

CAPABILITY POLICY AND PROCEDURE SUPPORT STAFF

Status: Statutory

Updated: 2nd November 2020

Reviewed and ratified by: Personnel and Pay Committee

Signed by Trust/Committee Chair

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Next review date: November 2021

Published location: www.secat.co.uk



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Support Staff Capability Policy

1. Introduction

The Trust is committed to providing the highest quality service to its pupils and the public. To achieve this, it requires its employees to work effectively and to a high standard at all times. This policy and procedure are in place to support this objective. Informal resolution of performance concerns through supervision and formal appraisal are encouraged in the first instance but it is recognised that informal resolution is not always possible. The procedure sets out fair and reasonable arrangements for formal capability concerns to be taken forward.

2. Delegated authority

Formal meetings under this policy and procedure should be chaired by the CEO/Headteacher or a senior manager with delegated powers who will have authority to terminate the Contract of Employment. Where the CEO/Headteacher has undertaken other stages of the process with the employee, the meeting or hearing shall be undertaken by an appropriate Trustee Panel.

Appeals against termination of contract will be heard by an appropriate Trustee Panel.

All other stages of the process should be undertaken by a Manager of the Trust under delegated authority from the CEO/Headteacher, or by the CEO/Headteacher.

3. Definition

Capability is defined as the ability of employees to perform their job to the required standard of performance. This procedure is triggered where a lack of capability with reference to a lack of skill, aptitude, knowledge or ability is identified.

Concerns about capability may arise from a number of factors including:

- Lack of proficiency and poor overall organisation
- Changes in the nature and allocation of work, including heavy workload
- Lack of aptitude, skill or experience
- Personal/family difficulties
- Short-term health problems
- Reorganisation or redefinition of role
- Absence of facilities crucial to the employee's performance.

Where circumstances suggest there is a mix of issues e.g. lack of capability and misconduct, the procedure appropriate to the principle reason for action should be used.

4. Application of the procedure

The capability procedure will be used where any deficiencies in performance on the part of the employee arise from a lack of aptitude, skill or knowledge rather than any wilful or negligent failure to carry out duties. This procedure will not be applied where the issue is one of a disciplinary nature, related to ill health or performance during probation. In these cases, the policy and procedure in place to cover them will apply.

5. Responsibilities

The Manager

It is the responsibility of all managers to ensure that they provide an environment in which employees can achieve the standards required of them. This would include ensuring that the standards are explicit, realistic and measurable in terms of what has to be achieved within the required timeframe.

Line managers have a responsibility to ensure:

- The employee is inducted into the Trust
- The employee receives initial and on-going training
- The appropriateness of the job content is applicable to the grade
- The volume of work is reasonable
- Adequate advice and supervision is available
- The expectation of work performance is realistic

Managers need to be aware that health related issues can have a significant effect on employee performance and therefore need to consider seeking advice or support from Occupational Health as necessary.

The employee

All employees have a responsibility to achieve the required standard and co-operate with their line managers in complying with the agreed action plans.

Employees have a responsibility to ensure that they:

- Know the standard of work expected of them and seek clarification if unsure
- Make their line manager aware of any problems they have with their work
- Advise their manager of any issues outside work that may be causing or contributing to performance issues
- Participate fully in the performance management scheme
- Undertake any additional training recommended by their line manager and other development opportunities appropriate to their role
- Participate in managerial supervision as appropriate.

6. Setting standards of performance

The following considerations should be observed when an employee commences their post but thereafter need to be periodically reviewed and updated throughout employment to ensure the standards of performance are appropriate to the role and understood by the employee:

- The standards of work required should be explained and employees should be absolutely clear as to what is expected of them. Attention should be paid to ensure that standards are understood.
- Job descriptions should accurately convey the main purpose and scope of each job and the tasks involved
- Person specifications should define clearly the type of experience, skills, competencies and abilities required
- The consequences of any failure to meet the required standards should be explained.

7. Identifying underperformance

Underperformance can take many forms. This list is not exhaustive but merely illustrative:

- Persistent failure to meet agreed objectives including meeting deadlines
- Persistent errors and/or omissions in completing work
- Failure to meet the requirements of the post as set out in the job description
- Failure to adapt to changed working procedures.

Levels of performance can be measured against a number of possible standards and sources such as:

- Written, measurable standards set by the manager
- Job description/person specification and competencies
- Occupational competencies
- Professional codes of practice and guidelines
- Grading criteria/expectation of the grade
- Feedback reports from supervisors/team leaders

8. Development

If it becomes clear that the reason for an employee’s poor job performance is lack of knowledge or skill, the manager should take positive steps to assess the employee’s specific training and/or development needs and to meet these by providing formal training, coaching or supervisory guidance.

It is important to bear in mind that individual employees’ needs vary. While one employee may cope well and adapt quickly to new job duties or new methods of work, another may require more extensive training and coaching before they can perform to a satisfactory standard.

9. Other considerations

Sometimes standards and expectations are changed because of new requirements. Where this occurs, it is essential to notify employees of the new standards (which must be reasonable) and expectations. An assessment should be made of any training or development needs for the affected employees in such cases.

Scope

- In educational establishments with fully delegated budgets, it is for the Trust to decide whether or not it is appropriate to apply this policy to staff. Where it is decided that it is not appropriate, Trustees are reminded of its obligation as an employer to nevertheless satisfy the requirements of the law and, where appropriate, the requirements of specific conditions of service.
- The term ‘employee’ refers to any member of staff whether teaching or support staff employed to work by the Trust either within a School or the Central Trust Team.

Delegation

- The CEO/Headteacher will decide when this policy applies. The term ‘CEO/Headteacher’ refers to CEO/Headteacher
- As per the policy or where delegation have been given to a Senior Manager.

The Procedure

1. Information Gathering Stage

It is important that performance problems are clearly identified and investigated and then given appropriate consideration and support at the earliest possible stage. The nature of the problem, its level of seriousness and cause(s), must be investigated and identified by structured information and systematic recording.

The Trust will investigate whether the employee has been made aware of expected standards or should reasonably know them from their qualification or other training or would be expected to have updated themselves as part of an individual's professional responsibility as a teacher and/or Trust manager.

Performance problems may be identified from single incidents, from routine checks of records or statistics (for example pupil progress, pupil attendance or regular failure to submit reports on time), from regular management meetings with the line manager or from performance management in the appraisal process.

Once the facts are gathered and the seriousness of the problem established there are three initial options:-

- No further action required under the capability procedure and the appraisal process will continue as normal; or
- Informal Stage: (For less serious situations) - arrange support and monitoring; or
- Formal Stage: (For more serious situations) - arrange a Formal Capability Meeting; notify the teacher in writing that the appraisal system will no longer apply and that their performance will be managed under the capability procedure.

2. Informal stage

Except in the most serious cases informal measures will be used to address issues before entry into the formal stages of the procedure.

The line manager must decide how to bring the performance issues to the attention of the employee. It may be done as part of normal supervision sessions or as a separate meeting, but the line manager must ensure performance concerns are brought to the employee's attention as soon as reasonably possible.

At the meeting the line manager should:

1. Explain the nature of the concerns
2. Explain that their performance will be managed under the informal capability process
3. Allow the employee the opportunity to respond
4. Discuss the situation with the employee. If the employee is lacking in particular skills, advice and/or training will be given, as appropriate, to help enable the employee to reach the required standards. Additional supervision for a specified period may also be offered
5. Set out clear standards of performance that the employee must attain
6. Identify activities and support measures to effect the improvement
7. Set a review period at the end of which a progress meeting will be held with the employee

8. Identify all necessary training and supervision to be provided to assist in effecting the improvement. Agree who will arrange this and by when
9. Agree an appropriate method of monitoring progress
10. Keep written records of the meetings and agreed actions.

These discussions will be confirmed in writing in the form of an informal Performance Improvement Plan (PIP)

If at this point the underperformance is identified as arising from an ill-health/disability related matter, the issue may require a referral to occupational health to seek medical guidance on how to support the employee to achieve the required standards, or to consider reasonable adjustments. Any issues relating to ill-health/disability related matter may be taken forward through the sickness absence policy and procedure.

If at the end of the informal review period, the employee's performance has met the required standard the employee should be informed that no further action will be taken but if this improvement is not sustained during a 12-month period the capability procedure will recommence at this informal stage.

If the employee's performance does not improve to the required standard within the agreed timescale, the line manager will decide whether to advance to the formal stage of the procedure. A reasonable review period would normally be two months, but at the line manager's discretion this time period may be either reduced to one month or extended up to four months depending on the nature of the underperformance. There may be exceptional circumstances whereby these minimum and maximum time periods are not adhered to.

3. Formal stage

Principles

When formal capability action may be necessary to improve an employee's performance to the required standard, there are a number of factors that must be considered.

- (i) The line manager must be able to identify the standard of performance expected and the measures of performance that are applicable. Such standards must be set according to the following principles:
 - Specific - they are well defined
 - Measurable - both quantitatively and qualitatively
 - Achievable - they are not set too high, (or too low)
 - Resourced - the resources necessary are readily available
 - Timed - the timescales set are reasonable
- (ii) The line manager must be able to demonstrate that the employee knows the standards of performance and that appropriate discussion regarding performance concerns have already taken place. (If the capability concerns are particularly serious and the formal stage has been directly invoked this will not apply).
- (iii) The line manager must refer their concerns to their own line manager who will be responsible for conducting the formal capability reviews at stage 2.

An invite letter will be sent by the manager to the employee at least 5 working days before any formal review meeting. The letter should outline the issues to be discussed

Employees may be accompanied by a colleague or trade union official at any formal meetings that are held to discuss a failure to meet the required standard of performance.

The employee will be notified of the outcome of all review meetings held under the formal capability procedure within 5 working days of the date of the meeting.

The employee should be made aware of the next steps in the procedure if there is a continued failure to reach the required level of performance.

Where work performance remains unsatisfactory following any informal measures a formal meeting should take place between the employee and their line manager as described below. The purpose of the meeting is to ensure improvement to the standards required for the role.

In order to move to the first stage of the formal review it is important to ensure that the following points have been included during the informal stage, where applicable:

- Regular feedback on general performance has been provided, normally this will be done during general supervision
- The employee understands the expectations of their role as described in the job description
- Where shortcomings have been raised, deadlines have been set and not met to expected standards
- An informal improvement plan has been put in place. In using the informal stage, a reasonable timeframe has been applied and the employee informed of this. This timeframe will depend on the complexity of the issues of concern.

Stage 1 – Formal Capability meeting

Having identified specific areas of incapability, a meeting will be arranged between the line manager and employee. This meeting will also be attended by a HR Representative who will provide guidance and assistance if required.

At this meeting the employee will be reminded of the earlier informal discussions (where these have taken place) and the steps taken to support an improvement in their performance. If the matter has been escalated immediately to the formal stage the employee will need to be advised as to seriousness of the performance concerns.

The purpose of this meeting is to:

- Give the employee the opportunity to explain their reasons for the problems identified
- Discuss opportunities for additional training, supervision or other work experience
- Explain the capability process to the employee
- Agree a formal Performance Improvement Plan (PIP)

The PIP should identify the following:

- The standard of performance to be achieved in the post by the employee
- The current level of actual performance
- The level of support the employee should expect from their line manager
- Additional training and development the employee can expect
- The timescales in which stepped and overall improvements between actual and standard performance are expected
- The frequency of interim review meetings between the employee and line manager – this will usually be weekly update meetings with the line manager and monthly reviews which may include the HR Representative
- The duration of the overall stage 1 review period
- The standard of performance to be achieved throughout the action plan
- The consequences of failing to meet the targets set, i.e. further action may be taken in line with this procedure, up to and including dismissal.
- The timing of the Stage 1 Capability Review Meeting review meeting.

If the employee expresses the view during this meeting that the job is not suitable for their capabilities, then redeployment will be considered. The redeployment process is detailed in appendix 2.

Follow up action

During each interim review meeting the manager conducting the formal capability process will assess improvements achieved against the action plan with the employee. The manager must ensure that the employee is aware of their performance which will be measured against the Performance Improvement Plan and keep progress under review.

Stage 1 Capability Review Meeting.

At the end of the Stage 1 review period a meeting will be held at which the employee's performance will be formally assessed. If the meeting date was not set upon agreeing the PIP, then the employee will be invited to a meeting with a minimum five working days' notice. The right to be accompanied will be confirmed and any documents to be discussed at the meeting will be circulated.

If the employee has achieved the required standards of performance as set out in the PIP they should be notified that the formal procedure will cease at this point but should their performance deteriorate within a twelve-month period, the process will be re-invoked from stage 1 of the formal procedure. This will be confirmed in writing.

If standards are not being achieved the line manager will decide whether to continue to review under stage 1 of the procedure or proceed to stage 2. The manager should consult Central HR with regard to the most suitable action to take in the circumstances but an extended stage 1 review should only be contemplated where the employee has reached a significant majority of the required standards/targets.

The employee will be advised that if performance is not satisfactory at the end of the stage 2 review period then further action under this procedure may be taken up to and including dismissal.

Follow up actions for extended reviews

If an extended review period has been set, the manager during each interim review meeting will assess improvements achieved against the action plan with the employee. The manager must ensure that the employee is aware of their performance which will be measured against the Performance Improvement Plan. At the end of extended review period if the employee has achieved the standards of performance required as set out in the improvement plan, they should be notified that should their performance deteriorate within a twelve-month period the process will be re-invoked from stage 1 of the formal procedure. However, if standards have not improved the matter will be escalated to stage 2 of the formal procedure.

This will be confirmed in writing.

Stage 2 –Formal capability meeting

Where reviews of performance under stage 1 of the formal procedure fail to identify an improved and sustained level of performance, a meeting should be arranged with the employee, a Senior Manager, line manager, and HR to review the employee's performance against the improvement plan. The employee should be informed of the date of the meeting in writing and 5 working days' notice should be given. The employee should be advised of their right to be accompanied by a trade union representative or colleague.

A new PIP will be set or a revised PIP will be agreed at this meeting, to include the following:

- The standard of performance to be achieved in the post by the employee
- The current level of actual performance
- The level of support the employee should expect from their line manager
- Additional training and development the employee can expect
- The timescales in which stepped and overall improvements between actual and standard performance are expected
- The frequency of interim review meetings between the employee and line manager – this will usually be weekly update meetings with the line manager and monthly reviews which may include the HR Representative
- The standard of performance to be achieved throughout the action plan
- The consequences of failing to meet the targets set
- The timing of the stage 2 capability review meeting.

The meeting will also consider information provided following the Stage 1 process and will consider steps taken to support the employee to achieve the required level of performance.

At this stage redeployment should be considered and discussed. Where reviews carried out during the redeployment procedure indicate that the employee is unsuitable for the alternative post redeployment to another post may be considered.

At this meeting the employee should be advised of the possibility of dismissal if the level of performance does not improve to the required standard or a suitable post is unavailable or options for redeployment are unacceptable to the manager or employee.

Follow up action

During each interim review meeting the Senior manager conducting the formal capability process will assess improvements achieved against the improvement action plan with the employee. The manager must ensure that the employee is aware of their performance which will be measured against the PIP and keep progress under review.

Stage 2 Capability Review Meeting.

At the end of the review period a meeting will be held at which the employee's performance will be formally assessed. If the meeting date was not set upon agreeing the PIP, then the employee will be invited to a meeting with a minimum five working days' notice, The right to be accompanied will be confirmed and any documents to be discussed at the meeting will be circulated.

If the employee has achieved the standards of performance required as set out in the PIP they should be notified that the formal procedure will cease at this point. However, should their performance deteriorate within a twelve-month period, the capability procedure will be re-invoked from stage 2 of the formal procedure.

If standards are not being achieved, the manager will decide whether to continue to review under stage 2 of the procedure or proceed to stage 3. The manager should consult Central HR with regard to the most suitable action to take in the circumstances but in any case an extended stage 2 review should only be contemplated where the employee has reached a significant majority of the required standards/targets and there is a reasonable belief that the performance standards will be met within two months.

Follow up action for extended reviews

If an extended review period has been set, the Senior Manager will assess improvements achieved against the Performance Improvement Plan. The manager must ensure that the employee is aware of their performance which will be measured against the PIP. At the end of the extended review period, if the employee has achieved the standards of performance required set out in the improvement plan, they should be notified, that should their performance deteriorate within a twelve-month period the capability procedure will be re-invoked from stage 2 of the formal procedure. However, if standards are not met after the extended review period then the procedure will enter Stage 3 – Contractual review.

This will be confirmed in writing.

Stage 3 - Contractual Review Hearing

Where standards of performance have not been achieved as set out in the PIP or where redeployment has been unsuccessful, a Contractual Review Hearing will be undertaken where dismissal will be considered. The employee should be given 10 school days' notice of the meeting and be supplied with a copy of the documents to be presented; this should include copies of the PIP, formal outcome letters and evidence of support/training provided.

The Contractual Review Hearing will be conducted by the CEO/Headteacher or, if they have acted as the manager in the case, by a Panel of Trustees and will be attended by the Senior Manager, line manager, HR Representative and the employee. As at all stages of the formal procedure, the employee may be accompanied by a work colleague or trade union official.

The Contractual Review Hearing will consider whether any progress has been made on the improvement plan and subsequent reports of progress. Where partial improvement has taken place, assessment must be made as to whether a further period of review would provide the employee with the opportunity to meet the standards required.

The CEO/Headteacher will review the history of the case including the steps that have been taken to support the employee to achieve the required level of performance. The employee's explanation including any mitigation will be heard and considered.

The CEO/Headteacher will then take the decision to either dismiss the employee on the grounds of their lack of capability or to extend their final review to allow further time for improvement. The option of allowing further time for improvement may only be considered if there is evidence to persuade the CEO/Headteacher that this time is likely to lead to the required sustained improvement in performance. Other than in exceptional circumstances a review period should not be longer than two months.

Where all options have been explored the employee may be dismissed on the grounds of their lack of capability. At this stage the CEO/Headteacher may recommend a search for alternative employment if this has not been considered before. The search may run at the same time as the notice period. If alternative employment is unsuccessful their employment will be terminated on the grounds of (lack of) capability.

A decision to dismiss must be confirmed in writing to the employee within 5 working days and must advise the employee that they have the right to appeal within 10 working days of receipt of the letter.

3. Redeployment

Redeployment within the Trust will be considered prior to and as an alternative to any dismissal although an employee does not have a right to be redeployed to a particular post. The opportunity for redeployment will depend on whether there is a suitable vacancy at the Trust and there will be no salary protection.

Redeployment will be subject to two months' review to ensure acceptable performance within the new post. Where the review indicates unsuitability for the post the conductor of the original contractual review (the CEO/Headteacher) will consider the case again, including further redeployment if possible, or dismissal on the grounds of lack of capability.

4. Right of Appeal

An employee may appeal against dismissal on the grounds of lack of capability. The appeal must be made in writing to the CEO or in the case that the CEO provided the outcome, the appeal must be made to the Chair of Trustees, stating the basis for the appeal.

If the appeal is to the CEO the panel will be formed of three members, consisting of members of either of the Executive team or Trustees who have had no prior involvement in the case. If the appeal is to the Chair of Trustees, the hearing panel will be formed of the first three Trustees available, providing there is no conflict of interest or prior involvement in the case. This is the final stage of the appeals procedure

The employee will be advised in writing of the date for the appeal to be heard, and that they may be accompanied by a trade union representative or work colleague. The employee will be given 10 working days' notice of the meeting.

The appeal must be made to the CEO via the Trust central address or by email to admin@secat.co.uk or in the case of a referral to the Chair of Trustees, to the Governance Manager, by post via SECAT House or to katylove@secat.co.uk Appeals must be made within 10 school days of receipt of the outcome.

The CEO/Governance Manager will record the date the appeal is received and acknowledge receipt of the appeal in writing (either by letter or email) within 5 school days.

Requests received outside of this time frame will only be considered if exceptional circumstances apply.

The CEO/Governance Manager will write to the appellant to inform them of the date of the meeting. They will aim to convene a meeting within 15 school days of receipt of the appeal. If this is not possible, the Governance Manager will provide an anticipated date and keep the appellant informed.

If the appellant rejects the offer of three proposed dates, without good reason, the CEO/Governance Manager will decide when to hold the meeting. It will then proceed in the appellant's absence on the basis of written submissions from both parties.

Capability flowchart

