



The de Ferrers Trust

Performance Improvement Policy

(Formally Capability Procedures)

Adopted by governors on
Consulted with trade unions on

Review Date	Reviewed by	Changes	Next review

Whole Trust Performance Improvement Policy Formally Teaching/Support staff Capability Procedures

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Introduction

The purpose of this policy and procedure is to improve the standards of performance of our colleagues and to encourage improvement where necessary. This procedure does not deal with conduct or sickness absence issues. These are dealt with in our disciplinary and managing attendance at work policies.

Any reference to 'the employer' refers to The de Ferrers Trust. The 'appropriate level of authority' should be determined according to the employer's decision making structure. This policy applies to employees of the organisation, referred to in this policy as colleagues.

The procedure applies to all colleagues, regardless of length of service, but does not form part of the contract of employment and can be varied from time to time and in consultation with the recognised trade unions. The procedure does not apply once you have left the employer.

The policy and procedure is commended for adoption by governing bodies for application to all colleagues employed in schools and Academies.

1. General Principles

- 1.1.** All managers have a duty to define, communicate and monitor the required standards of performance and provide regular feedback, support and recognition to colleagues on their performance. Colleagues are expected to take ownership for their progression towards achieving and sustaining acceptable performance and any identified performance improvement.
- 1.2.** As the aim of the procedure is to improve standards of performance, which fall below expectations, initially any performance issues should be dealt with informally by way of discussion with your line manager who will help, guide or advise you in improving your performance.
- 1.3.** At any stage where a need for assistance and support has been agreed between you and your line manager, your manager will ensure that the support is provided and will allow sufficient time for it to take effect.
- 1.4.** Cases of unsatisfactory performance are usually best dealt with informally and confidentially. A conversation about the concerns and resolutions is often all that is required to improve your performance. In some cases additional training, coaching and advice may be what is needed. There will be situations where matters are more serious or where an informal approach has been tried but has not worked.
- 1.5.** We are committed to equality and diversity and will make reasonable adjustments to the application of this policy and procedure where necessary and in line with our Equal Opportunities Policy.

2. Links with Other Policies and Procedures

2.1 Grievance Policy

2.1. Where you submit a complaint during performance improvement proceedings, this will not normally stop the proceedings from progressing. Where you raise a grievance during performance improvement proceedings:

- The performance improvement proceedings may be temporarily suspended in order to deal with the grievance or
- The grievance and performance improvement proceedings may be run concurrently where they are related

2.2. Where you assert that the performance improvement proceedings being undertaken are unlawfully discriminatory or are motivated by reasons other than poor performance, you can raise a grievance.

2.3. Managing Attendance at Work Policy

2.4. Where you are absent due to sickness, the managing attendance at work procedure will apply as normal. Under these arrangements due regard will be had for what is said by Occupational Health and any information you may wish to provide from your GP. We will arrange for you to see Occupational Health as soon as possible for them to assess your health generally and whether or not you are fit to participate in these procedures. Being absent from work due to sickness will not automatically stop the performance improvement procedure progressing.

3. Informal Performance Improvement Process

3.1. Where a manager has a concern about your performance there will normally be an informal period to improve your performance. The purpose of this is to identify and examine any areas of support and guidance, to ensure that you understand any future expectations of your performance and, where appropriate, to develop a performance improvement plan leading to improvements in your performance. Although this may result in a note of the discussion and any follow-up correspondence being kept by your manager on your personal file, this will not be considered to be a sanction under the formal Performance Improvement Policy.

3.2. You will be asked to confirm that you agree with any action plan you are signing up to, is achievable and realistic and should raise any concerns that you have about the action plan with your manager.

3.3. In the event that the matter cannot be resolved informally within a reasonable timescale or the matter is too serious for the informal approach to be applied, the formal performance management process will follow. The aim of the process is to improve your performance.

Although the stages of the performance improvement process will normally be followed sequentially the employer may enter the process at any stage depending on the seriousness of the matter.

- 3.4. Managers may progress your performance improvement case to the next step of the process before the expiry of the performance improvement plan.

4. Transition to the Formal Improvement Process

- 4.1. Before formal action is taken in relation to poor performance, the following steps will be taken:

- A review of your performance will take place. This might include a review of information from the informal performance improvement process or the performance improvement plan, monitoring your work and meeting with you to provide further insight or information related to your performance.
- If following this review your manager concludes it would be more appropriate to continue to address the remaining concerns through the informal performance process, or normal management, the performance improvement procedure will come to an end and your performance will be managed under the normal performance management process.

5. Formal Performance Improvement Process

- 5.1. If, following this review, it is believed that there are reasonable grounds for taking formal action or the next stage of formal action; you will be required to attend a performance improvement meeting.
- 5.2. You will be invited to the meeting in writing.
- 5.3. You will be provided with written details of the poor performance concerns, the reasons for the concerns and the possible outcomes, at least **10 working days** before the meeting/hearing/appeal.

6. Right to be Accompanied

- 6.1. You have the right to be accompanied by a companion at any meeting as part of the formal performance management procedure. The companion may be a fellow colleague, a trade union representative or an official employed by a trade union.
- 6.2. The companion is allowed to address the hearing, to put and sum up your case, respond on your behalf to any views expressed at the meeting and confer with you during the hearing. They may also request an adjournment and ask questions of anyone present. The companion does not, however, have the right to answer questions on your behalf, address the hearing if you do not wish it or prevent the employer from explaining their case. Other than confirming that all

parties have the same documentation it would not normally be necessary to read out the content of the documentation.

- 6.3. Under this procedure, you do not have the right to be accompanied by anyone else (such as a spouse, partner, other family member or legal representative).
- 6.4. It would not normally be reasonable for you to insist on being accompanied by a companion whose presence would prejudice the hearing nor would it be reasonable for you to ask to be accompanied by a companion from a remote geographical location if someone suitable and willing was available on site.
- 6.5. Where appropriate, eligible colleagues, for example those with disabilities or language difficulties, may have the attendance of a supporter or interpreter.

7. The Performance Improvement Meeting

- 7.1. Formal hearings will be conducted in line with formal meeting procedures. You must make all reasonable efforts to attend a performance improvement meeting. If you or your companion is unable to attend a meeting you may propose a new date of no more than **5 working days** from the date of the original date.
- 7.2. The Deciding Manager will respond sensitively when a delay is required as it may arise for a reason related to a disability or parental emergency involving dependants. We may arrange another meeting date if you fail to attend through circumstances outside of your control.
- 7.3. If you do not attend the meeting without good reason, it should be re-arranged but if you do not attend the rearranged meeting, a decision may be made in your absence. You may submit a written statement to be taken into consideration.
- 7.4. Where you are persistently unable or unwilling to attend the meeting without good cause the manager should make a decision on the evidence available.
- 7.5. The performance improvement meeting will be conducted by an appropriate person¹ known as the Deciding Manager who has the appropriate level of authority with the relevant skills and experience. A representative from HR may also be present and will always be present at hearings that may result in dismissal or an alternative to dismissal.
- 7.6. At the meeting the poor performance issues identified will be explained and you will have the opportunity to put your explanation forward. Consideration will be given to the reasons for your poor performance

¹ In schools and Academies the performance improvement meeting for the Headteacher should be conducted by an appropriate Panel of Governors.

and whether it is appropriate to provide any further measures by way of support. You will be informed what the level of improved performance will need to be, and by when, in order to end the performance improvement procedure. This will be detailed in your performance improvement plan. Any support that will be available to help you improve your performance will be explained to you and detailed in the plan. The steps and timescales for improvement of performance and how your performance will be monitored and reviewed will be discussed and explained at the meeting.

- 7.7. The timetable for improvement will depend on the circumstances of your case. It is for the Deciding Manager to determine the time period for improvement. It will be reasonable and proportionate, but not excessively long, and will provide you with sufficient opportunity for you to improve your performance.
- 7.8. The consequences of your failure to improve within the set period will be explained to you. In very serious cases, this could be a final improvement notice or dismissal.
- 7.9. The performance improvement meeting may be adjourned if it becomes necessary to explore any matters further. If any further evidence or information is obtained as a result, you will be given this evidence ahead of the reconvened meeting and given the opportunity to respond to it.
- 7.10. It is important that written records are kept during the performance improvement process. Action plans and notes of formal meetings will be given to you for your information and copies of notes, letters and action plans should be retained by the line manager.

8. Formal Performance Improvement Notices

8.1. Stage 1 – First improvement notice

Following a formal performance improvement meeting; a first improvement notice may be issued by the Deciding Manager and will usually be appropriate after a period of informal support, where there are no previous notices and where any agreed adjustments and other support has been made or provided. The notice will remain active for 6 months and it should be disregarded for performance improvement purposes after this period. Your performance will be reviewed throughout the period of the notice.

8.2. Stage 2 – Final improvement notice

Following a further formal performance improvement meeting; where any agreed adjustments and other support has been made or provided, a final improvement notice may be issued by the Deciding Manager in the following circumstances:

- where, within the review period of the first improvement notice, the necessary improvement has not been achieved
- where the seriousness of the poor performance is sufficient to warrant such a warning even though no previous warning may have been issued.

This will remain active for 12 months and it should be disregarded for performance improvement purposes after this period. Your performance will be reviewed throughout the period of the notice.

8.3. Stage 3 – Dismissal

Only a Deciding Manager with the appropriate level of authority in line with the employer's scheme of delegation² can take a decision to dismiss and where any agreed adjustments and other support has been made or provided. You may be dismissed in the following circumstances:

- any poor performance during your probationary period (except where national guidelines detail otherwise)
- where within the duration of the final improvement notice and following further formal procedure, the necessary improvement has not been achieved and any agreed adjustment and other support has been made or provided. This would be with notice or payment in lieu of notice.
- where, on the balance of probability, it is reasonably believed that you have committed an act of gross negligence; this will usually be dealt with under the disciplinary policy. Gross negligence will usually result in summary dismissal without notice and without pay in lieu of notice.

The employer may at its discretion consider alternatives to dismissal, for example demotion. If an alternative is applied, it may also be accompanied by a final improvement notice.

9. Performance Improvement Notices

- 9.1.** Where a notice is issued, this will be confirmed to you in writing within **10 working days** of the performance improvement meeting. The notice will state the poor performance that led to the notice, the action or improvement required by you, the duration of the review period, any measures that will be taken to support you, the duration of the notice and the likely consequences of the action or improvement not being taken and/or any further poor performance. You will also be advised of the right of appeal and the person to whom your appeal should be made.

² In Schools and Academies only a Panel of Governors can consider a dismissal.

10. Regular Feedback

10.1. Following any formal stage your manager has the responsibility to provide you with regular feedback and evidence on how your performance is progressing against your performance improvement plan. Feedback should not be saved for the next formal stage but shared with you during the performance notice. This prompt feedback could lead to improvements in your performance and could avoid the need to move to the next stage of the procedure.

11. Appeals

11.1. Where an improvement notice has been issued, if you are dissatisfied with that decision, you can appeal at all formal stages. Your appeal must be in writing and set out grounds of your appeal in line with the list below and include all the information you wish to rely on at the appeal hearing. You must send your appeal to the Appeal Deciding Manager within **5 working days** of the date you received the letter notifying you of the performance improvement meeting decision. You must be appealing against either:

- the finding that you are underperforming in your role where the evidence did not support this
- the severity of the performance notice taking into account the nature of the misconduct and the mitigating circumstances.
- the fact that you don't feel the correct procedure was followed
- the fact the new evidence has come to light that would change the outcome
- the sanction is inconsistent with how others have been treated
- there was unlawful discrimination in the handling of the performance improvement.

You will be invited to the appeal hearing in writing in accordance with formal meeting procedures. You will be given at least 10 working day's notice of the appeal meeting. You have the right to be accompanied at the appeal meeting by your companion.

12. Outcome

12.1. The outcome of the appeal may be to overturn or confirm the original decision or apply a different, but not more serious, sanction. The Appeal Deciding Manager will either recall the colleague to the Appeal Hearing or will write to the colleague confirming their decision. The appeal outcome will be confirmed in writing within **10 working days** of the appeal hearing. There is no further right of appeal.

12.2. You are not entitled to raise a further complaint under the employer's Grievance Policy (or any of the employer's complaints procedures) in relation to the same grounds of appeal.