



Sir Alexander Fleming Primary School and Nursery Capability of Staff

Reviewed September 2020
Next Review September 2021

Rationale

It can be recognised from time to time that employees may, for a variety of reasons have difficulty in sustaining the required level of good performance. It is therefore reasonable for Governors/Headteachers to support such employees to a return to former efficiency. However, when it becomes apparent that such support is not having the intended results, it may be necessary to look at a more formal management approach. This policy offers guidance to Governors/Headteachers to try to work with the employee to have a positive outcome i.e. regaining sustained good performance. However, if that is not achieved, it also offers a formal framework in which to support and manage the employee.

The formal section of this policy has been taken from Part B of the Department for Education's Teacher Appraisal and Capability procedure. This capability procedure is a stand-alone policy that sits outside of the appraisal process. This differs from the approach taken by the Department for Education. This is to ensure that both capability and appraisal policies are used appropriately and fairly and encourage sustained good performance. It also complies with the requirement to ensure Schools have a policy to deal with under performance. However, the appraisal process may highlight concerns in performance which may lead to either a supportive and/ or formal approach.

The formal section reflects the ACAS Code of Practice on disciplinary and grievance procedures.

The aim of this policy is to sustain good performance and this requires clear communication in terms of shortfalls, support and the required outcome expected within a specified timeframe.

This policy can be used for all employees within the school. Where the capability of the Headteacher is being reviewed, the Chair of Governors (or nominated other Governor) will assume responsibility. For all other employees, this responsibility will lie with the Headteacher or appropriate manager.

Support

Regular discussions Headteachers have with employees regarding the duties they undertake are a valuable tool in monitoring workload, offering advice, support and praise for a job well done. This may be done as part of an appraisal process or generally as part of management responsibilities.

They are also the opportunity to talk about any concerns the employee may have or difficulties they are experiencing. They provide an opportunity to resolve any concerns together and in a supportive manner.

For example, where the employee has an uncharacteristic dip in performance. This may highlight that there are personal reasons behind the dip in performance and you may be able to provide support*.

This could include (although is not an exhaustive list):

- Offering the counselling leaflet
- Temporary reduction in hours
- Temporary amendment in duties
- Temporary change to the working pattern

You will need to review the support within an agreed timeframe. The expectation is that this is a very short-term measure, which should result in a swift return to sustained good performance.

However, if you have not observed the expected outcome or you are in a situation where you have continued concerns regarding an employee's performance, you may wish to consider having a more in depth meeting with the employee, which would highlight your concerns.

This should be a supportive meeting to identify shortfalls, where possible identifying the reasons behind them and establishing what the required level of performance should be. The employee should be encouraged to contribute to the discussion and where relevant, contribute to suggestions for an action plan. Discussions should refer to any relevant professional standards.

Examples of support* may include:

- Mentoring
- Shadowing
- Targeted on or off the job training
- Discussing relevant professional standards
- Regular meetings with an experienced colleague to discuss problems
- Short secondments
- Access to the counselling service
- Temporary reduction in hours
- Temporary amendment in duties
- Temporary change in working pattern

*Indicates that both lists of support are interlinked and it is not the intention that one list is exhausted before moving onto the other. Support is given based on the needs of the individual.

Whilst the aim of this procedure is to achieve sustained good performance, the potential outcomes of not achieving this should also be made clear too. Therefore, you may decide to give a copy of this procedure to your employee with an accompanying letter (Appendix A).

Time-frames

Time-frames for this support will vary depending on each individual case and the demands/situation of the school.

It is not intended that there is an automatic progression to formal proceedings if an employee has not sustained good performance during this supportive time. Each case should be reviewed individually and in line with the needs of the school. This progression may be necessary in some cases but in others the situation may benefit from a further period of support.

Time-frames should always be made clear in any discussions as should expected outcomes and the support provided. When it becomes apparent that after agreed support within the agreed time-frames the expected outcome has not been achieved, and all other possibilities have been exhausted, the formal process will then need to be followed.

Whilst you have an agreed timeline of when you will review the support that has been put in place, you may find it beneficial to have regular catch ups with the employee to ascertain how they are finding the support, to determine whether it needs to be amended.

Improved performance

Where the employee achieves the objective/aim of the support, the support can be withdrawn. Clear expectations should be given to the employee regarding the sustained levels of performance and what may happen if their performance either dips again or is not sustained.

This could include a general discussion after a few weeks just to monitor that good performance has been sustained. If this has not been sustained then a further period of support may be considered before a move to the formal stages. Where there are serious concerns, then it may be necessary to move to the formal stages.

Trade Unions

Trade Union representatives can play an important role, not only in representing the employee but also to facilitate the process. Employees should be encouraged to contact their trade unions not only for representation but also for advice and guidance.

As the aim of this process is to seek sustained good performance through support offered by the school, it is not normally expected that Trade Union will be present during the initial meetings. However, if the employee would like the support of their trade union, it should be considered.

Formal Capability Meetings

Where previous support provided by the Governor/Head Teacher has not achieved sustained good performance, it may be necessary to follow the steps of this formal procedure.

The aim of this should still be to achieve sustained good performance and there are opportunities where the capability procedure can end. However, there is also the possibility that should the sustained good performance not be met, formal warnings may be issued and ongoing poor performance may result in dismissal.

Moving to this procedure will halt the appraisal process for teachers.

A minimum of 5 working days' notice will be given of the formal capability meeting. You should give the employee written notification of the meeting, which will contain information about the areas of underperformance, including reference to any relevant professional standards and the possible consequences. It must also contain copies of any written evidence; details of the time and place of the meeting; and will advise the employee of their right to be accompanied by a trade union representative, companion or colleague (Appendix B).

Formal capability meeting

This meeting is intended to establish the facts. It will be conducted by the Chair of Governors (for Headteacher capability meetings) or Headteacher (for other employees). The meeting gives the employee an opportunity 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 already collected (Appendix C).

The person conducting the meeting 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 supportive measures. In such cases, the capability procedure will come to an end.

The person conducting the meeting may also adjourn the meeting for example if they decide 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.

The meeting will:

- identify the professional shortcomings
- give clear guidance on the improved standard of performance needed to ensure that the employee can be removed from formal capability procedures
- explain any support that will be available to help the employee improve their performance;
- set out the timetable for improvement and explain how performance will be monitored and reviewed.
- warn the employee formally that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning (Appendix D).

Notes will be taken of formal meetings and a copy sent to the employee. This could either be in note or letter format. Where a warning is issued, the teacher will be informed in writing of the matters covered in the bullet points above and given information about the review stage and right of appeal.

Issuing warnings

Issuing a warning is relevant to any case where continued concern about the standard of performance is justified. The decision on which level of warning to issue will depend on the seriousness of the problem. If performance is unsatisfactory, a written warning will be the next step.

In the situation of very serious cases (e.g. where the education or health and safety of the children is in jeopardy), a final written warning could be issued. Should this be issued, the employee will then be invited to a decision meeting rather than a formal review meeting at the end of the specified time period.

Please see below types of and currency of warning:

1. Written warning (live for 6-12 months)
2. Final written warning (live for 2 years)

Where an employee is issued a warning but reaches the acceptable levels of performance to end the capability procedure, the warning is still valid for the remaining period of time. Should this level of performance decline again and the warning is still valid, the formal stages of the capability will be reinstated.

Where levels of performance decline again but this is outside of the time limit of the warning, consideration should be given to the severity of the decline and proximity to the end of the warning in considering what level of the process is reinstated.

Monitoring and review period following a formal capability meeting

A performance monitoring and review period will follow the formal capability meeting. Whilst review periods will depend on the individual circumstances of each case, the minimum review period is 4 weeks. The employee will be invited to a formal review meeting, unless they were issued with a final written warning, in which case they will be invited to a decision meeting (see below).

Formal review meeting

As with formal capability meetings, a minimum of 5 working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the teacher of their right to be accompanied by a trade union representative, companion or colleague.

If the person conducting the meeting is satisfied, that the employee has made sufficient improvement, the capability procedure will cease and the appraisal process for teachers will re-start.

In other cases:

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

As before, notes will be taken of formal meetings and a copy sent to the employee. The final written warning will mirror any previous warnings that have been issued.

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), may result in dismissal and given information about the handling of the further monitoring and review period and the procedure and time limits for appealing against the final warning. The employee will be invited to a decision meeting.

Decision meeting

Notice for the decision meeting will be 10 working days. The notification will give details of the time and place of the meeting and will advise the employee of their right to be accompanied by a trade union representative, companion or colleague.

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 for teachers will re-start. If performance remains unsatisfactory, a decision, or recommendation to the Governing Body will be made that the employee should be dismissed or required to cease working at the school.

In Academies, Trusts, Foundation Schools, Voluntary Aided Schools and Foundation Special Schools, the governing body is the employer but the power to dismiss can be delegated to the head teacher, to one or more governors, or to one or more governors acting with the head teacher.

In Community, Voluntary Controlled, Community Special, and Maintained Nursery schools, the power to determine that the employee should no longer work at the school can be delegated in the same way as above but it is the local authority (as the employer) that actually dismisses the employee i.e. issues the notice of dismissal (or for those who work in more than one school – requires them to cease to work at the school).

Before the decision to dismiss is made, the school will discuss the matter with the local authority (*N.B. this is not a legal requirement but schools may find it helpful*).

The employee will be informed 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 their right of appeal.

Decision to dismiss

The power to decide that employees should no longer work at this school has been delegated to one or more governors acting with the Headteacher.

Dismissal

Once the Governing Body/Headteacher has decided that the employee should no longer work at the school, it will notify the Local Authority of its decision and the reasons for it. Where employees work solely at this school, the Local Authority must dismiss them within fourteen days of the date of the notification. Where they work in more than one school, the local authority must require them to cease to work at this school (*Community, Voluntary Controlled, Community Special and Maintained Nursery Schools only*).

Appeal

If the employee feels that a decision to dismiss them, or other action taken against them, is wrong or unjust, they may appeal in writing to the Chair of Governors against the decision within ten working days of receipt of the decision, setting out at the same time the grounds for appeal (Appendix E).

Appeals will be heard without unreasonable delay by the Governors Appeals Committee and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a companion will apply as with formal capability and review meetings (at least 5 working days) and, as with other formal meetings, notes will be taken and a copy sent to the employee (Appendix F).

The appeal will be dealt with impartially and, wherever possible, by managers or governors who have not previously been involved in the case.

The employee will be informed in writing of the results of the appeal hearing as soon as possible.

The decision of the Appeals Committee is final.

General Principles Underlying This policy

Confidentiality

The appraisal and capability processes 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 appraisal system. *Schools to say here how they might achieve this, for example, the head teacher or appropriate colleague might review all teachers' objectives and written appraisal records personally, in order to check consistency of approach and expectation between different appraisers. The head teacher might also wish to be aware of any pay recommendations that have been made.*

Consistency of Treatment and Fairness

The Governing Body is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments for disabled employees. The Governing Body is aware of the guidance on the Equality Act issued by the Department for Education.

Delegation

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

Grievances

Where an employee 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 capability cases are related it may be appropriate to deal with both issues concurrently.

Sickness

If long-term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case will be dealt with in accordance with the school's absence policy. This may include an immediate referral to occupational health regarding the employee's ability to continue with the process or nominate a representative to act of their behalf.

Sickness does not stop the procedure. It suspends it for the period of absence. As part of the return to work discussion, an agreed settling in period will be discussed and confirmed before the procedure continues. This period will be dependant on the type and length of absence but should be no longer than 2 weeks.

Monitoring and Evaluation

The Governing Body and Headteacher will monitor the operation and effectiveness of the school's appraisal arrangements.

Retention

The Governing Body and Headteacher will ensure that all written appraisal records are retained in a secure place for six years and then destroyed.

Appraisal

Where teachers are subject to the formal capability procedures, the appraisal procedures will cease.

Recruitment

Schools are now required in references to ask whether the prospective employee/teacher has been subject to capability procedures in the last 2 years. 11

Appendix A

Optional letter indicating areas of improvement, support and timescales

Date

Confidential

Dear

I write to confirm the outcome of our discussion on (insert date) regarding some areas where your performance has dipped. These are:

List areas and required outcome and support

We agreed that this support will take place for a ...week period and at the end of that period we'll meet again to review. I will also take the opportunity to catch up with you between times to see whether I need to amend the support that has been put in place.

I do hope that this support will help you to make the improvements and achieve sustained good performance.

I have included a copy of the counseling leaflet and capability procedure for your information and if you have any questions of this or have any further queries or suggestions regarding the support, please do not hesitate to contact me.

Yours sincerely

Headteacher/Governor/s

Encs.

Counselling Leaflet

Capability Procedure

(Action plan if appropriate) 12

Appendix B

Letter confirming decision to initiate formal capability

Confidential

Dear

I write to confirm the outcome of our discussion on (insert date)

At our meeting we discussed that improvement is required in your performance in the following areas;

Insert areas

We discussed the support / action plan that had been put in place between ...date and which would address these needs. This is in line with the support provided under the remit of the schools capability procedure.

I enclose a copy of this action plan / support which includes the areas of concerns, agreed outcomes and timescales.

As we discussed, the aim is for you to sustain good levels of performance. Unfortunately, you haven't achieved the outcomes within the given time scales and therefore I will need to continue this support under the formal stages of this procedure. A copy of this procedure is attached for your information.

I therefore require you to attend a formal capability meeting in line with the Capability Procedure.

This meeting will be held at (location) on (date) at (time).

You have the right to be accompanied by a trade union representative or colleague.

The matter/s to be discussed at this meeting are covered in the attached documentation.

If for any reason you are unable to attend the meeting you must inform me as soon as is possible.

Yours sincerely

Headteacher/Governor/s

Encs.

Counselling Leaflet

Capability Procedure

Completed action plan/record of support, agreed & actual outcomes 13

Appendix C

Agenda for Formal Capability/Review/Decision Meeting.

1. Introduce those present and confirm the purpose of the meeting and that employee understands the procedure.
2. Confirm the employee understands their representation rights.
3. Detail the details of capability case.
4. Allow the employee to reply and make any representations.
5. Ask any questions or pursue specific points.
6. Allow employee to make any final points.
7. Adjourn to consider decision
8. Reconvene meeting and ask employee and representative to return
9. Give decision to employee
Where decision is to issue a formal warning
10. Identify professional shortcomings.
11. Give clear guidance on the improved standard of performance needed to end the capability procedure.
12. Explain the support that will be available, and how performance will be monitored over the following weeks.
13. Identify the timetable for improvement and agree a date for the formal review/decision meeting.
14. Explain the level of warning awarded and make it clearly understood that failure to improve may lead to dismissal.

Appendix D

Letter to Employee Confirming the outcome of the formal capability meeting

Date

Dear

Outcome of the formal capability/review meeting - WRITTEN / FINAL WRITTEN WARNING (select as appropriate)

This letter confirms my decision taken at the formal capability meeting of the capability procedure held on (date) which issued you with a written /final written warning (select as appropriate) under the terms of the capability procedure. This warning is effective under the terms of the capability procedure for 6-12 months (specify period)/ two years (select as appropriate) from the date of the formal interview.

This is a serious matter and you must take note of the following points.

This warning is issued to you due to the following professional shortcomings identified at the meeting (details of shortcomings identified as result of investigations).

As agreed at the meeting I will make the following arrangements to support and assist you to secure an improvement in your performance (give details). If you believe that you require any further support, assistance or training you must discuss this with me as soon as possible.

I will make the following arrangements to monitor your performance (give details).

The timetable for this process is (give details).

As a consequence of this you must achieve the following standards of performance in order for the capability procedure to be ended (give clear guidance on standards of performance required).

You must note that continued unsatisfactory performance may lead to further and more serious formal action being taken against you including possible dismissal.

The formal review / decision meeting (select as appropriate) will be held on date, at, location, at time. You have the right to be accompanied at this meeting by a union representative or colleague. 15

You have the right to appeal against the issue of this warning under the terms of the capability procedure. If you wish to appeal you must inform me in writing within 5 working days of receipt of this letter. You have the right to be accompanied at appeal by a union representative or colleague.

The issue of this warning is a serious matter and I require you to take careful note of the points made in this letter.

Yours sincerely

Headteacher/Governor/s 16

Appendix E

Letter Inviting Employee to Attend Appeal Hearing Against the Issue of a Formal Warning

Date

Dear

Following your letter of (date) lodging your appeal against the written /final warning (select as appropriate) issued to you on (date) under the terms of the Capability Procedure, I have arranged for your appeal to be heard by chair of governors/ governor(s) nominated under this procedure (select as appropriate) at (location) on (date) at (time).

You have the right to be accompanied by a trade union representative or colleague at this hearing.

You have already received a copy of the Capability Procedure and Appendix F details the agenda that will be followed at the hearing.

Yours sincerely

Headteacher/Governor/s 17

Appendix F

Agenda for Appeal Hearing against decisions and sanctions made except appeal against Initial Decision to dismiss.

1. Introduce those present and confirm purpose of the meeting and that the employee understands the procedure.
2. Confirm the employee understands their representation rights.
3. Employee to specify grounds for appeal and detail case.
4. Those hearing appeal and those who issued original sanction to ask any questions.
5. Those who issued original sanction to give response.
6. Those hearing appeal and employee to ask any questions.
7. Those who issued original sanction to make any final points
8. Employee to make any final points
9. Adjourn to consider decision.
10. Reconvene meeting asking all parties to return.
11. Give decision.
12. Explain that the decision will be confirmed in writing and that there is no further right of appeal.