

A008: Capability procedure for classroom teachers in schools with delegated budgets

Management Support to Schools policy document

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1. PURPOSE OF THIS DOCUMENT

This document sets out the steps which should be taken when over a period of time a classroom teacher experiences consistent and significant difficulty in performing to an acceptable professional standard the full range of duties of the post to which she/he was appointed. This under-performance is referred to as a lack of capability.

An allegation of lack of capability can have serious personal and professional implications for the individual concerned. It is therefore necessary to have procedures which are soundly based in law and which balance the rights of the individual with those of the pupils and with the needs of the school.

In this document the term 'classroom teacher' includes Assistant Headteachers and Deputy Headteachers.

2. PRINCIPLES

This document is based on the following principles:

- a) pupils have an entitlement to an effective education efficiently delivered in well managed and ordered schools;
- b) teachers have a contractual responsibility to achieve an acceptable professional standard when discharging the duties for which they were appointed;
- c) the school has a responsibility for setting realistic and measurable standards of performance, for explaining these standards carefully to teachers and for ensuring that workloads are neither unreasonable nor excessive;
- d) through programmes of support, teachers should have, at the relevant time, access to the appropriate and ongoing professional and personal support necessary to enable them to perform their duties satisfactorily;
- e) responsibility for resolving capability matters rests with the Headteacher but operational aspects may be delegated to appropriate senior members of the school's staff;
- f) teachers should have access to appropriate representation through their professional association;
- g) a sensitive, realistic and constructive approach to capability matters is required of all those working through these procedures;
- h) governors should not be involved in capability matters before the dismissal stage but the Chair of Governors should always

be notified of the fact that the capability procedure has been initiated.

3. INFORMAL STAGES

- 3.1 All teachers should have the reasonable expectation that advice, support and encouragement are available to them, particularly from those colleagues with professional leadership roles. Everyday support mechanisms are fundamental to the professional effectiveness of teachers and their presence is one indicator of a caring and effective school.
- 3.2 Headteachers should ensure that their schools have in place appropriate management arrangements (e.g. induction, mentoring, performance management) whereby they are made aware of the possible lack of capability of a teacher at the earliest opportunity. This is especially important in the case of teachers newly appointed to the school or teachers who have recently been promoted within it.
- 3.3 It is the responsibility of the headteacher to act promptly, supportively and effectively when alerted to possible cases of lack of capability. The support/counselling provided should aim to encourage and help the teacher to improve. It should be conducted discreetly and would not normally last for a period greater than six weeks (see Annex 1).
- 3.4 When discussing concerns with the teacher, the Head will naturally seek the teacher's explanation for their difficulties. Explanations should be considered carefully. If the explanation is satisfactory the matter will be dropped. If the matter is not to be dropped the teacher must be told what is required, how performance will be reviewed, and the review period. It should be made clear that the formal procedure will commence if there is no improvement. A brief note of any support should be kept for reference.
- 3.5 Discussion must not harass the teacher or turn into a formal interview. Full account should be taken of the teacher's circumstances both at work and, if appropriate, outside work. Where the discussions identify health concerns the Authority should be consulted before any further action is taken.
- 3.6 Where the teacher does not accept that there is a difficulty and/or refuses to co-operate in a reasonable manner, the Headteacher will consult the school's Management Support Adviser before confirming a move to the formal stage of this procedure in order to deal with the matter in a more structured and objective manner. The teacher will have the right to submit a written note of dissent which will be kept on the teacher's personal file.

3.7 After a period of review involving observation and assessment a firm conclusion should be reached. The options will be either to:-

- a) drop the matter; or
- b) convene a formal interview

4. FIRST FORMAL STAGE

4.1 The formal interview initiates the formal stage of the capability procedure. It provides an opportunity to deal with more serious problems in a structured way. It allows the teacher to prepare a response to allegations about performance.

4.2 The interview may provide new information or put a different slant on evidence already collected. If it becomes clear that further investigation is needed the interview should be adjourned for an appropriate length of time to allow this to happen.

4.3 There are five options at formal interview:

- a) drop the matter;
- b) support/counselling (only where previous support/counselling has led to an improvement);

These two options are only relevant where new information, a different slant on the information collected, or further investigation suggests that the matter is not as serious as it first seemed.

- c) oral warning (an oral warning should not normally be necessary in cases where support/counselling has already taken place; see also paragraph 4.10);
- d) first written warning;
- e) final written warning.

These three options are relevant to any case where continued concern about the standard of performance is justified. In the case of a final written warning the procedure will move immediately to the Second Formal Stage (Section 5 of this document).

4.4 Where the teacher does not accept that there is a difficulty and/or refuses to co-operate in a reasonable manner, the headteacher will consult the school's Management Support Adviser before initiating disciplinary action in accordance with the school's disciplinary and dismissal procedure.

4.5 The decision as to which level of warning to issue will depend on the seriousness of the problem. If performance is unsatisfactory a

first written warning will normally be issued and in exceptional circumstances an oral warning. In cases of particularly serious concern, where the education of children is in jeopardy, there will be a final written warning followed by an assessment period not exceeding four weeks.

- 4.6 A decision will only be made after all the facts and any representations from the teacher have been thoroughly considered. The Headteacher will adjourn the meeting for this purpose before informing the teacher.
- 4.7 Where a formal warning has been issued, the Headteacher will use the remainder of the meeting to:
 - a) identify the professional shortcomings;
 - b) give clear guidance on the improved standard of performance needed to end the capability procedure;
 - c) explain the support/counselling that will be available, and how performance will be monitored during the review period;
 - d) depending on the level of warning issued, to identify the timetable for improvement and agree a date for the next/final evaluation meeting; and
 - e) make it clearly understood that failure to improve may lead to dismissal.
- 4.8 A letter will be sent to the teacher immediately after the formal interview recording the result of the investigations, the main points discussed at the meeting, confirming the decision, and where a warning is issued, giving information about the handling of the formal stage.
- 4.9 On receipt of this letter the teacher will have a right of appeal against the warning and this must be lodged within 5 working days. The appeal will be heard within 10 working days of notification but will not interrupt the progress of the procedure, unless the appeal decision leads to the matter being reconsidered.
- 4.10 The Chair of the Governing Body will determine whether to hear the appeal personally; nominate a fellow governor; or request a senior officer of the Authority.
- 4.11 Appeals will normally consider the reasonableness of the decision taken by the Headteacher together with any relevant new evidence or any procedural irregularities. The appeal decision will be confirmed in writing and the teacher will be informed that there is no further appeal against the decision. Where an appeal is upheld, the matter will be referred back to the Headteacher to consider for further appropriate action.

- 4.12 At the point of entry into the formal stage the teacher will be notified of the timetable. This stage will normally last for up to 20 weeks. Where notwithstanding the circumstances described in 4.3(c) an oral warning has been issued the Headteacher will review the teacher's progress at the halfway point in the timetable period. Where insufficient improvement is identified the Headteacher will issue a first written warning.
- 4.13 The formal stage will comprise regular observation, monitoring and evaluation of performance, guidance, support and where necessary training (see annex 1). If at any point during the timetabled period the Headteacher gathers evidence which indicates a more serious problem exists, a decision will be taken to issue a final warning and move to the Second formal stage (paragraphs 4.9, 4.10 and 4.11 will apply).
- 4.14 At the end of the period timetabled for the first formal stage an evaluation meeting will be called by the Headteacher to assess the teacher's performance. If the evidence available to the Headteacher indicates a satisfactory level of performance which can be sustained, the capability procedure will cease at this point and the Headteacher will write accordingly to the teacher concerned. In the exceptional circumstances where the evidence indicates that the teacher will be unable to sustain the satisfactory level of performance, the provisions of paragraphs 4.15 and beyond will apply. Written reasons will be given to the teacher.
- 4.15 If the teacher's performance continues to be unsatisfactory a final written warning will be issued. The arrangements for the final formal stage will be explained to the teacher at the evaluation meeting. The teacher must be told clearly that failure to achieve an acceptable standard, which can be maintained with confidence, may result in dismissal.
- 4.16 The teacher will have a right of appeal against a final warning and this must be lodged within 5 working days. The appeal will be heard within 10 working days of notification but will not interrupt the progress of the procedure, unless the appeal decision leads to the matter being reconsidered (the provisions of paragraphs 4.10 and 4.11 will apply).
- 4.17 The appeal decision will be confirmed in writing and the teacher will be informed that there is no further appeal against the decision. Where an appeal is upheld, the matter will be referred back to the Headteacher for further consideration.

5. SECOND FORMAL STAGE

- 5.1 The second formal stage will be of 4 weeks duration. It will comprise regular observation, monitoring and evaluation of performance, guidance and support.
- 5.2 At the end of the four week period a final evaluation meeting will be called by the Headteacher to assess the teacher's performance during this timetabled period. If the evidence available to the headteacher indicates a satisfactory level of performance and there is confidence that this level of performance can be sustained, the capability procedure will cease at this point and the Headteacher will write accordingly to the teacher concerned. In the exceptional circumstances where a Headteacher does not have confidence in the capacity of the teacher to sustain this level of performance, written reasons will be given to the teacher.
- 5.3 If the teacher's performance has continued to be unsatisfactory the Headteacher will consult the Chief Education Officer before notifying the teacher that the matter is to be referred to the Staff Dismissal Committee of the Governing Body. The evaluation of the final formal stage and the main points of the meeting will be recorded in a letter to the teacher. From this point onwards the conduct of the matter of the teacher's capability will be dealt with in accordance with the Governors' Disciplinary and Dismissal Procedure.
- 5.4 Where the teacher is unwilling to co-operate the Headteacher will suspend the teacher on full pay and invoke the school's disciplinary procedure.
- 5.5 Where the school's disciplinary procedure has been invoked prompt steps will be taken to convene a disciplinary hearing. The headteacher will consider whether suspension (with full pay) or a transfer elsewhere within the school would be appropriate. Following a disciplinary hearing at which the governors have determined that the teacher should cease to work at the school, the governors will consider whether the performance of further classroom teaching duties during any period of notice would be detrimental to the school, the pupils and/or the individual teacher. Where the governors have such concerns and consider that suspension on full pay would be appropriate they will make a recommendation to that effect to the Headteacher.

Programmes of Support/Counselling

1. A programme of support/counselling is a series of practical measures aimed at encouraging and helping the teacher to achieve an improvement in her/his level of performance. Below is a range of measures to consider in such a programme. The measures selected will reflect the circumstances of the particular case and the discussions which have taken place. Every effort should be made to implement the programme of support in as discreet a manner as possible. The list is not exhaustive but Headteachers should consider each measure on the basis of its likely impact on the teacher's performance:
 - a) Support, advice or counselling from within the school and sympathetic supervision of work from a suitably experienced colleague.
 - b) Further training.
 - c) The opportunity to observe good practice within the school and in other schools.
 - d) Alterations to post/duties (in as far as this is consistent with the effective operation of the school).
 - e) Regular opportunities for feedback.
2. The support programme should also specify clearly:
 - a) Those areas where the standard of performance is not acceptable.
 - b) The standard of future performance which is expected.
 - c) What monitoring arrangements will be used (e.g. inspection of lesson plans and pupil's work). Monitoring will include observation of a range of relevant duties and functions.
 - d) The arrangements for oral feedback (including the frequency of meetings) to ensure prompt action.
 - e) Whether there will be any review meetings within the period set and if so when.

Application of the Procedure

1. For the purposes of this document a week shall be deemed to consist of five days when the school is in session.
2. This document applies only to classroom teachers who have completed their induction period. Separate arrangements are made by the Authority and schools for the professional development of newly qualified teachers. A separate document exists for Headteachers.
3. The Chief Education Officer and the school's Management Support Advisor have an important and constructive role to play in ensuring that these procedures are applied reasonably and equitably.
4. Capability matters should be dealt with promptly, efficiently, with agreed time periods (adjusted according to specific circumstances) and with clear outcomes resulting at all stages.
5. Where a teacher is (or has recently been) subject to these procedures and as a result has a formal warning lying on his/her personal file and subsequently commits an act of misconduct for which the governing body is considering administering a sanction in its own right, then the formal warning issued under this procedure will be taken into account provided that in the case of an oral warning it was issued within the last two full terms and in the case of a final warning it was issued in the last six full terms.
6. No meeting will be called under the formal stage of this procedure without at least five working days notice. Meetings will normally be held at the end of the working day unless requested otherwise. The teacher will be informed that she/he has the right to be accompanied by her/his professional association/representative/ friend at all meetings. A written record of all meetings will be taken and made available to the teacher. Where a teacher disagrees with this written record he/she may append a note of dissent.
7. Absence which arises during the capability procedure, and which may be long term, should be referred immediately to the Authority's Occupational Health Service to assess whether the teacher is fit for continued employment. Short term absences should not delay any part of the procedure. It is expected that the teacher will always attend meetings called in accordance with this procedure. Where the teacher is unable to attend, the meeting may proceed in the teacher's absence where delay may otherwise compromise the period of time set aside for that particular stage in the procedure and sufficient evidence has been gathered at the school. In such circumstances a full account of the evaluation should be provided in the letter to the teacher, which confirms the decision, which has been taken.

8. A failure to attend a meeting without good cause will normally lead to disciplinary action. Where a teacher has good reason for non-attendance a second meeting will be convened within ten school days.
9. In exceptional circumstances a teacher may raise a grievance about the behaviour of a head or senior member of staff during the course of a capability procedure. Depending on the circumstances it may be appropriate to suspend the procedure until the grievance can be considered. Such a delay should only be considered where there is a strong indication that the teacher has been mistreated and consideration should be given to bringing in another appropriate senior member of staff to deal with the capability case. Any records should be passed to the new manager and if appropriate the case should be continued within the same timetable.
10. Where a teacher has been subject to the formal stages of the capability procedure and within a reasonable time scale of the programme of action being terminated further concerns arise concerning her/his capability it will not normally be necessary to restart this procedure at the informal stage.