



Whole School Model Capability Procedure

1. When matters of lack of capability arise they must be addressed through discussion and support as part of the normal operation of the school. Use of this procedure is seen as a last resort. Before using this procedure the Headteacher must be satisfied and able to demonstrate from records, that appropriate support action has been taken.
2. The principal purpose of this procedure is to support and help staff who are failing to reach a satisfactory level of performance. The aim should be to resolve matters at an informal stage through appropriate counselling and support. Only when informal means have failed should the formal procedure (enclosed) be engaged.
3. The guidelines and checklist are deliberately placed at the front of this model procedure, to draw attention to their importance. There is a need to consider very carefully the identification of performance issues and the possible causes, which may point to appropriate forms of support and assistance. This procedure applies to the wide range of staff and capability issues which might arise. Since the jobs of staff substantially differ (e.g. teacher, caretaker, school secretary, S.M.S.A.) the procedure **must** be used with sensitivity, in the circumstances that arise.

In particular:

- The Headteacher and Trades Union/ Professional Association Representative should do their best to ensure that a supportive approach is maintained
- The Headteacher and Trades Union/Professional Association Representative should consider carefully whether a suitable person, independent of the school, could be of benefit. The employee may request an independent assessor and will be provided with a written reply
- Paragraph 7 of the formal procedure enables the number and length of review periods to be matched to the circumstances. Time to make improvements and deliver support is very important. Paragraph 7 enables a further written warning to be issued where a final warning is seen as inappropriate

Guidance & Checklist

A variety of ways are used to assess performance and a variety of courses may exist for rectifying under-performance. The following are some key points to be taken into account. Remember that employees are entitled to be accompanied by a Trades Union/ Professional Association Representative or work colleague when meeting about capability matters.

Definition of Responsibilities/ Duties

1. Reference must be made to the potholders' job description and any other documents which set down responsibilities/ duties.

Standards of Performance Required

2. School management must ensure that employees know what level of work performance is considered acceptable in relation to their responsibilities. Some standards will have been established through training. School specific standards may be set out in various school documents.

Consideration of Individual Performance

3. Concerns about an employee's work performance come to the school management's attention from a variety of sources. It is important to ensure that the concerns are checked and if appropriate, are progressed in a structured, supportive and open way that will involve systematic information gathering about an employee's performance. Where appropriate, other evidence should be gathered.

Establish the Nature and Level of the Difficulty

4. The extent to which the assessed standards of performance are lower than the required standards will demonstrate the employee's difficulty. It may be that this is spread across a range of duties or it is concerned with one particular aspect, e.g. classroom management. It may be that the issue is a very recent concern or it has been a problem over a longer period of time.

Consider the Cause

5. The action to be taken to support the employee will depend to some extent on the cause(s) of the difficulty. Given below is a list of possible causes, although it is not exhaustive.

- (i) the knowledge and technical skills required for the post are changing but the employee has not acquired these new skills and knowledge.
- (ii) circumstances outside the school are affecting the employee's work performance, E.g. domestic/ family problems.
- (iii) circumstances within the school environment are affecting the employee's work performance.
- (iv) the difficulties have been long standing but have only now been recognised.
- (v) the employee has inappropriate interpersonal skills for working in a school.

Note: It may be that more than one cause is relevant in a particular case. School management should check that they consider the issues are a matter of lack of capability and not of ill-health or misconduct. The latter should be dealt with through the arrangements set out in the Disciplinary Procedure. Medical procedures should be completely separate. Cases involving a disability will certainly require careful consideration and personnel or other specialist advice.

Support and Monitoring

6. After meetings, management will write to the employee setting out their concerns, improvements required and detailing the plan of support, which may include:

- timescales e.g. one-term, half a term
- giving of specific guidance/ instructions
- in service training (school based or other as appropriate)
- observation of good practice, within the school or at another school
- a change in role and responsibilities
- seeking to refer the employee to an appropriate source of support/ counselling
- “In class” support e.g. ancillary assistance, special need assistance etc
- extension of review period

The employee should be consulted about this proposed plan and given the opportunity to have an input to this.

7. The parties should seek to agree the choice of a designated person with appropriate skills. A designated person with appropriate skills should monitor performance and progress following a meeting. This monitoring process should include periodic structured meetings, informal discussion and direct support. The employee should be given the opportunity to comment on and contribute to the development of the support programme. It is important that the monitoring is conducted in a sympathetic and non-threatening way - the aim is to improve the employee's performance.

8. A written report of the monitoring must be prepared. A copy of this report should be given to the employee who should be given the opportunity to append his/ her comments.

Checklist of Key Points

Remember:

- If matters of concern arise then the first step should be to provide counselling and support and help to try to assist improvement in informal ways
- To consider other options for dealing with the matter at every stage e.g. redeployment if possible and training with the assistance of the LEA, altering job etc
- To document fully and record each stage of the procedure
- To inform your Chair/ Chairman that you are taking action under this procedure, but not the details of the case, since this would prevent your Chair/ Chairman sitting on an Appeals Hearing
- To identify shortcomings and set targets with reasonable timescales for employees to aim for; to specify help and support to be provided and the monitoring/assessment arrangements
- If you move to the formal procedure and arrange a meeting, to ensure the employee is fully informed (see para. 4 of Model Procedure)
- To ensure the employee is aware of the right to be accompanied by a Trades Union/ Professional Association Representative or work colleague at any meeting concerning capability and has the opportunity to fully give his/ her explanations and to ask questions
- To create a supportive atmosphere in the hearing and to keep in mind that the objective is to provide support and help which will improve capability

- To consider carefully what is said during the meeting and also to consider carefully any relevant argument in mitigation
- To be consistent in the application of this procedure and seek professional advice, e.g. personnel, legal, adviser

Preamble

- a) The term “employee” refers to any member of the staff, employed to work solely at the school.
- b) “Lack” of capability is defined as performance considered to be less than satisfactory for reasons connected with skills, knowledge, aptitude and mental and physical qualities. It is essential to consider the cause of the unsatisfactory performance in relation to the job requirements/ description. Incapability resulting from persistent ill-health should be dealt with under the absence procedure. Monitoring performance will always involve a person with the appropriate skills, other than the person chairing the meetings under this procedure. The parties should seek to agree on the person with appropriate skills for monitoring.
- c) Where the capability of the Headteacher is in question this procedure will be followed with the Chief Education Officer or nominee advising the Governing Body on appropriate detailed arrangements.
- d) Notes of all informal and/ or formal meetings and subsequent action must be kept and provided to the employee. The employee must be informed that they may be accompanied by a Trades Union/ Professional Association Representative or work colleague at any informal and/ or formal meeting under this procedure.

Oral Warning Stage

1. If after appropriate informal action an employee’s performance continues to appear less than satisfactory, the Head, as a first step will counsel the employee on the matters of concern. In the course of these discussions the nature of the perceived problem, appropriate remedies, (e.g. in-service training, visits to other schools, discussion with advisers), will be considered and planned. (See guidelines). The employee will be informed that his/ her performance will be monitored over a period, which will be specified, if such monitoring is considered necessary.
2. If an oral warning is to be given, it should be given at this stage. The fact that an oral warning has been given should be recorded in the notes of the meeting.

Formal Stages

3. If, after the specified period, the Head considers that the employee's performance has not improved, or not improved sufficiently, a formal meeting will be arranged with the employee.
4. The Head will write to the employee at least ten working days in advance to inform him/ her about:
 - a) the date, time and place of the meeting

- b) the specific details of the complaint about lack of capability
- c) the employee's right to be accompanied by a Trades Union/Professional Association Representative or work colleague
- d) the titles of enclosed copies of any documents to be used as evidence
- e) the attendance of an officer and his/ her role; e.g. Personnel Officer, Attached Adviser
- f) the possible outcomes

Note: (At the employee's request, an extra copy of this notice, together with any enclosures, should be provided for his/ her representative).

5. At the formal meeting, the employee (with his/ her representative) will be given a reasonable opportunity to comment on the complaint and to ask questions. At the conclusion, the Head will state his/ her decision and will afterwards confirm this in writing to the employee (and his/ her representative).

First Written Warning

6. If the Head considers that the complaint about lack of capability was justified, she will give the employee a **first written warning**. The warning will make clear:

- a) over what period and in what manner the employee's performance will be reviewed
- b) what aspects of the employee's performance will be assessed and by whom
- c) the help that will be given to the employee. The employee must be invited to make his/ her own proposals as to help and support
- d) that failure to meet the required standards may lead to a final written warning and ultimately dismissal
- e) the warning letter will specify the right of appeal (see paras. 14 - 17), and also make it clear that if the employee's performance becomes satisfactory before or by the end of the review period, the **written warning** will be cancelled

7. If the Head considers that the employee's performance is still not satisfactory by the end of the review period but that a final warning is not justified, the Head may decide to give the employee a further warning, or warnings, in accordance with paragraphs 4 and 5 above, if she thinks these will be fair and effective. The Head may also extend an existing review period to allow more time to the employee.

Final Written Warning

8. If the Head considers that the employee's performance is still not satisfactory, even though improved, by the end of the review period, s/he will call another formal meeting as outlined in paragraphs 4 and 5 above.

9. If at the conclusion of the meeting the Head still considers that the employee's performance is not satisfactory, the Head may decide to issue a final written warning, which will make clear:

- a) over what period and in what respect the employee's performance will be assessed
- b) the help that will be given to the employee. The employee must be invited to make his/ her own proposals as to help and support
- c) and that failure to meet the required standards will lead to a further formal meeting before a Panel of Governors, with a possible decision to dismiss
- d) The warning letter will specify the right of appeal (see paras. 14 - 17) also make it clear that if the employee's performance becomes satisfactory before or by the end of the review period, the final written warning will be cancelled

Governors Panel Hearing

10. If the Head considers that the employee has failed to meet the required standards by the end of the specified review period, the employee will be required to attend a formal meeting before a Panel of the Governors, in accordance with the procedure set out in paragraph 4 above.

The Panel of the Governors must consist of at least 3 Governors who have not been involved in the case.

11. The Panel of the Governors' decisions and reasons will be confirmed in writing normally within five working days to the employee (and his/ her representative).

12. If the Panel's decision is to dismiss, the employee must be given an opportunity to appeal (see 14 - 17 below). If there is no appeal, or the appeal is unsuccessful, the Governors then notify the LEA in writing that the employee is to be dismissed.

13. The Panel of Governors may decide not to dismiss but to issue a further written warning for a specified review period. The employee has a right of appeal against the decision.

Right Of Appeal

14. The employee has a right of appeal against a written warning issued by the Head (see 6 and 9). The appeal goes to a Panel of the Governors, consisting of at least 3 Governors, not previously involved in the case, who must hold a formal meeting with the employee to consider it. It can confirm, reduce or cancel the warning.

15. The employee has a right of appeal against a Panel of the Governors' decision to another Panel of the Governing Body consisting of no fewer than three Governors who have not been involved in the case.

16. The employee's notice of appeal, in writing, including the grounds of appeal should be sent to the Chair/ Chairman of Governors within 10 working days of receipt of the written decision. The formal meeting will only consider evidence relevant to the stated grounds of the appeal. There will not be a full re-hearing.



17. Appeal meetings should normally be held within 20 working days after receipt of the appeal and the employee should normally be formally notified in writing of the outcome of the appeal within five working days.

Trades Union Officials

18. Although normal performance standards must apply to the trade union official as an employee, no action beyond an oral warning should be taken until the circumstances of the case has been discussed with the relevant Trades Union Officer.

Records on Personal File

19. The normal expungement period will be six months for all but final warnings, which will be twelve months. The employee must be informed if a different from normal expungement period is proposed.

Addendum to The LA Model Capability Procedure for Schools

Timetable for addressing Teacher capability under the formal procedure

1. The timescale adopted will be in accordance with the seriousness of the lack of capability. Consideration needs to be given as to whether the problem is a specific or broader professional difficulty, whether it is of recent concern or spanning a longer period of time. Local procedure includes oral and written warnings. Normally, the period given for improvement will be no more than two terms after the date of entry into the formal procedure.

2. However, undue delay may not always be in the interests of all parties. In extreme cases, where the education of pupils is jeopardised, the period given for improvement, after the date of a final warning will be no more than four weeks. In such extreme cases the formal procedure may start at the final warning stage.

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