Education Futures Trust

Managing Unacceptable Performance

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Document summary

The Education Futures Trust (Trust) has clear expectations when it comes to the conduct and performance of its employees. Most of the time these are adhered to but on occasion the performance of employees falls below the required standard.

The aim of this policy is to formulate arrangements which will ensure a fair, effective and consistent method of dealing with these matters.

Key points

Each employee has a responsibility to be familiar with the rules and standards of conduct which relate to his/her area of work and with the Trust’s standards.

Definitions and principles

Improving staff performance positively impacts on service delivery and the reputation of the organisation.

The procedure for the Management of Unacceptable Performance sets out a fair and systematic approach to address shortfalls in an employee’s performance.

Key points

There is an agreed procedure for managing unacceptable performance that must be followed.

It is important to manage performance in a fair and consistent way.

Line managers are responsible for managing performance.

The overall objective is for the manager to assist the employee in the most appropriate way to improve their performance in their current post.

Incidents of unacceptable performance should be identified and dealt with as soon as possible, preferably in an informal way.

1. What is unacceptable performance?

It is performance that falls below the standards that have been set, or that could reasonably be expected of, a member of staff. Under the Employment Rights Act 1996 an employee’s performance can be assessed by reference to skill, aptitude, ability and/or any other physical or mental capacity, for example, lack of skill or ability in achieving business objectives such as frequent errors in work.

2. How does it differ from discipline?

In the beginning it may not be clear whether the problem is due to misconduct or unacceptable performance. If it is misconduct then the manager will need to
refer to the Disciplinary Policy. If a case is initially dealt with under the Disciplinary Procedure it should be transferred to the procedure for the Management of Unacceptable Performance immediately it becomes clear that performance issues are involved.

3. What if an employee’s health is affecting their performance?

3.1 If it is clear that an employee’s health is affecting their attendance at work and/or their performance, managers should refer to the Attendance Management Procedure.

3.2 You may need to consider whether an employee has a disability as defined in the Equality Act 2010 and therefore whether reasonable adjustments need to be made.

4. Why is it important to manage unacceptable performance?

It is important to manage unacceptable performance because of the impact on the individual, the team and the charity as a whole:

- team morale may dip when a member of staff is not performing;
- it can lower individual and team efficiency and effectiveness and compromise service delivery;
- if unacceptable performance is not managed, it will waste valuable time and energy for managers to rectify the situation.

5. Who is covered by the procedure?

The procedure applies to all employees except those still within their probationary period, or with less than one year’s service.

6. Should the case be dealt with informally first?

Stage One
All cases of poor performance should normally be dealt with informally in the first instance, unless it is likely to endanger the health and safety of other people or if the poor performance will have a significant impact on the business.

Managers should use the performance management systems to address the issues at this level.

7. Can an individual grievance be raised during this process?

In the event that an employee raises a grievance in the course of implementing this procedure, or there remains an outstanding grievance, the Trust will normally suspend consideration of the grievance until the outcome of implementing this procedure is known.

8. Is it possible to enter the formal procedure at Stage 2 or Stage 3 without the previous stages being followed?
Yes - in exceptional circumstances (e.g. significant impact on the business, or where the unacceptable performance endangers the health and safety of other employees and/or members of the public). This might also apply where an employee’s performance has already been reviewed as part of this procedure, only for it to deteriorate again in a relatively short period of time.

9. Representation

9.1 Employees may be accompanied by a recognised Trade Union Representative or work-place colleague, not acting in a professional capacity, at all formal stages of this procedure.

9.2 There is no right to legal representation at any stage of this procedure.

9.3 Managers should inform an employee in writing that they may be accompanied if the formal stage of this procedure is commenced. It is the responsibility of each employee to arrange their own representation.

10. Formal Procedure

10.1 When a manager considers that an employee is not performing to the appropriate standard and informal discussions have not resulted in improvement, the manager should then move on to the formal stages.

10.2 Full and detailed records should be kept by the manager at each stage of the procedure identifying the reasons for the employee’s failure to meet the required standards of performance, the manager’s response, any action logged and dated to ensure timescales are adhered to. Notes of all meetings should be kept and made available to the employee.

Stage Two (8 weeks duration)

1. A formal meeting should be convened to outline the concerns. The discussion should be full and wide-ranging in an environment of support. The employee’s poor performance must be identified clearly and openly. If documentary evidence is available, it must be discussed with the employee and copies made available. The employee’s explanations must be considered and explored to determine precise reasons for unacceptable performance.

2. The standard of work expected, the improvement needed and the appropriate action and time scale for achieving this will be identified, agreed and confirmed in writing by the manager. A timetable of regular monitoring sessions with the line manager will be arranged. These sessions may coincide with or replace normal or existing supervision arrangements.

3. The timetable will include two formal review meetings (usually after 4 and 8 weeks) to discuss progress, identify any further concerns not previously identified and review the support and monitoring programme.

4. The purpose of the second formal review meeting will be to determine
whether satisfactory progress has been made. If yes, clarify any ongoing support through management supervision. If no, issue a Notification of Concern in writing that performance continues to be unsatisfactory and move on to Stage Three of this procedure. The Notification of Concern will remain live for 12 months.

5. The employee has the right of appeal against the Notification of Concern. Any appeal should be made in writing to the manager within 5 working days of the date on which the Notification of Concern was received. The appeal will be heard by a different manager to the one who issued the Notification of Concern.

6. During Stage Two the manager and the employee may wish to discuss whether either party consider that the post is not appropriate for the employee, and reasonable support will be given to the employee e.g. time to prepare applications and attend interviews.

Stage Three (6 weeks duration)

1. A formal meeting should be convened to outline concerns and emphasise the seriousness of the situation. A final programme of support and monitoring should be discussed and agreed, emphasising that significant and rapid improvement in performance is required.

2. The results of Stage Two and the monitoring process will be fully discussed with the employee and reviewed objectively. The employee will give their assessment of the progress achieved, and the support and training made available during Stage Two.

3. The manager will consider how far performance has improved, whether it has been sustained and the shortfall(s) against the target(s) set during Stage Two. A new action plan will be identified, agreed and confirmed in writing clearly outlining targets to be achieved in order to bring the level of performance up to an acceptable standard during Stage Three.

4. Again a timetable of regular monitoring sessions with the line manager should be arranged to include a further formal review meeting (usually after 3 weeks) to discuss progress and review the monitoring and support programme.

5. A final review meeting should be arranged (usually after 6 weeks).

6. The purpose of the final formal review meeting will be to determine whether or not satisfactory progress has been made. If yes, then the employee will be informed in writing and any ongoing support through management supervision will be clarified. The formal warning issued at Stage Two will remain live for a period of 12 months. If there is a recurrence of the unacceptable performance within 12 months then it will be appropriate to re-enter this procedure at Stage Three.

7. If the employee's performance remains unacceptable a decision may be
taken to recommend the employee’s dismissal on the grounds of capability. The employee should be suspended (with pay) pending the dismissal hearing, which should be arranged as soon as possible following the final review meeting.

11. Format of the Dismissal Hearing

1. Where it is decided to refer the case to a dismissal hearing the employee will be given at least ten full working days’ notice. The invitation to a dismissal hearing will clearly state the areas of concern around the employee’s performance and the right to representation. Copies of the management case and any supporting information which may be referred to at the hearing will be enclosed, including any witness statements.

2. The employee should be informed that either party can produce witnesses and/or written witness statements and relevant supporting documents at the dismissal hearing, should they wish to do so. The employee is required to submit any supporting statements or documentation five full working days before the hearing.

3. All paperwork will therefore be circulated to both parties at least four working days before the dismissal hearing as no additional documentation will be accepted as evidence on the day.

Attendance at the Dismissal Hearing

1. The dismissal hearing will be heard by the Chief Executive, or another nominated manager accompanied by a personnel practitioner, manager or professional colleague.

2. The employee will attend the hearing and is entitled to be accompanied by a Trade Union representative or workplace colleague.

3. If the employee is unable to attend the hearing, an alternative date will be arranged, within five working days of the first date. If they are unable to attend that hearing it will be held in their absence.

Witnesses

If the manager presenting the case or employee wishes to call witnesses at the hearing, their identity will be disclosed to the other side in advance, unless exceptional circumstances prevent this where anonymity has to be preserved.

12. Dismissal Hearing Procedure

12.1 Presentation of the Trust’s case

The manager hearing the case for dismissal will make introductions and outline the process to be followed to ensure that everyone present understands what is going to happen.
The manager will be accompanied throughout the hearing by a personnel practitioner or a manager. The accompanying person will take notes of the meeting throughout. These will then be available to all parties present.

The employee’s line manager will then present their case highlighting key points and calling any witnesses, if any, to present their evidence. The line manager will refer to any documents as necessary.

The employee and/or their representative may question any witnesses or question the line manager on their evidence.

The manager hearing the case may also question any person present.

Each witness will join the hearing to give evidence and leave after doing so, although they may need to be recalled if necessary.

12.2 Presentation of the Employee’s Case

The employee or representative presents their case, referring to any relevant documents, and calling any witnesses as appropriate.

The line manager may question the employee or any of the witnesses on their evidence. The manager hearing the case may also question any person present.

Each witness will join the hearing to give evidence and leave after doing so, although they may be recalled if necessary.

12.3 Summing Up

The line manager summarises the main points of their case.

The employee or their representative summarises the main points of their case, including any mitigating circumstances.

At this stage no new evidence may be introduced. The line manager, the employee and their representative then leave the meeting.

12.4 The Decision

The manager hearing the case will consider whether there is sufficient grounds to dismiss the employee because of their poor performance. The manager should take into account any mitigating circumstances. If further clarification of information is required in order to make a decision, both parties will be recalled, or the hearing adjourned until the information is provided.

The manager should hear and consider all the evidence available at the time of the hearing.

The manager will read out their decision, including the reasons for it. If dismissal is recommended, the employee will be dismissed with the appropriate notice and informed of their right of appeal. In complex cases deliberation may take some
time. If this occurs a decision should be made within 2 working days of the conclusion of the hearing, and, in both situations the outcome of the hearing should be confirmed in writing within 5 working days. If the dismissal is confirmed then the employee will be given contractual notice on full pay. The employee should be told not to attend work during the notice period.

13. The Appeal Process

13.1 An employee may appeal against dismissal under this procedure, in writing, within 5 working days of receipt of the manager's letter.

13.2 Appeals against dismissal will be heard by a panel comprising of the Chief Executive, if not involved in the previous hearing, and one of the Trustees. Alternatively a panel comprising of the Trustees will hear the appeal.

13.3 The letter of appeal should state the reason for the appeal hearing.

Format of the Appeal Hearing

1. All appeals will be heard at the earliest possible date.

2. The employee will be informed in writing of the place, date and time of the hearing at least 10 working days before the date of the appeal hearing.

3. New evidence is permissible at the appeal. If either party wishes to introduce new evidence, they should give at least 5 working days' notice to the other party, prior to the hearing.

4. Details of the new evidence should be given to the other party prior to the hearing.

5. All paperwork will therefore be circulated to both parties at least four working days before the appeal hearing as no additional documentation will be accepted as evidence on the day.

6. The procedure will follow the same format as the Dismissal Hearing.

The Decision

The Appeals Panel will consider the matter in private and decide whether or not the case against the employee has been substantiated. If further clarification or information is required in order for a decision to be reached, both parties will be recalled or the appeal can be adjourned until the required information is provided.

The employee will normally be asked to wait for the Panel’s decision. However if the case is a complex one, the employee will be given the opportunity to leave and called back at a later time to receive the decision (accompanied wherever possible by their representative). In any event a decision will be made within 2 working days of the conclusion of the appeal hearing.
The decision will be confirmed to the employee in writing within **5 working days** of the conclusion of the appeal hearing.

The decision of the Appeals Panel is **FINAL** and there is no further right of appeal within the Trust.