

# **Selsey Community Forum**



## **Capability and Performance Policy**

### **Policy Statement**

It is recognised by Selsey Community Forum that there are occasions when despite the best efforts of staff they are, for a variety of reasons, not capable of performing their job to a satisfactory standard. This policy is designed to provide a framework to deal with situations of this nature. The provisions of this policy comply with employment legislation.

### **Scope**

This policy applies to staff following their probationary period and will be brought to the attention of all Selsey Community Forum staff. This policy is to be used when a member of staff is unable to perform their role to a satisfactory standard because they appear not to have the ability to do so.

### **General**

This procedure should not be viewed as a means of imposing sanctions on a member of staff. It is to be used when the staff member is unable to perform their job to a satisfactory standard, despite their best attempts to do so. This may include the inability to respond to service users properly or, if a manager, to satisfactorily manage staff. Selsey Community Forum expects that the first step in the process to improve performance will normally be an informal interview conducted by the staff member's manager and, in the case of a manager, by the Chair of the Trustees.

Where formal proceedings become necessary, Selsey Community Forum will ensure that this procedure is applied fairly and consistently through the involvement of the Trustees. Staff will be given sufficiently clear details of the nature of the lack of capability resulting in unsatisfactory performance and the opportunity to respond to them and the right of appeal if the various cautions in the procedure are implemented.

Managers are responsible for the management of their service and for ensuring that all staff are made aware of the standards that are expected of them.

It is an important principle of the procedure that details of all discussions, reviews, investigations, hearings, documentation and any other details or data used as evidence are considered confidential and are not to be made known, discussed or revealed to anyone not entitled under this procedure to have access to that information. This does not preclude evidence from third parties being provided where relevant.

Whenever the policy gives the member of staff the right to be accompanied this means a Trade Union representative or a workplace colleague.

### **Performance**

If the staff member is unable to fulfil the requirements of their job, the provisions of the procedure may be implemented. The procedure is designed to be used when it has become apparent a staff member is and potentially may remain unable to perform their role to a satisfactory standard

### **Capability Procedure Stages**

<b>Capability Procedure</b>	
<b>Informal Stage</b> No right to be represented No right of appeal	Informal meeting

<b>Stage 1</b> No right to be represented Normal period valid for 3 months No right of appeal	Formal written caution
<b>Stage 2</b> Right to be represented Normal period valid for 3 months Appeal	Final written caution
<b>Suspension</b>	To be used where appropriate – it is not of itself a form of sanction
<b>Stage 3</b> Right to be represented Appeal	Dismissal with notice

## Informal meetings

It is the line manager's responsibility to communicate with, train and develop their staff. If it has become apparent that the member of staff is unable to fulfil the requirements of their job, the line manager must discuss the problems with the staff member and agree how best to overcome these problems. The discussion must be documented, and the outcome confirmed in writing to the staff member confirming what needs to be addressed and why, and what support the manager will provide to help the staff member make and sustain the improvement required.

Every effort should be made to improve performance through encouragement, training and mentoring before formal action is taken under this procedure. In this instance, it is important that the staff member is given adequate time and opportunity to demonstrate an improvement in their performance.

A manager will, after interviewing the staff member in response to examples of poor performance, put in writing the outcome of the discussion. The note will outline the areas of poor performance and/or lack of capability and the support and/or training to be provided by the manager. It should also include the corrective action to be taken by the member of staff and the timescale for improvement.

A file note containing details of the discussion should be given to the member of staff and a copy placed on their personal file.

Meetings such as those described within this section are part of the normal supervisory process and do not form part of the formal Capability Procedure. Therefore, the staff member does not have the right to be accompanied at the meeting by a colleague or Trade Union representative and there is no right of appeal in these circumstances.

All records in relation to the above must be kept confidentially and securely.

## Preliminary Review

In cases of sustained poor performance, the manager will normally undertake a preliminary review to determine whether it is appropriate to hold a formal Capability meeting.

Selsey Community Forum expect preliminary reviews to be thorough and impartial and conducted as speedily as possible. A biased approach must be avoided, for example if the investigation stems from complaints by the staff member's colleagues, then other staff who have not made complaints should be interviewed and their views recorded to ensure that a fair and balanced view is obtained.

If the staff member who is the subject of the review is required to attend a review meeting, he or she should be given adequate advance warning of this to allow them time to prepare.

## Suspension pending investigation

Whilst suspension is not a form of sanction, it might be appropriate to suspend a member of staff if

their continuing presence at work may be prejudicial to the satisfactory operation of the service concerned. Similarly, in cases of alleged serious poor performance it may be inappropriate for the member of staff to be at work whilst an investigation and review takes place. It does not follow that a formal Capability meeting will inevitably follow a period of suspension.

Suspension will be on normal pay except where the staff member is receiving less than full pay (or no pay) under their contract of employment in which case that entitlement (or lack of it) shall continue during the period of suspension. Where normal pay is variable, any payments made during suspension will be calculated with reference to average pay during the preceding 12 weeks and the period of suspension will be as short as possible.

The decision to suspend a member of staff must, except in exceptional circumstances, be taken by the Chair of the Trustees. The decision to suspend must be confirmed in writing within 48 hours and the period of suspension be kept as short as possible.

Staff who are suspended are not permitted to attend their normal place of work or other Selsey Community Forum premises or to contact other employees, without express authority from their manager. If suspended employees wish to have access to documentation they must be referred to the Chair of the Trustees.

### **Capability meeting**

Action under the formal elements of this procedure will not be taken without a formal meeting, organised by the manager, and all meetings will be conducted by a nominated Trustee. A Capability meeting that may result in the termination of the staff member's employment must be referred to the Chair of the Trustees to ensure compliance with this Procedure.

A Capability meeting for an issue likely to result, if proven, in a Stage 1 or Stage 2 Caution will normally be carried out by the staff member's line manager or a Trustee if considered more appropriate.

A Capability meeting for an issue likely to result, if proven, in termination will normally be carried out by the Chair of the Trustees.

Unless a shorter period is mutually agreed, the staff member shall be given not less than two working days' notice in writing of the meeting arrangements. The letter, which will be sent by the Chair of the Trustees, shall be accompanied by a copy of this policy along with all relevant documentation, evidence and witness statements if appropriate.

The letter shall remind the staff member of their right to be accompanied by a work colleague or a Trade Union representative and must clearly state the areas of poor performance to be considered at the meeting. In line with the provisions of the Employment Relations Act 2004 the staff member's work colleague or a Trade Union representative may address the meeting to put the staff member's case, sum up their case, respond on the staff member's behalf to any view expressed at the meeting and confer with the staff member during the meeting. The representative does not however have the right to answer questions on the employee's behalf. Before the meeting takes place, the staff member should inform the Chair of the Trustees who they have chosen to accompany them.

The manager conducting the meeting must act reasonably in considering any request for a postponement of the meeting if the staff member considers that more time is needed for the preparation of their response.

In the event of the staff member advising Selsey Community Forum of illness which prevents their attendance on the stated date for the meeting, or the non-availability of a Trade Union representative, Selsey Community Forum will consider deferring the meeting. In these circumstances the staff member will be notified that further requests for deferment may be refused and that, in their absence at the re-arranged meeting, the manager conducting the meeting may need to proceed to assess the case and to make a judgement on the information available to them at that time. Selsey Community Forum may require the staff member to produce a medical certificate or doctor's letter confirming that they are unfit to attend a meeting (for which the fitness criteria may be different from that required for

attendance at work).

Before any meeting is held, the manager responsible for the meeting must be satisfied that the staff member has received in writing an explanation of the alleged poor performance in sufficient detail to consider and prepare their response.

Where either party intend to rely on evidence from other staff members, documents, CCTV footage, data collected from electronic recording systems or other evidence, copies of the evidence, documents and other material should be prepared and issued to the other party in good time, normally at least two working days in advance of the meeting unless otherwise agreed between the parties. The staff member will not be charged for copies of this material. Except in circumstances outlined below staff witnesses will normally be on hand at the meeting to answer questions from either side. The requirements of the Regulation of Investigatory Powers Act (RIPA) would be met if applicable.

Either side may provide documentation from a non-staff member but the decision to invite or allow a non-staff member witness to attend the meeting and give evidence and answer questions from either side will be a decision made by the manager conducting the meeting. Where either side intends to call witnesses, they must give advance notice that they intend to do this.

Where the manager conducting the meeting considers it essential to introduce statements made either anonymously or in circumstances where the witness justifiably wishes to preserve their anonymity the manager must make every effort to provide the staff member with such part of the statement as can be released without revealing the identity of the individual. It is also essential in such cases for the manager to make efforts to find corroborative evidence which can be presented to the staff member in a way that allows them to respond.

At the meeting the manager must ensure that all the evidence is aired and that the staff member and their representative have every opportunity to question the management representatives and to present their own evidence together with any points of mitigation, if appropriate. The manager must allow reasonable opportunities for comfort breaks and for the employee to confer with their accompanying union representative. The manager must ensure that as far as possible all the factors which might be considered in their decision are disclosed. The manager may call whomever they choose to give evidence, irrespective of whether or not they have previously been involved in the investigation or process in order to ensure that all relevant factors are considered before reaching a decision.

## **Outcomes and measures**

At the conclusion of the meeting, the manager will adjourn the proceedings to consider the evidence and review the discussion that took place. They will then reconvene the meeting to announce their decision. Every effort will be made to reach a decision on the day but if this is not possible the meeting will be adjourned to allow sufficient time for a decision to be reached. The adjournment will be as brief as possible, and the hearing reconvened at the earliest opportunity or the decision otherwise communicated to the staff member as soon as possible. In exceptional circumstances, further information may become available that needs to be examined by the panel, in which case a full resumption of the Capability meeting would be required.

The various stages in the capability process do not represent a sequence that has to be always followed and stages may therefore be missed out where there is sufficient justification for doing so. The decision to issue a Stage 1 or 2 Caution will be based on the nature of the poor performance and/or lack of capability, the presence of any mitigating factors, the need to act reasonably, the staff member's work record and the need to manage capability issues consistently and fairly.

If the staff member can provide a satisfactory explanation, no formal action will be taken. However, if formal action is considered appropriate the possible outcomes are as follows:

### **Stage 1 – Written Caution**

A Written Caution will be confirmed in the form of a letter sent to the employee within seven working

days of the conclusion of the capability proceedings and will state:

- Details of the poor performance/lack of capability;
- A short summary of the explanation offered and its acceptability;
- Confirmation of the decision;
- Details of any remedial action or improvement required and the support and training which will be provided to the staff member to help them improve their performance, with time-scales or review dates as appropriate;
- Confirmation of the consequences of a re-occurrence or failure to make and sustain the required improvement in performance;
- Confirmation of the period after which the Caution will be disregarded if the staff member's performance sufficiently improves. The notice will normally be valid for a period of 3 months;
- A Caution will remain valid until its expiry date, at which time, provided the staff member's performance has improved and remained at a satisfactory standard, it will be disregarded and removed from the staff member's personal file unless the Notice was issued for a matter related to Health & Safety, Young Persons or Vulnerable Persons;
- The manager may wish to discuss re-deployment opportunities with the staff member where appropriate.

### Stage 2 – Final Written Caution

A Final Written Caution will be confirmed in the form of a letter sent to the employee within seven working days of the conclusion of the capability proceedings. The process to be following for issuing a Final Written Caution will be the same as outlined in 7.1 above, with the following exceptions:

- A Final Written Caution will normally remain valid for a period of 3 months
- The letter should make clear that termination is a likely consequence if the staff member is unable to make and sustain the required improvement in their performance;
- Details of the staff member's right of appeal with time limits;
- At this stage, the manager should discuss with the member of staff if appropriate re-deployment opportunities exist elsewhere within Selsey Community Forum.

### Stage 3 – Termination (dismissal)

If the manager concludes that the staff member has and is likely to remain unable to perform their job to the required standard, the decision may be made to terminate the staff member's employment. Dismissal will always be with notice.

The letter to confirm dismissal will be issued within seven working days of the conclusion of the hearing and will confirm whether the notice period is to be worked or whether payment will be made in lieu of notice. Alternatively, the line manager has the right to place the staff member on paid special leave during part or all of their period of notice.

The staff member's right to appeal will be outlined in the letter.

As an alternative to dismissal the staff member may be considered for an alternative role at a lower grade if such a vacancy exists. In these circumstances the staff member does not have a right to retain their salary and terms and conditions of service.

## Appeals

Should a staff member wish to appeal against a Caution or dismissal, they must write to the Chair of the Trustees within ten working days of the date of receipt of written notification of the capability action. The letter requesting an appeal must state the grounds of appeal under one or more of the following headings:

- Severity of the action;
- The findings of the capability hearing on a point of fact which is pertinent to the decision of the hearing;
- Failure to adhere to the procedure; or
- Some other reason.

An appeal hearing will take place as soon as possible, but normally no more than 28 working days after the receipt of the letter of appeal. The staff member may be accompanied by a work colleague or Trade Union representative.

For capability action up to and including a Final Written Caution, the Appeal Panel shall consist of the manager, Chair of the Trustees and nominated Trustee. Members of the original panel that issued the Caution being appealed against cannot be members of the Appeal Panel.

For capability action resulting in Dismissal, the Appeal Panel shall consist of other Trustees. Members of the original panel that dismissed the employee cannot be members of the Appeal panel.

In certain circumstances an advisor may be selected to sit on an Appeals Panel if considered appropriate and if authorised to do so by the Chair of the Trustees.

The employee and/or their representative should present their grounds for making the Appeal to the Appeal Panel. The Appeal Panel must ensure that both parties are provided with the opportunity to present their views to the Panel about all the issues raised. Either side may raise any issue relevant to the case. It is the Panel's responsibility to ensure that it sufficiently tests the evidence presented to it prior to making its decision. New evidence can be presented but no new allegations unconnected with the Appeal may be made. New documentation or evidence to be introduced at the Appeal must normally be made available by both sides to all parties at least two working days before the Appeal hearing.

The Appeal Panel may confirm or reverse the action taken by management; impose a lower level Caution or reduce the period for which the Caution is valid.

The Appeal Panel's decision will be notified to the employee in writing within ten working days (five working days if an Appeal against dismissal) of the conclusion of the appeal hearing. The Panel's decision will be final subject to an employee's statutory rights.

If following an appeal against dismissal the employee is reinstated, they will be reinstated without a break in service.

**Other Matters**

This policy is applicable to all the activities in which Selsey Community Forum is or becomes involved; it is to be reviewed and updated as necessary at least annually.

Reviewed and Approved by Trustees: November 2024

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Mike Nicholls, Chair, Selsey Community Forum