



# Capability Procedure – Support Staff

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Statutory Policy	<b>Yes</b>

Signed:

*David Booker*

**Chair of Governors**

Date: **July 2019**



Higham Lane School  
Helping Learners Succeed

## **School Based Support Staff**

**Applicable to all community and voluntary controlled schools (where WCC is the employer) and voluntary aided, foundation and academy schools participating in the Warwickshire Consultation Framework.**

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## Capability (Performance) Procedure

### What does this procedure cover?

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## 1. Procedure Statement

The purpose of this procedure is to ensure staff work to high and consistent standards in accordance with their job description. The Governing Body is responsible for ensuring that employees are provided with the opportunity, support and encouragement to improve their performance when it falls below the required standards.

This procedure applies to all employees except for employees who are employed on teachers' terms and conditions where separate procedures are in place.

The procedure aims to ensure that the reasons for any performance or capability issues are explored fully and plans are put in place to overcome issues. The ultimate aim of the process is to assist in achieving sufficient improvement in the individual's effectiveness by adopting a supportive approach.

## 2. Definition

A performance or capability issue is defined as any decline in expected levels of performance, or the inability to reach satisfactory levels of competence, which may be due to lack of knowledge, skill, ability or some other objective reason.

This procedure should be used where there is an underlying lack of capability, rather than a deliberate failure on the part of the employee to perform to required standards, in which case the disciplinary procedure should be considered.

Consideration must be given to any of the protected characteristics contained within the Equality Act 2010 which may have a bearing on capability or performance.

NOTE: Unless specified otherwise in this procedure the term "manager" is used generally to include line manager, Head Teacher, supervisor, team leader, manager, senior manager or senior member of staff.

## 3. Purpose

The Capability Procedure provides a 3 stage process for identifying, understanding managing and resolving shortfalls in an individual's performance where this falls below the standard normally expected.

The overall aim of the procedure is to:

- Ensure that any concerns about an employee's ability to achieve acceptable standards of work are addressed effectively through a clear and supportive procedure.
  - Ensure that supervision, training, counselling and support measures are designed, discussed (with the aim of agreement) and deployed appropriately to help employees to achieve acceptable standards of work.
  - Bring performance to a level at which an employee becomes effective. Acceptable levels of performance are normally identified through the requirements and objectives agreed for the role as part of the performance review discussions between the employee and manager and as defined for the role within the job description.
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- Provide a clear and fair procedure for dealing with capability issues. Where an employee has not reached an acceptable level of performance, and it can be demonstrated that all reasonable steps have been taken to support the employee, this may include termination of employment.

#### **4. Equality Considerations**

Managers/ Head Teachers should take particular care to ensure employees with a disability are not unfairly discriminated against. Required formats or reasonable adjustments will depend on an individual's needs, access to technology and may, for example, include large print, audio tape, email, Braille, memory stick or CD. Consideration must also be given to the provision of language and interpreting services where English is not the first language of an employee. Any reasonable adjustments must be made to enable a disabled employee to undertake the role and responsibilities of their post.

Where a Manager/Head Teacher becomes aware that there may be an equality consideration, it is appropriate to seek advice from, for example, Human Resources, Health and Safety and/or Occupational Health providers. See 2. reference to Equality Act 2010.

#### **5. Principles**

- 5.1 Managers/Head Teachers should ensure that any individual whose performance appears to be unsatisfactory is clear about the:
    - level of concern;
    - objective evidence used to reach this conclusion;
    - expected level of performance required (discussed with the aim of agreeing this detail);
    - specific type of support available;
    - potential consequences of failing to improve their performance.
  - 5.2 A manager/Head Teacher contemplating using this procedure beyond the informal stage must seek advice from their HR Advisor and it is also recommended that staff are reminded about support from their trade unions at this stage.
  - 5.3 Performance issues should not be viewed in isolation and should be considered in the overall context of performance management.
  - 5.4 At each stage of the procedure, an employee will be informed about the alleged shortfall in performance and will be given an opportunity to provide an explanation before any action is taken and it is also recommended that the manager/Headteacher advises the employee to seek advice from their trade union.
  - 5.5 At all formal stages of the procedure, employees have the right to be accompanied by a Trade Union Representative, or work colleague. Some employees may require peer support where there is a specific need, giving consideration to the protected characteristics of the Equality Act 2010. Managers/Headteachers must take account of this in their approach to applying the procedure at all stages.
  - 5.6 If the work colleague/representative is unable to attend a meeting on the date proposed, the meeting will be rearranged on an alternative date once. The alternative date should normally be within five working days of the original date. In this instance it is advisable to liaise directly with the trade union (where they are a member) to facilitate the meeting.
  - 5.7 At all times an individual's right to confidentiality will be respected.
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- 5.8 In the event of any action being proposed under this Procedure against a Trade Union Representative, HR must be informed and the appropriate Regional Officer or Branch Officer of that Trade Union should be notified prior to the procedure being implemented.

## 6. Responsibilities

- 6.1 It is the manager/Head Teacher's responsibility to:
- monitor and address performance issues as early as possible;
  - set objectives and expectations that are realistic, achievable and in accordance with the individual's job role;
  - provide ongoing support and training;
  - ensure that the employee is aware when the Capability Procedure has been instigated and provide them with a copy of the procedure;
  - establish and agree performance improvement plans with the employee (with support from their trade union or work colleague at the formal stages);
  - conduct the informal and formal stages of this procedure.
- 6.2 It is an employee's responsibility to:
- participate in the objective setting process;
  - achieve objectives and targets as required;
  - perform to the best of their ability;
  - seek relevant support from their manager/headteacher and/or trade union.
- 6.3 It is the responsibility of HR to:
- provide advice and guidance to managers to ensure that the capability procedure is followed correctly;
  - support managers/Head Teachers, as necessary.
  - Attend meetings to advise the Governing body when dismissal is a likely option
- 6.4 It is the responsibility of recognised Trade Union Representatives to accompany, support and advise an employee throughout the formal stages of the Capability Procedure, where appropriate.

## 7. Procedure

The three stages of the procedure are:

- Performance Improvement Support (Informal Stage).
- Formal Capability (Stage 1).
- Formal Capability (Final) Hearing (Stage 2).

### 7.1 Performance Improvement Support (Informal Stage)

Where an employee displays an inability to perform their duties satisfactorily, the Council/ School will attempt to resolve the matter informally in a meeting between the line manager/ Head Teacher and employee. Any shortfalls in performance require the manager/ Head Teacher to inform the employee in a constructive and supportive way, the nature of the unsatisfactory performance and how such performance will need to improve. A copy of the Capability Procedure should be made available to the employee.

The issues should be discussed promptly with the employee concerned and the causes of the shortfall identified. Examples of the shortfalls should be provided to the employee and consideration should be given as to whether the employee requires further training,

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supervision, support or guidance. If appropriate, measures should be taken to provide additional support and an improvement action plan drawn up detailing areas for improvement, including measurable objectives and how performance will be reviewed, by whom and how often.

The aim of this stage is to support the employee at the earliest possible opportunity in order to improve their performance to the standard required. This may include:

- Regular supervision sessions
- Additional Training
- Feedback
- Support
- Guidance
- Work Shadowing
- Coaching
- Mentoring

It is recommended that the informal capability procedure is initially undertaken for a review period of at least four weeks. Performance should be reviewed by the manager/Head Teacher and the employee on a weekly basis (or more frequently if necessary).

At the end of four weeks review period, a discussion will take place between the manager/Head Teacher and employee to review the progress being made and to specify any aspects of the performance plan that have not been achieved and remain outstanding. If required a further period of up to four weeks will be allowed to achieve these improvements.

At the end of the review period (total of no more than 8 weeks), the informal stage can be extended further but **only** where the employee can demonstrate and evidence a significant improvement in their performance and is making progress towards achieving their improvement plan. This can only be extended for a further period not exceeding four weeks (i.e. total review period 12 weeks maximum).

In most situations, a constructive discussion around shortfalls in an employee's performance with a focus on the standards required will bring about improvements in work performance. If, however, such improvements are not forthcoming within the above timescales, the individual will be informed that their performance will progress to and be managed in accordance with Stage 1 of the formal part of the procedure.

Throughout the process it is vital that all meetings are fully documented and that all parties receive a copy of the notes.

## 7.2 Formal Capability (Stage 1)

If, following conclusion of the informal stage, there has been no significant improvement then stage 1 of the formal procedure should commence.

The manager/Head Teacher must write to the employee informing them that a formal Stage 1 meeting will be held, giving at least 5 working days notice and providing them with a further copy of the procedure. The employee should be advised that they may be accompanied by a recognised Trade Union Representative or a workplace colleague at this meeting.

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Discussions at the meeting should focus on clarifying the performance shortfalls, understanding any underlying causes, reviewing and agreeing a clear performance improvement plan, with achievable outcomes and appropriate time-scales, taking into account the nature and scope of the required improvements.

At the meeting the manager will:

- Remind the employee that this is a formal stage in the Councils capability procedure and failure to make the required improvements may lead to dismissal.
- Explain how the expected performance standards are not being met and what the expected performance standard is.
- Seek to establish the causes for the continued unsatisfactory performance.
- Review the performance improvement plan drafted in the informal stage and amend as required. The aim should be to agree the improvement plan as achievable following discussions with the manager/Headteacher (supported by their trade union representative).
- Ensure that detailed notes of all meetings are kept and a letter confirming the outcome of the meeting is sent to the employee.

Following this formal review, if the required performance improvements have either not been met or not sustained the employee will be given a further opportunity of at least four weeks to make the required improvements (**and extended at the discretion of the manager/Headteacher to take account of significant progress against the improvement plan or the timing of training, mentoring or other specific support**). The employee will be advised that if the improvements are not forthcoming, there will be no alternative other than to proceed to the final stage (stage 2) and this may result in their dismissal. If appropriate, consideration should be given to the employee being redeployed

At the end of the improvement period (at least four weeks) a discussion will take place between the manager and the employee. The employee will be informed that they have either achieved the improvement required or the matter will proceed to the final stage (stage 2).

If the employee has achieved the targets agreed within their performance improvement plan and reached the standards required, this should be recorded and placed on the employee's personal file. If no further action is required the employee will be deemed to have achieved the agreed targets of improvement. If, however, during the following 12 month period, there is a further lapse in performance this process will be resumed at the stage in the procedure where it previously ceased. Depending upon the lapse in performance, it may be appropriate to move immediately to the Final Hearing Stage of the procedure.

The contract of employment stipulates that 'subject to satisfactory performance support staff salaries will rise by annual increments' (contract clause 4. Pay and Allowances). Depending on the timing of the formal stage of this procedure within the performance management cycle, it may be necessary to defer a decision on progression until satisfactory performance can be confirmed.

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Where employees possess a professional qualification, the Council has a responsibility to notify the appropriate professional body if there are serious concerns about an individual's ability to carry out their professional role and where there may be a danger to the public.

### 7.3 Formal - Capability (Final) Hearing (Stage 2)

The employee will be given written notification, at least five working days in advance, of the date, time and place of the Hearing. This notification should outline the reasons for the hearing and include any relevant documents, e.g. copies of improvement plans. The employee should be advised that they may be accompanied by a recognised Trade Union Representative, or a workplace colleague.

### 7.4 The Panel

A panel of three Governors will be convened, one of whom will act as panel chairperson, and a representative from HR to provide professional help and guidance.

If the employee fails to attend the hearing, it may continue in their absence, unless a reasonable explanation for non-attendance is presented to the Panel. In that case arrangements will be made to reconvene the hearing within five working days. Continued non-attendance will result in the hearing being held in the employee's absence.

The employee's manager/ Head Teacher will provide evidence of the performance shortfalls and the panel will seek to establish why the shortfalls in performance have not been met. In certain circumstances the Chair may deem it necessary to adjourn the hearing to allow time for additional evidence to be presented to the Panel.

If, on the evidence offered, the Panel decides that a sanction should be imposed, the employee will be informed immediately of the details of that sanction. The decision will be confirmed, in writing, to the employee, normally within five working days.

At the Hearing the following sanctions may be applied:

- Improvement period extended.
- Alternative work\* (downgrading/ transfer to an appropriate role).
- Re-deployment to an appropriate role\*.
- Re-training.
- Dismissal.

\*These sanctions can only be considered where a suitable alternative vacancy exists.

The record of the Hearing, and any sanction applied, will normally be retained on the employee's personal file for a period of 12 months.

Once notification of the outcome of the hearing has been undertaken, where the decision is that termination of the contract of employment is the appropriate outcome, the Governing Body or Head teacher must write to the WES HR Schools Advisory Team to notify them of the decision to dismiss (**only for Community and Voluntary Controlled schools where Warwickshire County Council is the employer**). The Local Authority will then service notice of termination of the employees contract in writing within 14 calendar days of such notification, in accordance with the School Staffing (England) Regulations 2009 (Section 20).

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## **8. Alternative Work/Re-deployment**

The availability of alternative work must be considered wherever possible, before action is taken to dismiss an employee. The employee may also be eligible for consideration against vacancies that exist within the Council but only where WCC is the employer. There may be other suitable job vacancies within the employees' current work area for which the employee has the appropriate skills. Each case will need to be considered on its merits. Employees should be given access to these opportunities prior to the final stage. If no suitable vacancies have arisen and there does not appear to be any real prospect of redeployment or an employee has unreasonably refused alternative employment, the employee's contract will be terminated on the grounds of incapability.

Where a trial period has been agreed this will normally be for a period of four weeks and may be extended briefly through agreement between the manager and employee on the basis that further training may be necessary.

The existence of long-term illness or disability, whilst not being material to the reason for invoking the Capability Procedure, may need to be considered when identifying alternative employment. There is a requirement to consider reasonable adjustment to take account of the impairment but not any capability problem that is not related to the impairment. Managers/Headteachers are advised to seek HR advice regarding the requirements of the Equality Act 2010.

## **9. Appeals Procedure**

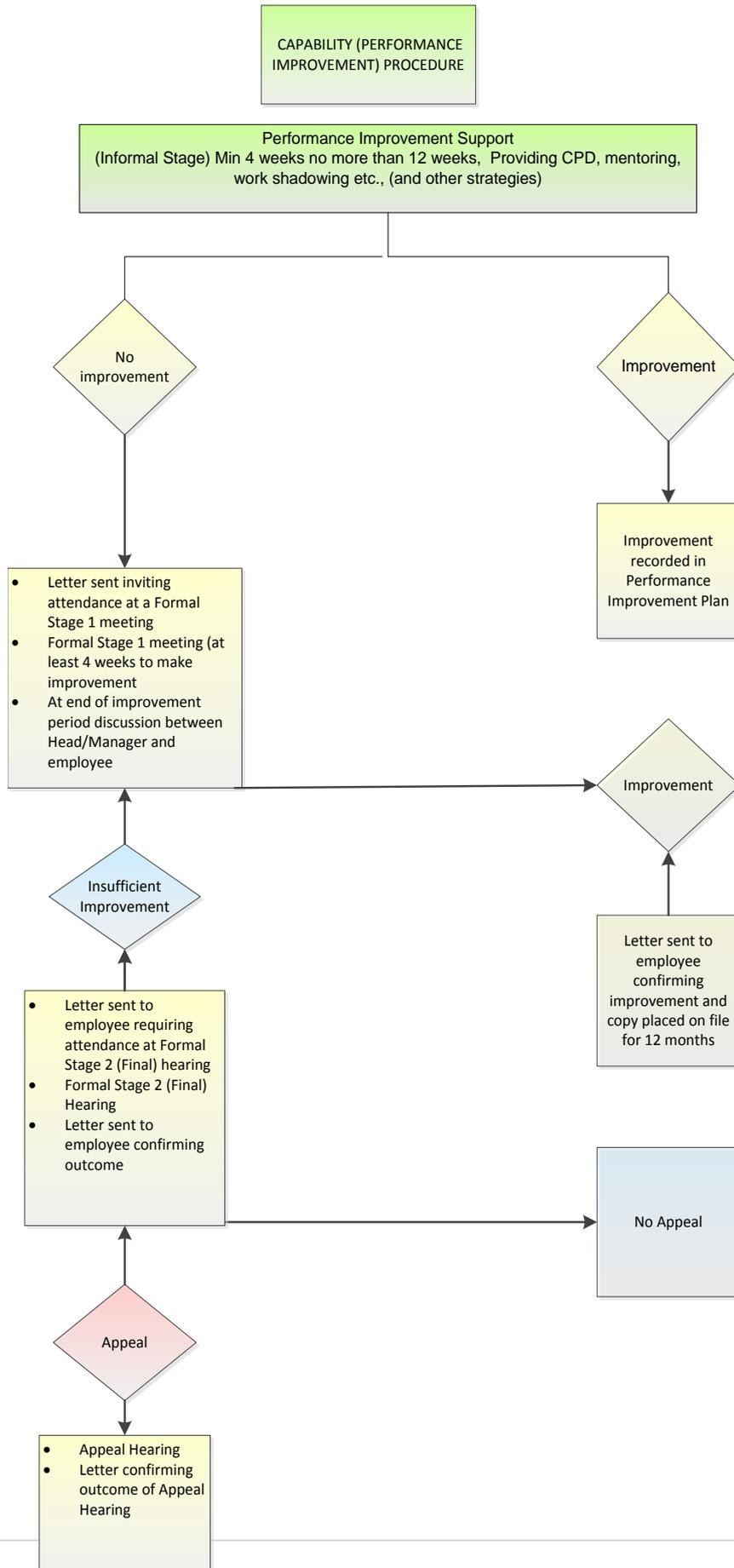
Where an employee wishes to appeal against formal action they should write to the Chair of Governors, clearly outlining the grounds of their appeal within 10 working days of receiving the written notification of the hearing outcome. Examples of grounds for appeal could include; insufficient weight given to evidence provided by the employee; further evidence has since come to light; the decision is inconsistent with precedents; the decision is perverse or disproportionate or did not follow the procedure.

The sanction imposed as a result of the original hearing will remain in force unless and until it is modified as the result of the appeal.

The appeal will normally be arranged within ten working days of the receipt of the request. The employee will be given notification of the date, time and place of the appeal hearing and will be entitled to be accompanied by a recognised Trade Union Representative, or work colleague. The members of the Panel hearing the case will have had no prior involvement in the case.

The employee will be informed of the result of the Appeal decision, in writing, within five working days.

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## Performance Improvement Plan

Name:					
Line Manager/Supervisor:					
<b>Stage/Date</b>	<b>Performance Objective to be met</b> What are the specific issues to be addressed	<b>Improvement Required</b> Success criterion/what progress is expected	<b>How will this be met/Any support required?</b> Method of achieving performance/ when/who will be responsible	<b>Timescale/Target Date for completion</b>	<b>Review Outcome</b> Comments/Review Notes/any additional action

**Jointly agreed by:**

**Line Manager/Supervisor:** \_\_\_\_\_ **Employee:** \_\_\_\_\_