Capability procedures for teachers

Overview
Governing bodies must by law have procedures for dealing with lack of capability in members of staff. They must have regard to guidance from the Secretary of State in determining staff capability. This document represents the Secretary of State's statutory guidance. It:

• provides a model capability procedure for teachers which governing bodies should either adopt or use to review their school's procedure
• gives advice on using the procedure.

Action
Taking account of this guidance;

• LEAs and church authorities should review and if necessary amend the model procedures that they recommend to governing bodies; and
• governing bodies should either adopt the model procedure, or review and if necessary amend their own procedure.

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Introduction

This guidance helps schools to deal with problems of teacher capability. It recommends a model procedure that is fair, efficient and in accordance with good employment practice.

Good management, clear expectations and appropriate support will go a long way towards addressing weaknesses in performance. Early identification of problems through performance review will help to avoid the need for formal capability procedures. In some cases an improvement may be achieved informally with a minimum of support and attention. In others a more formal approach will be necessary.

The model procedure below is based on the Outline Capability Procedure drawn up in 1997 by a national working group of teacher, employer, governor and church representatives chaired by the Advisory, Conciliation and Arbitration Service (ACAS).

Key points

- Capability procedures should be no more elaborate than the recommended model

Governing bodies must have regard to this guidance when dealing with lack of capability in staff. They are recommended to adopt the model staff capability procedure below. They may choose to continue using their own procedure or a model provided by their local education authority or diocese, but any such procedure should be no more elaborate than the recommended model below.

- The recommended timings are upper limits which may be shortened if appropriate

The model procedure proposes an upper limit of two terms for the formal assessment of staff capability. Particularly serious cases may be handled in up to four weeks. The period of assessment may be shortened if justified, for example, where it becomes clear that an acceptable level of improvement is beyond the ability of the person assessed, or where there is a lack of co-operation with reasonable measures to achieve improvement.

- The short procedure of up to four weeks would be appropriate in particularly serious cases

The short procedure of up to four weeks would apply in particularly serious cases where the education of children is in jeopardy. Examples of this might be where a teacher’s classroom control is so poor that no order can be established to enable teaching to take place, or where all the children under a teacher’s care fail to progress in that teacher’s lessons.

- Urgent action is required if sickness absence intervenes during a capability procedure

If long term sickness absence appears to have been triggered by the commencement of a formal capability procedure, the case should be referred immediately to the employer’s occupational health service to assess the person’s health and fitness for continued employment. Schools must take a considerate and sympathetic approach, but in general the length of time they may wait for a person’s health to improve before considering whether to terminate employment on health grounds should be subject to occupational health guidance.
MODEL STAFF CAPABILITY PROCEDURE

INFORMAL STAGE

Where a teacher may be under-performing, the head teacher or other line manager should investigate and collect evidence. The chair of governors must make arrangements for this to be done if the performance of the head teacher is in question. Once the facts are gathered and the seriousness of the problem established there are three initial options:

- Drop the matter (no case to answer or trivial)
- Arrange counselling (support without using the formal procedure)
- Arrange a formal interview (formal approach for more serious cases)

Counselling

Counselling and informal coaching should aim to encourage and help the teacher to improve. It should be conducted discreetly. Explanations should be considered carefully and the matter dropped if it becomes evident that there is no case to answer. The teacher must be told what is required, how performance will be reviewed, the review period, and that the formal procedure will commence if there is no improvement. Counselling should not go on too long. A brief note of any counselling should be kept for reference.

Discussion must not harass the teacher or turn into a formal interview. If more serious concerns arise, or if the teacher expresses discontent or indifference to the counselling the formal procedure should be commenced to deal with the matter in a more structured and objective manner.

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

- drop the matter; or
- convene a formal interview.

FORMAL STAGE

Formal interview

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 and make a case in the company of a union representative or colleague. At least 5 working days (or 7 consecutive days out of term time) notice must be given for the interview.
The interview may provide new information or put a different slant on evidence 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.

There are four options at formal interview:

- drop the matter
- counselling (except where already undertaken without improvement)

These 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.

- oral or written warning
- final written warning

These are relevant to any case where continued concern about the standard of performance is justified. The decision on which level of warning to issue will depend on the seriousness of the problem. If performance is unsatisfactory a written warning will normally be the next step and will invoke an assessment period of up to two terms. An oral warning should not normally be necessary in cases where counselling has already taken place. In cases of particularly serious concern, where the education of children is in jeopardy, it is possible to move directly to a final written warning. This will invoke an assessment period not exceeding 4 weeks.

A decision should be made after all the facts and any representations from the teacher have been considered. The head teacher or line manager should adjourn the meeting briefly to consider the appropriate option before delivering a decision to the teacher. Any appeal against a warning must be made within 5 working days (or 7 consecutive days out of term time), and heard within 10 working days (or 14 consecutive days out of term time) of notification of appeal, and must not interrupt the progress of the procedure, unless the appeal decision leads to the matter being reconsidered.

Where a formal warning is issued, the head teacher or manager should use the remainder of the meeting to:

- identify the professional shortcomings;
- give clear guidance on the improved standard of performance needed to end the capability procedure;
- explain the support that will be available, and how performance will be monitored over the following weeks;
- depending on the level of warning issued, to identify the timetable for improvement and agree a date for the next/final evaluation meeting; and
- make it clearly understood that failure to improve may lead to dismissal.

A letter should 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.
First assessment stage

**Weeks 1 to 20** - Regular observation, monitoring and evaluation of performance, with guidance, training if necessary, and support to the teacher.

If at any point during this stage the circumstances suggest a more serious problem a decision may be taken to move directly to a final written warning.

**Week 20** – Evaluation meeting to assess performance over the previous weeks. At least 5 working days (or 7 consecutive days out of term time) notice must be given for the meeting and the teacher may be accompanied by a union representative or colleague. If the level of performance has been satisfactory and there is confidence that it can be sustained the capability procedure can end here with a letter from the line manager.

If performance continues to be unsatisfactory a **final written warning** should be issued. Formal monitoring, evaluation, guidance and support should continue for a further period. Arrangements for this should be explained at the meeting. The teacher must be told clearly that failure to achieve an acceptable standard, with confidence that it can be maintained, may result in dismissal. The decision and main points of the meeting should be recorded in a letter to the teacher. Any appeal against a final warning must be made within 5 working days (or 7 consecutive days out of term time), and heard within 10 working days (or 14 consecutive days out of term time) of notification of appeal, and must not interrupt the progress of the procedure, unless the appeal decision leads to the matter being reconsidered.

Second assessment stage

**Weeks 20 to 24** - Regular monitoring and evaluation of performance, with guidance, training if necessary, and support to the teacher.

**Week 24** - Final evaluation meeting to report the assessment of performance over the previous weeks. At least 5 working days (or 7 consecutive days out of term time) notice must be given for the meeting and the teacher may be accompanied by a union representative or colleague. If performance has been satisfactory, and there is sufficient confidence that it can be maintained, the capability procedure can end here.

If performance is unsatisfactory the teacher should be told that the matter will be referred to the governing body Staff Dismissal Committee. The result of the assessment, main points of the meeting and date of the dismissal committee hearing (if known), should be recorded in a letter to the teacher.

Dismissal committee stage

The governing body should set up a Staff Dismissal Committee with at least three governors. This must hear the representations and recommendations brought by the head, or other line manager conducting the capability evaluation, and any representations that the teacher may wish to make. The governing body should also set up a Staff Appeal Committee to hear any appeal against a dismissal decision. None of the governors on the Staff Dismissal Committee should be on the Staff Appeal Committee.
Applying the procedures

1  Role of governors

Governors should not normally be involved with a capability procedure before the dismissal stage. The exception to this is where a governor or governors are involved in considering an appeal against a warning, or in a capability procedure against a head teacher when some governors may be involved in the monitoring and evaluation of performance. It is important to be prepared for the possibility of dismissal. The use of governors to hear any grievances or appeals against warnings should be limited to ensure a sufficient number of impartial governors remain available for the dismissal and dismissal appeal committees. Normally at least three governors are required for the dismissal committee and no fewer for the appeal, but where this number is not reasonably practicable it can be reduced to two.

2  Role of advisers

LEA advisers or other advisers with education and personnel experience should advise the school and where appropriate assist with the process, including classroom observation and providing support.

3  Representation at formal interview, evaluation meetings and dismissal hearing

A teacher has a legal entitlement to be accompanied by a colleague or union representative. If the teacher’s chosen companion is not available at the time proposed for the interview, meeting or hearing, and the teacher proposes an alternative that is reasonable and falls within 5 working days of the day proposed for the interview, the school must rearrange the event to the time proposed by the teacher.

4  Notice

Notice of 5 working days (or 7 consecutive days out of term time) must be given for an initial formal capability interview. The date of successive evaluation meetings should be fixed at the preceding interview or meeting and notice should only be necessary if it is rearranged. Notice of at least 5 working days (or 7 consecutive days out of term time) must be given for a staff dismissal committee or dismissal appeal hearing.

5  Support for the teacher

Those monitoring the performance should offer feedback and instruction to help the teacher improve performance. If training courses or assistance from colleagues would be helpful these should be arranged as soon as possible but should not interrupt the timing of the procedure.

6  Monitoring arrangements

Monitoring should include observations of a range of relevant duties and functions. An objective record of the monitoring should be kept and used to assist with the evaluation of performance.
7 Written records

A written record should be made of all interviews with the teacher and any action taken following such an interview. Except in agreed circumstances any formal warnings should be disregarded for disciplinary purposes after a specified period of satisfactory performance. These periods are 2 terms for an oral or written warning and 6 terms for a final written warning.

8 Staff who are absent through illness during the procedure

Absence which is triggered by the capability procedure, and which management believe is likely to be long term, is covered in the key points above and should be referred immediately to the occupational health adviser to assess whether the teacher is fit for continued employment. Short absences should not delay any part of the formal stage of the capability procedure. Reasonable steps should be made to enable the teacher to attend evaluation meetings, but where the teacher is unable to attend, these may proceed in the teacher’s absence if delay would otherwise compromise the maximum time set aside for the procedure. In such circumstances a full account of the evaluation should be provided in the letter confirming the decision taken.

9 Decisions on continuing the procedure and recommending dismissal

Normally the decision to continue a capability procedure or recommend dismissal should be taken by the head, or by the line manager with the head’s agreement (except where the head’s performance is being considered). If there is a difference of opinion, the head’s decision should prevail except where the head’s performance is being considered).

10 Timetable

References to terms throughout the model procedure and these notes on applying the procedure are taken to mean the normal school term lengths for schools that operate a three term academic year. Any schools that operate on more than the normal three terms in an academic year should make an approximate pro rata adjustment to any references to terms.

11 Disputes about the procedure

Any disagreements or grievances about the interpretation of the model procedure, or the application of any related matters not covered in the procedure, must not delay the various elements of the capability procedure or the overall timetable determined as appropriate for handling any particular case.

12 Appeals against formal warnings

Appeals may be heard by a senior manager, an LEA adviser or an individual governor. More governors may be used only where this does not compromise the availability of previously uninvolved governors to staff the dismissal and dismissal appeal committees. However, previous involvement does not necessarily mean that a governor is tainted and thereby ineligible to serve on a dismissal or dismissal appeal committee. Appeals should normally be restricted to considering the reasonableness of the decision made, any relevant new evidence,
or any procedural irregularities. A teacher is entitled to be accompanied at an appeal hearing by a colleague or union representative. The appeal decision should be confirmed in writing and the teacher told that there is no further appeal against the decision. Where the reasonableness of the decision is being questioned the test that should apply for overturning a formal warning is that the decision was so unreasonable that it was one that no other head or manager, acting with proper regard to his or her responsibilities, could have chosen to take. Where an appeal is upheld the matter should be referred back to the head or manager to be reconsidered or for further appropriate action. Where monitoring would otherwise be continuing, it should not be halted while an appeal is pending.

13 Grievances

In exceptional circumstances a teacher may raise a grievance about the behaviour of a head or other manager 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 manager 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.

The Outline Capability Procedure

The *Outline Capability Procedure* established a consensus of agreement among the national representatives of the principal parties, including employers and teacher unions and associations, about the key stages of a capability procedure. It is available from -

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ACAS guidance

This model procedure is consistent with the ACAS Code of Practice on disciplinary procedures. It is available from -

ACAS Reader
PO Box 16
Earl Shilton
Leicester LE9 8ZZ
Tel: 01455 852225
Or from the Internet at - http://www.acas.org.uk/acascode.pdf

For more copies see the Department’s website at www.dfee.gov.uk/
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