



# **Holyhead**

**Teach What Matters**

## **Capability Procedure for School Staff**

**Autumn 2020**

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## Capability Procedure for School Staff

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## **Capability Procedure for School Staff**

This document has been prepared for the guidance of the Governing Body. This procedure applies to all school employees who have successfully completed their probationary period.

This Policy does not form part of your contract of employment and may be varied from time to time by the Governing Body.

If you have less than 24-months continuous service, the school reserves the right to dismiss you for unsatisfactory attendance levels without following the Capability Procedure.

### **General**

This procedure applies only to staff or Principals about whose performance there are serious concerns that the appraisal process has been unable to address.

This procedure is designed to ensure that competency problems arising in relation to the work of staff are dealt with in a systematic and fair way. The intention is that such problems shall be identified and the staff concerned given appropriate help and encouragement within a reasonable timescale to bring their performance up to an acceptable level and to sustain it at that level.

Experience suggests that, with help, most employees experiencing difficulty with their performance can achieve this level if they have the will to do so. However it should be recognised that there will be those who cannot or will not accept advice and therefore this procedure makes reference to the Disciplinary Procedure. In practise it is difficult to be certain in some cases, at least initially, whether a problem is one of discipline or competence and for those cases this procedure will be followed.

Meetings associated with this procedure will only be postponed in exceptional circumstances and normally only once. Where the initial meeting is postponed the next meeting may continue in the absence of the employee. Where this is necessary the Capability Manager will write to the employee to confirm the outcome of the meeting and ask the individual to make any comments with regard to this.

In exceptional circumstances where there are immediate concerns regarding unacceptable levels of teaching and learning or a serious Health and Safety risk the Principal may take the decision to fast track this process.

## **Informal Procedure**

It is part of the normal duties of the Principal and other Managers within the School to monitor the competence of their staff and to attempt to improve it by informal advice, support and encouragement. Nothing in this procedure is intended to inhibit informal action of this nature. **The importance of supportive action before any formal procedures are involved must be stressed.**

The informal procedure begins with a meeting with the Manager to identify areas of concern and agree an action plan to move forward. The meeting should establish:

- that the individual understands the standards of work required and understands where they are not meeting them;
- that the standards set are achievable;
- whether the role completed by the individual has changed significantly. This may involve checking that the job description for the role is up to date;
- any health or personnel issues which may be affecting the individual's performance. A decision may be taken to refer the individual to occupational health;
- whether there is a training issue;
- the support that can be offered to the employee;
- timescales being given for the informal procedure;
- a date for the next review;
- that failure to improve could result in formal action under this policy which could ultimately lead to dismissal;

Agreements reached at this meeting will be put in writing to ensure that both parties have clarity.

If following the review period the individual has met the required standard the employee will be informed in writing that no further action will be taken. A decision may also be taken to extend the informal review if the employee has improved but not yet met the required standards. Failure to make the necessary improvement will result in the formal procedure being invoked.

## **Formal Procedure**

Problems of competency grow the longer they remain unchecked. It is not desirable to persist with informal action over prolonged periods. If the problem persists despite informal measures, then consideration must be given to the use of the formal procedure.

## **Capability Reviewer, Final Hearing and Appeal Manager**

The table below sets out the persons to be appointed, where possible, throughout the stages of the capability procedure depending on the person who is requiring formal capability support:

<b><i>Employee Level</i></b>	<b><i>Capability Manager</i></b>	<b><i>Final Hearing Chairperson</i></b>	<b><i>Appeal Manager (re Written Warnings)</i></b>	<b><i>Appeal Manager re Dismissal</i></b>
Principal	Chair or a non-staff Governor (other than the Vice-Chair) nominated by the Chair	Governors' Absence Panel appointed by the Vice-Chair	A non-staff Chair or a non-Governor staff Governor (other than the Chair or Vice-Chair)	Governors' Appeal Panel, appointed by the Vice-Chair
Other Leadership Spine	Principal	Chair or a non-staff Governor nominated by the Chair	A non-staff Governor nominated by the Vice-Chair	Governors' Appeal Panel
Other Teaching Staff	Senior/Vice Principal	Principal	Chair or a non-staff Governor nominated by the Chair	Governors' Appeal Panel
Other Associate Staff	Vice Principal/Business Manager	Principal	Chair or a non-staff Governor nominated by the Chair	Governors' Appeal Panel

**Identifying the problem**

Before any decision is taken to invoke the formal procedure, there should be a discussion of the circumstances between the Manager, the Principal and the Human Resources Manager. The Chair of Governors should also be advised of the situation. The purpose of this discussion is to identify:

- the precise areas of concern bearing in mind any special external factors (for example, financial circumstances, family illness, medical condition/disability), which might affect an employee's performance;
- whether the issue is sufficiently serious to merit formal action or whether further informal action is appropriate.

The conclusions resulting from the decision should be made known to the employee concerned and to their trade union representative or other companion should they so wish.

### **Evidence of unacceptable performance**

If, as an alternative to taking no action or further informal action, it is decided that formal action is required, the Principal should gather evidence which shows:

- the areas of underperformance with supporting evidence;
- what constitutes an acceptable level of performance.

A formal meeting will then be arranged and the individual will be written to advising them of the purpose of the meeting and their right to be accompanied by a companion ensuring that a minimum of 5 days notice is given to allow them to prepare.

The Manager will normally be supported by the Human Resources Manager.

At least five working days' notice will be given of the formal capability meeting. The notification will contain sufficient information about the concerns about performance and their possible consequences to enable the colleague to prepare to answer the case at a formal capability meeting. It will also contain copies of any written evidence; the details of the time and place of the meeting; and will advise the colleague of their right to be accompanied by a companion who may be another colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

### **Formal Capability Meeting**

This meeting is intended to establish the facts. It will be conducted by the Capability Manager defined above. The meeting allows the employee 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 person conducting the 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. The person conducting the 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.

In other cases, the meeting will continue. During the meeting, or any other meeting which could lead to a 1<sup>st</sup> Capability warning being issued, the person conducting the meeting will:

- identify the professional shortcomings, for example which of the standards expected of colleague are not being met;
- give clear guidance on the improved standard of performance needed to ensure that the colleague 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 colleague improve their performance;
- set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case but in straightforward cases could be between four and ten weeks;
- warn the colleague formally that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning.

Notes will be taken of formal meetings and a copy sent to the member of staff. Where a warning is issued, the colleague will be informed in writing of the matters covered in the bullet points above and given information about the timing and handling of the review stage and the procedure and time limits for appealing against the warning.

### **Monitoring and Review Period Following A Formal Capability Meeting**

A performance monitoring and review period will follow the formal capability meeting. The review period will be a minimum of 4 and a maximum of 12-working weeks. Formal monitoring, evaluation, guidance and support will continue during this period. The member of staff will be invited to a formal review meeting, unless they were issued with a final written warning, in which case they will be invited to a decision meeting (see below).

### **Formal Review Meeting**

As with formal capability meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the colleague of their right to be accompanied by a companion who may be another colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

If the person conducting the meeting is satisfied that the colleague has made sufficient improvement, the capability procedure will cease and the appraisal process will restart. 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 no, or insufficient improvement has been made during the monitoring and review period, the colleague will receive a final Capability warning.

As before, notes will be taken of formal meetings and a copy sent to the member of staff. The final written warning will mirror any previous warnings that have been issued. Where a final warning is issued, the member of staff will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale of a minimum of 4 and a maximum of 12-working weeks), may result in dismissal and given information about the handling of the further monitoring and review period and the procedure and time limits for appealing against the final warning. The colleague will be invited to a decision meeting.

## **Decision Meeting**

As with formal capability meetings and formal review meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the colleague of their right to be accompanied by a companion who may be another colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

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 restart. If performance remains unsatisfactory, a hearing will be arranged with a recommendation to the Principal, that the colleague should be dismissed on the grounds of capability.

## **Capability Hearing**

The Employee will be invited to a Capability Hearing, at least five working days' notice will be given and the notification will give details of the time and place of the hearing and will advise the colleague of their right to be accompanied by a companion who may be another colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

Included with the notification will be an explanation of the hearing's purpose, the reasons for the hearing and its place in the procedure. Copies of any relevant documents should be attached to the notice.

The employee should be asked to confirm that s/he will be attending the hearing, who will be representing him or her, and a list of any witnesses s/he intends to call. The employee should also be reminded to provide this information along with any documentation s/he wishes to rely on at least two working days before the hearing. Names of any witnesses from both sides should be circulated in advance and all witnesses should be asked to provide a written statement for consideration at the hearing.

It is useful to agree a date with the employee's representative before sending the formal notice above. The employee may suggest an alternative time and date for the hearing as long as it is reasonable and is not more than five working days after the original date. The committee principle (as the case may be) may reject the suggestion but will only do so if it is unreasonable, when they may proceed to hear the case in the employee's absence. Advice on what is reasonable may be sought from a HR Consultant/Manager.

The Capability Manager will present the facts of the absence to the Final Capability Reviewer.

## **Decision**

The Chair person will consider all of the evidence about non-attendance, including mitigation presented by the employee, and decide on one of the following options:

- a) To take no further action in relation to the employee; or
- b) To determine that the employee should be given notice and give notice of dismissal to the employee concerned; or
- c) To set a final reasonable review period to allow for additional formal monitoring and/or management support. This option to be supported with a warning that if the situation has not been resolved satisfactorily by the end of a reasonably defined period, then the hearing will reconvene to reconsider the employee's continued employment.

The Hearing Chair Person shall announce the decision to the parties in person or subsequently in writing. Any oral announcement shall be confirmed in writing within a reasonable period, including the right of appeal.

The Hearing Chair Person should take advice from HR on the duties to be undertaken by the employee during the notice period or if a payment in lieu of notice is appropriate.

## **Appeals**

You may appeal against a First Capability Warning or a Final Capability Warning by writing to the Clerk within 5 working days of being sent the relevant caution.

You may appeal against a dismissal with notice by writing to the Clerk within 10 working days of being sent the notification of termination.

Any appeal letter lodged must set out the grounds of your appeal in detail.

The fact of the appeal does not delay the commencement of any period under any caution or of any notice period.

Any appeal should normally be heard as soon as reasonably possible of the Clerk receiving your appeal letter.

You will be invited to an appeal hearing with a minimum of 5-working days' notice and you will be given an opportunity to present your grounds of appeal and the Final Absence Reviewer will respond to your appeal.

The Appeal Manager will confirm the outcome of the Appeal Meeting in writing to you within 5 working days of the date of the Appeal Meeting. The decision of the Appeal Manager is final and there will be no further right of appeal. The outcomes of the Appeal Meeting are that:

- a) the Appeal Manager may uphold the decision of the Capability Hearing ; or
- b) the Appeal Manager may uphold the employee's appeal, overturn the decision of the Capability Hearing and refer the matter back to the Capability Manager for reconsideration.

## **Confidentiality**

The appraisal and capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the Principal and Governing Body to quality-assure the operation and effectiveness of the appraisal system. The Principal will review all colleagues' objectives and written appraisal records personally, in order to check consistency of approach and expectation between different appraisers. The Principal might wish to be made aware of any pay recommendations that have been made.

## **Consistency of Treatment and Fairness**

The Governing Body is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments for disabled colleagues. The Governing Body is aware of the guidance on the Equality Act issued by the Department for Education.

## **Definitions**

Unless indicated otherwise, all references to "colleague" include the Principal.

## **Delegation**

Normal rules apply in respect of the delegation of functions by governing bodies and Principals.

## **Grievances**

Where a member of staff raises a grievance (please refer to Holyhead Grievance Procedure) during the capability procedure the capability procedure may be temporarily suspended in order to deal with the grievance. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.

## **Sickness**

If long term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case will be dealt with in accordance with the school's absence policy and will be *(e.g. referred immediately to the occupational health service to assess the member of staff's health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures)*. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

## **Monitoring and Evaluation**

The Governing Body and the Principal will monitor the operation and effectiveness of the school's appraisal and capability arrangements.

## **Retention**

The Governing Body and the Principal will ensure that all written appraisal and capability records are retained in a secure place for six years and then destroyed.

The Governing Body approved this policy on date: December 2020

Signed: \_\_\_\_\_ Chair of Governors

Signed: \_\_\_\_\_ Principal