Professional Capability Procedure for Schools

Agreed by Governors:
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V. CARR (Chair of Govs)

E. READ (Headteacher)

Review by spring 2022

Introduction

The School Staffing (England) Regulations 2009 sets out a requirement for governing bodies to establish procedures for dealing with lack of capability on the part of staff employed in schools.

The School Staffing (England) (Amendment) Regulations 2012 which take effect from 1 September 2012 requires schools to provide details about whether a headteacher or teacher has been subject to capability procedures in the previous two years.

Schools and local authorities must stay within the legal framework set out in the Staffing Regulations and in other relevant legislation that affects all employers (for example legislation on equality, employment protection and data protection).

The model Professional Capability Procedure has been developed from the model published by the Department for Education. It includes additional details where it is considered that these are helpful to the operation of an effective procedure. The Oxfordshire model procedure has been drawn up following consultation with all the recognised Trade Unions and Associations and should be read alongside the model Appraisal Policy.

The Staffing Regulations do not apply to academies. Academies are regulated through their funding agreement. However, it is good practice for all schools to have a system for managing the performance of its staff and it is suggested that academies also adopt this model professional capability procedure.

This model procedure applies to teachers, including headteachers and school support staff. The policy has been written in the context of schools, but the same principles apply to unattached or centrally employed teachers.

Professional Capability Procedure

The Governing Body of Cumnor C of E Primary School adopted this capability procedure on 20th April 2016 following consultation with staff and representatives of the recognised trade unions.

It will review it in *3 years*

Purpose

1. This procedure sets out the arrangements that will apply when the performance of employees falls below the levels of professional capability that are expected of them.

Application of the procedure

2. This procedure applies only to teachers or headteachers about whose performance there are serious concerns that the appraisal process has been unable to address.

3. Where there are concerns about the performance of the headteacher, the professional capability procedure will be conducted by the Chair of Governors (or other governor nominated by the Governing Body) supported by a suitably skilled and/or experienced external adviser who has been appointed by the Governing Body for that purpose.

4. The policy also applies to all support staff employed by the school.

5. Advice and guidance on the application of this procedure is available from the Schools' HR team.

Transition to capability

6. If, following a period of support and monitoring under the Appraisal Policy, the appraiser / headteacher is not satisfied with progress, the employee will be notified in writing that the appraisal system will no longer apply and that their performance will be managed under the Professional Capability Procedure. He/she will be invited to a formal capability meeting.

7. At least five working days' written 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 employee to prepare to answer the case at a formal capability meeting. It will also contain copies of any written evidence; the details of the time and place of the meeting; and will advise the employee of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

Formal capability meeting

8. This meeting is intended to establish the facts. It will be conducted by the Chair of Governors or another nominated governor (for headteacher capability meetings) or the headteacher or senior manager (for other teachers and support staff). The meeting allows the employee, 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.

9. 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. The person conducting the meeting may also adjourn the meeting for example if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.

10. In other cases, the meeting will continue. During the meeting, 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 employee can be removed from formal capability procedures (this will normally include the setting of 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);
    - provide an opportunity for the employee to respond to the concerns and make any representations;
    - explain any support that will be available to help the employee improve their performance;
    - set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case but in straightforward cases will normally be a minimum of six working weeks.[1]; and
    - warn the employee formally that failure to improve within the set period could lead to dismissal. This will normally be a first written warning but in very serious cases, a final written warning may be appropriate.

11. Notes will be taken of the meeting and a copy given to the member of staff within three working days of the meeting.

12. Where a warning is issued, the employee will be informed in writing of the matters covered in the bullet points above and given information about the timing and handling of the review stage and the procedure and time limits for appealing against the warning.

[1] It is for the person conducting the meeting to determine the set period which should be between four and ten working weeks. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place.

Monitoring and review period following a formal capability meeting

13. A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. At the end of this period, 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).

Formal review meeting

14. At least five working days' notice will be given and the written notification will give details of the time and place of the meeting and will advise the employee of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

15. At the formal review meeting the person conducting the meeting will:
    - Remind the employee of the purpose of the Professional Capability procedure;
    - Review the employee's progress in achieving the improved standard of performance identified in the formal capability meeting;
    - Provide the employee with an opportunity to respond to the assessment of his/her performance and make any representations;
    - Make a decision, as follows:

    EITHER

16. If the person conducting the meeting is satisfied that the employee has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start. The employee will be informed that if there is further cause for concern within six months they will re-enter the formal capability procedure at the stage at which they left it.

    OR

17. 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 and to schedule a further formal review meeting. The timetable for improvement will depend on the circumstances of the individual case and will be between four and ten working weeks.

    OR

18. If no, or insufficient improvement has been made during the monitoring and review period, the employee will be issued with a final written warning. If a final warning is issued the period for improvement will normally be four working weeks.

19. The employee will be invited to a decision meeting at the end of the monitoring and review period.

20. Notes will be taken of the meeting and a copy given to the member of staff within three working days of the meeting.

21. In all cases, the outcome of the meeting will be confirmed in writing.

22. Where a final warning is issued, the employee will be informed in writing that failure to achieve an acceptable standard of performance within the set timescale, may result in dismissal and given information about the handling of the monitoring and review period and the procedure and time limits for appealing against the final warning.

Decision meeting

23. At least five working days' notice will be given and the written notification will give details of the time and place of the meeting and will advise the employee of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

24. At the Decision meeting the person conducting the meeting will:
    - Remind the employee of the purpose of the Professional Capability procedure;
    - Review the employee's progress in achieving the improved standard of performance identified in the formal capability and/or formal review meeting;
    - Provide the employee with an opportunity to respond to the assessment of his/her performance and make any representations;
    - Make a decision, as follows:

    EITHER

25. If an acceptable standard of performance has been achieved during the monitoring and review period, the capability procedure will end and the appraisal process will re-start. The employee will be informed that if there is further cause for concern within six months they will normally re-enter the formal capability procedure at the stage at which they left it.

    OR

26. If performance remains unsatisfactory a recommendation will be made to the Governing Body that the employee should be dismissed or required to cease working at the school.[2]

27. Notes will be taken of the meeting and a copy given to the member of staff within three working days of the meeting.

[2] *In Foundation Schools, Voluntary Aided Schools and Foundation Special Schools, the governing body is the employer but the power to dismiss can be delegated to the headteacher, to one or more governors, or to one or more governors acting with the headteacher. In Community, Voluntary Controlled, Community Special, and Maintained Nursery schools, the power to determine that the member of staff should no longer work at the school can be delegated in the same way as above but it is the local authority (as the employer) that actually dismisses staff (or – for those who work in more than one school – requires them to cease to work at the school).*

28. In all cases, the outcome of the meeting will be confirmed in writing.

29. If it is decided to recommend that the employee is dismissed, he/she will be notified in writing that the recommendation to dismiss will be referred to a panel of governors in accordance with the school's formal Disciplinary procedure. The employee will be given a copy of the Disciplinary procedure.

Decision to dismiss

IMPORTANT NOTE: Although governing bodies have the power to delegate dismissal decisions, they are strongly recommended <u>not</u> to delegate such decisions to one person acting alone.

30. *<u>Foundation Schools, Voluntary Aided Schools and Foundation Special Schools</u>*

    Either: The power to dismiss staff in this school rests with the Governing Body.

    Or: The power to dismiss staff in this school has been delegated *to the headteacher / to one or more governors / to one or more governors acting with the headteacher (delete as appropriate).*

31. *<u>Community, Voluntary Controlled, Community Special, and Maintained Nursery schools</u>*

    Either: The power to decide that members of staff should no longer work at this school rests with the Governing Body.

    Or: The power to decide that members of staff should no longer work at this school has been delegated to *the headteacher / to one or more governors / to one or more governors acting with the headteacher.* (*delete as appropriate).*

Dismissal procedure

32. A formal meeting will be arranged between the employee and the Governing Body's Staff Dismissal Panel, the headteacher or the person who has conducted the Professional Capability Procedure will present the recommendation to the panel.

33. *Voluntary Aided, Foundation and Foundation Special schools*

    Once the decision to dismiss has been taken, the Governing Body (*or insert details of person or people to whom the power to dismiss has been delegated)* will dismiss the employee with notice*.*

34. *Community, Voluntary Controlled, Community Special and Maintained Nursery Schools*

    Once the Governing Body (*or insert details of person or people to whom the power has been delegated)* has decided that the employee should no longer work

at the school, it will notify the Local Authority of its decision and the reasons for it. Where teachers work solely at this school, the Local Authority must dismiss them within fourteen days of the date of the notification. Where they work in more than one school, the local authority must require them to cease to work at this school.

Appeals

35. If an employee feels that a decision to dismiss them, or other action taken against them, is wrong or unjust, they may appeal in writing against the decision within five working days of the decision, setting out at the same time the grounds for appeal. Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a companion will apply as with formal capability and review meetings and, as with other formal meetings, notes will be taken and a copy sent to the employee.

36. The appeal will be dealt with impartially and, wherever possible, by managers or governors who have not previously been involved in the case. Appeals against formal warnings before the Decision to Dismiss stage may be heard by a senior manager or an individual governor who has not been previously involved with the case.

37. Appeals should normally be restricted to considering the reasonableness of the decision made, any relevant new evidence or any procedural irregularities. Where the reasonableness of the decision is being questioned, the test should be that the decision was perverse, in that it was so unreasonable that no other headteacher or manager, acting with proper regard to his/her responsibilities, could have chosen to take it. Where an appeal is upheld the matter should be referred back to the headteacher or person conducting the procedure to be reconsidered or for further appropriate action. Where monitoring would otherwise be continuing, it should not be halted while an appeal is pending.

38. The employee will be informed in writing of the results of the appeal hearing within three working days of the date of the hearing.

Provision of information about teacher or headteacher capability

39. Where a teacher or headteacher applies for a teaching post at another school, the governing body must, on request, advise in writing whether the teacher or headteacher has, in the preceding two years, been subject to capability procedures. If this is the case, they must provide written details of the concerns which gave rise to capability procedures, the duration of the proceedings and their outcome.

Further advice and support is available from the Schools' HR team by telephone: 01865 797588 or by email: schoolshr@oxfordshire.gov.uk

Frequently Asked Questions

What happens if an employee raises a grievance during the capability procedure?

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. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.

What happens if an employee is absent for an extended period during the capability procedure?

If long term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case will be dealt with in accordance with the school's absence policy and will normally be referred immediately to the Occupational Health Service to assess the member of staff's health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures.

Monitoring and assessment under the procedure needs to be based on evidence of performance at work. However, in some cases it may be appropriate for formal procedures to continue during a period of sickness absence for example, if the procedure has reached a stage where the absence of the employee would not significantly affect the outcome.