

UNDER ERW REVIEW – AWAITING NEW DOCUMENT

GOWERTON SCHOOL



CAPABILITY POLICY 2011

Reviewed 10.2.11

STAFF CAPABILITY PROCEDURE FOR ALL TEACHING STAFF INCLUDING HEAD AND DEPUTY HEAD TEACHER

INTRODUCTION

The following procedure is provided for Governing Bodies and Heads of Establishment as an example of good practice in dealing with staff capability difficulties. The policy covers all categories of School based teaching staff including Head and Deputy Head Teachers. It is offered in good faith, but with the strong recommendation that **advice is sought from Senior Management of the Education Department at the earliest possible moment and thence throughout the progression of a specific case.**

If the Governing Body choose to adopt this procedure, details should be issued to all relevant staff so that they are fully aware of their rights and obligations. Governing Bodies are reminded that they, or their representative, will be required to attend any industrial tribunal which may arise as a result of action taken against a member of staff.

The following interpretations apply throughout this document:-

- "Headteacher" includes any person nominated to represent him/her;
- Director of Education includes any officer nominated to represent him/her.

1. **Definition**

The procedure is designed to deal with difficulties arising out of problems of capability.

For this procedure lack of capability is defined as a situation in which a member of staff fails consistently to perform his/her duties to a professionally acceptable standard.

The procedure does not deal with lack of capability due to ill health nor with misconduct which may be defined as an act or omission by an employee which is considered to be unacceptable professional behaviour. Any alleged lack of capability arising out of a health problem must be dealt with using the Sickness Procedure. The Disciplinary Procedure should be used for any alleged misconduct.

2. **Aim**

It must be emphasised that the prime aim of the procedure is to achieve an improvement to an acceptable standard in the unsatisfactory level of performance of an employee with regard to work standards, quality, productivity, or other capability factors which affect efficiency.

3. **Identification and Support**

3.1 It is important that all performance problems are clearly identified and given appropriate consideration and support at the **earliest possible stage**.

3.2 i) Where concerns then develop over the work performance of a member of staff, the appropriate line manager or nominated officer (Headteacher/ Deputy Head/Head of Department) will need to investigate.

ii) Where concerns develop over the Work Performance of a Headteacher the Director of Education will need to investigate.

3.3 The nature of the problem, its level of seriousness and causes must be investigated by structured information gathering and systematic recording. At any discussion with the member of staff concerned, he/she should be given reasonable notice and the opportunity to be supported by his TU Representative.

3.4 Following the investigation and assessment, a decision must be made whether to

a) drop the matter

b) give informal counselling/support

c) arrange a formal recorded interview (formal Stage 1).

3.5 Where the assessment is that the matter should be dropped the individual should be notified accordingly and any relevant records removed from the individual's file.

3.6 **Informal Counselling/Support**

This could include:-

i) appropriate counselling clearly outlining identified problem areas/concerns, route for improvement, agreed standards of performance; review of current duties.

- ii) provision of training where appropriate;
 - iii) provision of closer supervision/support for a period of time perhaps using a colleague as 'mentor';
 - iv) ongoing monitoring;
 - v) all action taken should be logged;
 - vi) an agreed period for review within a reasonable timescale.
- 3.7 Following support of this kind, (at the review date), if the employee is judged to have reached the appropriate standard, the employee is to be informed and a record placed on the personal file. However if the level of performance is still considered inadequate the formal procedure should be adopted. Advice should be sought from senior management of the Education Department, before formal procedures are commenced.
- 3.8 If the individual concerned is a Trade Union Representative or Shop Steward, a Senior Trade Union Representative or Full Time Official should be notified before proceeding to the formal procedure. The purpose of this is not to discriminate in favour of Trade Union Representatives but rather to ensure that any action is not seen to be an attack upon the Union's functions.

Formal Procedure

4. Formal Procedure Stage 1

- 4.1 This may be invoked *either* following investigation and assessment where it is considered appropriate due to the seriousness of the concerns *or* where the employee has failed to meet agreed standards of performance after the informal counselling/support outlined above.
- 4.2 The employee must be given written notification of the formal interview giving a minimum of 5 working days notice. The notification should state the nature of the unsatisfactory work performance and that the employee may be accompanied by a Trade Union representative.
- 4.3 At the interview, work performance issues should be discussed. Where it is justified the Headteacher will issue a written warning. Where the capability of the Headteacher is the subject of concern the Director of Education will issue the appropriate written warning.

Targets, support and timescales should be established and it should be made clear to the employee that he/she is subject to the formal capability procedure and the outcome of this procedure, which has a **2 term time limit**, may be dismissal. It should also be stated that this **written warning** will serve as “date of entry into the formal procedure”. In extreme cases a maximum of four weeks should be allowed for improvement, the initial stages could be completed in a shorter period. An extreme case is one where the education of pupils is jeopardised and the time allowed will reflect the seriousness of the situation.

The written warning issued must include:

- i) the nature of the unsatisfactory work performance;
- ii) the action required by the employee and targets set;
- iii) any training/support to be provided;
- iv) the date of the follow-up review - a reasonable time scale would **normally be one term** or equivalent time;
- v) the employees right of appeal - see para. 7 below.

4.4 The written warning should be handed or sent to the employee within 3 working days of the interview and a copy placed on his/her personal file.

4.5 Targets established should be monitored on an agreed ongoing basis. However, there should be a formal review of progress at the agreed timescale (see 4.3 iv) above).

4.6 Where targets have been reached, a letter stating this should be sent to the employee concerned and a copy placed on his/her personal file.

4.7 A written warning will remain on the individual’s file for 12 months.

5. **Formal Procedure - Stage II**

5.1 Where targets have not been reached, a further interview will be convened under Stage II of the formal procedure and the employee notified in accordance with para. 4.2 above.

5.2 At the interview, work performance issues are again discussed and where it is justified, the Headteacher or Director of Education as appropriate, will issue a **final warning**. This final warning must include:-

- i) the nature of the unsatisfactory work performance;
- ii) the action required by the employee and targets set;
- iii) any training or support to be provided;
- iv) the fact that since this is a final warning, any further failure to reach the set targets may result in dismissal;
- v) the date of the follow-up review - a reasonable time scale would normally be **one term or equivalent time**;
- vi) the employee's right of appeal - see para. 7 below.

5.3 Again, targets established should be monitored on an agreed ongoing basis. However there should be a formal review of progress at the agreed timescale (see para. 5.2 v) above).

5.4 Where targets have been reached, a letter stating this should be sent to the employee concerned and a copy placed on his/her personal file.

5.5 A final warning will remain on an individual's file for 24 months.

6. **Formal Procedure - Stage III**

Alternative Employment/Termination of Employment

6.1 If the outcome of the formal review of progress in Stage II is that targets have not been reached and the employee has not improved to the required standard, the question of alternative employment should be considered.

6.2 This possibility should be discussed with the employee. Consideration should be given as to whether alternative employment more suitable to the employee's capabilities can be offered. This could include moving to a post with reduced responsibility. It must be stressed that alternative employment does not have to be equivalent in terms and conditions to the current post and protection of salary will not apply.

6.3 The employee must be called to a meeting to inform him/her that an offer will be made in writing, why it is being made, the consequences of refusing it and giving him/her a period of seven days to consider the offer and to reply.

- 6.4 If no offer of alternative employment can be made or the employee refuses such an offer, a meeting must be held to consider the termination of the employee's employment on the grounds of lack of capability.
- 6.5 Only the Governing Body may make a determination that the employee should cease to work at the school. The Governing Body should therefore constitute a Capability Panel of three of their number which will meet to consider the recommendation by the Headteacher/Director of Education that the appointment be terminated on the grounds of the employee's inability to carry out duties to an acceptable standard. It shall have the power delegated to it to carry out this function.
- 6.6 The employee must be informed by letter of the date, time and location of the meeting, the nature of the specific charges and his/her right to be accompanied by a trade union representative or friend. The date of the meeting must be at least 5 working days after the date of the letter.
- 6.7 The Headteacher/Director of Education should prepare a statement giving:-
- a) full details of the alleged lack of capability;
 - b) statement of any unexpired previous capability warnings, with reasons and dates and subsequent action taken;
 - c) any other relevant documentary evidence.

This report is to be sent under confidential cover in advance of the meeting to the member of staff concerned not less than 5 working days before the meeting. The report will be given to members of the Capability Panel at the start of the meeting. If the employee wishes to introduce documentary evidence, he/she may also do so at this stage, but it is necessary that the Headteacher/Director of Education be provided with a copy of that documentary evidence at least 24 hours before the start of the meeting.

- 6.8 The Director of Education is entitled to attend and advise all such meetings and must be extended an invitation to attend with the usual 7 days' notice given to members of the Capability Panel.
- 6.9 If the member of staff fails to attend or to be represented at the meeting, this shall not invalidate the proceedings although the Capability Panel may, at their discretion, adjourn the meeting.

The structure of the meeting shall be as follows:-

- i) As indicated in 6.7 above, the Headteacher's/Director of Education's statement is to be given to the Capability Panel, together with any documentary evidence which the employee might wish to introduce.
- ii) The Headteacher/Director of Education will outline the alleged lack of capability, introducing any witnesses necessary.
- iii) The employee and/or his/her representative will be invited to offer his/her explanation, call witnesses if appropriate, or speak in mitigation.
- iv) The various parties (ie. the employee or his representative, the Capability Panel, the Head/Director of Education or their Advisers) will be allowed to ask questions at any convenient point in the proceedings, which should be kept as informal as possible.
- v) Both the employee or his/her representative and the Headteacher/Director of Education will be allowed to make a concluding statement.
- vi) All those present, except for the Capability Panel and its Adviser(s), shall be instructed to withdraw whilst the Capability Panel considers the matter.
- vii) If they consider there are sufficient grounds, they may make a determination to cease the employees employment or some lesser action.
- viii) Where they are unable to make a decision, they may defer the matter for further information. However a date to reconvene should be agreed and the matter dealt with as soon as possible.
- ix) After the Capability Panel has completed its deliberation, the parties will be recalled and advised of the conclusions reached. The employee will be notified of his/her rights of appeal and will be sent written confirmation of the determination, the reasons, and of his/her rights of appeal.
- x) The Local Education Authority shall not dismiss until the outcome of any appeal is known. Contractual pay should continue pending the outcome of the appeal.

7. Appeals

- 7.1 The employee will have a right of appeal against the decision of the Capability Panel or any warning issued during the formal interview procedure. Appeals must be in writing to the Headteacher/Director of Education within the time scales outlined below, giving full details of the grounds of the appeal.
- 7.2 The right of appeal against any warning issued under the interview procedure outlined in paras. 4 & 5 must be exercised within 5 working days of the date of the letter confirming the outcome of the interview. The appeal will be heard by the Capability Panel referred to in para. 6.5 above. Their decision will be binding.
- 7.3 The right of appeal against the determination that the employee cease to work at the school by the Capability Panel must be exercised within 5 working days of the date of the letter confirming the decision of the Panel.
- 7.4 The Governing Body will arrange for those of their Members who are not involved in the Capability Panel (3 members), to hear the appeal against the determination. Wherever practicable no more than 15 days should be allowed from the date of receipt of the appeal before the appeals meeting of the Governors is held.
- 7.5 The Director of Education shall have the right to be present throughout the meeting to advise the Governing Body and is entitled to the same notice of the meeting as members of the Governing Body. At least 5 working days' notice of the time and date of the meeting shall be given to the member of staff, and 7 days notice given to Governors and Director of Education.
- 7.6 The Governing Body should operate as follows:-
- i) Where an appeal has been lodged, the various parties and their representatives should be called in simultaneously before the Appeals Body.
 - ii) The Clerk to the Governors should put before the Appeals Body and the various parties, a brief statement of the Appellant's personal details (e.g. post held, length of service, etc.) together with details of the charges upon which the action was based.
 - iii) The Headteacher/Director of Education will then present the case, calling any witnesses.

- iv) The Appellant or his/her representative and the Governing Body will have a right to question the Headteacher/Director of Education and any witnesses.
- v) The Appellant or his/her representative will present his case calling any witnesses.
- vi) The Headteacher/Director of Education or his/her representative and the Governing Body will then be entitled to question the Appellant and any, witnesses on the case so presented.
- vii) Both parties can then make any closing remarks with the Headteacher/Director of Education going first. No new evidence is to be introduced at this stage.
- viii) All the parties other than the Governing Body (Even though the Headteacher may be a Governor) and Director of Education/Adviser will withdraw while the Governing Body consider the matter.
- ix) The Governing Body may, if they wish, recall the parties to clarify any points, but in any such event, must recall both the Headteacher/Director of Education and the Appellant, notwithstanding that only one party is to be questioned.
- x) After a decision has been reached, the parties should be recalled and the Governing Body's decision announced. This will then be confirmed in writing by the Clerk to the Governors at the earliest opportunity to the employee and the Director of Education.
- xi) If the decision is to uphold the determination that the employee should cease to work at the school, the Director of Education will formally terminate the employee's contract.

8. **Costs of Dismissal**

Governing Bodies and Headteachers are reminded that, if the Local Education Authority has good reason, the penalties and costs awarded by an Industrial Tribunal may be charged to the establishment's budget. Such good reason may be if the Authority's advice is not accepted or if the above procedure was not followed.

POLICY NAME: *Capability Policy*

REVIEWED BY: *Curriculum Committee*

DATE REVIEWED: *10/2/11*

DATE TO FGB: *9/3/11*

SIGNED: *Debbie Lloyd*

PRINT NAME: *Debbie Lloyd (Chair of Governors)*

DATE NEXT DUE TO BE REVIEWED *March 2015*

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