

# CAPABILITY PROCEDURE

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## Introduction

The model Professional Capability Procedure has been developed from the model published by the Department for Education in May 2012 and then further updated in March 2019.

The School Staffing (England) Regulations 2009 sets out a requirement for governing bodies to establish procedures for dealing with lack of capability on the part of staff employed in schools. Schools must stay within the legal framework set out in the Staffing Regulations.

## Applicability

This procedure applies to teachers, including headteachers and school support staff with the following exceptions:

- Newly Qualified Teachers during the statutory Induction Period
- Non-teaching staff under a probationary period, for whom alternative procedures apply

## General Principles

Employees subject to this procedure have the right to be accompanied by a work colleague or trade union representative during all stages of the formal process. The representative should be identified to management in advance and should not be someone whose presence would prejudice the meeting or who might have a conflict of interest. If the representative is a work colleague, they will be entitled to take reasonable time off to prepare for and attend the hearing and confer with the employee following the hearing.

No formal action will be taken against a trade union representative until the circumstances of the case have been notified to a regional officer of the trade union concerned.

If long term absence appears to have been triggered by the commencement of the monitoring performance at any stage of the procedure the case will be dealt with in accordance with the school's sickness absence, reporting and management policy. In some cases, it may be appropriate for monitoring and /or formal procedures to continue during a period of sickness absence.

The capability process will be treated confidentially.

## Authority

In Community, Voluntary Controlled, Community Special, and Maintained Nursery schools, the power to determine that the member of staff should no longer work at the school can be delegated in the same way as above but it is the local authority (as the employer) that actually dismisses staff (or – for those who work in more than one school – requires them to cease to work at the school).

## Consistency of Treatment and Fairness

The Governing Body is committed to ensuring consistency of treatment and fairness and will abide by all relevant equality legislation.

## Definitions

Unless indicated otherwise, all references to “teacher” include the headteacher.

## **Delegation**

Normal rules apply in respect of the delegation of functions by governing bodies, headteachers and local authorities.

## **Purpose**

1. This procedure sets out the arrangements that will apply when the performance of employees falls below the levels of professional capability that are expected of them.

## **Application of the procedure**

2. This procedure applies only to teachers or headteachers about whose performance there are serious concerns that the appraisal process has been unable to address.
3. Where there are concerns about the performance of the headteacher, the professional capability procedure will be conducted by the Chair of Governors (or other governor nominated by the Governing Body) supported by a suitably skilled and/or experienced external adviser who has been appointed by the Governing Body for that purpose.
4. The policy also applies to all support staff employed by the school.

## **Transition to capability**

5. If, following a period of support and monitoring under the Appraisal Policy, the appraiser / headteacher is not satisfied with progress, the employee will be notified in writing that the appraisal system will no longer apply and that their performance will be managed under the Professional Capability Procedure. He/she will be invited to a formal capability meeting.
6. At least five working days' written notice will be given of the formal capability meeting. The notification will contain sufficient information about the performance concerns and their possible consequences to enable the employee to prepare to answer the case at a formal capability meeting. It will also contain copies of any written evidence; the details of the time and place of the meeting; and will advise the employee of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent. Teachers are entitled to request an alternative date which is within five days of the original date.

## **Formal capability meeting**

7. This meeting is intended to establish the facts. It will be conducted by the Chair of Governors or another nominated governor (for headteacher capability meetings) or the Headteacher/ **senior manager nominated by the head teacher** (for other teachers and support staff). The meeting allows the employee, accompanied 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.

8. The person conducting the meeting may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases, the capability procedure will come to an end. The person conducting the meeting may also adjourn the meeting for example if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.
9. In other cases, the meeting will continue. During the meeting, the person conducting the meeting will:
  - identify the professional shortcomings, for example which of the standards expected of teachers are not being met;
  - give clear guidance on the improved standard of performance needed to ensure that the employee can be removed from formal capability procedures (this will normally include the setting of objectives focused on the specific weaknesses 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);
  - provide an opportunity for the employee to respond to the concerns and make any representations;
  - explain any support that will be available to help the employee improve their performance;
  - set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case but in straightforward cases will normally be a minimum of six working weeks. and;
  - warn the employee formally that failure to improve within the set period could lead to dismissal. This will normally be a first written warning but in very serious cases, a final written warning may be appropriate or there may be other serious implications such as no pay progression
10. Notes will be taken of the meeting and a copy given to the member of staff within five working days of the meeting.
11. Where a warning is issued, the employee will be informed in writing of the matters covered in the bullet points above and given information about the timing and handling of the review stage and the procedure and time limits for appealing against the warning.

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

12. A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. At the end of this period, the member of staff will be invited to a formal review meeting, unless they were issued with a final written warning, in which case they will be invited to a decision meeting (see below).

### **Formal review meeting**

13. At least five working days' notice will be given and the written notification will give details of the time and place of the meeting and will advise the employee of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.
14. At the formal review meeting the person conducting the meeting will:
  - Remind the employee of the purpose of the Professional Capability procedure;

- Review the employee's progress in achieving the improved standard of performance identified in the formal capability meeting;
- Provide the employee with an opportunity to respond to the assessment of his/her performance and make any representations;
- Make a decision, as follows:

EITHER

15. If the person conducting the meeting is satisfied that the employee has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start. The employee will be informed that if there is further cause for concern within 12 months' they will re-enter the formal capability procedure at the stage at which they left it.

OR

16. If some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period and to schedule a further formal review meeting. The timetable for improvement will depend on the circumstances of the individual case and will be between four and ten working weeks.

OR

17. If no, or insufficient improvement has been made during the monitoring and review period, the employee will be issued with a final written warning. If a final warning is issued the period for improvement will normally be four working weeks.
18. The employee will be invited to a decision meeting at the end of the monitoring and review period.
19. Notes will be taken of the meeting and a copy given to the member of staff within five working days of the meeting.
20. In all cases, the outcome of the meeting will be confirmed in writing.
21. Where a final warning is issued, the employee will be informed in writing that failure to achieve an acceptable standard of performance within the set timescale, may result in dismissal and given information about the handling of the monitoring and review period and the procedure and time limits for appealing against the final warning.

### **Decision meeting**

22. At least five working days' notice will be given and the written notification will give details of the time and place of the meeting, the possible outcomes of the meeting (including the potential for dismissal) and will advise the employee of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

23. The management case will be presented by the manager conducting the earlier stages of the process, or the head teacher or chair of governors, as appropriate.
24. A panel of three governors will consider the management case where the Headteacher has lead earlier stages of the procedure.
25. Where the Headteacher has not lead earlier parts of the procedure and the Governing Body has delegated the decision to dismiss to the Headteacher they may chair the meeting and decide the outcome of the meeting.
26. At the Decision meeting the person/panel conducting the meeting will:
  - Remind the employee of the purpose of the Professional Capability procedure;
  - Review the employee's progress in achieving the improved standard of performance identified in the formal capability and/or formal review meeting;
  - Provide the employee with an opportunity to respond to the assessment of his/her performance and make any representations;
  - Make a decision, as follows:

EITHER

27. If an acceptable standard of performance has been achieved during the monitoring and review period, the capability procedure will end and the appraisal process will re-start. The employee will be informed that if there is further cause for concern within 12 months they will normally re-enter the formal capability procedure at the stage at which they left it.

OR

28. If performance remains unsatisfactory a recommendation will be made to the Governing Body that the employee should be dismissed or required to cease working at the school.
29. Notes will be taken of the meeting and a copy given to the member of staff within five working days of the meeting.

In all cases, the outcome of the meeting will be confirmed in writing. The employee will be informed of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.

30. *Community, Voluntary Controlled, Community Special and Maintained Nursery Schools*

If a decision to dismiss is taken, the Headteacher or Governing Body will notify the Local Authority of its decision and the reasons for it. Where teachers work solely at this school, the Local Authority must dismiss them within fourteen days of the date of the notification. Where they work in more than one school, the local authority must require them to cease to work at this school.

## **Appeals**

31. If an employee feels that a decision to dismiss them, or other action taken against them, is wrong or unjust, they may appeal in writing against the decision within five working days of the decision, setting out at the same time the grounds for appeal. Appeals will be heard without

unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a companion will apply as with formal capability and review meetings and, as with other formal meetings, notes will be taken and a copy sent to the employee.

32. The appeal will be dealt with impartially and, wherever possible, by managers or governors who have not previously been involved in the case. Appeals against formal warnings before the Decision to Dismiss stage may be heard by a senior manager or an individual governor who has not been previously involved with the case.
33. Appeals should normally be restricted to considering the reasonableness of the decision made, any relevant new evidence or any procedural irregularities. Where the reasonableness of the decision is being questioned, the test should be that the decision was perverse, in that it was so unreasonable that no other headteacher or manager, acting with proper regard to his/her responsibilities, could have chosen to take it. Where an appeal is upheld the matter should be referred back to the headteacher or person conducting the procedure to be reconsidered or for further appropriate action. Where monitoring would otherwise be continuing, it should not be halted while an appeal is pending.
34. The employee will be informed in writing of the results of the appeal hearing within five working days of the date of the hearing.

#### **Provision of information about teacher or headteacher capability**

35. Where a teacher or headteacher applies for a teaching post at another school, the governing body must, on request, advise in writing whether the teacher or headteacher has, in the preceding two years, been subject to capability procedures. If this is the case, they must provide written details of the concerns which gave rise to capability procedures, the duration of the proceedings and their outcome.