Queen's Park Primary School
Hallfield Primary School
Oxford Gardens Primary School
Essendine Primary School
Dorothy Gardner Nursery School
Mary Paterson Nursery School
Tachbrook Nursery School
Queen's Park Family Hub
Bayswater Children's Centre

Capability Policy

(Adopted from WCC Capability Policy as used by Westminster HR)

Approved by:	Connected Governing Body	**Date:** January 2026
Last reviewed on:	January 2026	
Next review due by:	January 2027	

Introduction

Westminster City Council recognises that its employees need to be equipped with appropriate skills, aptitudes, levels of efficiency and health to undertake the duties required of them in order to deliver efficient and effective services to deliver a City for All.

This policy is based on the ACAS Code of Practice on Disciplinary and Grievance Procedures which also cover issues relating to capability and is to be used for dealing with issues of work performance (including attendance at work). The procedure is designed to help and encourage all employees to achieve and maintain the standards of capability, efficiency, attendance and work performance.

This policy applies to all WCC employees with the exception of those under probation period. Issues relating to unauthorised absence should be managed under the Unauthorised absence/Disciplinary Policy.

In every case, issues in relation to attendance and/or performance should already have been raised with the employee (through either the Unsatisfactory Performance Policy and/or Supporting Employee Health Policy) and opportunities for improvement and support should have been provided before formal capability action is started.

There will be occasions where there are concerns in relation to both performance and sickness, and both performance and sickness management processes are being run simultaneously, however the capability hearing will only lead on one. The manager will need to decide which process is of more concern.

Managers should be aware that it is perfectly acceptable for attendance to be one of the criteria for assessing performance and considering progression under the performance management process, so long as employees are aware of this and the requirements are reasonable and applied fairly and equitably.

Purpose of the capability hearing

The purpose of a capability hearing is to:

Consider fairly any work performance or attendance concerns about an employee;

- **Decide whether the facts support those concerns and**
- **Decide what action should be taken to address those concerns with the objective of assisting the employee to achieve acceptable standards of performance in carrying out their duties.**

The capability hearing should only take place where the line manager is satisfied that all options to improve attendance, including putting in place all reasonable adjustments where necessary, has been explored and it is considered unlikely that there will be an improvement in performance and/or attendance at work with a further review period. It is also important that the employee is aware that a referral is being made to a formal capability hearing and the implications.

Once a decision has been made to refer to a capability hearing, the line manager needs to produce a management report to make a case for a referral to a capability hearing under either performance or sickness. At this stage it is important that you are working closely with your HR Advisor. The report should include a summary of the employee's performance and or attendance progress to date and include the following:

- **Details of the employee's attendance record;**
- **details of the action taken to date to improve performance and or sickness**
- **details of support put in place to improve performance or sickness.**
- **whether the employee has an underlying medical condition or disability, and the measures taken to make reasonable adjustments, or why this has not been possible;**
- **details of whether the employee has engaged in the process and any issues/delays that have arisen during the process**
- **any recent medical information/opinion; i.e. Occupational health report**

- **general employment record; i.e. the length of employment and nature of the employee's job and the position they occupy within the Council;**
- **arrangements to cover the employee's absences and**
- **the effect of the employee's continued absence on the service and any need to engage a replacement; the impact of on service delivery, colleagues, and budget.**
- **and any related papers i.e. supervision records, action plans etc.**
- **the exact nature and length of the employee's illness and the prospects and likely timescale of their recovery; and**
- **the terms of the employee's contract of employment in relation to sickness absence, including any entitlement to sick pay.**

The manager should send the report to the Chair of Governors or SLT Member who will act as Adjudicating Officer, with recommendations for a capability hearing to be convened. Your HR Advisor should advise on this, and copies of all documents should be included. The Adjudicating Officer has to have the right level of authority to dismiss.

The Adjudicating Officer will confirm if they agree to progress to a capability hearing and will notify the employee in writing of the concern about his/her work performance or attendance. Copies of any relevant documents will be provided. The letter will indicate the formal capability action being recommended in relation to performance or attendance. The letter will include details of the arrangements for the capability hearing (date, time and location) and contain an invitation for the employee to attend and respond to the concern and the recommended capability action.

The letter will also advise the employee about his/her rights to representation. Finally, the letter will advise the employee that failure to attend the capability hearing without providing a reason acceptable to the Adjudicating Officer may result in the capability hearing proceeding in their absence.

The capability hearing

Further guidelines detailing how to carry out a capability hearing can be found below.

The employee must be given at least 10 working days' notice in writing (unless a shorter period is mutually agreed) of the date and time of the capability hearing. The letter, written by the Adjudicating Officer, will notify the employee of the date and time of the hearing and that the outcome could result in their dismissal.

The employee has the right to be accompanied by a Trade Union representative or work colleague and they may call witnesses. Any witnesses being called by the employee must be confirmed to the Adjudicating Officer no later than 2 working days prior to the capability hearing along with any papers they wish to submit. A full copy of the capability report and supporting documents must be provided to the employee at least 7 working days prior to the capability hearing.

The purpose of the capability hearing is to provide the opportunity for the employee to respond to the capability concerns. The stages of the capability hearing is set out below. In all cases where the case may result in dismissal, a representative from People Services must be present.

The Adjudicating Officer, who will chair the capability hearing will be identified by the School with the assistance of the HR Advisor. The Adjudicating Officer must have the authority to determine capability action, for details on the levels of authority please refer to the below table:

Type of Action	**Authorised Officer**
Dismissal with notice	**Chair of Governors \ SLT Member**
Medical Redeployment including Demotion	**Chair of Governors \ SLT Member**
Final Written Warning	**Chair of Governors \ SLT Member**
Written Warning	**Chair of Governors \ SLT Member**
Appeal for sanction less than dismissal	**Chair of Governors \ SLT Member**
Appeal for dismissal	**Staff Appeal Committee**

The capability hearing will comprise of two parts.

Part 1 – The Adjudicating Officer hears the concerns from the line manager and decides whether the concerns are confirmed

Part 2 –The Adjudicating Officer considers mitigation and decides on the appropriate sanction.

The Adjudicating Officer will ensure that the employee receives a fair and impartial hearing. The Adjudicating officer will:

- **arrange a Hearing within 15 working days of the case being referred for a capability hearing**
- **write to the employee giving 10 working days' notice of the Hearing**

- **make sure that the letter advises the employee that:**
- **the purpose of the Hearing is to consider the employee's continued employment with the Council**
- **the employee has the right to be accompanied at the Hearing by a trade union or work colleague (representatives may not act in a legal capacity)**
- **if they fail to attend without reasonable cause then the case may be considered in their absence**
- **any documentation the employee wishes to submit to the Hearing must be sent to the Adjudicating Officer no later than 3 working days before the Hearing**
- **send a copy of the management report and any other documents to be presented at the Hearing to the employee at least 5 working days before the Hearing**
- **the employee and their representatives should make every effort to attend the hearing. If there is a request to defer the hearing, this should not be unreasonably refused provided there are exceptional circumstances outside the control of the employee.**
- **Failure to attend the hearing without good cause may mean the Chair of Governors or SLT Member will proceed with the hearing and make a decision based on the available information.**

Order of the hearing

- **The Adjudicating Officer \ Governors Absence Panel will ask the manager to outline the case.**
- **The Adjudicating Officer \ Governors Absence Panel may question the manager and any relevant witnesses.**
- **The employee or representative will have the opportunity to question the manager and any witnesses**
- **The employee or representative will present their case together with any appropriate documents or witnesses, including any mitigating circumstances that may have resulted in their unsatisfactory performance.**
- **Adjudicating Officer \ Governors Absence Panel may question the employee and any witnesses.**
- **The employee or representative will be given the opportunity to sum up their case and clarify any outstanding points.**
- **The Adjudicating Officer will ask the employee if there are any mitigating circumstances.**
- **The Adjudicating Officer will ask all parties to withdraw.**

- **The Adjudicating Officer \ Governors Absence Panel will consider the case (see hearing guidance note).**
- **The Adjudicating Officer will recall both parties and inform both parties of the decision, unless they require further time for deliberation. In that case they will reconvene the hearing, or write to both parties to inform them of the decision.**

Possible sanctions

- **No further sanction**

Where there is an underlying medical condition:

- **Further review period – the case will go back for a further period of review. If not improvement is made then the case will revert back to a capability hearing for the adjudicating officer to make a final decision.**
- **Medical Redeployment – see medical redeployment guide (insert link). The adjudicating officer will issue notice, during which time the employee will be supported to seek alternative employment across the Council \ within the School**
- **Termination with notice – in line with the contractual notice period Where there is**

no underlying medical condition:

- **Written warning (to be removed from the personnel file after 12 months.)**
- **Final written warning (to be removed from the personnel file after 24 months)**
- **Dismissal with notice (e.g. dismissal with notice in line with contractual / statutory entitlement). Where an employee is dismissed with notice they may be required to work during their period of notice.**

In addition, a number of supplementary sanctions can be applied as follows:

Demotion* (This will only apply if a suitable vacant position is available). Demotion is considered as action short of dismissal therefore will require employee consent. If the employee does not consent then the employee will be dismissed with notice. Note: Demotion will include a reduction in salary. Salary protection will not apply.

The Adjudicating Officer should confirm the decision in writing and the letter should include:

- **The precise nature of the work performance or attendance concern confirmed**
- **The sanction and confirmed notice period of dismissal**
- **The basis of the Adjudicating Officers decision**
- **The period of time given for improvement, if appropriate, and the standard of improvement expected**
- **The formal capability action being applied**
- **Where appropriate, how long the formal capability action will last**
- **An indication of the likely consequences of any further confirmed work performance or attendance concern.**
- **Information about the employee's right of appeal, including how an appeal should be made, by when, and to whom.**

Record of the Hearing - A confidential and detailed record of the hearing must be made. This is not a verbatim record but a summary of the proceedings. The Adjudicating Officer should ensure that the notes of the hearing are accurate and are as clear and precise as possible, as they will be used in any subsequent appeal hearing or process.

Appeal process

Record of the Hearing - A confidential and detailed record of the hearing must be made. This is not a verbatim record but a summary of the proceedings. The Adjudicating Officer should ensure that the notes of the hearing are accurate and are as clear and precise as possible, as they will be used in any subsequent appeal hearing or process.

The grounds of the Appeal can only be based on:

- **the severity of the sanction and /or**
- **a failure to follow the procedure outlined in this policy**

Arranging an appeal

The School with advice from the HR Advisor will convene a meeting of the Staff Appeals Committee (Dismissals) comprising 3 Members.

For sanctions other than dismissal the appeal will be heard by an SLT Member or Chair of Governors who has not previously been involved, or a delegated senior manager.

The employee will be given at least 10 working days' notice of the Appeal Hearing. The letter must advise the employee of the right to be accompanied at the Appeal Hearing by a trade union representative or work colleague (representatives may not act in a legal capacity).

There is no further right of appeal against the decision of the Appeals Hearing.