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Teacher Capability Procedure

Kirklees LA Model Policy

April 2022

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1. Introduction

- 1.1 This document gives guidance to Headteachers and Governing Bodies on stages that can be applied where issues of professional competency arise. **The term 'Teacher' or 'Teachers' throughout this document covers all designations of Headteacher and/ or Teachers.**
- 1.2 Take time to read this procedure before commencing the process and it is advisable that you contact Human Resources (HR) and/or Kirklees Learning Partner (KLP) for guidance and assistance on the application of it.

2. Purpose

- 2.1 This procedure applies only to teachers and headteachers where there is serious underperformance which the appraisal process has been unable to address.
- 2.2 The purpose of this procedure is to encourage and ensure teachers achieve and maintain acceptable and agreed standards of performance and perform their jobs to the best of their ability. It is designed to ensure fairness & consistency and to provide support towards improvement, in the management of teacher under-performance.
- 2.3 Competence refers to a teacher's ability to perform the work expected of them to the level required in fulfilment of agreed contractual duties. This may be assessed by reference to a teacher's skill, aptitude, or ability in relation to the job that they are employed to do, and this appears to be because the teacher 'can't' (rather than 'won't') do something.
- 2.4 Very few teachers choose to perform their work badly, make mistakes or fail to complete tasks. Consequently, in the event that a teacher is underperforming, the head teacher (or in the case of the head teacher the governing body) should examine the circumstances to identify underlying causes and provide additional support to the teacher to help them to improve to the required standard of performance, including an agreed support programme.

3. Informal handling of under-performance

- 3.1 Any concerns regarding a teacher's performance should be discussed with them at the earliest opportunity, and head teachers should try to resolve issues of minor incompetence informally and in a supportive manner using the Appraisal policy. Further guidance for managers is given in Appendix 1, and some key steps summarised below.
 - Set the level – the head teacher should bring to the attention of the teacher how they are failing to meet the required level of performance and of the concerns that exist;
 - Seek an explanation - to provide the teacher with an opportunity to explain why they are not meeting the required level of performance and to discuss the acceptability of the explanation(s);

- Require improvement - to advise the teacher what they are expected to do to bring about improvements in performance. Outline any management action and support and give a time limit within which the teacher can reasonably be expected to demonstrate improvement;
 - Warn of the consequences - of failure to improve, to meet and sustain the level of performance required, such as formal action under the Capability Procedures.
- 3.2 The main points discussed should be noted and a copy provided to the teacher; for example, this could be via email or a memo. A copy of the note must not be placed on the teacher's personnel file at the informal stage.
- 3.3 It is recommended that you contact HR for advice when managing informal competency. Whilst not a requirement for an informal meeting you may wish to consider inviting HR and the employee's trade union representative to the informal competency meeting. This ensures that process is followed and support is put in place at the earliest stages.
- 3.4 Agree a Development/Coaching Plan, Appendix 2 and consider setting an informal review period. This could be for example over a half term period with regular 1-2-1's.
- 3.5 Formal action should be taken by organising a Stage One Capability Meeting where this approach has been tried and has not succeeded in improving performance, or where the underperformance is more serious (see section 4 below).

4. Formal Stage One – Capability Meeting

- 4.1 If a teacher's performance continues to be unsatisfactory or where unsatisfactory performance is sufficient to warrant moving straight to formal action, the teacher should be invited to a formal meeting to discuss the concerns.
- 4.2 The teacher should be given at least 5 working days' notice of the meeting. The notification letter should include:
- The time and place of the meeting
 - A statement of the concerns regarding their performance
 - The possible consequences of the meeting
 - Their right to be accompanied by either a work colleague or trade union representative
 - Copies of any written evidence that might be relied upon
- 4.3 The purpose of this meeting is to establish the facts. It will be conducted by the Chair of Governors (for headteacher capability meetings) or headteacher (for other teachers). The meeting allows the teacher, accompanied by a trade union representative or work colleague 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.

- 4.4 The teacher will be reminded of any informal discussions (where these have happened) and the steps taken to support an improvement in performance that have already been taken. Specific reference will be given to the appraisal procedure along with the agreed objectives and any support agreed to meet those objectives.
- 4.5 The points raised by the teacher should be documented as part of the Stage One process.
- 4.6 A decision will be taken at the meeting regarding the required action from one of the following options where:
- There are insufficient grounds for pursuing the competency issue, the concerns will be addressed informally through the appraisal policy and therefore formal action under the Capability Procedure will not proceed. In this instance, a note should be sent to confirm that the teacher has not entered formal proceedings.
 - It is found that the concerns are as a result of misconduct or ill health, action under the Capability Procedure may stop and further action will be taken under another appropriate procedure if required.
 - Further investigation proves necessary: the meeting may be adjourned and then reconvened once the investigation is complete.
 - There is evidence for the concerns: the meeting will continue and will address the points outlined in section 4.7 below
- 4.7 Where the meeting continues, it should address the following:
- identify the professional shortcomings, *for example which of the standards expected of teachers are not being met*,
 - Confirm the suspension of the usual Appraisal Process
 - Give clear guidance on the improved standard required, this must include setting objectives, identifying success criteria or the evidence that will be used to determine improved performance
 - Set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on individual circumstances and should be agreed by both parties wherever possible. It should be reasonable and proportionate to allow the opportunity for improvement to take place but should not be excessively long. A guide for the monitoring and review period is 4 to 6 weeks. [Note: in serious cases where it can be demonstrated that the education of students and/or the efficient and effective running of the school is being jeopardised or undermined it is expected that the period for improvement would be no more than 4 working weeks at each stage]
 - Issue a Performance Improvement Support Plan (Appendix 2), setting out the concerns, the agreed actions and timescales, the support that will be provided, and making clear the consequences of a failure to improve within the set period.
- 4.8 At the meeting consideration should be given regarding any reasonable support or training that would assist the teacher in achieving a satisfactory standard of performance.

- 4.9 Reasonable measures to assist the teacher to meet agreed objectives and perform at the level expected should be discussed and documented.
- 4.10 An important part of the support offered to a teacher would be a clearly defined amount of classroom observation with structured oral and written feedback. The amount of classroom observation should be discussed with the teacher and their trade union representative.
- 4.11 The teacher will receive a letter confirming the outcome of the meeting, including details of the Performance Improvement Support Plan and issuing a First Improvement Notice. The First Improvement Notice will state the improvement in performance required, targets and timescales for improvement ("the review period"), any support to be provided and the consequence of not meeting the performance targets within the review period. It will also set out the employee's right of appeal.
- 4.12 If an employee is able to evidence that the Capability Procedures have not been followed correctly or applied fairly then they should, in the first instance, share their concerns with management in the capability meeting, supervision or the review meeting. In some cases, this may result in an extension to a review period to accommodate and put right any concerns. If this does not address any procedural concerns then employees do have the right to appeal. The Chair of Governors will decide whether there are reasonable grounds for an appeal. They may address this informally by liaising with the senior leader managing the case and the employee. If informal attempts fail, this may result in an Appeal Hearing with Governors.
- 4.13 A copy of the First Improvement Notice will be retained on the teacher's personnel file. The First Improvement Notice will remain active for 12 months after which time it will be disregarded for the purposes of the Capability Procedure. After the review period the First Improvement Notice will remain permanently on file for reference purposes, but will be disregarded for the purposes of deciding on the appropriate action or outcome of any future capability proceedings.
- 4.14 Following this meeting during the specified time period for improvement, monitoring, evaluation, guidance and support will continue, the frequency of such will be determined on an individual basis.
- 4.15 A formal review meeting should be held at the end of the specified monitoring and review period (see section 5).

5. Formal Stage Two – Review Meeting

- 5.1 A formal review meeting will be held at the end of the monitoring and review period in order to evaluate whether sufficient improvement in performance has been made. It will be conducted by the Chair of Governors (for headteacher capability meetings) or headteacher (for other teachers).
- 5.2 The teacher should be given 5 working days' written notice of the meeting which must include:
- The time and place of the meeting
 - Confirmation of the performance concerns that are to be reviewed
 - The possible consequences of the meeting
 - Their right to be accompanied by either a work colleague or trade union representative
 - Copies of any written evidence that might be relied upon
- 5.3 At the review meeting the person(s) chairing the meeting and teacher will discuss the monitoring and review period and any support provided. The person(s) chairing the meeting will assess whether the teacher's performance has improved sufficiently. The teacher will have the opportunity to comment on their performance during this period.
- 5.4 Following discussion at the meeting, the person(s) chairing the meeting may decide that:
- a) The teacher's performance has improved sufficiently and no further action is required under the Capability Procedure. The teacher will be advised that satisfactory performance must be maintained via the appraisal procedure and that if performance becomes unsatisfactory again under the appraisal procedure further action may be taken under the Capability Procedure. If this occurs within 12 months, it may take into account action taken previously.
 - b) That some progress has been made and there is confidence that more is likely, so the monitoring and review period may be extended. The person(s) chairing the meeting will confirm the continuing areas of concern and the improvement required. Consideration will be given to any further support that can be provided. A further period for monitoring and review will be given, normally of no more than 4 weeks. At the end of this period a further review meeting will be convened.
 - c) That there has been no, or insufficient improvement made and performance remains unsatisfactory so a second Performance Improvement Support Plan will be issued. The teacher should be informed that failure to improve sufficiently within the set timescale, may result in dismissal. The person(s) chairing the meeting will confirm the continuing areas of concern and the improvement required. Consideration will be given to any further support that can be provided. A further monitoring and review period will be given, normally of no more than 4 weeks. At the end of this period a further review meeting will be convened.

- 5.5 The teacher will receive a letter confirming the outcome of the meeting.
- 5.6 If as a result of the formal stage two meeting a second Performance Improvement Support Plan is issued (5.4c) the teacher will receive a letter confirming the outcome of the meeting including details of the Performance Improvement Support Plan and the issuing of a Final Improvement Notice. The Final Improvement Notice will state the improvement in performance required, the targets and timescales for improvement (“the review period”), any support to be provided and the consequence of not meeting the performance targets within the review period. It will also set out the employee's right of appeal.
- 5.7 If an employee is able to evidence that the Capability Procedures have not been followed correctly or applied fairly then they should, in the first instance, share their concerns with management in the capability meeting, supervision or the review meeting. In some cases, this may result in an extension to a review period to accommodate and put right any concerns. If this does not address any procedural concerns then employees do have the right to appeal. The Chair of Governors will decide whether there are reasonable grounds for an appeal. They may address this informally by liaising with the senior leader managing the case and the employee. If informal attempts fail, this may result in an Appeal Hearing with Governors.
- 5.8 A copy of the Final Improvement Notice will be retained on the teacher's personnel file. The Final Improvement Notice will remain active for 12 months after which time it will be disregarded for the purposes of the Capability Procedure. After the review period the Final Improvement Notice will remain permanently on file for reference purposes but will be disregarded for the purposes of deciding on the appropriate action or outcome of any future capability proceedings.

Meeting to assess performance following the Stage 2 review meeting

- 5.9 Where the monitoring period has been extended as per (5.4b) or where a second Performance Improvement Support Plan is issued as per (5.4c), a further review meeting will take place at the end of the second monitoring and review period (follow steps 5 – 5.3), where the following decisions can be made:
- The teacher has reached a satisfactory standard of performance and no further action is required under the Capability Procedure (see 5.4a).
 - There has been no, or insufficient improvement made and performance remains unsatisfactory the person(s) chairing the meeting will arrange a dismissal hearing under stage three.

6. Formal Stage Three – Hearing to consider dismissal on grounds of capability

- 6.1 A decision hearing will be arranged where the teacher did not make a sufficient improvement in performance or meet agreed objectives during the specified monitoring and review period(s). Details of the procedure for the hearing at can be found at Appendix 3.
- 6.2 The Staffing Dismissals Committee of the Governing Body should call a formal hearing and listen to the response from the Teacher (or Headteacher) in respect of the Head Teacher's (or Chair of Governors) recommendation and determine appropriate action accordingly
- 6.3 The teacher will normally be given 10 working days' notice in writing of a dismissal hearing. The Chair of the hearing will confirm arrangements to the teacher in writing, including:
- The areas for development where the teacher has not met the required standard of performance
 - The date, time and location of the hearing. If the date / time is not convenient for any party an alternative date will be agreed, this will not normally be more than 5 working days after the date originally proposed by the Chair.
 - The name of the person (or panel) chairing the hearing
 - The right to be accompanied and/or represented by a trade union representative or work colleague
 - The requirement to provide the Chair with a copy of the documents that they will be relying upon and the names of any witnesses that they will be calling at the hearing at least 5 working days before the hearing
 - Advise the teacher that the hearing could result in dismissal
 - Copies of documents that the manager presenting the case will refer to at the hearing, and names of any witnesses that they will call
- 6.4 At the hearing the Chair of Governors (for headteacher capability meetings) or headteacher (for other teachers) will be given the opportunity to put forward their case for dismissal, and the teacher will be given the opportunity to present their case against the dismissal.
- 6.5 Both parties may call witnesses and ask questions. HR will attend the hearing to provide procedural advice.
- 6.6 The hearing will normally be adjourned whilst the person(s) hearing the matter consider the evidence put forward and reach a decision.
- 6.7 The outcome of the hearing may be either dismissal on the grounds of lack of competency or alternative action in the light of evidence presented at the hearing (see 6.9). Where a teacher is dismissed they should be dismissed with appropriate notice. The teacher will be notified in writing of the outcome and of their right of appeal.

- 6.8 A postponement may be granted if the teacher or their representative is unable to attend on the proposed date. A postponement should not be for more than 5 working days after the original date proposed, however, an extension to this time limit can be made by mutual agreement.
- 6.9 Alternative actions might include:
- extend a Final Improvement Notice and set a further review period (where a substantial improvement is likely within the review period). If the required level of performance is not achieved and this leads to a further dismissal hearing it should be heard, if possible, by the same person / panel.
 - redeployment to a different post if a vacant existing post is available as an alternative to dismissal; if the post is on a lower grade there will be no entitlement to protection of salary.
 - reduction of responsibility; this may be linked to the redeployment option or could apply to the post currently held by the teacher – again salary protection will not apply in such circumstances.

7. Formal Stage Four – Appeal

- 7.1 If a teacher 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 15 days of the decision, setting out at the same time the grounds for appeal.
- 7.2 The appeal should be on the basis of one of the following grounds:
- The procedure - a failure to follow procedure had a material effect on the decision
 - The decision - the evidence did not support the conclusion reached
 - The penalty - was too severe given the circumstances of the case
 - New evidence - which has genuinely come to light since the dismissal hearing.
- 7.3 The appeal must be made in writing, stating the grounds for the appeal, within 15 working days of receiving written notification of the decision to dismiss.
- 7.4 The teacher will normally be given 20 working days' notice, in writing, of the date of the appeal hearing. This notification will give the name of the person chairing the appeal hearing. It will remind the teacher of their right to be accompanied at the hearing by either a trade union representative or work colleague. An HR representative who has not previously been involved will attend the hearing to provide procedural advice. The notice periods can be changed by mutual agreement.
- 7.5 Both parties must indicate at least 10 working days in advance of the appeal hearing which, if any, witnesses they wish to call and provide copies of any documentation that will be relied upon at the hearing. In exceptional circumstances an alternative time-scale may be agreed.

- 7.6 The appeal hearing should consider the evidence presented in relation to the grounds for appeal put forward by the teacher; it is not expected that the appeal will constitute a full re-hearing.
- 7.7 The Chair of the Stage Three hearing will attend the appeal to present the management case in relation to the grounds of the appeal and may be accompanied by the person who acted at stages 1 and 2 in the procedure.
- 7.8 The teacher will be able to present evidence that is directly relevant to the grounds of the appeal. Management will have the opportunity to respond.
- 7.9 The appeal hearing may:
- confirm the decision of the dismissal hearing
 - overturn the decision of the dismissal hearing, and specify an additional period of time within which performance must improve
 - may recommend alternative action (for example, redeployment).
- 7.10 The teacher will be informed of the appeal decision in writing. The decision of the appeal hearing is final.

8. General Principles Underlying This policy

8.1 Confidentiality

The Capability Procedure 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 processes.

8.2 Consistency of Treatment and Fairness

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

8.3 Definitions

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

8.4 Delegation

Normal rules apply in respect of the delegation of functions by Governing Boards, head teachers and local authorities

8.5 Grievances

Where a member of staff 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 competency are related it may be appropriate to deal with both issues concurrently.

8.6 Sickness

If long term sickness appears to have been triggered by the commencement of monitoring or the formal Capability Procedure, the case will be dealt with in accordance with the Attendance Management Procedure and monitoring and/or formal procedures resumed on return to work. In some cases, it may be appropriate for formal procedures to continue during a period of sickness absence.

8.7 Monitoring and Evaluation

The governing board and headteacher will monitor the operation and effectiveness of the school's appraisal arrangements. This will include ensuring that the arrangements minimise the impact on workload for all parties involved.

The Governing Board and head teacher will monitor the operation and effectiveness of the school's capability arrangements.

8.8 Retention

The Governing Board and head teacher will ensure that all written capability records are retained in a secure place for six years and then destroyed

Appendix 1

Manager guidance on managing under-performance

This guidance is intended to help support managers who are managing concerns around a teacher's performance under the school's appraisal Policy. If subsequently taking action under the Capability Procedure it is important that the Manager can evidence the steps previously taken to try and support the required improvement.

Any concerns regarding a teacher's performance should be discussed at the earliest opportunity, and Headteachers should try to resolve issues of incompetence informally and in a supportive manner.

Teachers should receive constructive feedback on their performance throughout the year, as part of the Appraisal procedure, and as soon as practicable after agreed lesson observation has taken place. Feedback should highlight particular areas of strength as well as any areas that require improvement.

Appropriate action should be taken promptly as soon as it is noticed that a teacher is not performing certain aspects of their job satisfactorily. Delaying or doing nothing may cause the performance problem to escalate and cause delay in providing the necessary support and could impact negatively on educational outcomes for pupils.

The teacher should be advised to seek professional advice from their trade union representative; the school acknowledges that this may help to expedite resolution. However, there is no right to be accompanied to meetings taking place as part of the usual Appraisal process.

It should be recognised that capability problems may be related to issues outside the teacher's direct control and may be symptomatic of underlying work problems or other personal issues.

Particular care should be taken when disability or health issues are involved and advice should be sought from HR /Occupational Health Service as appropriate.

Where there are concerns about any aspects of a teacher's performance, the Headteacher should meet with them to:

- Give clear feedback about the nature and seriousness of the concerns
- Give the teacher the opportunity to comment and discuss the concerns and provide information on any issues impacting on the situation
- Agree any support (e.g. coaching, mentoring, structured observations, training, professional courses) that will be provided to help address those specific concerns
- Make clear how, and by when, progress will be reviewed (it may be appropriate to revise objectives and/or agree other appropriate & clear targets, and it will be necessary to allow sufficient time for improvement. The amount of time will need to reflect the seriousness of the concerns)
- Explain the implications and process if no – or insufficient – improvement is made (i.e. entry in to the formal capability procedure).

It is recommended that a note of the discussion is confirmed in writing (e.g. by email with receipt acknowledged by the teacher, or in appraisal documentation).

If the discussion outlined above results in the required improvement, it would be helpful to 'draw a line under it' by confirming that the issue(s) have been addressed and the appraisal process will continue as normal providing the improved performance is maintained.

Where this informal approach has been tried and has not succeeded in improving performance, or where the underperformance is more serious, formal action should be taken by organising a Stage One Capability Meeting.

Appendix 2

Development / Coaching Plan

Teacher name:	
Date of meeting:	

Concern / Area of performance for review	Level of improvement required*	Support to be provided (nature of support, who should make arrangements)	Timescales for improvement / review date(s)

**Actions agreed under this improvement note / support plan should be "SMART": specific, measurable, achievable, relevant, time-related, in other words it should be very clear what is required, by whom and by when, and clear how this will be evaluated and reviewed.*

I understand that the consequence of my performance not improving to the required level within the agreed time period will be the continuation of the Capability Procedure, which could include my dismissal.

Name - Printed	
Signed - Teacher	
Date	

Name - Printed	
Signed-Headteacher	
Date	

Appendix 3

Order of proceedings for Capability Procedure Stage Three Hearing

Introduction

Introduce those present and explain why they are there. Someone who is not directly involved in the hearing should be appointed to take notes on the proceedings and Human Resources may be present throughout the hearing.

Explain the purpose of the meeting i.e. to establish as fully as possible the facts, and to consider the case for dismissal in accordance with the school's Capability Procedure.

Explain how the meeting will be conducted

Statement of competency issue

The headteacher presenting the case for dismissal should state precisely what the competency issue is and outline the case for dismissal by going through the evidence that has been gathered.

Ensure that the teacher and his/her companion are allowed to see any statements made by witnesses and to raise questions.

Teacher's reply

Give the teacher the opportunity to state their case against dismissal, and to respond to the evidence that has been put forward. They should be able to ask questions, present their own evidence and call witnesses. The teacher and their companion should be given the opportunity to confer privately if necessary.

General questioning and discussion

The person(s) hearing the matter should:

- Use this stage to establish all the facts
- Ask the teacher if there are any special circumstances to be taken into account
- Keep the approach formal and polite, and encourage the teacher to speak freely; it should
- be a two-way process.
- Use questions to clarify the issues and check that what has been said is understood.

If new facts emerge, it may be necessary to adjourn the hearing to investigate.

Summing up

Summarise the main points of the discussion after questioning is completed, to remind all parties of the nature of the capability issue, the arguments and evidence put forward, and to ensure nothing is missed.

Ask the teacher if they have anything further to say.

Adjournment before decision

Adjourn before a decision is taken about whether dismissal is appropriate, to allow reflection and proper consideration. It also allows for further checking of any matters raised, particularly if there is a dispute over facts.

Giving the decision

Unless a mutual agreement has been reached otherwise, the meeting will be reconvened and the teacher be informed of the outcome of the hearing.

The decision will be communicated in writing.