

Model Capability Policy & Procedure for Teachers and Support Staff in schools

Contents

1. Introduction	3
2. Model Policy for Capability	4
3. Purpose.....	4
4. Application of the Policy	4
5. Capability Procedure	4
5.1 Informal Capability Level	5
5.2 Formal Capability Level	6
5.3 Formal Capability Warning	6
5.4 Monitoring and review period following a Formal Capability Warning.....	7
5.5 Formal Review Meeting where a First Formal Capability Warning is in place	7
5.7 Formal Review Meeting where a Final Capability Warning is in place	8
5.8 Formal Hearing at which Dismissal will be considered	8
6. Decision to dismiss	9
7. Dismissal	9
8. Appeals	9
9. Unattached Teachers.....	10
10. Headteachers	10
Appendix 1 General Principles Underlying This policy	11
MODEL POLICY FOR CAPABILITY.....	13

1. Introduction

1.1 Revised performance management arrangements come into force with effect from 1 September 2012. They are set out in the [Education \(School Teachers' Appraisal\) \(England\) Regulations 2012 \('the Appraisal Regulations'\)](#) which replace the Education (School Teacher Performance Management) (England) Regulations 2006 ('the 2006 Regulations'). Associated with these Regulations is a requirement for Schools to establish both an [Appraisal Policy](#) and a policy for dealing with lack of capability on the part of staff at the school. This model policy takes account of the DfE model which supersedes previous statutory guidance ("Capability Procedures for Teachers" issued July 2000).

1.2 Schools and local authorities must stay within the legal framework set out in relevant legislation that affects all employers (for example legislation on equality, employment protection and data protection).

1.3 This Model Policy has been designed for use with all employees in the school including teachers, headteachers, non teaching and support staff, and for unattached teachers employed by the Local Authority. Schools may choose to adopt this or another policy, according to Governing Body decision.

1.4 This procedure/policy does not form part of any employee's contract of employment and it may be amended at any time by the Governing Body (or local authority in the case of unattached teachers) following consultation with recognised Trades Unions.

2. Model Policy for Capability

The Governing Body of Stubbings Infant School adopted this policy in January 2017.

The policy has been the subject of consultation with recognised Trades Unions

It will review it in January 2020.

3. Purpose

This policy sets out the framework for managing serious performance issues which may arise from the Schools' Appraisal process or through other routes.

4. Application of the Policy

4.1 This policy applies to all staff including the headteacher and to all teachers, non teaching and support staff employed by the school and unattached teachers employed by the Local Authority, except those on temporary contracts of less than 13 weeks, those undergoing induction (i.e. NQTs) and agency workers.

4.2 Capability concerns arising as a result of ill-health should be addressed in accordance with the school's [Attendance Management policy](#).

4.3 Misconduct, wilfully deficient performance, refusal to follow instructions, negligence and other similar situations should be dealt with under the school's [Disciplinary policy](#).

4.4 The application of this policy is not intended to prevent or limit the normal good management practice of raising and discussing day to day concerns or issues with employees via supervision, 1:1's or other similar means.

4.5 Issues of Capability may arise as a result of lack of skill, aptitude, ability and training, Concerns about an employee's capability may arise through a number of routes including:

- Appraisals process where despite support and opportunities to improve the appraiser continues to have concerns that inadequate progress/improvement has taken place. In these circumstances the employee will be notified in writing that the [Appraisal](#) system will no longer apply and that their performance will be managed under the Capability Policy.
- Other routes including complaints, pupil progress, subject review or specific incidents.

5. Capability Procedure

Where new concerns arise about an employee's capability which cannot be managed via usual management practice (e.g. Para [4.4](#) above), these should normally be dealt with at informal level within the Capability Procedure in the first instance. See Para [5.1](#) below

However the case may be managed, in the first instance, at the Formal level where concerns are serious, or have already been raised during the Appraisal process and, despite support during this time, adequate progress/improvement has not taken place. See Para [5.2](#).

The person managing the capability issues will usually continue to manage the case until any final stage where dismissal may be considered. This will be the headteacher, relevant manager, or Chair of Governors (for headteacher capability issues) - for clarity this will be the 'Designated Person' in text below.

5.1 Informal Capability Level

5.1.1 Where the Designated Person identifies new concerns about the capability of an employee he/she will be invited to an Informal meeting under the Capability Procedure.

5.1.2 At least five working days' written notice will be given of a capability meeting under the Capability Procedure. The notification will contain sufficient information detailing the concerns about performance to enable the employee to prepare to answer the concerns at the meeting. It will also contain copies of any written evidence; the 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/official or a colleague.

5.1.3 This meeting is intended to establish the facts and to determine the appropriate course of action. The meeting allows the employee, accompanied by a trade union representative/official or 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 shared.

5.1.4 Having considered information presented the Designated Person may decide:

- That any issues of concern may be managed outside the capability process through normal management/supervision/appraisal processes
- That a period of improvement should be offered under the Informal level of the Procedure

5.1.5 Where a period of improvement at Informal level is offered the following will be set out at the meeting and confirmed in writing

- The shortcomings or concerns (e.g. the standards, actions or outcomes not being met)
- Clear guidance on the improved standard of performance needed to ensure that the employee can be removed from any Capability Procedure. This may include new targets focused on the specific weaknesses, other instructions or requirements and appropriate success criteria along with the evidence that will be used to assess whether or not the necessary improvement has been made
- Any support that will be available to help the employee improve their performance (e.g. coaching, training, shadowing, specific targets or instructions etc...)
- The timetable and action plan for improvement, identifying a specific review date and explaining how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case, and needs to be reasonable to enable opportunity

for improvement to take place and to be demonstrated (at an informal level a short period of four working weeks is recommended as being reasonable)

- Confirm this as an improvement period at Informal level of the Capability Procedure and explain that failure to improve within the set period could lead to Formal Warning or dismissal according to the circumstances

5.1.6 During the improvement period, performance monitoring, and review should take place in accordance with the agreed plan for improvement.

The Designated Person will consider the level of improvement and progress made during this time and will conclude as follows i.e.

- Where adequate progress/improvement has been made, and the capability concern resolved, the review meeting will be held at the Informal Level
- Where it is considered that insufficient improvement has taken place or further capability issues have arisen the employee will be invited to a meeting at Formal Capability Level (see Para 5.2.1 below)

5.2 Formal Capability Level

5.2.1 The Designated Person will invite the employee to a Formal Capability Level Meeting where:

- new but serious concerns about the capability of an employee have been identified
- issues have already been raised during the Appraisal process and, despite support during this time, adequate progress/improvement has not taken place
- adequate improvement of the Informal Capability Level (paragraph [5.1](#)) has not taken place

5.2.2 The arrangements for the meeting set out in Para 5.1.2 and 5.1.3 will apply

5.2.3 Having considered the evidence and representations the Designated Person may decide:

- That any issues of concern may be managed outside the capability process through normal management/supervision/appraisal processes, or at Informal level within the Capability procedure (see Para 5.1.above)
- That a Formal Capability Warning should be issued

5.3 Formal Capability Warning

5.3.1 Where a Formal Capability Warning is issued, the following will be set out at the meeting and confirmed in writing:

- The shortcomings or concerns (e.g. the standards, actions or outcomes not being met)
- Clear guidance on the improved standard of performance needed to ensure that the employee can be removed from Capability Procedure. This may include new targets focused on the specific weaknesses, other instructions or requirements and appropriate

success criteria along with the evidence that will be used to assess whether or not the necessary improvement has been made

- Any support that will be available to help the employee improve their performance (e.g. coaching, training, shadowing, specific targets or instructions etc...)
- The timetable and action plan for improvement, identifying a review date and explaining how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case, and needs to be reasonable to enable opportunity for improvement to take place and to be demonstrated (a period of four working weeks to a half term is recommended as being reasonable)
- The formal warning may be a First Formal Capability Warning or in very serious cases a Final Capability Warning. The confirmation will also explain that failure to improve within the set period could lead to further warnings or dismissal according to the circumstances.
- Advise of appeal rights and timescales

5.4 Monitoring and review period following a Formal Capability Warning

5.4.1 The performance monitoring and review period should follow. Formal monitoring, evaluation, guidance and support will continue during this period in accordance with the agreed plan for improvement.

5.4.2 Following the review period the employee will be invited to a Formal Review Meeting (see [5.5](#) below i.e. where a First Formal Capability Warning is in place), or in the case of a Final Capability Warning, they will be invited to a Formal Review Meeting in line with [5.7](#) below.

5.5 Formal Review Meeting where a First Formal Capability Warning is in place

5.5.1 As with earlier formal meetings, at least five working days' written notice will be given and 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/official or colleague.

5.5.2 The Designated Person will discuss with the employee the progress made during the review period and will decide as follows:

- Where the Designated Person is satisfied that the employee has made sufficient sustained improvement at the conclusion of the agreed review period, the Capability Procedure will cease and performance will continue to be managed through the Appraisal process or normal management/supervisor arrangements as appropriate. This will be confirmed in writing. However, if within a twelve month period the employee's performance falls below an acceptable level the Designated Person may re-introduce the procedure, commencing at the point at which it is considered appropriate in light of the previous action
- If some progress has been made and there is confidence that more is likely, it may be appropriate to arrange a further monitoring and review period and continue with the current level of warning in place. As before the relevant issues will be confirmed in writing as in Para 5.3.1. At the end of this further monitoring and review period a further Formal Review Meeting will be held

- If no, or insufficient improvement has been made during the monitoring and review period, the employee will receive a Final Capability Warning. The warning will set out the information contained in Para 5.3.1. The employee should also be informed that failure to achieve the acceptable standard of performance required (within the set timescale) may result in dismissal being considered.

5.6 Further Monitoring and Review period

5.6.1 A performance monitoring and review period should follow in line with the provisions in [5.4](#) above. Formal monitoring, evaluation, guidance and support should continue during this period. At the end of this period the employee will be invited to a further Formal Review Meeting (Paragraph [5.5](#)).

5.6.2 Where a Final Capability Warning is in place the Formal Review Meeting will take place in line with Paragraph [5.7](#) below.

5.7 Formal Review Meeting where a Final Capability Warning is in place

5.7.1 This Review Meeting will be held to consider progress made during the Final Capability Warning stage. The process will follow the arrangements set out in Para 5.5.1 and 5.5.2 above.

- However if no, or insufficient improvement has been made during the monitoring and review period, a formal hearing will be arranged with the Governing Body or the headteacher where the power to dismiss has been delegated (see Para [5.8](#) and [6.0](#) below)

5.8 Formal Hearing at which Dismissal will be considered

5.8.1 A formal hearing will be arranged in line with the decision making delegations set out in [Paragraph 6](#) at which dismissal on the grounds of capability will be considered, or alternatively that the employee should either no longer work at the school or in the current role. Where the decision making body is the Governing Body, this will usually be a Staffing Committee of three governors (staff governors should not take part in these hearings or appeals).

5.8.2 The employee will be given seven working days notice of the Hearing to enable representation to be arranged should they choose.

5.8.3 The case will be put by the headteacher/Designated Person managing the Capability process. The employee supported by their trade union representative/official or colleague will have the opportunity to respond.

The Staffing Review Committee may determine one of the following outcomes:

- i. That the matter be referred back to the headteacher or Designated Person to review, with any recommendations for further action and/or support, or,
- ii. That the employee be dismissed on a date which will normally follow the standard notice period, or,
- iii. With the employee's consent, that the employee should be redeployed into a lesser role should one be available

5.8.4 In circumstances where the employee is dismissed, the employee will be informed within five working days of the reasons for the dismissal, the appropriate period of notice, the date on which their employment contract will end, and their right of appeal.

6. Decision to dismiss

For Academies/Foundation Schools, Voluntary Aided Schools

Either: The power to dismiss staff in this school rests with the Governing Body

Or: The power to dismiss staff in this school has been delegated to the headteacher except where he/she has managed the capability case in which case the decision sits with members of the Governing Body

For Community, Voluntary Controlled, Community Special Schools

The power to decide that employees should no longer work at this school has been delegated to the headteacher except where he/she has managed the capability case in which case the decision sits with members of the Governing Body

7. Dismissal

Once the Governing Body (or decision maker – see [paragraph 6](#) above) has decided that the employee should no longer work at the School, the Local Authority will be informed of the decision and the reasons for it. Where an employee works 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, and Community Special schools only).

8. Appeals

8.1 If an employee feels that a decision to dismiss them, or other Formal Warnings issued within the Capability Procedure, are wrong or unjust, they may appeal in writing against the decision within five working days of the decision, setting out at the same time the grounds for appeal. Appeals will be heard without unreasonable delay where possible within 10 working days and at an agreed time and place. The same arrangements for notification and right to be accompanied by a trade union representative/official or colleague will apply.

8.2 Appeal against a Formal Warning will be heard in accordance with the process used in the School for appeals against formal warnings

8.3 Appeal against a Formal Warning against a headteacher will be to a Governor Appeal Committee.

8.4 Appeal against dismissal will be heard by a Governors' Appeal Committee. This will not include governors involved in the dismissal hearing (or any staff governor).

8.5 The employee will be informed in writing of the outcome of the appeal hearing within 5 working days of the hearing.

In 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 headteacher, to one or more governors, or to one or more governors acting with the headteacher. In Community, Voluntary Controlled, Community Special, and Maintained Nursery schools, the power to determine that the member of staff 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 staff (or – for those who work in more than one school – requires them to cease to work at the school).

9. Unattached Teachers

The above procedure will apply to unattached teachers as follows:

- The Designated Person will be a senior manager, usually with management responsibility for the employee
- Appeal against a formal warning will be to the Council's Appeals Panel
- A hearing at which dismissal is considered will be chaired by a senior person authorised to dismiss
- An appeal against dismissal is to the Councils' Appeal Panel

10. Headteachers

Headteachers capability issues will be managed by the Chair of Governors. The Chair of Governors is advised to contact the Local Authority for technical support on issues.

Appendix 1 General Principles Underlying This policy

ACAS Code of Practice on Disciplinary and Grievance Procedures

This Capability Policy is informed by the provisions of the ACAS Code of Practice.

Confidentiality

The Capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the headteacher and governing body to quality-assure the operation and effectiveness of the Capability Policy.

Consistency of Treatment and Fairness

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

Definitions

Unless indicated otherwise, all references to “teacher” include the headteacher.

Delegation

Normal rules apply in respect of the delegation of functions by governing bodies, headteachers 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 unrelated it may be appropriate to deal with both issues concurrently.

Sickness

While it is recognised that Capability Procedures can be distressing and may sometimes lead to an employee feeling unwell, the Governing Body believes that it is in everyone’s best interest to conclude matters as quickly as possible and will work with the employee to achieve this.

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 [Attendance Management Policy](#) including as appropriate referral for Occupational Health advice to assess the employee’s health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

Short absences will not delay any part of the formal stage of the Capability Procedure. All reasonable steps should be taken to enable the employee to attend review meetings, but in exceptional circumstances where s/he is unable to attend, these may proceed in the employee's absence. In such circumstances the employee’s Trade Union representative/official or colleague may attend on his/her behalf and a full account of the review will be provided to the employee in the letter confirming the decision taken.

Redeployment

[Redeployment](#) may be considered during the formal capability process with the agreement of the employee, in line with existing policies and procedures. The offer of redeployment will be made in writing, specifying why the offer is being made, and the timescale by which redeployment should be achieved, the level of salary on offer and the consequences of refusal. Sufficient time will be

given to the employee to consider any offer but there will be no extension to formal warning or dismissal notices issued.

Redeployment to an available lower graded post on grounds of capability will result in the payment of salary appropriate to the new role immediately on appointment - pay protection will not apply.

Redeployment will only be considered where the available evidence suggests that the employee's performance in the new post will be at a satisfactory level, and there is no requirement to create a new post for the purposes of redeployment.

Monitoring and Evaluation

The governing body and headteacher will monitor the operation and effectiveness of the school's Capability Policy.

Retention

The governing body and headteacher will ensure that all written records are retained in a secure place for six years and then destroyed.

MODEL POLICY FOR CAPABILITY

