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 **Kirklees**  
COUNCIL

# Teacher Capability Policy

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# 1. Introduction

- 1.1 This capability policy follows the format of the DfE's model policy. It has been consulted on with recognised trade unions.
- 1.2 The aim of capability policy is to provide a clear formal framework in which capability issues and concerns around performance are managed, in line with ACAS requirements. A robust and fair teacher capability process combines support, evidence, and careful management to foster improvement and maintain a high-quality education system.
- 1.3 The term 'capability' is defined as the ability of a teacher to perform their duties to the standards required. Capability processes apply only to teachers and school leaders where there are concerns which the appraisal process has been unable to address.
- 1.4 Except in the most serious cases of persistent failures to meet job expectations, resulting in negative consequences on the pupils and the school, teachers and school leaders should not be placed on capability processes without first undergoing a period of informal support. This support should have clear objectives, timelines and goals that are achievable. Informal support should be provided for a reasonable period (for example a minimum of 6 weeks) to allow for performance improvement. The duration will be determined based on the specific circumstances, with appropriate support in place to facilitate improvement. If no, or insufficient, improvement has been made over this period, the process should move to this formal Capability Policy.
- 1.5 The Head Teacher will ensure that teachers have access to this Capability Policy.
- 1.6 Where 'Head Teacher' is referred to in this document, this includes anybody with management responsibilities.
- 1.7 Where the Head Teacher is managed through this policy, the Chair of Governors (acting on behalf of the Governing Body) will take the place of the Head Teacher in dealing with the process.

## **2. Formal Capability Meeting**

- 2.1 Notification of a formal capability meeting should never come as a surprise to the teacher concerned. Informal support such as a coaching plan or a performance improvement plan should mean that the teacher is fully aware of the concerns being raised and they should have had every opportunity to improve in a supportive environment.
- 2.2 The teacher should be given at least 5 working days' notice of the meeting. The notification letter should include:
- a. The date, time and place of the meeting.
  - b. Details of the performance concerns and the informal support plan process.
  - c. The possible outcomes of the meeting and next steps.
  - d. Their right to be accompanied by either a trade union representative or work colleague.
  - e. Copies of any written evidence.
  - f. Details of any witnesses to be called by management.
  - g. That the teacher can call witnesses, details of which must be shared with the Head Teacher in advance of the meeting.
- 2.3 The meeting will be conducted by the Head Teacher. The teacher will be reminded of any informal support provided as part of the appraisal process (where these have happened) and steps taken to improve performance. Specific reference will be given to the appraisal process along with the agreed objectives and any support agreed to meet those objectives.
- 2.4 The meeting allows the teacher, 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.
- 2.5 The following points are a guide for the discussion at the meeting:
- a. Performance concerns and the informal support plan process. Confirm the suspension of the usual Appraisal Process
  - b. The improved standard required, this must include setting objectives, identifying success criteria or the evidence that will be used to determine improved performance
  - c. 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
  - d. Issue a Performance Improvement Support Plan 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.

- 2.6 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.
- 2.7 Reasonable measures to assist the teacher to meet agreed objectives and perform at the level expected should be discussed and documented.
- 2.8 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.
- 2.9 A decision will be taken at the meeting regarding the required action from one of the following options:
- a. There are insufficient grounds for pursuing the capability issue, the concerns will be addressed informally through the appraisal policy and therefore formal action under the Capability Policy will not proceed.
  - b. It is found that the concerns are as a result of misconduct or ill health, action under the Capability Policy may stop and further action will be taken under another appropriate procedure if required.
  - c. Further investigation proves necessary: the meeting may be adjourned and then reconvened once the investigation is complete.
  - d. There are sufficient grounds for perusing the performance issue within the Capability Policy and a Performance Improvement Support Plan is issued, along with a First Improvement Notice.
- 2.10 A summary of the meeting and the outcome should be confirmed to the teacher in writing. The letter should include what improvement is required, and the timescales for improvement, any support or training to be provided and make the teacher aware of the next stage within the process if sufficient improvement is not achieved, which could ultimately lead to a referral of their case to the Staffing Dismissal Committee, where serious consideration will be given to their continued employment and a dismissal on the grounds of capability.
- 2.11 If the teacher is able to evidence that the Capability Policy has not been followed correctly or applied fairly and this has not been resolved as part of the capability meeting, the teacher can request a review of the decision in writing to the Chair of Governors. This review will include all related paperwork and evidence to enable a decision to be made.

### **3. Formal Capability Review Meeting**

- 3.1 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 Head Teacher.
- 3.2 The teacher should be given 5 working days' written notice of the meeting which must include:
- a. The date, time and place of the meeting.
  - b. Confirmation of the performance concerns that are to be reviewed.
  - c. The possible outcomes of the meeting and next steps.
  - d. Their right to be accompanied by either a trade union representative or work colleague.
  - e. Copies of any written evidence.
  - f. Details of any witnesses to be called by management.
  - g. That the teacher can call witnesses, details of which must be shared with the Head Teacher in advance of the meeting.
- 3.3 At the meeting there should be a discussion with teacher about the monitoring and review period and any support provided. The Head Teacher will assess whether the teacher's performance has improved sufficiently. The teacher will have the opportunity to comment on their performance during this period.
- 3.4 A decision will be taken at the meeting regarding the required action from one of the following options:
- a. The teacher's performance has improved sufficiently, and no further action is required under the Capability Policy. The teacher will be advised that satisfactory performance must be maintained via the appraisal process and that if performance becomes unsatisfactory again under the appraisal process further action may be taken under the Capability Policy.
  - 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 Head Teacher 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 they are put back on a their Performance Improvement Support Plan. The teacher should be informed that failure to improve sufficiently within the set timescale, may result in dismissal. The Head Teacher 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.

- 3.5 A summary of the meeting and the outcome should be confirmed to the teacher in writing. The letter should include what improvement in performance is required, and the timescales for improvement, any support or training to be provided. It will also make the teacher aware of the next stage within the process if sufficient improvement is not achieved, which could include a referral of their case to the Staffing Dismissals Committee, where serious consideration will be given to their continued employment and a dismissal on the grounds of capability.
- 3.6 If as a result of the formal capability review meeting the teacher is placed on a second review and monitoring period (3.4c) 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.
- 3.7 If the teacher is able to evidence that the Capability Policy has not been followed correctly or applied fairly and this has not been resolved as part of the capability meeting, the teacher can request a review of the decision in writing to the Chair of Governors. This review will include all related paperwork and evidence to enable a decision to be made.
- 3.8 Where the monitoring period has been extended as per (3.4b) or where a second Performance Improvement Support Plan is issued as per (3.4c), a further review meeting will take place at the end of the second monitoring and review period (follow steps 3.1 to 3.3), where the following decisions can be made:
- a. The teacher has reached a satisfactory standard of performance and no further action is required under the Capability Policy (see 3.4a).
  - b. There has been no, or insufficient improvement made and performance remains unsatisfactory the Head Teacher will refer the case to the Staffing Dismissals Committee, who will give serious consideration to the teachers continued employment, and a dismissal on the grounds of capability.

#### **4. Hearing to consider dismissal on the grounds of capability**

- 4.1 The purpose of the Hearing is for consideration to be given to all the case information and for a decision to be made, which may include termination of the teachers employment on the grounds of capability.
- 4.2 Consideration should be given to who has authority to hear the case. In most cases this will be the Schools Staffing Dismissals Committee, which must be a panel of three Governors, who are representatives of this committee and who are not staff members of the school.
- 4.3 The teacher will normally be given at least 20 working days' notice, in writing, of the date, time and venue of the Hearing. The teacher must also be advised of their right to be accompanied at the hearing by either a trade union representative or work colleague. It may be possible to agree a shorter timescale by mutual agreement.
- 4.4 The format of the Hearing will allow the opportunity for the presentation and questioning of the information and allow the teacher to respond. Both management and the teacher will have the opportunity to present their case. Appendix 1.
- 4.5 Both parties may call witnesses. Kirklees HR will also attend to advise the panel of Governors.
- 4.6 It is expected that consideration is given to whether any adjustments may be needed to support the teacher at the Hearing.
- 4.7 Arrangements will need to be made for a Note Taker to be present at the Hearing.
- 4.8 The Panel will need to ensure they have all the information necessary to make a decision about the teachers continued employment.
- 4.9 An outcome letter must always be sent as soon as reasonably possible and must inform the teacher they have a right to appeal the decision.
- 4.10 Where a teacher is dismissed, this should be with appropriate notice.
- 4.11 Where dismissal is deemed appropriate and Kirklees Council are the employer, the Chair of the Panel should inform the teacher, that they are making a recommendation for dismissal to the Local Authority, who will then issue the outcome letter. If Kirklees Council are not the employer, the Chair of the Panel will confirm the decision in writing.

## **5. Appeal**

- 5.1 If a teacher feels that a decision to dismiss 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.
- 5.2 Consideration should be given to who has authority to hear the case. This is a Panel of three Governors, who are part of the Schools Staffing Appeals Committee, who are not staff members of the school and have had no previous involvement in the case.
- 5.3 The teacher will normally be given at least 20 working days' notice, in writing, of the date, time and venue of the appeal hearing. The teacher must also be advised of their right to be accompanied at the Hearing by either a trade union representative or work colleague. It may be possible to agree a shorter timescale by mutual agreement.
- 5.4 The Chair of the Panel who made the recommendation / decision to dismiss the teacher will attend the Appeal Hearing to present the management case in relation to the grounds of the appeal and may be accompanied by the Head Teacher who acted at the earlier stages in the process.
- 5.5 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.
- 5.6 It is expected that consideration is given to whether any adjustments may be needed to support an teacher at the Appeal Hearing.
- 5.7 Arrangements will need to be made for a Note Taker to be present at the Appeal Hearing.
- 5.8 The Appeal Hearing may have the following outcomes:
  - a. Confirm the decision of the dismissal hearing
  - b. Overturn the decision of the dismissal hearing, and specify an additional period of time within which performance must improve
  - c. May recommend alternative action (for example, redeployment).
- 5.9 The teacher will be informed of the appeal decision in writing. The decision of the appeal hearing is final.

## 6. Support Available

- 6.1 Any person who may be the subject of a capability process can seek support from:
- a. Professional Associations / Trade Union
  - b. Occupational Healthcare Services
  - c. Head Teacher Support Service (Wellbeing)
  - d. Acas (the Advisory, Conciliation and Arbitration Service) offers free, confidential and impartial advice about all employment rights issues.  
**Acas helpline:**  
Telephone: 0300 123 1100  
Textphone: 18001 0300 123 1100
  - e. **Citizens Advice:** Your [local Citizens Advice](#) can also give free and impartial advice.
  - f. **Equality Advisory Support Service:** Contact the Equality Advisory Support Service for advice about discrimination, equality and human rights in the following website [Equality Advisory Support Service](#) website.

## 7. General Principles Underlying This Policy

### 7.1 Confidentiality

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

### 7.2 Consistency of Treatment and Fairness

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

### 7.3 References

- 7.3.1 If a teacher has been subject to formal capability proceedings in the previous two years, (as stated in The School Staffing (England) (Amendment) Regulations 2012 and the Staffing and employment advice for schools), this must be disclosed to new potential school employers when requested, including details of the concerns which gave rise to this, along with the duration of the proceedings and their outcome must be included.

### 7.4 Definitions

- 7.4.1 Unless indicated otherwise, all references to “teacher” include the Head Teacher.

### 7.5 Delegation

- 7.5.1 Normal rules apply in respect of the delegation of functions by Governing Bodies, Head Teachers and local authorities.

## **7.6 Grievances**

- 7.6.1 Where a member of staff raises a grievance during the capability process the Capability Policy may be temporarily suspended in order to deal with the grievance. Where the grievance and capability are related it may be appropriate to deal with both issues concurrently.

## **7.7 Sickness**

- 7.7.1 If long term sickness appears to have been triggered by the commencement of the formal capability process, the case will be dealt with in accordance with the Attendance Management Procedure. In some cases, it may be appropriate for formal processes to continue during a period of sickness absence.

## **7.8 Monitoring and Evaluation**

- 7.8.1 The Governing Body and Head Teacher 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 Body and Head Teacher will monitor the operation and effectiveness of the school's capability arrangements.

## **7.9 Retention**

- 7.9.1 The Governing Body and Head Teacher will ensure that all written capability records are retained and stored in a secure place in line with their Retention and Disposal Policy.
- 7.9.2 For the purposes of the capability process, where a teacher receives an Improvement Notice, this will be retained on file for a period of 12 months, following the completion of the formal review period. Therefore, if there are performance concerns within the 12 months following the conclusion of the Improvement Notice period, then subject to individual circumstances, the capability process does not have to start at the beginning and the Head Teacher could decide to arrange a Formal Capability Review Meeting, as per section 3.
- 7.9.3 If a teacher has been subject to formal capability proceedings in the previous two years, this must be disclosed to new potential school employers when requested, including details of the concerns which gave rise to this, along with the duration of the proceedings and their outcome must be included. Therefore, for reference purposes, the Improvement Notice will be retained on file for a period of two years following the conclusion of the Improvement Notice period.

## Appendix 1

### Conducting a Hearing to consider dismissal on the grounds of capability

The purpose of the Hearing is for consideration to be given to all the case information presented and for a decision to be made, which may include termination of employment on the grounds of capability due to ill health.

The Chair of the Panel should:

- a. Invite both the management representatives and the employee with their representative into the room at the same time.
- b. If the employee appears without representation, check their understanding about their rights to representation.
- c. Confirm that notes of the meeting will be taken.
- d. Ensure that everyone is introduced by name, job title and to explain their role in the Hearing.
- e. Explain the purpose of the Hearing and the possible outcomes.
- f. Set any time limits for the Hearing.
- g. Confirm any witnesses to be called and record who they are.
- h. Check whether there are any other matters which should be dealt with before the Hearing starts.
- i. Explain that reasonable requests for adjournments will be allowed.
- j. Explain how the Hearing will be conducted, as below.

The format of the Hearing should be:

- a. The Head Teacher, supported by Kirklees HR will present details of the management case.
- b. The employee will then be given the opportunity to ask questions of the management case.
- c. Governors and their HR Advisor may then ask any questions of the management case.
- d. The employee will then be invited to present their case.
- e. The Head Teacher/HR will be given the opportunity to ask questions of the employee.
- f. Governors and the HR Advisor may then ask questions of the employee.
- g. The Head Teacher and employee will then be given the opportunity to sum up their cases if they wish. No new information should be included at the summing up stage. An adjournment to prepare the summing up may be required.
- h. After summing up, the Hearing will be adjourned to consider the information and make a decision.
- i. All parties will leave the room at the same time and will be called back at the same time to be informed of the decision.
- j. The intention should be to reach a decision that day but if this not possible, a discussion will need to take place to determine likely timescales for a decision and how the outcome will be communicated.

It is not necessary to always follow the format described rigidly if it prevents relevant information being identified or issues being explored.