

John Wheatley College

Procedure for Dealing with Capability

This document was approved by the Board of Management on 9 December 2010.

1. Aim

- 1.1 The primary aim of this procedure is to establish a support system for employees in relation to their capability and provide a framework within which managers can work with employees to maintain satisfactory performance standards and to encourage improvement.
- 1.2 It is the College's policy to ensure that concerns over performance are dealt with fairly and that steps are taken to establish the facts, provide support where required and to give employees the opportunity to improve performance.
- 1.3 This procedure is for guidance only and does not form part of an employee's contract of employment. The College may amend it at any time depending on the circumstances of the case.

2. General Principles

- 2.1 This procedure applies to all employees regardless of length of service. It does not apply to agency workers or self-employed contractors. It does not apply to cases of proposed redundancies or misconduct.
- 2.2 The procedure was developed in line with legislation and the ACAS Guide and Code of Practice relating to discipline and grievance procedures.
- 2.3 The purpose of the procedure is to elicit more positive behavior, conduct or performance on the part of the employee.
- 2.4 In the first instance, performance issues should normally be dealt with informally between the employee and their manager as part of day-to-day management. Formal procedures should be used for more serious cases, or in any case where an earlier informal discussion has not resulted in a satisfactory improvement.

Such informal discussions may help to:

- (a) identify the performance problem(s);
- (b) establish the impact on the College service;

- (c) have the employee acknowledge that there is impact on service and a willingness to improve;
- (d) establish any mitigating circumstances;
- (e) establish the likely causes of poor performance to determine how the poor performance should be managed and identify any related training needs;
- (c) encourage the employee to comment;
- (f) identify the improvements required and the required standards;
- (g) identify and set targets for the required improvements in performance;
- (h) set a timescale for the improvements;
- (i) identify any support or training to be given; and
- (j) set a date for review.

2.5 If there are concerns about an employee's performance their manager will undertake an assessment to decide how the matter should be progressed and managed. There are a range of potential outcomes of this review and the procedure followed will depend on the outcome of the assessment.

2.6 Where there is no improvement in performance the College will proceed to the formal stages of this procedure.

2.7 Where there is a decision to progress to a formal process the individual's manager will be required to provide a report on how performance has been managed to date.

3. Disabilities and Ill-Health

3.1 Consideration will always be given to whether an individual's disability or ill health has an impact on their performance and, if so, whether there are reasonable adjustments that could be made to an employee's working arrangements, including changing duties or providing additional equipment or training.

3.2 If an employee wishes to discuss this or inform the College of any disability or medical condition they consider may have an impact on their performance, they should contact the Human Resources section, their line manager or another appropriate member of the management team.

3.3 The College may, if deemed appropriate, seek the views of its Occupational Health Advisor in circumstances related to disability or ill-health where this is

a contributing factor. Such a decision will normally be made by the Human Resources Manager.

4. Notification of a Hearing

- 4.1 If the College considers that there are grounds for taking formal action over alleged poor performance, the employee will be required to attend a capability hearing. The College will notify the employee in writing of its concerns over their performance, the reasons for those concerns, the person who will chair the hearing, the procedure to be followed and the likely outcome if the evidence supports the allegation that the employee's performance has been unsatisfactory.

The College will also include the following where appropriate:

- (a) a summary of relevant information gathered;
 - (b) a copy of any relevant documents which will be used at the capability hearing; and
 - (c) a copy of the Capability Procedures.
- 4.2 The College will give the employee written notice of the date, time and place of the capability hearing. The hearing will be held as soon as reasonably practicable, but employees will be given a reasonable amount of time (usually a minimum of five College working days) to prepare their case based on the information the College has given to the employee.

5. Right to be Accompanied at Hearings

- 5.1 Employees may bring a companion to any capability hearing or appeal hearing under this procedure. The companion may be either a trade union official or a fellow worker. The employee must tell the manager conducting the hearing the identity of the chosen companion in good time before the hearing.
- 5.2 Acting as a companion is voluntary and other staff are under no obligation to do so. Employees will be allowed reasonable time off from duties, without loss of pay, to act as a companion.
- 5.3 If an employee's choice of companion is unreasonable the College may require the employee to choose someone else. For example:
- (a) if in the College's opinion the chosen companion may have a conflict of interest or may prejudice the hearing; or
 - (b) if the chosen companion is unavailable at the time a hearing is scheduled and will not be available for more than five working days.

- 5.4 The College may, at its discretion, allow the employee to bring another person who is not an employee or union official where this will help overcome a particular difficulty caused by language barrier or a disability. This person will be in addition to their chosen companion.
- 5.5 Employees have no right to be accompanied by a solicitor or other legal agent who may have been retained to represent them in a professional capacity.

6. Confidentiality

- 6.1 The College's aim is to deal with performance matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with a matter which is subject to this capability procedure.
- 6.2 The College will provide copies of the notes taken by the Chair during a disciplinary hearing or appeal hearing.
- 6.3 Employees will normally be told the names of any witnesses whose evidence is relevant to their capability hearing, unless the College believes that a witness's identity should remain confidential.

7. Procedure at Capability Hearings

- 7.1 The capability hearing will be attended by:
- (a) the individual chairing the hearing. It will be for this individual to hear and assess the evidence for and against the allegations of poor performance and make a decision based on the evidence presented;
 - (b) the manager presenting the case;
 - (c) a representative from the Human Resources Section. Their responsibility will be to ensure the College's procedures are followed;
 - (d) the person presenting the evidence. Normally the employee's manager;
 - (e) the employee; and
 - (f) the employee's companion.
- 7.2 If the employee or their companion cannot attend the hearing the employee should inform the College immediately and it will usually arrange an alternative time. Employees must make every effort to attend the hearing, and failure to attend without good reason may be treated as misconduct in itself. If an employee fails to attend without good reason, or are persistently unable to do so (for example for health reasons), the College may have to take a

decision based on the available evidence. If the failure to attend is related to a disability or health reasons the College will seek the opinion of its Occupational Health Service before making a decision.

- 7.3 The employee may bring a companion with them to the hearing (see paragraph 5). The employee's companion may make representations, ask questions, and sum up the employee's case, but will not be allowed to answer questions on the employee's behalf unless agreed by the Chair based on a barrier caused by language or disability. An employee may confer privately with their companion at any time during the hearing.
- 7.4 The employee may ask relevant witnesses to appear at the hearing, provided they give the Human Resources Section adequate notice and arrange their attendance. However, it will be for individual employees to decide whether to appear as a witness and the College will be under no duty to compel attendance. The employee will be given the opportunity to respond to any information given by a witness. The employee will normally be permitted to ask questions of a witness.
- 7.5 The purpose of a capability hearing will be to:
- (a) set out the required standards that the employee may have failed to meet, and going through any relevant evidence that the College has gathered;
 - (b) establish the performance improvement that is required;
 - (c) allow the employee to ask questions, present evidence, call witnesses, respond to evidence and make representations;
 - (d) establish the likely causes of poor performance including any reasons why any measures taken so far have not led to the required improvement;
 - (e) identify whether there are further measures, such as additional training or support, which may improve performance;
 - (f) where appropriate, discuss targets for improvement and a time-scale for review;
 - (g) set a timescale for improvements and a review date;
 - (h) if dismissal is a possibility, establish whether there is any likelihood of a significant improvement being made within a reasonable time and whether there is any practical alternative to dismissal, such as redeployment; and
 - (i) the consequences of failing to improve.

- 7.6 A hearing may be adjourned if the College needs to gather any further information or give consideration to matters discussed at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.
- 7.7 When the evidence has been heard and the questioning is complete the Chair will summarise the main points of the discussion. The employee will be given the opportunity to clarify and point or indicate anything they think has been missed or misinterpreted. The employee will then be asked if they have anything further to add.
- 7.8 The College will inform the employee in writing of its decision and its reasons for it, usually within five College working days of the capability hearing. Where possible this information will also be explained to the employee in person (accompanied by their companion and a College Human Resources representative). The employee will be required to sign and return a copy of the written decision within five working days.

8. Stage 1: Improvement Notice

- 8.1 Following a capability hearing, if the chair decides that an employee's performance is unsatisfactory, they will give the employee an improvement notice, setting out:
- (a) the performance issues;
 - (b) the areas in which the employee has not met the required performance standards;
 - (c) consideration of the manager's report, the actions taken and the impact on the College service;
 - (d) targets for improvement;
 - (e) any measures, such as additional training or support, which will be taken with a view to improving performance;
 - (f) a period for review; and
 - (g) the consequences of failing to improve within the review period, or of further unsatisfactory performance.
- 8.2 The improvement notice will normally remain active for six months, after which time it will be disregarded for the purposes of the capability procedure.
- 8.3 The employee's performance will be monitored by their manager during the review period and the manager will write to inform the employee of the outcome.

This will inform the employee:

- (a) if their manager is satisfied with their performance. No further action will be taken;
- (b) if their manager is not satisfied. The employee will be aware of this possibility as a result of the ongoing monitoring and review. The matter may be progressed to a Stage 2 capability hearing; or
- (c) if the manager feels that there has been an insufficient improvement. The review period may be extended.

9. Stage 2: Final Written Warning

- 9.1 If an employee's performance does not improve within the review period set out in the improvement notice, or if there is further evidence of poor performance while their improvement notice is still active, the College may decide to hold a Stage 2 capability hearing. The College will send the employee written notification as set out in paragraph 6.
- 9.2 Following a Stage 2 capability hearing, if the College decides that an employee's performance is unsatisfactory, the College will give the employee a final written warning, setting out:
 - (a) the performance issues;
 - (b) the areas in which the employee has not met the required performance standards;
 - (c) consideration of the manager's report, the actions taken and the impact on the College service;
 - (d) targets for improvement;
 - (e) any measures, such as additional training or support, which will be taken with a view to improving performance;
 - (f) a period for review;
 - (g) the consequences of failing to improve within the review period, or of further unsatisfactory performance.
- 9.3 A final written warning will normally remain active for a period of 12 months from the date of any formal decision, after which time it will be disregarded for the purposes of the capability procedure.
- 9.4 The employee's performance will be monitored by their manager during the review period and the manager will write to inform them of the outcome.

This will inform the employee:

- (a) if their manager is satisfied with their performance. No further action will be taken;
- (b) if their manager is not satisfied. The employee will be aware of this as a result of the ongoing monitoring and review. The matter may be progressed to a Stage 3 capability hearing; or
- (c) if the manager feels that there has been an insufficient improvement, the review period maybe extended.

10. Stage 3: Redeployment or Dismissal

10.1 The College may decide to hold a Stage 3 capability hearing if it has reason to believe the employee's performance:

- (a) has not improved sufficiently within the review period set out in a final written warning; or
- (b) continues to be unsatisfactory while a final written warning is still active.

The College will send the employee written notification of the hearing.

10.2 Where the employee's alleged poor performance is unrelated to the improvement notice or final written warning the College will consider a separate improvement notice or warning.

10.3 Following the hearing, if the chair finds that an employee's performance is unsatisfactory, they may, after reviewing any mitigating factors, consider a range of options including:

- (a) redeploying the employee into another suitable job at the same or a lower grade; or
- (b) dismissing the employee.

10.4 Dismissal will normally be with full notice or payment in lieu of notice.

11. Appeals Against Action Related to Capability

11.1 If an employee feels that the action taken under this procedure is wrong or unjust they should appeal in writing, stating their full grounds of appeal within five College working days of the date on which they were informed in writing of the decision.

- 11.2 If an employee is appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if their appeal is successful they will be reinstated with no loss of continuity or pay.
- 11.3 If an employee raises any new matters in their appeal, the Chair may need to carry out further investigation. The party bringing the new information will provide a summary including, where appropriate, copies of additional relevant documents and associated witness statements. The chair and the employee will have a reasonable opportunity to consider this information before the hearing.
- 11.4 The chair will give the employee written notice of the date, time and place of the appeal hearing. This will normally be five working days after they receive the written notice.
- 11.5 The appeal hearing may be a complete re-hearing of the matter or it may be a review of the sanction. This will be at the College's discretion depending on the circumstances of the case. In any event the appeal will be dealt with as impartially as possible.
- 11.6 Where possible, the appeal hearing will be conducted by a manager who was not previously involved in the case. The employee may bring a companion to the appeal hearing.
- 11.7 When the evidence has been heard and the questioning is complete the chair will summarise the main points of the discussion. The employee will be given the opportunity to clarify and point or indicate anything they think has been missed or misinterpreted. The employee will then be asked if they have anything further to add.
- 11.8 Following the appeal hearing the College may:
 - (a) confirm the original decision; or
 - (b) revoke the original decision; or
 - (c) substitute a lesser sanction.
- 11.9 The College will inform the employee in writing of its final decision as soon as possible, usually within five College working days of the appeal hearing. Where possible this will also be explained to the employee in person (accompanied by their companion and a College Human Resources representative). The employee will be required to sign and return a copy of the written decision within five College working days.
- 11.10 There will be no further right of appeal.