



JIGSAW LEARNING TRUST  
CAPABILITY PROCEDURE -  
TEACHERS AND HEADTEACHERS



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## 1 Introduction

1.1 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 and has been written following consideration of DFE guidance, model policies as well as the Report of the Teacher Workload Advisory Group relating to making data work.

1.2 The capability procedure applies to teachers, and any other employee subject to school teachers pay and conditions including all members of the school leadership group, where there have been persistent failures to meet job expectations, resulting in negative consequences on pupils and the organisation which have not been able to be addressed through the appraisal process. The purpose of a capability meeting is to establish the facts. The teacher will be able to respond to concerns about their performance and to present any relevant evidence.

1.3 Where a decision has been taken to transition to the capability procedure there is a requirement to disclose in writing if requested, whether or not that employee has, in the previous two years, been the subject of capability procedures if the individual applies for a role in another school or academy. This is in accordance with the School Staffing (England) (Amendment) Regulations 2012.

1.4 While an employee is in the capability procedure, pay progression should be withheld.

1.5 Teachers (with the exception of Early Career teachers) should be made aware that whilst they are and remain the subject of the capability procedure; the normal appraisal arrangements will be suspended. Teachers are expected to cooperate constructively with arrangements that are put in place to address under-performance.

1.6 With regard to Early Career Teachers, in very few but serious cases, it may be necessary to instigate capability procedures before the end of the induction period. Where this is the case the induction process must continue to run parallel to this procedure while the ECT remains in post and the appropriate body should be informed.

1.7 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 teacher's capabilities without additional support being provided.

1.8 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 teacher's performance. Written records of any formal meetings should be shared with the teacher.

## **2 Data Protection**

2.1 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 Confidentiality**

3.1 The capability process will be treated with confidentiality. However, the desire for confidentiality does not override the need for the Headteacher and TrustBboard to quality-assure the operation and effectiveness of the capability process.

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

4.1 The Trust Board is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including where the duty to make reasonable adjustments applies. The Trust Board is aware of the guidance on the Equality Act issued by the Department for Education.

## **5 Employee Health & Wellbeing**

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

5.2 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.

5.3 The 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.

## **6 Alternative Procedures**

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

6.2 If it becomes apparent that the poor performance is caused, not by capability, but by a lack of willingness to carry out reasonable duties, then the formal disciplinary procedure should be invoked (see Disciplinary Procedure).

6.3 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 11.

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

## **7 Formal Capability Meeting**

7.1 If the decision is taken to progress from Appraisal to Capability at least five working days' notice will be given of a 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 employee should already be aware of the concerns as these should have been discussed during normal performance management in line with the appraisal policy. The notification of the formal capability meeting will be accompanied by copies of

written evidence, (including copies of the Development plans which have been developed during the Development and Improvement stage of the appraisal process) details of the date and time of the meeting and will confirm the teacher's entitlement to be accompanied by a companion who may be a work colleague or a trade union representative. In addition, where an employee is experiencing mental ill health, consideration will be given to reasonable adjustments in respect of the appropriate person to accompany the employee. Notes will be taken of the formal meeting and a copy sent to the member of staff without unreasonable delay.

7.2 The purpose of this formal capability meeting is to establish the facts. It will usually be conducted by the Chair of Governors or an appropriate member of the Trust (for headteacher capability meetings) or headteacher/other suitable senior member of staff (for other teachers) (schools to insert any alternative arrangements in line with the school's scheme of delegation and terms of reference)

7.3 Discussion during the meeting would 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 respond to the concerns about their performance and add any information they deem relevant. This may provide new information or a different context to the information/evidence already collected. The person chairing the meeting may 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 be adjourned, and a decision made.

7.4 At the formal capability meeting the line manager must;

- 1 confirm which areas of the teacher's performance remain a concern;
- 2 Listen and consider the teacher's response
- 3 give clear guidance on the improved standard of performance needed;
- 4 explain any support that will be available to help the teacher improve to a point where they can be removed from the capability procedure;
- 5 set out the timetable for improvement and explain how performance will be monitored and reviewed taking into account the employee's personal circumstances. This may include any medical conditions, working pattern, well-being support needs, or disabilities protected by the Equality Act; and
- 6 warn the employee formally that failure to improve within the set period could lead to disciplinary action and ultimately dismissal (in very serious cases, the warning could be a final written warning or other serious implications.

7.5 There are three possible outcomes from the formal capability meeting:

1. No formal action and a return to the appraisal process, this is where it is determined that there is insufficient evidence to progress the matter further within the capability procedure or where the employee has successfully made representations that they have met the objectives set within the development and improvement plan. The employee should be given confirmation of the outcome in writing. In such cases this would bring the capability procedure to an end.
2. A first written warning and issue of a Capability Support plan. When determining an appropriate length of time for the support plan consideration should be given as to what the required improvement is and what is an appropriate timescale to allow the employee to be able to demonstrate they can achieve the objectives in the timescale given balanced with the impact of the poor performance.
3. A final written warning, this is for cases where the concern around performance is sufficiently serious. The Capability Support plan issued following this should be for a maximum period of 4 weeks unless there are extenuating circumstances to justify a longer support plan at this stage.

7.6 The employee will be notified in writing of the decision arising from the meeting. Any sanction issued will set out the areas where performance standards have not been met, targets for improvement and timescales, any measures (training and supervision) which will be taken to improve performance, a period for the review, the consequences of not meeting expected performance standards and anticipated next steps in the process.

7.7 Any formal sanctions imposed at a formal capability meeting will be considered 'live' for a period of 12 months from the date of issue. If a decision is taken to not award pay progression, that decision would be for that year only. If the teacher improved and came out of the capability process and back into the appraisal process, they would be eligible to be considered for pay progression at the next round.

7.8 If a sanction has been imposed at this meeting a teacher may appeal against the level of sanction imposed within ten working days of receiving notification of the decision. The appeal will be heard within a reasonable timescale.

## **8 Review of capability**

8.1 Monitoring an 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 with regard to the objectives set. This will mean that the employee should have an awareness of 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.

8.2 At the end of the agreed monitoring and review period, the employee should be invited to a further formal meeting. The employee should be given at least five working days notice of this meeting. Alternatively, this meeting can be arranged at the same time the Capability Support plan is set. At this point 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 the person conducting the meeting is satisfied that the teacher has made sufficient improvement, the capability procedure will end and the appraisal process will re-start. The employee should receive confirmation of this in writing without delay.

8.3 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. When extending the review period consideration should be given of 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 teacher will receive a final written warning. The final written warning will mirror any previous warnings which have been issued and the member of staff will be informed that failure to achieve acceptable standard of performance within a set timescale may result in dismissal. A further period of monitoring and then a review would be set and the employee should be given the right of appeal against the sanction. If, following a final written warning, performance does not improve to an acceptable standard during the monitoring period, the case will be referred to the headteacher or a relevant panel in line with the school's scheme of delegation and terms of reference where the employee would be invited to a decision meeting.

8.4 In cases where the employee was given a final written warning at the first meeting and after the monitoring period they have still not made sufficient improvements in their performance, the final stage of the procedure will be instigated and the case referred to the Headteacher or relevant panel in line with the school's scheme of delegation and terms of reference where the teacher will be invited to a decision meeting.

## **9 Final stage of formal capability - Decision meeting**

9.1 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 has the right to be



accompanied at the hearing by a work colleague or trade union representative. If their representative is unable to attend on the date proposed the teacher 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 Headteacher/relevant panel must have due regard to the availability of each of the parties concerned.

9.2 A copy of the procedure to be followed at the hearing should be sent to the employee in advance of the hearing.

9.3 The officer who has managed the employees performance up until this point in the process will produce a chronology/report of what has happened from the transition meeting to get to this point. This report will outline what the performance concerns have been at each stage, being clear where improvements have been made and clearly outline what support has been put in place to enable the teacher to improve their performance. This will be circulated in advance of the meeting to all parties.

9.4 At this decision meeting the Headteacher/relevant panel in line with the school's scheme of delegation and terms of reference will have the following options available to them:

1. If acceptable standard of performance has been achieved, end the capability support process and move the employee back to the appraisal process.
2. Continue with the capability support plan for a further period up to a maximum of 4 weeks to enable more monitoring before reviewing performance again then refer back to a decision meeting after more support has been put in place.
3. Dismiss the employee based on capability ensuring the employee is given appropriate notice and the right of appeal against the decision.
4. An appropriate sanction (first or final written warning) together with action short of dismissal, e.g. demotion, compulsory transfer to another post if another suitable post is available.

## 10 Appeal

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

10.2 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.

10.3 A set procedure will be used throughout the appeal hearing and this is attached as [Appendix 1](#).

10.4 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.

## 11 Additional Information

11.1 Where an employee raises a grievance during the capability procedure the capability procedure may be temporarily suspended in order to deal with the grievance. Consideration should be given to who is most appropriate to consider the grievance. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.

11.2 If the employee commences long term sickness absence linked with the commencement of this procedure the employee's absence will be managed in accordance with the attendance management procedure and the employee should be referred immediately to occupational health to obtain advice on their 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, this could include incorporating any further adjustments which may be required as a result of their 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 individual every opportunity to demonstrate they can meet the objectives set.

11.3 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 disciplinary 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 always be sought from the school's HR provider in these circumstances.

11.4 In cases where an employee is experiencing mental ill health, reasonable adjustments should be considered such as allowing the employee to have an appropriate person accompanying them to the meeting. If this is the case the teacher would have to confirm, in advance of any meeting, who that person is.

11.5 Where there are similar performance concerns within a 12-month period of a previous sanction being issued to a employee, it may be appropriate to move straight to formal capability, rather than commencing at the Development & Improvement stage of the Appraisal policy.

## Appendix 1

### 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 Head Teacher may ask questions of the member of staff (and his / her representative).
3. Trustees can ask questions of the member of staff (and his / her representative).
4. The Head Teacher to present his / her case
5. The member of staff (and his / her representative) may ask questions of the Head Teacher and his/her representative
6. 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. Head Teacher invited to have the opportunity to sum up his / her case.
9. 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

### Summary of Changes

The September 2024 Teacher Capability policy has been reviewed with the following changes:

|                  |   |
|------------------|---|
| <b>Section 1</b> | Added in wording to confirm the requirement to disclose information on a reference if asked   |
| <b>Section 5</b> | Reworded section on Employee Health and Wellbeing   |
| <b>Section 7</b> | Added more clarity about the formal capability meeting to take into account individual's personal circumstances and to clarify if a sanction is issued at this meeting, what information would be included with the sanction. |