



# CAPABILITY PROCEDURE FOR TEACHERS

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The Headteacher and Management Committee have a responsibility to help and encourage all staff in the Pupil Referral Unit to achieve and maintain an acceptable standard of performance.

Capability refers to the ability to carry out the duties of the post to the required standard. This standard should be appropriate to the level of the job and the skills and experience reasonably expected in that position. Headteachers will enable access to appropriate guidance, support and training for all staff.

Expectations and standards of performance should be agreed at the earliest opportunity. Where a minor problem in performance first occurs, it should be the normal practice for the line manager to support the teacher in the matter by counselling, advice, guidance, training and example. It is not intended that the capability procedure should replace this normal interchange between the teacher and line manager in the day to day running of a Pupil Referral Unit or department.

The Management Committee of a Pupil Referral Unit with a delegated budget is responsible for employment matters including dismissal on the grounds of capability but may delegate the responsibility for dismissals to the Headteacher.

An HR Representative from Luton Borough Council has the right (subject to the accordance of advisory rights by VA, Foundation or Academy Pupil Referral Units) to be present at all proceedings where dismissal is a possible outcome.

This formal capability procedure reflects the ACAS Code of Practice on disciplinary and grievance procedures. Capability procedures apply only to teachers and Headteachers about whose performance there are serious concerns. Those concerns, whether they are identified through the appraisal process or via other sources of information, for example parental complaints, will, in the first instance be addressed at an Informal Capability Meeting. For details please see the Pupil Referral Units Appraisal Procedure.

Capability due to ill health will be managed under the Pupil Referral Unit's sickness absence procedure.

## **1. First Formal Capability Meeting**

- 1.1. The meeting will have been arranged following a review under the Pupil Referral Unit's Appraisal Procedure. The meeting will be conducted by the Headteacher, or by the nominated Member (for Headteacher capability meetings). They may wish to be accompanied by a HR representative. The teacher may wish to be accompanied by a companion and will have an opportunity 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. The teacher's line manager/appraiser will also attend the meeting.

The chosen companion can be one of the following only:

- A work colleague
- A Trades Union Representative\*
- An official employed by a Trades Union

- A 'support worker' may be allowed to accompany an employee with a disability, agreed in advance as a reasonable adjustment under the Equalities Act 2010

\*A trades union representative who is not an employed official must have been certified by their trades union as being competent to accompany the employee. It is the employee's responsibility to check with their trades union that their chosen representative has been certified as competent.

1.2 During the meeting, the person conducting the meeting will ask the teacher's appraiser/line manager to:

- detail the serious concerns that the appraisal process has been unable to address.
- identify the professional shortcomings, *for example which of the standards expected of teachers are not being met*;

1.3 The Headteacher will then;

- give clear guidance on the improved standard of performance needed to ensure that the teacher can be removed from formal capability procedures (*this may include the setting of new 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*);
- explain any support that will be available to help the teacher improve their performance and include classroom observation and additional training
- set out the timetable for improvement and explain how performance will be monitored and reviewed and by whom;
- warn the teacher formally that failure to improve within the set period could lead to dismissal. The warning will be confirmed in writing and will remain live for one year. In very serious and exceptional cases, this warning could be a final written warning, which would be live for two years.

1.4 The timetable for improvement will depend on the warning issued and the circumstances of the individual case. Where a final written warning has been issued the monitoring period will be 4 weeks.

1.5 Where a written warning has been issued the monitoring period will normally be for 4 weeks, but it may be agreed in exceptional circumstances that a longer monitoring period is appropriate.

1.6 In all circumstances the monitoring period will not be less than 4 weeks or more than 10 weeks.

1.7 Notes will be taken of formal meetings and a copy sent to the member of staff.

1.8 The outcome of the First Formal Capability Meeting will be confirmed in writing to the teacher within 5 working days. Model letters are available at appendices 1 and 2.

1.9 A performance monitoring and review period will follow the First Formal Capability Meeting. Formal monitoring, evaluation, guidance and support will continue

during this period. The teacher will be invited to a Second Formal Capability Meeting at the end of the review period, unless they were issued with a final written warning, in which case they will be invited to a Decision Meeting.

- 1.10 The person conducting the First Formal Capability 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 and the appraisal process will apply once more.
- 1.11 The person conducting the First Formal Capability 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.

## **2. Second Formal Capability Meeting**

- 2.1 The date of any Second Formal Capability Meeting will be agreed upon during the First Formal Capability Meetings and confirmed in writing.
- 2.2 The meeting will be conducted by the Headteacher, or by the nominated Member (for Headteacher capability meetings). The teachers line manager/appraiser will attend the meeting.
- 2.3 During the Second Formal Capability Meeting, the person conducting the meeting will ask the teachers appraiser/ line manager to provide feedback on the progress made against the objectives set.
- 2.4 The teacher will have an opportunity to respond and make relevant representations.
- 2.5 If the person conducting the meeting is satisfied that the teacher has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start. In other cases:
  - 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 if this has not exceeded the 10-week maximum. A further Second Formal Capability meeting will then be held at the end of the extended monitoring and review period.
- 2.6 Any extension to the monitoring and review period will be confirmed in writing. A model letter is available at appendix 3.
- 2.7 If no, or insufficient improvement has been made during the monitoring and review period the Headteacher will then;
  - give clear guidance on the improved standard of performance needed to ensure that the teacher can be removed from formal capability procedures (*this may include the setting of new 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*);
  - explain any further support that will be available to help the teacher improve

their performance;

- advise that the teacher will have a 4 week monitoring period prior to attending a Decision Meeting and explain how performance will be monitored and reviewed and who by.
- Issue a final written warning. The warning will be confirmed in writing and will remain live for two years.

2.8 Notes will be taken of formal meetings and a copy sent to the member of staff.

2.9 The outcome of the Second Formal Capability Meeting will be confirmed in writing to the teacher within 5 working days. A model letter is available at appendix 2.

2.10 A performance monitoring and review period will follow the Second Formal Capability Meeting. Formal monitoring, evaluation, guidance and support will continue during this period. The teacher will be invited to a Decision Meeting at the end of the review period.

### **3. Decision Meeting**

3.1 As with the formal capability meetings, at least 5 working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the teacher of their right to be accompanied by a companion. Details of who a chosen companion may be are provided in paragraph 1.1 above. A model invite letter is available at Appendix 4.

3.2 The Decision Meeting will be conducted by the Headteacher or by the nominated Member (for Headteacher capability meetings). They will be accompanied, for the purpose of giving advice, by a HR representative from Luton Borough Council.

3.3 The Decision Meeting will be informed by the Appraisal Report, the evidence collected by the Appraiser/Line Manager following the First Formal Capability Meeting and the Second Formal Capability Meeting if one took place. This collated written evidence will be shared with the teacher 5 working days prior to the Decision Meeting. The teacher may also submit evidence subject to the requirement to provide that evidence 3 working days in advance of the Decision Meeting.

3.4 The procedure to be followed at a Decision Meeting or at an Appeal Meeting is detailed at Appendix 5.

3.5 If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end and the appraisal process will re-start. If performance remains unsatisfactory, a decision will be made that the teacher should be dismissed.

3.6 The teacher will be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.

#### **4. Appeal**

- 4.1 The teacher may appeal against the outcome. To do so, the teacher must write to the Chair of Members within 5 working days of receipt of the outcome letter, setting out clearly the grounds for appeal.
- 4.2 Appeals will be heard by at least two Members from the Pupil Referral Unit's Appeals Committee.
- 4.3 The same arrangements for notification and right to be accompanied by a companion will apply as with formal capability meetings.
- 4.4 The procedure to be followed at a Decision Meeting or at an Appeal Meeting is detailed at Appendix 5.
- 4.5 The teacher will be informed in writing of the outcome of the appeal hearing within 5 working days.

## **GENERAL PRINCIPLES UNDERLYING THIS PROCEDURE**

### **ACAS Code of Practice on Disciplinary and Grievance Procedures**

The policy will be implemented in accordance with the provisions of the ACAS Code of Practice.

### **Confidentiality**

The capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the Headteacher and Management Committee to quality-assure the operation and effectiveness of the capability procedure.

### **Consistency of Treatment and Fairness**

The Management Committee is committed to ensuring consistency of treatment and fairness and will abide by all relevant equality legislation.

### **Definitions**

Unless indicated otherwise, all references to “teacher” include the Headteacher, deputy and assistant Headteachers.

### **Monitoring and Evaluation**

The Management Committee and Headteacher will monitor the operation and effectiveness of the Pupil Referral Unit’s capability arrangements including for equality purposes.

**CAPABILITY PROCEDURE**

**MODEL LETTER – outcome of first formal capability meeting**

**WRITTEN WARNING**

Further to our meeting on (date), held under the Pupil Referral Unit's Capability Procedure, this letter constitutes a written warning that you are failing to achieve a satisfactory level of performance in your post of (post title).

Your performance was reviewed against the agreed objectives set with reference to the national Teachers' Standards (and /or other applicable national standards):

- (Objectives)
- 
- 

Ongoing support and training was agreed as follows:

- (Support and training)
- 
- 

Your performance will be reviewed over the next (number) weeks in conjunction with (name of appraiser/line manager). A Second Formal Capability meeting will be conducted by me on (date) (time) (venue).

This written warning will remain live for one year.

Please sign and return the second copy of this letter to acknowledge receipt. You have the right to appeal against this decision. If you wish to do so you should write to (insert COG details) within 5 working days of the date you receive this letter.

Please have no hesitation in seeking clarification or further support if you feel this would help.

Encl. notes of meeting.



**CAPABILITY PROCEDURE**

**MODEL LETTER - outcome of first or second formal capability meeting**

**FINAL WRITTEN WARNING**

Further to our meeting on (date), held under the Pupil Referral Unit's Capability Procedure, this letter constitutes a final written warning that you are failing to achieve a satisfactory level of performance in your post of (post title).

Your performance was reviewed against the agreed objectives with reference to the national Teachers' Standards (and /or other applicable national standards):

- (Objectives)
- 
- 

Ongoing support and training was agreed as follows:

- (Support and training)
- 
- 

Your performance will be reviewed over the next 4 weeks in conjunction with (name of appraiser/line manager).

There will be a formal Decision Meeting on (date), at (time), (venue) at which you will be entitled to be accompanied by a professional association/trades union representative or work colleague.

Please be advised that failure to achieve an acceptable standard of performance within the timescale specified may result in dismissal from your post.

This written warning will remain live for two years.

Please sign and return the second copy of this letter to acknowledge receipt. You have the right to appeal against this decision. If you wish to do so you should write to (insert Chair of Management Committee details) within 5 working days of the date you receive this letter.

Please have no hesitation in seeking clarification or further support if you feel this would help.

Encl. Notes of meeting

**CAPABILITY PROCEDURE**

**MODEL LETTER - outcome of second formal capability meeting**

**EXTENSION OF MONITORING PERIOD**

Further to our meeting on (date), held under the Pupil Referral Unit's Capability Procedure, I write to confirm that you have made some progress to improve your performance against the objectives set for you and that you will be subject to a further period of monitoring and review.

Your performance was reviewed against the agreed objectives with reference to the national Teachers' Standards (and /or other applicable national standards):

- (Objectives)
- 
- 

Ongoing support and training was agreed as follows:

- (Support and training)
- 
- 

Your performance will be reviewed over the next (number) weeks in conjunction with (name of appraiser/line manager). A further Second Formal Capability meeting will be conducted by me on (date) (time) (venue).

Please sign and return the second copy of this letter to acknowledge receipt.

Please have no hesitation in seeking clarification or further support if you feel this would help.

Encl. Notes of meeting

## CAPABILITY PROCEDURE

### MODEL LETTER - invitation to Decision Meeting

#### DECISION MEETING

Further to the Formal Capability Meeting on (date) held under the Pupil Referral Unit's Capability Procedure, I write to request your attendance at a Decision Meeting.

The Decision Meeting convened under the Pupil Referral Unit's Capability Procedure paragraph **NUMBER** will take place on (date), at (time), (venue). I will conduct the meeting and will be advised by (name). ((Name), as your appraiser/line manager will attend. (Please also specify any other witnesses who will attend).

You may be accompanied at the meeting by a companion. Details of who a chosen companion may be are provided in paragraph **NUMBER** of the Capability Procedure for Teachers in Pupil Referral Units with Delegated Budgets. A note taker will be in attendance to take notes for management purposes.

If you wish to submit evidence to the meeting or call witnesses, please ensure that (name) is in receipt of documentation and names of witnesses 3 days in advance of the meeting.

Your performance will be reviewed against the agreed objectives with reference to the national Teachers' Standards (and /or other applicable national standards).

- (Objectives)
- 
- 

You are advised that one of the outcomes available to me is dismissal from your post of (post title).

Please sign and return the second copy of this letter to acknowledge receipt.

Please have no hesitation in seeking clarification or further support if you feel this would help.

## **APPENDIX 5**

### **THE PROCEDURE TO BE FOLLOWED AT A DECISION MEETING OR AT AN APPEAL MEETING**

The meeting will be conducted by the Headteacher in the case of a Decision Meeting or by members of the Pupil Referral Unit's Appeals Committee at an Appeal Meeting.

The person(s) conducting the meeting will invite the appraiser/line manager or Headteacher to present the evidence of serious performance concerns collated by the Pupil Referral Unit.

The appraiser/line manager or Headteacher may call witnesses.

Each party will have the opportunity to question the witnesses.

The person(s) conducting the meeting will invite the teacher to respond to the concerns detailed and make any representations that they wish to.

The Teacher may call witnesses.

Each party will have the opportunity to question the witnesses.

The person(s) conducting the meeting and their HR Representative will have the opportunity to ask questions of the appraiser/line manager/Headteacher and of the teacher.

The person(s) conducting the meeting will invite both parties to sum up and withdraw from the meeting.

The person(s) conducting the meeting will consider the evidence presented and confirm their decision in writing to the teacher.