

# Capability

## Summary

The governing body recognise the importance of good working relationships with its employees and seek to ensure that concerns with capability are dealt with in a fair and timely way.

We believe that most employees meet or exceed the expectations of the roles they are assigned. When an employee is not meeting the performance standards of their role or is not doing so consistently, this procedure will ensure that the issue is dealt with in a fair, equitable, consistent and supportive manner. Managers are responsible for the successful operation of this procedure with the school.

This procedure sets out the measures available to managers in cases where the appraisal procedure has failed to achieve sufficient improvement in performance or where the matter is so serious that formal action is required.

It is based on the principles of the ACAS Code of Practice (No.1) on 'disciplinary and grievance procedures' and current employment and educational legislative requirements.

This capability procedure does not form part of an employee's contract of employment and is entirely non-contractual. It may be amended, withdrawn, suspended or departed from at the discretion of the school at any time. Everyone should ensure that they take the time to read and understand the content of this procedure and act in accordance with its aims and objectives. If you need support reading or understanding this procedure, please speak with your line manager.

Please note if the school has purchased legal insurance which covers employment issues you should refer to the terms and follow any requirements of the policy.

- Quick Glance** [Who does this policy apply to?](#)  
[What does the governing body expect of its employees and managers?](#)  
[What is the aim of the policy?](#)  
[What is expected in respect of capability?](#)  
[What is a “capability concern”?](#)  
[When should informal action be taken?](#)  
[When should formal action be taken?](#)  
[What are the requirements for an investigation?](#)  
[Is there a right to representation?](#)  
[Who can conduct a formal meeting?](#)  
[What is the role of governors?](#)  
[What is the role of GCC and the diocese?](#)  
[What is formal action?](#)  
[What arrangements are made for the formal meeting?](#)  
[What is an action plan?](#)  
[How is the action plan reviewed and monitored?](#)  
[What happens if the employee is absent during the informal or formal stages of managing their capability?](#)  
[What happens if the employee is dismissed?](#)  
[Is there a right of appeal?](#)

Who does this policy apply to?

It applies directly to the following employees:

- Support staff employed by the school where there are concerns which informal action has been unable to address or serious enough to require formal action.
- Teachers employed by the school where there are concerns (potentially that the appraisal process has been unable to address) or are serious enough to require formal action.

What does the governing body expect of its employees and school managers?

School Managers:

- regularly review the performance of employees and respond to any situations where an employee’s performance is unacceptable
- give employees regular feedback on how they are doing
- have early discussions with the employee about problems, possible causes and solutions
- support the development of employees

Employees:

- maintain acceptable standards of attendance, job performance and conduct
- be responsible for their own development
- raise with their manager any problems that are affecting their work as

soon as possible

- accept responsibility for their own work performance
- respond constructively to advice, guidance and development provided by their manager
- be flexible and cooperate with changing work requirements

What is the aim of the policy?

This policy provides a framework for managers to manage:

- an employee's work to an acceptable standard to ensure effectiveness and efficiency.

Whilst:

- promoting fairness and transparency in the treatment of employees.
- ensuring that acceptable standards are sustained and maintained.

What is expected in respect of "capability"?

Capability is an employee's capacity to apply appropriate knowledge and skills in order to achieve effective and efficient work standards and practices.

Employees should have a clear understanding of what is required of them to meet work standards and practices and the first point of reference should be their job description and person specification, although these documents should not be regarded as exhaustive.

Managers should give regular feedback on how well an employee is completing the requirements for their position and it is recommended this is a minimum of an annual formal review.

For teachers, this will be the appraisal period and it is recommended there is a similar arrangement in place for support staff. Teachers have [Professional Standards \(Head Teachers Standards\)](#) which should be referred to and against which should be considered in the assessment.

The head teacher or governing body (as appropriate) will need to consider whether certain teachers should also be assessed against other sets of standards published by the Secretary of State that are relevant to them.

What is a capability concern?

A capability concern is when expected work standards are not achieved or maintained. This could include when an employee:

- Does not make sufficient progress towards the objectives set in their appraisal review.
- Does not meet the professional standards required for their teaching status.
- Does not carry out the duties and responsibilities of the post to an acceptable standard.
- Is unable to carry out their duties effectively due to long-term absence or frequent absences. Absence is dealt with under the [Attendance Policy](#).

When should informal action be taken?

Informal action would normally be taken:

- When the employee has a previous good work standard and the matter appears easily rectifiable.
- When an observation (normally teachers) has taken place or other evidence has come to light, which indicates less than acceptable performance.
- Issues should be addressed using normal management processes (normally the appraisal process) in the first instance. These should not be left until the next planned meeting but addressed as soon as possible.

What are the requirements for an investigation?

An investigation is the gathering of information relating to a capability issue. Normally the manager will arrange an investigation to establish the facts. An investigation must be carried out before calling a [formal meeting](#) and will usually include a discussion with the employee about the issue.

Following the investigation a decision will be made as to whether to drop the matter, give informal support or in cases which require action under the Capability Policy to arrange a formal meeting.

Does an employee have to co-operate with the process?

All parties to the proceedings have an obligation to co-operate, to ensure that processes and timescales are followed without delay.

When should formal action be taken?

Formal action should be taken when the employee has:

- Repeated occasions of poor performance or where matters have not improved following informal action
- Performance concerns that are so serious they cannot reasonably be addressed through informal action.  
And may be taken when
- Previous formal warnings on file for any reason that are still current and there is a continued or new performance concern.

No formal action should commence against a trade union representative until the circumstances of the case have been discussed with the appropriate branch or full-time officer, with the prior permission of the employee. If the employee does not wish there to be any prior discussion with the branch or full-time officer then formal action will proceed in the normal way under this procedure.

Is there a right to representation?

The employee has a right to be represented/supported during formal meetings under the Capability Policy, by a trade union representative or workplace colleague.

<p>Who can conduct a formal meeting?</p>	<p>The head teacher, a governor, the head teacher and governor(s) or a panel of governors can conduct a formal meeting. The governing body may delegate responsibility for formal action, including the decision to dismiss, to the head teacher. For the formal stages up to stage two, this may be delegated to an appropriate member of the leadership team e.g. business manager for support staff. Where the head teacher is the subject of the formal meeting the governing body may delegate responsibility for formal action to a governor (normally the chair of governors) or more than one governor.</p> <p>Where practicable, different people should carry out the investigation and disciplinary hearing.</p>
<p>What is the role of governors?</p>	<p>A panel of governors (normally three) will hear an appeal. See also <a href="#">Who can conduct a formal meeting?</a></p> <p>Where collaborative arrangements with another governing body are in place regarding staff capability; governors from any of the collaborative schools may be delegated to conduct a formal meeting or appeal.</p>
<p>What is the role of GCC and the diocese?</p>	<p>In Community, Community Special, and Voluntary Controlled schools a representative from GCC is entitled to attend and provide advice on all proceedings that may result in an employee at the school's dismissal. GCC will confirm any dismissal decision as required by regulation.</p> <p>The diocese, through a representative, may be given the right to attend proceedings to give advice for Voluntary Controlled church schools.</p> <p>In Foundation and Voluntary Aided schools, the governors may give GCC rights of attendance. These rights of attendance should be the same for the diocese in a voluntary aided church school.</p> <p>The governing body, or where formal action has been delegated, the head teacher (in community, community special, &amp; voluntary controlled schools or where rights of attendance have been given), must consider any advice given by the GCC and/or diocesan representative before a decision to dismiss is made.</p>
<p>What is formal action?</p>	<p>Although there is an expectation that formal action is generally progressive, the first formal meeting can result in either a first or final warning, dependent on the severity of the situation and the circumstances.</p> <p>At each level a formal meeting will be arranged with the employee. See <a href="#">'What arrangements are made for the meeting?'</a> There will be an outcome from the formal meeting which may include support, training and/or an <a href="#">action plan</a>. If the concern is established the outcome should result in a warning and sanction (i.e. withholding an increment for support staff; preventing progression to the next pay point/grade for teachers) or ultimately dismissal. The start date of the formal warning will commence when the related action plan and support programme is finalised. Therefore</p>

if the action plan has not been finalised at the formal meeting it is essential that this is addressed within a few days of the meeting. If the outcome is that the concern was upheld and a warning was given that an improvement is required, the warning should include:

- The nature of the concern.
- The required improvement.
- Support arrangements.
- The monitoring arrangements and handling of the formal review stage (only applicable after a first written warning) including the date of the formal review meeting.
- What will happen if there is no, or insufficient, improvement and the formal action that could be taken as a result.
- How long the warning will remain in force.
- Any effect on pay.
- Action plan.
- Details of how the employee can appeal.

The levels of formal action and potential sanctions are given below:

<u>Level</u>	<u>Potential level of sanction</u>	<u>Suggested period of review</u>
<b>One</b> – Formal capability meeting.	First or final written warning. Withholding an increment for support staff or preventing progression to the next pay point/grade for teachers.	Between four and ten weeks.
<b>Two</b> – Formal review meeting (this level only applies if a first written warning was issued at level One).	Final written warning. Withholding an increment for support staff; preventing progression to the next pay point/grade for teachers.	Between four and ten weeks
<b>Three</b> – Decision meeting (will normally progress to this level after a final written warning has been issued at level one or two).	Dismissal.	

### level One

Where a first written warning is issued, if at any point during the monitoring/support period the evidence suggests a more serious issue, a decision may be taken to move to level two before the end of the review

period.

A decision can be made to issue a final written warning at level one depending on the seriousness of the issue. This might occur where the employee's unacceptable performance has had, or is liable to have, a very serious or harmful impact on the organisation and/or pupils.

If improvement is not achieved at level one or sustained thereafter, then it is likely to result in progression to level two. Where a final written warning has been issued at level one it may progress to the level three decision meeting.

A decision to withhold any increment for support staff and a "no progression" decision for teachers can be made at this point for salary progression at the next salary review date.

### **Level Two (Formal review meeting)**

This stage may result in a final written warning.

A decision to withhold any increment for support staff and a "no progression" decision for teachers can be made at this point for salary progression at the next salary review date.

### **Level Three (Decision meeting)**

This level may result in dismissal. Any notice will be in line with normal contractual arrangements or statutory notice depending on which is greater.

If an employee appeals against an outcome the sanction will remain in place until the outcome from the appeal is known.

What arrangements are made for the formal meeting?

The manager should make it absolutely clear to the employee that formal action is being taken.

- At least five working days' notice will be given of the formal capability meeting. For a formal meeting where dismissal is being considered at least 10 working days notice should be given to staff.
- The notification will contain sufficient information/documentated evidence about the performance concerns and their possible consequences to enable the employee to prepare to answer the case at a formal capability meeting. The letter should include a copy of the Capability Policy, the right to representation and an additional copy of the relevant information/documentated evidence for the representative.
- The letter must state at which of the formal levels the meeting is being held and the possible outcome or sanction that may result.
- The employee will need to be advised that they must provide any documentation in sufficient time to allow papers to be distributed to the chairperson or panel enabling all parties time to read and understand the content before the formal meeting. However there may be particular circumstances where this is not possible and the employee will need to contact their manager to make alternative

arrangements. For a formal meeting where dismissal is being considered, the employee must ensure the school receives any documents at least five working days before the meeting. This is to ensure there is sufficient time for all parties to receive the documentation at least three working days before the formal meeting to allow time to read and understand the content..

- Any formal action taken and the reasons for the decision will be confirmed in writing to the employee, including details on how they can appeal. The employee should be informed of the consequences of failing to improve sufficiently within the set period following a final warning, including confirmation that it may result in dismissal.

What is an action plan?

Action plans are developed to individual circumstances and will vary, but should normally include clear expectations regarding work standards and practices, the criteria for success, time scales, support, monitoring, and review arrangements which have been agreed.

Whilst it is for the manager to determine the criteria it is important that the employee understands what is required of them to achieve success and to help identify ways in which they can be supported. Any agreed support should form part of the action plan which should include details of the person responsible for making any arrangements. Employees are expected to co-operate positively with the process and engage fully with any agreed support.

Should the employee not achieve a successful outcome following the action plan they would normally progress to the next level of the Capability Policy and ultimately could be dismissed.

How is the action plan reviewed and monitored?

Arrangements for monitoring and review will be agreed as part of the action plan.

What happens if the employee is absent during the informal or formal stages of managing their capability?

Sickness absence should not normally delay any part of a capability process. If the employee is signed off as medically unfit for work during the process the employee should be referred immediately for Occupational Health assessment (if available) including in the referral, details of the process and the stage reached in the procedure.

Where the employee is unable to attend meetings, relating to their capability, for health reasons, written confirmation, together with a fit note must be submitted. The fit note must state specifically that the employee is unable to attend the capability hearing ( a fit note which merely states that the employee is unfit for work is not sufficient). If it is decided to adjourn the capability hearing the hearing will be rearranged. If the employee fails to attend, the hearing will normally go ahead in their absence after considering all the circumstances of the case. Where any employee is unable to attend, they may arrange for representation at the hearing in their absence or make written submissions. It is advised that further guidance is obtained from your HR provider if there are difficulties in arranging for an

What happens if the employee is dismissed?	<p>employee to attend meetings.</p> <p>In addition the absence will be dealt with in accordance with the school's <a href="#">Attendance Policy</a>.</p> <p>If the employee is absent during the period of any formal warning being in force the warning will be extended by a period equivalent to the total of the absence from work. If there is an extension to the timescale of the warning this must be confirmed in writing to the employee.</p> <p>For Community, Voluntary Controlled and Special Schools, the governing body will send an instruction to GCC and the dismissal notice will come from GCC.</p> <p>Foundation, Voluntary Aided schools and Academies are responsible for issuing the dismissal notice to their own employees.</p> <p>Where dismissal is with notice, any notice period will be in accordance with the employee's contractual arrangements, or the statutory period, whichever is greater. The employee will receive normal pay throughout the period of notice.</p>
Is there a right of appeal?	<p>Yes, at each formal level.</p> <p>Employees who wish to challenge the outcome of a formal meeting have the right of appeal as specified in the warning or dismissal letter. Whilst the outcome of the appeal is pending, an action plan, warning or dismissal will remain in force.</p> <p>The appeal letter must be received within five working days of the date of the outcome letter and clearly specify the full grounds of the appeal including why and in what respects the decision of the original meeting was unreasonable. The appeal needs to be set out with sufficient clarity to enable the manager/governor(s) whose decision is being appealed (those who conducted the formal meeting) to know what they will need to respond to at the appeal hearing.</p> <p>Any supporting documents or information should be provided with the appeal letter. The employer will collate, paginate and distribute the bundle for receipt by all parties at least three working days before the appeal meeting.</p> <p>Where the appeal period overlaps with a pre-determined holiday period e.g. out of term-time for term-time only employees, the letter of appeal needs only to register the intention of appeal. However a fully detailed letter should arrive within five working days following the end of the holiday period.</p> <p>A committee of three governors not previously involved with the case will conduct appeal meetings. Where there has been an appeal at an earlier stage of the procedure, the same governors may conduct the present appeal.</p> <p>Arrangements for the appeal meeting should normally be notified to the employee within 10 working days of receipt of the request for an appeal. The employee should be reminded of the right to be accompanied by a</p>

How should  
capability  
meetings be  
recorded

trade union representative or workplace colleague.

Appeals will be restricted to considering the reasonableness of the decision; they are not conducted as a full re-hearing.

At an appeal, the original outcome imposed will be reviewed and may be amended or withdrawn but it cannot be increased.

The decision of the appeal committee will be final, and will be confirmed in writing to the individual together with the reasons for the decision. Should the outcome of the appeal change the original decision, the committee will need to make clear the terms of that decision.

If an appeal is successful at any of the stages, any outcome will be amended or withdrawn. In the case of dismissal, overturned on appeal, there will be no detriment to service.

It is not necessary to minute or audio record every management meeting, but in this formal procedure where a formal sanction may be issued the employee must be notified in writing of the outcome of the hearing. Similarly, where dismissal could be involved, a note of the hearing should be kept and consideration should be given to having a note-taker present or using recording equipment. Employees are not permitted to make their own audio recording of a capability meeting without the knowledge of those present and permission of school management..