



Capability Procedures Policy checklist

This checklist should be used alongside the NEU's model policy on capability to help you negotiate a policy acceptable to the union. You may not be able to secure everything on this checklist – if that is the case, you will need to consult members on whether the proposed policy is sufficiently positive to be acceptable. More advice can be found on the NEU website at: neu.org.uk/help-advice.

The NEU's policy position

The objective of formal and/or informal support should be to improve staff performance where appropriate, and not to penalise staff for failing to meet management expectations, nor to 'manage' experienced – and therefore expensive – staff out of employment.

Application of procedure

Staff should never be placed on capability procedures unless their performance is having a significant impact on the employer's ability to deliver education to students or promote their health and welfare. A failure to meet objectives/targets alone is not enough to warrant a referral to capability procedures.

Incapability resulting from ill health or misconduct should not be dealt with under capability procedures – separate absence management and disciplinary procedures should be used.

Teachers undergoing induction should be dealt with via the induction procedure, not the capability procedure.

Right to be accompanied

Ask for trade union representation during the informal support process, as well as during capability procedures. (Trade union representation is important during the informal stages because this is the opportunity to resolve the situation.)

Capability procedures should not be commenced against a trade union representative until the circumstances have been discussed with an appropriate official of the trade union.

Informal support

Staff should not be placed on capability procedures without first undergoing a period of informal support. Although the union provides an alternative model policy for employers who do not provide support within appraisal, this approach is far from ideal. The union's casework experience is that capability procedures almost always end in dismissal.

Capability procedures may also be mentioned in job references. There is therefore a

great disadvantage to those placed on capability procedures. Seek the views of the school/college group if the employer insists on including informal support within capability procedures rather than appraisal.

Informal support should last for a period of not less than 13 weeks, although it should be possible to extend the period of support beyond 13 weeks where appropriate (refer to paragraph 3.8 of the capability step-by-step guide).

Ask for policies to be amended if they encourage warning letters to be issued at the informal support stage. Warning letters pre-judge the outcome of informal support, undermine confidence and may lead to increased stress and anxiety. In the union's view, warning letters are appropriate only when an employee enters a period of formal capability (refer to paragraph 3.9 of the capability step-by-step guide).

Commencement of capability procedures

Capability procedures should commence only after an investigatory/transition meeting has been held to consider whether it is appropriate to cease informal support and begin capability procedures (refer to paragraph 3.3 of the NEU default model policy).

Formal procedures – procedure for support, monitoring and review meetings

If there is no provision for initial informal support within appraisal, ensure there is a two-stage process of support within the capability procedure (refer to paragraph 4 of the NEU alternative model policy).

Formal capability hearings

Staff should have at least ten working days' notice of hearings in order to allow time to arrange representation – with the possibility of postponement where difficulties arise with regard to representation.

The hearing in all cases will be before a panel of governors, with representation from the local authority or academy chain where that is the employer.

There should be a further right of appeal in all cases.

Equality monitoring

Equality monitoring of the procedures should be undertaken annually or, at the very least, biennially. The results should be shared with the recognised trade unions (refer to paragraph 7 of the NEU model policies).

Absence related to capability procedures

Employers should recognise that sickness absence is a common response to an allegation of poor performance. Therefore, ask for employees who become ill on a long-term basis to be removed from capability procedures and placed on the absence management procedure instead.

Where employees become ill for a short period of time, the employer should either:

- suspend the procedure until the employee's return to work
- extend the review period, or
- disregard the absence if the employee has come close to meeting the targets set (refer to paragraph 6 of the NEU model policies).