



# Paulerspury C.E Primary School

## Capability Procedure

Date written:	<i>February 2018</i>
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To be reviewed:	<i>Every Two Years</i>
Next review:	<i>March 2024</i>

**Our policies are written with our School Values in mind. These are:**

Care,  
Courage,  
Creativity,  
Forgiveness,

Honesty,  
Hope,  
Perseverance  
Respect,

Responsibility,  
Thankfulness  
Trust.

Historic

Parent choice

Staff/Governor choice

Pupil choice

## 1. INTRODUCTION

- 1.1 This procedure sets out the steps to be followed when the head teacher believes that a teacher is failing consistently to perform his or her duties to a professionally acceptable standard. The primary objective is to ensure maximum support through guidance, counselling and training in order that the teacher's performance improves and the problem resolved.
- 1.2 Concerns about performance should in all cases initially be addressed through support provided within the appraisal process, before consideration is given to use of this capability procedure. The use of this capability procedure must be distinguished and kept entirely separate from initial support provided under the appraisal procedure. The appraisal process will be suspended when the capability procedure is invoked.
- 1.3 This procedure should not be used in cases of alleged misconduct or lack of capability due to persistent ill-health, which should be dealt with separately through the disciplinary procedure and ill health procedure respectively. It is not applicable to newly qualified teachers for whom separate induction procedures should apply.
- 1.4 This procedure is not intended to be used in relation to support staff who should be covered by a separate procedure for support staff.
- 1.5 At every step of this procedure, including at all meetings, the teacher has the right to be accompanied by a representative of an independent trade union or work colleague.
- 1.6 Timescales in this procedure may only be shortened with the agreement of both parties.

## 2. PRINCIPLES FOR HANDLING ISSUES OF CONCERN WITH REGARD TO PERFORMANCE

- 2.1 It is intended that, where concerns about perceived under-performance and professional difficulties arise, they are considered, discussed with the teacher and progressed in a structured, supportive, non-threatening and open way which takes account of individual circumstances.
- 2.2 Teachers are expected to understand the nature of their role, including the professional duties set out in the School Teachers Pay and Conditions Document, the duties set out in their job description and the professional standards set out in the Teachers' Standards.
- 2.3 Managers are expected to ensure that all teachers have a clearly defined and agreed job description, reviewed on a regular basis in order that it remains relevant and teachers know of what is expected of them, and that relevant school policies and other information are available and drawn to teachers' attention.
- 2.4 Perceived difficulties may cover a range of issues or may be concerned with one particular issue e.g. classroom management. They may be very recent concerns or may have been concerns over a longer period of time.
- 2.5 Cause(s) of difficulty may be due to one or more of the following:
- the knowledge and technical skills required for the post are changing but the teacher has not acquired these new skills and knowledge;
  - circumstances outside the school are affecting the teacher's work performance;

- circumstances within the school environment, for example redeployment or new or additional responsibility or perceived inadequate management support or unreasonable demands, are affecting the teacher's work performance.

2.6 Whenever perceived lapses from acceptable standards of work performance arise, either through the appraisal process or otherwise, they should initially be discussed with the teacher concerned by the teacher's immediate line manager.

2.7 The line manager should seek to identify the nature and causes of any problems. Some difficulties may be temporary as a result of family/personal circumstances or short-term health problems. The manager should also consider whether the issues are a matter of lack of capability, or of ill-health or misconduct which should be dealt with through separate procedures.

2.8 After this discussion has taken place, the manager may decide that:

- the matter is groundless and should be dropped;
- the matter is of a relatively trivial or 'one-off' nature and that informal discussion is sufficient to resolve the matter without further action;
- the matter is not a matter of capability but is one which should be dealt with under separate procedures; or
- the matter is one where informal support should be provided in relation to performance through the appraisal process

Where support has already been provided to the teacher as part of the appraisal process and concerns remain, the manager may refer the matter to the head teacher in order that a meeting may be held to consider whether the matter should be dealt with through the capability procedure.

### 3. CAPABILITY PROCEDURE - STAGE 1 - FORMAL MEETING / SUPPORT, MONITORING & REVIEW

3.1 Where the head teacher determines that a meeting should be convened to consider use of the capability procedure, the head teacher will write to the teacher inviting him/her to a meeting to discuss the on-going concerns and discuss and seek to agree a programme of support. The teacher will be given at least five working days' notice of the meeting.

3.2 The letter should set out the following:

- the nature of these concerns including the evidence to support them;
- the names of those who will be at the meeting (recognising that it is beneficial for the numbers present to be kept to the minimum required to facilitate the meeting);
- the teacher's right to be accompanied by a trade union representative or workplace colleague; and
- an outline of possible courses of action which might follow.

An extra copy of the letter, together with any enclosures, will be provided for the teacher to pass to his/her representative.

3.3 At the meeting the head teacher will outline the concerns and the teacher (or his/her representative) will be given the opportunity to respond, ask questions and make comments and representations. The head teacher will then determine whether concerns remain and, if so, whether support should continue to be provided within the appraisal process or whether the capability procedure should commence and the appraisal process will cease.

3.4 The head teacher may decide to adjourn and reconvene the meeting at any point in order to provide further time for consideration of issues raised or matters to be determined.

3.5 If the head teacher decides that the capability procedure should commence, the meeting will discuss and seek to agree the following:

- the issues which continue to give rise to concern with regard to capability and the standards required to bring the capability procedure to an end (including any specific reasonable and achievable objectives, and criteria against which matters will be judged);
- the further guidance, counselling and training to be provided to the teacher;
- arrangements for monitoring and assessment, including the name of the manager responsible, and the length of the review period over which this will happen (this should, in cases where professional support is to be provided, be a period of no fewer than 13 weeks).

3.6 The head teacher will make it clear to the teacher that failure to meet the required standards could in due course lead to dismissal. In very serious cases, this could include the issuing of a formal written warning at the conclusion of the meeting.

3.7 The head teacher will write to the teacher to confirm the outcome and decisions of the meeting, including any disciplinary warning, within five working days. The teacher will be entitled to record any points of disagreement. Notes will be taken of the meeting and a copy sent to the teacher.

3.8 Towards the end of the review period, the manager and teacher will meet to discuss the teacher's performance with regard to any agreed objectives and criteria. If, following this review meeting, the head teacher decides that the teacher has made sufficient improvement, this will be confirmed in writing and the capability procedure will come to an end and appraisal will re-start. If the head teacher decides that the teacher may make sufficient improvement with further support, then this stage of the procedure should be extended and such support provided prior to further review. If the head teacher decides that no or insufficient improvement has been made and the teacher shows no sign of doing so, a capability hearing under Stage 2 should be convened.

#### 4. CAPABILITY PROCEDURE - STAGE 2 - CAPABILITY HEARING

4.1 Where the head teacher determines that a meeting under Stage 2 should be convened, the Clerk to the Governors will write to the teacher inviting him/her to a capability hearing. The teacher will be given at least ten working days' notice of the capability hearing. Sympathetic consideration will be given to any request for postponement in order to allow representation or where there are other extenuating circumstances.

4.2 The capability hearing will take place before a committee of the governing body, comprising governors with no previous involvement in the matter. The purpose of the hearing will be to determine whether the teacher is performing to the required standards; whether he/she should be provided with further support; whether he/she should be dismissed on grounds of capability; or whether some other course of action is available. Where the teacher is employed by a local authority or academy chain, then in normal circumstances a representative of that employer will attend to advise the committee on procedure.

4.3 The letter should set out the following:

- a written statement of the concerns to be presented to the committee;
- the recommendation which will be made by the head teacher;
- any supporting papers which will be referred to during the hearing and the names of any witnesses to be called;

- the names of the members of the committee and others who will be at the meeting;
- the teacher's right to be accompanied by a trade union representative or workplace colleague; and
- an outline of possible courses of action which might follow. making it clear that dismissal is a potential outcome of the meeting.

The letter will give the teacher the opportunity of making a written statement for circulation to the members of the committee in advance of the hearing. An extra copy of the letter, together with any enclosures, will be provided for the teacher to pass to his/her representative.

#### 4.4 The format for the hearing will be as follows:

- The head teacher (or his/her representative), the teacher and the teacher's representative should enter the meeting room together.
- The Chair of the committee will describe the procedure, with any procedural questions resolved at this point.
- The head teacher will set out the concerns about the teacher's performance, referring to evidence and calling any witnesses.
- The teacher and/or the teacher's representative will question the head teacher (and witnesses) on their statement(s) and the evidence.
- Members of the committee will question the head teacher (and witnesses) on their statement(s) and the evidence.
- The teacher and/or the teacher's representative will make a statement in response, referring to evidence and calling any witnesses.
- The head teacher will question the teacher or the teacher's representative (and witnesses) on their statement(s) and the evidence.
- Members of the committee will question the teacher or the teacher's representative (and witnesses) on their statement(s) and the evidence.
- The head teacher will summarise and conclude.
- The teacher and/or the teacher's representative will summarise and conclude.
- The head teacher, the teacher and the teacher's representative withdraw whilst the committee, advised by any adviser present, consider the case.
- The Chair of the committee will announce the decision of the committee in the presence of all parties.

#### 4.5 The outcomes of the capability hearing may be that:

- the teacher will not be dismissed and that no further action will be taken;
- the teacher will not be dismissed but that a further period of support will be put in place and a further disciplinary warning issued;
- the teacher should be dismissed / should cease to work at the school; or
- the teacher should be dismissed / should cease to work at the school unless agreement can be reached on suitable alternatives to dismissal e.g. redeployment to alternative work within the establishment, if necessary on a different grade.

4.6 The Clerk to the Governors will write to the teacher within five working days of the capability hearing setting out the decision of the committee. Where the decision is to dismiss, the letter will inform the teacher that he/she can appeal against the decision to the relevant appeals committee of the governing body. The teacher will be given fifteen working days from the date of the letter to write to the Clerk to the Governors stating his/her intention to appeal and setting out the grounds for the appeal.

4.7 Where a decision is taken to dismiss a teacher employed by a local authority, the Director of Education for the local authority will be instructed to issue notice of termination when the teacher has not appealed against the decision within the set timescale, or immediately following an unsuccessful appeal.

## 5. CAPABILITY PROCEDURE - RIGHT OF APPEAL

5.1 The teacher has a right of appeal against any warning issued by the head teacher at any stage of the capability procedure and against any decision taken at a capability hearing. Such appeals will be considered by the appeals committee of the governing body, comprising at least 3 governors with no previous involvement in the case. The teacher may exercise the right to appeal within fifteen days of receipt of any warning and the Staff Appeals Committee shall meet to hear the appeal within fifteen days of the appeal being lodged. The teacher shall be informed in writing of the date and time of the meeting at least five days in advance. It can either confirm the warning or decision or cancel it or impose a lesser penalty.

## NOTES

### 1 TRADE UNION REPRESENTATIVES

Although normal performance standards should apply to the trade union representative as an employee, the formal capability procedure should not be commenced until the circumstances of the case have been discussed with an appropriate official of the trade union.

### 2 SUSPENSION

Given that the purpose of the capability procedure is to allow a member of staff to demonstrate an improvement in performance, and that this can only happen if the member of staff is at work, it is not appropriate to suspend a teacher who is subject to a capability procedure.

### 3 WARNINGS

Any letter confirming a warning will make it clear that if the teacher's performance is subsequently judged to have reached the required standard, the warning will then be disregarded and will be expunged from the file after no more than twelve months.

### 4 CONFIDENTIALITY

When dealing with capability matters the utmost confidentiality must be maintained on a 'need to know' basis. At the commencement of any meetings the importance of confidentiality will be explained and stressed. Governors and particularly the Chair will be made aware that their involvement in any stage of the capability procedure will prejudice any involvement at a later stage. The content of any papers which are circulated must not be divulged to anyone. The way in which governors vote, and opinions expressed at governors' meetings, must always be regarded as confidential. Governors, including parents and teachers, are representatives of their appointing bodies rather than delegates and any unauthorised reporting back to persons outside the Governing Body removes the protection of privilege and action for defamation could result. The minutes of confidential meetings must be kept separate and not made available for inspection.

Governors will be provided with monitoring reports of the use of the capability procedure and this information will also be provided to the recognised trade unions.

### 5 APPEALS AND GRIEVANCES

The capability procedure will not normally be suspended on grounds that the teacher has submitted a grievance in relation to the fact that they are subject to the capability procedure. The consideration of such grievances should, however, be expedited, in particular where the grievance relates to alleged discriminatory treatment.

## 6 SICKNESS ABSENCE DURING THE PROCEDURE

It is recognised that on occasions, a teacher receiving support through either the appraisal process or the capability procedure may suffer ill health requiring absence from work. In such circumstances, and particularly where the sick leave is of relatively short duration, every attempt will be made to offer the agreed support upon the teacher's return to work and exclude the period of absence from the period for support, monitoring and review.