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As stated by 'The Key for school leaders' schools should : "adopt the ICO's model scheme and make it publicly available, for example by linking to it on your website." Link below: KHNES commits to operating by these requirements.

<https://ico.org.uk/media/for-organisations/documents/1153/model-publication-scheme.pdf>



## Capability Policy

Last Approved by the KHNES Management Committee : May 2018

This policy applies to all staff employed in this service about whose performance there are serious concerns that the appraisal process has been unable to address.

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 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.

### Formal capability meeting

This meeting is intended to establish the facts. It will be conducted by the Chair of Management committee (for Executive Head teacher capability meetings) or the Executive Head teacher (for other staff) . 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 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 improve 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 should be within 6 weeks.
- warn the member of staff 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. This will occur when the member of staff's actions have had or are liable to have a serious or harmful impact on the service.

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**

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 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 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 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. 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 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.

### **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 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 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 performance remains

unsatisfactory, a decision, or recommendation to the Management Committee (in the case of the Executive Head teacher capability), will be made that the member of staff should be dismissed and required to cease working in the service.

The member of staff 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.

## **Decision to dismiss**

The power to dismiss staff in this service has been delegated to the Executive Head teacher.

## **Dismissal**

Once the Executive Head teacher has decided that the member of staff should no longer work in the service, they will notify the Management Committee of the decision and the reasons for it. The management committee will issue a notice period of 14 days, unless an appeal is raised. In this instance, the notice period for dismissal will be extended to cover the time before the appeal can be heard. If the appeal is heard after the 14 days, and the decision to dismiss is upheld, dismissal will take effect immediately.

## **Appeal**

If the member of staff 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 days 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 managers or committee members who have not previously been involved in the case.

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

## **General Principles Underlying This policy**

### **ACAS Code of Practice on Disciplinary and Grievance Procedures**

#### **Confidentiality**

The capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the Executive Head teacher and Management Committee to quality-assure the operation.

#### **Consistency of Treatment and Fairness**

The Management Committee 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 members of staff. The Management Committee is aware of the guidance on the Equality Act issued by the Department for Education.

#### **Definitions**

Unless indicated otherwise, all references to 'member of staff' include the Executive Head teacher.

## **Delegation**

Normal rules apply in respect of the delegation of functions by Management Committee, Executive Head teachers and Local Authorities.

## **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 school's absence policy and will be referred immediately to the occupational health service to assess the member of staff's health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

## **Monitoring and Evaluation**

The Management Committee and Executive Head teacher will monitor the operation and effectiveness of the school's appraisal and capability arrangements.

## **Retention**

The Management Committee and Executive Head teacher will ensure that all written appraisal capability records are retained in a secure place for six years and then destroyed.

## **Attendance at meetings**

Where a member of staff is persistently unable or unwilling to attend the formal meetings without good cause, the Executive Head teacher will make a decision on the evidence available.