

Schools Support Staff Capability Policy & Procedure

**Approved by: Schools Human Resources
 Trade Unions**

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1. Policy

1.1 Aim

The aim of the Capability Policy and Procedure is to enable employees to perform effectively in their role and to ensure that cases of poor performance are dealt with fairly and consistently, with the prime objective of improving an individual's performance to the required level.

1.2 Scope

The capability policy and procedure applies to all school based support staff employees with the exception of those staff who are in their probationary period.

Employees who are within their probation period will be covered by the **Schools Probation Policy and Procedure.**

1.3 Definitions

For the purpose of this policy an individual's capability to do their job is assessed by reference to their skills, qualification and aptitude.

1.4 Responsibilities

Employees are responsible for:

- performing their duties to an acceptable standard
- participating in appropriate training and development

Headteacher/line managers are responsible for ensuring that:

- the standards of performance required and the arrangements for monitoring and review are clear to all employees
- ensuring that employees receive appropriate training and development
- arrangements for dealing with incapability for work and poor performance are brought to the attention of all staff
- they take all reasonable measures to promote capability of employees under their responsibility
- occupational health advice is sought, where relevant to a case of incapacity for work
- where disability related issues emerge they are addressed in a positive way and, where necessary, the requirements to make reasonable adjustments are met
- full and accurate records are kept of all formal meetings

Schools Human Resources is responsible for:

- providing advice and support throughout the process
- monitoring the application of the procedure, reporting trends and non-compliance to the Chair of Governors and the Executive Director of Children & Young People's Service
- where applicable notify the General Teaching Council and/or Department for Children Schools & Families

2. Procedure

2.1 Introduction

- 2.1.1 Capability procedures are designed around support mechanisms to assist employees to achieve the desired levels of performance.
- 2.1.2 When issues arise it is important that the headteacher/line manager identify the performance gap and investigate the cause or causes. Once the reason for the gap has been discovered actions can be agreed with the employee to assist them to bridge the gap or work towards other acceptable solutions. Headteachers/line managers and employees should regularly discuss performance against agreed targets and objectives, identifying areas of concern either to the employee, the headteacher/line manager or both and identifying strategies for improvement.
- 2.1.3 Headteachers/line managers need to be clear about the objectives and targets they believe should be achieved by staff, such targets and objectives should always be reasonable and realistic, and employees need to understand what is required of them in terms of their work or attendance and the standards to be met.
- 2.1.4 Ideally, capability concerns should be resolved through informal discussions between the headteacher/line manager and the employee. The formal stages of the procedure should only be used when a headteacher/line manager can demonstrate that informal action has not achieved the desired objective.
- 2.1.5 In very limited and exceptional circumstances, the headteacher/line manager may proceed direct to the formal stages of this procedure. Circumstances where this may occur will only include instances of severe/gross incompetence and which would have a serious and direct impact on the health and safety of clients, service users or colleagues or where the education of pupils is at risk. Headteachers/line managers should seek advice and support from Schools Human Resources.

2.2 Setting standards

- 2.2.1 Headteachers/line managers are responsible for establishing the required reasonable standards of work expected from employees, whilst employees are responsible for understanding and meeting those standards. Headteachers/line managers should support and assist employees to achieve these standards, providing necessary training and support.

2.3 Investigation of concerns

- 2.3.1 If an employee is failing to achieve the expected standard of work, the headteacher/line manager should investigate the problem in an attempt to identify the causes for the poor performance, and work with the employee to improve performance providing appropriate support interventions.

2.4 Disability

- 2.4.1 If the employee is or becomes disabled, under the definitions of the **Disability Discrimination Act (DDA)**, the headteacher/line manager will discuss with the employee any reasonable adjustments to support

them in their work. Schools Human Resources and other appropriate specialist advice should be sought and the employee should be advised of their right to seek advice and support from their trade union.

2.5 Ill health

- 2.5.1 An individual's capability to carry out their role to the expected standard may be affected by their health and their attendance at work. The process for managing long-term periods of sickness absence (4 weeks or more) and managing repeated short-term absence is set out in the **Schools Sickness Policy and Procedure**.

3. Informal stage – Stage 1

3.1 Informal discussions

- 3.1.1 All employees benefit from continuous feedback, reassurance and recognition. In line with the School's performance review process, headteachers/line managers must hold regular one-to-one/supervision review meetings with employees whom they line manage. These meetings should primarily focus on the employee's progress against their agreed work plan and set objectives. The headteacher/line manager should discuss any achievements and review any development that the employee has undertaken.
- 3.1.2 The headteacher/line manager should discuss with the employee any concerns they have regarding the employee's performance. When discussing issues of poor performance the headteacher/line manager should:
- discuss fully their concerns regarding performance, explaining to the employee exactly how they are falling short of the required standard
 - ask the employee for their own views
 - seek any other information to gain a fuller understanding of the reasons for the performance concerns, including medical advice, if appropriate
 - confirm to the employee what will happen next and when the employee's performance will be reviewed
 - consider with the employee what support or actions may assist them to achieve the required level of performance
 - warn the employee of the possible consequences of continued poor performance
- 3.1.3 The headteacher/line manager must confirm these discussions in writing to the employee, confirming what is required to improve performance, how performance will be monitored and reviewed, the review period and warn the employee that formal action will commence if there is no improvement. The headteacher/line manager should set a date for a follow up meeting and/or arrange further support and training.
- 3.1.4 When discussing concerns of poor performance headteachers/line managers need to be specific about their concerns and must demonstrate evidence and/or give examples to support their assertions. Headteachers/line managers should be guided by the aim of this procedure set out above which is to "enable employees to perform effectively in their role" i.e. ensuring that a suitable programme of support is put in place, which may include more regular supervision and/or formal training or coaching.
- 3.1.5 At the follow up meeting, the headteacher/line manager and the employee will discuss any progress/lack of progress the employee has made. The headteacher/line manager should seek as much input from the employee as possible, inviting the employee to fully discuss the concerns raised and their own views on their progress.
- 3.1.6 If after the discussion, the headteacher/line manager is satisfied that the required standards have been achieved, no further action will be taken. However, the headteacher/line manager will continue to monitor the performance in accordance with the performance review process. However, where an employee fails to demonstrate that their performance is improving,

the headteacher/line manager should invite the employee, giving at least 5 working days notice, to attend a formal review meeting to discuss their performance.

4. Formal stage - Stage 2

4.1 Formal review

- 4.1.1 Where an employee fails to demonstrate that their performance is improving, the headteacher/line manager will write to invite them, giving at least 5 working days notice, to attend a formal review meeting to discuss their performance. The letter inviting the employee to attend a formal review meeting will detail the purpose for the meeting, the headteacher/line manager's concerns and advise the employee of their right to be accompanied by a trade union representative or work colleague. The headteacher/line manager may be accompanied by a Schools HR Officer.
- 4.1.2 At the meeting, the employee will be informed of:
- why their performance is considered unsatisfactory and the possible causes of the poor performance
 - what further actions can be taken and agree a structured improvement plan based on realistic set targets and timescales
 - obtain the employee's commitment to reaching an effective level of performance
- 4.1.3 Once action under the formal procedure is started, the maximum period for improvement is two months. In exceptional circumstances if an employee's lack of capability is placing pupils' education seriously at risk, the period may be shorter. Headteachers/line managers should seek advice from Schools HR.
- 4.1.4 Details of the formal review and any decisions discussed will be confirmed to the employee in writing. The headteacher/line manager will also confirm the time period for the employee to reach a satisfactory standard. The letter will serve as a formal written warning advising the employee that their employment may be at risk if their performance does not improve within the set period and any other reasonable action that will be taken.
- 4.1.5 At the end of the set period, the employee should be invited to a meeting to discuss whether the employee has reached the satisfactory standard. The headteacher/line manager may inform the employee whether or not their performance is satisfactory. If the performance is satisfactory, the employee should be informed of the need to maintain satisfactory performance and that any further cause of concern in the next 12 months may result in the headteacher/line manager progressing to stage 3 of the formal procedure. If the employee's performance is not satisfactory, the headteacher/line manager may extend the review period or refer the employee to a formal panel (under stage 3).

5. Formal stage – Stage 3

5.1 Capability hearing

- 5.1.1 If performance issues have been addressed at Stage 2 and, the employee is still unable to achieve the required standard of work then the headteacher/line manager should progress the case to the formal stage capability hearing.

The capability panel shall consist of a minimum of three governors who shall not have had any prior involvement in the case. The Chair of the panel shall be either trained or suitably experienced in chairing formal panels.

5.2 Notification of formal hearing

- 5.2.1 The headteacher/line manager is responsible for convening and managing the arrangements for all meetings held under this procedure, except Appeal Hearings. The headteacher/line manager should write to the employee instructing him or her to attend a capability hearing. The letter instructing the employee to attend the capability hearing should:

- give the employee at least 5 working days notice of the hearing
- set out the date, time and place of hearing and the names of the members of the panel
- should describe the nature of the capability issue and action taken so far
- where possible, be accompanied by the documents that the headteacher/line manager will present at the hearing, although these can be sent under separate cover provided they arrive no later than 5 working days before the hearing. Documents to be considered at a formal hearing should be set out in a logical order, indexed and paginated, with a written introduction including any conclusions and recommendations to the panel.
- advise the employee of the right to be represented by a work colleague or trade union representative
- provide a copy of the Capability Policy & Procedure
- advise the employee that they need to provide any documentation/names of witnesses at least 2 full working days before the hearing.
- explain that dismissal could be an outcome

5.3 Representation

- 5.3.1 Employees may be accompanied at any formal stage of this procedure by a work colleague, or a trade union representative.

5.4 Attendance at a formal hearing

- 5.4.1 The following may attend a capability hearing:
- the employee
 - the employee's representative
 - the panel of 3 governors who will hear the case
 - a School's HR representative who shall act as an impartial advisor to the panel
 - the headteacher/line manager (the presenting manager) who may be accompanied by a Schools HR officer
 - a note taker

- any other member of staff invited by the Panel to advise or give information

5.5 Requests for postponement

- 5.5.1 At the request of the employee the hearing may be postponed on one occasion. The reasons for the postponement must be explained to the chair of the panel, who will decide whether to agree or not to the postponement. If agreed, the employee must give an alternative date, no more than 5 working days after the original date for the hearing.
- 5.5.2 The hearing will not normally be re-arranged more than once. Further requests for postponement of a hearing will be considered on their merits by the Chair of the panel and will not always be agreed. Following one postponement the hearing may proceed in the absence of the employee.

5.6 Order of business

- 5.6.1 The order of business at a capability hearing will normally be:
- Introductions
 - Presentation by management, which may include the calling of witnesses, who may give their evidence, be cross-examined by the employee/representative and questioned by the panel
 - Questions to management by employee/representative and the panel
 - Presentation by the employee/representative, which may include the calling of witnesses, who may give their evidence, be cross examined by management and questioned by the panel
 - Questions to the employee/representative by management and the panel
 - Summing up by the management representative
 - Summing up by the employee/representative
 - Decision of the panel
 - Panels decision to be conveyed in writing

5.7 Outcomes at a formal capability hearing

- 5.7.1 The panel may decide one or more of the following:
- further monitoring and/or training (with a date for review)
 - by mutual agreement, transfer to another post within the school usually of a lower grade without salary protection. The panel will need to identify a suitable post before making this recommendation
 - a final written warning (with a date for review)
 - dismissal with pay in lieu of notice
 - any other reasonable action
- 5.7.2 If a Capability panel decide that further monitoring /training is required then a review date should be set by the panel.
- 5.7.3 If a Capability Hearing previously issued a final written warning and the employee has not achieved the required standards by the review date agreed by the panel, then the headteacher/line manager should refer the case back to the same panel for further consideration. The employee may be dismissed at the follow up hearing.

5.7.4 Where the employee has achieved the required standards by the agreed review date, the headteacher/line manager must in writing inform the employee, the chair of the capability panel and Schools HR.

5.8 Dismissal decisions & ratification

5.8.1 The Governing Body can make a recommendation to dismiss an employee from the school but only the Executive Director of Children & Young People's Service has the authority to dismiss the employee from the Council/School.

5.8.2 Dismissals and notice periods are effective from the date of the dismissal decision. Where a governing body determines that any person employed or engaged by the Local Authority to work at the school should cease to work there, notification of the decision and the reasons for it must be sent to the LA. If the member of staff is employed by the LA, it must within a period of 14 days, issue notice terminating the employment contract.

5.8.3 If the employee is successful at appeal they will be re-instated. It is, however possible that an appeal might be concluded within the notice period.

5.8.4 Confirmation of termination of employment will be provided in writing to the employee along with details of their right of appeal against termination of employment.

5.8.5 The Governing Body of Voluntary Aided and Foundation Schools can make the decision to dismiss and to ratify a dismissal decision.

5.9 Notification of the decision

5.9.1 The decision of the Panel will be notified to the employee in writing as soon as practicable after the hearing, not normally to exceed 5 working days.

The decision will include:

- a description of the capability issue
- the employee's response and views
- the findings of the panel
- the actions to be taken and review period
- the possible consequences of not achieving the required standards
- the right of appeal

5.9.2 If the employee is successful at appeal they will be re-instated. It is, however possible that an appeal might be concluded within the notice period.

5.10 Record of proceedings

5.10.1 It is important to keep written records during the entire capability process.

Records must include:

- the capability complaint against the employee;
- the employee's defence and response;
- findings made and actions taken;
- the reason for actions taken;
- whether an appeal was lodged;
- the outcome of the appeal;
- any grievances raised during the capability procedure; and
- subsequent developments.

- 5.10.2 Copies of meeting records should be taken and if requested, a copy provided to the employee within 10 working days of the hearing.

6. Appeal

6.1 Lodging an appeal

- 6.1.1 The employee can appeal against formal action taken under stage 3 of this procedure. The purpose of the appeal is to review the decision taken by the capability panel, not to re-hear the case.
- 6.1.2 The appeal must be made in writing, to the Chair of Governors/Clerk to the Governing Body (as appropriate), within 10 working days of the date of the letter confirming of the decision. The notice of appeal must clearly indicate the grounds of appeal.
- 6.1.3 The appeal will normally be heard within 20 working days from receipt of the appeal letter.
- 6.1.4 The Chair of Governors or his or her nominee shall arrange for the appeal to be heard by a panel of at least 3 governors who have not had any previous involvement in the case.
- 6.1.5 The employee will be informed of the right to be accompanied by either a work colleague or trade union representative.

6.2 Common appeal conditions

- 6.2.1 The grounds of appeal should relate to one or more of the following:
- a) The procedure**
An appeal can be lodged on the grounds that the capability procedure was applied unfairly or inaccurately.
 - b) The facts**
An appeal can be lodged where the employee believes that the facts of the case did not support the decision made; that the facts considered were not relevant; that the facts were not substantiated; or where there are new facts/evidence which need to be considered that has come to light subsequent to the hearing
 - c) The decision**
An appeal can be lodged where the employee feels that the sanction received is unreasonable in view of the circumstances and mitigation offered by the employee.
- 6.2.2 The appellant will be given 5 working days notice of the appeal hearing along with any documents which management will present at the appeal. The appellant must provide their own documents within 2 working days of the appeal hearing.
- 6.2.3 Order of Business for Capability Appeal Hearings – refer to 5.6 and note that the sequence of business is changed in that it is the employee and then the headteacher/line manager, in that order to make submissions to the appeal panel.

- 6.2.4 The panel will review whether the original decision was reasonable having reviewed the grounds for appeal. The Appeal Panel shall go into as much detail as they consider necessary in order to give a fair hearing within the grounds of the appeal.
- 6.2.5 The decision at appeal shall be either to uphold the original decision of the formal hearing, to issue a lesser sanction, or to overturn the original decision and impose no sanction. This decision shall be final and will be confirmed in writing.
- 6.2.6 Notes shall be taken at an appeal hearing and if requested a copy provided to the appellant within 10 working days of the appeal hearing.

7. Details of approval and variation process

- 7.1 Where the Council/School wishes to amend or terminate this procedure, it will consult with the relevant trade unions with a view to reaching agreement over the proposed amendment(s)/termination. This procedure may be amended or terminated by agreement with the relevant trade unions at any time. Where agreement has not been reached with the relevant trade unions arising from consultations, the Council/School reserve the right to implement its proposed amendment(s)/termination by giving 1 month's notice to employees of its proposal(s)