



JIGSAW LEARNING TRUST  
CAPABILITY PROCEDURE -  
SUPPORT STAFF



## Contents

- 1 Introduction
- 2 Data Protection
- 3 Employee Health and Wellbeing
- 4 Consistency of Treatment and Fairness
- 5 Alternative Procedures
- 6 Development and Improvement Stage - (Informal)
- 7 Formal Capability
  - 7.5 Formal Capability Meeting
  - 7.11 Formal Review of Capability
  - 7.19 Final Stage - Decision Meeting
- 8 Appeal
- 9 Additional information

## Appendices

Appendix 1: Appeals procedure

Appendix 2: Template Capability Support Plan

## 1 Introduction

It is important that management concerns regarding employee performance are managed effectively to ensure 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.

This procedure applies where there are performance concerns about school support staff that day to day management support has been unable to address. Performance concerns may be identified through appraisal and development, supervision or performance management meetings and should be resolved with the early intervention of support thereby avoiding the need for commencing the capability procedure.

This capability procedure is not designed to be a punitive management process but is intended to encourage improvement in work performance at an early stage before a problem becomes unmanageable. The procedure allows for fair and consistent treatment of support staff and, hopefully through co-operation of all involved, a positive outcome will be achieved.

At each stage of this procedure the timescale for the required improvement should be indicated after making an assessment of the problem.

There may be instances where concerns about performance are sufficiently serious enough to warrant the procedure being implemented at either the formal capability stage or final stage of the procedure, where it is deemed reasonable and appropriate to do so, after taking advice from HR.

A programme of support should be comprehensive as possible, reducing as time goes on. The objective must be at the end of the final period to assess the employee's capabilities without any support being provided.

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.

Staff can request a copy of any additional policies referred to within this Policy from their line manager or school office.

## **2 Data Protection**

A written record of all meetings conducted under this procedure will be made, either by the person holding the meeting or by an additional person arranged by the school to take notes. The school processes any personal data collected during the performance improvement procedure in accordance with its data protection policy. Any data collected is held securely and accessed by, and disclosed to, individuals only for the purposes of completing the performance improvement procedure. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the school's data protection policy immediately. It may also constitute a disciplinary offence, which will be dealt with under the school's disciplinary procedure.

## **3 Employee Health & Wellbeing**

The school is committed to creating an environment that promotes good physical and mental health and wellbeing, where staff can thrive and feel supported.

Where employees are being supported and managed within this policy, this will be done sensitively with appropriate regard to their individual circumstances. In addition, the school will consider any necessary reasonable adjustments to support an employee to fully engage in the process set out in this policy. This may include, for example, allowing the employee to have an appropriate 'support' person accompanying them to a formal meeting as well as a Trade Union representative or work colleague.

The governing board/trust board is expected to have an overriding regard for the wellbeing of all employees (including that of the Headteacher/CEO) and the board is expected to monitor the impact of strategies and initiatives that promote a positive and sustainable workplace culture. The headteacher/CEO is expected to model a positive and sustainable workplace culture to all employees and seek to reduce unnecessary workload.

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

The Governing Board 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 employees. The Governing Board is aware of the guidance on the Equality Act issued by the Department for Education.

In addition, the school will consider any necessary reasonable adjustments where an employee has a mental or physical illness which may make it more difficult for them to engage in the capability process set out in the policy. This may include, for example, allowing the employee to have an appropriate person accompanying them to a

formal meeting. In these cases, however, the employee would need to confirm, in advance of any meeting, who that person will be.

## **5 Alternative Procedures**

Capability issues refer to the skills, knowledge and abilities of an employee and where this can be clearly distinguished from their conduct or misconduct, concerns will be dealt with under this procedure. If this distinction cannot be clearly made the matter should be considered as a disciplinary issue in the first instance.

There are a number of factors which may affect an employee's ability to perform the job to the standard required. Appropriate consideration should be given to factors put forward by the employee, where those factors are supported by evidence.

Unsatisfactory performance caused by carelessness, lack of effort or negligence may not be a capability issue but may be a misconduct issue which will be addressed under the Disciplinary Policy. Unsatisfactory performance which is the result of poor behaviour or attitude may be viewed as misconduct depending on the circumstances.

Where it is identified that capability issues are linked with ill health, they will be managed in line with the Attendance Management Policy. Further information on this can be found in section 9.

## **6 Development and Improvement Stage (Informal Stage)**

Where there are performance concerns that day to day management support has been unable to address, this stage should be considered to provide a more structured mechanism of support to enable the employee to improve. Should a decision be made to progress to this stage, a meeting should be held with the employee to reinforce what the performance concerns are and discuss how to resolve these issues. The employee should be given reasonable notice of the date, time and purpose of the meeting. Whilst there is no statutory right for an employee to be accompanied to meetings during the informal stage of the process, any request from an employee at this stage will be considered.

The purpose of the meeting is to discuss the concerns in relation to the employee's performance and decide what measures should be taken to help them improve their performance to an acceptable level. The employee should be given an opportunity to ask questions, comment on the issues and put forward any explanation they may have for the matters identified by their manager as amounting to poor performance.

The outcome of the meeting may be:

- a decision to take no further action;
- a decision to refer the matter for investigation under the disciplinary procedure;
- the implementation of a Development and Improvement Plan.

A Development and Improvement Plan is a series of measures to help an employee improve their performance. Each plan will be tailored to the individual circumstances. Managers will seek to agree each target/measure with the employee but reserve the right to insist on any aspect of the plan if agreement cannot be reached.

An example Development and Improvement plan is attached as [Appendix 1](#). Plans should include, but are not limited to:

- Details of the particular areas in which performance is needed and on what criteria performance will be assessed.
- The overall timescale in which the necessary improvement must be achieved. This timescale should be reasonable and should normally be no more than 6 weeks in duration.
- Measures of support provided to help the employee improve their performance. For example, additional training, additional supervision, additional support from colleagues, opportunities to observe other colleagues or vice versa, visits to other schools, reallocation of certain duties.

Employees should receive regular feedback indicating the extent to which they are on track to deliver the improvements detailed in the plan. Regular review meetings should therefore be held throughout the agreed timescale to discuss and record progress. It also provides the Headteacher with an opportunity to give feedback and for the employee to highlight any areas of concern, or further support required throughout the review period.

At the end of the Development and Improvement plan (usually 6 weeks), a meeting to review the employee's performance will be held.

If the required improvement has been made, the employee should be told of this and encouraged in writing to maintain the improvement. The employee should be informed that they will continue to be monitored.

If the employee's performance meets the required standard but is not sustained for three months following expiry of the monitoring period, the capability procedure may be re-instigated at the formal stage.

If the required improvement has not been made, a decision will be made whether to extend the period of review (usually no more than 2 weeks) or to convene a formal capability meeting. This decision will be confirmed in writing and there is no right of appeal against the outcome made at the end of the development and improvement stage (informal stage).

## **7 Formal Capability**

### **Invite to the Formal Capability Meeting**

Where the Development and Improvement plan does not lead to satisfactory performance, the employee will be invited to a formal capability meeting. At least five working days' notice will be given of the meeting. The letter 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 the formal capability meeting will be accompanied by copies of written evidence and any documents from the informal stage that will be used, 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.

As highlighted in [Section 4](#) of this policy, consideration should be given as to whether reasonable adjustments are required to enable the employee to attend this formal meeting.

The employee will be told that they can present a written statement prior to the meeting should they wish to do so.

### **The Formal Capability Meeting**

This meeting would usually involve going through the Development and Improvement Plan and noting any improvements with performance but outlining where the objectives have not been met. At the meeting the employee will be given the opportunity to add any information they deem relevant. The meeting will be adjourned, and a decision made.

The outcome of the meeting may be a decision to:

- Take no further action
- Refer the matter for investigation under the disciplinary procedure
- Implement another/extend the Development and Improvement plan
- Issue a formal warning and implement a Capability Support plan

A formal warning will be issued if it is concluded that reasonable steps have been taken that should have allowed the employee to perform to an acceptable standard, but that these measures have not worked. In cases of particularly serious concern or where the education of children is in jeopardy, it may be appropriate to issue a first and final written warning and set a review period which will be no more than 4 weeks. The warning will remain 'live' for a period of 12 months, after which it will cease to have effect.

The remainder of the formal capability meeting will be used to;

1. Explain the nature of the improvement that is required in the employee's performance;
2. Give clear guidance on the improved standard of performance needed;
3. Explain any support that will be available to help the employee improve to a point where they can be removed from the capability procedure;
4. Set out the timetable for improvement and explain how performance will be monitored and reviewed. This should include the agreement and issuing of a Formal Capability Support Plan;
5. Set a monitoring and review period, which will usually be between 4 to 6 weeks (4 weeks max. where a final written warning has been issued); and
6. Warn the employee formally that failure to improve within the set period could lead to further formal sanctions being issued and/or ultimately dismissal.

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 in writing.

If a sanction has been imposed at this meeting an employee may appeal against the level of sanction imposed within ten working days of receiving written notification of the decision, in line with [Section 8](#) of this policy.

### **Formal Review of Capability**

Monitoring the employee's progress during the review period is essential. It is important to ensure they are given regular, constructive feedback throughout the review period, so they are aware of how they are progressing. This will mean that the employee should understand whether they are on track, or not, to meet the objectives set in their capability support plan by the time they reach the formal review meeting.

At the end of the agreed monitoring and review period the employee should be invited to a formal review meeting. This meeting in most cases will have been arranged at the point at which the Capability Support plan was set during the first



formal meeting. Prior to issuing a sanction the history of the case should be reviewed and the employee given the opportunity to explain their position. It should be made clear that this is a formal review meeting where action may be taken if insufficient progress has been made.

At the formal review meeting, if performance is deemed to have improved to a satisfactory level, the capability procedure should end and normal day to day management should resume. The employee should be notified of this and notified that their performance must be sustained. The school reserve the right to resume the capability procedure at the formal stage in the event that performance has subsequently fallen below the expected standards within 12 months of the meeting and where the performance concerns are similar to those address during this period.

If some progress has been made and there is confidence that more is likely, it may be appropriate to extend the capability plan and review period. When extending the review period, consideration should be given to an appropriate timescale to enable the employee to demonstrate sufficient and sustained improvement.

If no or insufficient improvement has been made during the monitoring and review period, the employee should be issued with a final written warning (where they were issued with a written warning at the previous meeting).

Where a further warning is issued during the formal review meeting, a further period of monitoring should be set with clear guidance provided on the improved standard of performance needed. A further formal review meeting should also be arranged to take place. The member of staff will be informed that failure to achieve an acceptable standard of performance within this set timescale may result in the employee being invited to a Decision Meeting which will be held before the relevant panel in line with the school's scheme of delegation and terms of reference.

In cases where the employee was given a final written warning at the first meeting and after the monitoring period, sufficient improvements in their performance has not been made, and after the history of the case has been reviewed and the employee given the opportunity to explain their position, the final stage of the procedure will be instigated, and the employee will be invited to a Decision Meeting which will be held before the relevant panel in line with the school's scheme of delegation and terms of reference.

If a sanction has been imposed at this meeting an employee may appeal against the level of sanction imposed within ten working days of receiving written notification of the decision, in line with [Section 8](#) of this policy.

### **Final Stage - Decision Meeting**

Where an employee has been issued with a final written warning, and performance has not improved to an acceptable standard, the matter may be referred to the relevant panel in line with the school's scheme of delegation and terms of reference for consideration. An outcome of this meeting could be that the employee is dismissed on the grounds of capability.

At least five working days' notice in writing of the time, date and place of the hearing shall be given to the employee. The employee should be given the right to be accompanied at the hearing by a work colleague or trade union representative and a copy of the procedure to be followed at the hearing should be sent to the employee in advance.

If their representative is unable to attend on the date proposed the employee can offer an alternative date and time so long as it is reasonable and falls within five working days of the original date. In proposing a new date, the Committee must have due regard to the availability of each of the parties concerned.

As highlighted in [Section 4](#) of this policy, consideration should be given as to whether reasonable adjustments are required to enable the employee to attend this formal hearing.

The Headteacher will produce a chronology/report to outline the performance concerns which have been raised with the employee at each stage, any improvements that have been made and will outline any support that has been put in place to enable the employee to improve their performance. This documentation will be circulated in advance of the meeting to all parties. The Headteacher will attend the hearing to present their case and to answer any questions that the panel members may have in respect of the case.

The employee should also have the opportunity to explain their position and an opportunity allowed for them to respond to any questions that the Governors/Trustees may have for them.

At this Decision Meeting the following options are available:

- 1 The matter be referred back to the Headteacher for further actions, together with any other recommendations made.
- 2 Action short of dismissal, e.g. demotion, compulsory transfer to another post, with the right of appeal.
- 3 Dismiss the employee on the grounds of capability ensuring the employee is given appropriate notice and the right of appeal against the decision.

The decision will be conveyed in writing to the employee and will also indicate their right of appeal. Any appeal will be heard in line with [Section 8](#) of this policy.

## **8 Appeal**

The employee will have the right to appeal against any formal action. To appeal an employee must notify the Clerk to the Governing Board in writing setting out that they wish to appeal together with the grounds for their appeal within 10 calendar days of receiving written confirmation of the decision. Appeals will be heard without unreasonable delay and will be heard by the relevant panel in line with the school's scheme of delegation and terms of reference.

At least five working days' notice in writing of the time, date and place of the appeal hearing shall be given to the employee. If their representative is unable to attend on the date proposed the employee can offer an alternative date and time so long as it is reasonable and falls within five working days of the original date.

The decision made at the appeal will be confirmed in writing to the employee without unreasonable delay and will be final with no other internal right of appeal.

## **9 Additional Information**

Where an employee raises a grievance during the capability procedure the capability procedure may be temporarily suspended in order to deal with the grievance. However, where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.

If long term sickness absence appears to have been triggered by the commencement of this procedure, the case will be dealt with in accordance with the school Attendance Management procedure and the employee will be referred immediately to Occupational Health to obtain advice on the employee's health. The employee should be informed that when their health improves, and they are able to attend work the support plan will resume. It may be necessary to review the support plan to ensure it remains fit for purpose upon return, this could include incorporating any further adjustments which may be required as a result of the employee's illness or updating the plan to reflect any changes in review dates etc as a result of the absence (this remains a support plan under the capability procedure). The aim of reviewing the plan is to give the employee full opportunity to demonstrate they can meet the objectives set.

If an employee has persistent short-term absence which is impacting on the ability to complete the performance review period within the set timescales the case should be dealt with in accordance with the Attendance Management procedure. If patterns of absence during the capability process are noted this should be managed as part of the Attendance Management procedure including potentially issuing formal sanctions where employees hit trigger levels. Consideration may be given on making decisions around performance despite short term absence by looking at the overall performance of the individual. Advice should be sought from HR in these circumstances.

Where an employee submits an appeal against a formal sanction issued during a formal capability meeting, and the appeal remains outstanding at the time a review meeting is due to take place, a decision may need to be taken to postpone the review meeting, where deemed appropriate, until the outcome of the appeal has been determined

### Procedure for Appeals Hearing

1. The member of staff (and his / her representative) to present his / her case
2. The Chair of the Panel / Committee and or the CEO/Head Teacher may ask questions of the member of staff (and his / her representative).
3. Governors Trustees can ask questions of the member of staff (and his / her representative).
4. The CEO/Head Teacher to present his / her case
5. The member of staff (and his / her representative) may ask questions of the CEO/Head Teacher and his/her representative
6. Governors /Trustees can ask questions of the Head Teacher and his/her representative
7. The member of staff (and/or his/her representative) then to have the opportunity of summing up his / her case.
8. The CEO/Head Teacher to have the opportunity to sum up his / her case.
9. The CEO/Head Teacher, member of staff and / or representative asked to leave the meeting.
10. The appeals panel (with any adviser) to deliberate in private only recalling the parties where there are particular points of uncertainty on the evidence given. If recall is necessary both parties are to return, notwithstanding that only one is concerned with the point giving rise to doubt.

**Appendix 2**  
**Example Improvement Plan**

<b>Bespoke Support Programme</b>	
<b>Stage of Process:</b>	<b>Informal/Formal</b>
<b>Staff Member:</b>	
<b>Date for review period:</b>	

**Objectives:**

- 

**Success criteria:**

- 

<b>Timescale &amp; extent of support</b>	<b>Personnel involved</b>	<b>Resources needed</b>
X week improvement period through support programme ( <b>Informal</b> or <b>Formal</b> Stage of the Capability Procedures)		

<b>Week /Date</b>	<b>Planned activity</b>	<b>Intended outcomes</b>	<b>Progress</b>

**Impact against the overall objectives:**

**Headteacher's signature:** \_\_\_\_\_

**Staff member signature:** \_\_\_\_\_