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# Capability Policy

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# 1 Introduction

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Poor performance may be due to a lack of necessary skills, aptitude, a lack of knowledge or understanding of what is required, or a lack of application by the individual.

Performance giving cause for concern may be defined as that which falls below the required standard due to reasons connected with skills, aptitude, or knowledge. Performance should be assessed against the criteria for the role and any nationally agreed standards.

Inherent in the role of all Managers in Schools ( i.e: Headteacher, Deputy/Assistant Head, Head of Department/Head of Faculty/ Head of Year, Key Stage Co-Ordinator) is the responsibility to monitor the performance of staff and to regularly discuss with them, their standards of work. Any failure to achieve the required standard of performance should be discussed at the earliest opportunity.

Initial discussions should be regarded as part of normal working routines including the appraisal cycle.

## 1.1 Scope

This procedure should not be used for any period where the performance is affected by ill health. Such issues should be managed through the Managing Attendance policy.

This procedure will apply to all teachers employed at the school and may be adapted for use with Support Staff.

Where poor performance may be attributed to ill health or misuse of drugs or alcohol the Managing Attendance Policy and / or Drugs and Alcohol Misuse Policy should be referred to. Human Resources should be involved in an advisory capacity to ensure that there is consistency in approach within the School and Managers may wish to consult with Human Resources prior to any action being taken.

## 1.2 Equality Statement

This policy applies equally to all School employees regardless of their age, disability, sex, race, religion or belief, sexual orientation, gender reassignment, pregnancy and maternity, marriage or civil partnership. Care will be taken to ensure that no traditionally excluded groups are adversely impacted in implementing this policy. Monitoring will take place to ensure compliance and fairness.

## 1.3 Definitions

Unless indicated otherwise, all references to “teacher” include the headteacher.

# 2 Policy Statement

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All employees have a contractual responsibility to perform to a satisfactory level and will be given every assistance and encouragement to do so. Regular performance management will provide the opportunity for Managers and individuals to discuss performance and development needs. However, issues of poor performance must be dealt with promptly as these arise and Managers should not wait for a formal meeting before addressing such issues.

Where performance falls below the required standard and has not improved through the appraisal cycle, the Capability Procedure sets out the formal process to help resolve poor performance through supportive actions.

In the case of teachers, including the headteacher, a formal capability process will only commence when, as an outcome of a Transition Meeting (see Performance Management Policy), a decision is taken to move out of the Performance Management process and into the formal Capability process.

## 3 Principles

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### 3.1 General Principles Underlying This policy

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

The main aim of the Capability Procedure is to help individuals improve and maintain performance whilst acknowledging that the Capability Procedure is not a substitute for good management practices and will normally only be invoked when attempts to resolve poor performance through normal day to day management and performance management practices have failed. Individuals will receive a reasonable amount of training and support to enable them to perform to the required standard

**Note: For the purposes of the Capability Procedure the generic term "Manager" will be used to cover all positions of responsibility in the School involving line management of staff.**

### 3.2 Confidentiality

The appraisal and capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the headteacher and Trust Board to quality-assure the operation and effectiveness of the appraisal system. This will be achieved by : *the headteacher or appropriate colleague will review all teachers' objectives and written appraisal records personally, in order to check consistency of approach and expectation between different appraisers. The headteacher will be aware of any pay recommendations that have been made.*

## 4 Formal Procedure

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This procedure applies only to teachers or headteachers about whose performance there are serious concerns that the Appraisal process has been unable to address.

### 4.1 Timescales

The timescale adopted in each case will be in accordance with the seriousness of the lack of capability of the employee. Consideration needs to be given to whether the problem is a specific or broader professional difficulty, whether it is of very recent concern or spanning a longer period of time. Normally, the period given for improvement will be no more than two terms after the date of entry into the formal process.

In extreme cases where the education of pupils is jeopardised, the period given for improvement after the date of a formal warning will be no more than four weeks.

The Governing Body acknowledges that:-

- The main aim of the procedure is to effect sustained improvement in a member of staff's performance.
- Members of staff experiencing difficulties should be able to call upon support from senior colleagues, whether this request comes from a member of staff or the need for support is identified elsewhere. Any information shared or help given should be wholly supportive.

## 4.2 Transitioning into Capability

Where following a Transition meeting (see appraisal policy), it has been determined that the teacher is required to be subject to Capability procedures, at least five working days' notice will be given of the formal capability meeting. The notification will contain sufficient information about the concerns about performance and their possible consequences to enable the teacher to prepare to answer the case at a formal capability meeting. It will also contain copies of any written evidence; the details of the time and place of the meeting; and will advise the teacher of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

## 4.3 Suspension

The Headteacher has the power to suspend a teacher from duty. It is advisable to consult with Human Resources before exercising this power. Suspension is not a disciplinary matter: its purpose is to remove the employee from a situation where his or her continuing presence might be counter to the interests of the employee or the School. This should be explained to the employee concerned who should be advised of the support mechanisms available. Suspension must be on full pay and as it is not a disciplinary sanction there is no right of appeal.

Note: Suspension should always be a neutral act.

Suspension on grounds of capability should only be considered in exceptional cases – e.g. where it is considered necessary for the protection of pupils, other staff or property;

## 4.4 Formal capability meeting

This meeting is intended to establish the facts. It will be conducted by Chair of Governors (for headteacher capability meetings) or headteacher (for other teachers). The meeting allows the teacher, accompanied by a companion if they wish, to respond to concerns about their performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected.

The person conducting the meeting may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases, the capability procedure will come to an end. The person conducting the meeting may also adjourn the meeting *for example if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.*

In other cases, the meeting will continue. During the meeting, or any other meeting which could lead to a formal warning being issued, the person conducting the meeting will:

- identify the professional shortcomings, for example which of the standards expected of teachers are not being met;
- give clear guidance on the improved standard of performance needed to ensure that the teacher can be removed from formal capability procedures (this may include the setting of new objectives focused on the specific weaknesses that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made);

- explain any support that will be available to help the teacher improve their performance;
- set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case but in straightforward cases could be *(It is for the school to determine the set period. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place)*; and
- warn the teacher formally that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning.

Notes will be taken of formal meetings and a copy sent to the member of staff.

#### Possible outcomes:

- **Appraisal Process to continue** – where there is insufficient grounds for pursuing Capability
- **First Written Warning** – This will remain on file for 6-12 months

Where a warning is issued, the teacher will be informed in writing **within five working days** of the matters covered in the bullet points above and given information about the timing and handling of the review stage and the procedure and time limits for appealing against the warning. A copy of both the notes and the letter will be placed on an employee's personal file.

### 4.5 Monitoring and review period following a formal capability meeting

A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. The member of staff will be invited to a formal review meeting, unless they were issued with a final written warning, in which case they will be invited to a decision meeting (see below).

### 4.6 Formal review meeting

In preparing for the review meeting the person conducting the meeting should gather all previous relevant information and consult with those who may have knowledge of the individual's performance in order to obtain as fair an assessment as possible. The person conducting the meeting should also be satisfied that identified support for the employee has been made available by the School.

As with formal capability meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the teacher of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

#### Possible Outcomes:

- **Appraisal re-starts** – If the person conducting the meeting is satisfied that the teacher has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start.
- **Extend Monitoring Period** - If some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period. It will be confirmed that the written warning will remain on file for 6-12 months;
- **Final Written Warning** - If no, or insufficient improvement has been made during the monitoring and review period, the teacher will receive a final written warning. This will remain on file for a minimum of 12-18 months.

As before, notes will be taken of formal meetings and a copy sent to the member of staff. The final written warning will mirror any previous warnings that have been issued and a copy will be held on the employee's personal file. Where a final warning is issued, the member of staff will be informed in writing of the outcome **within five working days** and will be reminded that failure to achieve an acceptable standard of performance (within the set timescale), may result in dismissal and given information about the handling of the further monitoring and review period and the procedure and time limits for appealing against the final warning. **The teacher will be invited to a decision meeting.**

## 4.7 Decision meeting

As with formal capability meetings and formal review meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the teacher of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

### Possible Outcomes:

- **Appraisal Re-starts** - If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end and the appraisal process will re-start.
- **Dismissal** - If performance remains unsatisfactory, a decision, or recommendation to the Governing Body, will be made that the teacher should be dismissed or required to cease working at the school.

Before the decision to dismiss is made, it is advisable to discuss the matter with Human Resources. The teacher will be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.

## 4.8 Decision to dismiss

Either: The power to decide that members of staff should no longer work at this school rests with the Governing Body.

Or: The power to decide that members of staff should no longer work at this school has been delegated to one or more governors acting with the head teacher.

(NB: these two options are available only to Community, Voluntary Controlled, Community Special, and Maintained Nursery schools)

Or: The power to dismiss staff in this school rests with the Governing Body (or equivalent).

Or: The power to dismiss staff in this school has been delegated to the head teacher/to one or more governors/to one or more governors acting with the head teacher (delete as appropriate).

(NB: the two options above are available only to, Foundation Schools, Voluntary Aided Schools and Foundation Special Schools).

An LA representative, in the case of Community, Community Special and Voluntary Controlled and a Diocesan representative in the case of Voluntary Aided Schools, should be invited to attend any possible dismissal meetings and the representative may ask questions and offer advice as necessary during the Decision meeting. Schools are advised to involve a Human Resources representative at this meeting and a Diocesan representative, if appropriate.

**\*\* Note – In Voluntary Aided, Foundation and Foundation Special Schools, the Governing Body is the employer but the power to dismiss can be delegated to the headteacher, to one or more governors, or to one or more governors acting with the headteacher.**

In Community, Voluntary Controlled, Community Special and Maintained Nursery schools, the power to determine that the member of staff should no longer work at the school can be delegated in the same way as above but it is the local authority (as the employer) that actually dismisses staff (or – for those who work in more than one school – requires them to cease to work at the school)

In Maintained Schools, before the decision to dismiss is made, the school will discuss the matter with the local authority. (N.B. this is not a legal requirement but schools may find it helpful).

## **4.9 Dismissal**

Once the Governing Body has decided that the teacher should no longer work at the school, it will notify the Local Authority of its decision and the reasons for it. Where teachers work solely at this school, the Local Authority must dismiss them within fourteen days of the date of the notification. Where they work in more than one school, the local authority must require them to cease to work at this school (Community, Voluntary Controlled, Community Special and Maintained Nursery Schools only). The teacher will then be dismissed with notice.

## **4.10 Appeal**

If a teacher feels that a decision to dismiss them, or other action taken against them, is wrong or unjust, they may appeal in writing against the decision within five working days of written receipt of the decision, setting out at the same time the grounds for appeal. Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a companion will apply as with formal capability and review meetings and, as with other formal meetings, notes will be taken and a copy sent to the teacher.

The appeal will be dealt with impartially and, wherever possible, by members of the Governors who have not previously been involved in the case.

The teacher will be informed in writing of the results of the appeal hearing as soon as possible.

## **4.11 Grievances**

Where a member of staff raises a grievance during the capability procedure the capability procedure may be temporarily suspended in order to deal with the grievance. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.

## **4.12 Monitoring and Evaluation**

The Governors and headteacher(s) will monitor the operation and effectiveness of the School's appraisal arrangements.

## **4.13 Retention**

The School will ensure that all written appraisal records are retained in a secure place in line with the General Data Protection Regulations and Data Protection Act 2018.

## 5 Policy Feedback

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Should you have any comments regarding this policy, please address them to the HR Policy mailbox –

[HRpolicy@torbay.gov.uk](mailto:HRpolicy@torbay.gov.uk)

### 5.1 History of Policy Changes

Date	Page	Details of Change	Agreed by:
Sep 17	All	Reformat and general update	
Sep 18	9	Ref to GDPR	

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