



# Capability Policy (for Teaching Staff)

*A PCC model policy.*

|                 |                   |
|-----------------|-------------------|
| Policy updated: | January 2021      |
| Policy adopted: | February 2023     |
| Status:         | Policy & Guidance |
| Review cycle:   | 2 yearly          |
| Review date:    | February 2025     |



## **CHANGES**

|                    |  |
|--------------------|--|
| 1st February 2007: | Policy Implemented   |
| June 2010:         | Styling revised in line with corporate guidelines                          |
| November 2012:     | Revised following teachers performance standards                           |
| August 2013:       | Revised in line with the STPCD September 2013/14                           |
| August 2014:       | Checked in line with STPCD 2014 (no updates)                               |
| August 2015:       | Checked in line with STPCD 2015 (page numbers inserted into Contents page) |
| August 2016:       | Checked in line with STPCD 2016  |
| September 2017:    | Checked in line with STPCD 2017  |
| September 2018:    | Checked in line with STPCD 2018  |
| September 2019:    | Checked in line with STPCD 2019 and minor revision to Section 12           |
| September 2020:    | Checked in line with STPCD 2020 and minor revision of scope wording page 3 |
| September 2021:    | Checked in line with STPCD 2021  |

If you have any questions regarding this policy, please contact your HR Adviser

| <b>CONTENTS</b>   | <b>PAGE</b> |
|---|-------------|
| 1 Introduction  | 2           |
| 2 Scope   | 2           |
| 3 Link to appraising teacher performance policy               | 3           |
| 4 Link to pay progression                                     | 3           |
| 5 Who is responsible for maintaining standards of performance | 3           |
| 6 Sickness absence  | 3           |
| 7 What are the principles?                                    | 4           |
| 8 Raising a grievance   | 4           |
| 9 Formal meeting with employee                                | 5           |
| 10 Formal meeting with employee                               | 6           |
| 11 Hearing with headteacher                                   | 6           |
| 12 Hearing with Governors staffing panel                      | 7           |
| 13 Right to appeal  | 8           |
| 14 Written records  | 9           |
| 15 Future reference requests                                  | 9           |

Appendix: Guidance notes for employees' subject to capability procedure

## **1 INTRODUCTION**

Governing bodies have a statutory duty to adopt formal policies and procedures for dealing with staff performance issues (School Staffing (England) Regulations 2003). The effective management of schools is underpinned by having a policy and procedure which supports and maintains acceptable standards of performance.

This procedure is primarily concerned with ensuring that any teacher whose standard of performance is unacceptable in one or more areas is clearly informed what standards are expected and receives support towards achieving those standards. This formal process should only be initiated when other support mechanisms in the school have failed to resolve the issues.

This procedure is designed to help the school maintain the required teacher standards of performance. From a position of knowing what shortcomings in performance have been identified, what improvements are required and in what time frame this policy will allow those who do not maintain expected standards of performance the opportunity to improve. It provides a method of dealing with shortcomings in performance including the provision of reasonable levels of support and monitoring. It provides for matters to be dealt with in a fair and consistent manner.

## **2 SCOPE**

This procedure is informed by Sections 35(8) and 36(8) of the Education Act 2002, and the ACAS Code of Practice on Disciplinary and Grievance Procedures 2009. It has been drawn up following consultation with the recognised Teachers Professional Associations. It applies to and is designed to help and encourage teaching staff within schools maintain acceptable standards of performance.

The procedure applies to all teachers directly employed by the school. It does not apply to support staff or persons working at the school who are not employees of the school e.g. agency staff, employees of external contractor's or the LA.

This procedure does not apply to matters of:

- misconduct; i.e. where it is clear an employee is capable of performing at a required standard but chooses not to do so, which should be dealt with under the disciplinary procedure adopted by the Governing Body.
- ill health; for which there is a separate procedure adopted by the Governing Body, the ill health procedure should be used if there is good reason to believe that the employees inability to meet set standards of performance is linked to health problems;

### **3 LINK TO APPRAISING TEACHER PERFORMANCE POLICY**

This capability procedure will apply to those teachers (including the Headteacher) about whom serious concerns exist regarding their performance and will be initiated where the appraisal process has sought but not been able to address these concerns. The capability process should only be implemented where performance concerns have been identified and the teacher made aware of them and any corrective action, facilitated under the teacher's appraisal process, has failed to bring about the required improvement.

If the appraiser is not satisfied with progress following the review held as part of the appraisal process, the teacher will be notified in writing that the appraisal process will no longer apply and that their performance will be managed under the capability procedure.

### **4 LINK TO PAY PROGRESSION**

Where concerns about a teacher's performance have resulted in the commencement of the capability procedure, it is recommended that pay progression is withheld on the basis that the teacher will not be meeting the required standards as outlined in the Professional Standards for teachers.

If the reviewer for the purposes of pay progression, is not directly involved in the capability procedure, they should be informed that the capability procedure has commenced but no details of the concerns should be made known to the pay reviewer.

The employee will, under the pay policy, have the right to appeal the decision to withhold progression.

### **5 WHO IS RESPONSIBLE FOR MAINTAINING STANDARDS OF PERFORMANCE?**

The Governing Body has overall responsibility for ensuring acceptable standards of performance are maintained. Under the Education Act 2002 School Staffing (England) Regulations 2003, Headteachers should be given responsibility for the day to day management and implementation of appraisal and performance management procedures. Governors may also delegate authority to the Headteacher to take disciplinary action up to and including initial decisions to dismiss, following which a right of appeal to a panel of Governors would be given.

### **6 SICKNESS ABSENCE**

If a period of long term absence appears to have been triggered by the commencement of capability procedures, the case may be referred to Occupational Health.

## **7 WHAT ARE THE PRINCIPLES?**

Staff will be aware of the school's expectations regarding standards of performance and the possible consequences of failing to meet these standards. A teacher who becomes subject to these procedures will be encouraged, at an early stage, to seek advice either from their professional association or a work colleague. The school welcomes and supports the input and involvement of trade union representatives in these procedures including the right of staff to be accompanied during any formal meeting conducted as part of this process.

Those involved in implementing this procedure will do so fairly and equitably ensuring that the employee is given the opportunity to respond to concerns regarding poor performance and that no decisions are made until all relevant and appropriate information has been considered.

The procedure will be withdrawn when improvements in performance have been achieved and maintained. The decision to withdraw the procedure will be confirmed in writing.

Where the Headteacher is the subject of the capability procedure, the Chair of Governors or other designated Governor, will be responsible for initiating any required actions and for fulfilling duties that would otherwise be undertaken by the Headteacher. In such cases it is recommended the Chair of Governors contact their HR Adviser and discuss the circumstances before any action is taken.

It is recognised an employee being supported through this procedure is likely to find the situation stressful, and the Headteacher will make the employee aware of the wellbeing services available.

## **8 RAISING A GRIEVANCE**

Where an employee raises a grievance relating to the way in which concerns about their performance are being addressed the capability procedure may be temporarily suspended for a short period in order to deal with the grievance. It is recommended that discussion takes place with the school's HR Adviser and the employee (normally through their professional association or directly if they are not represented) about whether or not the capability procedure should be suspended so that the grievance issues can be dealt with separately under the grievance procedure, or whether the grievance should be raised by the employee at relevant capability interviews, reviews, hearings or appeal.

Suspending the capability procedure because a grievance has been raised would normally take place when:

- There is an allegation that management have failed to follow procedure;
- There is possible discrimination.

## **9 FORMAL MEETING WITH EMPLOYEE**

Concerns about a teachers performance that have not been resolved through the appraisal process will be confirmed in writing by their appraiser along with confirmation that the appraisal process will no longer apply and that their performance will from this point be managed under the capability procedure.

The Headteacher with appropriate notice will meet formally with the member of staff to discuss the perceived shortcomings and will advise that the capability procedure has been reached.

The employee will be informed in writing of their right to be accompanied by their professional association representative or workplace colleague. During the meeting discussion will take place with the member of staff on ways of providing further opportunity to improve their performance. The meeting will:

- Clarify perceived shortcomings. The member of staff will be given a copy of any documents being used to record areas for improvement, objectives to be achieved, the support and guidance provided and progress being made.
- Seek to agree a formal course of action to effect the required improvement, which will include the provision of support and advice from experienced sources both within and outside of the school. Support arrangements will be kept separate and distinct from monitoring arrangements. In each case individuals with appropriate experience will be selected to undertake these roles. Where the concern relates to the performance of the Headteacher, support and advice could be provided by another Headteacher(s) in consultation with the LA or the schools HR adviser.
- Set an appropriate period of time for the member of staff to improve and arrange a formal review meeting.
- Inform the member of staff that a continued failure to improve performance could lead to a formal hearing being convened.

At the conclusion of the agreed period a formal review meeting will take place. That meeting will involve the Headteacher, line-manager (if appropriate) and LA representative/schools HR adviser, if required. Where the concern relates to the performance of the Headteacher, the review meeting will involve the Chair of Governors, and appropriate LA representative/schools HR adviser if required.

If the Headteacher concludes 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, the capability procedure will come to an end.

## 10 FORMAL REVIEW MEETING

The employees will be informed of their right to be accompanied by their professional association representative or workplace colleague.

The employee must be given at least five working days written notice of the meeting and confirmation of the nature of the concerns, and any accompanying documents that will be referred to at the meeting, including a further copy of the procedure.

At the meeting and prior to any decision being taken the employee will be given an opportunity to comment on the concerns and to ask any questions.

The Headteacher will then consider what action should be taken. Following the meeting the Headteacher will inform the employee both verbally and in writing of their decision. The options at this stage of the procedure are:

The outcome of the review will be either:

- a) Satisfactory progress; no further action required, the capability procedure will cease and the appraisal process will re-start.
- b) Some progress; further review needed after specified period, the timetable for improvement will depend on the circumstances of each individual case
- c) No significant improvement - move to a formal hearing with the Headteacher or Governors Staffing Panel.

## 11 HEARING WITH THE HEADTEACHER

If, after the conclusion of the formal review meeting, it is decided there has been no significant improvement in performance, or that the improvement has not been sustained, arrangements will be made for the member of staff to attend a formal hearing.

If the Headteacher has not been directly involved in the capability process leading to a hearing and has not made earlier judgements on performance they will convene the hearing. The procedures to be followed at this stage may be varied by mutual agreement. The employee must be advised in writing of the date, time, place of hearing, who will be involved, the specific nature of the shortcomings, including copies of the supporting information and the right to have a representative present. The member of staff will be given at least five working days' notice of the hearing.

If the **Headteacher has been directly involved**, then the matter will be referred to a Governors Staffing Panel hearing.

The outcome to the hearing will be either:

- (a) Required improvement in performance achieved; no further action required, the capability procedure will cease and the appraisal process will re-start.



- (b) Some progress towards required improvement achieved but performance remains below acceptable standards; agree a further period of support and monitoring aimed at securing acceptable progress towards performance objectives set and arrange a second review meeting. In addition, consideration may be given to issuing a written warning; this will state the grounds for action to be taken, and that failure to improve may result in dismissal.
- (c) No significant improvement; Issue a written or final written warning and give the employee further time to improve

The decision will be confirmed in writing within five working days. If the decision is to issue a written warning the member of staff will be advised of the grounds for the action taken and, where appropriate, clarification of those areas of work giving cause for concern, objectives which will need to be met to demonstrate appropriate improvement, the timescale for achieving this improvement, the support provided to assist the employee, the date on which a review will be conducted and by whom. The letter will also contain details of their right of appeal.

## **12 HEARING WITH GOVERNORS STAFFING PANEL**

If, after the conclusion of the formal review meeting, it is decided that there has been no significant improvement in performance, or that the improvement has not been sustained, arrangements will be made for the member of staff to attend a formal hearing.

The Governing Body will nominate three of its members, who are not staff members to form the Staffing Panel. Three different Governors will also be nominated to form the appeals panel. No Governor will serve on either panel if they have had any previous involvement in the matter or have a pecuniary interest. Where the Chair of Governors acts as critical friend to the Headteacher he/she will not sit on either panel.

The employee will be:

- given at least five working days written notice,
- advised of the right to be accompanied by a workplace colleague or professional association representative,
- informed of the nature of concerns, and provided with all relevant evidence that will be discussed at the hearing.
- The Headteacher will present the evidence for the areas of concern, the process followed and the support and training given and make recommendations.
- The employee will be given the opportunity to respond.
- The panel of governors will consider evidence regarding the employee's performance and any recommended actions and determine whether:

- a) Sufficient improvement has taken place and withdraw the procedure.
- b) Alternative employment is available within the school and can be offered to the employee.
- c) To issue a written or final written warning and give the employee further time to improve.
- d) Dismiss the employee with notice.

The decision must be confirmed in writing within five days of the hearing. If the decision is to issue a written warning or dismiss then the employee must be notified of their right of appeal.

The school should discuss the matter with the Local Authority, if dismissal is a potential outcome, prior to the hearing. A Local Authority Representative may also be present at the hearing.

### **13 RIGHT OF APPEAL**

An employee may lodge a letter of appeal against any formal action taken under this procedure. A letter of appeal should be addressed to the Clerk to the Governing Body and forwarded within five working days of the date on which they receive the confirmation of the formal action. The appeal will be heard by the appeals panel of the Governing Body in accordance with the schools agreed appeals procedure.

The appeal panel will consist of governors who have not taken part in any early stages of the procedure.

The member of staff will be given at least five working days' notice of the hearing. In maintained schools a LA representative and, in the case of VA Schools, a Diocesan representative will be invited to attend.

The decision of the appeal panel will be confirmed in writing within five working days.

If the appeal is upheld the letter will only convey the grounds for the action taken. If the decision is not to uphold the employee's appeal, the letter will confirm the grounds on which the panel reached their decision.

Where the outcome to the above hearings fall short of dismissal and concerns regarding performance remain the employee will be informed of;

- those areas of work that continue to be a cause for concern,
- the targets which will need to be met to demonstrate appropriate improvement,
- the timescale for achieving this improvement,
- the support provided to assist the employee,

- the date on which a review will be conducted and by whom.

In these circumstances the above procedure will recommence from Section 8.

## **14 WRITTEN RECORDS**

A record of the documentation relating to each stage of the process will be retained and will include:

- details of the shortfall in performance standards
- the employee's views
- names of participants, their role, findings and actions taken
- the reason for actions taken
- whether an appeal was lodged
- outcome of the appeal
- subsequent developments
- notes of any formal meetings

## **15 FUTURE REFERENCE REQUESTS**

In receiving a reference request for an employee who has been subject to formal capability the school must:

- advise in writing whether or not that member of staff has, in the preceding two years, been the subject of the procedures established by the governing body if so,
- provide written details of the concerns which gave rise to this, the duration of the proceedings and their outcome.