Ealing Council

Managing Unsatisfactory Performance (Support Staff)

Model Procedure for Schools

**Revised Jan 2025**



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**MANAGING UNSATISFACTORY PERFORMANCE PROCEDURE (Support Staff)**

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**MANAGING UNSATISFACTORY PERFORMANCE PROCEDURE (Support Staff)**

## **AIM**

* 1. The school is committed to improving and maintaining employee performance, which is essential to improving the school’s overall performance in teaching and learning.The aim of this procedure is to provide fair, equitable and effective arrangements for achieving and maintaining the required standards of performance.

1.2 This document sets out a model managing unsatisfactory performance procedure (support staff), which is recommended for adoption by governing bodies. It has been developed following consultation with the recognised trade unions/professional associations.

1.3 The procedure takes account of the best practice legislative requirements and guidance.

## **SCOPE**

2.1 This procedure applies to all support staff who have a contract of employment to work at a School. It does not apply to, agency workers or contractors. For new support staff in their probation period the probation procedure should be used.

## **Internal Appointments**

2.2 Where internal appointments for support staff are subject to an induction period and they fail to meet the required standards of the new job at the end of the six-month period, the managing unsatisfactory performance procedure will be initiated at the formal stage. Evidence and documentation arising from the induction reviews will be considered.

## **Trade Union Officials**

2.3 Where an employee concerned is an official of a recognised trade union; the local Branch Secretary of that union should be informed before proceedings commence. In any event, Schools HR should be consulted about cases involving trade union representatives before any action is taken under this procedure.

## **DEFINITIONS**

3.1 Reference to ‘Managers’ or Senior Manager’ includes Headteacher, members of SLT and School Governors. (The school should set out within this section, which managers have delegated authority to take action under this procedure (including those who have authority to take action short of dismissal)

## **PRINCIPLES**

## **Management of Performance**

4.1 All schools require employees to sustain a satisfactory standard of work and performance to support the delivery of quality education and meet school commitments and objectives. It is the responsibility of managers to take active steps to manage and provide support for the performance of all employees. To achieve this there needs to be a means of identifying and addressing occasions where capability and performance of employees is considered to have fallen below an acceptable standard and becomes a potential cause for concern.

4.2 All employees should have clear standards of performance set for them by managers through job descriptions, person specifications, competencies, targets, objectives and achievements. These should be realistic and measurable in respect of quality, quantity, time and cost. The standard of work required should be explained and employees should be clear about what is expected of them. Employees should be provided with the opportunity to discuss these expectations, e.g. if they consider that they are unreasonable. Employees should be made aware of the consequences of underperformance and failing to adhere to these standards.

4.3 A system of regular supervision and day to day management should be put in place to review employee performance. Managers should support the employee to improve performance to a level that meets required standards through appropriate induction, training and development.

4.4 It is a line manager’s responsibility to support and monitor the performance of employees they manage and to raise any concerns they may have with an employee as soon as possible, typically through regular supervision. The manager is also responsible for monitoring the workload of employees and for ensuring that duties and responsibilities fall within the range of reasonable expectations. Employees should be provided with the opportunity to discuss these expectations, e.g. if they consider that they are unreasonable.

4.5 There may be circumstances where a manager believes that an employee was set a reasonable target and yet failed to meet it when given every opportunity to do so. This policy is intended to provide a standardised, and formal framework to support managers in intervening to address such problems of performance. Unless the matter of concern is significant, it is anticipated that most issues will be dealt with informally.

4.6 An employee should have clear objectives and standards of performance set out and agreed, in line with the school’s performance management/appraisal schemes. The managing unsatisfactory performance procedure should be used to address all matters of unsatisfactory performance.

4.7 Managers should ascertain whether any alleged failure to meet required standards is due to misconduct, medical capability, or some other reason, when determining the appropriate approach to take., Guidance should be sought from your HR provider.

## **Informal Action**

4.8 Where a manager considers that an employee is not performing to the required standard. The unsatisfactory performance and practice should initially be dealt with informally through day-to-day management, supervision, training, support and setting clear standards for improvement which are discussed with the employee.

4.9 Informal action should be used wherever possible and appropriate to improve performance before formal action is considered.

4.10 In circumstances where unsatisfactory performance has serious consequences for the school it may not be appropriate to use the informal stages of the procedure. The school should take advice from HR and consider using the formal stage of the procedure.

## **Confidentiality**

4.11 At all stages of the procedure confidentiality must be observed. Information relating to an employee’s capability should only be divulged to any parties directly involved (including employee representatives where the employee has given permission) in the capability process and must remain strictly confidential to those people. Unnecessary disclosure of confidential information by any party at any stage may lead to disciplinary action.

## **Records**

4.12 Written records of proceedings must be kept on the employee’s file at the school and managed appropriately. The school will normally arrange to have notes of any formal meeting taken. There may be rare occasions when a tape or audio recording of meetings is mutually agreed (e.g. Microsoft teams which can provide a transcript). Managers should ensure that the school keeps their own records. The outcome of meetings and any action plans under this policy must be shared with the employee and retained on the employee’s personal file at the school. Arrangements must be made for the employee to have access to their personal file on request. Notes taken by the school appointed notetaker will remain the official notes.

4.13 Records held on personal files should be removed and confidentially destroyed after

a period of 18 months at the conclusion of the process. There may be circumstances if the proceedings relate to a dismissal or demotion, or a safeguarding concern, that records would be retained for a longer period and would be kept in

accordance with statutory (e.g. KCSIE para’s 422-425) or local document retention guidance. You should seek HR advice on these matters.

## **Right of Appeal**

4.14 Employees have the right to appeal against any formal action taken. There is, however, no right of appeal against any informal action taken by the manager.

## **RIGHT TO REPRESENTATION**

5.1 Employees who are the subject of action under this procedure have the right to be accompanied/represented by a recognised trade union representative or work place colleague at any formal stage of the procedure. This does not extend to representation at day-to-day management/supervision meetings, or at the informal stage of this procedure. However, the employee can contact their trade union representative at any stage of the process.

5.2 Legal representation, specialist employment law advisers and similar, will not be allowedto attend any meetings under this procedure.

5.3 Employees and their representatives should be consulted on the timing of formal meetings, to avoid the need to re-arrange meetings. However, if it is not possible to agree a date, then the manager will have to proceed to set a date for the meeting.

## **TIMESCALES**

6.1 All parties to the proceedings have an obligation to co-operate in ensuring that processes and timescales set out in this procedure are followed without unnecessary delay. Where the handling of the case would be compromised by the need to comply with the timescales and in the event more time is needed, the timescales may be extended. In this case, the employee must be informed and given the reasons for the extension.

6.2 Where a trade union representative or work colleague chosen by the employee to accompany them at any stage of the formal procedure cannot attend on the date proposed, an alternative date may be arranged.This should normally bewithin five working days, beginning with the first working day after the day proposed by the employer.

6.3 The formal meeting would not normally be postponed a second time.

## **Relationship of UNSATISFACTORY performance procedure with other procedures**

7.1 Separate procedures and guidance exist for dealing with disciplinary matters and the management of sickness absence and medical capability. If when progressing an unsatisfactory performance case, it transpires that it is an issue of misconduct or medical capability rather than unsatisfactory performance, the matter should be referred for action under the relevant procedure. The same manager nominated to handle the unsatisfactory performance will normally follow through under the relevant disciplinary or medical capability review procedure.

7.2 In any cases involving another procedure, advice can be sought from Schools HR before proceeding.

## **Performance management/Appraisal**

7.3 This procedure is not intended to replace the operation of any school’s performance management scheme(s) for support staff, which provides a framework for the regular assessment of an employee’s performance, potential and development needs. If a manager has concerns about the performance of an employee, action must be taken under this procedure, starting with the informal process (unless circumstances determine in accordance with 4.10 above). Managers should not wait until the next appraisal meeting before raising their concerns with the employee and taking appropriate action under this procedure.

7.4 Where action is being taken in respect of an employee under the formal stage contained in this procedure, consideration may be given to suspending the performance management process during this time.

## **Unsatisfactory Performance and Grievances**

7.5 Any concerns that an employee has regarding action being taken under this procedure should be raised as part of their response or appeal to the action taken and will normally be considered under this procedure. It should not be raised as a separate grievance except as detailed below.

7.6 An exception would be a grievance that claims that the action being taken against them amounts to or would amount to unlawful discrimination or some other breach of statutory duty.

7.7 In such cases a manager may consider suspending this procedure for a short period to deal with the grievance using the school’s grievance procedure. The decision about whether or not to suspend action under this procedure, and for how long is for the school to decide.

## **Sickness absence during the procedure**

7.8 If non-attendance at a meeting under this procedure is due to a medical reason, the employee must inform the manager as soon as possible. Written confirmation together with a medical certificate can be required. Costs incurred in obtaining a medical certificate during the first 7 days of absence will be reimbursed by the school.

7.9 Absence during the managing unsatisfactory performance procedure, can be referred to the occupational health adviser for an assessment to ascertain when they will be fit to attend a meeting.

7.10 If sickness absence continues, the school would have to consider using the school’s absence management provisions and/or medical capability procedure.

7.11 If it is established that an employee’s unsatisfactory performance may be due to either a personal, domestic or short-term health problem, the manager should consider what support could be given to the employee. Employees can be referred to the Occupational Health Service and advised of the availability of any Employee Assistance Programme the school has to offer. The employee will still be required to meet the standards required for their post.

## **Unsatisfactory Performance and Disciplinary**

7.12 where the unsatisfactory performance of an employee is considered to be the result of wilful or deliberate misconduct and/or behaviour then the school’s disciplinary procedure should be followed.

## **ROLE OF HUMAN RESOURCES (HR) REPRESENTATIVES**

8.1 At all stages of this procedure, in addition to those stages where there is a specific requirement, the school’s HR provider should be consulted for advice.

8.2 The role of Schools Human Resources includes the following:

* Providing advice to managers on informal action
* Providing advice to managers on taking formal action for unsatisfactory performance including advice on complex cases, scoping letters, advising on case documentation
* Ensuring that managers are aware of the legal and any other sensitive aspects of a case
* Advising at formal meetings and/or appeal meetings
* Advising on outcome letters
* Advising on interpretation of school policy
* The role of the HR Adviser at formal meetings and appeals, is primarily to provide advice to the chair on HR procedural matters
* The HR Adviser may also ask questions in order to seek clarification of points for the chair/Appeal Panel

## **ROLE OF MANAGERS**

9.1 The role of Managers includes the following:

* Managing employee’s performance informally, and formally if required
* Preparing evidence and documentation to be presented at Performance Review meetings, i.e. details of unsatisfactory performance
* Making arrangements for administering the process and for notes to be taken and written up, where appropriate
* Conducting informal and formal unsatisfactory performance review meetings
* Being familiar with the procedure and taking advice and guidance from HR on its application

9.2 Managers may consult Schools HR at any time about using this procedure.

## **MANAGING UNSATISFACTORY PERFORMANCE**

## **Day to Day Management and Supervision**

10.1 Cases of unsatisfactory performance should be dealt with through day-to-day management and early discussions with the employee, for example, through coaching, management guidance, supervision, instructions and training, and agreeing the setting of clear standards for performance and expectations rather than the formal managing unsatisfactory performance procedure.

10.2 In many cases, dealing with matters of unsatisfactory performance early with the right actions at the right time, will often provide a more satisfactory result for both the manager and employee and may well prevent the need for more formal action in the future.

## **Informal action**

10.3 If performance does not improve to a satisfactory level through day-to-day management and supervision. and the required standards are not met. The manager, can set up an informal performance review meeting.

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10.4 At this informal meeting the manager clarifies to the employee giving examples where their performance is not reaching the required level of performance and standards, what the shortfall in performance is and what is expected of them. The manager explains how their performance will be monitored and reviewed and over what time period e.g. 4 to 6 weeks and if necessary what support will be offered to the employee. An informal performance improvement action plan should be drafted following discussion with the employee (appendix 2). Any informal discussions about an employees’ unsatisfactory performance or any action proposed and/or details provided about required standards should be confirmed in writing to the employee.

10.5 The meeting invitation to the employee (appendix 3) will refer them to this procedure for guidance and the implications of not meeting agreed objectives and required standards of performance. Employees should be made aware of what action could be taken if they fail to improve their performance to the required standard during the informal stage ie. that the formal stage of this procedure may apply.

10.6 If during an informal stage it becomes clear that the matter is more serious than first thought, then a decision is made by the manager as to whether to move to the formal stage immediately or not. Managers should contact Schools HR for further advice at this stage. The employee should be kept informed of any decisions and advised of any timescales.

## **Possible outcomes of an informal performance management meeting:**

10.7 State expected performance standards and objectives and record these, including how and when performance will be reviewed.

10.8 Set **Informal Performance Improvement Action Plan** ideally with ‘SMART’ objectives (Specific, Measurable, Achievable, Realistic, Time-bound), confirm any support offered and an agreed time period of e.g. four to six weeks. See appendix 2 for a template ‘Performance Improvement Action Plan’.

10.9 Set a date and hold a progress review meeting half way through the informal performance monitoring period to assess if improvement in performance is being made during the informal stage.

10.10 Set and hold a review meeting at the end of the informal performance monitoring period to review the employee’s performance against the action plan.

10.11 If the employee achieves the required standards by the end of the informal stage, then no further action is required other than to inform the employee of the need to maintain that improvement in performance going forward and that their performance will continue to be monitored as part of day to day management.

10.12 If the employee has reached the required improvements in most areas but there is a still some performance improvement required, the manager can consider extending the informal monitoring stage by up to 3 weeks for the employee to reach the required standards. The manager should then hold a further performance review meeting at the end of the extended period to review the employee’s performance against the action plan.

10.13 If the employee achieves the required standards by the end of the extension period of the informal stage, then no further action is required other than to inform the employee of the need to maintain that improvement in performance going forward and that their performance will continue to be monitored as part of day-to-day management.

10.14 Where the required improvement in performance (even after extension period) is not reached or maintained by the end of the informal stage, the manager should advise the employee that managing their underperformance will now be considered under the formal stage of this procedure.

10.15 The discussion and outcome of the informal meeting should be confirmed in writing to the employee ideally within 5 working days and a copy of the letter and informal performance improvement action plan should be placed on his/her personal file. The informal action may be referred to in any formal action subsequently taken under this procedure.

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## **Formal Action**

10.16 The formal procedure is designed to be used only if attempts to improve performance through informal action has been unsuccessful, or in cases of more serious unsatisfactory performance.You should consult with HR before moving to the formal stage. Formal action under this procedure consists of two stages.

## **Stage 1 - First Formal Unsatisfactory Performance Review Meeting**

10.17 Where an employee did not achieve the required improvement in performance by the end of informal stage. The manager sets up a Stage 1 First Formal Unsatisfactory Performance Review Meeting (appendix 3).

10.18 The manager must write to the employee giving a minimum of 5 working days notice of the meeting. The letter inviting the employee to attend should give details of the reason for the meeting and the matters to be considered and the possible outcomes that if they fail to improve their performance to the required standard by the end of the first formal stage, the matter may proceed to the second formal stage of this procedure. The employee should be advised of their right to be accompanied by a trade union representative or work colleague and an HR adviser can also be present.

10.19 At this stage 1 meeting, the manager clarifies to the employee giving examples where their performance is not reaching the required level of performance and standards, what the shortfall in performance is and what is expected of them (appendix 4 conducting a formal unsatisfactory performance review meeting). The employee will be given the opportunity to respond to the manager's concerns. The manager explains how their performance will be monitored and reviewed and over what time period e.g. 4 to 6 weeks and if necessary what support will be offered to the employee. The manager, following discussion with the employee, formally sets a first formal performance improvement action plan with an agreed time period for monitoring improvement in performance eg. 4 to 6 weeks (Appendix 2).

10.20 The manager should tell the employee that failure to meet the improvement in performance required at the end of the formal stage 1 monitoring period could result in moving to formal Stage 2 of this procedure. The employee should be advised to read stage 2 of the procedure to ensure they understand the consequences if they move to that stage.

10.21 The manager should set a date and hold a progress of performance review meeting half way through the stage 1 formal monitoring period to assess if satisfactory improvement in performance is being made. The manager should raise any issues and provide guidance to support the employee to achieve the required standards. The employee should be given the opportunity to respond and raise any issues from their perspective.

10.22 Any formal discussions about an employee’s unsatisfactory performance or any action proposed and/or details provided about required standards should be confirmed in writing to the employee within 5 working days (appendix 5).

10.23 If at any point during the stage 1 formal monitoring period, the underperformance circumstances suggest a more serious problem, the manager should consider moving the matter to formal stage 2 of this procedure. Managers can contact Schools HR for further advice at this stage. The employee should be kept informed of any decisions and advised of any timescales.

10.24 Set and hold a stage 1 review meeting at the end of the stage 1 formal performance monitoring period to review the employee’s performance against the formal action plan. Confirm outcome in writing to the employee (appendix 6).

## **Possible outcomes of a Stage 1 Formal Unsatisfactory Performance Review Meeting:**

**Sufficient Improvement Achieved**

* If sufficient improvement in performance is made at the end of the formal stage 1 monitoring period, then no further action is required other than to advise the employee in writing of the need to maintain that improvement in performance going forward and that their performance will revert to being monitored as part of day-to-day management. The employee should be informed that if they fail to maintain this standard further action may be taken under this procedure If the employee’s performance falls below the required standard in the next nine months then the manager may move to the stage 2 formal unsatisfactory performance review stage of the procedure.This should be confirmed to the employee in writing and a copy placed on the employee’s personal file.

**Some Improvement Achieved**

* If the employee has reached the required improvements in most areas but there is a still some performance improvement required to be made, the manager can consider extending the formal stage 1 monitoring period up to 3 weeks for the employee to reach the required standards.
* Set a date and hold review of performance at the end of the extension period to assess if the required improvement in performance is made.
* If the employee achieves the required standards by the end of the stage 1 extension period, then no further action is required other than to inform the employee of the need to maintain that improvement in performance going forward and that their performance will revert to being monitored as part of day-to-day management. The employee should be informed that if they fail to maintain this standard further action may be taken under this procedure If the employee’s performance falls below the required standard in the next nine months then the manager may move to the stage 2 formal unsatisfactory performance review stage of the procedure. This should be confirmed to the employee in writing and a copy placed on the employee’s personal file.

**Insufficient / Unsatisfactory or No Improvement Achieved**

* If insufficient / unsatisfactory or no improvement in performance is made (even after extension) by the employee, then the employee should be issued with a f**inal warning and final action plan for improved performance** and the employee’s performance will be monitored under stage 2 of this procedure.

10.25 The employee has the right of appeal against the action taken at the end of formal stage 1.

## **Stage 2 - Second Formal Unsatisfactory Performance Review Meeting**

10.26 Where an employee did not achieve the required improvement in performance by the end of the first formal stage. The manager sets up a stage 2 second formal unsatisfactory performance review meeting (appendix 3).

10.27 The manager must write to the employee giving a minimum of 5 working days notice of the meeting. The letter inviting the employee to attend should give details of the reason for the meeting and the matters to be considered and the possible outcomes that if they fail to improve their performance to the required standard by the end of the second formal stage, it could lead to their dismissal on grounds of unsatisfactory performance and incapability. The employee should be advised of the right to be accompanied by a trade union representative or work colleague and an HR Adviser should also be present at this meeting.

10.28 At this meeting, the manager clarifies to the employee giving examples where their performance is not reaching the required level of performance and standards, what the shortfall in performance is and what is expected of them (appendix 4 conducting a formal unsatisfactory performance review meeting). The employee will be given the opportunity to respond to the manager's concerns The manager explains how their performance will be monitored and reviewed and over what time period e.g. 4 to 6 weeks and if necessary what support will be offered to the employee. The manager, following discussion with the employee, formally sets a final formal performance improvement action plan with an agreed time period for monitoring improvement in performance eg. 4 to 6 weeks (appendix 2).

10.29 The manager should tell the employee that failure to meet the improvement in performance required at the end of the final formal stage 2 monitoring period could result in dismissal on grounds of unsatisfactory performance and incapability to do the job.

10.30 The manager should set a date and hold a progress of performance review meeting half way through the stage 2 formal monitoring period to assess if satisfactory improvement in performance is being made. The manager should raise any issues and provide guidance to support the employee to achieve the required standards. The employee should be given the opportunity to respond and raise any issues from their perspective.

10.31 Any formal discussions about an employee’s unsatisfactory performance or any action proposed and/or details provided about required standards should be confirmed in writing to the employee within 5 working days (appendix 5).

10.32 If at any point during the stage 2 formal monitoring period, the underperformance circumstances suggest a more serious problem, the manager should consider holding a final formal meeting of this procedure before the end of the formal monitoring period. Managers can contact Schools HR for further advice at this stage. The employee should be kept informed of any decisions and advised of any timescales.

10.33 Set and hold a final formal review meeting at the end of the final formal performance monitoring period to review the employee’s performance against the final formal action plan. Confirm outcome in writing to the employee (appendix 7).

## **Possible outcomes of a Final Stage 2 Formal Unsatisfactory Performance Review Meeting:**

**Sufficient Improvement Achieved**

* If sufficient improvement in performance is made at the end of the final formal stage 2 monitoring period, then no further action is required other than to advise the employee in writing of the need to maintain that improvement in performance going forward and that their performance will revert to be monitored as part of day-to-day management. The employee should be informed that if they fail to maintain this standard further action may be taken under this procedure. If the employee’s performance falls below the required standard in the next nine months, then the manager may move to the stage 2 formal unsatisfactory performance review of the procedure. This should be confirmed to the employee in writing and a copy placed on the employee’s personal file.

**Some Improvement Achieved**

* If the employee has reached the required improvements in most areas but there is a still some performance improvement required to be made, the manager can consider extending the formal Stage 2 monitoring period up to 3 weeks for the employee to reach the required standards.
* Set a date and hold review of performance at the end of the extension period to assess if the required improvement in performance is made.
* If the employee achieves the required standards by the end of the Stage 2 extension period, then no further action is required other than to inform the employee of the need to maintain that improvement in performance going forward and that their performance will revert to be monitored as part of day-to-day management. The employee should be informed that if they fail to maintain this standard further action may be taken under this procedure. If the employees’ performance falls below the required standard in the next nine months, then the manager may move to the Stage 2 formal unsatisfactory performance review stage of the procedure.This should be confirmed to the employee in writing and a copy placed on the employee’s personal file.

**Insufficient / Unsatisfactory or No Improvement Achieved**

* If insufficient / unsatisfactory or no improvement in performance is made (even after extension) at the end of stage 2 formal monitoring period by the employee, then there are two options available to the manager:
1. **Transfer to another post (which may be a lower grade)**

This option would be subject to agreement by the employee. The employee will have to demonstrate that they meet the criteria for the post they are transferring to. They will also be subject to the inductee element of the probation procedure. There will be no salary protection if the transfer is to a lower graded post and the appointment will normally be at the first point of the grade being transferred to.

1. **Dismissal on grounds of unsatisfactory performance and incapability to do the job with contractual notice.**

10.34 The employee has the right of appeal against the action taken at the end of formal stage 2.

## **APPEALS PROCEDURE**

11.1 An employee has the right of appeal against any formal action taken under this procedure. Any appeal would normally be on the grounds that:

* The process followed was flawed
* The decision/outcome/targets/objectives length of monitoring period was not appropriate and/or reasonable in all the circumstances; and/or
* New evidence has come to light, which if it had been available at the time of making the decision may have resulted in the Manager reaching a different conclusion

11.2 Appeals must be submitted to the headteacher within 10 working days of the letter informing the employee of the outcome of a stage 1 or stage 2 decision under this procedure. The appeal notification must include the grounds for the appeal.

11.3 Appeals under this procedure will be to the Governing Board Appeal panel (if the headteacher made the decision) or to the headteacher (if the decision was made by another member of SLT) and the panel or person hearing the appeal can be supported by HR.

11.4 Lodging an appeal against dismissal, will not postpone or delay the date of dismissal. It is expected that the appeal will be heard during the period of notice.

## **Timing of Appeal Meeting**

11.5 The appeal meeting will normally be held no later than 20 working days from receipt of the notice of the full grounds of appeal. The employee, and (if appropriate) their representative, will be given at least 5 working days written notice of:

* + The date, time and place of the meeting
	+ Details of the panel members conducting the appeal
	+ The employee’s right to attend and be represented at the appeal by a trade union representative or work colleague
	+ The employee shall be enabled to call witnesses and produce documents relevant to their defence at the meeting

11.6 Provided the employee has been given the appropriate notice of the date of the meeting, the appeal may be considered based on the available evidence where the employee is absent for an unexplained reason.

## **Appeal Meeting**

11.7 When setting up an appeal, for appeals against stage 1 decisions it is recommended that this will be the headteacher if not previously involved or one governor. For appeals against stage 2 decisions it is recommended that there should be a panel of at least 3 members of the governing body. Panel members should be impartial, i.e. not have a personal interest in the case (should not be a staff governor).

11.8 The appeal meeting will consider the grounds of the appeal and the appeal meeting should consider the arguments set out in the grounds of appeal and determine whether the decision made at the formal meeting (stage 1 or stage 2) was reasonable in all the circumstances.

11.9 The presenting manager (the head teacher or manager who was responsible for the original decision) will prepare a response to the employee’s submission. This should be provided to the employee within 5 days of receipt of the full grounds of appeal. If further clarification or elaboration is considered necessary, either or both parties will be asked to provide this information at least 3 working days before the appeal meeting.

11.10 New evidence will only be considered in exceptional circumstances. This will be at the discretion of the appeal panel and will only be admitted where it may significantly affect the previous decision.

11.11 Arrangements should be made for a clerk to take confidential notes at the hearing.

## **Outcomes of an Appeal Meeting**

## **Possible outcomes of an Appeal Meeting for appeals against warnings, setting of formal targets/objectives or the length of a monitoring period are:**

* A decision to uphold the employee’s appeal and either revoke the decision completely or impose a different outcome
* Deny appeal and confirm the original decision
* Submit case back to the school at stage 1 of this procedure (In the event that the appeal panel believes that the procedure was flawed as to render the decision unfair OR that important evidence was either not available or not appropriately considered at the formal meeting). Consideration should be given as to whether the same person should re-hear or a new person should be appointed.

## **Possible outcomes of an Appeal Meeting for considering appeals against demotion or dismissal are:**

* A decision to uphold the employee’s appeal and either revoke the decision completely or impose a lesser sanction (for dismissal)
* To deny the appeal and confirm the demotion/dismissal.
* To submit the case back to the school to restart stage 2 of this procedure (In the event that the appeal panel believes that the procedure was flawed as to render the decision unfair OR that important evidence was either not available or not appropriately considered at the formal meeting). Consideration should be given as to whether the same person should re-hear or a new person should be appointed.

11.12 The decision of the appeal meeting manager or panel will be final.

11.13 On reaching their decision the manager or panel should immediately convey it orally to the employee and representative and confirm in writing within 5 working days. If, because of time constraints, the employee and their representative have left the premises before the manager or panel’s decision is reached, by agreement.

11.14 Where an appeal or demotion is not upheld, the effective date of the sanction is that of the original decision.

11.15 Where an appeal is upheld either wholly or in part, pay and continuous service will be reinstated effective from the date of the original decision.

11.16 Where the outcome of an appeal changes the original decision made, records held on file will need to reflect this and removed in accordance with the decision made. Except in cases involving children and/or safeguarding, where there may be a requirement to keep records (in accordance with the relevant section of Keeping Children Safe in Education para).

## **APPENDICES**

The following model letters have been drafted to assist managers. Please amend and adapt the model letters as necessary and tailor them to suit the individual circumstances of the case. The letters should be placed on school letterhead paper.

## **Appendix 1** Flowchart - Managing Unsatisfactory Performance (Support Staff)

## **Appendix 2** Performance Improvement Action Plan (Informal or First Formal or Final)

## **Appendix 3** Invite Formal Unsatisfactory Performance Review Meeting– Stage 1/Stage 2 Letter

## **Appendix 4** Conducting a Formal Unsatisfactory Review Meeting Stage 1 or Stage 2

## **Appendix 5** Outcome letter of actions agreed at Formal Unsatisfactory Performance Review Meeting Stage 1 or Stage 2 – setting Performance Improvement Action Plan

## **Appendix 6** Outcome letter at end of Formal Unsatisfactory Performance Monitoring Review Period Meeting Stage 1 – Setting Final Formal PIP

## **Appendix 7** Outcome letter at end of Formal Unsatisfactory Performance Monitoring Review Period Meeting Stage 2 – Transfer to another post/Dismissal

**Managing Unsatisfactory Performance (Support Staff) – Flowchart Appendix 1**



**Managing Unsatisfactory Performance (Support Staff) Appendix 2**

**Performance Improvement Action Plan (Informal or First Formal (Stage 1) or Final (Stage 2))**

|  |  |  |  |
| --- | --- | --- | --- |
| **Employee Name** |  | **Post Title** |  |
| **Manager** |  | **Date** |  |
| **Informal Stage** |  | **First Formal Stage 1** |  | **Final Formal Stage 2** |  |

Indicate above which stage this plan is issued for.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **Areas of Performance concern** | **Improvement/Standards Required/Objectives - SMART****(Specific, Measurable, Achievable, Realistic, Time-bound)** | **If agreed Training/Support to be provided and by whom** | **Assessment/Evidence** | **Review Date** |
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| --- | --- | --- | --- | --- | --- |
| **Employee's signature:** |  | **Manager's signature:** |  | **Date:** |  |

**Appendix 3**

**Invite letter - Formal Unsatisfactory Performance Review Meeting Stage 1/Stage 2**

**Delivered by first class post/email/hand/special delivery**

**PRIVATE & CONFIDENTIAL**

(insert employee name & address)

(insert date)

Dear (insert name)

**Formal Unsatisfactory Performance Review Meeting Stage 1 or Stage 2\*** *(\*delete as appropriate)*

I write to advise that your work performance has been and continues to remain unsatisfactory and you have failed to reach the standards of performance required. I have therefore decided that this must now be reviewed in accordance with the School’s Managing Unsatisfactory Performance Procedure (see copy enclosed for information) and I have arranged a **Stage 1 or Stage 2\*** *(\*delete as appropriate)* **Formal** **Unsatisfactory Performance Review Meeting**.

You are required to attend this meeting:

**Date: (insert date)**

**Time: (insert time)**

**Venue: (insert venue)**

This is Stage 1 or Stage 2\* *(\*delete as appropriate)* of formal action under the School’s Managing Unsatisfactory Performance Procedure and you have the right to be accompanied a work colleague or trade union representative. If you decide to do so, please ensure they are aware of the time, date and venue of the meeting as early as possible.

I will chair the meeting. A representative *(insert name if known)* from Schools Human Resources will attend to provide HR advice. The management case will be presented by *(insert name)*.

The purpose of the meeting is to discuss the following areas of your work performance which have not reached the standards required:

* *(List the unsatisfactory work performance concerns/problems areas)*

The outcome of Stage 1 or Stage 2\* *(\*delete as appropriate)* Formal Performance meeting may result in

***For Stage 1 insert\*:***

a First Formal Performance Improvement Action Plan including a monitoring period, improvements in performance required.

***For Stage 2 insert\*:***

a Final Formal Performance Improvement Action Plan including a monitoring period, improvements in performance required.

I enclose the papers to which Management will refer at the meeting (specify).

There will be *(delete as appropriate\*)* \**no management witnesses or management will be calling the following witnesses* (insert names). Should you wish to provide any supporting evidence then this must be presented to me at least 3 working days prior to the meeting

together with the names of any witnesses you intend to call to speak on your behalf.

***For Stage 1 insert\*:***

I should advise you that a possible outcome of this meeting is that if you fail to improve your performance to the required standard by the end of the first formal stage, the matter will proceed to the second formal stage of this procedure.

***For Stage 2 insert\*:***

I should advise you that a possible outcome of this meeting is that if you fail to improve your performance to the required standard by the end of the second formal stage, it could lead to your dismissal on grounds of unsatisfactory performance and incapability.

Please can you confirm in writing that you are able to attend the meeting. If you are unable to attend for any reason you may submit a written statement and/or be represented in your absence by a trade union representative or a workplace colleague. The hearing may in any event be held in your absence.

If you have any queries, please do not hesitate to contact me.

Yours sincerely

(*Manager’s name*)

(*Title*)

Enc: Managing Unsatisfactory Performance Procedure

 Items/document listed in this letter re. evidence of unsatisfactory performance

Cc: Personal File/itrent

 Schools HR Consultancy

**Appendix 4**

**Guidance on conducting a Formal Unsatisfactory Performance Review Meeting (Stage 1 or Stage 2)**

1. The chair of the appeal meeting (senior manager or chair of governing body appeal panel) will invite both parties into the room at the same time, introduce all parties present and explain the purpose and conduct of the appeal meeting and how witnesses will be managed.
2. The chair makes introductions and confirms the purpose of the appeal meeting. The purpose being to consider the arguments set out in the grounds of appeal and determine whether the decision made at the formal meeting (stage 1 or stage 2) was reasonable in all the circumstances based on the facts and evidence presented.
3. The manager/appeal panel may require that witnesses/evidence should be called in order to ensure that all the necessary facts can be considered before making a decision on the appeal. Where appropriate any senior members of staff who have had line management responsibility for the member of staff concerned may be called as witnesses. The manager/appeal panel may decide to adjourn the hearing to allow for this if necessary.
4. It is for the chair to manage the process and conduct of the meeting.
5. The presenting manager (the headteacher or manager who was responsible for the original decision) starts by presenting the management case against the employee. Then other parties may ask questions on the management presentation.
* Employee and/or trade union representative/work colleague
* Head teacher/disciplinary panel members
* HR adviser
* The manager presenting the case will then call witnesses if required.
* The other parties may ask questions of the witnesses
1. Following completion of the management case, the employee and/or trade union representative/work colleague will present their case. Then other parties may ask questions on the employee side presentation.
* Management representative
* Chair/appeal panel members
* HR adviser
* The employee side will then call witnesses if required
* The other parties may ask questions of the witnesses
1. Witnesses should leave the hearing after they have given their evidence. They should be advised if they will need to remain on site for possible recall or if they can be released. They must be told that matters discussed at the appeal meeting are confidential and should not be discussed with others.
2. Once all the evidence has been presented, both parties will then have an opportunity to sum up, starting with the management representative, followed by the employee/representative. This summing up may take into account statements made during the proceedings but may not introduce new evidence. Cross questioning is not permitted during the summations.
3. At the conclusion of the summations all parties which would usually include the clerk/note taker should withdraw apart from the HR adviser while the chair/appeal panel, considers the decision. The chair/appeal panel should indicate to the parties whether they should wait to be recalled for the decision. The chair/appeal panel should then reach a decision based on the evidence presented in the course of the appeal meeting with advice from the HR adviser as necessary.
4. The chair/appeal panel recalls the management representative and the member of staff and his/her representative to give the decision verbally if possible. In any event the decision must be confirmed in writing, within 5 working days of the date of the decision, to the employee and copied to their representative and to the manager presenting the case.

**Appendix 5**

**Outcome letter of actions agreed at Formal Unsatisfactory Performance Review Meeting Stage 1/Stage 2 setting Performance Improvement Action Plan**

**Delivered by first class post/email/hand/special delivery**

**PRIVATE & CONFIDENTIAL**

(insert employee name & address)

(insert date)

Dear (insert name)

**Outcome of actions agreed at Formal Stage 1 or Stage 2\*** *(\*delete as appropriate)* **Unsatisfactory Performance Review Meeting**

I am writing to confirm the outcome following the end of the Stage 1 or Stage 2\* *(\*delete as appropriate)* formal unsatisfactory performance review meeting held with you on……………….(date).

I chaired the meeting and xxx *(insert name of HR Adviser)* from Human Resources was also present to provide HR advice. You were representedby xxx (*insert name of TU rep*) your trade union representative. OR You were accompanied by xx (*insert name of TU rep*) as your work colleague. OR You were not represented and agreed to continue with the meeting unaccompanied.

The meeting was to consider the following areas of your work performance which have not reached the standards required:

* *(List the unsatisfactory work performance concerns/problems areas)*

I gave serious and careful consideration to all the evidence presented to me and decided that:

***For Stage 1 insert\*:***

As you have not reached satisfactory performance standards under the informal stage of the School’s Managing Unsatisfactory Performance Procedure (see copy enclosed for information). Your performance will be monitored under a First Formal Performance Improvement Action Plan which has been set for you with a formal monitoring period of *x weeks* and details of the performance improvements you are required to make with a timescale as well as support/training to be provided and how you will be assessed to reach the performance standard required.

I should advise you that if you fail to improve your performance to the required standard by the end of the first formal stage, you will be issued with a **Final Warning and Final Action plan for improved performance** andyourperformance will be monitored under Stage 2 of this procedure.

***For Stage 2 insert\*:***

As you have not reached satisfactory performance standards under the first formal stage of the School’s Managing Unsatisfactory Performance Procedure. Your performance will be monitored under a **(Stage 2)** **Final Formal Performance Improvement Action Plan** which has been set for you with a formal monitoring period of *x weeks* and details of the performance improvements you are required to make with a timescale as well as support/training to be provided and how you will be assessed to reach the performance standard required.

I should advise you that if you fail to improve your performance to the required standard by the end of the second formal stage, it could lead to your dismissal on grounds of unsatisfactory performance and incapability.

A copy of this letter will be placed on your personal file. If you have any queries, please do not hesitate to contact me.

Yours sincerely

(*Manager’s name*)

(*Title*)

Enc: Managing Unsatisfactory Performance Procedure

Cc: Personal File/itrent

 Schools HR Consultancy

**Appendix 6**

**Outcome letter at end of Formal Unsatisfactory Performance Monitoring Review Period Meeting Stage 1 – Setting Stage 2 Final Formal PIP**

**Delivered by first class post/email/hand/special delivery**

**PRIVATE & CONFIDENTIAL**

(insert employee name & address)

(insert date)

Dear (insert name)

**Outcome at the end of Formal Stage 1 Unsatisfactory Performance Review Meeting**

I am writing to confirm the outcome following the end of the Stage 1 formal unsatisfactory performance review meeting held with you on……………….(date) where your performance was considered against the First Formal Performance Improvement Action Plan.

I chaired the meeting and xxx *(insert name of HR Adviser)* from Human Resources was also present to provide HR advice. You were representedby xxx (*insert name of TU rep*) your trade union representative. OR You were accompanied by xx (*insert name of TU rep*) as your work colleague. OR You were not represented and agreed to continue with the meeting unaccompanied.

The meeting was to consider the following areas of your work performance which have not reached the standards required:

* *(List the unsatisfactory work performance concerns/problems areas)*

I gave serious and careful consideration to all the evidence presented to me (include here some of the evidence of performance not reached) and decided that:

***Choose paras below if sufficient performance was made***

As you have made sufficient improvement in your performance at the end of the final formal stage 2 monitoring period, no further action is required other than to advise you of the need to maintain this improvement in performance going forward and that your performance will continue to be monitored as part of day-to-day management.

I should advice you that if you fail to maintain this standard further action may be taken under this procedure. If your performance falls below the required standard in the next nine months then I may consider your performance under formal stage 2 unsatisfactory performance review of the procedure.

***Choose paras below if Insufficient / Unsatisfactory or No Improvement Achieved***

As you have not reached satisfactory performance standards at the end of the first formal stage of the School’s Managing Unsatisfactory Performance Procedure (see copy enclosed for information). You are issued with a **Final Warning and Final Action plan for improved performance** and your performance will be monitored under Stage 2 of this procedure. Your performance will be monitored under a **Final Formal Performance Improvement Action Plan** which has been set for you with a formal monitoring period of *x weeks* and details of the performance improvements you are required to make with a timescale as well as support/training to be provided and how you will be assessed to reach the performance standard required.

I should advise you that if you fail to improve your performance to the required standard by the end of the second formal stage, it could lead to your dismissal on grounds of unsatisfactory performance and incapability.

You have the right of appeal against this decision. If you wish to exercise this right, you should confirm in writing the grounds or basis for the appeal to me at the school, within 5 working days of receipt of this letter. The appeal will be considered by the Manager/Governing Body Appeals Panel.

A copy of this letter will be placed on your personal file. If you have any queries, please do not hesitate to contact me.

Yours sincerely

(*Manager’s name*)

(*Title*)

Enc: Managing Unsatisfactory Performance Procedure

Cc: Personal File/itrent

 Schools HR Consultancy

**Appendix 7**

**Outcome letter at end of Formal Unsatisfactory Performance Monitoring Review Period Meeting Stage 2 –Transfer to another post/Dismissal**

**Delivered by first class post/email/hand/special delivery**

**PRIVATE & CONFIDENTIAL**

(insert employee name & address)

(insert date)

Dear (insert name)

**Outcome of Formal at the end of Stage 2 Unsatisfactory Performance Review Meeting**

I am writing to confirm the outcome following the end of the Stage 2 formal unsatisfactory performance review meeting held with you on……………….(date) where your performance was considered against the Final Formal Performance Improvement Action Plan.

I chaired the meeting and xxx *(insert name of HR Adviser)* from Human Resources was also present to provide HR advice. You were representedby xxx (*insert name of TU rep*) your trade union representative. OR You were accompanied by xx (*insert name of TU rep*) as your work colleague. OR You were not represented and agreed to continue with the meeting unaccompanied.

The meeting was to consider the following areas of your work performance which have not reached the standards required:

* *(List the unsatisfactory work performance concerns/problems areas)*

I gave serious and careful consideration to all the evidence presented to me (include here some of the evidence of performance not reached) and decided that:

***Choose paras below if sufficient performance was made***

As you have made sufficient improvement in your performance at the end of the final formal stage 2 monitoring period, no further action is required other than to advise you of the need to maintain this improvement in performance going forward and that your performance will continue to be monitored as part of day to day management.

I should advice you that if you fail to maintain this standard further action may be taken under this procedure. If your performance falls below the required standard in the next twelve months then I may consider your performance under formal stage 2 unsatisfactory performance review of the procedure.

***Choose paras below if Insufficient / Unsatisfactory or No Improvement Achieved***

As you have not reached satisfactory performance standards at the end of the final monitoring period of the second formal stage of the School’s Managing Unsatisfactory Performance Procedure. Having reviewed all of the information presented to me, I have decided that you are *(\*delete as appropriate) \** transferred to another post of xxx *(insert post title)* at the school with effect from *(insert date).* *(include details of the transfer to another post process)*

OR

\*you are dismissed from your post of xx *(insert post title)* on grounds of unsatisfactory performance and incapability to do the job with contractual notice of xx weeks/months effective from *(insert date).*

Manager to consider if they want employee to continue working during the notice period?

You have the right of appeal against this decision. If you wish to exercise this right, you should confirm in writing the grounds or basis for the appeal to me at the school, within 5 working days of receipt of this letter. The appeal will be considered by the Manager/Governing Body Appeals Panel.

A copy of this letter will be placed on your personal file. If you have any queries, please do not hesitate to contact me.

Yours sincerely

(*Manager’s name*)

(*Title*)

Enc: Managing Unsatisfactory Performance Procedure

Cc: Personal File/itrent

 Schools HR Consultancy