



# **PERFORMANCE CAPABILITY POLICY**

## **FOR TEACHERS**

**Approved on 06.11.2020 by F & R GB**

## **1.0 Introduction**

- 1.1 An accepted definition of capability is a situation in which a teacher fails consistently to perform his/her duties at the level commensurate with the post and to the appropriate professional standards.
- 1.2 The School require all teachers to sustain the required standard of work (as set out in the Teachers Standards). It is the responsibility of the Headteacher/Manager to take active steps to manage the performance of teachers and to support those who may require additional assistance.
- 1.3 It is recognised that this can be a difficult time for teachers and the process for the performance capability procedure must be handled sensitively and teachers should feel supported at all times. Details of support available, such as counselling, should be offered by the Headteacher/Manager.

## **2.0 Scope**

- 2.1 The Performance Capability policy and procedure applies to all teaching staff in school, whose work performance does not meet the required standards (as set out in the Teachers Standards) irrespective of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation.
- 2.2 A teacher who is not achieving the required standard of work because of ill health will be dealt with under the School's Managing Attendance Procedure. (see 7.0)
- 2.3 If the teacher is capable but fails to meet the required standards because of their own carelessness, negligence or lack of effort this will be dealt with under the Disciplinary Policy and Procedure.

## **3.0 Aim**

- 3.1 To provide a framework for the Headteacher/Manager to assist teachers who are not currently achieving the required standard (as set out in the Teachers Standards) to improve their performance at work. The Headteacher/Manager must address unsatisfactory work performance and the following procedure sets out the stages the Headteacher/Manager must follow.

## **4.0 Suspension of Appraisal Process**

- 4.1 The Appraisal process should be suspended when a teacher enters formal performance capability. The Headteacher/Manager must confirm this in writing to the teacher concerned. Prior to implementing the transition from appraisal to capability, a support plan will be put into place for a period of up to 4 weeks under the appraisal process. (see appraisal policy for more details)
- 4.2 Pay progression could also be delayed/affected once in performance capability. (Advice should be sought from HR regarding this). The Headteacher/Manager must confirm this in writing to the teacher concerned.

## **5.0 Formal Capability Meeting – 1<sup>st</sup> Meeting**

5.1 A meeting must be held with the teacher concerned. The Headteacher/Manager must write to the teacher giving a minimum of **5 working days** notice of the meeting. The letter inviting the teacher to attend should give details of the reason for the meeting and inform them that it is part of the performance capability procedure. The teacher should be advised of the right to be accompanied by their trade union representative or a school colleague and an HR Advisor should be present at this meeting. The Headteacher/Manager may wish to seek advice from the External Adviser. (see example letter LET PCT1). **A notetaker should be present at all formal meetings.**

5.2 The purpose of this meeting is:

- to establish the facts (including support given so far);
- to bring the teacher's attention to those aspects of work performance that are not meeting the required standards - with reference to the teacher's job role and actions taken so far (i.e. under the appraisal process – see 4.1);
- to explain the impact their performance is having on the educational progress of the pupils;
- to find out whether the teacher realises and accepts that there is a problem with their work performance;
- to give the teacher an opportunity to explain any mitigating circumstances surrounding their unsatisfactory work performance;
- to discuss what is necessary to achieve an improvement in their performance;
- to develop an action plan and timetable for improvement (4-10 weeks) and give clear guidance on the improved standard of performance required. (see example letter LET PCT2) (the timetable should provide sufficient opportunity for an improvement to take place); and
- to explain the support and training the teacher can expect to help them achieve the level of improvement;
- During the meeting a warning should be issued. The teacher should be informed that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final warning. The teacher will have the right to appeal against the warning/final warning within **5 working days** of the date of the letter. They should do this in writing addressed to the Headteacher/Manager, stating the reason for the appeal. Appeals should be heard by the appropriate committee of the Governing Body. Human Resources will provide advice on this process. (See 9.0 and Appendix 1)

- 5.3 As a result of the meeting the Headteacher/Manager should write to the teacher to confirm: (see example letter LET PCT2)
- the specific areas of work that are unsatisfactory and the specific level of improvement required in these areas;
  - the timescale over which the improvement is required to be achieved (recommended up to a 10-working week period however, a 2nd meeting will take place mid-way to assess continuing to 10 weeks). HR may attend this meeting and the teacher should be advised of their right to be accompanied by a trade union representative or school colleague); and
  - the process for monitoring and reviewing the teacher's progress over this timescale (recommended fortnightly meetings between the teacher and the Headteacher/Manager).
- 5.4 If for any reason objectives and timescales cannot be agreed between the Headteacher/Manager and teacher these may be referred to the Headteacher who will ensure targets are realistic and achievable and within the Teachers Standards. If the manager is the Headteacher, the Headteacher will set realistic and achievable objectives and timescales.
- 5.5 If the monitoring period is interrupted for any reason, the Headteacher/Manager will look at the individual circumstances and **may** extend the period so that 10 working weeks are assessed.
- 5.6 It is vital that the Headteacher/Manager monitors the performance of the teacher throughout the agreed period and gives the teacher ongoing guidance on his/her progress towards the required improvement. Monitoring meetings should be used to provide feedback and raise any issues, these should be recorded and a copy of notes given to the teacher. Throughout this process the emphasis must be on helping the teacher to achieve the improvements necessary.
- 5.7 **2<sup>nd</sup> Meeting** - An interim meeting must be held with the teacher. The Headteacher/Manager must write to the teacher giving them a minimum of 5 working days notice of the meeting. This meeting should take place up to 5 working weeks after the 1<sup>st</sup> meeting. The teacher should be advised of their right to be accompanied by their trade union representative or school colleague and an HR Advisor may also be present at the meeting. (see example letter LET PCT3) **A notetaker should be present at all formal meetings.**
- 5.8 At the meeting, the points below should be discussed –
- Ascertain how much progress the teacher feels has been achieved
  - Review action plan and progress so far
  - Discuss support and training provided and establish support required moving forward to help the teacher achieve the required level of improvement

- Bring the teacher's attention to those aspects of work performance that are not meeting the required standards and clearly outline what is expected and by when
- Explain the impact their performance is having on the educational progress of the pupils
- To find out if the teacher realises and accepts that there is a problem with their work performance
- An updated action plan and timetable for improvement (up to 5 weeks) should be issued to the teacher giving clear guidance on the standard of performance required if sufficient improvement has occurred so far
- If sufficient progress is being made, the teacher should be made aware that the warning issued at the 1<sup>st</sup> meeting will continue; that sufficient improvement must be made in the required timescales; that a further meeting will be held in up to 5 weeks time at which HR will attend. They will have the right to be accompanied by their trade union representative or school colleague (see example letter LET PCT4). The date for the 3<sup>rd</sup> meeting will be agreed at this meeting
- The teacher should also be made aware of the implications should the required improvements not be met
- If no improvement or insufficient improvement has been made despite training and support being provided, the Headteacher/Manager should discuss the following:
  - the steps taken to date to assist him/her to improve his/her work performance;
  - the results of the monitoring process; and
  - any points or information the teacher wishes to offer in mitigation.
  - Issue a final warning which will mirror any previous warning issued. The teacher should be informed that failure to improve to the required standards within the set period may lead to dismissal. The teacher will have the right to appeal against the final warning within **5** working days of the date of the letter. This should be put in writing and addressed to the Headteacher/Manager, stating the reason for the appeal. Appeals against any formal action should be heard by the appropriate committee of the Governing Body. Human Resources will provide advice on this process. (See 9.0 and Appendix 1)

5.9 **3<sup>rd</sup> Meeting** - At the end of the set timescale, the Headteacher/Manager must hold a further meeting with the teacher to review the monitoring period. The Headteacher/Manager must give a minimum of 5 working days written notice and the teacher should be advised of the right to be accompanied by their trade union representative or school colleague. An HR Advisor should also be present at this meeting (see example letter LET PCT3). **A notetaker should be present at all formal meetings.**

- 5.10 At the meeting, progress will be reviewed and measured against the action plan and the Headteacher/Manager will discuss the next steps which will depend on how much, if any, improvement in performance has occurred. (Refer to 5.8)

**a) Sufficient Improvement Achieved**

If sufficient improvement has been achieved, the Headteacher/Manager should confirm in writing to the teacher that performance capability has ceased and that the appraisal process will restart. Headteachers/Managers should emphasise with the teacher that the improvement achieved needs to be sustained and the Headteacher/Manager will continue to monitor performance through day-to-day management and appraisal.

**b) Some Improvement Achieved**

If some improvement has been achieved, but there are still concerns, it may be appropriate for a further monitoring period to be put in place to ensure improvement to the required standard is achieved and sustained (a further period of up to 5 working weeks is recommended). A further action plan should be produced (see 5.8) and this should be confirmed in writing to the teacher and a 4th meeting should be arranged to assess progress. If not already issued, a final warning should be given at this point. (see C below) If a final warning has already been issued, the teacher should be made aware that it will continue.

It is not recommended that the monitoring period be extended more than once. 15 weeks is considered to be a more than adequate period of time for a teacher to improve. Failing that, alternative options may be discussed or a disciplinary hearing should be considered.

**c) Little or No Improvement Achieved**

If, after the agreed monitoring period (or if it becomes clear, before that time) no improvement or insufficient improvement has been achieved despite training and support being provided then the Headteacher/Manager should discuss the following: -

- the steps taken to date to assist him/her to improve his/her work performance;
- the results of the monitoring process;
- specific shortcomings in work performance; and
- any points or information the teacher wishes to offer in mitigation.
- If the monitoring period is to be extended issue a final warning which will mirror any previous warning issued. The teacher should be informed that failure to improve to the required standards within the set period may lead to dismissal. The teacher will have the right to appeal against the final warning within **5** working days of the date of the letter. This should be put

in writing and addressed to the Headteacher/Manager, stating the reason for the appeal. Appeals against any formal action should be heard by the appropriate committee of the Governing Body. Human Resources will provide advice on this process.

5.11 Taking into account all the matters discussed at the meeting, the Headteacher/Manager should consider one of the following options: -

- Extend the monitoring period (a further period of up to 5 working weeks is recommended – if the Headteacher/Manager feels that the necessary improvements can be achieved in that time) In this case, a 4<sup>th</sup> meeting should be scheduled
- Discuss any other options
- Recommend a hearing in line with the disciplinary policy. (If the Headteacher is involved in the monitoring of performance, then any recommendation for a hearing should be made to the Chair of Governors)

5.12 **4<sup>th</sup> Meeting** - Please refer to 5.8, 5.9 and 5.10

5.13 If it becomes clear that following the extended monitoring period the teacher has not improved to the required standard and alternative options are not appropriate, the Headteacher/Manager should convene a hearing to consider termination of employment on performance capability grounds (see Disciplinary Policy).

(See example letter LET PCT5)

5.14 It is not envisaged that a teacher should go through this procedure more than once. Should a Headteacher/Manager identify a teacher failing to perform who has previously been through the capability procedure they must seek advice from HR on the individual case.

5.15 At any stage in the formal procedure, should the Headteacher/Manager have concerns in relation to progress, a meeting will be arranged giving the teacher a minimum of 5 working days notice.

## **6.0 Exceptional Circumstances**

6.1 In exceptional circumstances, a procedure for 4 working weeks for improvement may be invoked. This would apply in particularly serious cases where the education of the children is in jeopardy. Examples of this might be where a teacher's classroom control is so poor that no order can be established to enable teaching to take place, or where all of the children under a teacher's care fail to progress in that teacher's lesson. Following all support already provided, advice should be sought from Human Resources.

6.2 In extreme cases, the teacher may be suspended from work. Suspension may be at any point during the capability procedure, should this become necessary, and will progress straight to a disciplinary hearing. The period of suspension will be on full pay and will be as brief as possible and without prejudice. The

Headteacher/Manager concerned will write to the teacher and explain the reason(s) for any delay(s) whilst a hearing is being arranged. In these cases, advice should be sought from Human Resources and the teacher will be encouraged to seek advice from their Trade Union Representative.

## **7.0 Illness, Injury or Disability**

- 7.1 Changes in a teacher's health through illness, injury or disability may not cause them to be absent from school but may have an impact on their ability to perform their duties to the required standard. Medical advice may be required.
- 7.2 If it is recognised by the Headteacher/Manager and the teacher that the teacher is under performing because of changes in health then consideration should be given to whether the role can be reasonably adjusted on a temporary or even permanent basis to allow the teacher to remain in post and perform to the required standard.
- 7.3 If the post cannot be adjusted then the procedure should be followed in the normal way. However, the Headteacher/Manager may need to consider extending monitoring timescales to facilitate teachers in this situation to ensure every opportunity to improve has been afforded.

## **8.0 Sickness Absence**

- 8.1 If long term absence appears to have been triggered by the commencement of this procedure, the case should be referred immediately for medical advice to assess the teacher's health and fitness. A considerate and sympathetic approach should be taken, but in general the medical advice may influence the length of time the Headteacher/Manager may wait for a teacher's health to improve before considering whether to terminate employment on health grounds.
- 8.2 Reasonable steps should be made to enable the teacher to attend meetings, however, if the teacher is unable to attend, they may proceed in the teacher's absence with the Trade Union Representative present if the teacher is in agreement. In such circumstances, a full account should be provided in the letter confirming the outcome of the meeting.
- 8.3 Where poor performance is due to a teacher having a disability, the school needs to be aware of their duty to make reasonable adjustments. Advice may be required from Occupational Health and Human Resources.
- 8.4 Short term absences should not delay any part of the formal stage of the capability procedure. (Advice should be sought from Human Resources in the case of short-term absences)

## **9.0 Appeals**

- 9.1 There shall be the right of appeal against all warnings and final warnings. Further guidance is available at Appendix 1.



## **10.0 Keeping Records**

- 10.1 All meetings with the teacher and any guidance provided outside of those meetings should be confirmed in writing to the teacher.
- 10.2 All documentation should be held confidentially by the Headteacher/Manager and copies of any letters, outcomes and action plans should be sent to the teacher and a copy placed on their personal file.
- 10.3 If performance continues to be unsatisfactory, despite the measures taken, these records will be required to progress any action to be taken and may need to be produced if any action is appealed.

## **11.0 Confidentiality**

- 11.1 Confidentiality should be maintained by all those involved in this procedure. Information will only be shared with relevant parties. While respecting confidentiality, it is important the teacher is able to discuss issues with their trade union representative or school colleague who may be able to assist or support them through what is acknowledged to be difficult circumstances.

## **12.0 References**

- 12.1 The school will disclose information regarding current capability issues (in the preceding two years) being dealt with under this performance capability policy when requested to do so for the purpose of employment references.

### **Behaviour and attitude problems**

Poor performance in terms of behaviour or attitude can be difficult to deal with. This could be a teacher regularly behaving in a way that is uncooperative or antagonistic where they may be rude to colleagues or where a teacher displays a lax attitude towards work.

Such behaviour may be as a result of lack of capability or may be viewed as misconduct and therefore subject to discipline, depending on the circumstances. In either case, it is the Headteacher/Manager's responsibility to address the matter through a meeting with the teacher and try to establish if there are any underlying reasons for the behaviour.

During the meeting the Headteacher/Manager must provide specific examples of the teacher's behaviour rather than making generalised statements. Examples should be quoted in a neutral, factual way with an explanation from the Headteacher/Manager as to how the particular behaviour came across, or how it affected others, and why such behaviour is unacceptable. Trade Union representatives will not be present at this meeting, however, the teacher may wish to seek advice from their Trade Union Representative.

The teacher may or may not be aware that his or her attitude, manner or behaviour is perceived in a particular way and the Headteacher/Manager will need to treat the matter with sensitivity and patience in order for the teacher to accept the need to change. Training or counselling may be appropriate to help teachers adjust their behaviour or attitude.

The Headteacher/Manager will make a decision as to whether the poor performance should be dealt with under the School's Performance Capability Procedure or the Disciplinary Procedure. Advice from HR should be taken.

### **Appeal Procedure**

1. The Headteacher will, on receipt of an appeal letter, arrange a meeting of the Appeal Panel to be held at the earliest opportunity and subject to the availability of Governors and all parties concerned.
2. The Headteacher will provide the teacher with 5 working days written notice of the date, time and location of the Appeal Hearing. The teacher will also be reminded of his/her right to representation. (See example letter LET PCT6). **A notetaker should be present at all formal meetings.**
3. Both management and the teacher will be invited to submit any additional information and/or reports. They should be submitted to allow distribution to take place at least 3 working days before the hearing.
4. The Headteacher/Manager will be required to attend the Appeal Hearing to make a statement or give evidence as to the reasons for issuing the teacher with a warning/final warning.
5. The Appeal Panel will consist of 3 members of the Governing Body. The panel would usually consist of governors from the school concerned, however, it may be necessary to form a panel of governors from other governing bodies.
6. The Appeal Panel will not re-conduct the original meeting but will allow the teacher and/or the teacher's representative to submit their case for appeal. The Headteacher/Manager shall be permitted to submit the case as to why the decision to issue the warning/final warning should be upheld.
7. The decision of the Appeal Panel will be final. The outcome of the appeal hearing will be a decision to uphold or not uphold the decision of the issuing of the warning/final warning.
8. The decision of the Appeal Panel will be confirmed in writing to the teacher within 5 working days of the hearing. (See example letter LET PCT7).

### **Procedure for hearing an Appeal**

An appeal panel formed from the Governing Body will hear the appeal with advice from a Human Resources representative. This panel should include 3 members of the Governing Body who have had no prior involvement in the matter.

Papers to be submitted by either party should be sent to the Chair of the appeals panel. The Chair of the panel will then ensure all parties receive all documents at least 3 days prior to the hearing.

The procedure for the appeal hearing will be as follows:-

- (a) The teacher and/or representative shall state the case.
- (b) The Headteacher/Manager may ask questions of the teacher and/or representative.
- (c) The Panel may ask questions of the teacher and/or representative.
- (d) The Headteacher/Manager shall state the case.
- (e) The teacher and/or representative may ask questions of the Headteacher/Manager.
- (f) The Panel may ask questions of the Headteacher/Manager.
- (g) The teacher and/or representative to have the opportunity to sum up his/her case if he/she wishes.
- (h) The Headteacher/Manager to have the opportunity to sum up his/her case if he/she wishes.
- (i) The teacher, teacher's representative and the Headteacher/Manager withdraw.
- (j) The Panel to deliberate, recalling the teacher and representative and Headteacher/Manager only if clarification of evidence already given is required. In such instances both parties should be recalled even though clarification may be required from only one side.
- (k) The Panel shall announce its decision to both sides unless further time for deliberation is needed, in which case both sides will be informed of this and the decision advised in writing.
- (l) The decision of the Panel will be notified to both sides in writing within 5 working days of the appeal hearing. If it is not possible to respond within this timescale the teacher should be given an explanation for the delay and when a response can be expected.
- (m) The decision of the Panel is final.