

*St. Joseph's Catholic School & Sixth Form
Centre*
Ysgol Gatholig San Joseff

Staff Capability Procedure



Staff Capability Procedure agreed by Governors:

Signed by Chair: _____ **Date:** 04/07/2023

Staff Capability Procedure for All School Based Staff



Schools

SUGGESTED BY

NPTCBC HR

DATE

EDITION/VERSION

REVIEW DATE

Os hoffech dderbyn gohebiaeth mewn perthynas â'ch cyflogaeth yn Gymraeg, cysylltwch â'ch Swyddog AD dynodedig.

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1. INTRODUCTION

The following procedure is provided for Governing Bodies and Heads of Establishment as an example of good practice in dealing with staff capability difficulties. It is offered in good faith, but with the strong recommendation that advice is sought from Senior Management of the Directorate of Education, Leisure & Lifelong Learning at the earliest possible moment and thence throughout the progression of a specific case.

If the Governing Body choose to adopt this procedure, details should be issued to all staff so that they are fully aware of their rights and obligations. Governing Bodies are reminded that they, or their representative, will be required to attend any industrial tribunal which may arise as a result of action taken against a member of staff.

Where there is "good cause", for instance, where advice is not sought, or where advice is given but not followed, the Authority may charge to the school's budget any costs arising.

The following interpretations apply throughout this document:-

- for "him" read him/her;
- for "his" read his/her;
- for "he" read he/she;
- "Headteacher" includes any person nominated to represent him;
- "Director of Education, Leisure & Lifelong Learning" includes any officer nominated to represent him.

2. DEFINITION

The procedure is designed to deal with difficulties arising out of problems of capability. It must be emphasized, however, that any alleged lack of capability arising out of a health problem, must be dealt with using the Authority's Sickness Monitoring Procedure. Neither the Capability Procedure nor the Disciplinary Procedure would be appropriate in such cases.

It is the view of the Authority that disciplinary procedures are not generally appropriate for instances involving poor performance or lack of capability, unless the employee's performance at work is wilfully inadequate, or poor performance is reflected by a combination of incompetence and misconduct. However, when the reason for dissatisfaction with an employee's performance is related to capability, meaning 'capability assessed by reference to skill, aptitude, health or any other physical or mental quality', the principles inherent in disciplinary procedures can be adapted to meet such cases and to ensure that they are handled sympathetically and constructively.

The following procedure is therefore designed to deal with cases where there is an innate lack of capability for reasons other than health or any other physical or mental quality. It is emphasised that the procedure is not normally to be linked in any way to the Teacher Appraisal System unless requested by the Teacher and is not to be used at all in the context of performance related pay.

3. AIM

It must be emphasised that the prime aim of the procedure is to achieve an improvement to an acceptable standard in the unsatisfactory level of performance of an employee with regard to work standards, quality, productivity, or other capability factors which affect efficiency.

4. HEADTEACHER

Where the headteacher is the subject of the concern the procedure as outlined in Appendix A will apply.

5. INITIAL SUPPORT

5.1 For all staff, management will already have ensured that appropriate supervision, training, counselling and encouragement have been provided.

5.2 Where concerns then develop over the work performance of a member of staff, the appropriate line manager (Headteacher, Deputy Head, Head of Department, etc.) will need to undertake the following action:-

- I Investigate the situation by discussion with the member of staff to establish the legitimacy of the concerns, if necessary, with a trade union representative or friend present.

- II Where it is decided that there are legitimate concerns, make those concerns clear to the member of staff, together with the need for improvement.
- III Provide appropriate counselling.
- IV Provide for, or make arrangements for refresher or other forms of training where appropriate.
- V Provide closer supervision and support for a period of time, perhaps involving a "mentor" colleague.
- VI Review the employee's progress at appropriate intervals.
- VII Log any action taken on the employee's file, together with details of areas of concern and progress achieved.

5.3. Following support of this kind, if the employee's progress is judged to have reached the appropriate standard, the employee is to be informed of this and a record placed on the personal file. However, if the level of performance is still considered inadequate, the line manager should consult the Directorate of Education, Leisure & Lifelong Learning so that action under the formal procedure can be considered.

5.4 In cases of very serious under-performance it may be necessary to move immediately to "Formal Procedure - Stage II". Action in such cases would only be taken on the advice of the LEA and where there was a risk of very serious damage to the school.

6. FORMAL PROCEDURE – STAGE I

- 6.1 Having utilised the informal approach, where the Headteacher considers it necessary to take formal action because of the failure of the employee to meet the necessary performance standards the employee should receive a written notification giving a minimum period of seven days notice that an interview under the procedure will be held. The notification should state the nature of the unsatisfactory work performance and that the employee may be accompanied at the interview by a trade union representative or a friend.
- 6.2 At the interview, the work performance issues should be discussed and should the Headteacher consider it justified, a **WRITTEN WARNING** should be issued stating:
- i) the nature of the unsatisfactory work performance as discussed at the interview;
 - ii) the action required by the employee;
 - iii) any further training or support which is to be provided;
 - iv) the date at which the issues will be the subject of a follow-up review – a reasonable time limit would be up to a maximum of 3 months;
 - v) the employee's right of appeal - see Para. 8.
- 6.3. The written warning should be handed or sent to the employee within three working days of the interview and a copy kept on his personal file.
- 6.4. If upon the follow-up review the employee has improved to the satisfaction of the Headteacher, a letter stating this should be sent to the employee concerned and a copy placed on his personal file.

7. FORMAL PROCEDURE – STAGE II

7.1 Should the follow-up review at Stage I indicate a further cause for concern and the Headteacher considers that an interview under this stage of the procedure is warranted the employee will be informed. Notification of the interview and its format will be in accordance with that detailed in Stage I above.

7.2 Should the Headteacher consider that a final warning is justified, the interview will be followed by the issue of a FINAL WARNING stating:

- i) the nature of the unsatisfactory matters dealt with at the interview;
- ii) the action required by the employee;
- iii) any further training or support which is to be provided;
- iv) the fact that a final warning has been given and that any further cause for complaint may result in the termination of employment;
- v) the date on which the employee's performance will be the subject of a follow-up review;
- vi) the employee's right of appeal - see Para. 8.

7.3 The final warning should be handed or sent to the employee within three working days of the interview and a copy kept on his personal file.

7.4 The follow-up review should be conducted in accordance with the arrangements specified in Stage I above - Para. 5.4.

7.1 ALTERNATIVE EMPLOYMENT/TERMINATION OF EMPLOYMENT

7.2 If the outcome of the follow-up review in Stage II is that the employee has still not improved to the required standard, the Headteacher should discuss the question of suitable alternative employment with the employee. Consideration should then be given as to whether alternative employment more suitable to the employee's capabilities can be offered. The employee must be called to a meeting to inform him that an offer will be made in writing, explaining why it is made, the consequences of refusing it and giving him a period of 7 days to consider the offer and to reply. It must be stressed that alternative employment does not have to be equivalent in terms and conditions to the current post and protection of salary will not apply.

7.3 If no offer of alternative employment can be made, then a meeting must be held to consider the termination of the employee's appointment on the grounds of his lack of capability.

7.4 Only the Governing Body may take a decision to terminate the employment of a member of staff. The Governing Body also needs to establish a procedure for the hearing of appeals. The decision of that Appeals Body will be binding and, in terms of natural justice, Governors taking part in the original decision should not be involved in hearing the appeal. The Governing Body should therefore constitute a Staff Dismissal Committee of three of their number which will meet to consider the recommendation by the Headteacher that the appointment be terminated on the grounds of the employee's inability to carry out duties to an acceptable standard. It shall have the power delegated to it to carry out this function.

7.5 The employee must be informed by letter of the date, time and location of the meeting, the nature of the specific charges and his/her right to be accompanied by a trade union representative or friend. The date of the meeting must be at least 7 days after the date of the letter.

7.6 The Headteacher should prepare a statement giving:-

- a) full details of the alleged lack of capability;
- b) statement of any unexpired previous warnings, with reasons and dates and subsequent action taken;
- c) any other relevant documentary evidence.

This report is to be sent under confidential cover in advance of the meeting to the member of staff concerned not less than 7 days before the meeting. The report will be given to members of the Staff Dismissal Committee at the start of the meeting. If the employee wishes to introduce documentary evidence, he may also do so at this stage, but it is necessary that the Headteacher be provided with a copy of that documentary evidence at least 24 hours before the start of the meeting.

7.7 The Director of Education, Leisure & Lifelong Learning is entitled to attend and advise any such meetings and must be extended an invitation to attend with the usual 7 days' notice given to members of the Staff Dismissal Committee.

7.8 If the member of staff fails to attend or to be represented at the meeting, this shall not invalidate the proceedings although the Staff Dismissal Committee may, at their discretion, adjourn the meeting.

7.9 The proceedings of the meeting shall be as follows:-

- (i) As indicated in 7.6 above, the Headteacher's statement is to be given to the Staff Dismissal Committee, together with any documentary evidence which the employee might wish to introduce.
- (ii) The Headteacher will outline the alleged lack of capability, introducing any witnesses necessary.
- (iii) The employee and/or his representative will be invited to offer his explanation, call witnesses if appropriate, or speak in mitigation.

- (iv) The various parties (i.e. the employee or his representative, the Staff Dismissal Committee, the Head or their Advisers) will be allowed to ask questions at any convenient point in the proceedings, which should be kept as informal as possible.
- (v) Both the employee or his representative and the Headteacher will be allowed to make a concluding statement.
- (vi) All those present, except for the Staff Dismissal Committee and their Adviser(s), shall be instructed to withdraw whilst the Staff Dismissal Committee considers the matter.
- (vii) If they consider there are sufficient grounds, they may decide on dismissal or on some lesser action.
- (viii) Where they are unable to make a decision, they may defer the matter.
- (ix) After the Staff Dismissal Committee have completed their deliberation, the parties will be recalled and advised of the conclusions reached. The employee will be notified of his rights of appeal and will be sent written confirmation of the decision, the reasons, and of his rights of appeal. The Clerk to the Governors shall copy this letter to the Director of Education, Leisure & Lifelong Learning.
- (x) When the member of staff subject to action is the Head of Establishment, the role of Head of Establishment in the proceedings will be taken by the Director of Education, Leisure & Lifelong Learning.

9. APPEALS

9.1 The employee will have a right of appeal against the decision of the Staff Dismissal Committee or any stage of the formal interview procedure. Appeals must be in writing to the Headteacher within the time scales outlined below, giving full details of the grounds of the appeal.

9.2 The right of appeal against any stage of the interview procedure outlined in para. 6 must be exercised within 7 days of the date of the letter confirming the outcome of the interview. The appeal will be heard by the Staff Dismissal Committee referred to in para 7. above.

9.3 The right of appeal against the dismissal decision of the Staff Dismissal Committee must be exercised within 7 days of the date of the letter confirming the decision of the Staff Dismissal Committee.

9.4 The Governing Body will arrange for those of their Members who are not involved in the Staff Dismissal Committee to hear the appeal against termination. At least 10 and not more than 15 days should be allowed from the date of receipt of the appeal before the appeals meeting of the Governors is held.

9.5 The Director of Education, Leisure & Lifelong Learning shall have the right to be present throughout the meeting to advise the Governing Body and is entitled to the same notice of the meeting as members of the Governing Body. At least 7 days' notice of the time and date of the meeting shall be given to the member of staff, Governors and Director of Education, Leisure & Lifelong Learning.

9.6 The Governing Body should operate as follows:-

- i) Where an appeal has been lodged, the various parties and their representatives should be called in simultaneously before the Appeals Body.
- ii) The Clerk to the Governors should put before the Appeals Body and the various parties, a brief statement of the Appellant's personal details (e.g. post held, length of service, etc.,) together with details of the charges upon which the disciplinary action was based.
- iii) The Headteacher will then present the case, calling any witnesses.

- iv) The Appellant or his representative will have a right to question the Headteacher and any witnesses.
- v) The Appellant or his representative will present his case calling any witnesses.
- vi) The Headteacher or his representatives and the Governing Body will then be entitled to question the Appellant and any witnesses on the case so presented
- vii) Both parties can then make any closing remarks with the Headteacher going first. No new evidence is to be introduced at this stage.
- viii) All the parties other than the Governing Body and the Director of Education, Leisure & Lifelong Learning will withdraw while the Governing Body consider the matter.
- ix) The Governing Body may, if they wish, recall the parties to clarify any points, but in any such event, must recall both the Headteacher and the Appellant, notwithstanding that only one party is to be questioned.
- x) After a decision has been reached, the parties should be recalled and the Governing Body's decision announced. This will then be confirmed in writing by the Clerk to the Governors at the earliest opportunity to the employee and the Director of Education, Leisure & Lifelong Learning.
- xi) If the decision is to confirm the termination of employment, the Director of Education, Leisure & Lifelong Learning will formally terminate the employee's contract.

10. COSTS OF DISMISSAL

Governing Bodies and Headteachers are reminded that, if the Local Education Authority has good reason, the penalties and costs awarded by an Industrial Tribunal may be charged to the establishment's budget. Such good reason may be if the Authority's advice is not accepted or if the above procedure were not followed.

APPENDIX A

Procedure where the headteacher is the subject of action with regard to capability issues

1. Where a capability issue arises with the headteacher, the Chair or Vice Chair, where appropriate, will arrange for the Director of Education, Leisure & Lifelong Learning to carry out any investigation necessary.
2. Following the investigation, if it is decided that formal action is not warranted, then the Chair and Vice Chair together with the Director of Education, Leisure & Lifelong Learning, will interview the headteacher.
3. In the absence of the Chair or Vice Chair another member of the Governing Body will be selected as a substitute by either the Chair or Vice Chair as appropriate.
4. Where, following the investigation, it is decided that a formal capability hearing is warranted, the capability Staff Dismissal Committee of the Governing Body will meet to hear the case.
5. The procedure for the Staff Dismissal Committee meetings will be as outlined in paragraphs 4, 5, 6 and 7, of the main procedure, with the case against the headteacher being presented by the Director of Education, Leisure & Lifelong Learning, Leisure.
6. Any appeals, whether against warnings, some other penalty or dismissal will be dealt with under the appeal paragraph 8 of the main procedure, again with the role of the headteacher being carried out by the Director of Education, Leisure & Lifelong Learning.