



## Contents

- **Introduction**
- **Purpose, scope and principles**
- **Misconduct**
- **Definition and separation of roles**
- **Right to be accompanied**
- **Informal management period**
- **The capability procedure**
  - Stage 1 - formal capability hearing
  - Stage 2 - formal capability hearing
  - Stage 3 - formal capability hearing (The dismissal stage)
- **Appeals**
- **Duration of warning**
- **Disputes about the procedure**

### **1. Introduction**

This procedure applies to employees of the Trust. It does not apply to newly qualified teachers or employees in their probationary period in respect of which there are alternative procedures in place.

This procedure does not form part of any employees' contract of employment and it may be amended at any time.

### **2. Purpose, scope and principles**

A capability policy provides a framework for resolving issues where an employee's performance has fallen below the accepted level for the role. The focus is to address issues and see an improvement in the employee's performance, however the procedure also covers the process to follow when performance does not improve.

Concerns raised about performance as well as support and advice given at all stages should be well documented.

At every formal stage in the procedure, the employee will:

- be advised in writing of the nature of the performance concerns
- have the right to be accompanied by their accredited trade union/professional association representative or work colleague

- be given 5 working days' notice of any formal meeting
- have a right of appeal against any warning given

### **3. Misconduct**

In some circumstances performance may be unsatisfactory due to an employee's own negligence or wilful misconduct. In such cases the disciplinary procedure should be used rather than the capability procedure.

### **4. Right to be accompanied**

An employee has the right to be accompanied and supported, at each formal stage of the procedure by a work colleague or an accredited professional association/trade union representative.

The employee should provide the name of their representative within 2 working days of the meeting. Where the chosen companion is unavailable on the day scheduled for the meeting, the employee may request that the meeting be rescheduled to an alternative time that is reasonable and within 5 working days of the scheduled date.

If the employee is unable to attend a meeting within 5 working days the meeting may take place in a timeframe at the Trust's discretion. If the representative remains unavailable, the employee may be asked to choose another representative.

During the meeting the companion may put the employee's case forward and confer with the employee however they may not answer questions on the employee's behalf or make any representations if the employee indicates they do not wish this.

### **5. Informal management period**

**Before** embarking on the formal capability procedure, management will check that through normal performance appraisal and management supervision:

- the employee has been alerted to concerns
- the employee is clear on agreed expectation of standards of performance
- a performance improvement plan (PIP) has been set with support and a timescale for review
- a copy of this policy has been given to the employee

## **6. The capability procedure**

Where performance concerns have not been successfully addressed an assessment will be undertaken to decide if there are grounds for taking formal action under this procedure, including review of any records relating to the employees work performance.

### **7.1 Stage 1 - formal capability meeting**

The employee will be invited in writing to attend any formal capability meeting, the employee will be informed that the appraisal process is suspended and will no longer apply whilst the employee's performance is being managed under the capability procedure.

The employee must make every effort to attend formal meetings and failure to attend without good reason may be treated as misconduct. If the employee fails to attend without good reason or is persistently unable to do so (for example health reasons) a formal meeting will be convened in their absence and the decision taken based on the available evidence.

**7.1.1** The meeting is intended to establish the facts. At this meeting the manager will:

- identify the performance concerns, the support already given as part of the appraisal policy, the standards required and where the shortfall in their performance has occurred
- provide written evidence of the concerns identified (e.g. from job descriptions, supervision notes, classroom observations, examples of pieces of work that do not meet the required standards)
- consider and discuss any causes and reasons for the shortfall including any reasons why the measures taken so far have not led to improvement. The employee should be given the opportunity to discuss any contributory factors they feel may have affected their performance and/or refute the evidence presented if appropriate
- after reviewing the evidence before them and taking into account any contributing factors the employee has put forward, the manager will decide whether:
  - to move into a further period of monitoring without issuing a warning
  - to issue a first written warning
  - to issue a final written warning (serious cases only)

At which point the following will also apply:

- set a PIP and targets for the future standard of performance with agreed objectives set out showing clearly how these will be achieved and measured
- identify the support to be provided to assist the employee in reaching the required PIP (e.g. additional supervision, coaching, observing exemplar lessons) the employee should also be invited to suggest what support that they feel they may benefit from
- set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case but should usually be four to six weeks or half a term. It is for the academy to determine the set period. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for significant improvement to take place
- notes must be taken of the meeting

If, following a response from the employee, it is accepted that it is not appropriate to proceed with the formal capability process; the matter could be addressed via performance appraisal or relevant management support. Otherwise, the decision and reasons for it will be put in writing.

#### **7.1.2 Monitoring and review period following a formal capability meeting**

A performance monitoring and review period will follow the stage 1 formal capability meeting. At the end of the review period a letter will be sent to the employee advising either:

- that performance has improved to a satisfactory level and no further action will be taken
- that substantial but insufficient improvement has been made and the review period will be extended
- that insufficient improvement has been made and the matter will be progressed to a stage 2 capability meeting (or stage 3 if a final written warning has been issued)

Formal support will continue at all stages and informal feedback meetings should be arranged to enable regular updates on performance.

#### **7.2 Stage 2 - formal capability meeting**

The formal meeting allows the employee to respond to the assessment that their performance has failed to improve and to explain the failure. The stage 2 meeting may also be instigated if there is further evidence of poor performance during the period of monitoring following the first written warning.

The meeting will cover:

- the areas in which the employee has not met the required performance standards set out in the PIP and previous warning
- any relevant documents including minutes from Stage 1 formal meeting

### **7.2.2 Outcome of the stage 2 formal capability meeting**

There are three possible outcomes to the **stage 2 meeting**:

- sufficient improvement, in which case the capability procedure will cease and appraisal process will resume
- there has been some improvement, and there is confidence that more is likely, but further support or monitoring is required and the monitoring, review period and PIP will be extended
- if no, or insufficient improvement has been made, the employee will receive either a first written warning if one wasn't issued at the commencement of the formal capability meeting or a final written warning if a first writing warning has already been issued

The decision will be confirmed in writing.

### **7.2.3 Monitoring and review period following stage 2 capability meeting**

A performance monitoring and review period will follow the stage 1 formal capability meeting. At the end of the review period a letter will be sent to the employee advising either:

- that performance has improved to a satisfactory level and no further action will be taken
- that substantial but insufficient improvement has been made and the review period will be extended
- that insufficient improvement has been made and the matter will be progressed to a stage 3 capability meeting

Formal support will continue at all stages and informal feedback meetings should be arranged to enable regular updates on performance.

### **7.3 Stage 3 – formal capability meeting (dismissal stage)**

**7.3.1** Where dismissal is a possible outcome, a panel of three appropriate individuals will normally hear the case. Where this is impracticable, or would cause unreasonable delays, a panel of two individuals may hear the case.

If the case concerns the Headteacher a panel of governors would hear the case.

Copies of all relevant documents will be sent by the academy to the panel members before the meeting.

**7.3.2** At any meeting where dismissal is to be considered, the academy may invite an HR Adviser from their HR Service.

- the role of the HR Adviser is to provide professional advice and support to the panel., they are not a decision maker in the process

Dismissal on the grounds of capability shall be with notice.

The outcome will be confirmed in writing to the employee as soon as reasonably practicable and usually within five working days.

## **8. Appeals**

An employee may appeal against a warning or dismissal at any stage within seven calendar days specifying the grounds of appeal.

Wherever possible the appeal will be heard by an appropriate individual, or panel of individuals, who have not been involved in the decision to impose the original sanction.

The appeal hearing may be a complete rehearing of the matter or it may be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light. This will be at the academy's discretion depending on the circumstances of the case.

The decision of an appeal panel at each stage will be final. The outcome will be confirmed in writing to the employee as soon as reasonably practicable and usually within five working days.

## **9. Duration of warnings**

In circumstances where a written or final written warning is issued it will be placed on the employees personnel file normally for a period of 12 months, unless the employee is notified to the contrary. After the active period the warning will remain permanently on the employees personnel file but will be disregarded in deciding the outcome of future capability proceedings.

If an employee is subject to the formal capability procedure, or has a live warning in place at the time of a reference request, this must be referred to in any employment reference.

There may be occasions when an expired warning cannot be disregarded, such as where the performance is satisfactory throughout the period the warning is in force, only to lapse very soon thereafter. Where such a pattern emerges, an employee's record of previous warnings will be borne in mind in deciding how long any new warning will last or whether it is appropriate to undertake disciplinary action instead, on the basis that the employee has been able to previously demonstrate that capability is not in question.

## **10. Disputes about the policy**

Where there is evidence of poor performance there will be no access to the grievance or harassment and bullying policies and procedures for matters related to the application of the capability policy.

Where issues arise relating to this policy, for example identified support has not been provided; they should be raised during the monitoring period and/or at any subsequent formal meeting or appeal process.

Agreed by

Marina Stone Chair of Governors

Leigh Humphries Headteacher