



*Maximising Potential*

## Capability Procedure

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# **1. Introduction**

- 1.1 This procedure provides a fair and effective framework for schools to address employees' performance issues.
- 1.2 The main aim of the procedure is to improve an employee's future performance and encourage and motivate them to achieve an acceptable standard.
- 1.3 It is recognised that the management arrangements within schools vary depending upon their size and structure. Where the procedure refers to the Manager, this means either the Headteacher or Senior School Manager.

# **2. Scope**

- 2.1 This procedure does not apply to cases of misconduct or to matters of ill-health capability; separate procedures apply to these matters, namely the disciplinary procedure, and the sickness management policy respectively.
- 2.2 This procedure applies to teachers in schools.
- 2.3 This procedure will apply to teachers when all attempts to resolve performance issues in the teachers' Performance Management process have been unsuccessful. For teachers, where any shortcomings in performance are identified, they are addressed in the first instance under the Performance Management process, and, if they cannot be resolved under that policy, the capability procedure is implemented. The procedure will start at formal stage, with a review period of 4 weeks.
- 2.4 At the point that the capability procedure is initiated, the teacher will be aware that they have not achieved a satisfactory level of performance in the timescales provided during their Performance Management process.
- 2.5 Possible effect on pay progression

At all stages of the capability procedure, employees will usually be advised of the likelihood that pay progression will be withheld, in accordance with the provisions of the pay policy, in the event that no, or insufficient, improvement is made in their performance.

### **3. Roles and Responsibilities**

#### **3.1 The Trust**

The role of the Trust is to:

- initiate this procedure where the concerns relate to the performance of the Headteacher;
- seek advice and support from the HR representative.

#### **3.2 Headteachers**

The role of the Headteacher is to:

- initiate this procedure where the concerns relate to the performance of teachers;
- be responsible for managing the procedure;
- support and assist employees in achieving the required standard of performance (via training and development, coaching etc); and
- seek advice and support from the HR representative where required.

#### **3.3 Employees**

All employees have a responsibility to:

- take full accountability for their own performance and be committed to achieving satisfactory levels of performance;
- work with managers constructively to address any underlying issues which may be affecting performance;
- be open to constructive feedback; and
- attend meetings and hearings convened in accordance with the capability procedure.

#### **3.4 Professional Associations/Trade Unions**

The role of professional association/trade union representatives is to:

- support their member throughout the procedure;
- represent their member at each stage of the procedure; and
- work constructively with managers to assist the employee in improving their performance.

### **4. The formal stages of the Capability Procedure**

The formal stages of the procedure are set out in the paragraphs below (and also in the flowchart Appendix A3).

## **5. Prior to initiating the formal stages of the procedure**

- 5.1 Prior to initiating the formal procedure the manager should gather evidence to demonstrate that, the employee concerned:
- has been informed of the performance required of them and that this is in accordance with their job description;
  - has been provided with the appropriate training and support in order to achieve the required level of performance; and
  - is failing to achieve the required level of performance.
- 5.2 The manager should identify which aspects of the employee's work are the cause of concern.
- 5.3 The manager should also consider whether there has been any significant change in duties or other school circumstances which might account for the employee's performance.
- 5.4 Where personal or domestic circumstances have been identified as a contributory factor to performance concerns, the manager should consider whether the appropriate support has been provided.

## **6. Formal Capability Meeting**

- 6.1 The manager will give the employee at least five working days' notice, in writing, of the formal capability meeting taking place. The letter will include:
- the decision to move to the formal stages of the capability procedure;
  - the purpose of the meeting and who will be present;
  - the date, time and location of the meeting;
  - the nature and details of the concerns, for example, which of the standards expected of them are not being met;
  - the possible consequences if the concerns are found to be substantiated; and
  - the right to be accompanied by a companion who may be either a trade union representative or work colleague.
- 6.2 The meeting is intended to establish the facts, and will be conducted by the Headteacher, or the CEO of the Trust. The person conducting the meeting will clearly identify the areas where it is considered that a satisfactory level of performance has not been achieved, and will explain the level of performance which is expected.
- 6.3 The meeting allows the employee, accompanied by a companion if they wish, to respond to concerns about their performance and to make any relevant

representations. This may provide new information or a different context to the information/evidence already collected.

- 6.4 The person conducting the meeting may adjourn the meeting if, for example, they decide that further investigation is needed, or that more time is needed in which to consider any additional information.

## 7. Outcomes from Formal Capability Meeting

7.1 Possible outcomes from the formal capability meeting are:

- there are insufficient grounds for pursuing the capability procedure and that it would be more appropriate to continue to address the concerns through the Performance Management process. In such cases, the capability procedure will come to an end.
- Progress to the initial stage, with a formal monitoring period of 4 weeks, within which the employee is required to improve their performance to a satisfactory level; if they fail to improve or do not show sufficient improvement, this may lead to the final stage, and ultimately dismissal.
- In exceptional circumstances, where the performance issues generate very serious concerns, the employee may progress to the final stage with a formal monitoring period of 4 weeks, within which the employee is required to improve their performance to a satisfactory level; if they fail to improve or do not show sufficient improvement, this may lead to dismissal.

7.2 Where a manager decides to progress the employee to the initial or final stage they will:

- identify the professional shortcomings, e.g. which of the standards expected of teachers are not being met; which aspects of their job role an employee is not performing to a satisfactory level;
- give clear guidance on the improved standard of performance needed to ensure that the employee can be removed from formal capability procedures (this may include the setting of new objectives focused on the specific areas that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made);
- explain the support that will be made available to help the employee improve their performance (this may include, for example, on the job training; observing good practice; additional management support; providing a mentor)
- set out the action plan for improvement, confirm who the monitoring officer will be and explain how performance will be monitored and reviewed, over the 4-week period; and

- inform the employee formally that failure to improve within the set period could lead to the final stage, and ultimately dismissal; or, if the employee has progressed to the final stage, this could lead to dismissal;
- Agree the date for the formal review meeting at the end of the monitoring period.

7.3 The main points covered at the meeting, set out in paragraph 7.2, will be confirmed in writing by letter to the employee within five school working days of the date of the meeting. This letter will also be the invitation to the next formal review meeting.

## **8. Monitoring and review period following a formal capability meeting**

- 8.1 A formal 4-week performance monitoring period will follow the formal capability meeting. During this period the guidance and support discussed at the meeting will be provided, and the employee concerned will be monitored to assess whether they are improving. At the end of the monitoring period, the employee will attend the formal review meeting, unless they were progressed to the final stage, in which case they will attend the decision meeting (see paragraph 13 below).
- 8.2 The effect of any short term absence by the employee during the review period will be considered and may lead to appropriate extension of the review period.

## **9. Formal review meeting**

- 9.1 As with formal capability meetings, the employee may be accompanied by a companion who may be a trade union representative or work colleague.
- 9.2 The purpose of the meeting is to formally review the progress made during the monitoring period, and to decide what, if any, further action should be taken. The employee concerned has the opportunity at the meeting to respond to the matters raised by management.

## **10. Outcomes from Formal Review Meeting**

- 10.1 Possible outcomes from a formal review meeting are:

- If the person conducting the meeting is satisfied that the employee has made sufficient improvement, the capability procedure will cease and the Performance Management process will re-start.
- If some progress has been made and there is confidence that more is likely, it would be appropriate to extend the monitoring and review period by no more than 4 weeks;
- If no, or insufficient improvement has been made during the monitoring and review period, the employee will progress to the final stage, together with a formal monitoring period, within which the employee is required to improve their performance to a satisfactory level; if they fail to improve or do not show sufficient improvement, this may lead to dismissal.
- explain the support that will be made available to help the employee improve their performance (this may include, for example, on the job training; observing good practice; additional management support; providing a mentor)
- set out the action plan for improvement, confirm who the monitoring officer will be and explain how performance will be monitored and reviewed, over the 4-week period; and
- Agree the date for the next formal review or decision meeting at the end of the monitoring period.

10.2 In line with the process following a formal capability meeting, the main points covered at the meeting, and the outcome, will be confirmed in writing by letter to the employee within five school working days of the date of the meeting. This letter will also be the invitation to the next formal review meeting.

10.3 Where the employee has progressed to the final stage, the letter will clearly inform the employee that failure to achieve an acceptable standard of performance (within the set timescale), may result in dismissal and that the next formal review meeting will be a decision meeting.

## **11. Monitoring and review period following a formal review meeting**

11.1 A formal 4-week performance monitoring period will follow the review meeting. During this period the guidance and support discussed at the meeting will be provided, and the employee concerned will be monitored to assess whether they are improving. At the end of the monitoring period, the employee will attend a decision meeting.

## **12. Decision meeting**

- 12.1 As with formal capability meetings, the employee may be accompanied by a companion who may be a trade union representative or work colleague.
- 12.2 At the decision meeting, the panel will comprise the headteacher and two members of the governing body Special Purposes Committee. The governing body members must not be employees of the school.
- 12.3 The purpose of the meeting is to formally review the progress made during the monitoring period, and to decide what action should be taken. The employee concerned has the opportunity at the meeting to respond to the matters raised by management.

## **13. Outcomes from Decision Meeting**

- 13.1 Possible outcomes of the decision meeting are:
- no further action - an acceptable standard of performance has been achieved during the further monitoring and review period and therefore the capability procedure will end and the Performance Management process (as appropriate) will re-start;
  - if some progress has been made and there is confidence that more is likely, it would be appropriate to extend the monitoring and review period by no more than 4 weeks;
  - dismissal with notice - there has been no or insufficient progress following the monitoring period and the employee is therefore dismissed with notice.
- 13.2 If the decision is to dismiss, the employee will be suspended from duty with immediate effect.
- 13.3 The outcome of the decision meeting will be confirmed in writing by letter to the employee.
- 13.4 The headteacher must notify the Trust of his/her decision in writing. Within 10 days of the date of notification, the school will terminate the contract with notice in line with contractual requirements.

## **14. Appeal**

- 14.1 If an appeal against dismissal is submitted, this will not delay the suspension of the employee, or the dismissal itself, should it not be possible to hear the appeal before the termination date. In the event of a successful appeal after the dismissal, the employee would be re-integrated into the workplace.

- 14.3 An employee wishing to exercise the right of appeal must submit a written appeal to the Clerk to the Local Governing Body within five school working days of receiving written notification of the determination to dismiss and should state the grounds on which the appeal is to be made. The employee will indicate which of the original documents used at the decision meeting will be re-submitted.
- 14.4 The appeal will be heard by the Special Purposes Committee of the Local Governing Body. At least ten working days' notice of the appeal hearing will be given.
- 14.5 At least five school working days prior to the appeal hearing, Management will indicate which of the original documents used at the decision meeting are to be re-submitted.
- 14.6 Part-time employees shall normally be called to a hearing on one of their contractual days where reasonably practicable.
- 14.7 If either side wish to deal with some aspect that was not included in the documentation previously provided, this is permissible. However, where this applies, the documentation must be submitted to the Clerk to the Local Governing Body at least five school working days in advance of the hearing in order that it may be forwarded to both parties.
- 14.8 The employee shall have the right to be accompanied to the appeal hearing by a companion who may be either a trade union representative or work colleague.
- 14.9 The CEO or the Trust HR representative will attend the hearing to provide appropriate advice to the committee.
- 14.10 The conduct of the appeal hearing shall be in accordance with Appendix A1 to this procedure.
- 14.11 In hearing the appeal, the Appeals Committee shall confirm or reject the decision which is the subject of appeal. This decision shall be final.
- 14.12 If the determination of the Appeal Committee is to confirm the decision to dismiss the employee, notice of termination of contract will continue.
- 14.13 If the decision is to overturn the decision to dismiss the employee, a process for the reintegration of the employee into the workplace and further monitoring of performance, in accordance with either the Performance Management or capability procedure, will be arranged by Management, following discussion with the employee and his/her companion. Notice of termination of contract will be rescinded.
- 14.14 The outcome of the appeal will be confirmed in writing by letter to the employee within five school working days of the hearing.

## **15. Note on employment references for teachers**

15.1 Headteachers are required to provide information about a teacher's capability when providing a reference request for potential employees.

15.2 On receipt of such requests, Headteachers must:

- advise in writing whether or not that member of staff has, in the preceding two years, been the subject of the Capability Procedure; and
- provide written details of the nature of the concerns, the duration of the proceedings and their outcome, if known.

Where a teacher is dismissed for serious professional incompetence the school must report the matter to the National College for Teaching and Leadership.

## **Appendix A1 - Procedure for Performance Capability Dismissal Appeal Hearing**

- 1 The Chair of the Committee conducting the hearing will invite all parties into the room and introduce all those present.
- 2 The purpose of the hearing and the order of proceedings will be explained.
- 3 Management will present its case, referring to documentation previously made available to all parties, and calling witnesses as appropriate. Witnesses will only remain in the hearing to give evidence and answer any questions.
- 4 The employee or companion will be given the opportunity to question Management and any witnesses.
- 5 The Committee hearing the case and the representative of the Trust will be given the opportunity to question Management and any witnesses.
- 6 The employee or companion will make representations to the Committee and may present documentation and/or call witnesses to support the representation, as appropriate. Witnesses will only remain in the hearing to give evidence and answer any questions.
- 7 Management will be given the opportunity to question the employee and any witnesses.
- 8 The members of the Committee hearing the case and the representative of the Trust will have the opportunity to question the employee and any witnesses.
- 9 Management will be given the opportunity to summarise its case.
- 10 The employee or companion will be given the opportunity to summarise their representations.
- 11 Management and the employee and companion will then withdraw, leaving the Committee to consider the representation. The representative of the Trust will remain to make him/herself available to offer advice to the Committee.
- 12 The Committee conducting the hearing may recall either party to clear points of uncertainty on representation already given. Should this occur, both parties will be present.
- 13 Management and the employee and companion will then be invited to hear the decision.

## **Appendix A2 - Guidance on devising an appropriate performance capability support programme**

1. The employee should be made fully aware that the aim of the support programme is to assist him/her in improving performance in the job to the appropriate standards.
2. The nature of the support programme will vary from case to case depending upon the difficulties faced by the employee, the amount of assistance that may be required, organisational arrangements in the school and the resources available.
3. When drawing up a support programme consideration may be given to:
  - identifying and arranging appropriate in service training
  - arranging for the employee to observe good practice
  - a reorganisation of work areas, classes or rooms
  - arranging the observation of the employee's work by someone from the school or outside, who has good experience, and the ability to give constructive feedback on performance
  - modifying workload for a specified period of time
  - providing additional management support
  - provision of a mentor to guide and support the employee towards an improvement in performance
4. The mentor's role is separate and distinct to that of monitoring officer who is responsible for assessing and reporting on performance.
5. The support programme should be confirmed in writing and contain:
  - details of the support arrangements
  - where appropriate, specific guidance towards the necessary improvement
  - a time period over which the support programme will be in operation and reviewed
6. A support programme should provide as much support as possible and appropriate at the beginning of the capability process but the level of support should reduce as the process continues. This tapering level of support maximises the employee's opportunity to make improvements in performance to the required standards, whilst at the same time, allowing the employee's capabilities to be assessed alone (i.e. without the additional support) at the end of the process.

# Appendix A3 - Capability Procedure Flowchart

