



**BRIGHT EYES CHILDCARE LIMITED**  
**CAPABILITY POLICY**

Capability refers to an employee's ability to perform the work expected of them to the standard required. This may be assessed by reference to an employee's skill, aptitude, health or any other physical or mental quality in relation to the job that he or she is employed to do.

The purpose of the Capability Policy is to provide a framework for managing underperformance in a fair and consistent manner. The Policy differs from the Disciplinary, Sickness Absence and other policies as its primary focus is that of improving performance to the standard required. The Policy establishes guidelines for managers and staff when an employee's work performance falls below the standard appropriate for the role due to underperformance.

Bright Eyes Childcare Ltd has a responsibility for setting realistic standards of performance, for explaining these standards carefully to employees and for supporting employees to achieve the standards set.

All members of staff are required to perform their duties to an acceptable standard. Whilst the majority of staff meet or exceed the standards required of them, performance problems may arise. All managers, deputies and room leaders should be aware of the terms of the Capability Policy and ensure that they understand its nature and scope. They should liaise with the Manager and it is the manager's responsibility to identify underperformance and to seek to address this at the earliest opportunity.

It is recognised that capability problems may result from underlying work problems or personal issues that may be outside the employee's direct control. Consequently, there is a need to treat all capability issues with care and sensitivity and to identify and (where appropriate) address the underlying causes.

The Policy applies to employees of the Bright Eyes Childcare Ltd in conjunction with their contract of employment and the Company's handbook. Performance issues identified during an individual's probationary period should be dealt with under the relevant probationary procedure. This Policy should not be used for managing cases of sickness absence or misconduct. For such cases reference should be made to the Sickness Absence Policy or the relevant disciplinary procedure. The purpose of the Capability Policy is to manage cases of underperformance, including those cases where ill health may be a contributing factor.

**Statement of Policy**

The mission of Bright Eyes Childcare is to contribute to society through the pursuit of caring and education at the highest possible standards.

In support of this aim, we are committed to ensuring that all employees are given the opportunity and support to deliver and maintain a high level of performance at work.

All employees should be made fully aware of the performance standards they are expected to deliver and should have regular supervisions with their managers to discuss their work and performance.

It is the responsibility of managers to ensure that any performance issues are addressed at an early stage and where possible resolved on an informal basis without recourse to the formal procedure.

Where any instances of underperformance are identified, the Capability Policy provides a framework for managing cases in a constructive, fair and consistent manner.

The focus of the Capability Policy and procedure is to resolve performance problems by providing appropriate support to enable the employee to perform to the standard required.

### **General Principles**

The following principles will apply to the application of this procedure:-

In implementing this Policy and the associated guidance, due regard will be given to relevant legislation and the ACAS Code of Practice.

All employees who are the subject of this procedure have the right to be accompanied to formal stage one, two or three meetings held under the procedure by a trade union representative or work colleague.

Managers should be supportive of employees, help them to take action to improve their performance and consider any mitigating circumstances that may be affecting their performance.

Employees are responsible for co-operating with their manager in improving their performance and attending meetings under this procedure.

This Policy seeks to ensure that performance matters are dealt with sensitively and with due respect for the privacy of any individuals involved. All those involved must treat as confidential any information shared with them under this procedure.

Employees will not normally be dismissed for performance reasons without previous improvement notices. However, where an employee's performance falls significantly below the acceptable standard and the actual or potential consequences are, or could be, extremely serious, moving straight to the formal stage 3 meeting may exceptionally be appropriate.

Every effort will be made to comply with the timescales stated in this Policy. If however, due to the complexity and/or specific circumstances of a case, timescales need to be extended, the employee will be advised of the reasons for any delay.

### **Conducting Informal Discussions**

In the first instance managers should seek to resolve performance issues informally and as early as possible as part of normal day to day management. Ideally this would be within a few days of the issues being identified.

Informal discussions should:

- explain the nature of the concerns (providing specific examples as appropriate)
- set out the expected standards of performance
- establish the likely causes of underperformance and identify any actions required by the employee or manager to aid improvement eg training or other sources of support.
- set targets and timescales for improvement and review dates.
- explain the potential consequences of not achieving the required improvements in performance.

The manager may consider a range of actions including the provision of advice and guidance, training, coaching, mentoring, work shadowing or other informal action e.g. counselling.

The manager may confirm the outcomes of any informal discussion in writing to the employee and retain any notes of these informal discussions or meetings for reference purposes.

Where there is satisfactory improvement, the matter will be considered to be resolved.

### **Conducting Formal Meetings**

If performance does not meet acceptable standards, and informal action is not considered appropriate or has not succeeded in addressing the problem, the manager should consider whether there are grounds for undertaking formal action under this procedure. The assessment necessary will depend on the circumstances but may involve reviewing the employee's personnel file, gathering relevant documents, monitoring the employee's work and, if appropriate, interviewing the employee and witnesses confidentially regarding the employee's work.

Where there are grounds for taking formal action regarding alleged underperformance, the employee will be required to attend a capability meeting.

The employee should receive at least two working days written notice of the capability meeting. The letter inviting the employee to the meeting will outline the purpose of the meeting, the performance issues to be considered and the possible outcome if it is decided that the employee's performance has been unsatisfactory. Where there is additional relevant information provided to the employee this will be sent with the letter. The letter will also inform the employee of the date, time and place of the meeting and of the employee's right to be accompanied. The companion may be either a trade union representative or a colleague.

At least one working days prior to a formal capability meeting the employee must inform the manager conducting the meeting of the names of any nominated witnesses they wish to call, any written submissions they wish to have considered, any documentary evidence they intend to rely on at the meeting.

The meeting will be held by the employee's manager or duty manager and will be attended by a note taker.

The aims of a capability meeting will include:

- setting out the required standards that it is considered the employee has failed to meet and considering any relevant evidence
- giving the employee the opportunity to ask questions, present evidence, call witnesses, respond to evidence and make representations
- establishing the likely causes of underperformance including any reasons why measures taken so far have not led to the required improvement
- identifying whether there are any further measures, such as additional training or supervision, which may improve performance
- discussing and agreeing where possible targets for improvement and a timescale for review. Ensuring a reasonable period of time is provided for the individual to demonstrate improved performance.
- if dismissal is a possibility, establishing whether there is any likelihood of a significant improvement being made within a reasonable timeframe and whether there is any practical alternative to dismissal.

A meeting may be adjourned if it is necessary to gather further information or to give further consideration to matters discussed at the meeting.

The employee will be informed in writing of the outcome of the formal capability meeting and the reasons for it within three working days.

### **Formal Meeting Stages**

As outlined above, whilst managers should seek to resolve performance issues informally wherever possible, where there are grounds for taking formal action, the employee will be required to attend a capability meeting. A formal capability meeting will fall under one of the formal stages one to three below.

#### **Formal stage one Meeting**

If an employee's performance does not meet acceptable standards, and informal action is not considered appropriate or has not succeeded in addressing the problem, the employee may be required to attend a formal stage one meeting.

The Employee will be invited to a formal meeting and will have the right to be accompanied by a trade union representative or a colleague.

If as a result of the meeting and the evidence presented, the employee's performance is considered to be satisfactory and no further action is required, this will be confirmed to the employee in writing.

If as a result of the meeting and the evidence presented, the employee's performance is considered to be unsatisfactory, the manager will write to the employee, issuing a First Improvement Notice. The First Improvement Notice will state the improvement in performance required, targets and timescales for improvement ("the review period"), any support to be provided and the consequence of not meeting the performance targets within the review period. It will also set out the employee's right of appeal.

A copy of the First Improvement Notice will be retained on the employee's personnel file. The First Improvement Notice will remain active for a specified period (eg one year) after which time it will be disregarded for the purposes of the capability procedure. After the review period the First Improvement Notice will remain permanently on file for reference purposes, but will be disregarded for the purposes of deciding on the appropriate action or outcome of any future capability proceedings.

The manager will monitor the employee's performance during the review period and hold regular review meetings with the employee. A Performance Improvement Plan should be used to record actions taken and progress made during the review period. On completion of the review period, the manager will write to the employee to inform them of the outcome that either:

- the employee has met the performance standards set and no further action will be taken; or
- the employee has not met the performance standards set and the matter will be progressed to formal stage two; or
- progress has been made towards meeting the standards set, but they have not been achieved fully (or other factors have been present e.g. sickness or leave) and the review period will be extended or other options considered.

#### **Formal stage two meeting**

If the employee has failed to meet the performance targets as set out in the First Improvement Notice, or there is further evidence of underperformance while the First Improvement Notice is still active, or

the performance issues are sufficiently serious, the employee may be required to attend a formal stage two meeting.

The Employee will be invited to a formal meeting and will have the right to be accompanied by a trade union representative or a colleague.

If as a result of the formal stage two meeting the employee's performance is unsatisfactory, he/she will write to the employee with a Final Improvement Notice, within five working days. The Final Improvement Notice will state the improvement in performance required, the targets and timescales for improvement ("the review period"), any support to be provided and the consequence of not meeting the performance targets within the review period. It will also set out the employee's right of appeal.

A copy of the Final Improvement Notice will be retained on the employee's personnel file. The Final Improvement Notice will remain active for a specified period (eg twelve months, after which time it will be disregarded for the purposes of the capability procedure. After the review period the Final Improvement Notice will remain permanently on file for reference purposes but will be disregarded for the purposes of deciding on the appropriate action or outcome of any future capability proceedings.

The manager will monitor the employee's performance during the review period and hold regular review meetings with the employee. A Performance Improvement Plan should be used to record actions taken and progress made during the review period. On completion the manager will write to the employee to inform them that either:

- the employee has met the performance standards set and no further action will be taken; or
- the employee has not met the performance standards set and the matter will be progressed to formal stage three or
- progress has been made towards meeting the standards set, but they have not been achieved fully (or other factors have been present e.g. sickness or leave) and the review period will be extended or other options considered.

### **Formal stage three meeting**

If the employee's performance has failed to improve sufficiently as detailed in the Final Improvement Notice whilst that Notice is still live, or if the underperformance has been so serious as to warrant moving straight to a formal stage 3 meeting, the employee will be invited to a formal stage three meeting.

The formal stage three meeting will be conducted by the Managing Director, Director or Manager who will be accompanied by a note taker. The employee will have the right to be accompanied by a trade union representative or a colleague.

Following the meeting, if it is decided that the employee's performance is unsatisfactory, the Head of Institution or nominated deputy, may consider one or more of the following options, (this list is not exhaustive):

- to issue a First or Final Improvement Notice (where one is not already active)
- to extend a Final Improvement Notice and set a further review period (where a substantial improvement is likely within the review period)
- to consider alternatives to dismissal such as redeployment to a suitable available post within the company or other appropriate action short of dismissal
- to dismiss on grounds of capability.

Any dismissal will be with full notice or payment in lieu of notice, unless the employee's underperformance has been serious enough to overturn the contract between the Bright Eyes Childcare Ltd and the employee thus justifying a formal stage 3 meeting and the possibility of dismissal without notice. For the purposes of this Policy, this may include gross incompetence, gross negligence or any act or omission which brings the Nursery into serious disrepute.

The decision will be confirmed in writing within three working days of the meeting. The letter shall also notify the employee of their right to appeal against any sanction. In the event that the decision is taken to dismiss the employee, the letter will include the reasons for dismissal, the date that their employment will terminate and the right of appeal.

### **Concerns and Appeals**

Employees who feel that they have been treated unreasonably under any section of the Capability procedure can raise the matter with the Manager or Managing Director.

Date of Policy: April 2019

Signed By: Nursery Manager

Reviewed by M Larson 13/1/20