



Capability Teachers & Headteachers

Model HR Policy and Procedure for Schools and Academies

Last Reviewed: September 2019

Policy Outline

Reviewing the Policy

TfC HR Advice Team will keep the operation of this policy under review and will make such changes to the policy as deemed appropriate following consultation with the trade unions, where appropriate.

Personalising the Policy

TfC HR Advice Team has developed a number of model policies for schools and academies to consider and adopt as their own. There are a number of sections within this policy which require either amendments and/or deletion to the specific paragraphs to ensure the policy is accurate in setting out your operational requirements. We advise that these sections are amended prior to the policy being adopted.

The relevant sections in this policy we advise you consider are;

- 8 Summary dismissal. This paragraph only applies to Community, voluntary controlled, community special and maintained schools

Consultation with recognised trade unions has been undertaken prior to the issuing of this model policy. Should you wish to make amendments to the contents of this policy (save for those as set-out above in 'Personalising the Policy') then you may need to enter in further consultation with recognised trade unions. Please seek advice from your allocated HR Adviser.

In addition, the term 'school' is used throughout this policy and refers to a school or an academy. This reference could be amended throughout the policy where deemed appropriate.

Summary of Changes

Removal of the informal stage of support.

Clarification around the requirement to disclose in writing if asked, whether or not that member of staff has, in the preceding two years, been the subject of capability procedures if the individual applies for a role in another school or academy

Contacts for help and assistance

Please contact your allocated HR Adviser within the TfC HR Advice Team for help and assistance in applying the content of this policy. Alternatively you can email the TfC HR Advice Team at;

Email HRAdvice@togetherforchildren.org.uk

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1 Introduction

It is important that under-performance is managed to ensure that the quality of teaching and learning is unaffected and that the overall performance of the company is not compromised. The overall approach to capability should be supportive, constructive and helpful to the employee. This procedure complies with the provisions of the ACAS code of practice and has been written following consideration of DFE guidance, model policies as well as the Report of the Teacher Workload Advisory Group relating to making data work.

The capability procedure applies only to teachers where there are concerns about their performance which have not been able to be addressed through the appraisal process. The purpose of a capability meeting is to establish the facts and will usually be chaired by the Line Manager. The subject of the capability meeting will be able to respond to concerns about their performance and to present any relevant evidence.

Employees should be made aware that whilst they are and remain the subject of the capability procedure; the normal appraisal arrangements will be suspended. Employees are expected to cooperate constructively with arrangements that are put in place to address under-performance.

A programme of support should be comprehensive as possible, reducing as time goes on. The objective must be at the end of the final period to assess the employee's capabilities without additional support being provided.

As is the case in all formal procedures, the chair of each meeting should ensure that clear written records are kept, in particular, the management concerns about the employee's performance.

2 Data Protection

A written record of all meetings conducted under this procedure will be made, either by the person holding the meeting or by an additional person arranged by the school to take notes. The school processes any personal data collected during the performance improvement procedure in accordance with its data protection policy. Any data collected is held securely and accessed by, and disclosed to, individuals only for the purposes of completing the performance improvement procedure. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the School's data protection policy immediately. It may also constitute a disciplinary offence, which will be dealt with under the school's disciplinary procedure

3 Confidentiality

The capability process will be treated with confidentiality. However, the desire for confidentiality does not override the need for the headteacher and Governing board to quality-assure the operation and effectiveness of the capability process.

4 Consistency of Treatment and Fairness

The Governing board is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments for disabled teachers. The Governing board is aware of the guidance on the Equality Act issued by the Department for Education.

5 Alternative Procedures

Capability issues refer to the skills, knowledge and abilities of an employee and where this can be clearly distinguished from their conduct or misconduct this will be dealt with under the Capability procedure. If this distinction cannot be clearly made the matter should be considered as a disciplinary issue in the first instance.

The School may determine in respect of an issue that it will be considered under an alternative procedure, where it considers it appropriate to do so.

If it becomes apparent that the poor performance is caused, not by capability, but by a lack of willingness to carry out reasonable duties, then the formal disciplinary procedure should be invoked (see Disciplinary Procedure).

6 Transition from Appraisal to Capability

The transition to the capability procedure will not normally be made unless there is evidence gathered through the appraisal process that:

- Shows there has been a deterioration in their performance against agreed objectives and / or standards; (usually documented as part of the appraisal process or from supervision meetings) and

- the underperformance is either serious or has persisted despite the provision of support through the development and improvement stage.

After the development and Improvement stage of the Appraisal policy, if there are still concerns regarding an individual's performance, a meeting will take place with the employee to determine whether it is appropriate to move to the capability procedure (transition meeting). The teacher will be given at least five working days' notice of the meeting. The teacher is entitled to have a trade union or work colleague support and it would be advisable to have HR support. In addition, where an employee is experiencing mental ill health, consideration will be given to reasonable adjustments in respect of the appropriate person to accompany the employee. The meeting should be conducted in a positive manner with the aim of achieving a joint resolution to the problem.

Once matters have been considered in the transition meeting, the line manager should adjourn the meeting and reflect on the findings before making a decision on how to proceed. If a decision can not be made immediately the employee will be informed of the decision in writing and normally within five working days. The decision will be either to continue with the appraisal process with regular reviews on progress being documented or to invoke the capability procedure.

Where a decision is taken to invoke the capability procedure the individual should be informed that there would be a requirement to disclose in writing if asked, whether or not that member of staff has, in the preceding two years, been the subject of capability procedures if the individual applies for a role in another school or academy. This is in accordance with the School Staffing (England) (Amendment) Regulations 2012.

7 Capability

If the decision is taken to progress from Appraisal to Capability at least five working days' notice will be given of a formal capability meeting. The notification will contain sufficient information about performance concerns and the possible consequences to enable the teacher to prepare to present their case at the meeting. The notification of the formal capability meeting will be accompanied by copies of written evidence, (including copies of the Development plans which have been developed during the Development and Improvement stage of the appraisal process) details of the date and time of the meeting and will confirm the teacher's entitlement to be accompanied by a companion who may be a work colleague or a trade union representative. In addition, where an employee is experiencing mental ill health, consideration will be given to reasonable adjustments in respect of the appropriate person to accompany the employee. Notes will be taken of the formal meeting and a copy sent to the member of staff.

At the formal capability meeting the line manager must;

1. identify the teacher's professional shortcomings;

2. give clear guidance on the improved standard of performance needed;
3. explain any support that will be available to help the teacher improve to a point where they can be removed from the capability procedure;
4. set out the timetable for improvement and explain how performance will be monitored and reviewed; and
5. warn the teacher formally that failure to improve within the set period could lead to disciplinary action and ultimately dismissal (in very serious cases, the warning could be a final written warning).

This would usually involve going through the development and improvement plan and noting any improvements with performance but outlining where the objectives have not been met. At the meeting the employee will be given the opportunity to add any information they deem relevant. The meeting will be adjourned and a decision made.

There are three possible outcomes from the formal capability meeting:

1. No formal action and a return to the appraisal process, this is where it is determined that there is insufficient evidence to progress the matter further within the capability procedure or where the employee has successfully made representations that they have met the objectives set within the development and improvement plan.
2. A first written warning and issue of a Capability Support plan. This plan should be for a period of 4 weeks and a maximum of 6 weeks.
3. A final written warning, this is for cases where the concern around performance is sufficiently serious. The Capability Support plan issued following this should be for a maximum period of 4 weeks.

The employee will be notified of the decision arising from the meeting and of the timescales for monitoring and the anticipated next steps in the process.

If a sanction has been imposed at this meeting an employee may appeal against the level of sanction imposed within ten working days of receiving notification of the decision. The appeal will be heard within a reasonable timescale.

8 Review of capability

At the end of the agreed monitoring and review period, the employee should be invited to a further formal meeting. This meeting can be arranged at the same time the Capability Support plan is set, at this point it should be made clear that this is a formal review meeting where action may be taken if insufficient progress has been made. At the formal review meeting, if the person conducting the meeting is satisfied that the teacher has made sufficient improvement, the capability procedure will end and the appraisal process will re-start.

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. If no or insufficient

improvement has been made during the monitoring and review period, the teacher will receive a final written warning. The final written warning will mirror any previous warnings which have been issued and the member of staff will be informed that failure to achieve acceptable standard of performance within a set timescale may result in dismissal. A further period of monitoring and then a review would need set and the employee should be given the right of appeal against the sanction. If, following a final written warning, performance does not improve to an acceptable standard during the monitoring period, the case will be referred to the headteacher or an appropriate panel of governors where the employee would be invited to a decision meeting.

In cases where the employee was given a final written warning at the first meeting and after the monitoring period they had still not made sufficient improvements in their performance the final stage of the procedure will be instigated and the case referred to the Headteacher/Committee of Governors where the employee will be invited to a decision meeting.

9 Final stage of formal capability – Decision meeting

At least five working days' notice in writing of the time, date and place of the hearing shall be given to the teacher. The employee should be given the right to be accompanied at the hearing by a work colleague or trade union representative. If their representative is unable to attend on the date proposed the employee can offer an alternative date and time so long as it is reasonable and falls within five working days of the original date. In proposing a new date the Headteacher/Governing Board must have due regard to the availability of each of the parties concerned.

A copy of the procedure to be followed at the hearing should be sent to the employee in advance of the hearing.

The headteacher will produce a chronology/report of what has happened from the transition meeting to get to this point. This report will outline what the performance concerns have been at each stage being clear where improvements have been made and clearly outline what support has been put in place to enable the teacher to improve their performance. This will be circulated in advance of the meeting to all parties.

At this decision meeting the Headteacher/Governors will have the following options available to them:

1. If acceptable standard of performance has been achieved, end the capability support process and move the employee back to the appraisal process.
2. Continue with the capability support plan for a further period up to a maximum of 4 weeks to enable more monitoring before reviewing

performance again then refer back to a decision meeting after more support has been put in place.

3. Dismiss the teacher on the basis of capability ensuring the employee is given appropriate notice and the right of appeal against the decision.
4. An appropriate sanction (first or final written warning) together with action short of dismissal, e.g. demotion, compulsory transfer to another post if another suitable post is available.

[delete as appropriate]

The Governing Board must notify the Local Authority of their initial determination to dismiss. Where a Local Authority/Diocesan representative is present at the Hearing the effective date of dismissal will be the date of the Headteacher's/Committee's decision.

10 Appeal

The Teacher will have the right to appeal against any formal action. To appeal the employee must notify the Clerk to the Governing Board in writing setting out that they wish to appeal together with the grounds for their appeal within ten calendar days of receiving written confirmation of the decision. Appeals will be heard without unreasonable delay and will be to the appeals committee of the Governing Board.

At least five working days' notice in writing of the time, date and place of the appeal hearing shall be given to the employee. If their representative is unable to attend on the date proposed the employee can offer an alternative date and time so long as it is reasonable and falls within five working days of the original date.

A set procedure will be used throughout the appeal hearing and this is attached as [Appendix 2](#).

The decision made at the Appeal will be confirmed in writing to the employee without unreasonable delay and will be final with no other internal right of appeal.

11 Additional Information

Where a teacher raises a grievance during the capability procedure the capability procedure may be temporarily suspended in order to deal with the grievance. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.

If long term sickness absence coincides with commencement of this procedure the case will be dealt with in accordance with the attendance management procedure and the teacher will be referred immediately to

occupational health to obtain advice on the member of staff's health and fitness to continue with this procedure. In some cases it may be appropriate for this procedure to continue during a period of sickness absence.

If an employee has persistent short term absence which is impacting on the ability to complete the performance review period within the set timescales the case should be dealt with in accordance with the attendance management procedure. If patterns of absence during the capability process are noted this should be managed as part of the attendance management procedure including potentially issuing disciplinary sanctions where employees hit trigger levels. Consideration may be given on making decisions around performance despite short term absence by looking at the overall performance of the individual. Advice should be sought from HR in these circumstances.

In cases where an employee is experiencing mental ill health, as a reasonable adjustment consideration should be given to allow them to have an appropriate person accompanying them to the meeting. If this is the case the employee would have to confirm, in advance of any meeting, who that person is.

Example Capability Support Plan

Capability Support Plan	
School/Academy:	
Name:	
Line Manager:	
Dates for review period:	

Teachers' Standards
<ol style="list-style-type: none"> 1 Set high expectations which inspire, motivate and challenge pupils 2 Promote good progress and outcomes by pupils 3 Demonstrate good subject and curriculum knowledge 4 Plan and teach well structured lessons 5 Adapt teaching to respond to the strengths and needs of all pupils 6 Make accurate and productive use of assessment 7 Manage behaviour effectively to ensure a good and safe learning environment 8 Fulfil wider professional responsibilities

TLR (if applicable)
Outline the TLR responsibility in this section if appropriate

Objective 1: Example: Marking and feedback

Activity	Success Criteria	Key Strategies / Milestones	Support	Impact
(a) To mark work in line with whole school policy, ensuring all record keeping is up to date, so pupil progress can be ascertained (Linked to Teaching Standard 4 & 6)	Evidence of feedback on pupils' work as per whole school expectation	<ol style="list-style-type: none"> 1) To ensure pupil work is marked in line with whole school expectations and feedback evident in pupil work 2) Marking and feedback focuses on individual needs in order to improve areas of identified weakness 3) Books to be available for monitoring within one day of being requested. 	<p>Assessment & Marking Policy available</p> <p>Line Manager to sample pupil work and evaluate against success criteria.</p> <p>Access to exemplar material and literacy coordinator for advice and guidance as appropriate</p>	Fortnightly monitoring of marking and assessment by Headteacher beginning <DATE>
b)				

Objective 2: Example: Planning and delivery of teaching

Activity	Success Criteria	Key Strategies / Milestones	Support	Impact
a)				
b)				

Progress:

Mid plan review (Headteacher comments)

Mid plan review (Employee comments)

Headteacher signature: _____ Date: _____

Employee signature: _____ Date: _____

Procedure for Appeals Hearing

1. The member of staff (and his / her representative) to present his / her case
2. The Chair of the Panel / Committee and or the Head Teacher may ask questions of the member of staff (and his / her representative).
3. Governors can ask questions of the member of staff (and his / her representative).
4. The Head Teacher to present his / her case
5. The member of staff (and his / her representative) may ask questions of the Head Teacher and his/her representative
6. Governors can ask questions of the Head Teacher and his/her representative
7. The member of staff (and/or his/her representative) then to have the opportunity of summing up his / her case.
8. Head Teacher invited to have the opportunity to sum up his / her case.
9. Head Teacher, member of staff and / or representative asked to leave the meeting.
10. The appeals panel (with any adviser) to deliberate in private only recalling the parties where there are particular points of uncertainty on the evidence given. If recall is necessary both parties are to return, notwithstanding that only one is concerned with the point giving rise to doubt.