



Rotherham Aspire Staff Capability Procedure

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CAPABILITY PROCEDURE

INTRODUCTION

Under the Education Act, 1996, and Articles of Government, Governing Bodies of Schools and Headteachers have a responsibility for ensuring that the performance of all staff employed at their schools is properly monitored.

Professional Standards underpin the work of all staff employed in schools: The Professional Standards framework for Teachers, and the National Occupational Standards for support staff. All staff employed in a school should have a Job Description and be included in the school's Appraisal arrangements. School's have a responsibility to facilitate access by all staff to on-going professional development. Where a member of staff is failing in a significant or persistent way to carry out his/her responsibilities or duties to sufficiently high standard it is the duty of the Governing Body to ensure that steps are taken to attempt to bring about an improvement in the individual's performance. In the vast majority of instances it is possible for an individual to succeed in reaching an acceptable standard of performance with appropriately targeted support and guidance within the context of the school's Appraisal arrangements.

In a small number of instances, where sufficient improvement has not been secured within the Appraisal cycle, it may prove necessary to use the Governing Body's Capability Procedures. The process is designed to enable the individual to make accelerated progress outside the Appraisal arrangements, with the ambition that he/she will rejoin the school's Appraisal cycle as soon as possible. However, if such steps were to prove unsuccessful the Governing Body has a duty to resolve the matter, or, in the last resort, by removing the member of staff from employment at the school.

The processes outlined in this document apply equally to Teachers and school-based Support Staff (*where differences apply these are noted*). The management of any procedures adopted by the Governing Body will be the responsibility of the headteacher. If the member of staff giving rise to serious concern is the headteacher, it will be the responsibility of the Governing Body to apply the process with the advice of the Local Authority and, where appropriate, the relevant Diocese.

PRINCIPLES UNDERPINNING THE CAPABILITY PROCESS

The process adopted by the governing body should:

- Build on effective and rigorous Appraisal
- Reflect the expectations of performance defined by the relevant professional standards
- Be constructive and not punitive, in that it attempts to identify the underlying cause(s) of professional difficulties and devise strategies to support the individual to overcome these
- Be supportive in ensuring access to well targeted professional development and training experiences to assist the member of staff to improve their performance
- Be characterised by fairness, consistency and the principles of natural justice
- Enable the individual to be clear how and by when they need to improve and to what standard
- Enable the individual to know exactly at which stage in the process they currently are
- Be based on a secure and appropriately documented evidence base and record of the process
- Ensure appropriate involvement of Trade Unions if the individual wishes
- Involve Human Resources and School Effectiveness Service representatives to support schools with the process and helping to ensure fairness
- Ensure that only genuine issues of capability (i.e. where the individual is *unable* to meet the required standard of performance) are addressed using the process

WHEN IS IT APPROPRIATE TO USE THE CAPABILITY PROCESS?

The use of the capability procedure is not designed to address issues which arise through the normal process of improving the quality of teaching and learning, and/or quality of overall provision in a school. In all schools this would be achieved through whole school, team and individual development activity including through the school's Appraisal cycle. Nor is this process designed to address issues where a member of staff has chosen not to comply with acceptable standards of performance which should be addressed as a conduct issue. When focussing on an employee's capability, it is important to recognise that not all staff will perform at the same standard all the time, and, even in the context of whole school improvement activity, some individuals will require a greater level of support in order to implement changed approaches or new requirements. The capability process is designed for use only when a headteacher determines that the normal process of professional development in the context of Appraisal has been *unsuccessful* in bringing about an acceptable standard of performance and *serious concerns* remain. Ofsted inspection evidence *alone* should not trigger an immediate move into the Governing Body Capability process. Such evidence will however, entirely properly be used to *complement* the headteacher's own evidence as he/she seeks to address under-performance.

- A decision will be made to move to **Capability Stage 1** when clear evidence exists of serious concerns and Appraisal has been unsuccessful in achieving the necessary improved performance.
- A decision will be made to move to **Capability Stage 2** when serious concerns still remain after use of the Stage 1 process.
- A decision will be made to move to **Capability Stage 3** when serious concerns remain and have failed to be satisfactorily addressed through Stage 2

OVERVIEW OF THE CAPABILITY PROCESS AND SUPPORTING INFORMATION

The first part of the attached diagram (see *Appendix i*), illustrates the process to be followed *before* it would be appropriate to consider using the capability process, and an overview of key points and nature of evidence gathering at each stage in the capability process.

At Stage 3 of the Capability process, where sanctions may be taken against a member of staff, initial meetings and subsequent hearings under Stage 3 need to follow a more rigid format. This is set out in *Appendix ii*.

Model letters for use during the capability process

To achieve consistency for all employees throughout the stages of the capability process, model letters are provided in the *Appendix ii* for schools to use/adapt to the particular circumstances. See Overview of the Capability process for further information about the stages at which different letters need to be used.

Sources of support, advice and guidance

It will be the responsibility of the headteacher to make a decision as to whether the capability process is to be used to support an individual to achieve the required standard of performance, and to lead the process. Where use of the capability process is being considered, headteachers are strongly urged to discuss this with the named officer in the Local Authority School Effectiveness Service and the school's Human Resources service provider.

Dismissal

Where the outcome following Stage 3 of the Capability process is that a decision is taken by the school to dismiss the member of staff, the school would need to write to the Local Authority recommending dismissal and asking the Local Authority to issue a notice of dismissal within 14 days. Notice of dismissal can be issued subject to appeal.

OVERVIEW OF THE CAPABILITY PROCESS			
EMPLOYEE STILL IN THE APPRAISAL CYCLE	STAGE 1	STAGE 2	STAGE 3
Yearly cycle with mid year review	STAGE 1 and STAGE 2 recommended to be completed in approximately one term with Stage 2 recommended to take no more than 2 weeks		Approximately one term

STILL IN APPRAISAL CYCLE
 Focus at this point is on the Relevant Standards framework with objective setting, support and monitoring arrangements through the usual Appraisal arrangements. Only if a decision has been taken that **serious concerns** remain and Appraisal has been *unsuccessful* in achieving the necessary improved performance would the individual move into Capability Stage 1 and be provided with a copy of the Capability process

Headteacher writes to the employee to alert to **serious concerns which need to be dealt with outside the Appraisal arrangements** and invites the employee to a Capability Stage 1 meeting using **LETTER A**

EVIDENCE GATHERING - EMPLOYEE STILL IN APPRAISAL
 HT moderates all Appraisal statement(s) and ensures that evidence of emerging concerns is collated. This would include dates when emerging concerns were shared with the individual, additional targeted support to enable improvement to be made, and the outcomes of monitoring activity

SERIOUS CONCERNS REMAIN

STAGE 1
 An employee at this stage requires a more targeted approach than Appraisal within a much shorter timescale. Meetings in Stage 1 need to be recorded with individualised improvement targets, support and monitoring arrangements. Stage 1 meetings will be school-based with SES support if necessary.

During Stage 1 it is recommended that the individual is taken through not less than 2 review cycles which would each include:

- Meeting to identify improvement targets
- Support arrangements
- Monitoring arrangements
- Date for next review (approximately 4-5 week cycle)

Each cycle ends with a written record of the meeting. **LETTER B** models how the meeting should be recorded. Employees should be advised that they can be accompanied by their trade union or a colleague in the second cycle meetings.

If *sufficient* progress is made, the employee would be notified in writing of their return to the school's Appraisal arrangements. **LETTER C**

If *insufficient* progress is made, after the second cycle, the HT will invite the employee to a Capability Stage 2

EVIDENCE GATHERING DURING STAGE 1
 During Stage 1 the HT will need to ensure that internal evidence continues to be collated including:

- Support provided
- Lesson observations and drop-ins
- Pupil progress data
- Outcomes of work scrutiny
- Scrutiny of performance related to specific improvement targets
- Where Leadership improvement targets have been identified, evidence of performance related to these will continue to be necessary

Additional external evidence **may** be provided during Stage 1 e.g. from Ofsted, SES

STAGE 2
 If required improvement not evident after 2 cycles in Stage 1, Stage 2 includes one further short cycle of no more than 2 weeks, providing a last opportunity to the employee to demonstrate that s/he can meet the required standards. Stage 2 meetings will have HR and/or SES representation as appropriate. Employee may be accompanied by their Trade Union or a colleague at Stage 2 meetings. **LETTER E** models how the meeting should be recorded.

If *sufficient* progress is made, the employee would be notified in writing of their return to Stage 1 to ensure improvement is sustained until return to Appraisal is appropriate. i.e. one cycle **LETTER C**

If *insufficient* progress is made, HT will invite the employee to a Capability Stage 3 meeting using **LETTER F**

EVIDENCE GATHERING DURING STAGE 2
 During Stage 2 the HT will need to ensure that evidence continues to be collated as in Stage 1 including the support provided.

In addition, at Stage 2 **it will be necessary** for evidence to be provided by a third party e.g. SES Adviser /Consultant, SIP, member of SLT

STAGE 3
 At this stage formalised target setting, support and monitoring will take place, determined at an Initial Stage 3 meeting. A record of the initial meeting will be provided using **LETTER G**.

If *sufficient* progress is made after the initial 4-5 week cycle, the employee would be notified in writing of their return to Stage 1 to ensure improvement is sustained until return to Appraisal is appropriate ie one cycle **LETTER C**

If *insufficient* progress made, then there would normally be 3 cycles with reviews/hearings held after each 4-5 week cycle during Stage 3, and the following sanctions considered and communicated:

- Written warning (**LETTER H**)
- Final warning (**LETTER J**)
- Dismissal (this letter will be supplied by the LA) (For specific guidance on the structure of meetings during Stage 3 see Appendix iii)

Stage 3 meetings will have HR and SES representation. Employees may be represented by their Trade Union during Stage 3.

EVIDENCE GATHERING DURING STAGE 3
 This will continue as in Stage 2 with the nature of evidence and support appropriate to the continuing concerns and formal targets. The same person should not conduct the reviews/hearings and gather/present the evidence at the meetings.

EVIDENCE OF SERIOUS CONCERNS
Before signalling the intention to move out of Appraisal, the HT must already have documented evidence of the serious issues of concern remaining, the steps taken so far to support improved performance and the outcomes of this. This would be expected to include notes/feedback following observations & drop-ins, outcomes of pupil progress meetings, work & planning scrutiny and pupil tracking data, and/or other documented concerns appropriate to the employee's role and responsibilities. Where performance concerns relate to Leadership issues other evidence will also be necessary e.g. observations of meetings and/or other leadership practice, documentation, analysis of performance data

KEY to ABBREVIATIONS
 HT - Headteacher
 HR – Human Resources
 SES – School Effectiveness Service
 LA – Local Authority
 PM – Performance Management
 SIP – School Improvement Partner
 SLT – Senior Leadership Team

APPENDIX ii

CONDUCTING MEETINGS AT CAPABILITY STAGE 3

At all meetings/hearings held during Capability Stage 3, the relevant Human Resources Adviser and School Effectiveness Service Officer should be present. The headteacher will chair meetings/hearings

CAPABILITY STAGE 3 - STRUCTURE OF THE INITIAL MEETING

The headteacher will:

1. restate the specific areas of concern regarding performance
2. identify, for each of the areas of concern, the standard of performance required
3. allocate formal targets/objectives for each of the areas of concern
4. offer the opportunity to the member of staff/trade union representative to seek any clarification needed and raise any areas of concern
5. set out for the member of staff/trade union representative the following:
 - Who will be responsible for collating the evidence to be reported to the Review Hearing (NB *this will be someone other than the Head*)
 - The nature and scope of the evidence that will be gathered.
 - How the evidence will be gathered (e.g. scrutiny of pupils work, planned and unannounced observations; observations by internal staff and School Effectiveness Service staff)
6. detail any arrangements for mentoring/support to be provided to the member of staff.
7. notify all those present of the date of the Stage 3 Review Hearing and the potential consequences of a failure to meet the required standard of performance
8. confirm all of the above in writing (LETTER G)

CAPABILITY STAGE 3 - STRUCTURE OF THE REVIEW HEARING(S)

The headteacher will chair the Review Hearings at Capability Stage 3. Another member of staff eg deputy headteacher, head of department, will present the evidence to the hearing (*presenting officer*)

The headteacher will:

1. remind the employee of the agreed targets and process from the Initial Stage 3 meeting
2. request the evidence to be presented to the hearing
3. asks any questions of the presenting officer
4. offer the opportunity to the employee/trade union representative to ask any questions of the presenting officer
5. ask for representations from the employee/trade union representative
6. adjourn the hearing to consider action (advised by HR/SES).
7. reconvene the hearing to convey the decision (to be confirmed in writing using LETTER H or J as appropriate).