

## Model capability procedure

### (i) Purpose

This procedure sets out the steps to be followed in responding to problems arising from a lack of capability on the part of the employee. 'Lack of capability' is defined as a situation where an employee fails consistently to perform his/her duties to a professionally acceptable standard.

This procedure is not intended to deal with lack of capability due to ill-health, nor with cases of misconduct. It applies to all school staff except the headteacher, for whom separate arrangements are made.

The aim of this procedure is to ensure that an employee who is the subject of concerns about his/her competence is made aware of these at the earliest possible stage, and that the school endeavours positively to assist the employee to achieve a satisfactory level of performance.

### (ii) Principles

No employee will be dismissed on grounds of incapability without account being taken of each stage of this procedure, save where the education of pupils is in serious jeopardy.

The employee will have the right to be accompanied by a person of his/her choice at any meeting called formally within this procedure to consider their performance.

For any formal meeting called to discuss issues related to performance, at least five working days' notice will be given, and all reasonable efforts will be made to ensure that it takes place at a time when it is possible for the person whom the employee has chosen to accompany him/her to be present.

Consideration shall be given, wherever appropriate, to any latent or external reasons for the teacher's underperformance (such as health problems, the working environment or personal difficulties).

In the application of this procedure, the emphasis will be on helping the employee to achieve a satisfactory level of work performance through training, coaching/mentoring, target-setting and monitoring, as appropriate. It is therefore essential that the employee receives appropriate support and guidance on both a personal and a work-based level.

Nothing in these procedures is intended to prevent the headteacher from discussing issues arising from the employees' day-to-day performance of their duties as they arise, as such early informal discussions are vital in preventing problems from developing.

### (iii) Procedure

#### *Informal stage 1*

Where the headteacher (or line manager as appropriate) has formed the view that there may be legitimate concerns about an employee's performance, s/he shall implement the informal procedure by convening a meeting with the employee, giving them at least five working days' notice in writing of the causes for concern, the time and date of the meeting and of their right to be accompanied by a person of their choice. It will be made clear that the status of this meeting is informal.

At the meeting, they should:

- establish with the employee that s/he is aware of the expected standards of performance

- provide all available information as to the causes of concern
- discuss the concerns and any reasons/ circumstances underlying them
- identify any necessary changes/ improvements in performance or practice
- discuss and, where possible, agree a plan of support to assist the employee in achieving the required level of performance.

The measures that need to be considered to support the employee could include:

- a change in working practices within the terms of reference of the employee's responsibilities
- observation of good practice, within or outside the school
- counselling, which could lead to reference for medical advice
- training, for which the school will meet the costs
- mentoring, advice and/or support from within the school and, if appropriate, from external expert advisers
- closer, but supportive, supervision for a limited period.

Where improvement is considered to be necessary, a timescale for improvement shall be established, normally lasting not less than eight school weeks, during which the employee should be monitored by a senior colleague. The monitoring should include periodic structured meetings to give supportive advice and feedback.

The outcome of the meeting, including the plan of support, will be confirmed in writing to the employee within five working days, with an opportunity to submit written comments.

### **Formal stage 2**

Where, following a review of progress after the period of monitoring and support as above, the headteacher (or the line manager, as appropriate) considers that significant concerns continue as to the employee's performance, they will write to the employee inviting him/her to a formal meeting and giving at least five working days' notice.

The notice of the meeting shall include:

- the date, time and place of the meeting
- details of the concerns, relating to performance, to be discussed
- copies of any documents to be considered at the meeting
- the names of any witnesses or other persons to be present at the meeting
- a copy of this procedure
- notification of his/her right to be accompanied at the meeting by a person of the employee's choice.

If the employee has documents which s/he wishes to be considered, s/he should provide copies to the headteacher (or line manager, as appropriate) normally at least 24 hours before the meeting.

At the meeting, the headteacher (or line manager as appropriate) should outline the concerns notified and invite the employee and/or his/her rep to respond, having had time to consider the issues, and, if appropriate, to ask questions.

At the meeting, discussion should take place to establish the validity of the grounds for concern and the best means of alleviating these concerns. In particular, there should be discussion of appropriate means of support (as outlined in paragraph (iii) above).

A (further) plan of appropriate support for the employee and a timescale (normally

lasting not less than eight school weeks) for improvement will be established, where practicable by agreement with the employee, during which the employee will be (further) monitored. The monitoring shall include periodic structured meetings to give supportive advice and feedback.

If the headteacher (or line manager as appropriate) considers that the concerns as to the employee's performance are justified, s/he will give the employee a written warning, which will be confirmed in writing within five working days of the meeting. The warning letter will set out:

- the concerns as to the employee's performance
- the outcome of the discussion at the meeting, including the action plan and timetable for improvement
- the employee's opportunity to submit written comments in response
- a warning of the consequences of the employee not being able to improve his/her capability to a satisfactory level during the review period
- his/her right to appeal (see paragraph **(iv)**).

### **Formal stage 3**

Where, following a review of progress after the period of (further) monitoring as above, the headteacher considers that significant concerns continue as to the employee's performance, the headteacher will write to the employee inviting him/her to a further formal meeting and giving at least five working days' notice. The notice of the meeting shall include:

- the date, time and place of the meeting
- details of the concerns relating to performance to be discussed
- copies of any documents to be considered at the meeting

- the names of any witnesses or other persons to be present at the meeting
- a copy of this procedure
- notification of his/her right to be accompanied at the meeting by a person of the employee's choice.

If the employee has documents which s/he wishes to be considered, s/he should provide copies to the headteacher normally at least 24 hours before the meeting.

At the meeting, the headteacher should outline the concerns notified and invite the employee and/or his/her rep to respond, having had time to consider the issues, and, if appropriate, to ask questions.

At the meeting, discussion should take place to establish the validity of the grounds for concern and the best means of alleviating these concerns. In particular, there should be discussion of appropriate means of support (as outlined in paragraph **(iii)** above).

A (further) plan of appropriate support for the employee and a timescale (normally lasting not less than eight school weeks) for improvement will be established, where practicable by agreement with the employee, during which the employee will be (further) monitored. The monitoring shall include periodic structured meetings to give supportive advice and feedback.

If the headteacher considers that the concerns as to the employee's performance are justified, s/he will either extend the period of monitoring and support under formal stage 2 or give the employee a final written warning. The outcome of the meeting will be confirmed to the employee in writing within five working days of the meeting.

The letter will set out:

- the concerns as to the employee's performance
- the outcome of the discussion at the meeting, including the action plan and timetable for improvement
- the employee's opportunity to submit written comments in response
- where so decided, a warning that if the employee is not able to improve his/her capability to a satisfactory level during the review period, consideration may be given to his/her dismissal
- his/her right to appeal (see paragraph (iv)).

#### **Formal stage 4**

Where, following a review of progress after the period of (further) monitoring as above, the headteacher considers that significant concerns continue as to the employee's performance, s/he will write to the employee, inviting him/her to a hearing before a committee of the governors of the school, giving at least 10 working days' notice.

The notice of the meeting shall include:

- the date, time and place of the hearing
- details of the concerns relating to performance to be discussed
- copies of any documents to be considered at the hearing relating to these issues
- the names of any witnesses or other persons to be present at the hearing
- notification that the result of the hearing could be the employee's dismissal
- a copy of this procedure
- notification of his/her right to be accompanied at the hearing by a person of the employee's choice.

If the employee has documents which s/he wishes to be considered, s/he should provide copies to the headteacher (or to the clerk to the governors, as appropriate) normally at least 24 hours before the meeting.

At the meeting, the headteacher should outline the concerns notified and the steps taken under this procedure to assist the employee to reach a satisfactory level of capability. If the headteacher has witnesses to give evidence to the committee, the employee (or his/her rep) and the members of the committee will have the opportunity to ask them questions. The employee and/or his/her rep will then be invited to respond, and, if appropriate, to ask questions of the headteacher. If the employee has witnesses to give evidence to the committee, the headteacher and the members of the committee will have the opportunity to ask them questions.

Having heard the evidence from the headteacher and the employee, the committee shall then deliberate in private and decide which of the following outcomes is appropriate:

- the exoneration of the employee on the basis that his/her capability is now satisfactory
- the imposition of a (further) warning under this procedure
- the extension of the period of monitoring and support under formal stage 2 or 3
- consideration of a change of responsibilities or working arrangements, by agreement with the employee
- dismissal of the employee under notice in accordance with his/her contract.

The outcome of the meeting will be confirmed to the employee in writing within five working days of the meeting. The letter will set out:

- the concerns as to the employee's performance and the outcome of the committee's deliberations
- where so decided, the action plan and timetable for improvement
- where so decided, a warning under this procedure
- where so decided, notification of dismissal, with notice in accordance with the employee's contract
- his/her right to appeal (see paragraph **(iv)**).

#### **(iv) Appeals**

The employee may appeal against any warning given under any formal stage of this procedure, or against dismissal. Any appeal must be notified in writing to the headteacher, setting out the grounds for the appeal, within 10 working days of the receipt of notification of the sanction concerned.

Any appeal will be heard by an appeals committee of the governing body, comprising at least three governors, and shall be conducted as a rehearing of the case. The employee will be given at least five working days' written notice of the appeal hearing. The notice of the hearing shall include:

- the date, time and place of the hearing
- copies of any documents to be considered at the hearing
- the names of any witnesses or other persons to be present at the hearing
- notification of the employee's right to be accompanied by a person of their choice.

The decision of the appeals committee shall be final and may be:

- the exoneration of the employee on the basis that his/her capability is now satisfactory
- the imposition of a warning at a lower level under this procedure
- in the case of an appeal against a warning at formal stage 2 or 3, the extension of the period of monitoring and support
- in the case of an appeal against a decision to dismiss, consideration of a change of responsibilities or working arrangements, by agreement with the teacher
- confirmation of the existing decision.

The outcome of the appeal will be confirmed in writing to the teacher within five working days.