

HR Education
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School Support Staff Capability Procedure

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1. Introduction

- 1.1 Performance management is a way to ensure employees know the standards expected of them at work.
- 1.2 Sometimes there is a gap between expected and actual performance or standards of behaviour, where employees need additional help and support to help them reach the required standard.
- 1.3 The Capability process ensures those who are not performing adequately or behaving appropriately are supported in a fair and consistent way.
- 1.4 This procedure describes the steps involved in dealing with employees lacking the capability or competence to perform or behave at the required standard with the aim of helping them to perform or behave to an acceptable level.
- 1.5 At all formal stages of this process advice and assistance should be sought from the HR Service.

2. Purpose

- 2.1 The aim of performance management is to provide a supportive and clear process to help management and staff when there are concerns about an employee's performance or behaviour. To provide a clear and equitable process to help employees to improve and sustain performance to a satisfactory standard wherever possible and to take appropriate action where this is not possible.
- 2.2 It is the managers responsibility to ensure that staff are aware of the standards of performance required of them. This should be in place from the moment an employee joins the school through induction and probation. Performance Management is a continuous process where performance is discussed through regular supervision and appraisals. Identifying developmental needs at an early stage and providing support, training, mentoring and coaching etc to address any gaps.
- 2.3 The standards set under Performance Management should be reasonable and achievable. Regular meetings with employees will minimise the risk of poor performance.

3. Considerations

- 3.1 There may be reasons for an employee's performance falling below the required standard, including changes in the job, manager, team members, the tools or technology to do the job, personal circumstances, health, or disability.
- 3.2 Where the job or tools required have changed, the employee has the right to expect to be retrained to carry out their duties effectively. Poor health and disability will often require advice from Employee Healthcare and counselling can be provided to an employee through Care First for many situations where employees' personal circumstances have changed.

- 3.3 Where an employee is, or becomes, disabled then consideration must be given to reasonable adjustments which might be necessary to help them perform their duties. The Authority's Guidelines on Reasonable Adjustments should be consulted and advice sought from HR in such cases.
- 3.4 Before potential performance or behavioural problems can be dealt with it is important that employees know the standards required. Expectations must be made clear and should be both reasonable and achievable. These must be identified and communicated in writing to the employee so both the manager and employee know when they are not being met. Underperformance or inappropriate behaviour is often identified through regular 1:1 discussions and appraisal discussions. It is important to identify and address problems in performance or behaviour and support and encourage employees to achieve and maintain the required standards by being very clear what they need to achieve and determining what support is needed for them to do this.
- 3.5 Alternatively the employees' performance may indicate a wilful lack of effort, or misconduct. In the case of wilful neglect of duty or failure to carry out reasonable instructions, the Authority's disciplinary procedures should be considered. At any time, the manager may choose to pursue the matter under a more appropriate procedure, however if this is the case the manager must confirm that it is appropriate with HR and give the employee reasons for doing so.

4. Informal Pre-Capability Support Plan

- 4.1 Where possible and appropriate before reaching a formal stage, the manager will informally discuss the ways in which the individuals work performance is unsatisfactory, giving the employee the opportunity to comment and inform their manager of any additional factors that may be affecting their performance at work.
- 4.2 Management may want to consider a Development/Coaching Plan Performance Improvement Support plan to support their 1-2-1 meetings. This is a useful continuous development tool. Where there are concerns this would be identified on the plan along with expectations and support put in place to help the employee achieve those goals. Please see appendix 1 for a Performance Improvement Support plan template.
- 4.3 The length of the informal monitoring period will be set according to the details of the particular case but will usually be 6 weeks but can be dependant on the length of term.
- 4.4 Where performance management/support plan has failed to resolve problems of poor performance, the formal process outlined below should be followed. Managers should discuss the matter with their HR representative. This procedure should be given to the employee prior to the first formal meeting and they should be told in writing, 5 days before, the date, time and reason for the meeting. Evidence, including notes of all discussions to date, should be collated by the manager for use at the formal meetings and given to the employee in advance. All formal meetings should be recorded in writing and a copy given to the employee.

4.5 The employee can be represented by a trade union representative or work colleague at any of the formal meetings within this process. A member of the Human Resources (HR) team may be present.

5. Formal Stage One – Capability meeting

5.1 If an employee's performance continues to be unsatisfactory or where unsatisfactory performance is sufficient to warrant moving straight to formal action, the manager should discuss this with the employee and invite them to a formal meeting to discuss the concerns.

5.2 The employee 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

5.3 The purpose of this meeting is to establish the facts. The meeting allows the employee, 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.

5.4 The employee 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.

5.5 The points raised by the employee should be documented as part of the Stage One process.

5.6 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 employee 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 5.7 below

5.7 Where the meeting continues, it should address the following:

- Identify the standards of work required
- 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 1), 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.

5.8 At the meeting consideration should be given regarding any reasonable support or training that would assist the employee in achieving a satisfactory standard of performance.

5.9 Reasonable measures to assist the employee to meet agreed objectives and perform at the level expected should be discussed and documented.

5.10 The employee 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.

5.11 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.

- 5.12 A copy of the First Improvement Notice will be retained on the employee'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.
- 5.13 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.
- 5.14 A formal review meeting should be held at the end of the specified monitoring and review period (see section 6).

6. Formal Stage Two – Review Meeting

- 6.1 A formal review meeting will be held at the end of the monitoring and review period to evaluate whether sufficient improvement in performance has been made.
- 6.2 The Review Meeting will be between the manager and the individual concerned and, where there has been no significant improvement, in the presence of and chaired by the Headteacher.
- 6.3 The employee 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
- 6.4 At the review meeting the person(s) chairing the meeting and the employee will discuss the monitoring and review period and any support provided. The person(s) chairing the meeting will assess whether the employee's performance has improved sufficiently. The employee will have the opportunity to comment on their performance during this period.
- 6.5 Following discussion at the meeting, the person(s) chairing the meeting may decide that:
- a) The employee's performance has improved sufficiently and no further action is required under the Capability Procedure. The employee 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 consider 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 the Performance Improvement Support Plan will be revisited. The employee 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.

- 6.6 The employee will receive a letter confirming the outcome of the meeting.
- 6.7 If as a result of the formal stage two meeting the Performance Improvement Support Plan is revisited (6.5c) the employee 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.
- 6.8 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.
- 6.9 A copy of the Final Improvement Notice will be retained on the employee'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

6.9 Where the monitoring period has been extended as per (6.5b) or includes revision of the Performance Improvement Support Plan as per (6.5c), a further review meeting will take place at the end of the second monitoring and review period (follow steps 6 – 6.4) where the following decisions can be made:

- The employee has reached a satisfactory standard of performance and no further action is required under the Capability Procedure (see 6.5a).
- 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.

6.10 If there is subsequent poor performance, and it is clear that the employee is capable of working at the required level, consideration should be given to invoking the disciplinary procedure.

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

7.1 A decision hearing will be arranged where the employee 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 2.

7.2 The Staffing Committee of the Governing Body should call a formal hearing and listen to the response from the employee (or Headteacher) in respect of the Head Teacher's (or Chair of Governors) recommendation and determine appropriate action accordingly

7.3 The employee will normally be given 10 working days' notice in writing of the hearing. The Chair of the hearing will confirm arrangements to the employee in writing, including:

- The areas for development where the employee 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 employee 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

- 7.4 At the hearing the manager will be given the opportunity to put forward their case for dismissal, and the employee will be given the opportunity to present their case against the dismissal.
- 7.5 Both parties may call witnesses and ask questions. HR will attend the hearing to provide procedural advice.
- 7.6 The hearing will normally be adjourned whilst the person(s) hearing the matter consider the evidence put forward and reach a decision.
- 7.7 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 7.8). The employee will be notified in writing of the outcome and of their right of appeal.
- 7.8 Alternative actions might include:
- Acceptance that significant improvements had been made and agreed continued monitoring to ensure this is maintained
 - 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 that is within the individual's skills and capabilities 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 employee – again salary protection will not apply in such circumstances and there will be no rights of appeal against this decision.

8. Formal Stage Four – Appeal

- 8.1 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 15 days of the decision, setting out at the same time the grounds for appeal.
- 8.2 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.

- 8.3 The employee 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 employee 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.
- 8.4 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 timescale may be agreed.
- 8.5 The appeal hearing should consider the evidence presented in relation to the grounds for appeal put forward by the employee; it is not expected that the appeal will constitute a full re-hearing.
- 8.6 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 One and Two in the Capability Procedure.
- 8.7 The employee will be able to present evidence that is directly relevant to the grounds of the appeal. Management will have the opportunity to respond.
- 8.8 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).
- 8.9 The employee will be informed of the appeal decision in writing. The decision of the appeal hearing is final.

Appendix 1

Performance Improvement Support plan

Employee name:	
School:	
Date concerns raised:	
Date support plan commenced:	
Date of meeting:	

Aims:

Context & outline of concerns:

Objectives of planned support

It was agreed that the programme of support needs to focus on the following areas:

-
-
-

How monitoring will take place

-
-

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 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 will be the continuation of the Capability Procedure, which could include my dismissal.

Name - Printed	
Signed - Employee	
Date	

Name - Printed	
Signed - Manager	
Date	

Appendix 2

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 manager 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 employee and his/her companion are allowed to see any statements made by witnesses and to raise questions.

Employee's reply

Give the employee 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 employee 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 employee if there are any special circumstances to be considered
- Keep the approach formal and polite, and encourage the employee 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 employee 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 employee be informed of the outcome of the hearing. The decision will be communicated in writing.