

Capability Policy and Procedure for Staff

DOCUMENT TITLE:	CAPABILITY POLICY AND PROCEDURE FOR STAFF
VERSION NUMBER:	2
EFFECTIVE DATE:	1 MAY 2011
DATE OF LATEST REVISION:	N/A
DISTRIBUTION:	ALL EMPLOYEES (EXCLUDING HEADS)
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DEPARTMENT:	HR

1. Introduction

- 1.1 This policy and procedure applies to all employees of The Girls' Day School Trust (GDST) other than Heads (to whom a separate procedure applies).
- 1.2 The GDST expects from its staff a high standard of performance in their work, and to this end seeks to ensure that standards are established, achieved and maintained, performance is monitored and employees are given the appropriate support, training and development.
- 1.3 This policy and procedure is intended to operate in circumstances where an employee's performance is sometimes unsatisfactory because of lack of ability, skill, experience, or knowledge of what is expected. This procedure will not be applied in situations of redundancy, misconduct, sickness absence or ill health and is not applicable during an employee's probationary period other than in cases of gross incapability, which will be dealt with under the final formal stage. However, the GDST reserves the right to follow whichever procedure it thinks the most appropriate in the circumstances.
- 1.4 Any action taken under this procedure (i.e. improvement notes, final written warnings or dismissal) other than informal action will only be taken after a hearing and in accordance with this capability procedure.

2. Informal guidance

- 2.1 Nothing in this procedure is intended to prevent the normal process of supervision whereby line managers allocate work, monitor performance, draw attention to errors or poor quality, offer assistance in achieving improvement and highlight work done well. However, if there is continuing concern about an employee's work performance, it is important for the line manager to take prompt action in accordance with this procedure.
- 2.2 The line manager should have one or more informal discussions with the employee to explain the concerns, listen to the employee's viewpoint, and try to establish the reason(s) for any poor performance.
- 2.3 If poor health is contributing to the problem, the matter should be dealt with in accordance with the appropriate sickness absence and ill-health procedure.
- 2.4 If it is established that performance problems are related to the employee's personal life or domestic circumstances, then the employee should be encouraged to seek appropriate counselling and support, and given whatever reasonable help the Head or other line manager is able to offer.
- 2.5 Before moving into the Formal Stage of this procedure, the line manager should normally have:
 - investigated any complaints or concerns;

- established clearly what reasonable and attainable standards and targets are expected for the future;
- agreed what training and other support will be given to help the employee improve; and
- set a review date.

Where improvement in performance is required, it is recommended to confirm the details in writing. This does not constitute a formal warning.

- 2.6 Where appropriate, notes of any informal discussions may be placed on the employee's personnel file and may be referred to in future capability hearings.
- 2.7 An employee who wishes to appeal against any informal action taken should use the grievance procedure.
- 2.8 If the employee's performance improves satisfactorily, the employee should be informed and encouraged to maintain the improvement. However, if there are still concerns about an employee's performance, the line manager will assess whether there are grounds for taking formal action under this procedure.

3. Disabilities

- 3.1 Consideration will be given to whether an employee's poor performance may be related to a disability and, if so, whether there are reasonable adjustments that could be made to the employee's working arrangements, including changing his or her duties or providing additional equipment or training. This procedure may also be adjusted if appropriate.

4. Notification of a formal capability hearing

- 4.1 The formal procedure should be used where earlier informal guidance has not resulted in a satisfactory improvement or for more serious cases of poor performance where it is considered informal guidance would not be appropriate. If, it is considered that there are grounds for taking formal action over an employee's alleged poor performance, s/he will be required to attend a formal capability hearing.
- 4.2 Hearings will be held without unreasonable delay but allowing the employee reasonable time to prepare his or her case. Employees will be given at least five working days' notice in writing of the date and time of any capability hearing and:
 - (i) informed of the concerns to be raised, the reason for those concerns and the likely outcome if it is decided after the hearing that his/her performance has been unsatisfactory;
 - (ii) provided with a summary of relevant information gathered as part of any investigation, including copies of any documents to be relied upon at the hearing.
 - (iii) provided with a copy of this capability procedure and;
 - (iv) advised of his/her rights to be accompanied and to call any relevant witnesses.

5. The right to be accompanied

- 5.1 Employees have the right to bring a companion – either a work colleague or qualified trade union representative or official - to any capability or appeal hearing. If the outcome of a capability hearing could result in the employee being excluded from working in his/her profession (for example, where it is likely to lead to a referral to the Independent Safeguarding Authority or any equivalent body), the employee may be permitted to be accompanied by a legal representative if s/he so requests.
- 5.2 To exercise the right to be accompanied, the employee must make a reasonable request, detailing the name of any proposed companion. What is reasonable will depend on the circumstances of the case but it will not normally be reasonable for an employee to insist on being accompanied by a companion who: (i) would prejudice the proceedings by his or her presence; (ii) has to travel from a remote geographical location (if there is a suitable alternative companion on site); or (iii) is unavailable at the time the hearing is scheduled and will not be available for more than five working days after that date.

5.3 Employees may, at the GDST's discretion, be allowed to bring a companion who is not a colleague or trade union representative (for example a family member) where this will help to overcome a particular difficulty caused by a disability or where the employee has difficulty understanding English.

5.4 Employees and their companions should make every effort to attend the capability or appeal hearing. If the employee is unable to attend the hearing through circumstances outside her/his control, s/he should inform the line manager immediately who will usually arrange another hearing (but normally only one postponement will be permitted). If the employee's companion cannot attend on a proposed date, the employee may suggest another reasonable date not more than five working days after the date originally proposed. This time limit may be waived by mutual agreement.

5.5 During a formal capability meeting or appeal hearing, the employee's companion will be allowed to:

- Put the employee's case;
- Sum up the employee's case;
- Respond on behalf of the employee to any views expressed during the meeting; and
- Confer with the employee during the meeting.

The employee's companion will not have the right to:

- answer questions on the employee's behalf;
- address the meeting if the employee does not wish it; or
- prevent the employee from explaining the case.

6. Procedure at formal capability hearings

6.1 The aims of a capability hearing are to:

- go through any evidence gathered in respect of the employee's performance;
- set out the perceived shortfall between the employee's performance and the required standard;
- allow the employee to ask questions, present evidence and make representations;
- if possible, to identify the cause(s) of any poor performance;
- hear any explanations offered by the employee;
- establish any measures that may improve the employee's performance (such as continuing training or support);
- discuss any specific targets to be met by the employee and the time scale over which improvement is expected;
- how performance will be monitored over that period and feedback provided; and
- for final formal stage hearings only: (if dismissal is a possibility) establish whether there is any likelihood of significant improvement within a reasonable time and any practical alternatives to dismissal, such as redeployment.

6.2 The hearing will normally be conducted by the employee's line manager or the person specified in his/her contract of employment, with other appropriate persons (i.e. a member of the HR team and/or another manager or senior administrative staff member) present in an advisory capacity and/or to take notes.

6.3 A hearing may be adjourned if it is necessary to gather more information or to give consideration to matters raised at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

6.4 Failure to attend the hearing without good reason may be treated as misconduct and dealt with accordingly. If an employee fails to attend or is persistently unable to do so, a decision may have to be taken in his or her absence based on the evidence available.

- 6.5 The employee will be informed of the outcome of the hearing and the reasons for it in writing (including details of an improvement note or a final written warning where unsatisfactory performance has been established – see below) usually within five working days of the hearing. Where possible, the outcome will also be explained to the employee in person.
- 6.6 Written notes of the hearing should be made and a copy will be given to the employee, usually within five working days of the hearing.

7. First Stage Formal Hearing: Improvement note

7.1 Following a first stage formal capability hearing notified and convened as set out above, if the employee's performance is found to be unsatisfactory, s/he will be given an improvement note, setting out:

- the areas in which the employee has not met the required performance standards;
- targets for improvement;
- any measures (such as additional training or supervision) which will be taken to help the employee improve his or her performance;
- the timescale over which improvement is expected and will be reviewed;
- how performance will be monitored over the review period and feedback provided.
- the consequences of failure to improve within the period or of other unsatisfactory performance; and
- the right of appeal.

7.2 An improvement note will remain active for twelve months from its date of issue after which time it will remain on the employee's personnel file but will be disregarded for the purposes of the capability procedure.

7.3 The employee's performance will be monitored during the review period and at the end of the period the outcome will be confirmed in writing:

- If there has been a satisfactory improvement in the employee's performance, no further action will be taken and the employee should be informed and encouraged to maintain the improvement. Where relevant, further monitoring arrangements to ensure improvement is sustained should be put in place.
- Where it is considered there has been a substantial but insufficient improvement, the review period may be extended.
- If there has not been a satisfactory improvement in the employee's performance, the matter may be progressed to the second formal stage.

8. Second Stage Formal Hearing: Final written warning *(for staff who have completed their probationary periods but with less than 12 months' service, this stage may be omitted and continuing cases should move directly to the Final Formal Stage)*

8.1 If the line manager considers that the level of improvement in the employee's performance within the review period set out in the improvement note is unacceptable or there is further evidence of poor performance while the improvement note is still active, s/he may decide to hold a second stage formal hearing, notified and convened as set out above in this document.

8.2 If, following a second stage formal hearing, it is decided that the employee's performance is unsatisfactory, s/he will be given a final written warning, setting out:

- the areas in which s/he has not met the required performance standards;
- targets for improvement;
- any measures (such as additional training or supervision) which will be taken to help the employee improve his or her performance;
- the timescale over which improvement is expected and will be reviewed;

- how performance will be monitored over the review period and feedback provided;
- the consequences of failure to improve within the period or of other unsatisfactory performance, which may be dismissal with notice; and
- the right of appeal.

8.3 A final written warning will remain active for two years from its date of issue after which time it will remain on the employee's personnel file but will be disregarded for the purposes of the capability procedure.

8.4 The employee's performance will be monitored during the review period and the outcome will be confirmed in writing:

- If there has been a satisfactory improvement in the employee's performance, no further action will be taken and the employee should be informed and encouraged to maintain the improvement. Where relevant, further monitoring arrangements to ensure improvement is sustained should be put in place.

- If there has not been a satisfactory or sufficient enough improvement in the employee's performance, the matter may be progressed to the final formal stage.

9. Final Stage Formal Hearing: Dismissal or Redeployment

9.1 The line manager or other authorised senior manager as specified in the employee's contract of employment (which may be the Head (*for school staff*) or a member of the SMT or the CEO (*for Trust Office staff*)) may decide to hold a final stage formal capability hearing if s/he has reason to believe that:

- the employee's performance has not improved sufficiently within the review period set out in a final written warning; or
- the employee's performance has been unsatisfactory while a final written warning is still active; or
- the employee's performance has been grossly negligent or incompetent so as to warrant dismissal without the need for a final written warning.

9.2 If it is decided to hold a final stage formal capability hearing, it will be notified and convened as set out above for formal hearings.

9.3 At the hearing, the appropriate manager will explain why s/he considers the employee's performance or level of improvement to be unacceptable, and the following should be discussed:

- Any explanations or mitigating circumstances offered by the employee.
- The possibility of dismissal or any alternative solutions, such as redeployment to a more suitable role if available (and if the employee's written preference for this action has been obtained), or extending an active final written warning (with a further review period).

9.4 Following the final formal stage capability hearing, if it is found that an employee's performance is unsatisfactory, the appropriate manager will consider whether this continuing failure to meet required standards of performance justifies dismissal. Before taking any decision to terminate employment, the manager must be satisfied that:

- any standards or targets set were reasonable and attainable;
- appropriate training and support have been provided;
- possibilities of alternative employment for which the employee may be more suited have been investigated; and
- this procedure has been followed.

9.5 The outcome of the final formal stage capability hearing will be notified in writing to the employee as soon as reasonably practicable and, if action is necessary, either notice of termination of employment will be given, or further arrangements for review of performance will be set out.

Dismissal will normally be with full notice in accordance with the provisions of the employee's contract of employment, unless the employee's performance has been considered grossly negligent, in which case s/he may be dismissed without notice.

- 9.6 The letter should also state the outcome of the hearing, the reasons for it and include the right of appeal and a copy of the notes of the hearing.

10. Right of appeal

- 10.1 An employee has the right to appeal a decision to take action under this procedure and to terminate employment. To exercise this right, the employee should submit an appeal in writing, giving full grounds, to the Head (*for school staff*) or the appropriate member of the Senior Management Team (SMT) (*for relevant Trust Office staff*), within ten working days of being informed of the decision. An employee who has been given an Improvement Note or a final written warning, or has been dismissed by the Head or a member of Trust Office SMT has the right of appeal to the Chief Executive Officer (CEO). An employee who has been given an Improvement Note or a final written warning, or has been dismissed by the CEO should submit an appeal to the Chairman of the Council of the GDST. An appeal may be made on the grounds of procedural irregularities or perceived unfairness of the decision.
- 10.2 If the employee raises any new matters in his or her appeal, the GDST may need to carry out further investigation. If any new information comes to light, the employee will be provided with a summary including, where appropriate, copies of additional relevant documents and witness statements. The employee will have a reasonable opportunity to consider this information before the appeal hearing.
- 10.3 The employee will be given at least five working days' written notice of the date, time and place of the appeal hearing. Appeals will be heard without unreasonable delay and as soon as is reasonably practicable.
- 10.4 The appeal will be heard by the Head or SMT member, or his or her appointed nominee. In circumstances where the Head or SMT member took the decision for capability action or to terminate employment, the appeal will be heard by the CEO or an appropriately senior person nominated by the CEO. Where the CEO took the decision for capability action or to terminate employment the appeal will be heard by a panel of three members of the Council of the GDST. In any case, the appeal will be conducted by someone other than, and more senior to, the person who investigated the matter or took the decision for capability action. Other appropriate persons (i.e. a member of the HR team and/or another manager or senior administrative staff member) may also be present at the appeal hearing in an advisory capacity and/or to take notes.
- 10.5 The appeal may be a complete re-hearing of the matter or a review of the fairness of the original decision in light of the procedure that was followed and any new information that may have come to light since. In any case, the appeal will be considered impartially.
- 10.6 The manager who conducted the capability hearing will usually be in attendance at the appeal hearing.
- 10.7 If it is necessary to carry out further investigations in light of any new points the employee raises at the appeal hearing, the appeal hearing may be adjourned to allow these investigations to take place. The employee will be given a reasonable opportunity to consider any new information obtained before the appeal hearing is reconvened.
- 10.8 Following the appeal hearing, either: (i) the original decision will be confirmed; (ii) the original decision will be revoked; and/or (iii) a different penalty will be substituted.
- 10.9 In any case, the employee will be informed of the decision in writing as soon as possible, usually within five working days of the appeal hearing. Where possible, the decision will also be explained to the employee in person.
- 10.10 The decision of the appeal shall be final. There is no further right of appeal.

- 10.11 If a decision to terminate employment is upheld, the date of the dismissal will be the original date of dismissal by the line manager or other authorised senior employee.

11. General

- 11.1 Occasionally it may not be reasonably practicable to comply with the time limits specified above in which case they may be varied by agreement between the GDST and the employee.
- 11.2 The GDST aims to deal with performance matters sensitively and with due respect for the privacy of the individuals involved. All employees must treat as confidential any information communicated to them in connection with a matter that is subject to this capability procedure.
- 11.3 Where an employee raises a grievance during a capability process, the capability process may be temporarily suspended in order to deal with the grievance if it is thought appropriate to do so. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.
- 11.4 Neither the GDST nor the employee (including his or her companion) subject to this capability procedure may make any electronic recording of any meetings or hearings conducted under this procedure.
- 11.5 This procedure may be amended from time to time by the GDST in order to reflect changes in statutory requirements or organisational changes within the GDST. Substantive changes will only be made following consultation with appropriate employee representatives.