

CAPABILITY POLICY SUPPORT STAFF

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1.0 INTRODUCTION

- 1.1 This policy is intended to give clear guidance to all concerned where issues of capability are to be addressed and set out the formal Capability Procedure. It also confirms the need to follow the rules of natural justice. Working in line with this policy will enable the school to:
- Provide support to help an employee overcome any difficulties;
 - Meet legislative requirements;
 - Encourage improvement in an individual's performance.
- 1.2 It is essential to have policies which balance the needs of the individual with those of the pupils and the school. Where complaints are made about support staff by parents or other persons outside the school, this policy should be read alongside the School's Complaints Procedure located on the school's website.
- 1.3 The formal Capability Procedure has 6 stages and should normally be preceded by attempts to resolve the matter without reference to the formal procedure. Pre-policy support in the Performance Appraisal Policy should be followed prior to entering stages 1-6 of the formal procedure. Pre-policy support is an opportunity to resolve matters prior to entering the formal capability procedure.
- 1.4 Although part of normal performance management arrangements, Pre-policy support should not be confused with normal performance management arrangements where the line manager/Headteacher would support the individual whose performance was cause for concern. Pre-policy support would be where the individual would be advised to contact their Trade Union Representative in a final attempt to avoid formal procedures. Normally with the support of the union the individual would be given a period of time to demonstrate a significant and sustained improvement, but the period would be dependent upon the nature of the problem and the needs of the school.
- 1.5 The formal Capability Procedure involves the following stages:
1. Informal stage – this stage is part of the formal Capability Procedure
 2. First formal stage meeting
 3. Second formal stage meeting
 4. Third formal stage meeting – Case review
 5. Formal Hearing
 6. Appeal Hearing

2.0 SCOPE

- 2.1 This policy applies to all support staff employed within the Trust about whose performance there are serious concerns that the appraisal process and normal performance management arrangements have been unable to resolve.
- 2.2 The Trust 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 where these are deemed either necessary or appropriate. The Trust is aware of the guidance on the Equality Act 2010 issued by the Department for Education.

3.0 DEFINITIONS

- 3.1 Capability – The ability of an individual to discharge their duties to an acceptable standard. Use of the formal Capability Policy is appropriate where, due to lack of capability, the employee fails consistently and over a period of time to discharge their duties to the acceptable standard. A distinction should be made between this and misconduct.
- 3.2 Confidentiality – Capability proceedings and capability records are confidential to those persons involved. Schools should be mindful of the requirements of the Data Protection Act 2018 and compliance with GDPR.
- 3.3 Days/Weeks – any reference in this policy to ‘days’ means school working days and ‘weeks’ means school working weeks.
- 3.4 Employee – All support staff employed in a school, excluding teaching staff.
- 3.5 Trust (EPT) – Education Partnership Trust.
- 3.6 Manager – This could be a Headteacher, Deputy Headteacher, Chair of Governors, or another nominated person.
- 3.7 Right to Representation – The statutory right to representation applies at all stages of the formal procedure. The right to representation includes a trade union official or work colleague; it does not include legal representation.
- 3.8 Designated Officer/Panel/Manager – the person or persons who may hear a case.

4.0 ROLES AND RESPONSIBILITIES

- 4.1 A manager can issue cautions up to and including a Final Caution in the Capability Policy. After this stage the case will be presented to the appropriate person who will make the decision on whether or not to dismiss. Please refer to your school’s decision sheet for information on who can issue cautions or determine a dismissal.
- 4.2 Appeals – an employee’s appeal against any level of caution issued may be heard by the next level of management within the school or a Governors’ appeal panel. A Governors’ appeal panel must hear all appeals against dismissal.

5.0 CONTEXT

- 5.1 In most cases issues relating to capability can be dealt with informally through normal performance management arrangements – i.e. advice and support and via the Performance Appraisal Policy for Support Staff without recourse to the Capability Policy. The approach to identifying the nature of the employee’s difficulty and providing appropriate support, advice and training must include structured information gathering and systematic recording.
- 5.2 All employees should have a clear job description and clearly defined expectations, which will assist in establishing clear performance standards and objectives as part of the appraisal process.

- 5.3 Everyday processes of support, training and advice are fundamental to an employee's effectiveness and wherever possible any difficulties should be resolved informally in a spirit of partnership. Only where these processes do not succeed in overcoming the difficulties should consideration be given to entering the formal capability procedures.

6.0 IDENTIFICATION OF PERFORMANCE ISSUES AND NEXT STEPS

- 6.1 Performance problems may come to light in many ways, including:
- issues that have been unresolved during the appraisal process;
 - a complaint received from someone internally or from someone externally;
 - observation by a person in the workplace;
 - discussions held with a manager; this might be at an individual's performance review;
 - an unsatisfactory report from an OFSTED inspection, HMI visit or Trust review.
- 6.2 One concern does not automatically trigger the use of the policy; this should be determined by the professional judgment of the manager.
- 6.3 The manager may seek to identify further what the specific problems are by either discussion with the employee or if appropriate, observation in the workplace. This process should be carried out in consultation with the employee and consideration should be given to the levels of monitoring. Excessive monitoring may have a detrimental effect on this procedure.

7.0 PRE-POLICY SUPPORT ARRANGEMENTS

- 7.1 Unless the performance causing concern is sufficiently serious to justify formal action, managers in the first instance should deal with the issue through professional advice and support and via the Appraisal Process for Support Staff, with a view to agreeing corrective action without invoking the formal Capability Procedure. Only where these processes do not succeed in overcoming the difficulties or the issue causing concern is sufficiently serious, should consideration be given to entering the formal Capability procedure.
- 7.2 Managers must identify the nature of the employee's performance issues, gather information and systematically record the details of any corrective action, agreed actions, the support plan and the timescales over which improvements are required and the possible consequences of the employee failing to meet this.
- 7.3 The formal Capability Procedure has 6 stages and should be preceded by attempts to resolve the matter without reference to the formal Procedure. Pre policy support arrangements should be followed prior to entering stages 1-6 of the formal Procedure described below. Pre policy support is a last opportunity to resolve matters prior to entering the formal Capability Procedure. It should not be confused with normal performance management arrangements where the line manager/Headteacher would support the individual whose performance was cause for concern. Pre policy support would be where the individual would be advised to contact their union representative in a final attempt to avoid formal procedures.
- 7.4 Normally with the support of the union the individual would be given up to a maximum of 6 teaching weeks to demonstrate a significant and sustained improvement, but the actual period would be dependent upon the nature of the problem and the needs of the school.

8.0 FORMAL PROCEDURE

- 8.1 In appropriate cases, during the formal procedure the manager may consider looking for redeployment opportunities within their own school when it is clear that the employee is unable to meet the performance targets. The discussion with the employee regarding redeployment will take place at the appropriate capability meeting.
- 8.2 In some exceptional cases the level of concern may be so serious that it is necessary to reduce the length of the review period or 'jump' some stages of this formal procedure. In cases where the education, health or welfare of pupils may be jeopardised, the period for improvements will be much shorter.
- 8.3 Where it is decided to invoke the formal capability procedures it is the responsibility of the manager to:
- inform the employee in writing that the formal procedure is being invoked and advise them to consult with their trade union;
 - provide the employee with 2 copies of the policy (1 for the employee and 1 for their trade union representative);
 - inform the employee that they have a right to be represented by a work colleague or trade unions representative at any meeting convened under the formal procedure.

9.0 FORMAL MEETINGS

Stage 1 - Informal Stage Meeting

- 9.1 Normally, consideration should only be given to entering the formal capability procedure where informal and pre policy support have not been successful. This procedure should not be used where problems can be resolved through everyday processes of advice and support or via the Appraisal Policy for Support Staff including pre policy support arrangements. It is necessary that the nature, level of seriousness and the cause of the specific problems have been identified at the outset. However, it is recognised that a situation could arise where the performance causing concern is so serious that the formal capability procedure should be invoked without any further delay.
- The nature of the discussion and the targets agreed will depend upon the particular difficulties of the employee.
- 9.2 The employee may be represented at the meeting by a work colleague or trade union representative.
- 9.3 It is the responsibility of the manager to:
- consult with HR and the governing body where appropriate;
 - advise the employee of the nature of the problem;
 - advise the employee they will be given the opportunity to state their case before any decision on action is taken;
 - arrange the meeting;
 - identify ways of bringing performance up to the standard required through support, training and advice;
 - advise the employee that they may be represented at the meeting by a work colleague or trade union representative.

9.4 The employee should be given 5 days written notice of the meeting together with details of the nature of the problem.

9.5 The discussion should be undertaken through a formal meeting with the employee.

At the Informal stage meeting:

- any documents or evidence arising from previous meetings must be brought to the meeting by both parties;
- if new information arises at the meeting the manager may adjourn the meeting to allow for further investigation;
- areas of unsatisfactory performance must be made very clear, with specific examples;
- clearly defined targets for performance improvement should be identified/ agreed. All targets should be Specific, Measurable, Attainable, Reasonable, and Time-limited (SMART);
- the guidance and support that will be offered should be identified/agreed and the employee informed if an independent person will be used to produce the final monitoring report.;
- the timetable for improvement and date for the next meeting should be set/agreed (this is recommended to be in 6 weeks).

9.6 The usual period for the employee to demonstrate a significant improvement will normally be 6 teaching weeks, but this could be shorter dependent upon the nature of the problem, a marked failure to make improvement or the needs of the school. If there are still concerns, it should be pointed out that unless the standard of work improves, it may be necessary to progress through the formal procedure.

9.7 The manager should keep a formal written note of discussions held in the employee's personnel file held at the school; this note should be copied to the employee and may be referred to in any subsequent meetings within the formal procedure.

9.8 If the employee has made a significant improvement and achieved satisfactory standards during the 6-week period, the manager should meet with them at the end of the six-week period to review the informal stage and advise them that there is no further action. If the employee has not met satisfactory standards the manager should advise them of this in a formal meeting at the end of the 6-week period when reviewing the informal stage before proceeding to the first formal stage meeting.

Stage 2 – First Formal Stage Meeting

9.9 If satisfactory standards have not been achieved through the informal stage then the manager should proceed to the first formal meeting.

9.10 The employee should be given 5 days written notice of the meeting together with details of the nature of the problem.

9.11 The employee may be represented at the meeting by a work colleague or trade union representative and must be advised of that.

9.12 The discussion should be undertaken through a formal meeting with the employee.

At the First Formal Stage meeting:

- any documents or evidence arising from previous meetings must be brought to the meeting by both parties;
- if new information arises at the meeting the manager may adjourn the meeting to allow for further investigation;
- areas of unsatisfactory performance must be made very clear, with specific examples;
- clearly defined targets for performance improvement should be identified. agreed. All targets should be Specific, Measurable, Attainable, Reasonable, and Time-limited (SMART);
- the guidance and support that will be offered should be identified/ agreed and the employee informed if an independent person will be used to produce the final monitoring report;
- the timetable for improvement and date for the next meeting should be set/agreed (this is recommended to be in 6 weeks).

9.13 The purpose of the meeting is to review performance, assess progress in relation to the areas of improvement, offer appropriate support, discuss any final monitoring report which has been produced agree targets for the next 6 weeks and determine the way forward.

The outcome of the meeting will be either:

- no further action required as sufficient improvements have been made; or
- extend timescales for improvement – for a maximum of 4 weeks. This should only be considered in exceptional circumstances where the individual has made a substantial improvement but has not quite reached the required level; or
- issue first or final caution (if there are serious concerns).

9.14 The employee will be informed of the outcome of the meeting in writing within 5 days of the meeting. A standard formal meeting outcome letter is available from HR. The support plan should also be attached. The letter will set out the outcome of the meeting detailing:

- areas of unsatisfactory performance, these must be very clear, specific examples
- clearly defined targets for performance improvement. All targets should be Specific, Measurable, Attainable, Reasonable, and Time-limited (SMART);
- what guidance and support will be offered and if an independent person will be used to produce the final monitoring report,
- the timetable for improvement and date for the next meeting (this is recommended to be in 6 weeks);
- a clear statement that failure to improve may lead to further action being taken;
- any caution issued and the right of appeal. If a final caution is issued – also inform the employee that any further action by the employer may lead to their dismissal.

Second Formal Stage Meeting

9.15 The employee should be given 5 days written notice of the meeting together with details of the nature of the problem.

9.16 The employee may be represented at the meeting by a work colleague or trade union representative and must be advised of that.

- 9.17 The discussion should be undertaken through a formal meeting with the employee. Please refer to the guidance document for information on how to conduct a formal meeting;

At the Second Formal stage meeting

- any documents or evidence arising from previous stages must be brought to the meeting by both parties;
- if new information arises at the meeting the manager may adjourn the meeting to allow for further investigation.

- 9.18 The outcome of the meeting will be either:

- no further action required as sufficient improvements have been made; or
- extend timescales for improvement – maximum 4 weeks. This should only be considered in exceptional circumstances where the individual has made a substantial improvement but has not quite reached the required level; or
- issue final caution (if there are serious concerns).

- 9.19 The employee will be informed of the outcome of the formal meeting in writing within 5 days of the meeting. A standard formal meeting outcome letter is available from HR.

The letter will set out the outcome of the meeting, particularly;

- areas of unsatisfactory performance, these must be very clear, specific examples;
- clearly defined targets for performance improvement. All targets should be Specific, Measurable, Attainable, Reasonable, and Time-limited (SMART);
- what guidance and support will be offered and if an independent person will be used to produce the final monitoring report.
- the timetable for improvement and date for the next meeting (this is recommended to be in 6 weeks);
- a clear statement that failure to improve may lead to further action being taken. If a final caution is issued – also inform the employee that any further action may lead to their dismissal;
- any caution issued and the right of appeal.

Third Formal Stage Meeting – Case Review Meeting

- 9.20 The employee should be given 5 days written notice of the meeting together with details of the nature of the problem. A standard invite letter is available from HR.

- the discussion should be undertaken through a formal meeting with the employee;
- advise the employee that they may be represented by a work colleague or trade union representative;
- any documents or evidence arising from previous stages must be brought to the meeting by both parties;
- if new information arises at the meeting the manager may adjourn the meeting to allow for further investigation.

- 9.21 The outcome of the meeting will be either:

- no further action required as sufficient improvements have been made or;

- extend timescales for improvement – maximum 4 weeks.
- This should only be considered in exceptional circumstances where the individual has made a substantial improvement but has not quite reached the required level or
- progress the case to a Formal Stage Hearing.

9.22 The employee will be informed of the outcome of the formal meeting in writing within 5 days of the meeting.

The letter will set out the outcome of the meeting, particularly;

- areas of unsatisfactory performance; these must be very clear, specific examples;
- clearly defined targets for performance improvement. All targets should be Specific, Measurable, Attainable, Reasonable, and Time-limited (SMART);
- what guidance and support will be offered and if an independent person will be used to produce the final report?
- the outcome - whether no further action, extended timescales for improvement or a formal stage hearing is to be arranged;
- a clear statement that failure to improve/progression to the formal stage may lead to their dismissal.

Formal Hearing

9.23 If the employee's performance has not improved to the required standard, it will be necessary to set up a hearing.

9.24 In rare and extreme circumstances, pending the formal hearing, the employee may be temporarily redeployed within the school, or if this is not possible, they may be suspended.

9.25 If a person involved in a case which may lead to dismissal has a relative/partner living with them who is employed at the school, that person will take no part in the consideration or discussion of any matter involving the dismissal of an employee if this could result in a vacant post for which their relative could be a candidate. This also applies to anyone who may have a pecuniary interest in the case.

9.26 At this stage the case will be presented by the manager and heard by the designated officer/panel. It will be the decision of the designated officer/panel whether or not to dismiss. No person with significant prior involvement in the case should hear the case.

- the employee should be given 10 days written notice of the hearing together with details of the nature of the problem.
- advise the employee that they may be represented by a work colleague or trade union representative;
- the purpose of the meeting is to establish whether or not the employee's capability is deficient enough to warrant dismissal;
- all evidence to be referred to at the hearing including any documents arising from previous stages must be forwarded by both parties to the other party and the designated officer/panel within 5 days of the hearing.

9.27 A firm conclusion should be reached from the hearing and the outcome may be the employee's dismissal. In most instances the outcome will be confirmed to the employee at the hearing, if this is

not possible a timescale will be given. The decision will be confirmed in writing within 5 days following the hearing.

10.0 APPEALS

- 10.1 The employee may appeal against all formal cautions issued at every stage of this process and against a decision that they should be dismissed.
- any appeal must be made in writing within 10 days of receipt of the outcome letter and the appeal should be heard within 20 working days of the receipt of the notification of appeal;
 - advise the employee that they may be represented by a work colleague or trade union representative;
 - a meeting will be convened for the appeal to be heard and 10 days' notice will be given of the hearing to the employee and all parties concerned;
 - the appeal decision should be confirmed in writing within 5 days.

11.0 DISMISSAL AND APPEAL HEARINGS

- 11.1 As a general principle, no-one who has had significant involvement in the process leading to a dismissal or appeal hearing can act in any way as designated officer/panel at an appeal hearing.
- 11.2 The person presenting the case at the appeal hearing will normally be the person responsible for deciding on the outcome, which is the subject of appeal, as part of their case they explain the reasons for their decision.
- 11.3 An employee's appeal against any level of caution issued may be heard by the next level of management or a Governors appeal panel. A Governor panel must hear all appeals against dismissal.
- 11.4 The designated officer/panel is the person(s) who make(s) the decision. In the course of a hearing, they will hear complaints about the employee's performance and the employee's response, and determine what action, if any, should be taken.
- 11.5 In very complex cases it may be necessary for more than one person to present information.
- 11.6 The designated officer/panel may adjourn the hearing for an appropriate period of time (normally no more than 5 working days) if a reasonable request is made to do so by any party. This request should not be unreasonably refused.

12.0 EXPUNCTIONS

- 12.1 Records of informal meetings/cautions will be retained on the employee's personal file for 1 year following the date of the meeting(s). Schools should be mindful of the Data Protection Act and compliance with GDPR.

13.0 TRADE UNION REPRESENTATIVES

- 13.1 No formal capability procedures will be taken against an accredited representative of a recognised trade union until full circumstances of the case have been discussed with an appropriate full time official of the trade union concerned.

14.0 FUTURE PERFORMANCE

- 14.1 If there are any further concerns about the employee's performance within 12 months of informal concerns and/or a formal caution being issued, the manager may invoke the capability procedure again at the stage at which the last capability procedure ended or as appropriate.

15.0 SUPPORT PLANS

- 15.1 If it has not been possible to agree targets during a meeting, a further meeting should be arranged between the employee and manager within no more than 5 days of the formal review meeting to establish targets, agree appropriate support programme and timescales.

16.0 MONITORING AND REVIEW

- 16.1 Human Resources will work with Headteachers and governing bodies to monitor the application of this policy. They may review any aspect of the policy in light of changing circumstances at any time, in consultation and negotiation with the recognised trade union.
- 16.2 An equality impact assessment of this policy will be undertaken to ensure that no groups or individuals with protected characteristics are unintentionally disadvantaged by the policy or practice.