

Capability (Performance) Policy & Procedure

Reviewed 2017

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1.0 Introduction

It is important that school employees effectively perform the duties for which they are engaged.

It is accepted that there are occasions when an employee's performance is identified as below an acceptable standard and when normal day-to-day management support as part of the appraisal process has not resulted in satisfactory improvement.

The Procedure is designed to provide particular support and guidance to those employees whose level of job performance has been identified as below an acceptable standard and of serious concern.

Separate procedures exist for managing discipline and sickness absence from work.

2.0 Definitions and Abbreviations

Throughout the Procedure reference is made to the Manager. This refers to the lead senior manager who has responsibility for managing the employee's performance matters.

HRA means the HR Adviser supporting or advising the Manager responsible for managing an employee's poor performance.

HR means the Human Resources Department.

SLA means the 'Service Level Agreement' bought by schools.

3.0 Employees Covered by this Policy

The Procedure applies to all school employees whose employment is under the purview of the Governing Body/Trust Board/Interim Executive Board.

4.0 General Principles

At formal review meetings the employee will be provided with clear evidence of the performance problems identified and will be given an opportunity to respond.

At every stage of the Procedure the employee will have the right to be accompanied by a trade union representative or a work colleague. It is recommended that any employee requiring such support make contact with their representative at an early stage.

Another manager or the HR Adviser (in schools where the SLA allows for this) may accompany the Manager at any stage of the Procedure where the Manager deems this as relevant to the process and to the matters under discussion.

The timescale set by the Manager over which the employee's performance is to be monitored must be reasonable and appropriate to the particular circumstances. Sufficient time must be allowed to enable the employee to

demonstrate improvement. For guidance the maximum period for the stages to be completed is two terms. If the performance is particularly poor and is having a significant and detrimental effect on pupil learning the process may be much shorter.

Where an employee is subject to capability proceedings and is absent from work due to ill health s/he will be referred to Occupational Health for advice which will be taken into account when determining the most appropriate way forward.

As far as possible there will be consistency in those Managers directly involved in the management/support of the employee throughout the process.

It is accepted that not all capability situations may fall neatly into the Procedure. In such exceptional cases, a process will be adopted that is within the spirit and general scope of the Procedure.

5.0 Redeployment

Good practice requires that redeployment be properly considered prior to any decision to dismiss an employee for reasons of poor performance.

Redeployment may be discussed and considered at any stage in the process.

Details of any/all such discussions must be included in the Manager's written record.

It is recommended that the Manager seek advice from the HR Adviser prior to any discussion about redeployment.

If a suitable post is available and redeployment agreed as viable, the employee will have a trial period in the new post of four weeks. This period will allow the employee to decide whether the new job is suitable and the Manager to assess the employee's performance in the new role.

There is no pay protection for employees who request and who are redeployed to a lower-graded post.

6.0 Roles and Responsibilities

The employee has responsibility for the effective performance of their duties and responsibilities.

The Manager has responsibility for ensuring that the performance of employees meets the required standard.

Should the performance of an employee not be of the required standard it is for the Manager to bring this to the attention of the employee within normal day to day management processes.

If the performance of an employee is of serious concern it is for the Manager to instigate the Procedure.

The employee has responsibility to attend and to participate in any meeting reasonably arranged by the Manager.

7.0 Informal Procedure

7.1 The procedure will only be put into effect once the normal management processes of discussing performance and providing encouragement, guidance, support and feedback have been provided. This must include support plans which have realistic timescales for improvement and must be well documented to be able to evidence the support provided.

7.2 For teaching staff this includes any required appraisal reviews and the school must ensure that informal support as outlined in section 11 in the schools adopted Appraisal Policy and Guidance has been followed prior to implementing this policy. (above moved from introduction and tweaked)

8.0 The Formal Procedure

8.1 Stage One

Once the informal procedure above has been exhausted and in relation to Teachers, when it has been determined at a transition meeting (see section 11 in the Appraisal Policy) that formal capability procedures should commence, the employee will be invited to attend a formal Stage One capability meeting.

The Manager should give a minimum of 5 working days written notice for the formal capability meeting and include a copy of the Procedure and details of the issue/s of concern.

*A draft letter is attached as **Appendix A**.*

The meeting will be conducted by the Headteacher (or Chair of Governors for a Headteacher capability meeting). The purpose of this meeting is to establish the facts and allows the employee to respond to the concerns raised.

The person conducting the meeting may conclude that there are insufficient grounds for pursuing the matter via the capability process and that it would be more appropriate to continue to address matters through the normal supportive management processes. In such cases the capability process will come to an end at this stage and *a draft outcome letter is attached as **Appendix B/C**.*

The person conducting the meeting may adjourn the meeting (e.g. to allow for further investigation or to allow more time to consider additional information) and *a draft outcome letter is attached as **Appendix B/C**.*

In other cases the meeting will continue. Matters for discussion will include the following:

- The performance issues causing concern.
- The improvement that is required.
- Details of any support already provided.
- Any relevant issues raised by the employee.
- The reasonable timescale over which the employee's performance will be monitored.
- Details of how progress will be monitored and by whom.
- Support/guidance that is to be provided.

- Arrangements for regular review during the monitoring period.
- A caution that the potential outcome of failure to effect the required improvement is the termination of employment.
- Date and time of Review Meeting.
- Redeployment – when appropriate and where the employee wishes this to be considered.

Following a Stage One meeting and normally within five working days the Manager will provide a record of the meeting (covering all of the matters discussed) to the employee and to their representative.

Also included will be the arrangements for the Stage Two Meeting.

*A draft letter is attached as **Appendix D**.*

A copy of the letter will be placed on the employee's personal file.

8.2 Stage Two

Review of Performance over Monitoring Period.

At the end of the monitoring period the Manager will review the overall performance of the employee against the targets set. This assessment may include discussions with those appointed to monitor the performance of the employee over the period. Any such nominated person may also be asked to attend the subsequent Review Meeting in order to provide verbal feedback.

Stage Two Review Meeting - Performance targets met.

If, over the period of monitoring, the employee has met the required standard of performance the purpose of the Review Meeting is to discuss the following:

- The performance issues now resolved.
- Any relevant issues raised by the employee.
- Providing that improvement is maintained that formal monitoring of performance is ended and the employee returned to normal management supervision processes.

The Manager will provide a written record of the Review Meeting to the employee normally within five working days. A copy will be appended to the original record on the employee's personal file where it will remain for six months. Subject to the standard of improved performance being sustained during that period all records will then be disregarded.

*A draft letter is attached as **Appendix E**.*

Stage Two Review Meeting - Performance targets not met/partially met.

If over the period of monitoring the performance has not met the required standard the Stage Two Meeting will be held in order to discuss:

- The outcomes of the monitoring process.
- The performance issues continuing to cause concern.
- The improvement that is required.

- Any relevant issues raised by the employee.
- The timescale during which performance will continue to be monitored.
- Details of how progress will continue to be assessed and by whom.
- Any support / guidance to be provided.
- Arrangements for regular review discussions during the monitoring period.
- Date and time of Stage Three meeting.
- Redeployment – when appropriate and where the employee wishes this to be considered.

The Manager will caution the employee that if performance does not meet the required standard by the end of the next period of monitoring the matter may be taken to a Hearing with the termination of employment being a potential outcome.

The Manager will record the discussion (including the caution) providing a copy to the employee normally within five working days of the discussion. A copy will be appended to the record of the Stage One discussion on the Personal File. *A draft letter is attached as **Appendix F**.*

8.3 Stage Three

Review of Performance over Monitoring Period

At the end of the monitoring period, the Manager will review the overall performance of the employee against the targets set. This assessment may include discussions with those appointed to monitor the performance of the employee on a day-to-day basis. Any such nominated person may also be asked to attend in order to provide verbal feedback.

Stage Three Review Meeting - Performance targets met.

If, over the period of monitoring the performance has met the required standard the Stage Three meeting will be held in order to discuss:

- The performance issues now resolved.
- Any relevant issues raised by the employee.
- Providing that improvement is maintained that formal monitoring of performance is ended and the employee returned to normal management supervision processes.

A record of the discussion will be provided to the employee normally within five working days of the meeting. A copy will be appended to the original records on the employee's personal file where it will remain for six months. Subject to the standard of improved performance being maintained during that period, all records will then be disregarded. *A draft letter is attached at **Appendix E**.*

Stage Three Review Meeting - Performance targets not met/partially met.

If, over the period of monitoring, the performance has not met the required standard the Stage Three meeting will be in order to discuss:

- The outcomes of the monitoring process.

- The performance issues continuing to cause concern.
- Any relevant issues raised by the employee.
- Redeployment if appropriate.
- Suspension from work on full pay, pending a Hearing, with a potential outcome of the termination of employment.

The manager will provide a record of the discussion to the employee normally within five working days. *A sample letter is attached as **Appendix G**.*

The Manager will convene a Hearing.

9.0 Hearing Process and Appeals

9.1 Hearing Process

The Manager will provide 10 working days written notice to the employee of any Hearing. The letter will outline the reason for the Hearing, the employee's right to be represented and date, time and location. The Manager will enclose the supporting documentary evidence. The employee will provide any supporting documentation for the Hearing five days prior to the Hearing date.

If the original date is inconvenient the Manager will determine an alternative date within five days of the original date.

The employee is entitled to be accompanied or represented at a Hearing by a TU representative or a work colleague.

Failure to attend the Hearing or to be so represented will not prevent it from taking place.

The Format for the Hearing is attached at **Appendix H**.

The employee will be informed in writing of the outcome of the Hearing within five working days and confirming their right of appeal.

9.2 Outcome of Hearing

The outcome of the Hearing will normally be one of the following:

- A decision that the employee's performance is satisfactory and that no further action will be taken.
- A final period of monitoring, with or without additional support.
- Redeployment to another post within the school (if available and appropriate and where the employee wishes this). Any such redeployment carrying with it no personal protection of salary, if the new post is at a lower level than the current post.
- Termination of employment with notice.

9.3 Appeal Process

The employee has a right of appeal against any decision to terminate employment.

An employee wishing to appeal must write to the Nominated Officer within 10 working days of the outcome of the Hearing, providing details of the grounds of Appeal.

The Nominated Officer will respond in writing within five working days, providing details of the Appeal arrangements.

The employee may be accompanied or represented at an Appeal by a TU representative or a work colleague. Failure to attend the Appeal or to be so represented will not prevent it from taking place.

The Format for the Appeal Hearing is attached at **Appendix I**.

The outcome of the Appeal will be confirmed to the employee, in writing, within five working days.

Following an Appeal Hearing, there is no further right of appeal.

9.4 Authority to make decisions

The Nominated Officer has authority for decision-making at Hearings and may be:

- A Panel of the Governing Body authorised to hear such cases.
- The person or persons formally nominated by the Governing Body to undertake that role.
- The Head Teacher.

The Appeal Panel holds authority for decision-making at an Appeal and may be as follows:

- A Panel of the Governing Body authorised to hear such cases.
- The person or persons formally nominated by the Governing Body to undertake that role OR
- Headteacher.

In any Appeal against dismissal the Panel will comprise three governors.

An HR Representative (normally a Senior HR Adviser) may be asked to advise the Officer/Panel.

The Panel will consider all the evidence and determine an appropriate response.

Appendix A

Sample Letter: Notice of Stage 1 Meeting to Discuss Performance

Dear

Re: Notification of a Meeting - Stage One (Capability Process)

Following the transition meeting on the < > (in the case of Teachers), I am writing to inform you that you are required to attend a meeting in order that I may formally discuss with you your performance at work. A copy of the relevant procedure is attached.

I have made arrangements for the meeting to take place on < > on < > at < > which will be held in < >.

You may be accompanied at this meeting by a representative of your Trade Union or a work colleague.

You are invited to bring with you any information you feel may be relevant to the discussion.

It is important that you make arrangements to attend this meeting. Should you have any difficulties with the proposed arrangements, you must make contact with me immediately, for discussion.

Failure to attend the meeting without prior notice and agreement may result in your pay being suspended.

Should you have any queries regarding the content of this letter, please do not hesitate to make contact with me on <telephone>

Yours sincerely

Sample Letter: Record of Stage 1 Outcome – Insufficient Grounds to Continue or Meeting Adjourned

Dear

Re: Record of Stage One Outcome (Capability Procedure)

I wish to confirm performance details discussed at the meeting held on < > at which you were accompanied by < >

*If a pro forma / matrix has been used for monitoring purposes and covers any/all of the headings below, reference may simply be made to this document where applicable and a copy appended.

Performance Issues causing Concern

Details of Improvement Required

Issues raised by Employee

I have concluded that it is more appropriate for these matters to be addressed through normal management processes and this formal Capability process is now at an end. I will inform your manager of my decision and s/he will be in contact with you to discuss any outstanding issues.

OR

I adjourned the meeting so as to allow time for (further consideration of the material presented/further investigation). The meeting will be reconvened on < > on < > at < > which will be held in < >.

Should you have any queries about the content of this letter please let me know as soon as possible and by <date> at the latest.

Yours sincerely

Sample Letter: Record of Stage 1 Outcome

Dear

Re: Record Of Stage One Outcome (Capability Procedure)

I wish to confirm performance details discussed at the meeting held on < > at < > which will be held in < > at which you were accompanied by

*If a pro forma / matrix has been used for monitoring purposes and covers any/all of the headings below, reference may simply be made to this document where applicable and a copy appended.

Performance Issues causing Concern

Details of Improvement Required

Issues raised by Employee

Timescale for Monitoring

Details of how progress will be monitored during the period and by whom.

Details of support offered and agreed

Date and Time of Next Review

Right of representation at next meeting

Redeployment

Should you have any queries please let me know as soon as possible and by <date> at the latest.

Yours sincerely

**Sample Letter: Record of Stage Two
(Or Stage Three) Outcomes
Required Standard reached**

Dear

Re: Record of Stage Two/Three (Delete as Appropriate) Outcomes (Capability Procedure)

I wish to confirm performance details discussed at the meeting held on < >at which you were accompanied by < >.

Performance Issues now resolved.

Sustained Improvement that is now required.

Relevant issues raised by employee.

As discussed, I am pleased to confirm that your performance has now reached the required standard and the formal monitoring process is now at an end. Normal management monitoring will now be reinstated.

The record of this process will be kept for the next six months and, providing that you sustain the improvement, will then be disregarded.

Should you have any queries regarding the content of this letter, please let me know as soon as possible, and by <date> at the latest.

Yours sincerely

**Sample Letter: Record of Stage Two Outcomes
Performance Remains below Acceptable Standard**

Dear

Re: Record of Stage Two Outcomes (Capability Procedure)

I wish to confirm performance details discussed at the meeting held on < >at which you were accompanied by < >

Performance Issues causing Concern.

Details of Improvement Required.

Issues raised by Employee.

Timescale for Further Monitoring.

Details of how progress will be monitored during the period and by whom.

Details of support offered.

Redeployment.

Date and Time of Next Review and right of representation.

As discussed, your performance remains below an acceptable standard and I have cautioned you that, if your performance does not improve to an acceptable standard over the next period of monitoring, the matter may be taken to a formal Hearing, with potential for the termination of your employment.

Should you have any queries regarding the content of this letter please let me know as soon as possible and by <date> at the latest.

Yours sincerely

Sample Letter: Record of Stage 3 Outcomes

- **Performance remains below acceptable standard.**
- **Redeployment not wanted/appropriate.**
- **Suspension from Work pending Hearing.**

Dear

Re: Record Of Stage Three Outcomes (Capability Procedure) Including Suspension And Notice Of A Hearing

I wish to confirm performance details discussed at the meeting held on < >at which you were accompanied by < >

Review of performance over the period.

Issues raised by Employee.

As discussed, your performance remains below an acceptable standard and I have therefore suspended you from work on full pay, pending a Hearing.

The Hearing will be held in accordance with the attached guidance with a potential outcome of the termination of your employment.

I will write to you again separately with details of the Hearing.

Should you have any queries regarding the content of this letter please let me know as soon as possible and by <date> at the latest.

Yours sincerely

Conduct of Hearing (Capability)

Preliminaries

- a) The employee will have been notified in writing of the details of the Hearing and the right to representation.
- b) Those present will be as follows:
 - The Nominated Officer.
 - Manager/HR Adviser - to present the case.
 - Employee (and Representative).
 - Witnesses called by either side (not in the room until called).

The following may be present if applicable:

- The Director of Children, Young Peoples and Families or his/her representative (Advisory capacity).
 - Headteacher – (Advisory capacity if not hearing or presenting the case).
- c) The employee, representative and the Manager/HR Adviser will enter the room together, when invited to do so.

The Hearing

1. The Nominated Officer introduces all parties, and outlines the procedure.
2. The Manager/HR Adviser presents the facts of the case and may call witnesses.

Questioning of witnesses proceeds in the following order:

Manager/HR Adviser questions the witness.

Employee or Representative questions the witness.

Nominated Officer question the witness.

Director's representative questions the witness.

Witnesses leave the room at the conclusion of their evidence and examination.

3. The employee/representative may seek clarification from the Manager/HR Adviser.
4. The Nominated Officer and the Director's representative may seek clarification from the Manager/HR Adviser.
5. The employee/representative has the opportunity to respond and may call witnesses.

Questioning of witnesses proceeds in the following order:

Employee or representative questions the witness.

Manager/HR Adviser questions the witness.

Nominated Officer may question the witness.

Director's representative questions the witness.

6. The Manager/HR Adviser may seek clarification from the employee.
7. The Nominated Officer and the director's representative may seek clarification from the employee.
8. The Manager/HR Adviser sums up the management case (no new evidence may be introduced).
9. The employee/representative sums up (no new evidence may be introduced).
10. All retire from the room except the Nominated Officer and the Director's Representative (and Head teacher if present in an advisory capacity).
11. The Nominated Officer considers the evidence and determines an appropriate response.
12. Before reaching a decision, the Nominated Officer may recall the parties to clarify points and/or adjourn for further investigation if required.
13. The employee/representative and the Manager/HR Adviser are invited to return and are informed of the decision.
14. The decision and the right of appeal are confirmed in writing within five working days.

Conduct of an Appeals Hearing (Capability)

Preliminaries

- a) Those present will be as follows:
- The Appeal Panel to hear the case.
 - The Nominated Officer/HR Adviser of original panel - to present evidence for the original decision.
 - Appellant (and representative) – to present the case for the appeal.
 - Witnesses called by the Appeals Panel.

The following may be present if applicable:

- The Director of Children, Young People and Families or his/her representative (advisory capacity).
 - Headteacher (advisory capacity if not presenting or acting as a witness).
- b) The appellant, representative and the Nominated Officer and HR Adviser will enter the room together, when invited to do so.

The Hearing

1. A member of the Appeal Panel introduces all parties, and outlines the procedure.
2. The appellant presents the grounds for the appeal and their case for overturning the original decision.
3. Any witnesses called by the Appeal Panel that originally gave evidence in support of the appellant are called at this point.

Questioning of witnesses proceeds in the following order:

The Nominated Officer/HR Adviser of original panel (not both) questions the witness.

Appeal Panel members question the witness.

Director's representative questions the witness.

4. The Nominated Officer/ HR Adviser of original panel may seek clarification from the Appellant.
5. Members of the original Panel and the Director's representative may seek clarification from the Appellant.
6. The Nominated Officer / HR Adviser of the original panel put forward the case for the original decision.
7. Witnesses called by the Appeal Panel that originally gave evidence in support of the Nominated Officer/HR Adviser case are called at this point.

Questioning of witnesses proceeds in the following order:

Appellant or representative (not both) questions the witness.
Appeal Panel members question the witness.
Director's representative questions the witness.

8. The appellant or representative may seek clarification from the Nominated Officer / HR Adviser of the original panel.
9. The Appeal Panel and the Director's representative may seek clarification from the Nominated Officer/HR Adviser of original panel.
10. The appellant or representative is afforded the opportunity to summarise their case (no new evidence may be introduced).
11. The Nominated Officer/HR Adviser of original panel sums up (no new evidence may be introduced).
12. All retire from the room except the Appeals Panel and the Director's representative (and Head teacher if present in an advisory capacity).
13. The Appeals Panel consider the evidence and determine whether to uphold the decision of the original panel.
14. Before reaching a decision, the Appeals Panel may recall the parties to clarify points and/or adjourn for further investigation if required.
15. The employee/representative and the Nominated Officer/HR Adviser of original panel are invited to return and are informed of the decision. There is no further right of appeal.
16. The decision is confirmed in writing within five working days.

Record of document review and amendments		
Date	Amended by	Comments
Policy - September 2014		
September 2017	KP	Clarity re transition meeting