



WARBLINGTON
SCHOOL

PART 2 CAPABILITY POLICY ALL STAFF

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Document Control

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Part 2 – Capability Procedure

1. Principles

- 1.1 This procedure will apply in circumstances where poor performance is assessed to be as a result of an employee's lack of skill, ability, knowledge, experience or aptitude. Where poor work performance is assessed to be due to a deliberate or wilful failure to fulfil the duties of an employee's role and/or a deliberate lack of care, the matter will be dealt with under the School's Disciplinary Procedure as this is a conduct concern.
- 1.2 Where an employee wilfully and unreasonably refuses to co-operate with the application of the Capability Procedure, the matter will be dealt with under the Disciplinary Procedure.
- 1.3 Poor performance due to health problems and/or sickness absence will normally be dealt with via the [School's Sickness Absence Policy and Procedure](#). This is likely to lead to a referral to Occupational Health in order to assess the employee's fitness for work. In some cases it may be appropriate for the Capability Procedure to continue during a period of sickness absence, however the Headteacher/Senior Manager/Headteacher Performance Management Committee (HPMC) will have regard to the views of Occupational Health.
- 1.4 Prior to the implementation of this procedure, the Headteacher/Senior Manager/HPMC will normally need to be able to show that, through the performance review process, reasonable efforts have been made to identify any performance concerns, discuss them with the employee and, as appropriate, provide support designed to facilitate improvement.
- 1.5 This procedure aims, through advice and support, to improve to an acceptable level, as set by the school, the performance of an employee who is causing concern. Such advice and support may be provided:
 - from within the school;
 - through accessing expertise in another school;
 - via the local authority's advisory services;
 - from other expert sources external to the school;
 - through training courses or events.
- 1.6 The stages specified in this document must be dealt with on a professional and confidential basis. Governors will be notified in the event that the formal Capability Procedure is applied to a member of staff, but will not be provided with any other detail, as this may prejudice governors' involvement in a later stage if recourse to that stage eventually becomes necessary.
- 1.7 Employees are encouraged to be accompanied by a professional association or trade union representative or by a work colleague under any stages of the Capability

Procedure and to seek advice at the earliest opportunity where they are subject to formal action. The companion is allowed to make representations on behalf of the employee, submit papers, ask questions and address a meeting on behalf of the employee but is not allowed to answer questions on behalf of the employee. It is the employee's responsibility to arrange their own companion and advise management of this. If the employee, or their companion, is unable, for good reason, to attend a meeting, an alternative date will be arranged, once only, normally within 5 working days of the original meeting.

- 1.8 When the Capability Procedure has commenced, the employee will be provided with a copy of the Procedure.
- 1.9 All targets and support and review meetings will be recorded during the capability process.
- 1.10 The employee will not normally be permitted to raise a grievance related to any action taken, or contemplated, under this procedure. Such grievances will normally be managed within the hearing and appeal process detailed below.
- 1.11 If the employee has less than two years of continuous service with the employer (depending on the employee's start date), the procedure at [Appendix 1](#) will be used.
- 1.12 The employee will have the right of appeal against any formal action taken against them in accordance with [section 10](#) of this procedure.
- 1.13 The School will have the right to request that an officer from Education Personnel Services attends any meetings under Stages 1 or 2 of the Capability procedure, in order to provide support to the Senior Manager/Headteacher/HPMC. Education Personnel Services will have the right to attend a meeting held under Stage 3 of the Capability Procedure in Hampshire Maintained Schools (other than in Voluntary Aided or Foundation Schools unless such rights exist) on behalf of the Local Authority.
- 1.14 In the interests of fairness, both parties are expected to provide details of any significant issues and relevant papers in advance of meetings arranged under the formal procedure. Management documents will normally be supplied with the letter inviting the employee to the formal meeting. The employee, or their representative/colleague, must submit their information to arrive at least **3 working days** before the meeting.
- 1.15 Responsibility for decision-making within this procedure rests with the Headteacher/Senior Manager/HPMC, and the Headteacher/Governors' Committee where convened. If the governing body has delegated to the Headteacher the power to dismiss, the Headteacher will not normally be able to fulfil that role where he/she has had substantial involvement in the earlier stages of the procedure.
- 1.16 Where this procedure is used in relation to Headteacher poor performance, the HPMC will undertake the role of Headteacher/Senior Manager. In such cases, an

additional professional adviser from the School's School Improvement provider will be present, at any stage, to provide governors with professional advice.

- 1.17 The time periods in this procedure will also apply to part-time employees.
- 1.18 A first formal warning given as part of the application of this procedure will lapse at the point when the Headteacher/Senior Manager/HPMC decides that an acceptable level of performance has been reached. If performance concerns return within 12 months from the date of such a decision, the Headteacher/Senior Manager/HPMC, following consultation with Education Personnel Services (or HIAS in the case of the Headteacher), may re-enter the procedure at the appropriate point in Stage 1.
- 1.19 Where a final warning has been issued, this will lapse at the point when the Headteacher/Senior Manager/HPMC decides that an acceptable level of performance has been reached. If performance concerns return within a period of two years (six terms) from the date of issue, the Headteacher/Senior Manager/HPMC, following consultation with Education Personnel Services (or HIAS in the case of the Headteacher), may re-enter the procedure at the appropriate point in Stage 2 at any time during this two-year period.
- 1.20 Action involving use of a formal written warning and beyond will not be taken in respect of an accredited representative of a Trade Union unless the Headteacher or Education Personnel Services (as appropriate) has informed the relevant full-time official of the action that is being contemplated.
- 1.21 The audio or video recording of any meetings or hearings held under this procedure is not permitted. Where an employee is unable to take his or her own notes of a meeting due to a physical, sensory or mental impairment, it is expected that the employee's representative will take notes on their behalf and/or alternative options will be considered to remove any potential disadvantage that an employee may have. Only in exceptional cases may an employee request an audio or video recording of the meeting as an alternative. In such cases, consideration will be given as to whether or not recording the meeting is appropriate in all the circumstances, including an assessment of whether other options have been considered as above.

2. Stages of the Procedure

- 2.1 There are three stages in the Capability Procedure, as follows:
 - Stage 1 - Formal Meeting Stage
 - Stage 2 – Formal Meeting Stage
 - Stage 3 – Headteacher/Governors' Committee hearing
- 2.2 At every stage of the procedure the employee will be advised of the nature of the concern, be given an opportunity to provide their view, and have the right to be accompanied.

3. Stage 1 - Formal Meeting

3.1 Invitation to a Stage 1 Formal Meeting

3.1.1 The Headteacher/Senior Manager/HPMC will write to the employee to invite them to a Stage 1 Formal Meeting. The invitation letter will:

- inform the employee of the stage of the procedure being followed;
- provide the employee with a minimum of 5 working days' notice of the meeting;
- inform the employee of the right to be accompanied at the meeting;
- inform the employee of the requirement to confirm before the meeting whether they intend to be accompanied at the meeting, and, if so, by whom;
- inform the employee that, if they wish to refer to any written information at the meeting, this must be submitted to arrive 3 working days before the meeting;
- explain that if the employee needs special support or assistance during the meeting, they should notify the Headteacher/Senior Manager/HPMC in advance of the meeting;
- remind the employee of their access to the Council's Employee Support service;
- enclose a copy of the Capability Procedure (if they have not already been provided with a copy) and all written information the Headteacher/Senior Manager/HPMC wishes to rely upon during the meeting;

3.2 Conduct of the Stage 1 Formal Meeting

3.2.1 The Headteacher/Senior Manager/HPMC will:

- clearly set out the nature of the performance concerns, discuss the measures put in place during any period of structured managerial support and explain why progression to the Capability Procedure may be required;
- refer to any documents or evidence (for example, evidence of support provided, monitoring and training records and examples of the employee's work) and clarify the requirements of the employee's role and the standards expected;
- ask the employee to account for their continued under-performance including any mitigation the employee feels is relevant;
- consider all the facts and, if necessary, adjourn the meeting to consider these further before making a decision about whether the employee will move onto the Capability Procedure;
- define success criteria and the evidence that will be used to assess whether or not the necessary improvement has been made;
- define the nature and frequency of any support to be provided, and of the monitoring process, and the dates of interim progress reports and formal reviews ([noting section 9](#)).

3.3 Outcomes of the Stage 1 Formal Meeting

3.3.1 Possible outcomes include:

- no formal action required (in which case it may be appropriate to continue to address the concerns through the performance management process and the Capability Procedure will not apply);
- a Formal Warning is issued;
- (in serious cases) a Final Warning is issued ([see section 7](#));
- (in exceptional cases) a decision is made to suspend the employee pending an investigation into a concern of gross incapability ([see section 8](#)). In such circumstances, the Headteacher/Senior Manager/HPMC may refer the matter directly to a hearing under Stage 3.

An employee issued with a warning will be told the consequences of further poor performance or failure to improve within the set review period. The length of the review period will depend on the circumstances of the individual case but in most cases will be between four and ten weeks. Progress will be formally reviewed at the end of this period, however interim reviews will also be held to assess progress ([noting section 9](#)).

- 3.3.2 The outcome of the meeting will be confirmed in writing to the employee, normally within 5 working days. If it is necessary to vary this timescale the employee should be notified at the conclusion of the meeting. A copy of this letter will be placed on the employee's personal file.

4. Stage 2 - Formal Meeting

4.1 Invitation to a Stage 2 Formal Meeting

- 4.1.1 The Headteacher/Senior Manager/HPMC will write to the employee to invite them to a Stage 2 Formal Meeting. The invitation letter will be in accordance with paragraph 3.1.1.

4.2 Conduct of the Stage 2 Formal Meeting

- 4.2.1 The Headteacher/Senior Manager/HPMC will:

- clearly set out the nature of the performance concerns, discuss the measures put in place during any period of structured managerial support and explain why progression to the next stage of the Procedure may be required;
- refer to any documents or evidence (for example, evidence of support provided, monitoring and training records and examples of the employee's work) and clarify the requirements of the employee's role and the standards expected;
- ask the employee to account for their continued under-performance including any mitigation the employee feels is relevant;
- consider all the facts and, if necessary, adjourn the meeting to consider this further before making a decision about whether the next formal stage will be commenced or the current stage extended;
- define success criteria and the evidence that will be used to assess whether or not the necessary improvement has been made;

- define the nature and frequency of any support to be provided, and of the monitoring process, and the dates of interim progress reports and formal reviews.

4.3 Outcomes of the Stage 2 Formal Meeting

4.3.1 Possible outcomes include:

- no further action, in which case the Capability Procedure will cease ([see section 6](#));
- the Formal Warning remains in place for a further specified period of time under Stage 1;
- a Final Warning is given.

The employee will be told the consequences of further poor performance or failure to improve within the set review period (as defined in section 4.5 and 5, below). In most cases, a review period will be set of no more than four weeks.

The outcome of the meeting will be confirmed in writing to the employee, normally within 5 working days. If it is necessary to vary this timescale the employee should be notified at the conclusion of the meeting. A copy of this letter will be placed on the employee's personal file.

4.4 Stage 2 Final Review Meeting

4.4.1 At the end of the review period in Stage 2, the employee will be invited to a Final Review Meeting. The invitation letter will be in accordance with paragraph 3.1.1. The conduct of the meeting will be in accordance with paragraph 4.2.

4.4.2 Possible outcomes include:

- a decision to refer the matter to a Headteacher/Governors' Committee Hearing to consider dismissal on the grounds of Capability;
- the Final Warning remains in place for a further specified period of time;
- no further action, in which case the Capability Procedure will cease ([see section 6](#)).

4.4.3 The Headteacher/Chair of the HPMC (in the case of a Headteacher) will inform the Chair of the Governing Body and Education Personnel Services (if not already involved) of the outcome of the Stage 2 Final Review Meeting.

4.4.4 The outcome of the meeting will be confirmed in writing to the employee, normally within 5 working days. If it is necessary to vary this timescale the employee should be notified at the conclusion of the meeting. A copy of this letter will be placed on the employee's personal file.

4.5 Consideration of alternative options

Before any meeting takes place under Stage 3 of this procedure (with the exception of potential gross incapability cases), Education Personnel Services and, where

appropriate, a Local Authority Officer and/or, in the case of an Aided School, an officer of the Diocese, will meet with the employee and the Headteacher/Senior Manager/HPMC separately to examine any available alternatives which would obviate the need for the application of Stage 3 or beyond. This will include consideration of whether or not it is feasible to make any offer of alternative employment to the employee.

5. Stage 3 – Headteacher/Governors’ Committee Hearing

5.1 Invitation to a Stage 3 Hearing

5.1.1 The Headteacher/Senior Manager/HPMC will write to the employee to invite them to a Stage 3 Hearing. The invitation letter will be in accordance with paragraph 3.1.1 and the employee must be advised that dismissal is a potential outcome. The employee must be advised of their right to be accompanied at the Hearing in accordance with paragraph 1.7.

5.2 Conduct of a Stage 3 Hearing

5.2.1 Where the Headteacher has formally delegated powers of dismissal and has not had substantial involvement in Stages 1 and/or 2 of the procedure, the Headteacher may hear the matter. Where this is not the case, the matter will be heard by a Governors’ Committee.

5.2.2 The Hearing will be conducted in accordance with the procedure for [Headteacher/Governor Committee Hearings](#).

5.2.3 In the case of the Headteacher, the Chair of the HPMC will commission an Advocate from the School Improvement Service and a senior officer from Education Personnel Services to present the management case. The Chair of the HPMC will normally be called as a witness.

5.3 Outcomes of the Stage 3 Hearing

5.3.1 Possible outcomes include:

- no further action, in which case the Capability Procedure will cease ([see section 6](#));
- the previous Final Warning should remain in place for a further specified period of time (in which case the required improvement in performance will be identified as well as the support that will be provided to help the employee achieve this and the period of time in which the necessary improvement must be made);
- the employee is dismissed on the grounds of capability with the appropriate contractual notice;
- the employee is dismissed summarily (in gross incapability cases – [see section 8](#)).

5.3.2 The outcome of the meeting will be confirmed in writing to the employee, normally within 5 working days. If it is necessary to vary this timescale the employee should

be notified at the conclusion of the meeting. If the decision is to dismiss the employee the letter will:

- specify the reason for the decision to dismiss;
- confirm that the dismissal will take place with notice (or without notice in the case of gross incapability);
- confirm that the employee has the right of appeal against the decision, and the mechanism for doing so.

6. Improvement in performance achieved

- 6.1 If the employee's performance improves as required, the Headteacher/Senior Manager/HPMC will meet the employee to tell them this. This will be confirmed in writing to the employee and the letter will be placed on the employee's file. The Capability Procedure will cease at this point and Performance Management will re-start. If the employee was at Stage 1 of the Capability procedure, their improvement in performance will need to be sustained for at least 12 months, at Stage 2 the improvement would need to be sustained for at least 24 months. If the employee's performance declines during this period of time, the Headteacher/Senior Manager/HPMC will have the option to re-enter the procedure at the appropriate point.

7. Fast-track procedure

- 7.1 In very serious cases it may be necessary to issue a Final Warning at a Stage 1 meeting. In such cases, if the necessary improvement in performance is not achieved during the review period, the Headteacher/Senior Manager/HPMC will proceed to Stage 3 – a Headteacher/Governors' Committee Hearing.

8. Gross Incapability

- 8.1 When an employee's performance is regarded as gross incapability it would be inappropriate to take them through a staged procedure, particularly if the health and safety of pupils or other employees is in serious jeopardy or there are serious consequences for the school, to the extent that dismissal would be justified. In such cases, a full investigation must take place and the employee must be given the opportunity to respond. The matter would normally be referred straight to a Headteacher/Governors' Committee hearing and a potential outcome is that the employee is summarily dismissed on the grounds of gross incapability.

9. Failure to make progress during a review period

- 9.1 The review periods set at each stage of the Procedure are the maximum number of weeks in which an employee must make the necessary improvements in performance. However, where during a stage there is evidence to suggest a more serious problem or that progress is insufficient or the individual is unlikely to make the

required improvements, the Headteacher/Senior Manager/HPMC may decide to move to the next Stage of the Procedure.

10. Right of Appeal

- 10.1 An employee may appeal against any warning issued to them through the Capability Procedure and/or against a decision to dismiss them. For appeals against warnings under this procedure, the employee must submit an appeal in writing to the Headteacher/Senior Manager who signed the letter confirming the action to be taken under the procedure. Appeals against dismissal under Stage 3 of this procedure must be addressed to the Clerk to Governors. In both instances, the appeal must be received within 10 working days of receipt of the letter confirming the warning/dismissal and the employee must state in full the reasons for their appeal.
- 10.2 The purpose of an appeal is to enable an impartial review to be carried out as to the 'reasonableness' of the previous decision. The appeal should not become another capability hearing but should focus on reviewing the process followed, and the reasonableness of the decision that was taken.
- 10.3 Invitation to Appeal Meeting
- 10.3.1 If the employee lodges an appeal in line with the procedure, they will be invited by letter to an appeal meeting and given at least 7 working days' notice of the meeting date. Any relevant documentation must also be included with the letter.
- 10.3.2 The letter inviting the employee to the appeal meeting must include their right to be accompanied at that meeting.
- 10.3.3 If the warnings have been issued by a Senior Manager during the formal stages, the appeal may be heard by the Headteacher. If the warnings have been issued by the Headteacher during the formal stages, the appeal will be heard by a governors' committee. Where the Headteacher has heard appeals under Stage 1 and/or Stage 2, this will preclude the Headteacher from forming the committee under Stage 3 of this procedure.
- 10.3.4 Any appeal against dismissal will be heard by a governors' committee. The Headteacher or Clerk to the Governors' Committee (depending on who is hearing the appeal), will issue documentation with the letter of invitation to the appeal meeting. This will consist of the documentation used at the original hearing, supplemented with the employee's letter of appeal. Where either party wishes to provide additional information, this must arrive at least 3 working days in advance of the meeting to allow time for the information to be considered.

10.4 Conduct of Appeal Meeting

10.4.1 The conduct of the meeting will be in accordance with the Procedure for [a Governors' Appeal Committee Hearing](#) in the case of all Hampshire Maintained schools. This procedure is commended for use to academies and other external schools.

10.4.2 The outcome should normally be confirmed to the employee in writing within 5 working days. If it is necessary to vary this timescale, the employee should be notified at the conclusion of the meeting.

11. Requirement for schools to pass on information about a teacher's capability to a new employer

11.1 The School Staffing (England) (Amendment) Regulations 2012 require maintained schools to pass on information to a prospective employer about any teacher or Headteacher who has been on the Capability Procedure in the last two years. Specifically they will need to provide details of the duration of capability and an explanation of the outcome. Whilst the Regulations do not apply to Academies, Academies can also ask for the information as part of their recruitment processes.

12. Support

12.1 Employee Support is a confidential counselling and support service provided by trained, experienced counsellors, providing telephone and face-to-face counselling. This service is available to all staff in Hampshire maintained schools and more information can be found at <http://www3.hants.gov.uk/occupational-health/employee-support.htm>, or by contacting the helpline on [0800 030 5182](tel:08000305182). Staff in Academies and other schools should contact their school's counselling service where provided.

12.2 Employees can also seek advice and support from their professional association or trade union. A list of teacher professional association contact details are available at <http://www3.hants.gov.uk/education/teachers-info/tlp.htm>
Teachers can also seek support from the Teacher Support Line <http://teachersupport.info/>

Appendix 1 - Employees with less than two years of continuous service with the employer

This procedure applies to employees with less than two years of continuous service where performance is considered unacceptable.

It is expected that all new employees, during and after their induction, will have informal discussions with their line manager and that any concerns over the employee's performance are raised as early as possible.

Formal Meeting

There is only one formal meeting for employees in their second year of service (depending on the employee's start date). The Headteacher/Senior Manager will adopt the same approach as they would for a Stage 2 Formal Meeting (see [Section 4](#) of the Capability procedure).

Possible outcomes include:

- no formal action required (in which case it may be appropriate to continue to address the concerns through the induction and/or performance management process and the Capability Procedure will cease;
- a Final Warning is given in which case the employee will be told the consequences of further poor performance or failure to improve within the set review period;
- the matter is referred to a Headteacher/Governors Committee Hearing in order to consider whether the employee should be dismissed.

The outcome of the meeting will be confirmed to the employee. If the decision is to issue a Final Warning, the letter will:

- specify the reasons for the Stage 2 Final Warning, including details of the performance problems;
- include details of how long the final warning will remain in place;
- identify the improvement in performance required;
- identify any additional support or training to help the employee achieve the performance standards required;
- specify the period of time allowed for the necessary improvement to be made;
- specify the review dates;
- remind the employee that failure to improve to the required standard may lead to dismissal;

The timescale for the set review period for employees in their second year of service will be shorter and will not result in the employment being extended beyond two years prior to a final decision being taken.

If the decision is to refer the matter to a Headteacher/Governors' Committee Hearing, the letter will confirm the arrangements for this in accordance with the [Procedure for](#)

[Headteacher and Governors' Committee Hearings](#). The letter will confirm that a possible outcome of this hearing is that the employee could be dismissed on the grounds of capability.

This Procedure does not prevent a summary dismissal on the grounds of gross incapability in accordance with [Section 8](#) of the Capability Procedure.

Right of Appeal against Dismissal

Under this procedure, an employee only has the right of appeal against a dismissal decision; there is no right of appeal against a warning.

The employee must lodge an appeal as set out in [Section 10](#) of the Capability Procedure.