



# Capability Procedures Policy

<b>Audience:</b>	School and academy staff, particularly Headteachers and administrative staff Local Governing Bodies
<b>Reviewed:</b>	Adopted Date: 4th February 2019
<b>Other related policies / procedures</b>	
<b>Owner</b>	
<b>Policy / procedure model</b>	<b>MAT policy: all Crofty schools use this policy</b> Aligned: Policy to be adapted to school where indicated School policy: specific to needs of the school

## **Transition to capability**

Performance concerns should be dealt with through the staff appraisal policy but if progress towards addressing performance concerns is insufficient or the concerns are sufficiently serious, a 'transition meeting' should be held.

A meeting of this nature does not amount to part of the formal capability procedure.

The employee, their line manager and the head teacher (or CEO / SIO where the capability of the head teacher is in question) will be present at the meeting. As the outcome of the meeting may have serious consequences, the employee should be encouraged to be accompanied by a work colleague or a trade union representative.

Before considering entering into a capability process it is important that an employee has been fully supported to be successful. This would primarily be evidenced through the appraisal process.

At the meeting the headteacher will consider whether:

- Sufficient and appropriate practical support, advice and guidance has been provided to the employee
- Relevant training has been provided where
- Performance criteria have been made clear and monitored within agreed time schedules
- The employee's shortcomings have been clearly set out in writing.

Guiding principles to the overall approach to the meeting

The meeting will be chaired by the Headteacher (or CEO/SIO in the case of a Headteacher) and will consider the following matters:

- The evidence that has given rise to the specific concerns about the employee's performance
- The seriousness of the concerns and their impact on the performance of the school
- The support that has been provided to date
- The time for which the concerns have persisted
- The degree of improvement that has been achieved and whether or not this has been sustained
- The extent to which the employee has shown insight and has engaged with the support provided throughout the appraisal process
- Any mitigating factors

Once these matters have been considered, the chair should close the meeting and reflect on the findings, take advice and reach a decision. The employee will be informed of the decision in writing and normally within five working days. The decision will be either to continue with the appraisal process or to invoke the capability procedure by convening a formal capability meeting.

The transition to the capability procedure will not normally be made unless there is evidence that:

- under-performance against agreed objectives and / or standards has prevailed for some time; and
- the underperformance is either serious or has persisted despite the provision of support.

## **Capability procedure principles**

The principal purpose of a capability procedure is to support and ensure that staff are able to perform their duties and to deal with underperformance on a formal basis. The aim is to deal with those cases, where, despite appropriate management support (normally provided through the appraisal process), a member of staff is deficient in key areas of ability, skill, competence or knowledge and is consequently unable to carry out their required duties to an acceptable standard.

It is important that under-performance is managed to ensure that the quality of teaching and learning is unaffected and that the overall performance of the school is not compromised. The overall approach to capability should be supportive, constructive and helpful to the employee.

This procedure complies with the provisions of the ACAS code of practice.

The capability procedure applies only to support staff, teachers and headteachers where there are serious concerns about their performance that are not able to be addressed by the appraisal procedure.

Employees should be made aware that whilst they are and remain the subject of the capability procedure; the normal appraisal arrangements will be suspended. Employees are expected to cooperate constructively with arrangements that are put in place to address underperformance. Where an employee believes that they are being unfairly treated, they may raise an informal complaint or a formal grievance as appropriate.

### **Formal capability meeting**

The first meeting under the capability procedure, often referred to as the formal interview initiates the capability procedure. This will usually be chaired by the headteacher, or where the Headteacher is subject to concerns, the SIO. At least five working days' notice will be given of the formal capability meeting. The notification will contain sufficient information about performance concerns and the possible consequences to enable the teacher to prepare to present their case at the meeting. The notification of a capability meeting will be accompanied by copies of written evidence, details of the date and time of the meeting and will confirm the teacher's entitlement to be accompanied by a companion who may be a work colleague or a trade union representative.

The chair of the capability meeting will aim to

- a) identify the employee's professional shortcomings;
- b) give clear guidance on the improved standard of performance needed;
- c) explain any support that will be available to help the teacher improve to a point where they can be removed from the capability procedure;
- d) set out the timetable for improvement and explain how performance will be monitored and reviewed; and
- e) warn the employee formally that failure to improve within the set period could lead to dismissal (in very serious cases, the warning could be a final written warning).

There are two possible outcomes from the formal capability meeting:

1. A first written warning
2. A final written warning

The level of warning should be determined by the seriousness of the concerns that relate to the performance of the employee. Lower level concerns are likely to lead to a first written warning and a period of up to 8 weeks may be granted for improvement; conversely, higher level concerns would normally lead to a final written warning and a shorter monitoring period of no more than four weeks.

As is the case in all formal procedures, the chair of each meeting should ensure that clear written records are kept, in particular, the management concerns about the employee's performance.

The employee will be notified of the decision arising from the meeting and of the timescales for monitoring and the anticipated next steps in the process.

An employee may appeal against the decision arising from the first formal meeting within five working days of receiving notification of the decision and will normally be heard with a period of ten working days, unless alternative timescales are agreed between the parties to the dispute.

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

A performance monitoring and review period will follow the formal capability meeting. This period will include regular task/classroom observation, performance evaluation and monitoring, training, management support and guidance.

### **Timescales**

Under the procedure, timescales may be adjusted as appropriate:

- this procedure proposes a period of up to eight weeks for the implementation of the formal support plan where a first written warning has been issued. The agreed period may be adjusted to suit the merits and circumstances in each individual case; for example, you would expect an experienced teacher or other member of staff to make improvements in a short period of time whereas you may wish to grant a longer period of time to an employee at early career stage
- In particularly serious cases where the education, health or wellbeing of pupils may be at risk (and a final written warning has been issued), a shorter period for monitoring is, in all likelihood, going to be more appropriate (eg where a teacher's control of the class is poor or where pupil progress is inadequate, despite support)
- If the implementation of the capability procedure triggers an episode of sickness absence, the case should be immediately referred to the school's HR advisers and occupational health service to assess the employee's health and fitness for continued employment; the length of time a school should wait for an employee's health to improve before considering whether to terminate the employment on health grounds should be subject to ongoing occupational health guidance

### **Formal review meeting**

Following the conclusion of a monitoring and review period, the member of staff will be invited to a formal review meeting chaired by the headteacher. At the formal review meeting, if the headteacher is satisfied that the employee has made sufficient improvement, the capability procedure will end and the appraisal process will restart.

If no or insufficient improvement has been made during the monitoring and review period, the employee will receive a final written warning.

A further monitoring period, of up to four weeks, will be set and a subsequent and final review meeting will be scheduled. If, following a final written warning, performance does not improve to an acceptable standard; the case will be referred to an appropriate panel for the decision meeting. This panel should include a senior MAT officer (typically CEO/SIO/SIP) and governors / trustees.

### **Panel Decision Meeting**

At the panel hearing there are three possible outcomes:

1. An acceptable standard of performance has been achieved during the monitoring and review period, the capability procedure will end and the appraisal process will restart.

2. A further monitoring period of four to six weeks within the capability procedures is required.
3. Where performance remains unsatisfactory (ie where sufficient improvement has not been achieved despite comprehensive support or where performance concerns are of particular gravity), a decision, will be made that the employee should be dismissed as soon as possible in accordance with employment law.

## **Appeal**

If an employee feels that the decision to dismiss them is wrong or unjust, they may appeal in writing against the decision, setting out the grounds of the appeal. The employee will be informed in writing of the results of the appeal hearing without unreasonable delay.

The appeals panel should be made up of three impartial officers and or governors / trustees who have had no involvement or have no knowledge of the case in which the appeal has been brought.

The decision of the appeals panel is final.

## **Management guidance: applying the procedures**

### **Role of governors / trustees**

Governors/ trustees should not normally be involved with a capability procedure before the dismissal stage.

### **Role of the head teacher**

The head teacher will be responsible for taking the decision to invoke the capability procedure, unless of course, they are the subject of the procedure.

### **Role of advisers**

The Trust's School Improvement Officer and other advisers may be invited to participate in the capability procedure or with the monitoring process or with providing support.

### **Employee representation**

If the employee's chosen companion is not available at the time proposed for the interview, meeting or hearing and the employee proposes an alternative date and time that is reasonable and falls within 5 working days of the original date, this should be given careful consideration and advice should be sought to ensure that revised arrangements can be made.

### **Monitoring arrangements**

Any monitoring undertaken should be across the range of principal job responsibilities so that a balanced view can be reached to support the evaluation of performance.

### **Written records**

Formal warning should be disregarded after a specified period of satisfactory performance.

First written warning - 12 months

Final written warning - 24 months

**Grievances**

Where an employee raises a grievance that relates to the capability procedure and its management and/or implementation, the capability procedure will be suspended until the grievance can be considered.