

Capability Procedure Teachers

These guidelines are to provide helpful information to assist the assessment of teacher's performance and are not intended to amount to legal advice.

1.0 Introduction

This procedure applies to centrally employed teachers and head teachers. It will be invoked where there are serious concerns about the employee's performance that the appraisal process has been unable to address.

This policy does not form part of any employee's contract of employment and it may be amended at any time following consultation. We may also vary any parts of this procedure, including any time limits, as appropriate in any case.

2.0 Review period

This policy will be reviewed in September 2016.

3.0 Capability Process

3.1 Before the meeting

When the line manager decides that the concerns highlighted in the appraisal have not been addressed and there is no improvement then the employee will be invited to a formal capability meeting to discuss the identified poor performance as specifically as possible.

The line manager will write to the employee at least 5 working days in advance of the meeting to confirm:

- a) the date, time and place of the meeting.
- b) sufficient details of the concerns about the employee's performance and the possible consequences to enable the teacher to prepare to answer the case
- c) the employee's right to be accompanied by a companion who may be a colleague, a trade union official or a trade union representative who has been certified by their union as being competent.
- d) the titles of any documents to be used at the meeting. Copies must be enclosed.
- e) the names of any witnesses to be called
- f) that they have the right to call witnesses on their behalf.
- g) the name and position of any advisor who will accompany the senior manager at the meeting.

An extra copy, together with any enclosures, will be provided for the employee's companion.

3.2 At the meeting

The meeting is intended to establish the facts. It will be conducted by a senior manager delegated by the head teacher (or the assistant director / head of service for head teacher). The meeting will allow the employee 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.

The senior manager may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases, the capability procedure will come to an end.

The senior manager may also adjourn the meeting if it is decided that further investigation is needed, or that more time is needed in which to consider any additional information. In other cases, the meeting will continue.

During the meeting, or any other meeting which could lead to a formal warning being issued, the senior manager will:

- In the case of a teacher, identify the poor performance, including which of the standards expected of the teacher is not being met;
- Ensure the employee is given an opportunity to ask questions, present evidence, call witnesses, respond to evidence and make representations;
- Establish the likely causes of poor performance including any reasons why any measures taken so far have not led to the required improvement;
- Give clear guidance on the improved standard of performance needed to ensure that the employee can be removed from formal capability procedures which may include the setting of new objectives focused on the specific area/s of poor performance that need to be addressed. It will include any success criteria that are appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made;
- Identify whether there are further measures which may improve performance and explain any support that will be considered and planned to help the employee, e.g. in-service training, visits to other schools, discussion with appropriate colleagues or professionals;
- Set out the timetable for improvement and explain how performance will be monitored and reviewed. The review period should ideally be for no more than 8 weeks. In serious cases this procedure can be shortened to 4 weeks where the education, health or wellbeing of children is in jeopardy
- The timetable will depend on the circumstances of the individual case but will be reasonable and proportionate, between four and eight weeks in normal circumstances, and will provide sufficient opportunity for improvement to take place. The length of time required will depend on the concerns raised with the employee, the nature of any support and training required, and sufficient time to establish whether performance has improved;
- Warn the employee formally that failure to improve within the set period could lead to a final written warning which could then lead to his/her dismissal. In very serious cases this warning may be the final warning.
- Inform the employee of the right of appeal
- Agree with the employee and any companion the date of the formal review meeting

Notes will be taken of formal meetings and a copy sent to the employee and any companion. Where a first warning is issued, the employee will be informed in writing of the matters discussed. The letter will also state that failure to achieve an acceptable standard of performance (within the set timescale), may result in a final written warning which could then lead to dismissal if wholly satisfactory performance is not achieved. The letter will set the time limit for appealing against the first written warning.

If the concerns relate to a lack of capability that poses a risk to the health, safety or well-being of children, or is likely to result in serious damage to pupils' education, the senior manager may exceptionally decide to issue a first and final written warning.

4.0 Sickness absence

It is important that sickness absence should not delay or avoid the use of formal capability procedures. It is in the interests of all parties to address concerns about performance without undue delay. Arrangements will normally be made to seek medical advice from an occupational health adviser to assess the employee's health and fitness for continued employment.

Consideration will be given to whether poor performance may be related to a disability and, if so, whether there are reasonable adjustments that could be made to the employee's working arrangements, including changing the employee's duties or providing additional equipment or training. The council may also consider making adjustments to this procedure in appropriate cases e.g. moving from this procedure to the Attendance Policy.

If an employee's medical condition is not serious enough to warrant a consideration of termination of employment on the grounds of ill health, the occupational health adviser will normally be asked to assess whether an employee absent through sickness is fit enough to attend a meeting under this procedure. In the event that the employee is deemed not fit to attend a formal capability meeting then they may present a written submission for consideration and/or be represented by a companion in their absence.

5.0 Formal Review meeting

A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. Following this monitoring and review period, the employee will either:-

- be invited to a formal review meeting,
- or be invited to a decision meeting (see paragraph 7 below). This will apply if they had been issued with a final written warning at the capability meeting.

At least 5 working days' notice will be given for a formal review meeting. The letter will provide the time and place of the meeting and will advise the teacher of their right to be accompanied by a companion who may be a colleague, a trade union official or a trade union representative who has been certified by their union as being competent.

The formal review meeting will follow a similar procedure to that identified for the formal capability meeting as set out in paragraph 3.2 above.

If the senior manager (or assistant director for the head teacher) is satisfied that the employee has made sufficient improvement, the formal capability procedure will cease and the appraisal process will re-start.

In cases:

- where some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period;
- where no, or insufficient improvement has been made during the monitoring and review period, the employee will receive a final written warning.

Notes will be taken at the formal review meeting and a copy will be sent to the employee and any companion.

Where a final warning is issued, the employee will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale of no more than 4 weeks), may result in dismissal. They will be given information about the further monitoring and review period and the procedure and time limits for appealing against the final written warning. The date for the decision meeting will be agreed with the employee and any companion.

At this stage, rather than refer the matter to a decision meeting, consideration could be given to the employee being given a different range of duties or an alternative post. By agreement, this may

include transfer to a post suited to the employee's capabilities. If this post is at a lower salary level, the substantive lower salary would apply.

6.0 Appeal against decision taken at Formal Review meeting

If an employee feels that a decision to issue a first and/or final written warning, is wrong or unjust, s/he may appeal in writing against the decision

Appeals against a written warning shall be restricted to considering the reasonableness of the decision made by the senior manager, any relevant new evidence not previously available to the senior manager or any procedural irregularities. A statement giving the reasons for the appeal should be submitted to the senior manager within two weeks of the formal written warning having been received.

All appeal hearings will be held as soon as possible after receipt of the appeal at an agreed time and place.

The appeal will be heard by an alternative senior manager in accordance with the council's [Appeal Policy](#) and [Appeals Procedure](#). The employee will be informed in writing of the results of the appeal hearing as soon as possible.

The same arrangements for notification and the right to be accompanied by a companion will apply for an appeal hearing as for the formal capability and review meetings and, as with those meetings, notes will be taken and a copy sent to the employee and any companion.

Pending any appeal the employee will be expected to continue to work in accordance with targets set for the next stage of the procedure and his/her progress towards the achievement of these targets may be monitored during this period.

7.0 Decision meeting

At least 5 days before the date of the decision meeting a letter will be given in writing together with details of the meeting as in paragraph 3.1 above. The meeting will normally be chaired by a head of service from within the department of the employee concerned who has not taken part in the review process. Where these officers have been involved with the review or are otherwise not available, then a director, assistant director or head of service from another department may be asked to conduct the meeting. An HR business partner will be present to advise the chair.

If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end and the appraisal process will re-start.

If progress has been made and there is confidence that wholly satisfactory performance will be achieved by a short extension, it may be appropriate to extend the monitoring and review period rather than to dismiss. The final written warning will be extended for a short specified assessment period.

If performance has remained unsatisfactory, a decision will be made that the employee should be dismissed. The employee will be informed in writing as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and whether the notice is to be served or there will be pay in lieu of notice, and the right of appeal.

8.0 Right of Appeal against decision to dismiss

The employee has a right of appeal against dismissal. The procedure to follow is detailed in the council's Appeal Policy and Procedure. A statement giving the reasons for the appeal should be submitted to the senior manager within two weeks of the dismissal letter being received.

9.0 Grievances arising during the procedure

Where an employee has a grievance against the way the senior manager has conducted the procedure this will normally be dealt with under the appeals process set out above. However, in very exceptional circumstances, where the behaviour of the senior manager is the cause of the grievance, it may be appropriate to suspend this procedure for a short period until the grievance has been considered

10.0 Trade Union Officials

Although normal performance standards must apply to an employee who is a lay trade union official, no disciplinary action, beyond an informal oral warning will be taken until the circumstances of the case have been discussed with the relevant professional trade union officer.

11.0 Recording

The employee, and anyone accompanying the employee (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure. Failure to observe confidentiality could be a reason for disciplinary action being taken.

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