



EYFS Key Themes and Commitments

<u>A Unique Child</u>	<u>Positive Relationships</u>	<u>Enabling Environments</u>	<u>Learning and Development</u>
1.2 Inclusive Practice	2.1 Respecting Each Other 2.2 Parents as Partners	3.2 Supporting Every Child 3.4 The Wider Context	

Policy Statement

This procedure is primarily concerned with ensuring that an employee whose standard of performance is unacceptable in one or more areas is clearly informed what standards are expected and received support towards achieving those standards. This procedure should only be initiated when normal support mechanisms have failed to resolve the issues.

It provides for an outcome, which is fair and constructive. It is not intended that the procedure should replace normal communication between line managers and employees, whereby comments may be made informally. It is important that employees are made fully aware of any complaint regarding their work at the time the complaint is received so that they are able to respond in a timely way.

This procedure is designed to help Warwick Community Playschool maintain the required employee standards of performance. It allows those who do not maintain those standards the opportunity to improve. It provides a method of dealing with any apparent short comings and can help an employee become effective again. It provides for matters to be dealt with in a fair and consistent manner.

This procedure is informed by the ACAS Code of Practice on Disciplinary and Grievance Procedures 2009. The procedure will apply to all employees of Warwick Community Playschool. This does not include contractor's employees.

This procedure does not apply where there are matters of:

Misconduct: which is dealt with under the Disciplinary Policy, which should be used if it is clear that the employee is capable of reaching the required standard and has actively not done so;

Grievance: which is dealt with under the Grievance Policy;

Ill Health: for which there is a separate absence policy;

Bullying, harassment, discrimination and/or victimisation: which are dealt with in the first instance under the Grievance Policy.

Principles

It is important that employees are made aware of the required standards and expectations of performance and the possible consequences of falling below this.

At the formal stage of the procedure the employee will be informed of their right to be accompanied at meetings by a work colleague. The accompanying person can address the meeting but not answer questions on behalf of the employee.

The employee will have the right of appeal against any formal warning under this procedure.

The procedure ensures that at all stages the employee will be heard in good faith and that there is no pre judgement of the outcome of any particular review meeting. The use of one stage of the procedure does not mean that the next stage follows automatically. When the employee achieves the standard of performance required, there will be a period of monitoring to ensure the improvement is maintained. The procedure may be suspended during this period and re-invoked if performance lapses to an unacceptable standard. When it is necessary to re-invoke this procedure, this will be at the stage which applied at the time the procedure was suspended.

The procedure will be withdrawn when improvement in performance have been both achieved and maintained and will be confirmed in writing.

An employee faced with possible disciplinary action is likely to find the situation stressful; line managers consider whether appropriate well-being services should be made available to the employee.

Where there is a performance concern identified during the appraisal process and this procedure has been invoked it would be usual to suspend the appraisal process.

Raising a Grievance

Employees should not use raising a grievance as a method of avoiding potential disciplinary action, however Warwick Community Playschool recognises that there are times when this may happen. Where an employee raises a grievance during a capability process the process may be temporarily suspended in order to deal with the grievance. Where the grievance and capability concerns are related it may be appropriate to deal with both issues concurrently. A decision will therefore be taken about whether or not the procedure should be suspended so that the grievance issues can be dealt with separately under the grievance procedure or whether the employee, at relevant capability interviews should raise the grievance.

Suspending the capability procedure because a grievance has been raised would normally take place when:

- ☀ There is an allegation that management have failed to follow the procedure;
- ☀ There is possible discrimination.

Procedure

Stage One – Informal Procedure

Where an employee exhibits an inability to perform their duties satisfactorily, the Playschool will attempt to resolve the matter informally via a meeting between the Line Manager and the member of staff. The nature and date of the meeting will be recorded and a letter sent to the member of staff indicating the nature of their unsatisfactory performance and how such performance can be improved to the satisfactory of the Line Manager. The member of staff should be informed that they may be accompanied at any meetings by a work colleague.

At this meeting, the line manager will agree performance standards with the member of staff, and a time period (between one and three months) over which improvement will be expected. They will also agree how the individuals performance will be monitored. The improvement period may be extended by the line manager if signs of improvement are being demonstrated but not yet to expected standards.

In discussion with the employee, the line manager will also decide on the support and help that will be put into place. The nature of the shortcomings will determine the nature of help and support to be provided. This could include:

- ☀ Mentoring and/or coaching
- ☀ Provision of suitable training
- ☀ Management and/or peer support
- ☀ Review of commitment
- ☀ Provision of appropriate equipment.

If the individual's performance improves adequately over the timescale, then the process will terminate at this stage. If performance remains unsatisfactory, then the Line Manager will invoke the formal procedure as set out in stage 2.

Stage Two – Formal Procedure

First Formal Meeting

If, after monitoring and support provided within the informal stage, the employee's performance remains unsatisfactory the Line Manager will arrange a further meeting with the employee. This is the first meeting in the formal stage of this procedure.

The employee will be informed of his/her right to be accompanied at this meeting by a work colleague.

The employee must be given at least ten working days written notice of the meeting and confirmation of the nature of the concerns and any accompanying documents that will be referred to at the meeting, including a copy of this procedure.

At the meeting the employee will be given an opportunity to comment on the concerns and to ask any questions.

The Line Manager will then consider what action s/he proposes to take and will inform the employee both verbally and in writing.

The options at this stage of the procedure are:

- ☀ **An end to the procedure.** As a result of the discussions the line manager considers that the employee's performance has reached the required standards, and therefore, after a monitoring period of three to six months, can withdraw the procedure if performance continues to be satisfactory. All employees will revert back to the appropriate appraisal process following the successful monitoring period.
- ☀ **Set a timescale under formal stage.** Employees who have made some progress but further support is required, a timescale is set under the formal stage of procedure.
- ☀ **Issue first written warning.** Employees whose performance has not reached the required standard may be issued a first written warning with a further review date. This review meeting will take place within the formal procedure.

Second Formal Meeting

If, following a review period the line manager remains concerned about an employee's ability to perform his/her duty to the required standard a further meeting will be convened under the formal stage of this procedure. The Chair of the Committee will chair this meeting. The line manager will prepare a written report based on evidence gained e.g. by interviews and observation of performance. The report should be precise and specific in the observations and comments it makes and shall contain clear information on:

- ☀ Areas where the member of staff is failing to perform adequately;
- ☀ Actions already taken by management to address these failings and whether these actions were adequate – i.e. were clear performance standards set and monitored;
- ☀ Whether the member of staff acknowledges a problem and shows a willingness to improve;
- ☀ The impact of the individuals failings on colleagues and work output;
- ☀ Any other mitigating factors.

The report should be given to the employee concerned in advance of the meeting.

The chair of the committee will consider the report, and may opt to taken the following actions:

- ☀ No further action;
- ☀ Instruct the line manager to set reasonable performance standards for the individual and monitor these for a set period of time. *(this option should be chosen if this has not been previously carries out adequately and at least three months given to improve).*
- ☀ **Issue first written warning (if not previously given).** Employees whose performance has not reached the required standard may be issued a first written warning with a further review date. This review meeting will take place within the formal procedure.
- ☀ **Issue Final Warning.** Employees whose performance has not reached the required standard and is considered very unsatisfactory may be issued a First and Final Written Warning with a further review date. The employee must be informed that if an improvement is not forthcoming, the playschool will convene a final meeting at which it will consider terminating the contract of the member of staff involved on the grounds of capability.
- ☀ If previous warnings have been issued, convene a formal capability hearing to consider the matter further.

Stage Three – Capability Hearing

The chair of the committee will write to the member of staff informing them of the date of the hearing, attaching any relevant documentation. The letter shall contain:

- ☀ The performance deficits in sufficient detail to ensure that the member of staff fully comprehends their nature, extent and seriousness.
- ☀ The time, date and venue of the hearing.
- ☀ The person who will be conducting the hearing.
- ☀ A statement that all employees have the right to be accompanied by a work colleague at any interview or hearing held under the provision of these procedures.
- ☀ At least ten days notice of the hearing.

At the hearing, the employee will be given the opportunity to put forwards a defence, to bring witnesses in support of their situation, to present mitigating circumstances and to make a full statement. A written copy of the procedure to be adhered to during the hearing should be made available to the employee before the hearing takes place.

If the performance concerns are found to be justifies, then a decision on the action to be taken must be made. The chair of the committee will consider the evidence regarding the employees performance and consider the recommendations and determine whether:

- ☀ To issue an appropriate warning and give the employee further time to improve.

- ☀ To consider whether alternative employment is available and can be offered to the employee.
- ☀ To withdraw the procedure.
- ☀ To dismiss the employee with notice.

If redeployment is possible it is unlikely to be equivalent employment. Any offer of reasonable redeployment will be made in writing and the employee will be given reasonable time to consider the offer. Following acceptance or redeployment, salary will be paid at the appropriate rate for the post regardless of any previous salary paid in any previous post. Redeployment will only be made to an established current vacancy. Warwick Community Playschool is not obliged to create a post for the employee.

If the employee is given a warning and further time to improve at this stage of the procedure, any subsequent meetings will be reconvened at this stage. The process will not start again.

If poor performance continues, the process set out in stage 3 should be repeated. The time scale for improvement will depend on the nature of the duties and responsibilities of the employee concerned and the seriousness of the concerns. Where final written warnings are issued, the employee must be informed that if improvements are not forthcoming, the playschool will convene a final hearing at which it will consider terminating the contract of the employee on the grounds of capability.

The decision must be confirmed in writing within five days of the hearing.

Right of Appeal

All employees have the right to appeal against the outcome of a formal capability hearing. To exercise this right, the employee should send a letter to the chair of the committee within ten days of the hearing. If an employee submits their appeal late, a letter will be sent asking for the reasons why the appeal should be heard out of time.

Appeals will only be considered on the following grounds:

- ☀ The employee believes the sanction/decision is unfair;
- ☀ The employee believes that the application of the policy was flawed or inadequate and the procedure leading to the sanction/decision has not been applied consistently or fairly; or
- ☀ New evidence has come to light, which was not available at the time of the hearing and which may make a difference to the original decision.

In all cases, the employee must be able to provide evidence in support of their appeal on any of the grounds listed above. Appeals are not intended to be a complete re-hearing of the same information unless there is evidence that the original evidence was flawed or procedure was not followed.

Once the appeal has been considered, the employee will be informed in writing of the outcome within ten days. Where this is not possible, an explanation for the delay will be provided and a revised date provided.

At the conclusion of the appeals process, the employee will be informed that the decision is final and that the internal grievance procedure has now been exhausted.

Written Records

A record of the documentation relating to the case will be retained and will include:

- ☀ The details of the shortfall in performance standards
- ☀ The employee's views
- ☀ Any grievance raised during the capability process
- ☀ Findings made and actions taken and by whom
- ☀ The reason for action taken
- ☀ Whether an appeal was lodged
- ☀ The outcome of the appeal
- ☀ Subsequent relevant developments
- ☀ Notes of any formal meetings.

Records will be treated as confidential and be kept in accordance with the Data Protection Act 1998 so that an employee has the right to request and have access to relevant information but, in certain circumstances, Warwick Community Playschool may consider it appropriate to withhold some.

A warning will be disregarded for capability purposes after the following periods from the date of the hearing when the warning was issued, providing there has been satisfactory performance:

- ☀ Written warning – 12 months
- ☀ Final written warning - 18 months

There may be occasions where an employees performance is satisfactory throughout the period the warning is in force, only to lapse very soon thereafter. Where a pattern emerges and/or there is evidence of abuse of this policy, the employees performance record should be borne in mind in deciding how long any warning should last.

This policy was adopted at a meeting of: Warwick Community Association

Reviewed on: May 2017

This policy will be reviewed annually in December.

This policy will be reviewed annually, with changes made as required. The manager of the setting will be responsible for maintaining this and sharing with the committee members of Warwick Community Association to be verified. This will be shown in the minutes of the meeting.