



CAPABILITY PROCEDURE

September 2017

Capability Procedure

INTRODUCTION

This procedure applies only to Radius Trust staff about whose performance there are serious concerns that the appraisal process has been unable to address. This policy has been developed in accordance with the provisions of the ACAS Code of Practice.

Definitions

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.

Sickness

If long term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case will be dealt with in accordance with the Radius Trust Managing Sickness Absence Procedure. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

PROCEDURE

Transfer from Appraisal Procedure

Where the appraiser is not satisfied with progress following a period of additional support and monitoring within the appraisal process, the member of staff will have been notified in writing that the appraisal system will no longer apply and that their performance will be managed under the Capability Procedure.

Formal capability meeting

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 member of staff 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 member of staff of their right to be accompanied by a companion who may be a colleague employed by Radius Trust, a trade union official, or a trade union representative who has been certified by their union as being competent. If the member of staff concerned is a TU representative they should be advised to contact their Regional Officer for support.

This meeting is intended to establish the facts and will be conducted by a designated person, as follows:

- For Executive Head capability meetings: a governor nominated by the Chair of Governors
- For Head/Principal capability meetings: the Executive Head
- For other staff: the relevant Head/Principal

The Executive Head may delegate the first formal meeting to a Head or other appropriate manager.

The meeting allows the member of staff, 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 the member of staff are not being met;
- give clear guidance on the improved standard of performance needed to ensure that the member of staff 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 member of staff 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 between four and ten weeks. It is for the designated person conducting the meeting 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.
- warn the member of staff formally (first written warning) that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning.

- make the member of staff aware of the right of appeal against any formal warning.

Notes will be taken of formal meetings and a copy sent to the member of staff. Where a warning is issued, the member of staff will be informed in writing 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.

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).

Formal review meeting

This meeting will be conducted by the Executive Head/Head/Principal, unless they have delegated the meeting. In the case of a Head/Principal's capability the meeting will be conducted by the Executive Head, unless they have delegated the meeting.

As with formal capability meetings, at least five working days' notice will be given: the notification will give details of the time and place of the meeting and will advise the member of staff 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. If the member of staff concerned is a TU representative they should be advised to contact their Regional Officer for support.

If the person conducting the meeting is satisfied that the member of staff has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start. In other cases:

- 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;
- if no or insufficient improvement has been made during the monitoring and review period, the member of staff will receive a final written warning.

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

Any final written warning will reflect any previous warnings that have been issued. Where a final warning is issued, the member of staff will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale) may result in dismissal and will be 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 member of staff will be invited to a decision meeting.

Final Decision meeting

This meeting should be conducted by the Head/Principal in all cases except:

- where the grievance relates to the Head/Principal (where this meeting will be conducted by the Executive Head);
- where the grievance relates to the Executive Head (where this meeting will be conducted by the Trustee nominated by the Chair of Trustees);
- where there is a conflict of interest (e.g. relationship to member of staff).

If the formal meetings had been delegated to an appropriate manager, then that person should also attend the final decision meeting to ensure continuity.

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 member of staff 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.

The outcome of the final decision meeting would be one of the following:

- Performance has improved, the capability procedure will end and there will be a return to the appraisal process
- Performance remains unsatisfactory and the member of staff will be dismissed or will cease to work for Radius Trust.

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.

If the decision is made to dismiss, the letter will give the reason for dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.

The member of staff will be informed of the outcome, in writing, within 5 working days of the meeting and they should be asked to acknowledge receipt of the letter.

Decision to dismiss

If performance remains unsatisfactory, a recommendation to the LGB will be made that the member of staff should be dismissed or required to cease working at the school.

The power to determine that members of staff should no longer work at Radius Trust schools rests with the Head/Principal. The power to determine that the Head/Principal should no longer work at Radius Trust schools rests with the Executive Head.

Dismissal

Employees should only be dismissed if, despite warnings, their capability has not improved within the specified timescale.

The letter of notice of dismissal must contain:

- the reasons for dismissal
- the date on which employment will end
- the appropriate period of notice
- the right of appeal against dismissal, including the timescales

APPEAL

If a member of staff feels that a decision to dismiss them, or other action taken against them during this process, is wrong or unjust, they may appeal in writing against the decision within five working days of the decision, setting out at the same time the grounds for appeal. The appeal letter should be sent to the Clerk to the Governors. 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 member of staff.

The Clerk to the Governors will arrange a meeting of an appeals panel without unreasonable delay and ideally within 15 working days of receiving the letter of appeal.

Appeal Hearing

The appeal will be dealt with impartially and, wherever possible, heard by Governors or Board members who have not previously been involved in the case. Please see Appendix 1 for details of appeals panels.

The panel will consider whether to uphold each of the grounds for appeal and why.

The panel can decide to uphold the appeal, dismiss the appeal or lessen the penalty that was awarded at the first hearing. The panel may not increase the penalty.

Outcome of the Appeal

The member of staff will be informed, in writing, of the results of the appeal hearing as soon as possible.

If the result of the appeal is to reinstate the member of staff who had been dismissed they will receive payment of salary for the period from the date of dismissal to the date of reinstatement.

There is no further right of appeal and the decision of the appeals panel will be final.

GENERAL PRINCIPLES UNDERLYING THIS POLICY

ACAS Code of Practice on Disciplinary and Grievance Procedures

The procedure will be implemented in accordance with the provisions of the ACAS Code of Practice.

Confidentiality

The process will be treated with confidentiality.

Consistency of Treatment and Fairness

Radius Trust is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments for disabled staff. The Trust is aware of the guidance on the Equality Act issued by the Department for Education.

RELATED POLICIES AND PROCEDURES

Appraisal Procedure
Disciplinary Procedure
Grievance Resolution Procedure
Staff Code of Conduct
Staff Development Policy

APPENDIX 1: Authority levels for disciplinary procedures

Staff capability and disciplinary meetings: by Head or appropriate manager as delegated by Head

Staff dismissal: by Head

Staff appeals: by Executive Head or appropriate manager as delegated by Executive Head + a member of the LGB or external

Head's capability and dismissal meetings: by Executive Head or appropriate manager as delegated by Executive Head

Head's dismissal: by Executive Head

Head's appeals: by Chair of Governors as delegated by the Chair + an LGB Governor or external