

Management Handbook 2.5.3

Revised February 2023

**CAPABILITY
PROCEDURE FOR
TEACHERS AND
SCHOOLS BASED
SUPPORT STAFF**

1. INTRODUCTION

- 1.1 This procedure shall apply to all employees, both teaching and support Staff employed directly within the school if problems arise which appear to relate to the capability of the member of staff to carry out the duties for which he/she is employed. This policy will also apply to Teachers employed in Central Services. For support staff employed through the Local Authority (e.g. Caretakers, Cleaners and Kitchen staff) the procedure outlined in Appendix Q of the local conditions of service for Local Government Services staff should be used. In accordance with this procedure, if there are issues in relation to Head Teacher/Head of Service, the role of the Head Teacher in this procedure shall be undertaken by the Chair of Governors or such person as may be appointed by the Governing Board or the Director of People and Inclusion (or his/her representative).
- 1.2 Capability relates to the skills, aptitudes, mental or physical health of an employee and is therefore separate from the Disciplinary Procedure which is mainly concerned with an employee's conduct. This procedure should be seen as supportive in terms of addressing perceived concerns. Lack of capability is defined as a situation in which a member of staff fails consistently to perform his or her duties to a professionally acceptable standard.
- (a) In dealing with capability issues the first concern must be to ensure that any member of staff who experiences difficulties in his/her duties should receive maximum assistance, support and training to try to remedy the areas giving cause for concern.
 - (b) The possible causes of a member of staff experiencing problems should be identified, if possible, as they will have a bearing on the kind of support to be provided.
 - (c) The causes may be temporary as a result of bereavement, family/personal problems or short-term health problems.
 - (d) A gradual deterioration in health can be a factor, in which case assistance from Human Resources should be sought for arrangements to be made for referral to the Occupational Health if appropriate. In such cases the school's procedure on the Managing Attendance for Teachers and Schools Based Support Staff could also be applied.
 - (e) An enforced change in circumstances e.g. redeployment or new or additional responsibilities can affect performance.
 - (f) Perceived inadequate management support, unreasonable demands or workload or lack of appropriate training can affect performance.
 - (g) In some cases a Head of Establishment/Chair of Governors, following consultation with the Director of People and Inclusion (or his/her representative), may consider that a member of staff would benefit from:

- (i) Voluntary redeployment to another more suitable post within the establishment, with training/retraining support as necessary; or
- (ii) Medical advice/treatment where the Head of Establishment/Chair of Governors, following consultation with the Director of People and Inclusion (or his/her representative) considers that the member of staff's lack of capability is arising from ill-health. Advice may be given by the Director of People and Inclusion (or his/her representative) about an ill health retirement pension. In such cases the school's procedure on the Managing Attendance for Teachers and School Based Support Staff could also be applied; or
- (iii) Where the reason for the problem and a possible solution is less clear, more intensive counselling and/or advice.

1.3 The formal procedures are intended to be used in those situations in which a member of staff fails consistently to perform his or her duties to a professionally acceptable standard and after informal steps have failed to achieve a satisfactory outcome.

2. **PRINCIPLES**

This procedure embodies the following principles:-

- (i) To encourage a sensitive and constructive approach to capability issues.
- (ii) To establish that the responsibility for resolving capability issues rests with Heads of Establishments and Chairs of Governors receiving advice from the Director of People and Inclusion (or his/her representative) as appropriate. Resolution of capability in respect of Heads of Establishments rests with the Chair of Governors with advice from the Director of People and Inclusion (or his/her representative).
- (iii) To ensure capability issues are dealt with efficiently, with clear outcomes resulting at all stages.
- (iv) To involve and recognise the value of the role of Trade Unions and Professional Associations in the operation of the procedure.
- (v) To ensure that standards of work required are explained and comply with the Conditions of Employment and accepted standards of professionalism.
- (vi) All members of staff must have a job description which should be mutually agreed which sets out the responsibilities of the post. Job descriptions should be reviewed on a regular basis in consultation with the member of staff concerned to ensure that they remain relevant to the establishment's needs and members of staff are aware of what is expected of them. In addition all members of staff should be aware of school and departmental policies where appropriate.

- (vii) To ensure that the member of staff is provided with the necessary support, advice, assistance and training to try to achieve an improvement in their performance.
- (viii) To recognise that whilst every effort will be made to help and improve the performance of the member of staff with a capability problem, continued employment cannot be guaranteed.
- (ix) When dealing with capability matters the utmost confidentiality must be maintained on a "needs to know" basis. At the commencement of any meetings the importance of confidentiality must be explained and stressed. Governors and particularly the Chair should be made aware that their involvement in any stage of the capability procedure will prejudice any involvement at a later stage. The content of any papers which are circulated must not be divulged to anyone. The way in which Governors vote and opinions expressed at Governors' meetings must always be regarded as confidential. Governors e.g. parents and teachers are representatives of their appointing bodies rather than delegates and any unauthorised reporting back to persons outside the Governing Board removes the protection of privilege and action for defamation could result. The minutes of confidential meetings must be kept separate and not made available for inspection.

In cases where a member of staff is given any formal warning or is suspended the Governing Board at their next ordinary meeting, or a specially convened meeting, should be informed of action which has been taken. No discussion should take place. The Governing Board should receive and note the report.

3. **TRADE UNION/PROFESSIONAL ASSOCIATION REPRESENTATIVES**

Normal performance standards should apply to accredited representatives of recognised Trade Unions/Professional Associations and no action beyond the informal stage shall be taken until the circumstances have been discussed by the Director Of People and Inclusion (or his/her representative) and with a full time official of the Trade Union or Professional Association concerned.

4. **TIMESCALE**

- 4.1 The timescale adopted will be in accordance with the seriousness of the lack of capability of the member of staff. Consideration needs to be given as to whether the problem is a specific or broader professional difficulty, whether it is of very recent concern or spanning a longer period of time. Normally the period given for improvement from the commencement of entry into the formal procedure to its ending will be no more than two terms.
- 4.2 The timetable for improvement in performance must be established after investigation and assessment and, at every stage, the time allowed will reflect the seriousness of the performance problem. In some cases, depending upon circumstances, the period for a member of staff to demonstrate an improvement could be one term. In extreme cases, for example where the education of

pupils is jeopardised, the period given for improvement after the date of a formal warning will be no more than four weeks.

- 4.3 The timetable does not take into account any appeals procedure.
- 4.4 Under normal circumstances all stages of the procedure shall apply successively. However, in extreme cases, for example where the education of pupils is jeopardised any part of the formal procedure can be immediately applied.

PROCEDURE

5. IDENTIFICATION OF PROBLEM

Many potential problems and difficulties can be and should be resolved informally.

It is important that problems relating to capability are clearly identified and given appropriate consideration and support at the earliest possible stage. The nature of the problem, its level of seriousness and cause(s), must be investigated and identified by structured information gathering and systematic recording. The Head of Establishment or designated senior member of staff would normally be involved with evidence gathering. In appropriate circumstances a representative from Quality Standards and Performance (Children and Young People Department) should normally be involved in classroom observation and in assisting with the evidence gathering. In the case of Heads of Establishment, a senior officer from Human Resources and a representative from Quality Standards and Performance (Children and Young People Department) will normally carry out the investigation on behalf of the Chair of Governors.

Following the investigation and assessment, a decision must be made as to whether to:

- (i) take no action;
- (ii) give informal counselling;
- (iii) arrange a meeting with the member of staff in cases which require action under the capability procedure.

5.1 INFORMAL COUNSELLING

- 5.1.1 Following the investigation and after consultation with the Director of People and Inclusion (or his/her representative) if a Head of Establishment/Chair of Governors has cause for concern relating to a member of staff's capability to carry out his/her duties, they should discuss the matter informally with the individual concerned. The meeting which should be informal, should only involve the Head of Establishment (where there is cause for concern relating to a member of staff's capability), or the Chair of Governors (where there is cause for concern relating to a Head of Establishment's capability). The Director of People and Inclusion (or his/her representative) may also be present.

Seven working days notice of the meeting should be given. The meeting should be held at a mutually convenient time, with time allowed to enable full discussion to take place. At the time of notification of the meeting the member of staff should be informed that they have the right to be accompanied by a work colleague, Trade Union or Professional Association representative. There should be a specific agenda so that the meeting has a clear purpose and the informal discussion should establish:

- (i) that the meeting is being held under the informal stage of the Capability Procedure.
- (ii) which areas of the member of staff's job description/conditions of employment are giving cause for concern and where there is a requirement to improve performance;
- (iii) where problems are being experienced by a member of staff the informal discussion should identify:
 - (a) the area(s) of the member of staff's job where there is a need to make an improvement;
 - (b) whether or not training, further training or re-training is required and if so, the nature of such training;
 - (c) whether the member of staff would welcome closer supervision, at least for a period of time initially;
 - (d) whether further counselling and/or advice appear to be necessary, including medical advice if considered appropriate;
 - (e) whether any consideration should be given at this stage or subsequently to a different balance of duties or alternative post where appropriate.

5.1.2 Clear guidance should be given to the member of staff by the Head of Establishment/Chair of Governors/ Director of People and Inclusion (or his/her representative) as to what is expected of him/her in future. This guidance, which shall be confirmed in writing within 3 working days shall include the following:-

- (i) The precise aspects in which performance is considered to be inadequate;
- (ii) the improvements which are required with a timetable detailing the targets to be achieved;
- (iii) the support and advice which will be made available to assist the member of staff to achieve the required standard of performance. Where necessary, written notes of specific guidance must be provided;
- (iv) the timescale for achieving the required standard.

- 5.1.3 The member of staff should be given the opportunity to comment on the concerns and the proposed support and advice for the purpose of improving his/her future performance.
- 5.1.4 The performance of a member of staff should be monitored by the Head of Establishment/designated senior member of staff and in the case of a Head of Establishment by the Director of People and Inclusion (or his/her representative). Individual independent support may also be given by a senior member of staff from Human Resources.
- 5.1.5 The monitoring process should include periodic structured meetings, informal discussion and support.

It is important that the monitoring is conducted in a sympathetic and non-threatening way.

The timescale for a member of staff to receive and respond to informal counselling would normally be not less than one term but could vary depending upon circumstances.

- 5.1.6 Where performance has improved as required and can be sustained without additional support at the end of the review period, the manager will confirm this to the member of staff in writing. The matter will then be concluded. If however, after a review meeting with the member of staff to assess the situation it is considered there has been no or insufficient improvement in performance, the member of staff should be informed that the formal stages of the procedure will be applied.

5.2 **FORMAL PROCEDURE**

5.2.1 **Stage 1**

Following consultation with the Director of People and Inclusion (or his/her representative) in cases where the Head of Establishment/Chair of Governors is of the opinion that the member of staff has a capability problem which cannot be resolved informally, a meeting should be arranged with the member of staff. The meeting will constitute the date of entry into the formal procedure. The member of staff should be given at least 7 working days notice of the meeting and he/she must be advised of the following:

- (i) the detailed nature of the concerns, including the evidence to support these concerns, relating to his/her deficiencies in performance;
- (ii) his/her right to be accompanied by a Trade Union/Professional Association representative or a work colleague;
- (iii) the date, time and place of the meeting;
- (iv) the right to respond to the concerns.

5.2.2 If at the conclusion of the meeting and having listened to the views of the teacher/Head of Establishment, the Head of Establishment/Chair of Governors in consultation with the Director of People and Inclusion (or his/her representative) considers that an acceptable level of performance has not been reached, a capability improvement notice (pro forma attached at appendix 2), which will be confirmed in writing within 5 working days of the meeting, will be issued and shall include:-

- (i) a statement of the areas for improvement for the member of staff;
- (ii) details of the improvement in performance which is expected along with any advice to the member of staff as to how it might be achieved;
- (iii) such action will normally include the establishment of targets and/or performance standards, together with an appropriate support programme and structured timescale.
- (iv) whether it is possible to offer a different balance of duties or an alternative post;
- (v) the support and advice which will be made available to assist the member of staff to achieve the required standard of performance;
- (vi) the likely consequences of insufficient improvement;
- (vii) the timescales over which an improvement in performance is expected.

A copy of the letter to the member of staff together with the Capability Improvement Note will be sent by the Head of Establishment/Chair of Governors to the Trade Union/Professional Association of the member of staff concerned.

5.2.3 Towards the end of the agreed review period a meeting should be arranged to assess the member of staff's performance against the agreed targets.

5.2.4 If, following this review meeting the performance has improved as required the manager will confirm this to the employee in writing. The matter will then be concluded. Where little or no improvements have been identified in the member of staff's performance, further action will be required.

5.3 **Stage 2**

5.3.1 Where the application of Stage 1 has failed to produce the required improvement, the Head of Establishment/Chair of Governors, following consultation with the Director of People and Inclusion (or his/her representative), should follow the procedure detailed in paragraph 5.2.1 (i) to (iv).

5.3.2 If at the conclusion of the meeting the Head of Establishment/Chair of Governors in consultation with the Director of People and Inclusion (or his/her representative) considers that an acceptable level of performance has not been

reached a written warning will be issued to the member of staff by the Head of Establishment/Chair of Governors within 5 working days of the meeting and will include items (i) to (vii) in paragraph 5.2.2.

A copy of the letter to the teacher/Head of Establishment will be sent by the Head of Establishment/Chair of Governors to the Trade Union/Professional Association of the member of staff concerned.

A copy of the written warning will be kept on a member of staff's personal file for a period of twelve months, after which time it will be disregarded provided that performance is considered to be satisfactory. Where there is an improvement in performance following the issue of a written warning it will still remain on a personal file for twelve months.

5.3.3 Towards the end of the agreed review period a meeting should be arranged to assess the member of staff's performance against the agreed targets.

5.3.4 If, following this review meeting the performance has improved as required the manager will confirm this to the employee in writing. The matter will then be concluded. Where little or no improvements have been identified in the member of staff's performance, further action will be required.

5.4 **Stage 3**

5.4.1 Where the application of Stage 2 has failed to produce the required improvement the Head of Establishment/Chair of Governors, following consultation with the Director of People and Inclusion (or his/her representative), should follow the procedure detailed in paragraph 5.2.1 (i) to (iv).

5.4.2. If at the conclusion of the meeting the Head of Establishment/Chair of Governors in consultation with the Director of People and Inclusion (or his/her representative), considers that an acceptable level of performance has not been reached a final written warning will be issued to the member of staff by the Head of Establishment/Chair of Governors within 5 working days of the meeting and will include items (i) to (vii) in paragraph 5.2.2.

A copy of the letter to the teacher/Head of Establishment will be sent by the Head of Establishment/Chair of Governors to the Trade Union/Professional Association of the member of staff concerned.

A copy of the final written warning will be kept on a member of staff's personal file for a period of eighteen months, after which time it will be disregarded provided that performance is considered to be satisfactory. Where there is an improvement in performance following the issue of a final written warning it will still remain on a personal file for eighteen months.

If at the end of the prescribed period the Head of Establishment/Chair of Governors, following consultation with the Director of People and Inclusion (or his/her representative), is satisfied that there has been an improvement in the teacher's/ Head of Establishment's performance, but not to the standard which

may be considered satisfactory, the prescribed period may be extended together with the provision of support and advice.

6. **DISMISSAL**

- 6.1 If, following completion of the prescribed period relating to the issue of a final written warning, and in the opinion of the Head of Establishment/Chair of Governors, following consultation with the Director of People and Inclusion (or his/her representative), there are still areas of concern in relation to the member of staff's performance, a written report should be prepared by the Head of Establishment/ Chair of the Governing Board, in consultation with the Director of People and Inclusion (or his/her representative).

The Head of Establishment/Chair of Governors should inform the member of staff in accordance with paragraph 5.2.1 (i) to (iv).

The member of staff will be given at least 7 working days notice in writing of the date of the hearing.

- 6.2 Normally it would not be appropriate to suspend a member of staff. However, suspension may be necessary pending a hearing, in extreme cases, where the education of pupils is jeopardised. Suspension is a precautionary measure and does not prejudice any formal action that may follow. The member of staff suspended from duty shall receive full salary for the duration of the suspension.

If an employee is sick while suspended, this will over-ride their suspension. During their sickness, they will be subject to the Authority's Managing Attendance Policy and will have to present medical certificates, and be paid at the appropriate rate i.e. Occupational Sick Pay, Statutory Sick Pay or no pay. If at the end of their period of sickness, any investigation has not been completed, they will continue to be suspended.

- 6.3 The member of staff shall be interviewed by the Head of Establishment and/or Chair of Governors in the presence of the Director of People and Inclusion (or his/her representative) and informed why he/she is being suspended from duty. The member of staff must be given the right to be accompanied by a Trade Union/ Professional Association representative or work colleague. The reason(s) for suspension must be confirmed in writing within 3 working days by the Head of Establishment or the Chair of Governors, following consultation with the Director of People and Inclusion (or his/her representative), to the member of staff concerned.

6.4 **For schools based staff**

- 6.4.1 The Chair of the Governing Board should refer the matter to the First Committee of the Governing Board which shall be convened as soon as practicable to consider the case for dismissal.
- 6.4.2 The First Committee shall consist of not less than 3 members of the Governing Board who have had no previous involvement. Account should be taken of ethnic origin and gender, where possible.

6.4.3 The procedure to be followed at the dismissal hearing should be in accordance with Appendix 1.

6.4.4 The member of staff whose dismissal is to be considered by the First Committee shall have the right to make representations to that Committee, including oral representations, for which purpose he/she may be accompanied by a Trade Union/Professional Association representative or work colleague.

6.4.5 The decision of the First Committee shall be one of the following:

- (i) to exonerate the member of staff and direct that all references to the matter in question be removed from his/her personal file.
- (ii) to find that the alleged deficiencies are proven in whole or in part, and
 - (a) determine an extension of a prescribed period given under the last warning issued and, if appropriate, supplement the provision of support and advice to the member of staff, or
 - (b) Where appropriate, redeploy to alternative work within the establishment, if necessary on a different grade; or
 - (c) determine that the member of staff should cease to work at the school in accordance with Section 35(8) and 36(8) of the Education Act 2002.

6.4.6 The First Committee shall confirm their decision, in writing, within 5 working days of the hearing and in the case of dismissal shall include a right of appeal.

6.5 **Referrals to an Appropriate Agency**

6.5.1 Where a teacher is dismissed for lack of capability the case will be referred to the appropriate agency if there is a requirement to do so at the time.

6.5.2 In circumstances where a teacher resigns or leaves the school in the course of capability proceedings, usually where there are no improvements in performance and the level of performance at this stage is such that it could have led to dismissal, the case will be referred to the appropriate agency if there is a requirement to do so at the time. Many cases in this category relate to failure to manage pupil behaviour adequately, but poor lesson planning and pupil supervision are examples of other aspects.

7. **APPEALS**

7.1 A member of staff shall have a right of appeal to a Sub-Committee of the Governing Board against the issuing of a warning.

7.2 The member of staff's intention to appeal should be submitted, in writing to the Clerk to the Governing Board within 7 working days of receiving the written decision of the Head of Establishment/Chair of Governors. The written statement of appeal by the member of staff shall indicate the grounds of the appeal.

- 7.3 The Clerk to the Governing Board is required to convene the Appeals Sub-Committee where possible within 7 working days of the receipt of a written appeal from the member of staff. The Appeal Hearing should be held no sooner than 7 working days after the invitation to the hearing has been sent.
- 7.4 In the interest of natural justice the appeal shall be heard by an Appeals Sub-Committee with delegated powers nominated by the Governing Board, comprising at least 3 members who have had no previous involvement. Account should be taken of ethnic origin and gender, where possible. At the Appeal Hearing the member of staff may be accompanied by a Trade Union/Professional Association representative or a work colleague.
- 7.5 The Governors shall make available to the member of staff any necessary papers relating to the matter, at least 5 working days before the hearing. The member of staff shall also have the opportunity to provide any documents for circulation at least 5 working days before the hearing.
- 7.6 The procedure for the hearing shall be in accordance with Appendix 1.
- 7.7 The decision of the Appeals Sub-Committee shall be final.
- 7.8 Where the Governing Board determines that a member of staff employed at the school should cease to work there it shall notify the Director of People and Inclusion (or his/her representative) in writing, of its decision and the reasons for it.

Where the member of staff is employed to work solely at the school and he/she has not already resigned, the Director of People and Inclusion (or his/her representative) shall, within 14 days of the date of notification from the Governing Board, give the member of staff appropriate notice (or pay in lieu of notice) terminating his/her contract of employment.

8. CAPABILITY PROCEDURE FOR TEACHERS IN CENTRAL SERVICES

- 8.1 In the case of Central Services where capability problems arise with a teacher/Head of Service, the Director of People and Inclusion (or his/her representative) will deal with the matter in accordance with this procedure.
- 8.2 In the event of dismissal the Director of People and Inclusion shall arrange for a Chief/Senior officer to hear the case against the member of staff. Account should be taken of ethnic origin and gender, where possible.
- 8.3 Where formal stages are applied and an appeal is made an Employment Appeals Panel, made up of senior managers shall be convened. The Chair of the appeals panel should be of a higher level than the Chair of the original hearing. Account should be taken of ethnic origin and gender, where possible.
- 8.4 In the case of dismissals only, an appeals panel made up of elected members of the Council will hear all appeals.

The Director of People and Inclusion (or his/her representative) will be present at all stages to give advice.

APPENDIX 1

PROCEDURE TO BE FOLLOWED AT A CAPABILITY HEARING OR APPEALS SUB-COMMITTEE

INTRODUCTION

- (i) The Head of Establishment/Chair of Governors should explain the purpose of the hearing and how it will be conducted.
- (ii) The meeting shall take place in private session and all parties shall be reminded that the proceedings are confidential.
- (iii) The Head of Establishment (except where he/she is the person concerned) and the Director of People and Inclusion (or his/her representative) are entitled to attend all procedures for the purpose of giving advice.

1. THE CASE AGAINST THE MEMBER OF STAFF

- (i) The Head of Establishment or Chair of Governors shall state the case, and may call witnesses.
- (ii) The member of staff or his/her representative shall have the opportunity to ask questions of the Head of Establishment/Chair of Governors and witnesses.
- (iii) The person(s) hearing the case shall have the opportunity to ask questions of the Head of Establishment/Chair of Governors or his/her representative and witnesses.

2. THE CASE FOR THE MEMBER OF STAFF

- (i) The member of staff or his/her representative shall state the case and may call witnesses.
- (ii) The Head of Establishment/Chair of Governors shall have the opportunity to ask questions of the member of staff or his/her representative and witnesses.
- (iii) The person(s) hearing the case shall have the opportunity to ask questions of the member of staff or his/her representative and witnesses.

3. FINAL STATEMENT

The Head of Establishment/Chair of Governors and then the member of staff or his/her representative shall make a final statement. The final statements shall not include any new information

4. **WITNESSES**

Witnesses shall only be present while giving evidence or being questioned.

5. **ADJOURNMENT**

Either party or the person(s) hearing the case may request an adjournment of the hearing at any stage.

6. **CONSIDERATION OF THE CASE**

- (i) At the conclusion of the hearing both parties and their representatives shall withdraw.
- (ii) The person(s) hearing the case shall deliberate in private. If it is necessary to recall either party or any witness in order to resolve points of uncertainty on the evidence given both parties will be recalled notwithstanding the fact that only one may be concerned with the point giving rise to doubt.

7. **DECISION**

- (i) The person(s) hearing the case shall recall the parties to announce the decision, which will be confirmed in writing within 5 working days with a copy to the Trade Union/Professional Association Representative or work colleague. Where applicable the member of staff shall be informed of his/her right of appeal.
- (ii) Where a Sub-Committee of a Governing Board is involved, they must take such action and may decide any issue regarding the future employment of the employee as may lie within the powers of the Governing Board under the School Staffing (England) Regulations 2009 and Guidance on Managing Staff Employment in Schools (which supercede Sections 35(8) and 36(8) of the Education Act 2002).

In the case of the Appeals Sub-Committee it may confirm, impose a lesser penalty or reject the action taken by the First Committee or by the Head of Establishment/Chair of Governors.

APPENDIX 2

CAPABILITY IMPROVEMENT NOTE

Specified Period for Monitoring and Review: _____ to _____

Employee Name: _____ School: _____ Manager: _____

Date Capability Improvement Notice issued: _____ Signed: _____ (Employee)

Signed: _____ (Manager)

Performance Issue/Area of Concern	Standards Required	Improvement required	Timescales	Review Date	Support/Training Required	Other Information

