



South Tyneside Council



# Teacher Capability Policy

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## 1. Purpose

This policy applies to teachers or had teachers about whose performance there are concerns that the teacher appraisal policy has been unable to address. Its purpose is to enable such situations to be dealt with fairly, consistently and without delay with the aim of supporting the teacher / head teacher to achieve and maintain acceptable standards of performance.

Following consultation with governing bodies, head teachers and teaching trades unions, this policy is effective from September 2012 and reviewed in August 2015.

## 2. Person conducting the meeting

The person conducting the meetings throughout the capability process will either be the chair of governors (for head teacher capability), head teacher or member of the senior leadership team.

## 3. Support and representation at meetings

Other than at the informal stage of the capability process, it is recommended that an HR Adviser be present at the meetings to offer advice and support and the teacher can also be represented by a trade union representative or a work colleague.

## 4. Transition to informal capability

Where there are concerns about a teacher's performance that have been unable to be addressed through the teacher appraisal policy, the teacher will be notified in writing that the appraisal system will no longer apply or cannot be applied as the chair of governors, head teacher or member of the senior leadership team has judged that there are concerns about their performance. The letter will also tell them that they will be invited to attend an informal capability meeting. The objective is to provide support and guidance through the capability process in such a way that the teacher's performance improves and any concerns are resolved.

The chair of governors, head teacher or member of senior leadership team will meet the teacher informally and:

- Give clear feedback to the teacher about the nature and seriousness of the concerns;
- Give the teacher the opportunity to comment and discuss the concerns;
- Agree any support (eg coaching, mentoring, structured observations, training, visits to other classes or schools) that will provided to help address those specific concerns;

- Make clear how, and by when, progress will be reviewed eg provide an action plan, review date and specific how improvement will be measured (it may be appropriate to revise objectives and it will be necessary to allow sufficient time for improvement). It is recommended the informal review period should be 4 weeks'
- Clearly explain the implications and process if no (or insufficient) improvement is made which will be to progress to the formal capability meeting.

#### **5. Monitoring and review period following an informal capability meeting**

A performance monitoring and review period of 4 weeks will follow the informal capability meeting. Formal monitoring, review, evaluation, guidance and support will continue during this period. Regular reviews will be held with the teacher throughout the monitoring and review period to inform them how they are progressing against objectives detailed in the action plan. The teacher will then be invited to an informal review meeting.

#### **6. Informal review meeting**

The teacher will be invited to an informal review meeting. At this meeting the person conducting the meeting will review the evidence about performance during the informal monitoring and review period. The teacher will be able to respond to concerns about their performance and make any representations.

- If the person conducting the meeting is satisfied the teacher has made sufficient improvement, the informal capability procedure will cease and the appraisal process will re-start. In other cases;
- If some progress has been made and there is confidence that more is likely, it may be appropriate to extend the informal monitoring and review period;
- If no, or insufficient, improvement has been made during the informal monitoring and review period, the teacher will be invited to attend a formal capability meeting.

#### **7. Formal capability meeting**

At least five working days' notice will be given of the formal capability meeting. The notification will contain:

- Sufficient information about the concerns about performance and their possible consequences to enable the teacher to prepare to answer the case at a formal capability meeting;
- Details of the time and place of the meeting;
- Advise the teacher of their right to be accompanied.

The meeting is intended to establish the facts. It will be conducted by the chair of governors (for head teacher capability) or head teacher / member of the senior leadership team (for other teachers). Copies of any written evidence will be available at the meeting and it allows the teacher, accompanied 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 collected.

The person conducting the meeting may conclude:

- That there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases, the capability procedure will come to an end or;
- Adjourn the meeting (for example if they decide that further information is needed or that more time is needed in which to consider any additional information); or

- In other cases, the meeting will continue.

During the meeting, or any other meeting which could lead to a formal warning being issued, the person conducting the meeting will:

- Identify the professional shortcomings, for example which of the standards expected of teachers are not being met;
- Give clear guidance on the improved standard of performance needed to ensure that the teacher can be removed from formal capability procedures (this may include the setting of new objectives focused on the specific weaknesses that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made);
- Discuss and confirm any support that will be available to help the teacher improve their performance (eg coaching, mentoring, structured observations, training, visits to other classes or schools);
- Set out the timetable for improvement (see monitoring and review period below) and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case including the nature of the job but in straightforward cases this could be six weeks. It is for the head teacher / member of senior leadership team / governing body to determine the set period. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place);
- Warn the teacher formally that failure to improve within the set period could lead to dismissal;
- Where appropriate issue a written warning at this meeting or in very serious cases, this warning could be a final written warning. Please ensure that the person conducting the meeting has the delegated authority to issue the appropriate warning;
- A decision about issuing a warning should be made after all the facts have been considered, and any representations from the teacher have been considered. The person conducting the meeting should adjourn the meeting to consider the appropriate action before delivering a decision to the teacher.

A letter must be sent to the teacher within 5 working days of the formal capability meeting confirming:

- The main points discussed at the meeting;
- The outcome of the meeting.

Where a warning is issued, the letter will include:

- The matters covered in the bullet points above;
- Give information about the timing and handling of the review stage;
- The procedure and time limits for appealing against the warning.

Any appeal against a warning must be submitted in writing to the clerk of governors within 5 working days of receiving the letter setting out the grounds of appeal. The appeal will be heard, where practicable, within 10 working days of the notification of appeal. The appeal must not delay the progress of the procedure unless the appeal decision leads to the matter being reconsidered.

## **8. Monitoring and review period following a formal capability meeting**

A performance monitoring and review period of 6 weeks will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. Regular reviews will be held with the teacher throughout the monitoring and review period to inform them how they are progressing against objectives

detailed in the action plan. The member of staff will be invited to a formal review meeting, unless they were issued with a final written warning, in which case they will be invited to a decision meeting (see below).

#### **9. Formal review meeting.**

As with the formal capability meetings, at least 5 working days' notice will be given and the notification will give:

- Details of the time and place of the meeting;
- Advise the teacher of their right to be accompanied.

At this meeting the person conducting the meeting will review the evidence about performance during the monitoring and review period. HR support will be provided at the meeting where requested. The teacher will be able to respond to concerns about their performance and make any representations.

- If the person conducting the meeting is satisfied that the teacher has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start. In other cases;
- If some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period;
- If no, or insufficient, improvement has been made during the monitoring and review period, the teacher will receive a final written warning. Please ensure that the person conducting the meeting has the delegated authority to issue the appropriate warning.

As before, a letter must be sent to the teacher within 5 working days of the formal review meeting confirming:

- The main points discussed at the meeting;
- The outcomes of the meeting.

Where a final written warning is issued, the letter will include:

- That failure to achieve an acceptable standard of performance (within the set timescale) may result in dismissal;
- Give information about the handling of the further monitoring and review period;
- The procedure and time limits for appealing against the final written warning.

Any appeal against a warning must be submitted in writing to the clerk of governors within 5 working days of receiving the letter setting out the grounds of appeal. The appeal will be heard, where practicable, within 10 working days of the notification of appeal. The appeal must not delay the progress of the procedure unless the appeal decision leads to the matter being reconsidered.

#### **10. Monitoring and review period following a formal review meeting**

A performance monitoring and review period of 4 weeks will follow the formal review meeting. Formal monitoring, evaluation, guidance and support will continue during the period. Regular reviews will be held with the teacher throughout the monitoring and review period to inform them how they are progressing against objectives detailed in the action plan. The teacher will then be invited to the decision meeting (see below).

#### **11. Decision making**

As with formal capability meetings and formal review meetings, at least 5 working days' notice will be given and the notification will give:

- Details of the time and place of the meeting;
- Will advise the teacher of their right to be accompanied.

At this meeting the person conducting the meeting will review the evidence about performance during the monitoring and review period. The teacher will be able to respond to concerns about their performance and make any representations.

- If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end and the appraisal process will re-start;
- If performance remains unsatisfactory a recommendation to the governing body will be made that the teacher should cease working at the school. Consideration needs to be given to the teacher not being at work whilst these arrangements are being made.

## **12. Governing body**

The governing body should set up the appropriate committee to deal with the recommendations that the teacher should cease to work at the school with at least 3 governors. They must hear the representations and recommendations brought by the head teacher or other line manager conducting the capability evaluation and any representations that the teacher may wish to make. The governing body should also set up the appropriate appeal committee to hear any appeal against a decision that the teacher should cease to work at the school. None of the governors who were on the appropriate committee that recommended the teacher should cease to work at the school should be on the appeal committee.

## **13. Dismissal**

For Voluntary Aided Schools, once the governing body has decided that the teacher should cease to work at the school, the governing body will dismiss the teacher.

For community schools, once the governing body has decided that the teacher should cease working at the school, the governing body will write to the Local Authority informing the Corporate Director of their decision and the reasons for it. Where teachers work solely at this school the Corporate Director will write to the teacher, within 14 days of the notification from the governing body, informing them:

- The reason for dismissal;
- The date on which the employment contract will end;
- The appropriate period of notice;
- Right of appeal.

Where the teacher works at more than one school, the Corporate Director may require them to cease work at that school (in addition to the above).

## **14. Appeal against dismissal / written or final written warning**

If a teacher feels that a decision to dismiss them or issue a written or final written warning is wrong or unjust, they may appeal in writing against the decision within 5 working days of the decision, to the clerk of governors setting out at the same time the grounds for appeal. Appeals will be heard by the appropriate appeals committee, where practicable within 10 working days of receipt of the appeal. A teacher is entitled to be accompanied at an appeal hearing. The main points discussed at the meeting and the outcome will be confirmed in writing.

## **15. Expiry of warnings**

Any formal warnings issued under the capability procedure must be disregarded after the periods of time set out below:

- A written warning must be disregarded after a period not exceeding 6 months;
- A final written warning must be disregarded after a period not exceeding 12 months.

## **16. General principles underlying this policy**

### **Role of governors**

Governors should not normally be involved with a capability procedure before the recommendation that the teacher ceases to work at the school stage. The exception to this is where a governor or governors are involved in considering an appeal against a warning, or in the capability procedure against a head teacher, when some governors may be involved in the monitoring and evaluation of performance. It is important to be prepared for the possibility of dismissal. The use of governors to hear any grievances or appeals against warnings should be limited to ensure a sufficient number of impartial governors remain available for the dismissal and dismissal appeal committees. Normally at least 3 governors are required for the dismissal committee and no fewer for the appeal but where this number is not reasonably practicable, it can be reduced to 2.

### **Support for the teacher**

Those monitoring the performance should offer feedback and instruction to help the teacher improve performance. If training courses or assistance from colleagues would be helpful these should be arranged as soon as possible but should not interrupt the timing of the procedure. The objective is to provide support and guidance through the capability process in such a way that the teacher's performance improves and any concerns are resolved.

### **ACAS code of practice on disciplinary and grievances procedures**

This policy will be implemented in accordance with the provisions of the ACAS Code of Practice.

### **Confidentiality**

The capability process will be treated with confidentiality.

### **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 head teacher.

### **Delegation**

Normal rules apply in all respect of the delegation of functions of the governing body, head teacher and local authority.

### **Grievances**

Where a member of staff raises a grievance during the capability procedure the capability procedure may be temporarily suspended in order to deal with the grievance.

### **Sickness**

If long term sickness absence appears to have been triggered by the commencement of the monitoring or a formal capability procedure, the case will be dealt with in accordance with the school's absence policy and will be referred immediately to the occupational health service. In some cases it may be appropriate for formal procedures to

continue during a period of sickness absence. Short term absences should not delay any part of the formal stage of the capability procedure.

**Legal considerations**

Lack of capability is a potentially fair reason for dismissal of an employee although the decision needs to be based on the facts and the employer needs to have followed a fair procedure. The employer will not have acted reasonably in dismissing an employee unless they have been given a fair warning and a chance to improve.

**Equality and diversity statement**

The governing body is committed to promoting equality and valuing diversity in everything they do including service delivery and employment. Further details can be obtained by referring to the Equality and Diversity in Employment Policy statement available from the Local Authority.

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