

# Managing Underperformance Policy applicable to Headteachers



This policy is not intended for use by non-maintained schools. If extracts are used they should be attributed.



Foundation and Voluntary Aided Schools can adapt and adopt this policy or use an alternative.



This policy is for use by Community and Voluntary Controlled schools. Governing Bodies are asked to adopt this policy. Should a Governing Body wish to adopt an alternative policy please ensure that a copy is supplied providing assurance that it is legally compliant.

<https://www.milton-keynes.gov.uk/schools-and-lifelong-learning>

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## 1.0 Policy Statement

- 1.1 The continued success of the School is dependent on all employees achieving and maintaining high standards of performance in their roles.
- 1.2 The definition of underperformance is: “where an employee is failing to carry out their responsibilities or duties in a satisfactory manner due to a lack of ability i.e. skill or aptitude.”
- 1.3 Such failings will be managed by the use of this policy and steps taken to improve performance within a defined period of time. Where such steps prove unsuccessful the employee may have their employment terminated on the grounds of underperformance.

## 2.0 Scope

- 2.1 This policy applies to any Headteacher employed at a Community and Voluntary Controlled school.

A similar policy applies to employees within Milton Keynes Council.

## 3.0 Introduction/Purpose

- 3.1 This policy is designed to ensure that a Headteacher whose standard of performance is unacceptable is clearly informed of what standards are expected and receives support towards achieving those standards.
- 3.2 If the cause of an employee's poor performance is related to ill-health then the **Sickness Monitoring & Capability Policy for Schools (link to policy)** should be followed.
- 3.3 If it is established that poor performance is as a result of employee misconduct or negligence; the **Disciplinary Policy for Headteachers (link to policy)** should be followed.

## 4.0 Key Roles and Responsibilities

- 4.1 Chair of Governors / IEB:

- Ensuring that appropriate work standards are established and communicated to the Headteacher
- Assessing Headteacher performance and encouraging open and honest dialogue
- Taking appropriate action within this policy to deal with underperformance of a Headteacher at the earliest opportunity.
- Developing a culture where the Headteacher is supported and assisted in achieving the required standards of performance.
- Recording and keeping details of all meetings with the Headteacher, monitoring any targets and offering support and, should there be a need to hold a Formal Underperformance Hearing, presenting the management case.

- 4.2 Governing Body or IEB

- Adopt the policy and procedure
- Ensure that appropriate performance review processes are in place within the School and are followed in a fair and reasonable manner
- Determine who will be responsible for conducting a Formal Underperformance Hearing which **may** result in dismissal. The Governing Body or IEB will make a decision based on the options given below and this decision should be formally minuted and reviewed annually:

- a) to appoint a separate Staff Underperformance Committee consisting of three governors (in exceptional circumstances this may be reduced to two)
- b) may collaborate with another School's Governing Body or IEB
- Appoint an Appeal Committee (comprising three governors who have not previously been involved) to hear any appeals. A governor who has served on a Staff Underperformance Committee or been involved in the case previously with the Headteacher i.e. setting performance standards with the Headteacher etc. must not serve on the Appeal Committee which hears a resultant appeal
- Staff governors must have no involvement in any formal underperformance proceedings against members of staff within the school.
- The Governing Body or IEB will appoint a Clerk to keep a record of any hearing or appeal hearing relating to a underperformance matter.

#### 4.3 Headteacher:

- Performing their role to a satisfactory level in accordance with their role profile and the expectations of the Governing Body or IEB.
- Committing to the achievement of satisfactory levels of performance should this fall below the standards expected.
- Attending any meetings / hearings convened in accordance with this policy.

#### 4.4 Human Resources Provider:

- Advising and supporting the Chair of Governors / IEB and in the application of this policy.
- Attending in an advisory capacity at formal hearings / appeal hearings

### 5.0 Principles

5.1 This policy does not replace the normal day-to-day interaction between a Headteacher and the Chair of Governors / IEB on issues of performance. It should only be used when options such as regular one to ones, supervision and review of performance objectives have failed to produce a satisfactory result. It is therefore important to ensure that these mechanisms to review performance are in place and operating accordingly.

5.2 The policy set out in this document aims to ensure that there is:

- A means of monitoring performance and establishing reasonable and appropriate performance criteria
- A consistent approach which ensures that a Headteacher is given the opportunity to attain a satisfactory level of performance
- Assistance in identifying the most appropriate forms of support and providing that support

5.3 If a Headteacher does not meet the required standard of performance any consequent action will be based on:

- Adequate evidence that the Headteacher is incapable of performing their duties satisfactorily
- Adequate evidence that the Headteacher knew of and was given reasonable support and assistance to overcome the shortfalls and
- A fair procedure

5.4 It is expected that the Chair of Governors / IEB will conduct the Informal Review Meeting as well as the Stage 1 and Stage 2 Formal Review Meetings. Advice and guidance can be sought from the HR provider at any point in the process. There will be an HR representative in attendance at the Stage 1 or Stage 2 Formal Review Meetings.

5.5 Should the process progress to the final stage, the Formal Underperformance Hearing will be conducted by the governing body or IEB's Hearings Committee. At any Formal

Underperformance Hearing and Appeal Hearing the Chair will be accompanied and advised by a representative from the Human Resources provider. A representative of the Local Authority will also attend the meeting.

- 5.6 In serious cases of underperformance where the requirements of the service do not permit any delay or where pupils' education is jeopardised the Chair of Governors / IEB reserves the right to start the procedure at any stage with the proviso that the sanction of dismissal / redeployment will not be applied unless a Stage 2 Formal Review Meeting has taken place.
- 5.7 The provisions of the Equality Act 2010 will be applied throughout the implementation of this Policy. Managers and staff should consult the guidance found at [Equality Act Guidance for Schools](#). This provides protection for several employee characteristics covered by equality legislation:
- Age – covers all age related issues
  - Disability, including making reasonable adjustments
  - Gender reassignment from the moment transition starts
  - Race, religion or belief,
  - Sex – things associated with being male or female,
  - Sexual orientation including feelings, sexuality as well as identity
  - Marriage and civil partnership status
  - Pregnancy and maternity

In underperformance cases this may mean ensuring that, where possible, consideration is given to making reasonable adjustments to the employee's role / working pattern / working environment etc with the aim of preserving the employment of the individual. Advice should be sought from the school's HR provider.

- 5.8 If the Headteacher or their representative is unable, for good reason, to attend the Formal Underperformance Meeting / Hearing on the date proposed, the Chair of Governors / IEB will reschedule the meeting/hearing to take place no later than 5 working days after the date of the original meeting/hearing. No further rescheduling will be considered unless the reason for non attendance is regarded as exceptional. If the Headteacher fails to attend the rescheduled meeting/hearing, it will continue in the employee's absence.
- 5.9 Each stage of the procedure will be carefully documented. It is the Chair of Governors' / IEB's responsibility to ensure notes are taken of the informal review meetings or in the case of the formal stages, arrange for a note taker to be present at the meetings.
- 5.10 If issues of underperformance relate to a Professional Association representative, the union's senior local convenor and regional officer must be notified. No further action should be taken until they have been informed
- 5.11 A Headteacher has the right to appeal against a sanction issued under the Formal Process. However the submission of an appeal will not halt the progress of any Formal Review Period which will run concurrently with the appeals process.
- 5.12 A Headteacher cannot invoke other formal procedures such as grievance or harassment and bullying as a challenge to a decision of the Chair of Governors / IEB to issue a warning under this policy unless there are indications that the Chair of Governors / IEB has acted in a vexatious or discriminatory manner. The Hearings Committee will determine whether the employee has a justified complaint and whether or not the Grievance Policy or Harassment and Bullying Policy should be invoked.

## **6.0 Establishing the Performance Gap**

- 6.1 The first task is to identify that there is a problem. The Headteacher's performance must be objectively assessed in relation to the job for which s/he is employed to do.

6.2 Once the Chair of Governors / IEB has identified and has sufficient evidence that there is a performance problem then the following process should be followed.

## **7.0 Informal Process**

7.1 The Chair of Governors / IEB will convene a meeting with the Headteacher which must be held in private. There is no right for a Headteacher to be accompanied at an informal meeting. At the meeting the Chair of Governors / IEB will:

- Outline the specific performance shortcomings,
- Explore the reasons for underperformance (is it work or non work related?),
- Explain the standards expected,
- Agree the performance standards required (Performance Improvement Plan) and the timeframe (the 'Informal Review Period') in writing,
- Decide on the support and help that will be offered.

7.2 The nature of the alleged shortcoming(s) will determine the type of help to be provided.

7.3 Any support agreed should be clearly detailed on the Headteacher's Performance Improvement Plan.

7.4 The Headteacher should also be reminded of the Teacher Support Network should issues of a personal nature be impacting on the individual's performance. The Teacher Support Network can be contacted 365 days of the year on 08000 562 561.

7.5 The Headteacher must be supported for a period of time which is reasonable considering the role, the nature of the shortcoming(s) and the Headteacher's length of service. This would normally be between 4 and 12 weeks.

7.6 The Chair of Governors / IEB and Headteacher must set dates for the interim review meetings to assess progress against the Performance Improvement Plan. These will take place at regular intervals during the Informal Review Period.

7.7 A date must also be set for a meeting to review achievement at the end of the Informal Review Period. Depending on progress, this meeting will serve one of two purposes:

- Where the Headteacher's performance improves to the standard required the Headteacher should be informed of this and also reminded of the need to maintain the improved standard. The procedure will be suspended on the understanding that it will be re-invoked if performance becomes unsatisfactory at any time in the future. This should be confirmed in writing.
- If the Headteacher's performance does not reach the standard required this meeting will inform the Headteacher that the process is moving to Stage 1 of the Formal Process and could result in the issue of a First Written Warning. A letter should be issued to the Headteacher inviting them to a Stage 1 Formal Review meeting to take place 5 working days after the date of end of the Informal Process as detailed in Section 8 below.

7.8 It is important that the Headteacher is made aware of the consequences of the failure to improve and if performance remains unsatisfactory at the end of the Informal Review Period then Stage 1 of the Formal Process will be commenced, which could result in the issue of a First Written Warning.

7.9 The outcome of the Informal Meeting including the various review dates will be confirmed in writing within 5 working days. A copy of this letter should be forwarded to the Human Resources provider for inclusion on the Headteacher's personnel file.

## **8.0 Formal Process - Stage 1 Formal Review Meeting**

- 8.1 If, after monitoring and support provided within the informal process, the Headteacher's performance remains unsatisfactory or where the issues are serious enough to skip the informal stage, the Chair of Governors / IEB will arrange a Stage 1 Formal Review meeting with the Headteacher.
- 8.2 The Headteacher has the right to be accompanied by a trade union/professional association representative or workplace colleague.
- 8.3 The Headteacher must be given at least 5 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.
- 8.4 At the meeting the Chair of Governors / IEB:
- Will re-state the standards required and shortfalls identified
  - Agree objectives / targets with the Headteacher and timescales (Formal Review Period) for achievement using the Performance Improvement Plan
  - Discuss and plan appropriate training / support

The Chair of Governors / IEB will be advised on the content of the Performance Improvement Plan by an Improvement Advisor from the local authority.

- 8.5 The Headteacher will be given an opportunity to comment on the concerns, to ask any questions and provide any supporting evidence.
- 8.6 The Headteacher must be supported for a period of time which is reasonable considering the role, the nature of the shortcoming(s) and the Headteacher's length of service. The Formal Review Period is recommended at between 4 and 12 weeks maximum, taking into account the timescales already allotted to the Informal process
- 8.7 The Chair of Governors/IEB will then conclude what action s/he/they propose(s) to take. If there are no extenuating circumstances then the Chair of Governors/IEB will issue a First Written Warning. This will remain 'live' for a period of 12 months from the date of the meeting. This letter should be issued within 5 working days of the meeting clearly detailing the Headteacher's right to appeal the decision and also include the date of the Stage 2 Formal Review Meeting. A copy of this letter should be forwarded to the Human Resources provider for inclusion on the Headteacher's personnel file.
- 8.8 At the end of the Stage 1 Formal Review period a Stage 2 Formal Review Meeting must be held to assess progress. The validity of the formal process is dependent upon the Stage 2 Formal Review Meeting taking place.

## **9.0 Formal Process – Stage 2 Formal Review Meeting**

- 9.1 At the Stage 2 Formal Review meeting the Chair of Governors / IEB will discuss with the Headteacher their performance during the Formal Review Period. The same principles (including employee's right to be accompanied) and format that applied to the Stage 1 Formal Review Meeting are applicable to this meeting (See 8.2, 8.3, 8.4 & 8.5 above).
- 9.2 Following discussion the Chair of Governors / IEB will decide:
- Whether the Headteacher's performance has reached the required standard, and therefore, suspend the procedure clearly indicating that should performance deteriorate during the lifetime of the First Written Warning then the process will recommence from this point.
  - Whether the Headteacher's performance has not reached the required standard, and therefore initiate a further Formal Review Period and issue a Final Written Warning. This

Final Written Warning will remain 'live' for a period of 24 months from the date of the meeting.

- Whether the Headteacher's performance has deteriorated, and therefore arrange a Formal Underperformance Hearing.

9.3 Whatever the outcome of this meeting the decision must be confirmed in writing within 5 working days of the meeting. A copy of this letter should be forwarded to the Human Resources provider for inclusion on the Headteacher's personnel file.

9.4 If the outcome of the Stage 2 Formal Review Meeting is the issue of a Final Written Warning the Headteacher will be given a further opportunity to improve and the Chair of Governors / IEB will set a date for a Final Formal Review Meeting. This can be between 4 and 12 weeks, maximum, and should take into account the timescales previously set during Stage 1 of the Formal Process.

9.5 Should the Headteacher's performance reach the required standard by the time of the Final Formal Review Meeting they will be informed that the procedure will be suspended. However it will be made clear that should performance deteriorate during the lifetime of the Final Written Warning then the process will recommence from this point.

9.6 If performance still remains unsatisfactory at the time of the Final Formal Review Meeting the Chair of Governors / IEB will inform the Headteacher of the intention to move to a Formal Underperformance Hearing and that the outcome of this could result in dismissal.

## **10.0 Formal Underperformance Hearing**

10.1 The Headteacher will be given at least 5 working days written notice, advised of the right to be accompanied by a workplace colleague or trade union/professional association representative, given confirmation of the nature of the concerns and provided with all relevant evidence that will be discussed at the Hearing.

10.2 The Hearing will be conducted by the Hearings Committee which will be advised by a representative from the Human Resources provider.

10.3 Where the council is the formal employer, the Chair of Governors / IEB must consult with the Director of Children's Services and a representative of the local authority will attend the hearing.

10.4 The Chair of Governors / IEB will present the evidence of the underperformance issues, how those have been addressed, the process followed and the support and training given.

10.5 The Headteacher will be given the opportunity to respond.

10.6 The Hearings Committee will consider the evidence of underperformance and determine whether it is appropriate:

- To dismiss the Headteacher with notice considering whether alternative employment is available and whether it is appropriate that it be offered to the Headteacher (Advice on the feasibility of this option must be sought from the HR provider)
- To give the Headteacher further time to improve
- To withdraw the procedure

10.7 The decision must be confirmed in writing within 5 working days of the hearing. The Headteacher must be notified of his/her right to appeal.

10.8 If a Headteacher is dismissed as a result of a Formal Underperformance Hearing, they should be advised that the Chair of Governors / IEB will make a referral to the appropriate body in line with national guidelines.

## 11.0 Appeal

11.1 If the Headteacher wishes to appeal the decision at any stage of the Formal Process s/he should do so, in writing, within 5 working days of notification of the decision, stating the grounds for appeal. In the case of the Formal Review meetings the appeal should be directed to the Chair of Governors / IEB or in the case of a Formal Underperformance Hearing, the Clerk to the Committee

11.2 The Headteacher can appeal on the following grounds only:

- That the managing underperformance procedure has been applied defectively or unfairly
- That new evidence has come to light that was not available at previous meeting / hearing and that it is likely to make a difference to the original decision.

and, as a result, the outcome or level of sanction imposed was inappropriate.

11.3 The Headteacher must ensure that the written appeal clearly demonstrates that they have information/evidence available to them that substantiates their grounds for appeal. A Headteacher cannot appeal simply because they do not agree with or like the outcome.

11.4 Arrangements for the appeal to be heard will be made within 10 working days of the receipt by the Chair of Governors or IEB or Clerk to the Committee of the written appeal.

11.5 The Headteacher will be given notice in writing at least 7 working days in advance of the time and place of the hearing.

11.6 The Chair of Governors / IEB and Headteacher should provide the Clerk with any written material to be used at the hearing at least 5 working days prior to the appeal.

11.7 The Clerk will arrange for a copy of the other party's written material to be provided to the Chair of Governors/IEB and Headteacher at least 3 working days prior to the hearing.

11.8 Any extension on the time frames must be agreed in advance by both parties.

11.9 All appeals will be heard by the governing body's Appeal Committee (which will not include any governor who was a member of the Hearings Committee) advised by a representative from the Human Resources provider. A representative of the Local Authority will also attend the hearing.

11.10 At the appeal hearing both parties (i.e. the Headteacher who is appealing against the action taken against them and the Chair of the Formal Underperformance Hearing who is presenting the management's case) have the opportunity to state their case and to ask questions of each other.

11.11 The Headteacher has the right to be accompanied to the appeal hearing by a work colleague or trade union/professional association representative.

11.12 The Headteacher or the accompanying person has the opportunity to consider any new evidence arising during the hearing before any decision is taken.

11.13 In the case of an appeal against action that includes dismissal, the Appeal Committee can sanction that the:

- Appeal is upheld, and that the sanction will then be the same or a lesser penalty; or
- Appeal is not upheld, and is dismissed

The decision of the Appeal Committee should be communicated in writing within 5 working days of the hearing.

11.14 The decision of the Appeal Committee is final and there is no further internal right of appeal.

## **12.0 Representation**

- 12.1 As confirmed throughout the policy, the Headteacher has the right to be accompanied at formal meetings / hearings and appeals by a trade union/professional association representative or a workplace colleague. The accompanying person can address the meeting/hearing/appeal, but not answer questions on behalf of the Headteacher unless this is agreed by the chair of the meeting/hearing/appeal.

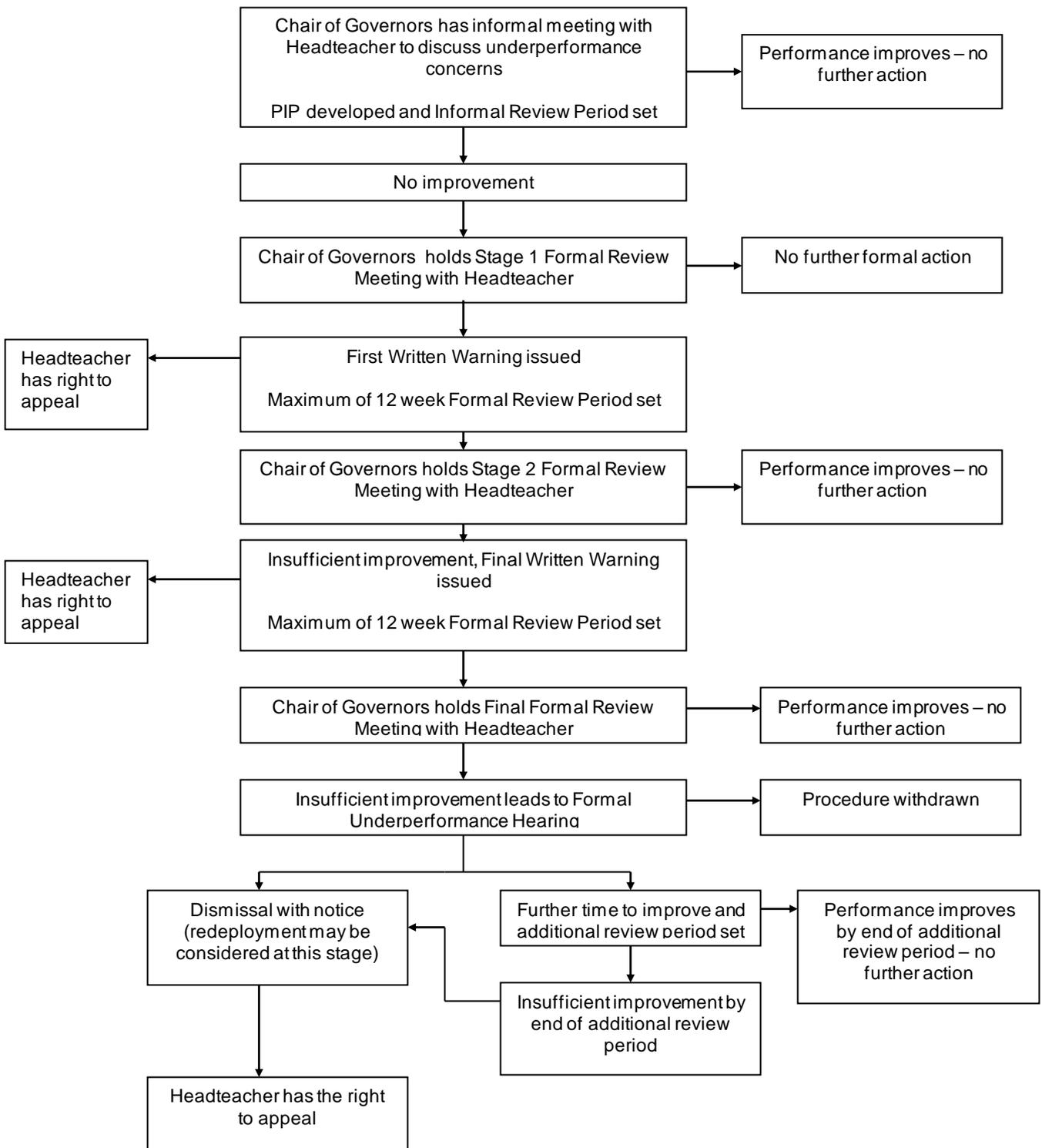
## **13.0 Data Protection**

- 13.1 The organisation processes personal data collected to monitor and manage employee's performance and any subsequent actions required in accordance with its Data Protection Policy.
- 13.2 A written record of all meetings conducted under the Managing Underperformance process will be made, either by the person holding the meeting or by an additional person arranged by the organisation to take notes.
- 13.3 Any data collected and processed as part of managing an employee's performance is held securely and accessed by, and disclosed to, individuals only for the purposes of completing the performance improvement process under the procedure. Records are retained and destroyed in accordance with the organisations Retention Schedule.
- 13.4 Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the Data Protection Policy immediately. It may also constitute a disciplinary offence, which may be dealt with under this Disciplinary Procedure.

## **14.0 Interpretation**

- 13.1 Any questions as to the interpretation of this policy should be referred to the Human Resources provider.

# Appendix 1 - Managing Underperformance – Process Flow



<https://www.milton-keynes.gov.uk/schools-and-lifelong-learning>

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