Hampton Court House

Teaching Staff Capability Policy

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Policy Aims

This policy sets out the steps Hampton Court House will follow when an employee is failing consistently to perform their duties to a professionally acceptable standard. The primary objective is to ensure maximum support is provided through guidance, counselling, and training to improve the employee's performance, encourage professionalism and autonomy, and resolve any performance-related issues, which are more than likely to be temporary.

In all cases, concerns about performance must initially be addressed through additional support provided before any consideration is given to use of this capability procedure.

The use of this procedure must be distinguished and kept entirely separate from initial support provided under the appraisal procedure. It should only be used after such informal support has been provided. The appraisal process will be suspended when the capability procedure is invoked.

Staff should not be placed on capability procedures unless their performance is having a significant impact on Hampton Court House's ability to deliver education to pupils or promote their health and welfare. Failure to meet objectives/targets alone is not enough to warrant a referral to capability procedures.

Scope

This policy applies to all teaching staff, except for Early Career Teachers (ECTs), for whom separate induction procedures through ISTIP apply.

This procedure should not be used in cases of alleged misconduct or long-term sickness absence, which should be dealt with separately through other policies.

Roles and responsibilities

Where concerns about perceived under-performance and professional difficulties arise, Hampton Court House will ensure they are discussed with the employee and progressed in a structured, supportive, and non-threatening way which takes account of individual circumstances.

All teaching staff are expected to understand the nature of their role, including the professional duties set out in their contract, the duties set out in their job description and the professional standards set out in the Teachers' Standards.

Managers are expected to ensure that all employees have a clearly defined and agreed job description, reviewed on a regular basis to ensure it remains relevant. Additionally, managers should ensure that employees know what is expected of them, and that relevant school policies and other information are available and drawn to employees' attention.

At every step of this procedure, including at all meetings, the employee has the right to be accompanied.

Timescales in this procedure may only be shortened or extended with the agreement of both parties.

Equalities

Hampton Court House will always comply with all relevant employment and equalities legislation and regulations.

An Equality Impact Assessment (EIA) may be undertaken to ensure that the application of the policy does not disadvantage any group with a protected characteristic(s) as defined by the Equality Act 2010.

Capability procedure - Stage 1

Formal meeting: support, monitoring & review

Where the Principal determines that a meeting should be convened to consider use of the capability procedure, they will write to the employee inviting them to a meeting to discuss the ongoing concerns and seek to agree a programme of support. The employee will be given at least five working days' notice of the meeting.

The letter should set out the following:

- the nature of these concerns including the evidence to support them;
- evidence of any previous support provided to address the concerns;
- the names of those who will be at the meeting (recognising that it is beneficial for the numbers present to be kept to the minimum required to facilitate the meeting);
- the employee's right to be accompanied; and
- an outline of actions which might follow.

A copy of the letter, together with any enclosures, will be provided for the employee to pass to their representative.

At the meeting, the Senior Vice Principal (SVP) will outline the concerns and the employee (or their representative) will be given the opportunity to respond, ask questions and make comments and representations. The SVP will then determine whether concerns remain and, if so, whether support should continue to be provided within normal procedures or whether the capability procedure should commence, and the other procedures will cease.

The SVP may decide to adjourn and reconvene the meeting at any point to provide further time for consideration of issues raised or matters to be determined.

If the SVP decides that the capability procedure should commence, the meeting will discuss and seek to agree the following:

- the issues which continue to give rise to concern about capability and the standards required to bring the capability procedure to an end (including any specific reasonable and achievable objectives, and criteria against which matters will be judged);
- further guidance, counselling and training to be provided to the employee;
- arrangements for monitoring and assessment, including the name of the manager responsible, and the length of the review period over which this will happen (this should, in cases where professional support is to be provided, normally be a period of no fewer than 3 weeks). Where both parties are satisfied that concerns have been addressed in a shorter period and that the improved performance can be sustained, the monitoring period may be ended earlier than scheduled.

The SVP will make it clear to the employee that failure to meet the required standards could in due course lead to dismissal. In very serious cases, this could include the issuing of a formal written warning following the meeting.

The SVP will write to the teacher to confirm the outcome and decisions of the meeting, including any disciplinary warning, within five working days. The employee will be entitled to record any points of disagreement. Notes will be taken of the meeting and a copy sent to the employee.

Throughout the review period, the manager and employee will meet to discuss the employee's performance about any agreed objectives and criteria. If, following the final review meeting, the SVP decides that the employee has made enough improvement, this will be confirmed in writing, the capability procedure will come to an end and the appraisal process will re-start. If the SVP decides that no or insufficient improvement has been made, the SVP will determine that a meeting under Stage 2 of this procedure will be arranged. Where managers continue to have concerns during the review period, these must be discussed with the employee to try to achieve the required improvement.

Capability procedure - Stage 2

Further formal meeting: support, monitoring & review

Where the SVP determines that a meeting under Stage 2 should be convened, the SVP will write to the employee informing them of a further meeting. The employee will be given at least ten working days' notice of the meeting.

At the meeting, the SVP will outline the concerns and the employee will be given the opportunity to respond, ask questions and make comments and representations. The SVP will then determine whether concerns remain and, if so, will inform the employee that the capability procedure will continue.

The meeting will then discuss and seek to agree arrangements for further support, monitoring, and review in accordance. The SVP will inform the employee that a formal written warning will be issued which may, in very serious cases, be a final written warning; and inform the employee again that failure to meet the required standards could in due course lead to dismissal.

The SVP will write to the employee to confirm the outcome and decisions of the meeting, including any disciplinary warning, within five working days. The employee will be entitled to record any points of disagreement. Notes will be taken of the meeting and a copy sent to the employee.

Throughout the further review period, the manager and employee will meet to discuss the employee's performance about any agreed objectives and criteria. The review period should be reasonable in length e.g. between 3-6 weeks and be mutually agreed by both parties. Where managers continue to have concerns during the review period, these must be discussed with the employee to try to achieve the required improvement. If, following the final review meeting, the SVP decides that the employee has made enough improvement, this will be confirmed in writing and the capability procedure will be terminated. If the SVP decides that the employee may make enough improvement with further support, then this stage of the procedure should be extended, and such support provided prior to further review. If the SVP decides that no or insufficient improvement has been made and the employee shows no sign of doing so, a capability hearing under Stage 3 should be convened.

Capability procedure - Stage 3

Capability hearing

Where the SVP determines that a meeting under Stage 3 should be convened, the HR Manager will write to the employee inviting them to a capability hearing. The employee will be given at least ten working days' notice of the capability hearing. Sympathetic consideration will be given to any request for postponement to allow representation or where there are other extenuating circumstances.

The capability hearing will take place before a committee of the Principal and at least one governor, with no previous involvement in the matter. The purpose of the hearing will be to determine whether the employee is performing to the required standards; whether they should be provided with further support; whether they should be dismissed on grounds of capability; or whether some other course of action is available. In normal circumstances, a representative of Dukes Education will attend to advise the committee on procedure.

The letter should set out the following:

- a written statement of the concerns to be presented to the committee;
- the recommendation which will be made by the SVP;
- any supporting papers which will be referred to during the hearing and the names of any witnesses to be called;
- evidence of the support previously provided to the employee;
- the names of the members of the committee and others who will be at the meeting;
- the employee's right to be accompanied by a trade union representative or workplace colleague;
- an outline of actions which might follow, making it clear that dismissal is a potential outcome of the meeting.

The letter will give the employee the opportunity of making a written statement for circulation to the members of the committee in advance of the hearing. A copy of the letter, together with any enclosures, will be provided for the employee to pass to their representative.

The format for the hearing will be as follows:

- The SVP, the employee and the employee's representative should enter the meeting room together.
- The Chair of the committee will describe the procedure, with any procedural questions resolved at this point.
- The SVP will set out the concerns about the employee’s performance, referring to evidence and calling any witnesses.
- The employee and/or their representative will question the SVP (and witnesses) on their statement(s) and the evidence.
- Members of the committee will question the SVP (and witnesses) on their statement(s) and the evidence.
- The employee and/or their representative will make a statement in response, referring to evidence and calling any witnesses.
- The SVP will question the employee or their representative (and witnesses) on their statement(s) and the evidence.
- Members of the committee will question the employee or their representative (and witnesses) on their statement(s) and the evidence.
- The SVP will summarise and conclude.
- The employee and/or their representative will summarise and conclude.
- The SVP, the employee and their representative withdraw whilst the committee, advised by any adviser present, consider the case.

- The Chair of the committee will announce the decision of the committee in the presence of all parties.

The outcomes of the capability hearing may be that:

- the employee will not be dismissed and that no further action will be taken;
- the employee will not be dismissed but that a further period of support will be put in place and a further disciplinary warning issued;
- the employee should be dismissed / should cease to work at the school; or
- the employee should be dismissed / should cease to work at the school unless agreement can be reached on suitable alternatives to dismissal e.g. redeployment to alternative work within the establishment, if necessary, on a different grade. Where an employee is moved to a lower graded post, an appropriate pay safeguarding arrangement will be considered.

The HR Manager will write to the employee within five working days of the capability hearing, setting out the decision of the committee. Where the decision is to dismiss, the letter will inform the employee that they can appeal against the decision to the relevant appeals committee of the governing body. The employee will be given 15 working days from the date of the letter to write to the HR Manager stating their intention to appeal and setting out the grounds for the appeal.

Appeals

The employee has a right of appeal against any warning issued by the SVP at any stage of the capability procedure and against any decision taken at a capability hearing. Such appeals will be considered by an appropriate committee of Hampton Court House. The employee may exercise the right to appeal within 15 days of receipt of any warning, and the Appeals Committee shall meet to hear the appeal within 15 days of the appeal being lodged. The employee shall be informed in writing of the date and time of the meeting at least five days in advance. The Committee can either confirm the warning or decision or cancel it or impose a lesser penalty.

Suspension

Given that the purpose of the capability procedure is to allow a member of staff to demonstrate an improvement in performance, and that this can only happen if the member of staff is at work, it is not appropriate to suspend an employee who is subject to a capability procedure.

Warnings

Any letter confirming a warning will make it clear that if the teacher's performance is subsequently judged to have reached the required standard, the warning will then be disregarded and will be removed from the employee’s file after a maximum period of 12 months.

Confidentiality

When dealing with capability matters, the utmost confidentiality must be maintained on a ‘need to know’ basis. At the commencement of any meetings, the importance of confidentiality will be explained and emphasised. Governors will be made aware that their involvement in any stage of the capability procedure will prejudice any involvement at a later stage. The content of any papers which are circulated must not be divulged to anyone. The way in which governors vote, and opinions expressed at governors’ meetings, must always be regarded as confidential. Governors, including parents and employees, are representatives of their appointing bodies

rather than delegates, and any unauthorised reporting back to persons outside Dukes Education removes the protection of privilege and action for defamation could result. The minutes of confidential meetings must be kept separate and not made available for inspection.

Governors will be provided with monitoring reports of the use of the capability procedure and this information will also be provided to the recognised trade unions.

Grievances

The capability procedure will not normally be suspended on grounds that the employee has submitted a grievance in relation to the fact that they are subject to the capability procedure. The consideration of such grievances should, however, be expedited where the grievance relates to alleged discriminatory treatment or a contractual breach.

Sickness absence during the procedure

It is recognised that on occasion, an employee receiving support through either the appraisal process or the capability procedure may suffer ill health requiring absence from work. In such circumstances, and particularly where the sick leave is of relatively short duration, every attempt will be made to offer agreed support upon the employee's return to work and exclude the period of absence from the period for support, monitoring, and review.

Review and monitoring

This policy will be reviewed annually, to ensure consistency, fairness, and effectiveness, and to reflect any changes in employment legislation.

Hampton Court House will monitor, review and report on the outcomes and impact of this policy on an annual basis and in line with the Equality Act 2010.

Record keeping

Hampton Court House will ensure that individual records are managed appropriately in accordance with data-privacy requirements under the General Data Protection Regulations (GDPR).