

High Tunstall College of Science



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Capability Policy & Procedure (Support Staff)

Revised	-	March 2018
Stakeholder Consulted	-	Finance and Staffing
Review Date	-	March 2020
Responsibility for Review	-	LA Authority/HR

Policy

This procedure relates to the underperformance of support staff and is called the Support Staff Capability Procedure. All other capability concerns that relate to the health or any other physical or mental fitness of support staff are contained in the Absence and Attendance Management Procedure.

1. Scope & Purpose

This procedure applies to the under-performance of all support staff that are permanent or fixed term employees within the establishment of a school, whether full-time or part-time.

Support staff on daily or hourly supply have a right to be given a performance interview before a decision is reached on termination of their employment as a result of poor performance.

The procedure is designed to help and encourage all support staff to achieve and maintain acceptable standards of capability, efficiency, attendance and work performance. The main purpose of the capability procedure is to encourage an employee, whose work performance is unsatisfactory, to improve. Capability action may, at its extreme, lead to dismissal.

2. General principles

For the purpose of this document, capability will be assessed by reference to skill, aptitude, efficiency, health or any other physical or mental quality. Lack of capability is defined as a situation in which an employee fails consistently to perform his or her duties to a professionally acceptable standard. Capability concerns may be about a single matter or a number of separate issues

The Headteacher or Governing Body has overall responsibility for promoting and maintaining standards of work performance. Informal guidance does not form part of the formal capability procedure.

The following capability procedure has been established by the Governing Body in line with the powers given under the School Staffing (England) Regulations 2009. In establishing these procedures, care has been taken that the procedure is consistent with the Education Act and Regulations, employment legislation and codes of practice, as well as good personnel practice. The Headteacher will have the delegated responsibility to take capability action up to initial dismissal decisions, following which there will be an opportunity to appeal to a panel of governors.

The Governing Body has a responsibility to apply the provisions of this procedure fairly and with full regard to the School Staffing (England) Regulations 2009 and in accordance with the LA-School Relations Code of Practice.

All proceedings under this procedure shall be held in private and shall be confidential.

The use of days out of term time is only used by mutual agreement in writing if it is necessary and appropriate to progress matters outside term time.

The submission of a grievance or a complaint of harassment or discrimination will not suspend the operation of the capability procedure or prejudice the Headteacher/Governing Body's right to pursue capability action against an employee. Concerns relating to the

substance and conduct of the capability action taken against an employee cannot be dealt with under the schools grievance procedure, but should be raised by the employee during and as part of the capability process.

3. Informal stage

Stage 1 - Dealing with Poor Performance

As soon as the Headteacher¹ becomes aware that normal day-to-day supervision has failed to address an employee's unsatisfactory performance, he/she should arrange to discuss the matter with the employee concerned. This discussion should be used to:

- identify those aspects of the employee's performance, which do not meet the required standards. This should be done with reference to the employee's agreed job description or work plan wherever possible
- ascertain the extent to which the employee realises and accepts that there is a problem
- give the employee the opportunity to give an explanation, including any mitigating circumstances (e.g. the context within which the employee's work has changed significantly; health or personal problems)

If the employee's conduct is identified as having contributed to his/her unsatisfactory performance in the job, it may be more appropriate to consider action under the terms of the Disciplinary Procedure.

If the employee accepts that there is a problem and seeks to achieve an improvement, the employee and the Headteacher¹ should develop an action plan, which will include:

- a statement by the Headteacher¹ indicating the specific areas of work which are unsatisfactory and the level of improvement required in these areas
- the support and training to be given to the employee to assist him/her in achieving the level of improvement required
- a realistic timescale over which the improvement is required
- ensuring that all other staff involved are fully briefed on, and implement, their part of the action plan
- the process for monitoring the employee's progress over this timescale
- the likely result if satisfactory performance is not achieved and sustained
- that the above will be recorded together with any written comments or observations which the employee may wish to make
- confirmation of the above in writing to the employee

If the poor performance is identified as arising from long-term health problems, the Head Teacher¹ may have to refer the matter to the Authority's Occupational Health Provider and deal with the situation under the separate provisions relating to incapability due to ill health.

If the health problem is short-term in duration, an action plan should be designed to support the employee so that he/she can contribute his/her best effort until former health is restored.

¹ or management representative

Stage 2 - Monitoring Period

It is vital that the monitoring process is ongoing throughout the agreed period; carried out effectively; and that the Headteacher¹ gives the employee ongoing guidance on his/her progress towards the required improvement. Throughout this process the emphasis should be on helping the employee to improve.

During the period of support and training, the employee will be placed under appropriate supervision and observation in order to assist the process of improvement. The support and training might include measures, for example, such as directed reading or observation of other employees.

Stage 3 - Review of Performance

Following the monitoring period, a review meeting should take place with the employee concerned. This meeting should take place immediately upon the conclusion of the timescale specified in the agreed action plan, and the employee must receive adequate notice of the meeting, which will include details of any specific issues to be discussed.

At the review meeting the Headteacher¹ will review the employee's performance over the support period. If the performance is regarded as satisfactory, the employee should be informed of this fact in writing and the matter may be regarded as closed. In some cases the Headteacher¹ may feel it necessary to continue to monitor the employee's performance for a time to ensure that the required level of performance is sustained. In such cases the employee should be advised of this and of the period during which monitoring will continue.

If some improvement has taken place but further improvement is required, consideration can be given to extending the action plan, or another alternative action plan, and the situation again reviewed after a further appropriate interval. In this case, the employee should be informed of this fact in writing and the support and training measures should be continued.

At this point the Headteacher¹ should discuss with the employee the possible outcomes, including dismissal on grounds of capability, should the required improvement not take place.

If no improvement has taken place and the employee continues to perform poorly, the employee should be informed that a formal hearing with the nominated officer will be convened.

The above points should be confirmed to the employee in writing.

4. Formal stage

If, after the agreed period, or if it becomes clear to both the Headteacher¹ and the employee before that time, that the employee will fail to meet the required level of performance, the Headteacher¹ will convene a formal meeting to discuss the matter. At least 5 working days notice should be given to the employee. The purpose of the meeting will be to:

¹ or management representative

- confirm the specific areas of work which are unsatisfactory
- confirm the standards required and determine whether those standards have been set at an unattainable level
- remind the employee of the steps taken to assist him/her to improve work performance
- discuss the outcome of the monitoring period
- establish the shortcomings
- establish if this is due to poor performance, misconduct or ill-health
- consider the options available

The employee must be informed in writing of the date, time and venue of this meeting and the matters to be considered. The letter should ideally be handed to the employee personally or sent to the employee's address by first class post. The right to be represented by a trade union or colleague should also be given.

Any documentary evidence to be produced by either party will be made available for the information of the other party as soon as is reasonable and practicable in all the circumstances, giving both parties adequate time to prepare responses.

All correspondence will be copied to the Trade Union unless the employee indicates otherwise.

At the meeting the employee must be informed of the details of the shortfalls in work capability and the measures implemented to facilitate improvement. The employee should be given the opportunity to present relevant information in support of his/her case.

If at the meeting the employee is able to advance acceptable reasons to counter the allegation of lack of capability, no further action will be taken under the capability procedure and the meeting will be terminated.

Where the Headteacher¹ determines that the standards have been set at an unattainable level, revised reasonable standards should be issued and no further action shall be taken except where the employee's performance fails to meet the revised standards.

There are five options following the formal meeting.

No further action.

Extend the period of the action plan. This will give the employee a further opportunity to achieve the required level of work performance. The Headteacher¹ should at this point inform the employee that, unless the required improvement is made within a specified period of time, further action could be taken which could result in dismissal. After the prescribed extension of the action plan, the Headteacher¹ should interview the employee again in order to be informed of the view now taken of his/her competence. If the performance is regarded as satisfactory, the employee should be informed of this fact in writing and the matter may be regarded as closed.

¹ or management representative

Alternative employment – schools should investigate whether there is any other suitable reasonable offer of employment in school and also seek advice from HR to see if there are opportunities for redeployment.

Early Retirement under the provisions of the Early Retirement/Voluntary Retirement scheme can be explored in cases where incapability results from a fundamental change to the nature of the job. The employee should be formally warned that if this course of action is not appropriate or financially viable to the school, and if there are no other suitable options, further action will be taken which could result in dismissal.

Dismissal. Where all other options have been explored a formal hearing will be convened. The Headteacher will normally hear the case. Where the Head has been directly involved in the procedures leading to capability action and has instigated the proposal to dismiss, the initial decision can be delegated to a panel of at least three governors.

5. Representation

At all stages of the capability process support staff have the right to be represented or accompanied by an accredited official of a trade union or a work colleague, and should be so advised. The representative or work colleague may address the meeting and/or interview and confer with the employee but may not answer questions on their behalf.

The employee should make their own arrangements to be represented or accompanied. Where the employee's chosen Trade Union representative or colleague is not available at the proposed time and date, the employee may propose an alternative time. If this suggestion is reasonable and falls within 5 working days of the original date, the meeting should be postponed to that date and time.

6. Issues of Capability of Trade Union Officials

Any capability action being contemplated in respect of staff representatives of recognised trade unions within this procedure should not be instigated without the prior involvement of the full-time official or nominee, of the appropriate Trade Union.

7. Records

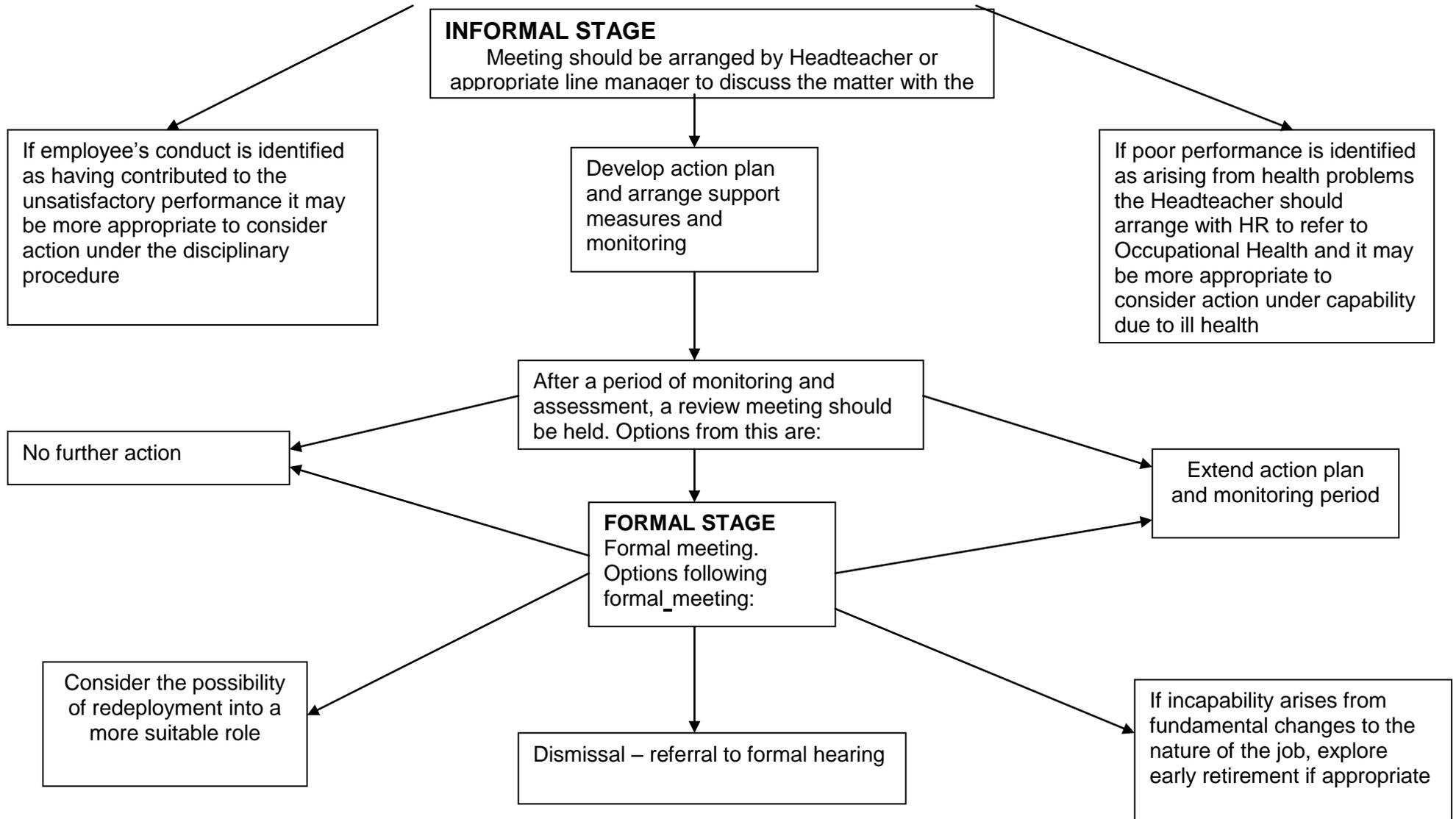
The maintenance of accurate and contemporaneous records is essential, particularly in the event of referral to an Employment Tribunal. Notes are not necessarily verbatim, and there is no requirement for agreed minutes. It should be noted that consideration by an employment tribunal might be an extended time after the matter was considered internally.

Records should be held in a secure and confidential manner, often the issues raised by an employee are particularly sensitive and it is essential that information is kept in accordance with the Data Protection Act 1998.

Documentation which should normally be retained includes:

- all papers presented at the Hearing and Appeal Committees'
- notes of meetings (contemporaneous or otherwise)
- information collated by the panel or used to assist in making a decision;
- confirmation of the decision, or other supplementary correspondence;
- clarity on how decisions were reached and capability action determined.

SUPPORT STAFF CAPABILITY FLOWCHART



PROCEDURE FOR THE HEARING **At the Hearing**

When a case is to be considered by the Hearing Committee it shall be heard by a panel of no less than three governors

In exceptional circumstances, where it is not reasonably practicable to comply with the requirement of a minimum of three members of the Panel, the membership of the panel shall be determined by governors in such a way as to ensure that any subsequent Appeal Committee includes no fewer members than on the Hearing Committee.

The Director of Children and Commissioning Services (or nominated representative) may attend the meeting at which the capability complaint is considered for the purposes of giving advice. Any advice given by the Director of Children and Commissioning Services (or nominated representative) must be considered by those concerned before a decision is made; but they will not be party to the decision.

A representative of the Human Resources Service will be available to attend a capability hearing if required. Where dismissal is thought to be a possible outcome it is essential that a representative from Human Resources attend the Hearing.

If the employee fails to attend the hearing the case will be heard in their absence, unless the Hearing Committee agrees to postpone the hearing to a later date having received acceptable reasons.

The Hearing Committee should have before them copies of all relevant papers that will be referred to during the hearing including those submitted by the employee concerned.

At the hearing, the Panel will decide whether late evidence from either side will be accepted. The views of both sides should be heard when considering whether to accept late evidence, along with general considerations of reasonableness and fairness. If late evidence is accepted in the form of written documentation, the hearing will normally be adjourned for a brief period to provide reading time

The hearing will be aimed at enabling the Panel to come to a decision as to what has taken place and then to make a decision about the appropriate action and/or sanction.

The Panel must provide an opportunity for both sides to put their case fully and make sure that both sides have a fair and reasonable hearing. In particular the Panel must allow the employee the opportunity to be represented or accompanied by a Trade Union representative or work colleague. The Panel must ensure the procedure outlined below is adhered to as far as possible.

The Chair will open the proceedings by:

- stating the purpose of the hearing
- introducing all present;
- saying how the hearing will be conducted and any time constraints which may apply;
- confirming that all have the same documentation;
- confirming the number and names of witnesses attending on both sides;
- asking for any points of clarification to be stated;

- reading the capability allegations;

The Chair will then ask each side to present their case and is responsible for ensuring that all presentations, evidence and questions are relevant and questioned if any area is unclear.

The order of the proceedings is as follows:

- The Management representative to present the facts of the case and may call witnesses.
- The employee or his/her representative to have the opportunity to question the Management representative and any witnesses about the facts provided.
- Members of the Committee to have the opportunity to question the Management representative and any witnesses
- The employee or his/her representative to put his/her case and to call such witnesses as he/she wishes.
- The Management representative to have the opportunity to ask questions of the employee or his/her representative and witnesses.
- Members of the Committee to have the opportunity to ask questions of the employee or his/her representative, or the witnesses.
- The Management representative to have the opportunity to sum up his/her case (no new evidence shall be submitted at this stage)
- The employee or his/her representative to have the opportunity to sum up his/her case (no new evidence to be submitted at this stage)
- The Management representative and the employee and his/her representative to withdraw.
- The members of the Hearing Committee to consider the facts presented to them.

The hearing may also be adjourned at the deliberation stage, in order to allow for further investigation if the Committee feels that there are points that need clarification. Opportunity may be given to re-examine the evidence/witnesses.

The Decision

All parties other than the assigned officer(s) advising the panel shall withdraw when the panel considers its decision.

Following careful consideration of the case, the Chair will normally announce the decision and the formal action, if any, to be taken. The Chair will also give an explanation for that action and will explain the employee's right of appeal under this procedure. These points will be confirmed in writing to the employee and copied to their representative unless the employee indicates otherwise.

Written Warnings

Where the Panel believes there is a realistic possibility that the employee will be able to reach the required standard of performance, the employee will be issued with a written warning confirming the standard of performance expected and the timescales for improvement. The written warning will inform the employee that failure to improve may lead to dismissal.

Dismissal

Where the Panel believes the employee's performance will not improve sufficiently, the final stage of the process will be dismissal. The employee will be informed of the reasons for the dismissal, the date on which their employment will terminate, the appropriate period of notice and their right of appeal. Notice of dismissal will be issued only by the Director of Children and Commissioning Services, on receipt of the notification of the decision of the panel.

PROCEDURE FOR THE APPEAL

Appeal

An employee can appeal against any formal action taken as a result of this procedure. All appeals will be conducted as a full re-hearing of the case.

An appeal must be sent to the Chair of Governors. A pro-forma will be included with the written notification of formal action, on which the employee can give notice of appeal, including identification of the grounds for appeal. Notice of appeal must be received within 5 working days of receipt of the decision letter. This time limit will be strictly observed.

Arrangements for the appeal will be made on receipt of the appeal request. Wherever possible the appeal should be heard within 20 working days of the lodging of the appeal and the employee should have at least 5 working days notice of the Appeal Hearing.

Appeal hearings will consider the representations made by the employee or his/her representative, together with the information given by the manager and any witnesses and will then decide whether to uphold the warning/dismissal or allow the appeal. If allowing the appeal, the record of the warning will be removed from the employee's record.

The Appeals Committee

No member of the Hearing Committee shall be a member of the Appeals Committee.

All papers presented to the hearing, together with the decision of the Chair of the Committee and any subsequent correspondence must be available to the Appeals Panel. Any new evidence, which the employee wishes to introduce, should be copied to all parties at least 5 working days in advance of the Appeal Hearing.

At the Appeals Hearing:

The Appeals Procedure will be the same as the procedure for the Hearing (as set out in *Appendix 1* of this document)

The Appeals Committee will consider the grounds for the appeal, paying particular attention to any new evidence that has been introduced by the employee and hear representations from both management and the employee or their representative in order to determine whether the decision of the hearing was fair and reasonable in view of the evidence available.

The decision of the Appeals Committee is final and binding on all parties and, once made must then be notified to the employee and the Local Authority in writing.