



# Capability Policy Procedure

<b>Approval Body:</b>	MST Standards Committee
<b>Approval Date:</b>	June 2020
<b>Implementation Date:</b>	June 2020
<b>Review Date:</b>	As Necessary
<b>Policy Version:</b>	3

Version Control

Version	Reviewed	Changes since last version
1	Existing	<ul style="list-style-type: none"> <li>• Upon Conversion of the Trust agreed to adopt London Borough of Tower Hamlets Policy</li> </ul>
2	June 2019	<ul style="list-style-type: none"> <li>• Updated based on Tower Hamlets Changes</li> </ul>
3	June 2020	There haven't been any further updates to the Tower Hamlets Capability policy to be reflected. Minor changes to language for consistency. Updated reference to legislation.

**Upon Conversion of the Trust agreed to adopt this London Borough of Tower Hamlets Policy  
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## **1. BACKGROUND**

The Trust needs to optimise the performance of all employees to ensure the highest quality of education provision to children.

The Capability Procedure is designed to provide a consistent and fair framework for dealing with issues of inadequate performance, where individual staff members appear not to be fulfilling their duties and responsibilities to the desired standard. This procedure document ensures a mechanism is in place to help and encourage employees to achieve and maintain a high standard of performance. The procedure does not apply to any employee during their induction/probation period.

## **2. INTRODUCTION**

This guidance is to help schools deal with problems of employee capability. It recommends a model procedure that is fair, efficient and in accordance with good employment practice.

Good management, clear expectations and appropriate support will go a long way towards addressing weaknesses in performance. Early identification of problems through performance review will help to avoid the need for formal capability procedures. In some cases an improvement may be achieved informally with a minimum of support and attention. In others a more formal approach will be necessary.

Whilst it is recognised that the use of the capability procedure is likely to be a very stressful experience for the employee concerned, should she/he fail to achieve the required standards and expectations then use of the procedure will inevitably lead to dismissal.

## **3. DEFINITION**

Capability in employment law is assessed by reference to skill, aptitude, health or any other physical or mental quality. For the purposes of this procedure, incapability can be defined as:

“The identification of an employee’s inadequate performance which can arise for a number of reasons and may be attributable to an employee’s lack of knowledge, skills or aptitude for the position to which they are appointed”.

The issue for managers is how to deal effectively with inadequate performance in order to ensure that job requirements are met, service provisions are fulfilled and the employee is given appropriate opportunity to meet the performance standards required.

## **4. APPLICATION OF OTHER HR PROCEDURES DURING CAPABILITY**

When absence is triggered by the capability procedure, and management believe it is likely to be long term, the employee should be referred immediately to Occupational Health. A considerate and sympathetic approach should be taken, but in general the length of time to wait for a person’s health to improve before considering dismissal will be managed through the sickness procedure.

Short periods of absence should not delay any part of the formal stage of the capability procedure. Reasonable steps should be made to enable the employee to attend formal meetings, but where they are unable to attend, these may proceed in their absence. In these circumstances a full account of the meeting will be provided in the letter confirming the decision taken.

It is recognised that the capability procedure may increase the levels of stress and anxiety experienced by an employee. However, it is in their best interests to return to the workplace as soon as they are able to in order to address the underlying causes of any unsatisfactory performance and any related ill health.

Where the submission of a grievance against an appraiser or other person responsible for assessing performance follows the initiation of the capability procedure or action to support the employee informally, an initial assessment should be made of its merits and evidence immediately available as soon as possible. This may require responsibility for appraising/supporting the employee to be temporarily moved until the grievance process can be concluded. It should not automatically delay any planned support or capability action. The procedure should only be suspended if there is strong evidence that an employee has been mistreated.

## 5. STAFF EXPERIENCING DIFFICULTIES – INFORMAL CAPABILITY

When dealing with an employee experiencing difficulties, the objective is to provide support and guidance through the appraisal process in such a way that the employee's performance improves and the problem is resolved.

Where it is apparent that an employee's personal circumstances are leading to difficulties at school, support will be offered as soon as possible, without waiting for the formal annual assessment. This part of the support process does not need to be disclosed in references provided for teachers.

If an appraiser identifies through the appraisal process, or via other sources of information, that the difficulties experienced by an employee are such that, if not rectified, could lead to capability procedures, the appraiser, the head teacher, or a member of the leadership team, will meet the employee.

The employee should be provided at least 5 working days' notice that a meeting will be held to discuss targets for improvement as part of a programme of support, and informed that she/he can have a trade union representative or work place colleague present at this and any future meetings where capability will be discussed (*note: Although there is no statutory right to be accompanied outside of the formal stages of capability or other HR procedures, the Trust allows a trade union representative or work colleague to attend to support the employee during what will be a difficult period for them*). The appraiser or head teacher holding the meeting can have a member of the leadership team or someone from human resources in attendance if they require it.

The purpose of the meeting with the employee is to:

- give clear written feedback about the nature and seriousness of the concerns;
- explain the implications and process if no – or insufficient – improvement is made.
- give them the opportunity to comment on and discuss the concerns;
- produce a support plan in consultation with the employee and her/his trade union representative (for example coaching, training, in-class support, mentoring, structured observations, visits to other classes or schools or discussions with advisory teachers), that will help address those specific concerns;
- make clear how progress will be monitored and when it will be reviewed;

The employee's progress will continue to be monitored as part of the appraisal process and a reasonable time given for their performance to improve. This will depend upon the circumstances, but will be for a timescale which is reasonable and proportionate, with appropriate support as agreed in the support plan, in order that the aim of recovering and improving performance can be achieved. During this monitoring period the employee will be given regular feedback on progress and arrangements will be made to modify the support plan if appropriate.

If sufficient progress is made within this period which results in the employee performing at a level that indicates there is no longer a possibility of capability procedures being invoked, the employee should be informed of this at a meeting to review progress against the support plan with the appraiser or head teacher. Following this meeting the appraisal process will continue as normal.

If no, or insufficient, improvement has been made over this period, the employee will be informed of the intention at a meeting with the appraiser or head teacher to review progress against the support plan. Following this meeting the employee will be invited to a formal capability meeting.

## **6. FORMAL CAPABILITY**

This procedure applies only to those employees about whose performance there are serious concerns that appraisal, informal capability and other support processes have been unable to address. As during the previous stage, the focus of formal capability is to support the employee to achieve the required level of performance for their role. Schools are required to include information on use of the formal capability procedure in references provided for teachers.

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 employee to prepare to answer the case at a formal capability meeting. It will also contain the details of the time and place of the meeting and will advise the employee of their right to be accompanied by a trade union representative or a work colleague.

If performance deteriorates to an unacceptable level within 12 months of a formal capability process ending, the Capability Procedure can be resumed at the stage the previous process reached. Before restarting the formal process, the employee should be advised of any concerns and given an opportunity to explain why their performance has not been maintained. If the areas of concern are different to those previously addressed, the employee should be given a reasonable period of support to achieve an improvement before restarting the procedure.

### **6.1 Formal capability meeting**

This meeting is intended to establish the facts and to determine a course of action. It will be conducted by the appraiser as nominated by the head teacher, which will usually be the line manager who may be supported by a more senior manager. For head teachers it will be conducted by the appraising governors.

The meeting allows the employee, accompanied by a trade union representative or work colleague 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 formally and that it would be more appropriate to continue to address the remaining

concerns through the appraisal, informal capability or other processes. In such cases, the formal capability procedure will not have commenced. 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 and the formal capability process will commence. During this and any subsequent meetings, the person conducting the meeting will:

- identify the professional shortcomings, for example which of the standards or targets expected of the employee are not being met;
- give clear guidance on the improvements needed to ensure that the employee 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 employee 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 and be appropriate to the issues that need to be addressed. It is for the manager/governor conducting the meeting to determine a suitable period taking into account the individual circumstances of each case. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place; and
- warn the employee formally that failure to improve within the set period could lead to dismissal.

Notes will be taken of formal meetings and a copy sent to the member of staff. The improvements required and the measures to help the employee achieve them will be recorded in a support plan which should be completed in consultation with the employee and trade union representative if they have one.

The employee will be provided with a copy of the support plan which must include information about the timing and handling of the review stage.

## **6.2 Monitoring and review period**

A performance monitoring and review period as recorded in the support plan 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 in line with the timescales given at the formal capability meeting and recorded in the support plan.

## **6.3 Formal review meetings**

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 employee of their right to be accompanied by a trade union representative or work colleague.

If the person conducting the meeting is satisfied that the employee has made sufficient improvement, and that this improvement will be sustained, the capability procedure will cease. In other cases:

- It may be appropriate to extend the review period if for example some progress has been made and there is confidence that more is likely. In these circumstances the support plan should be updated and a further review meeting scheduled to formally review progress.
- At either the first or any subsequent review meetings, if no or insufficient improvement has been made against the support plan during the monitoring and review period, the employee will be informed of the timescale for holding a decision meeting.

As before, notes will be taken of formal meetings and a copy sent to the member of staff.

If no or insufficient improvement has been made, the member of staff will be informed in writing that failure to achieve an acceptable standard of performance within a set timescale, may result in dismissal. They should be given an updated support plan and information about the handling of the further monitoring and review period.

A second formal review meeting should be scheduled to take place at the end of the next review period. If the outcome of this second formal review meeting is that no or insufficient improvement has been made, a decision meeting should be arranged.

If the required level of performance has not been achieved at this stage but the employee is considered to be making satisfactory progress against the support plan, a further formal review meeting can be scheduled if it is not yet considered appropriate to progress to a decision meeting. However, formal capability processes should not continue indefinitely.

#### **6.4 Decision meeting**

The decision meeting will be conducted by the headteacher and one governor (other than the chair of governors) or where the meeting relates to the head teacher / principal, two governors (other than the appraising governors) one of whom should be a trustee and the CEO. Where the meeting relates to the CEO, two trustees (other than the appraising trustees) will conduct the 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 employee of their right to be accompanied by a trade union representative or work colleague. A clerk to the governing body or other official minute taker should minute these meetings. The Trust's Director of HR must also be present to advise.

The panel will consider evidence presented on the employee's performance and the support that has been provided to decide which of the following options is appropriate:-

- If an acceptable standard of performance has been achieved and there is confidence that this will be sustained, the capability procedure will end.
- If there has been some improvement which is sufficient to provide confidence that an acceptable level of performance can be achieved within an acceptable period or, the panel requires evidence that any further and sustained improvement can be achieved, they may



decide that a further period of monitoring and review is appropriate. In these circumstances the decision meeting will reconvene at the end of this period.

- If there has been insufficient progress and a realistic opportunity given to demonstrate an acceptable level of performance, the panel may dismiss the employee. The panel must be satisfied that all reasonable efforts to support the employee have been made.

The panel will communicate their decision in writing to the employee within 5 working days of the meeting. If possible, the panel will verbally inform the employee of the Panel's decision at the conclusion of the meeting. If dismissal is the outcome, notice will start from the date of the determination to dismiss letter.

## **7. DISABILITY, ILL HEALTH AND UNDER-PERFORMANCE**

If a head teacher/designated manager considers that an individual's under-performance may be related to a disability, health condition or industrial injury she/he shall first investigate, verify and then address the circumstances. This will normally include referral to Occupational Health (OH) to seek advice and/or confirm whether there is a health related reason impacting on performance. This referral can be as part of the normal management process that precedes this procedure or at any time during the formal stages.

An important question to consider is whether the employee's condition is covered under the Equality Act (2010). Advice is available from HR. Reasonable adjustments must be considered for disabled employees, for example, special equipment or facilities to enable her/him to continue to perform their job to the required standard. Reasonable adjustments can be put in place either prior to the start of the procedure or at any stage once it has commenced.

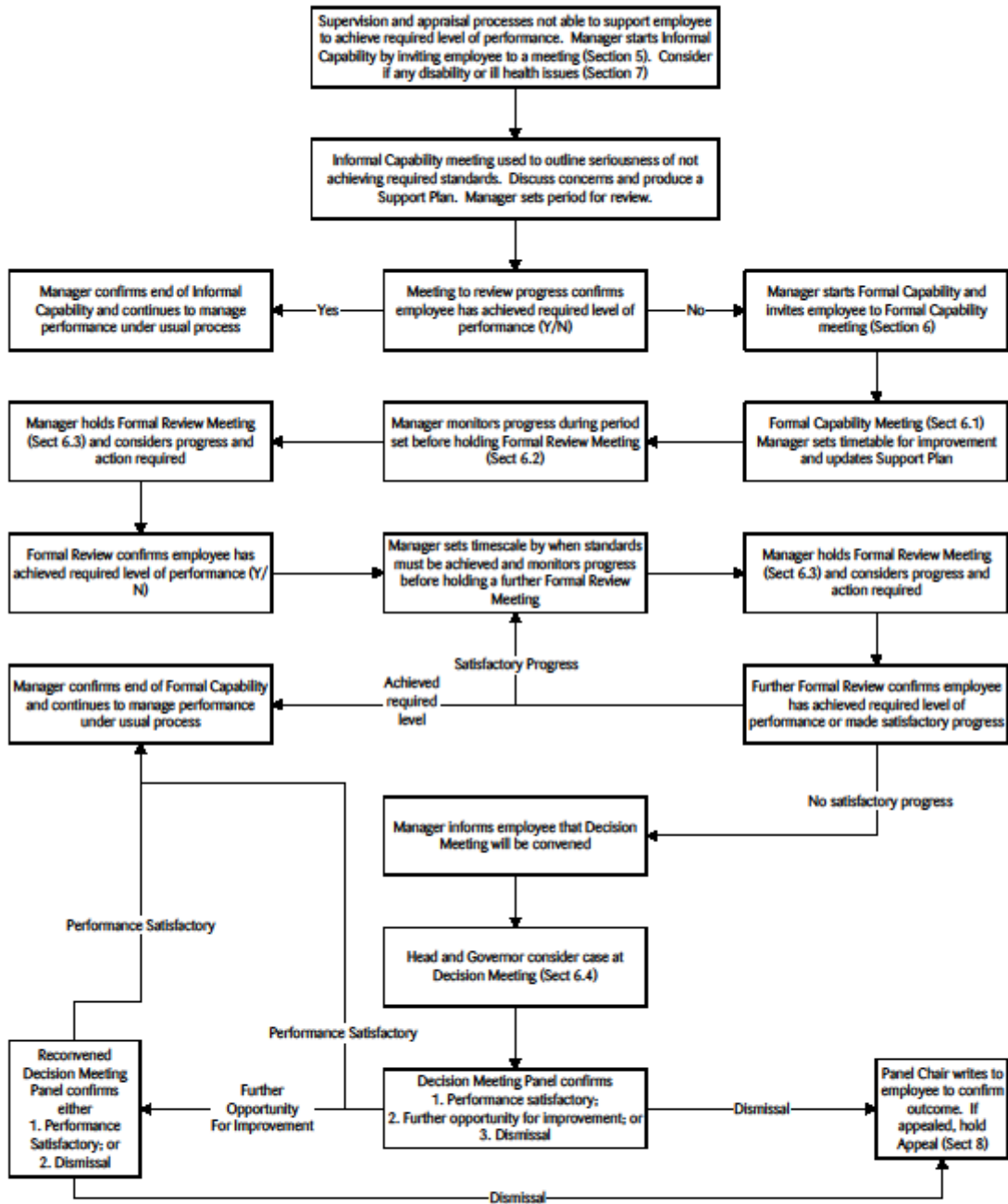
## **8. APPEALS**

If an employee feels that a decision to dismiss them is wrong or unjust, they may appeal to the Trust Board in writing against the decision within ten working days of being informed of the decision, setting out at the same time the grounds of their appeal. Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place.

The Chair of the Trust Board will write to the employee giving details of the appeal hearing. The employee will be advised in writing of their right to be accompanied at the appeal hearing by a trade union representative or work colleague. Appeals will be heard by 3 trustees (normally including the Chair of the Trust Board). The appeal will be dealt with, if possible, by trustees who have not previously been involved in the case. The Trust's Director of HR should be present at this hearing.

The Chair of the Panel will communicate their decision in writing to the employee within 10 working days of the appeal hearing. If possible, the Chair will verbally inform the employee of the Panel's decision at the conclusion of the hearing. The panel's decision is final and is the end of the procedure. There is not further right of appeal. This decision must be reported to the full Trust Board.

### Capability Procedure Flow Diagram





**Example Support Plan Template**

Area for Improvement	Objective	Support	Monitoring Mechanisms	Timescale for Review	Objective Met? Yes/No	Comments