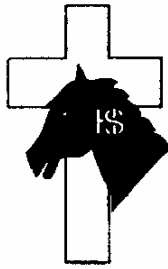


HORSINGTON CHURCH OF ENGLAND PRIMARY SCHOOL



MODEL STAFF CAPABILITY PROCEDURE

INFORMAL STAGE

Where a member of staff may be under-performing, the head teacher or other line manager should investigate and collect evidence. The chair of governors must make arrangements for this to be done if the performance of the head teacher is in question. Once the facts are gathered and the seriousness of the problem established there are three initial options:

- Drop the matter (no case to answer or trivial)
- Arrange counselling (support without using the formal procedure)
- Arrange a formal interview (formal approach for more serious cases)

COUNSELLING

Counselling and informal coaching (hereafter referred to as counselling) should aim to encourage and help the member of staff to improve. It should be conducted discreetly. Explanations should be considered carefully and the matter dropped if it becomes evident that there is no case to answer. The member of staff must be told what is required, how performance will be reviewed, the review period, and that the formal procedure will commence if there is no improvement. Counselling should not go on too long. A brief note of any counselling should be kept for reference.

Discussion must not harass the member of staff or turn into a formal interview. If more serious concerns arise, or if the member of staff expresses discontent or indifference to the counselling the formal procedure should be commenced to deal with the matter in a more structured and objective manner.

After a period of review involving observation and assessment a firm conclusion should be reached. The options will be either to;

- drop the matter; or
- convene a formal interview.

FORMAL STAGE

Formal interview

The formal interview initiates the formal stage of the capability procedure. It provides an opportunity to deal with more serious problems in a structured way. It allows the member of staff to prepare a response to allegations about performance and make a case in the company of a union representative or colleague. At least 5 working days notice (or 7 consecutive days out of term time) must be given for the interview.

The interview may provide new information or put a different slant on evidence collected. If

it becomes clear that further investigation is needed the interview should be adjourned for an appropriate length of time to allow this to happen.

There are four options at formal interview;

- drop the matter
- counselling (except where already undertaken without improvement)

These are only relevant where new information, a different slant on the information collected, or further investigation suggests that the matter is not as serious as it first seemed.

- oral or written warning
- final written warning

These are relevant to any case where continued concern about the standard of performance is justified. The decision on which level of warning to issue will depend on the seriousness of the problem. If performance is unsatisfactory a written warning will normally be the next step and will invoke an assessment period of up to two terms. An oral warning should not normally be necessary in cases where counselling has already taken place. In cases of particularly serious concern, which could include where the education of children is in jeopardy, it is possible to move directly to a final written warning. This will invoke an assessment period not exceeding 4 weeks.

A decision should be made after all the facts and any representations from the member of staff have been considered. The head teacher or line manager should adjourn the meeting briefly to consider the appropriate option before delivering a decision to the member of staff. Any appeal against a warning must be made within 5 working days (or 7 consecutive days out of term time), and heard within 10 working days (or 14 consecutive days out of term time) of notification of appeal, and must not interrupt the progress of the procedure, unless the appeal decision leads to the matter being reconsidered.

Where a formal warning is issued, the head teacher or line manager should use the remainder of the meeting to;

- identify the professional shortcomings;
- give clear guidance on the improved standard of performance needed to end the capability procedure;
- explain the support that will be available, and how performance will be monitored over the following weeks;
- depending on the level of warning issued, to identify the timetable for improvement and agree a date for the next/final evaluation meeting; and
- make it clearly understood that failure to improve may lead to dismissal.

A letter should be sent to the member of staff immediately after the formal interview recording the result of the investigations, the main points discussed at the meeting, confirming the decision, and where a warning is issued, giving information about the handling of the formal stage.

FIRST ASSESSMENT STAGE

Weeks 1 to 20 - Regular observation, monitoring and evaluation of performance, with guidance, training if necessary, and support to the member of staff.

If at any point during this stage the circumstances suggest a more serious problem a decision may be taken to move directly to a final written warning.

Week 20 - Evaluation meeting to assess performance over the previous weeks. At least 5 working days (or 7 consecutive days out of term time) notice must be given for the meeting and the member of staff may be accompanied by a union representative or colleague. If the level of performance has been satisfactory and there is confidence that it can be sustained the capability procedure can end here with a letter from the line manager.

If performance continues to be unsatisfactory, a **final written warning** should be issued. Formal monitoring, evaluation, guidance and support should continue for a further period. Arrangements for this should be explained at the meeting. The member of staff must be told clearly that failure to achieve an acceptable standard, with confidence that it can be maintained, may result in dismissal. The decision and main points of the meeting should be recorded in a letter to the member of staff. Any appeal against a final warning must be made within 5 working days (or 7 consecutive days out of term time), and heard within 10 working days (or 14 consecutive days out of term time) of notification of appeal, and must not interrupt the progress of the procedure, unless the appeal decision leads to the matter being reconsidered.

SECOND ASSESSMENT STAGE

Weeks 20 to 24 - Regular monitoring and evaluation of performance, with guidance, training if necessary, and support to the member of staff.

Week 24 - Final evaluation meeting to report the assessment of performance over the previous weeks. At least 5 working days (or 7 consecutive days out of term time) notice must be given for the meeting and the member of staff may be accompanied by a union representative or colleague. If the level of performance has been satisfactory and there is sufficient confidence that it can be maintained, the capability procedure can end here.

If performance is unsatisfactory the member of staff should be told that the matter will be referred to the governing body Staff Dismissal Committee. The result of the assessment, main points of the meeting and date of the dismissal committee hearing (if known), should be recorded in a letter to the member of staff.

DISMISSAL COMMITTEE STAGE

The governing body should set up a Staff Dismissal Committee with at least three governors. This must hear the representations and recommendations brought by the head, or other line manager conducting the capability evaluation, and any representations that the member of staff may wish to make. The governing body should also set up a Staff Appeal Committee to hear any appeal against a dismissal action. None of the governors on the Staff Dismissal Committee should be on the Staff Appeal Committee.

APPLYING THE PROCEDURES

1. ROLE OF GOVERNORS

Governors should not normally be involved with a capability procedure before the dismissal stage. The exception to this is where a governor or governors are involved in considering an appeal against a warning, or in a capability procedure against a head teacher when some governors may be involved in the monitoring and evaluation of performance. The governors must establish responsibility for the role based on neutrality to the situation. No staff governors can be involved in the process. It is important to be prepared for the possibility of dismissal. The use of governors to hear any grievances or appeals against warnings should be limited to ensure a sufficient number of impartial governors remain available for the dismissal and dismissal appeal committees. Normally at least three governors are required for the dismissal committee.

and no fewer for the appeal, but where this number is not reasonably practicable it can be reduced to two.

2. ROLE OF ADVISERS

LA advisers or other advisers with education and personnel experience should advise the school and where appropriate assist with the process, including classroom observation and providing support.

3. REPRESENTATION AT FORMAL INTERVIEW, EVALUATION MEETINGS AND DISMISSAL HEARING

A member of staff has a legal entitlement to be accompanied by a colleague or union representative. If the member of staff's chosen companion is not available at the time proposed for the interview, meeting or hearing, and the member of staff proposes an alternative that is reasonable and falls within 5 working days of the day proposed for the interview, the school must rearrange the event to the time proposed by the member of staff.

4. NOTICE

Notice of 5 working days (or 7 consecutive days out of term time) must be given for an initial formal capability interview. The date of successive evaluation meetings should be fixed at the preceding interview or meeting and notice should only be necessary if it is rearranged. Notice of at least 5 working days (or 7 consecutive days out of term time) must be given for a staff dismissal committee or dismissal appeal hearing.

5. SUPPORT FOR THE MEMBER OF STAFF

Those monitoring the performance should offer feedback and instruction to help the member of staff improve performance. If training courses or assistance from colleagues would be helpful these should be arranged as soon as possible but should not interrupt the timing of the procedure.

6. MONITORING ARRANGEMENTS

Monitoring should include observations of a range of relevant duties and functions. An objective record of the monitoring should be kept and used to assist with the evaluation of performance.

7. WRITTEN RECORDS

A written record should be made of all interviews with the member of staff and any action taken following such an interview. Except in agreed circumstances any formal warnings should be disregarded for disciplinary purposes after a specified period of satisfactory performance. These periods are 30 days (2 terms) for an oral or written warning and 2 years (6 terms) for a final written warning.

8. STAFF WHO ARE ABSENT THROUGH ILLNESS DURING THE PROCEDURE

Absence which is triggered by the capability procedure, and which management believe is likely to be long term, is covered in the key points above and should be referred immediately to the occupational health adviser to assess whether the member of staff is fit for continued employment. Short absences should not delay any part of the formal stage of the capability procedure. Reasonable steps should be made to enable the member of staff to attend evaluation meetings, but where the member of staff is unable to attend, these may proceed in the member of staff's absence if delay would otherwise compromise the maximum time set aside for the procedure. In such circumstances a full account of the evaluation should be provided in the letter confirming the decision

taken.

9. DECISIONS ON CONTINUING THE PROCEDURE AND RECOMMENDING DISMISSAL

Normally the decision to continue a capability procedure or recommend dismissal should be taken by the head, or by the line manager with the head's agreement (except where the head's performance is being considered). If there is a difference of opinion, the head's decision should prevail (except where the head's performance is being considered).

10. DISPUTES ABOUT THE PROCEDURE

Any disagreements or grievances about the interpretation of the model procedure, or the application of any related matters not covered in the procedure, must not delay the various elements of the capability procedure or the overall timetable determined as appropriate for handling any particular case.

11. APPEALS AGAINST FORMAL WARNINGS

Appeals may be heard by a senior manager, an LA adviser or an individual governor. More governors may be used only where this does not compromise the availability of previously uninvolved governors to staff the dismissal and dismissal appeal committees. However, previous involvement does not necessarily mean that a governor is tainted and thereby ineligible to serve on a dismissal or dismissal appeal committee. Appeals should normally be restricted to considering the reasonableness of the decision made, any relevant new evidence, or any procedural irregularities. A member of staff is entitled to be accompanied at an appeal hearing by a colleague or union representative. The appeal decision should be confirmed in writing and the member of staff told that there is no further appeal against the decision. Where the reasonableness of the decision is being questioned the test that should apply for overturning a formal warning is that the decision was so unreasonable that it was one that no other head or manager, acting with proper regard to his or her responsibilities, could have chosen to take. Where an appeal is upheld the matter should be referred back to the head or manager to be reconsidered or for further appropriate action. Where monitoring would otherwise be continuing, it should not be halted while an appeal is pending.

12. GRIEVANCES

In exceptional circumstances a member of staff may raise a grievance about the behaviour of a head or other manager during the course of a capability procedure. Depending on the circumstances it may be appropriate to suspend the procedure until the grievance can be considered. Such a delay should only be considered where there is a strong indication that the member of staff has been mistreated and consideration should be given to bringing in another manager to deal with the capability case. Any records should be passed to the new manager and if appropriate the case should be continued within the same timetable.

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Reviewed: March 2011

THE OUTLINE CAPABILITY PROCEDURE

The *Outline Capability Procedure* established a consensus of agreement among the national representatives of the principal parties, including employers and member of staff unions and associations, about the key stages of a capability procedure. It is available from -

Department of Education
4D Sanctuary Buildings
Great Smith Street
Westminster
London
SW1P 3BT
Tel: 020 7925 6137

ACAS guidance

This model procedure is consistent with the ACAS Code of Practice on disciplinary procedures. It is available from -

ACAS Reader
PO Box 16
Earl Shilton
Leicester
LE9 8ZZ
Tel: 01455 852225

Or from the Internet at - <http://www.acas.org.uk/acascode.pdf>