



**Unsatisfactory Performance Procedure - Support staff**  
**Wandsworth Hospital and Home Tuition Service**

**Author of Procedures:** Wandsworth Borough Council

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### A. Preamble

The Governing Body of the School together with the Headteacher are expected to take appropriate steps to ensure satisfactory performance levels from all staff. This procedure is designed to ensure that where unsatisfactory staff performance is identified, the employee is treated fairly, and appropriate action to seek to resolve the problem is taken at an early stage. The procedure also ensures that the employee is given an opportunity to improve performance, having had additional training or guidance, as appropriate. Dismissal shall be a final recourse, only after attempts to achieve a satisfactory level of performance have failed, or the possibilities for redeployment have been exhausted. All employees have the right under this Procedure to approach their trade union representative for advice and guidance at any stage and are encouraged to do so.

This Procedure shall not apply to employees whose performance is unsatisfactory because of ill health (the Code of Practice for Staff Sickness refers). Where a welfare dimension is raised, human resources advice should be sought.

### B. Procedure

#### **B1. Informal Guidance**

Formal action under this Procedure is very much an action of last resort. Should an employee's level of performance give cause for concern the manager should discuss this fully with the employee concerned and explore methods of improving the situation at an early stage, e.g. by the provision of guidance, direction, training and/or support.

#### **B2. Outline of stages and levels of responsibility**

2.1 If responsibility for dismissals has been delegated to the Headteacher, a Senior Manager would normally undertake Stage 1, with a Headteacher's Hearing at Stage 2. Stage 3 is the Appeal Hearing which would be undertaken by the Appeal Committee of the Governing Body. Where responsibility for dismissals has not been delegated to the Headteacher or where the Headteacher is the direct line manager of the individual, the Headteacher should undertake Stage 1, a Committee of the Governing Body Stage 2 and the Appeal Committee of the Governing Body Stage 3.

#### **B3. Stage 1**

3.1 Where a manager considers that an employee's performance remains unsatisfactory, after normal management steps have failed to produce the desired level of performance, the manager shall refer the matter to the Headteacher or Senior Manager. He/she shall then arrange to interview the employee formally. In giving notice of the interview arrangements, the Headteacher or Senior Manager shall explain in writing the reason for the meeting, and inform the employee that he/she may be accompanied at the interview by a trade union or other representative and give the employee enough time and particulars to prepare for it. Three clear working days should normally suffice for this, but this may be extended by agreement if the nature of the case requires it.

3.2 At the interview the Headteacher or Senior Manager shall explain to the employee the

reason for the meeting and examine the circumstances of the problem, allow opportunities for discussion, response and explanation and discuss ways in which performance may be improved.

3.3 At the conclusion of the interview, if satisfied that further action to rectify performance is necessary, the Headteacher or Senior Manager shall:

- (a) specify the areas in which improvement is required and the priorities (if any) to be applied to these tasks;
- (b) specify the action needed to achieve improvement;
- (c) identify and offer remedies as appropriate e.g. training, further guidance;
- (d) set a review period and monitoring provision to apply during this period;
- (e) advise the employee that if he/she is dissatisfied with the action taken, this can be pursued under the Grievance Procedure (see Para.C.4).

A three month period shall be set for this first review period. Exceptionally this may be extended to meet particular work circumstances, in accordance with Paragraph 4 of the Technical Details. If the Headteacher or Senior Manager is satisfied that no further action is required, all reference to the meeting shall be expunged.

3.4 It shall be made clear to the employee that if performance is not found to be satisfactory at the end of the review period the case may be referred to the Committee of the Governing Body or Headteacher of the School and that this could result in dismissal or compulsory redeployment. The outcome of the interview will be confirmed by letter to the employee, specifying details of paragraph 3.3 (a) (b) (c) (d) and (e) above.

3.5 During the review period, progress should be monitored and regularly discussed with the employee. Records of this monitoring should be maintained on a monthly basis and a copy supplied to the employee.

3.6 If, at the end of the first review period, performance has proved satisfactory no further formal review period need be set, but continued supervision and monitoring arrangements should be considered to avoid further problems. If there has been substantial progress during the review period but performance remains below an acceptable level one more review period should be allowed if it appears likely that a satisfactory standard would then be achieved. In both cases the employee should be interviewed (using arrangements set out in paragraph 3.1) and informed of the decision. This should be confirmed in writing.

3.7 At the end of a review period, or at an earlier date if there is significant deterioration during it, the response should be discussed with the employee (arrangements as under paragraph 3.1) the reasons for any shortcomings explored, and the course of future action stated. The manager may, if appropriate, discuss with the employee possible solutions by way of redeployment and/or retraining.

3.8 If at the end of the first or any subsequent review, performance remains clearly below the satisfactory level, the case should be referred to the Headteacher or Committee of the Governing Body for consideration and possible compulsory redeployment or dismissal. This should be confirmed in writing.

## **B4. Stage 2**

4.1 The Committee of the Governing Body appointed to hear the case shall be constituted in accordance with the Articles of Government of the School and shall consist of three members of the Governing Body. It may not be appropriate to include staff governors on the

Committee.

4.2 In cases which are referred to the Committee of the Governing Body or Headteacher a report should be prepared on the specific shortcomings, with examples, and the action which has been taken in an attempt to resolve them.

4.3 At least five clear working days written notice should be given of the meeting by letter, which should state the purpose of the meeting and that possible outcomes include dismissal from the School, redeployment and/or retraining. The manager's report should be supplied to the employee at least 3 days prior to the hearing to allow preparation. This shall include a description of the employee's work record and work history. Any matters which have been expunged or allegations which are unsubstantiated and which the employee has not been advised of will not be referred to in the work record. The employee should be informed that he/she may be accompanied at the interview by a trade union or other representative. The notice shall be delivered by hand to the workplace or residence of the employee or sent by recorded delivery post. The timescales may be extended by agreement if the nature of the case requires it.

4.4 The person who conducted the Stage 1 of the procedures shall be present, together with a representative of the Director of Children's Services, and a notetaker to take a careful record of the proceedings. This record may be made available to the employee or, subject to the prior written agreement of the employee to the staff representative. Written documentation which is referred to at a hearing under this procedure should be made available at the request of the employee.

4.5 At the hearing, the Committee of the Governing Body or Headteacher should firstly review the action taken under this Procedure, then discuss with the employee the circumstances of the poor performance, the results of the review period and assessment, any mitigating circumstances, and finally consider any further action needed. If the case has been referred to the Committee of the Governing Body or Headteacher after a single review period, careful consideration should be given as to whether any further period would be beneficial, and if so, its length.

4.6 The employee (or representative) should be given an opportunity to present any mitigating factors.

4.7 The person who conducted the first stage of the procedure shall then sum up, followed by the employee (or representative).

4.8 The Committee of the Governing Body or Headteacher may adjourn a hearing in order to allow further evidence from either side to be produced or for any other purpose required by the particular circumstances.

4.9 Where the Committee of the Governing Body or Headteacher is of the opinion that performance continues to be unsatisfactory following the review process and that a further period of review, training or assistance to the employee would not produce the required improvement it should consider the possibility of redeployment and/or retraining in consultation with the Director of Children's Services/Council's Head of Corporate Human Resources.

## B5 Compulsory Redeployment

5.1 It may be possible to redeploy staff within the same school or within Council Departments. However it is not normally possible to redeploy staff across different schools. In cases where redeployment is an option, when a potentially suitable post has been identified, consideration shall be given to the pay arrangements having regard to the circumstances of the case, in consultation with the Council's Head of Corporate Human Resources and having regard to any representations made by the employee and/or representative. The employee should be provided with a letter specifying the proposed redeployment, including statement of particulars, a job description and details of pay and conditions. The employee will be asked to reply formally to the proposal within 10 clear working days of receipt of the letter. If it is decided to redeploy, the employee shall be entitled to appeal against any aspects of the decision to the Committee of the Governing Body constituted to hear appeals. Such appeal stating the grounds shall be lodged within the 10 day period referred to above.

## **B6. Dismissal**

6.1 After having given due consideration to the results of review periods, the employee's overall work record and work history and any mitigating factors, and after fully exploring, in consultation with the Council's Head of Corporate Human Resources the possibilities for redeployment and retraining, the Committee of the Governing Body or Headteacher may decide to dismiss the employee.

6.2 The decision of the Committee of the Governing Body or Headteacher shall be confirmed in writing by letter sent by the Director of Children's Services by recorded delivery post, or delivered by hand, to the residence or the employee at school. The letter will be arranged by your allocated HR Officer and will include the date of the last day of service.

6.3 If subsequent to the hearing, new evidence becomes available, it shall be brought to the attention of the Committee of the Governing Body or Headteacher who, if satisfied that the nature and significance is such that if presented at the original hearing, it may have affected the decision, shall have discretion to reconvene the hearing.

6.4 In cases of dismissal the employee shall be informed of appeal rights to the Appeals Committee of the Governing Body. Such appeals shall only be accepted on the grounds that:

- (a) the decision was unreasonable or unfair in the light of all the circumstances;
- or
- (b) the provisions of this procedure have not been observed, to the detriment of the employee.

6.5 An appeal shall state the grounds upon which it is based and shall contain supporting details, and must be lodged within ten working days of the date on which the decision was delivered to the employee.

## **C. Stage 3 - Appeal Procedure**

### **C.1 Preparation for the Appeal**

1.1 The final level of internal appeals is to the Committee of the Governing Body constituted to hear appeals.

1.2 Appeals shall be heard within twelve working days from the day of receipt by the Headteacher of a written notice of appeal stating the grounds of appeal. The employee shall be notified in writing of the date, time and place of hearing and provision for representation. The letter shall be sent by recorded delivery post or delivered by hand to the residence or

workplace of the employee to be delivered at least 5 working days before the hearing.

1.3 The appeal shall be heard with advisory officers present to give the Appeal Committee of the Governing Body such advice as may be necessary as to procedure, and the requirements of employment law, Codes of Practice and this Procedure, with such further enquiry as may be necessary to establish the facts of the case or the grounds of appeal.

1.4 The employee will be sent the written case statement of the Headteacher if she/he heard Stage 2, or the Chairman or other representative of the Committee of the Governing Body delivered at least 3 working days before the hearing.

## **C2. Conduct of the Appeal to Appeals Committee**

2.1 The Headteacher or Chairman (or other representative of the Committee of the Governing Body which made the decision being appealed against) shall report the circumstances of the case by written statement, in the presence of the employee and the representative, and may call witnesses as to the facts.

2.2 The employee or the representative shall then be given the opportunity to question the Headteacher or Chairman or other representative concerned or any witnesses.

2.3 The members of the Appeal Committee shall then have the opportunity to question the Headteacher or Chairman or representative concerned or any witnesses.

2.4 The employee or the representative shall then put his/her case in the presence of the Headteacher or Chairman or other representative and may call witnesses.

2.5 The Headteacher or Chairman or other representative concerned shall then have the opportunity to question the employee and his/her witnesses.

2.6 The members of the Appeal Committee shall then have the opportunity to question the employee and his/her witnesses.

2.7 The Headteacher or Chairman or other representative shall then sum up, followed by the employee or the representative.

2.8 All parties will then withdraw, except for the Headteacher or Chairman or other representative concerned and the employee's representative who shall be invited to remain to assist in consideration of the management and employee relations aspects for the case, following which they shall withdraw.

2.9 The members of the Appeal Committee shall then consider the case in private. If it is necessary to recall any party to answer any questions, all the parties shall be recalled. The members of the Appeal Committee shall determine their decision in all respects as they think fit on behalf of the School.

2.10 All the parties shall then be recalled and informed of the decision.

2.11 A hearing may be adjourned at any stage by the members of the Appeal Committee to allow further evidence to be produced, or for any other purposes required by the particular circumstances.

## **C3. Confirmation of Decision**

The appeal decision shall be confirmed in writing by letter sent by recorded delivery post or by hand to the residence or workplace of the employee. The letter shall state the grounds on which the decision is based.

#### **C4. Other Representations Regarding the Application of this Procedure**

Following a formal interview under this Procedure, an employee will be informed that should he/she be aggrieved regarding the reasonableness of the criticisms which have been made and/or the criteria that have been set, these can be pursued using the School's Grievance Procedure for support staff. Special provision shall be made that the individual hearing such a grievance does not subsequently become involved in decisions made with regard to that employee under this Procedure.

#### **C5. Employment Tribunals**

The appeal rights conveyed by this procedure are not intended to be in substitution for, or prejudicial to, an employee's right of appeal to an Employment Tribunal on a complaint of unfair dismissal. Details of that appeal procedure and its time limit may be obtained from the Central Office of the Employment Tribunals, Montague Court, London Road, Croydon CR0 2RF. It is suggested that any aggrieved employee should first use the internal appeals machinery of this procedure fully before proceeding on such a complaint.

**Note: This procedure applies from 2007. This version was reformatted in January 2013.**

#### **Technical Details**

##### **1.0. Application**

This procedure shall apply to all support staff other than those in a probationary period. Special provisions apply in the following cases:

##### **1.1 Employee representatives**

Recognised trade union staff representatives and shop stewards shall be subject to the same standards as other employees, but shall be advised that they have the right to be represented by a full-time official of their union. To avoid misunderstanding the Headteacher or his/her representative bringing action under this Procedure shall also immediately contact the Trade Union District Officer or equivalent and no action beyond the informal stages shall be taken until the circumstances of the case have been discussed with that person. If in any circumstances such discussion cannot immediately take place then the nature of the case and the arrangements for hearing shall be notified to the District Officer or equivalent and to the local Trade Union Branch Secretary in writing. Thereafter the procedure to be followed shall be as prescribed for employees generally.

##### **2. Authority**

The expressions Director of Children's Services, Headteacher and Council's Head of Corporate Human Resources shall include any person at an appropriate level of seniority authorised to act on their behalf.

##### **3. Representation**

The employee may be represented by a trade union or colleague at any hearing under this

procedure. This can include another employee, unless the latter has given, or could be reasonably expected to give management advice on that particular case in performing his/her own duties of employment. The representative shall be afforded such time off with pay from his/her normal duties as shall be reasonably required to prepare for and to attend the hearing.

#### 4. Waiver of Time Limits

The periods given in this procedure for the completion of the procedural stages are provided to ensure prompt decisions in the interests of both the School and the employee.

Where it is considered that an exception may be warranted an application for the extension of any prescribed period together with the reasons therefore shall be made immediately to the Headteacher who will undertake the necessary consultations and convey the School's decision upon the application. Alternatively it may be considered necessary for the School to extend a time limit. In such a case the Headteacher will consult with the Director of Children's Services, the representative and employee concerned as appropriate. The School decision on any extension shall be final.

#### 5. Expungement of Records

Employees should be informed when any informal adverse criticism or any reference to action under this Procedure are to be placed on their personal files and notified of their content. These should be removed after a period of 18 months from the date when a satisfactory standard of performance has been achieved provided that no further formal action under this procedure has proved necessary and the employee should be notified of this. If a further unsatisfactory performance review is begun before the expiry of this 18 month period, all previous unsatisfactory performance reviews shall be taken into account.