



Capability Procedure

Author : Mark Harmer
Date Amended : 8th January 2016
Version : 0.5
Amended By : Mark Harmer

Contents	Page
• Introduction	3
• Timescales	3
• Formal capability meeting	4
• Monitoring and review period following a formal capability meeting	4
• Formal review meeting	5
• Appeal	5
• Management guidance: applying the procedures	5

Introduction

The principal purpose of a capability procedure is to support and ensure that staff are able to perform their duties and to deal with under-performance on a formal basis. The aim is to deal with those cases, where, despite appropriate management support (normally provided through the appraisal process), a member of staff is deficient in key areas of ability, skill, competence or knowledge and is consequently unable to carry out their required duties to an acceptable standard.

It is important that under-performance is managed to ensure that the quality of teaching and learning is unaffected and that the overall performance of the school is not compromised. The overall approach to capability should be supportive, constructive and helpful to the employee.

This procedure complies with the provisions of the ACAS code of practice.

The capability procedure applies only to employees where there are serious concerns about their performance that are not able to be addressed by the appraisal procedure. The purpose of a capability meeting is to establish the facts and will usually be chaired by either the Principal (unless the Principal is the subject of the capability meeting in which case the Managing Director will chair the meeting). The subject of the capability meeting will be able to respond to concerns about their performance and to present any relevant evidence.

Employees should be made aware that whilst they are and remain the subject of the capability procedure; the normal appraisal arrangements will be suspended. Employees are expected to cooperate constructively with arrangements that are put in place to address under-performance. Where an employee believes that they are being unfairly treated, they may raise an informal complaint or a formal grievance as appropriate.

As is the case in all formal procedures, the chair of each meeting should ensure that clear written records are kept, in particular, the management concerns about the employee's performance.

Timescales

Under the procedure, timescales may be adjusted as appropriate:

- The agreed period, during which a member of staff will typically be supported by a support plan or what may also be known as an action plan, may be adjusted to suit the merits and circumstances in each individual case; for example, you would expect an experienced member of staff to make improvements in a short period of time whereas you may wish to grant a longer period of time to an employee at an early stage in their career.
- In particularly serious cases where the education, health or wellbeing of students may be at risk, a shorter period for monitoring is, in all likelihood, going to be more appropriate (e.g. where an employee's control of the class is poor or where student progress is inadequate, despite support).

Formal capability meeting

The first meeting under the capability procedure, often referred to as the formal interview, initiates the capability procedure. At least five working days' notice will be given of the formal capability meeting. The notification will contain sufficient information about performance concerns and the possible consequences to enable the employee to prepare to present their case at the meeting. The notification of a capability meeting will be accompanied by copies of written evidence, details of the date and time of the meeting and will confirm the employee's entitlement to be accompanied by a companion who may be a work colleague or a trade union representative.

The chair of the capability meeting will aim to:

- a) identify the employee's professional shortcomings;
- b) give clear guidance on the improved standard of performance needed;
- c) explain any support that will be available to help the employee improve to a point where they can be removed from the capability procedure;
- d) set out the timetable for improvement and explain how performance will be monitored and reviewed; and
- e) warn the employee formally that failure to improve within the set period could lead to dismissal (in very serious cases, the warning could be a final written warning).

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

There are three possible outcomes from the formal capability meeting:

1. A return to the appraisal process, where it is determined that there is insufficient evidence to progress the matter further within the capability procedure
2. A first written warning
3. A final written warning

Options two and three are relevant to any case where continued concern about the standards of performance is justified. The level of warning should be determined by the seriousness of the concerns that relate to the performance of the employee. Lower level concerns are likely to lead to a first written warning and a period of up to 8 weeks may be granted for improvement; conversely, higher level concerns would normally lead to a final written warning and a shorter monitoring period of no more than four weeks.

The employee will be notified of the decision arising from the meeting and of the timescales for monitoring and the anticipated next steps in the process.

An employee may appeal against the decision arising from the first formal meeting within five working days of receiving notification of the decision and will normally be heard within a period of ten working days, unless alternative timescales are agreed between the parties to the dispute.

Monitoring and review period following a formal capability meeting

A performance monitoring and review period will follow the formal capability meeting. This period will include regular task/classroom observation, performance evaluation and monitoring, training, management support and guidance.

Formal review meeting

Following the conclusion of a monitoring and review period, the member of staff will be invited to a formal review meeting. At the formal review meeting, if the person conducting the meeting is satisfied that the employee has made sufficient improvement, the capability procedure will end and the appraisal process will re-start. 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 employee will receive a final written warning.

A further monitoring period will be set and a subsequent and final review meeting will be scheduled. If, following a final written warning, performance does not improve to an acceptable standard; the case will be referred to the Managing Director.

Appeal

If an employee feels that the decision to dismiss them is wrong or unjust, they may appeal in writing against the decision, setting out the grounds of the appeal. The employee will be informed in writing of the results of the appeal hearing without unreasonable delay.

The appeals panel should be made up of three members of the management team (or two members of the management team plus an external HR advisor) who have had no prior involvement in the case in which the appeal has been brought.

The decision of the appeals panel is final.

Management guidance: applying the procedures

Managing Director

The Managing Director should not normally be involved with a capability procedure before the dismissal stage unless the Principal is the subject of the capability procedure.

Role of the Principal

The Principal will be responsible for taking the decision to invoke the capability procedure, unless of course, they are the subject of the procedure.

Role of advisers

External advisers may be invited to participate in the capability procedure or with the monitoring process or with providing support.

Employee representation

If the employee's chosen companion is not available at the time proposed for the interview, meeting or hearing and the employee proposes an alternative date and time that is reasonable and falls within 5 working days of the original date, this should be given careful consideration and advice should be sought to ensure that revised arrangements can be made.

Monitoring arrangements

Any monitoring undertaken should be across the range of principal job responsibilities so that a balanced view can be reached to support the evaluation of performance.

Written records

Formal warning should be disregarded after a specified period of satisfactory performance.

First written warning - 12 months

Final written warning - 24 months

Grievances

Where an employee raises a grievance that relates to the capability procedure and its management and/or implementation, it may be appropriate to suspend the capability procedure until the grievance can be considered but such a delay should only be considered where there is a strong indication that the employee has been mistreated.