



Capability Procedure for Teachers

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Approved By	Trust Board	Status	Statutory
Last Review	September 2026	Next Review	September 2028

Details of Policy Updates

Date	Details
July 2022	No changes made.
June 2024	No changes made.
September 2025	No changes made.
September 2026	Section 1a. Added paragraph – Grievances Section 6. Pay progression clarity Addition of: Section 9. Confidentiality, Section 10. Consistency of Treatment and Fairness, Section 11. References and Section 12. Monitoring and Record Retention Review date amended to 2 years
September 2026	Prior to commencing formal capability procedures, consideration should be given to workload, wellbeing, health, disability, workplace adjustments and any other factors that may be affecting performance.

	To notify the CEO and the manager of HR must be notified when a teacher enters Stage 1 of the capability procedure so the trust can maintain oversight of capability cases to ensure consistency, fairness and compliance across all schools.
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1. Introduction

The Trustees / Governors wish to support staff to achieve their full potential through regular monitoring and feedback.

This procedure applies to all teaching staff, including the leadership team.

This procedure should be used in conjunction with the school’s Appraisal Policy.

1a. Scope

This procedure supports managers and teachers in improving performance to the required standard within a reasonable time period. The formal procedure must not be used unless there is evidence that support through day-to-day performance management has not brought about the required improvements.

Action in the case of employees who do not achieve an acceptable standard of performance because of misconduct should be conducted under the terms of the Disciplinary Policy adopted by the Board of Trustees.

If it is established that an employee's unsatisfactory performance is due to sickness or ill health these issues should be dealt with under the Managing Sickness and Supporting Attendance Policy adopted by the Board of Trustees.

Where a teacher raises a grievance during the capability procedure, the procedure may be temporarily suspended in order to deal with the grievance. Where the grievance and capability cases are related, including as part of the capability process, it may be appropriate to deal with both issues concurrently. Grievances should be handled in accordance with the Trust's Grievance Policy.

2. Headteacher's Responsibilities

It is a headteacher's responsibility to:

- Prior to commencing formal capability procedures, consideration should be given to workload, wellbeing, health, disability, workplace adjustments and any other factors that may be affecting performance.
- ensure that the procedure is brought to the attention of all teaching staff;
- seek to ensure effective recruitment, induction, training and development arrangements exist so that employees are properly supported in meeting the requirements of their job;
- communicate clearly any change in the requirements of the job and provide any additional support and guidance required;
- seek to ensure that if new standards are set including Headteachers' and teachers' standards, they are reasonably attainable by staff;
- deal fairly and consistently with an employee's continuing unsatisfactory work performance through an appropriate programme of monitoring, support and guidance, explored carefully with the individual and his/her representative;
- maintain confidentiality;
- implement appraisal within the school.
- To notify the CEO and the manager of HR must be notified when a teacher enters Stage 1 of the capability procedure so the trust can maintain oversight of capability cases to ensure consistency, fairness and compliance across all schools.

3. Teacher's Responsibilities

It is an employee's responsibility to;

- undertake the duties of his/her post to the very best of his/her abilities;
- be familiar with teachers' standards and any other professional standards
- make the best use of training, development, support and guidance offered to better perform his/her duties;
- seek to ensure their own continuing professional development;
- engage in the appraisal process.

4. Trustee / Governor Responsibilities

It is the Trustee / Governor's responsibility to:

- undertake their duties in accordance with the terms of this procedure at Stage 2 and Stage 3;
- maintain confidentiality;
- ensure appraisal is undertaken within the school/ trust.

5. Day-to-day Management (Professional Guidance)

The teacher must have completed his/her statutory induction period. It is essential that any performance issues that arise are dealt with immediately to stop any escalation of unsatisfactory outcomes.

Where a teacher has been underperforming for some time and his/her underperformance has never been raised with him/her this should be addressed as soon as possible.

Targets and objectives should be set in accordance with the performance management process.

The majority of performance issues arising should be dealt with through normal day-to-day management, and the headteacher or line manager (or person who is the appraiser under the appraisal scheme) should discuss concerns with the teacher as soon as they arise. Teachers may contribute ideas on why they are underperforming and how improvements can be made.

The headteacher or line manager may begin the process of supporting employees by meeting with them on a one-to-one basis and considering any reasons for underperformance for example:

- have there been any changes since s/he started in the job e.g. have different systems been introduced;
- is the employee fully aware of his/her duties and responsibilities;
- have they received adequate training? (the list is not exhaustive).

See also under “*Scope*” above regarding other policies.

Where problems are identified, a reasonable timeframe to allow for improvement should be given (between a minimum of four and a maximum of twelve weeks). The consequences of not meeting the required improvements must be explained to the teacher. The rationale for the time frame should be documented. During this period regular meetings should take place in a confidential environment and be conducted in a supportive manner. Discussions and outcomes should be recorded. Having identified concerns or problems, headteachers or line managers may want to take advice from their HR adviser, Occupational Health, Director of School Improvement or other managers who have dealt with similar situations.

Should it become clear that the teacher’s performance is not reaching a satisfactory standard, the matter should be dealt with under this formal capability procedure. The employee should be advised immediately in writing and any meeting/discussion which is part of the professional guidance and support will be ended. The headteacher or line manager should proceed to Stage 1 of this Procedure and inform the teacher of this in writing. The letter should clearly outline:

- the level of concern;
- the evidence used to reach this conclusion;
- the expected level of performance required;
- the type of support available;
- the consequences of failing to improve their performance;

6. Provisions of Procedure

An employee has a right to be accompanied by a TU rep or work colleague at each stage of this procedure.

An employee must be given at least five working days’ notice of meetings under the formal procedure. If an employee cannot attend a meeting it may be re-arranged within five working days.

In the event that a teacher fails to attend a formal meeting due to sickness, then the advice of Occupational Health may need to be sought as to: (a) the teacher’s ability to attend such a meeting or, (b) if attendance is not recommended on health grounds, when this position

might change. Whatever the Occupational Health advice, the performance improvement meeting may still need to proceed on the basis of the above if necessary and reasonable.

The procedure includes a number of time-related targets for reviewing and assessing performance. In exceptional circumstances, the guidelines may need to be exceeded, in which case the employee will be advised accordingly.

When this procedure applies to headteacher/member of ELT, the term “headteacher” will be substituted with “a nominated trustee/governor” and “teacher” with “headteacher/member of ELT”.

Where it is intended to invoke these procedures against a Trade Union official, a Trade Union Officer (Regional Officer) should be informed as soon as possible. No action will normally be taken against the Trade Union Official until the allegations have been discussed with the Trade Union Officer (Regional Officer) of the relevant union.

While a teacher or school leader is in capability procedures, pay progression will be withheld.

7. Education of Pupils is in Jeopardy

In very exceptional circumstances Stage 1 and Stage 2 of the formal procedure will be replaced with an assessment period of a maximum of four working weeks. This will only occur where the headteacher can demonstrate that the “education of pupils is in jeopardy”. This action must only be taken after consultation and agreement from the CEO and HR. Where the teacher is a member of a Teacher Association, the Branch Office should be contacted and informed before the employee is notified. This is to ensure the appropriate support and advice is available at the earliest stage. Where the teacher is a Trade Union official, the relevant Regional Officer should be notified.

8. Formal Procedure

8a. Stage 1

The formal procedure should be used where professional guidance has not achieved the desired outcome and should address all the matters that are giving cause for concern.

The headteacher will call the teacher to attend a formal Stage 1 Capability Meeting in order to discuss the problem areas. At the meeting, the headteacher will confirm that:

- a first level warning will be issued. The teacher’s performance must improve to the required standard within the timeframe specified;
- a performance improvement plan (PIP) will be put together to support the teacher;

- a date for the formal review meeting will be set. This will typically be between 4 – 7 weeks from the formal Capability Meeting, and may be varied at the discretion of the headteacher. The rationale for the time period will be recorded;
- progress with the teacher will be regularly reviewed during this period. The frequency of meetings will be agreed and revised as necessary to support the employee;
- the teacher has the right to appeal against this sanction;
- failure to improve and maintain improvement during this period could lead to Formal Stage 2 of this procedure being invoked;
- these outcomes and a copy of the PIP will be confirmed in writing within five working days of the meeting.

At the end of the formal review period the headteacher will review the teacher's performance against the PIP.

If the teacher's performance has improved to the required standard, the headteacher will:

- meet and discuss this with the teacher;
- confirm it in writing within five working days of the meeting;
- if necessary, his/her objectives could be clarified.

If the teacher's performance has not improved to the required standard, then the headteacher will either:

- extend the formal review period for a specific time and confirm this in writing, giving reasons; or
- follow the procedure set out in Stage 2.

Where a teacher has been given a warning and his/her performance has improved, but the improvement is not sustained (due either to the same or to different issues) for a period of 12 months after the warning has been issued, the headteacher may wish to consider proceeding straight to Stage 2 of the procedure.

8b. Stage 2

The headteacher will call the teacher to attend a formal Stage 2 Capability Meeting in order to discuss the outstanding problem areas. At the meeting, the headteacher will confirm that:

- a second level warning will be issued. The teacher's performance must improve to the required standard within the timeframe specified;

- a revised performance improvement plan (PIP) will be put together to support the teacher;
- a date for the formal review meeting will be set. This will typically be between 4 – 6 weeks from the formal Capability Meeting, and may be varied at the discretion of the headteacher;
- the rationale for the time period will be recorded;
- progress with the teacher will be regularly reviewed during this period. The frequency of meetings will be agreed and revised as necessary to support the employee;
- the teacher has the right to appeal against this sanction;
- failure to improve and maintain improvement during this period could lead to dismissal;
- these outcomes and a copy of the PIP will be confirmed in writing within five working days of the meeting.

At the end of the formal review period the headteacher will meet with the teacher and review the teacher's performance against the PIP.

If the teacher's performance has improved to the required standard, the headteacher will:

- meet and discuss this with the teacher;
- confirm it in writing within five working days of the meeting.

If the teacher's performance has not improved to the required standard, then the headteacher may:

- extend the formal review period for a specific time and confirm this in writing, giving reasons; or
- move to the dismissal procedure.

8c. Stage 3: Dismissal

Stage 3 will apply where a teacher fails to improve his/her performance to the required standard under Stage 2.

The headteacher or line manager will invite the teacher to a hearing ~~before the headteacher or trustee/governor/a panel of governors/trustees~~ which will be conducted by a panel who have not been party to any previous performance improvement measures involving the employee. The panel will be assisted in an advisory capacity by HR. The panel should include three senior leaders or governors. At the end of the meeting, the panel may conclude that:

- there should be a further period of guidance, support, monitoring and review;

- the teacher could be moved, to an alternative post of lesser responsibility, within the school (this may include, for instance, the withdrawal of any TLR);
- the teacher should be dismissed.

The headteacher's/trustee's/governor's decision should be confirmed to the teacher, in writing, within five working days.

The teacher will have the right of appeal against dismissal to a panel of trustees.

The teacher should lodge his/her appeal with the governance professional within 10 working days of receipt of the letter confirming the outcome of the hearing. The letter should set out the grounds of appeal.

The governance professional will write to the teacher to confirm the agreed date, time and place of the hearing providing 10 working days' notice of the hearing.

9. Confidentiality

The appraisal and capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the headteacher and governing board to quality-assure the operation and effectiveness of the appraisal system. ELT will review appraisals and targets across the Trust to check consistency of approaches and expectations between different appraisers.

10. Consistency of Treatment and Fairness

The Trust 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 teachers. The Trust is aware of the guidance on the Equality Act 2010 issued by the Department for Education.

11. References

If a teacher has been subject to formal capability procedures within the past two years, as outlined in The School Staffing (England) (Amendment) Regulations 2012 and the Staffing and Employment Advice for Schools, this information must be disclosed to prospective school employers when requested.

The policy will be implemented in accordance with the provisions of the ACAS Code of Practice on Disciplinary and Grievance Procedures.

12. Monitoring and Record Retention

The Trust will monitor the operation and effectiveness of the school's capability procedures, including monitoring the impact on workload.

The Trust will ensure that all written records of capability procedures are retained in a secure place for six years in line with the school's Records Management Policy and in accordance with DfE guidance.

Capability Process
Informal Process (day to day management)
Identify gaps in performance and a timeframe to improve, between 4 and 12 weeks.
Draw up an action plan, agree improvement objectives, identify support and training.
Explain the Capability Procedure and the consequences of if the employee's performance does not improve.
Hold regular supportive review meetings.
Record outcomes of these meetings.
Contact OH if needed.
If performance does not improve during the agreed timeframe and there is a need to proceed to the formal process, advise the employee immediately in writing and proceed to stage 1 of the Capability Procedure.
Stage 1
Send letter inviting employee to a stage 1 meeting, give at least 5 days' notice and explain the right to representation.
At the meeting explain where the employee has not met the required level of performance, backed up by specific evidence and that a first level warning will be issued.
Agree a performance improvement plan.
Set a date for a formal review meeting between 4 and 7 weeks from the stage 1 meeting.
Confirm outcomes of the meeting, including PIP, in writing within 5 days, with the right of appeal.
Have regular progress review meetings, give specific feedback and highlight areas where performance still needs to improve.

End of review period:
Review teacher's performance against PIP.
If improved to required standard, meet with teacher, confirm in writing and clarify objectives if needed.
If performance has not improved to the required standard, either extend the review period and confirm in writing giving timescales and reasons; OR
Proceed to stage 2
Stage 2
Invite to meeting in writing giving 5 days' notice and the right to representation.
Explain where performance has not improved sufficiently and confirm second level warning will be issued. Set date for formal review meeting, typically between 4 – 6 weeks from the stage 2 meeting.
Agree revised PIP.
Confirm outcomes and copy of PIP in writing within 5 working days of stage 2 meeting with right of appeal.
Hold regular progress review meetings.
Warn that failure to improve and maintain improvement during this period could lead to dismissal.
End of review period:
Review the teacher's performance against the PIP.
If performance has improved to required standard, meet with teacher, confirm in writing and clarify objectives if needed.

If performance has not improved, either extend this review period and confirm in writing giving timescales and reasons; OR
Move to dismissal procedure.
Stage 3 Dismissal
Line manager prepares a management report which will be presented at a hearing.
Invite the teacher to a hearing before the Headteacher or a panel of Governors/Trustees
HR Adviser supports the panel.
Possible outcomes: further review period, moved to alternative post or dismissal.
Confirm outcome in writing with right to appeal.
Education of pupils is in jeopardy
In exceptional circumstances stage 1 and stage 2 of the procedure are replaced with an assessment period of a maximum of 4 working weeks.
Consultation needed with CEO and HR Adviser.