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## Capability Procedure

It is our policy to ensure that concerns over performance are dealt with fairly and that steps are taken to establish the facts. To do this we have provided a framework within which the Preschool Leader can work with employees to maintain good performance standards and to encourage improvement where necessary.

Employees should not be dismissed or subjected to formal sanctions for poor performance unless:

- They have been given a written statement of the reasons for concern
- a fair hearing has been held
- The employee has been given the right to an appeal hearing unless only a warning has been given

Employees will not normally be dismissed for performance reasons without previous warnings. This is with the exception of any serious cases of gross negligence or any case involving an employee who has not yet completed their probationary period; dismissal without previous warnings may then be appropriate.

This procedure applies to all employees regardless of status or length of service however it does not apply to agency workers or self-employed contractors. This procedure may vary to include time limits as appropriate to a particular case. This procedure is for guidance only and does not form part of an employee's contract of employment.

### Disabilities

At each stage, consideration should be given as to whether the unsatisfactory performance is related to a disability and if so, whether there are reasonable changes that could be made to the requirements of the job or other aspects of the working arrangements. If an employee has any difficulties at any stage of the procedure because of a disability, or wishes to inform the committee of any medical condition they consider to be relevant, they should contact the chairperson of Bradpole Pre-School.

### Informal Discussions

In the first instance, performance issues should normally be dealt with informally between the employee and the Preschool Leader as part of the day-to-day management. Informal discussions may be held with a view to:

Identify areas of concern

Clarify the required standards set out at Bradpole Preschool

Establish the likely causes of poor performance and identifying any training needs

Setting out targets for improvements and agreeing a time- scale for a review

A formal procedure will be used for more serious cases, or in any case where informal discussions have not resulted in a satisfactory improvement.

### Capability Hearings

A capability hearing will be held at each stage of the procedure unless it is impractical to do so, the employee will be given a written notice of the date, time and place of the capability hearing. The written notice will contain the Preschool's concerns over the employee's performance and the basis for those concerns. The employee will have a reasonable



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opportunity to consider this information before the hearing.

The hearing will be held by the Preschool Leader. The employee is entitled to bring a companion to the hearing- this may be a work colleague. The employee must take reasonable steps to attend the hearing. Failure to attend a hearing without good reason may be treated as misconduct. If the employee or their companion cannot attend at the time specified, they should inform the Preschool immediately to seek to agree an alternative. A hearing may be adjourned if any further information needs to be gathered or to give consideration to matters discussed at the hearing. The employee will be given reasonable opportunity to consider any new information obtained before the hearing is reconvened.

The employee will receive written confirmation of the Preschool's decision, the reasons for it, and the right of appeal, within one week of the capability hearing unless the time scale is not practical, in which case this information will be confirmed as soon as is practicable.

### **STAGE 1: First Capability Hearing**

Where performance is unsatisfactory, and informal steps have either failed to resolve the situation or are not appropriate, a First Capability Hearing will be held.

The purpose of the First Capability Hearing includes:

- Setting out the required standards that are considered not to have been met
- Establishing the likely causes of poor performance
- Allowing the employee the opportunity to explain the poor performance and ask an relevant questions
- Discussing measures, such as additional training or supervision, which may improve performance
- Setting targets for improvement
- Setting a time scale for a review

Following the hearing, if the Preschool Leader decides that it is appropriate to do so, the employee will be given a First Written Warning setting out:

- The areas in which the required performance standards have not been met
- Targets for improvement
- Any measures, such as additional training or supervision, which will be taken with a view to improving performance
- A time scale for review
- The consequences of failing to improve within the review period or of further unsatisfactory performance

The warning will remain active for six months after which time it will normally be disregarded for the purposes of the Capability Procedure. A record of the warning will form a permanent part of the employee's personal record. The employee's performance will be monitored and at the end of the review period the Preschool will write to inform the employee of the next step, as follows:

- If the manager is satisfied with the employee's performance, no further action will be taken
- If the manager is not satisfied, the matter may be progressed to stage 2
- If the manager feels that there has been a substantial but insufficient improvement, the



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review period may be extended

## **STAGE 2: Second Capability Hearing**

If the employee's performance does not improve within the review period, or if there are further instances of poor performance while the first written warning is still active, the Preschool will hold a second capability hearing. The purposes of the second hearing include:

- Setting out the required standards that are considered not to have been met
- Establishing the likely causes of poor performance including any reasons why the measures taken so far have not led to the required improvement
- Allowing the employee the opportunity to explain the poor performance and ask any relevant 11 questions
- Identifying further measures, such as additional training or supervision, which may improve performance
- Setting targets for improvement
- Setting a time scale for review

Following the hearing, if the Preschool decides that it is appropriate to do so, the employee will be given a final written warning, setting out:

- The areas which have not met the required performance standards
- Targets for improvement
- Any measures, such as additional training or supervision, which will be taken with a view to improving performance
- A further time scale for review
- The consequences of failing to improve within the time scale, or of further unsatisfactory performance

A final written warning will remain active for 12 months; after which time it will be disregarded for the purposes of the capability procedure. A record of the warning will form a permanent part of the employee's personal record. The employee's performance will be monitored and at the end of the review period the Pre-School will write to inform the employee of the next step, as follows:

- If the manager is satisfied with the performance, no further action will be taken
- If the manager is not satisfied, the matter may be progressed to a Stage 3 capability hearing
- If the manager feels that there has been a substantial but insufficient improvement, the review period may be extended

## **STAGE 3: Dismissal or redeployment**

If the employee's performance does not improve within the further review period set out in the final written warning, or if there are further serious instances of poor performance while the written warnings are still active, the Pre-School will hold a further capability hearing. The purpose of the stage 3 hearing includes:

- Setting out the required standards that are considered not to have been met
- Identifying areas in which performance is still unsatisfactory
- Allowing the employee the opportunity to explain the poor performance and ask any



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relevant questions

- Establishing whether there are any further steps that could reasonably be taken to rectify poor performance
- Establishing whether there is any reasonable likelihood of the required standard of performance being met within a reasonable time
- Discussing whether there is any practical alternative to dismissal, such as redeployment to a suitable job that is available at the same or lower grade

In exceptional cases where the Preschool believes that there is a reasonable likelihood of the necessary improvement being made within a reasonable time, a further review period will be set and the final written warning extended.

If performance remains unsatisfactory and there is to be no further review period, the Preschool may do one of the following:

- Redeploy the employee to another suitable job at the same, or if their contract permits a lower grade
- Dismiss the employee

Dismissal will normally be with full notice or payment in lieu of notice, unless the employee is guilty of gross misconduct within the meaning of our disciplinary policy, in which case they may be dismissed without notice or any pay in lieu.

### **Appeals**

The employee may appeal against the outcome of any stage of the formal Capability Procedure. If they wish to appeal they should do so in writing, stating the full grounds of appeal it should be addressed to the chair person. Unless it is not practicable, the employee will be given between two days' and one week's written notice of the appeal hearing. In cases of dismissal the appeal will be held as soon as possible.

Where practicable, the appeal hearing should be held by a manager senior to the person who conducted the capability hearing. The employee may bring a companion to the appeal meeting.

If the employee raises any new matters in the appeal further investigation may need to be carried out. If any new information comes to light the Pre-School will provide the employee with details in writing. The employee will have a reasonable opportunity to consider this information before the hearing. Following the appeal the Preschool may:

- Confirm the original decision
- Revoke the original decision
- Substitute a different outcome

The decision will be confirmed in writing, if possible, within 10 working days of the appeal hearing. There will be no further right of appeal.

The date that any dismissal takes effect will not be delayed pending the outcome of an appeal. However, if the appeal is successful, the decision to dismiss the employee will be revoked with no loss of continuity or pay.



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This policy was updated at a meeting of: The Committee of Bradpole Preschool

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