



The right support, at the right time

Staff Appraisal and Capability Policy

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This policy sets out the procedures and responsibilities for managing staff appraisals, as well as the capability procedures at the Leading Futures Alternative Provision.

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Introduction

As an unregistered alternative provision, we are not legally bound by the statutory appraisal arrangements that apply to maintained schools and registered independent schools. However, we are committed to maintaining high professional standards and accountability in our practice.

The Education (School Teachers' Appraisal) (England) Regulations 2012, made under the Education Act 2002, set out expectations for appraisal and capability procedures in maintained schools. Although these regulations do not apply directly to unregistered settings, we use them as a reference framework for quality assurance, ensuring our approach reflects recognised best practice within the education sector.

Within our setting, we refer to the professionals who deliver teaching and learning as tutors rather than teachers, in recognition of our alternative and flexible model of education. Our appraisal procedures are designed to support the professional growth, accountability and wellbeing of all tutors and staff, and to ensure that our learners receive high-quality, consistent educational experiences.

Support staff are also included in our approach to appraisal. While they are not covered by the 2012 regulations, it is both good practice and beneficial for the provision to apply a similar process, tailored to their specific roles and responsibilities.

Guiding principles

In overseeing the appraisal system, the Directors are committed to ensuring fairness, consistency, and compliance with the broader legal framework that applies to all employers. This includes, but is not limited to, the Equality Act 2010, the Employment Rights Act 1996, the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002, the Data Protection Act 2018, and the UK General Data Protection Regulation (UK GDPR).

Although our provision is unregistered, we apply these principles as part of our commitment to robust governance and high-quality practice.

The Directors will moderate a representative sample of appraisal planning statements to ensure that objectives are fair, proportionate, and consistent across staff with similar levels of responsibility, and that they align with this policy.

All aspects of the appraisal process, including supporting documentation, will be treated as strictly confidential. Access to appraisal information will be limited to those who require it in order to fulfil their professional responsibilities.

The Directors will monitor the operation of the appraisal system and review it periodically to ensure that it remains effective, equitable, and reflective of the provision's aims and values.

Purpose

This policy sets out the framework for a clear and consistent assessment of the overall performance of tutors and support staff and for supporting their development needs in the context

of the provisions improvement plan.

The appraisal

The Directors of a provision must appraise the performance and is responsible for ensuring the review of the performance of every other leader, tutors and member of support staff employed at the provision.

Appraisal meetings should be held during normal working hours and scheduled for at least one hour or longer if necessary.

The purpose of the appraisal meeting is to review the employee's current job, performance, and plans. More specifically, the meeting will also be an opportunity to discuss how the employee can contribute to the wider work of the provision and agree and set a number of objectives (typically three, however, there is no minimum or maximum number of objectives).

Mid-year reviews, while not mandatory, are highly recommended to ensure progress is being made, that obstacles are being dealt with effectively and that there are 'no surprises'.

A flowchart outlining the appraisal process can be found in **Annex 1**.

The appraisal period

The appraisal period will be for 12 months, and it will begin on 1 September; the appraisal itself should ideally be completed by 31 October for tutors, support staff and middle leaders and by 31 December for Directors.

The cycle will begin with a planning meeting and end with a review meeting. Mid-year review meetings may also be held if agreed and considered necessary (see below in 'Objective setting').

Where a tutor starts their employment or transfers to a new post in the provision part way through a performance management cycle, the Directors shall determine appraisal arrangements for the remainder of the appraisal period. They will do this with a view to bringing their appraisal arrangements into line with the cycle for other provision leaders, tutors, and support staff as soon as possible.

Where a provision leader or tutor is employed on a fixed-term contract for less than 12 months, the length of the appraisal period will be determined by the duration of the contract.

The appraisers

All appraisers, including allocated members of the Directors, should be provided with appropriate training.

For the Directors

The Directors will be the appraiser for one another.

The Directors of a provision must appoint an external adviser to provide it with advice and support in relation to the appraisal of the Directors, if deemed necessary. The qualifications and experience required of an external adviser are not set by regulation. It is for the Directors to

decide who it wishes to use as an external adviser.

The external adviser is not responsible for determining a recommendation on whether an increment should be paid to the Directors following the review; this is a matter for Directors to decide in agreement with one another. However, Directors can ask for advice and should take account of any advice offered.

For all other employees

The Directors are responsible for the appraisal of all other employees, but they may delegate this responsibility to others who will normally have line management responsibility for those they appraise.

Teaching staff / Tutors should be able to object, on professional grounds, to the appointment of an appraiser. They should place their concerns in writing to the Directors, who will consider the objection and make a decision on the matter. The tutor should be advised in writing of the acceptance or rejection of the objection.

Objective setting

The setting and agreement of objectives are fundamentally important to the effective operation of a performance management system that aims to link individual performance to pay progression. The job description can be a useful place to begin the process of identifying relevant objectives for each individual job holder. However, the job description is just one 'reference document,' others may include the provision's improvement plan, the provision's business plan, Ofsted's provision inspection guidelines or the Teacher' Standards.

In addition, it may be prudent to allow for some flexibility and pragmatism in the setting and agreement of objectives to enable them to be determined and agreed around issues that are emerging for the provision and require some dedicated attention that's best articulated as one or as a set of objectives. As emerging issues are unlikely to be known at the outset of an appraisal period, objectives may need to be adjusted throughout the appraisal period so that they remain relevant to the performance of the individual and pertinent to the priorities of the provision. This is perfectly standard practice and again strengthens the case for having mid-year reviews where objectives can be discussed and adjusted. The ideal outcome for all parties is that the level and extent of the objectives is broadly or proportionately the same at the conclusion of any subsequent 'objectives' discussion.

Objectives should be SMART:

S = Specific

M = Measurable

A = Achievable

R = Relevant

T = Timed.

Objectives should also be fair and equitable when judged across employees with similar roles and responsibilities. However, appraisal objectives will normally become more challenging as a tutor progresses up the main pay scale.

The Directors of the provision must before, or as soon as practicable, after the start of each appraisal period discuss the standards against which their performance and that of employees, will be assessed and set objectives for the appraisal period.

The Directors of the provision must before, or as soon as practicable after the start of each appraisal period in relation to every tutor employed at that provision, inform the tutor of the standards against which their performance will be assessed and set objectives for the tutor for the appraisal period. Directors may delegate this responsibility to the employee's line manager.

The objectives must be set such that they will contribute to the improvement of a provision's educational offer and performance; appraisers will, therefore, be expected to align individual's objectives with the provision's priorities.

Every effort should be made to achieve agreement on the Directors' objectives. All appraisers and appraisees should look to agree on objectives; where an agreement cannot be reached, the appraiser will make the final determination.

Objectives should focus on the priorities for the provision or individual for the duration of the appraisal cycle. Staff should typically expect to have no more than three objectives, but there is no actual minimum or maximum number.

Objectives will be set out in a planning statement along with details of any agreed training and support. The planning statement should also specify the evidence that will be collected to support the review of performance, including details of the arrangements for task or classroom observation, where relevant.

Objectives may be revised if circumstances change.

On the understanding that pay decisions must be directly related to the performance of individual tutors, it's important to acknowledge that agreed performance objectives are in the working scope and remit of each tutor.

While it may be entirely appropriate to agree on a subject-related target with a tutor who is the subject lead, it wouldn't, for example, be appropriate to set and agree whole learner progress targets for a tutor who is clearly not wholly responsible for the aggregated educational progress of individual learners or groups of learners that they coincidentally teach.

A robust moderation process should ensure tutors have set and agreed on performance objectives that are not beyond but within their reach, albeit with a little stretch.

Tutor Standards

From the appraisal arrangements that took effect from 1 September 2013, the performance of all tutors, regardless of their career stage, will be assessed against the Teachers' Standards. The standards define the minimum level of practice expected of trainees and teachers (tutors).

The standards against which performance must be assessed in respect of a tutor are the set of standards articulated in the Teachers' Standards document and any other set of standards relating to teachers' (tutors) performance published by the secretary of state as determined by Directors as being applicable.

To meet the Teachers' Standards, a tutor will need to demonstrate their practice is consistent with the definitions set out in part one (teaching) and part two (personal and professional conduct).

Applying the Teachers' Standards

Tutors make learners' education their first concern, and they are accountable for achieving the highest possible standards in their work and conduct. Tutors act with honesty and integrity, have strong subject knowledge and are self-critical. They forge positive professional relationships with those around them and work with parents and carers in the best interests of their learners.

Tutors

The Teachers' Standards effectively set out a 'code' of good teaching practice and professional conduct, and as such, it would seem to be perfectly reasonable for provisions to expect all teaching staff (tutors) to meet the expectations set out in the standards document. Tutors should, therefore, be evaluated against all the elements set out in the Tutors' Standards, and it is for provisions to put appropriate arrangements in place to achieve a fair and equitable process of evaluation. Some degree of pragmatism must be considered, and it would be unreasonable (if not unmanageable) for tutors to be routinely expected to provide evidence that they meet all the standards.

Directors

Teachers' Standards must also be applied to Directors as well as to all other tutors. As Directors may only spend a proportion of their scheduled week teaching, careful judgement should be exercised when assessing such staff against the Teachers' Standards.

After an 11-year absence, the National Standards of Excellence for Headteachers were reintroduced in January 2015. Unlike the teachers' standards, the standards for headteachers are non-mandatory.

The introduction to the standards makes it clear that they are intended 'to inform' the appraisal of Directors.

Use of the standards in provisions depends on the arrangements of those provisions. Independent provisions aren't required to use the standards, but they can do so if they wish.

Gathering the evidence

As part of the overall appraisal process, it's critically important for all members of staff subject to the provision's staff appraisal policy to understand the evidence required to enable the appraiser to assess their performance and make a substantiated and evidence-based pay recommendation to the 'decision maker'.

Judgements relating to performance should be supported by evidence which has been established and agreed at the beginning of the performance cycle. Evidence should show and demonstrate a contribution towards the following:

- a positive impact on learners' progress.

- a positive impact on wider outcomes for learners.
- improvement in specific elements of practice, e.g. lesson planning.
- a positive contribution to the work at the provision.

The evidence gathered by the provision and the member of staff will largely be determined by the nature and scope of the agreed objectives and/or the Teachers' Standards. Examples of evidence may include the following:

- classroom observations.
- task observations.
- reviews of assessment results.
- reviews of lesson planning records.
- internal tracking.
- provision improvement and subject plans.
- moderation in and across provisions.
- learners' voice.
- parents' voice.
- Directors' immersion walks.
- evidence supporting progress against the Teachers' Standards.

Classroom/ task protocols

Any classroom/ task observations will be carried out in accordance with the provision's classroom and task observation protocol. Classroom observation will be carried out by Directors who hold QTS.

At least five working days' notice of the date and time of the observation will be given, and verbal feedback will be provided by the end of the next provision day in a suitable private environment. Written feedback will be provided within five working days. The appraisee has the right to append written comments to the feedback document.

For appraisal purposes, the Directors is committed to ensuring that classroom and task observation is developmental and supportive and that those involved in the process will do the following:

- carry out the role with professionalism, integrity and courtesy.
- evaluate objectively.
- report accurately and fairly.
- respect the confidentiality of the information gained.

The arrangements for classroom/ task observation will be stated in the appraisal planning statement and adhere to the established classroom/ task protocols. The arrangements will specify the amount of observation, its primary purpose, any specific aspects of the employee's performance that will be assessed, the duration of the observation, when during the appraisal cycle the observation is likely to take place and who is likely to conduct the observation.

Where evidence emerges about the appraisee's performance that gives rise to concern, additional observations may be arranged during the cycle.

The three hours' statutory limit on classroom observations for appraisal no longer applies; the government believes Directors and other appraisers should be free to decide how much observation is necessary for them to form an accurate assessment of a tutor's performance.

A Directors must evaluate the standards of teaching and learning and ensure proper standards of professional performance are established and maintained throughout the provision. They may, therefore, determine that it's necessary to collect additional evidence to help inform the evaluation of teaching standards and provision improvement strategies. This additional evidence may include immersion walks, task observation, reviews of assessment results and lesson planning records. It may not be practicable to provide notice of these additional monitoring activities. As part of their overall inspection framework, Ofsted guidance states that the appraisal procedure should be used effectively and should facilitate the provisions improvement.

Reviewing performance and the annual assessment

At the end of the cycle, assessment of performance will be on the basis agreed at the beginning of the cycle.

In determining an appraisal, the Directors must assess the performance in the appraisal period, apply the relevant standards, assess performance against the agreed objectives, assess the professional development needs, identify any action that should be taken and, finally, include a recommendation relating to pay.

It will be for Directors to establish their arrangements for determining the overall evaluation and rating of the individual's performance. The provision may wish to continue to use their existing arrangements for evaluating and rating an individual's performance and apply the Teaches' Standards where appropriate.

A written appraisal report must be provided at the end of the appraisal process – ideally by 31st October for middle leaders, tutors, and support staff, and ideally by 31st December for Directors; the report must record the overall performance assessment and pay recommendation.

Good progress towards the achievement of a challenging objective, even if the performance criteria have not been met in full, may still be assessed favourably. If an agreement can't be reached, especially on the outcomes of an appraisal meeting, the tutor may appeal to the Directors whose decisions will be final.

The overall assessment of performance and its subsequent performance rating for individual members of staff will be subject to a process of moderation, arrangements for which will be put in place by the Directors.

The final version of the appraisal documentation will be placed on the employee's file, and a copy of their continuing professional development (CPD) will be made available to the provision's CPD coordinator. The sharing of such information is governed by the data protection principles set out under the Data Protection Act 2018 and General Data Protection Regulation.

The Directors will ensure all written appraisal records are retained in a secure place for six years and then destroyed.

Continuing professional development

The provision's overall CPD programme will be informed by the training and development needs identified through the appraisal procedure. The Directors will ensure in the budget planning process, that, as far as possible, appropriate resources will be made available for any agreed training, support, or CPD.

Support to meet an individual or collective development needs should be provided in the context of the provision's improvement plan.

Conflict of interest

In any circumstances where an individual believes their participation in any part of the appraisal process amounts (or may amount) to a 'conflict of interest', they should declare this to their appraiser and/ or absent themselves from any part of the appraisal process where they believe a 'conflict of interest' would or is likely to prevail.

Pay progression linked to performance

The Directors must consider annually whether or not to increase the salary of tutors who have completed a year of continuous employment since the previous annual pay determination, and if so, to what salary in the relevant pay ranges.

All pay recommendations should be clearly attributable to the performance of an employee. The relevant body must decide how pay progression will be determined, subject to the following:

- a. The decision, whether or not to award pay progression, must be related to a tutor's performance
- b. A pay recommendation must be made in writing as part of a tutor's annual appraisal report
- c. Continued good performance, as defined by the provision's pay policy, should give a classroom or an unqualified tutor an expectation of progression to the top of their respective pay ranges
- d. Those making pay decisions on employees facing capability proceedings, would be well advised to have good reason and justification for departing from the statutory pay guidance and should seek the advice of their HR support service in this respect.

The relevant body must set out clearly in the provision's pay policy how pay progression will be determined. The Directors will be responsible for ensuring appropriate arrangements are put in place to support the links between performance and pay and agreed rates of pay progression are affordable and comply with prevailing legislation (e.g. equal pay).

Where tutors are eligible for pay progression, the recommendation made by the appraiser will be based on an assessment of performance against agreed performance objectives. The decision

made by the relevant decision-making body will be based on the statutory criteria and guidance set out in the Provision Teachers' Pay and Conditions Document (STPCD) and the relevant Teachers' Standards.

To progress through the main pay range, tutors must demonstrate sustained progress toward their objectives and show competence across all elements of the Teachers' Standards. Teaching should consistently meet the criteria for a *strong standard*, reflecting the type of evidence Ofsted would consider during inspection - including curriculum delivery, pupil engagement, assessment, and inclusive practice.

The Directors will consult with staff and union representatives on the establishment of appraisal and pay policies, and they will also ensure appraisers have the knowledge and skills to apply procedures fairly.

Tutors will collaborate with their appraisers to ensure there's sufficient evidence to support pay recommendations. Tutors will also keep records of objectives and review them throughout the appraisal period.

Applications to be paid on the upper pay range

Since 1 September 2013, any qualified teacher (tutor) can apply to be paid on the upper pay range. All applications should include the results of two appraisal cycles; where such information isn't available, a written statement and summary of evidence that sets out how the applicant has met the assessment criteria will be sufficient. Tutors who have been absent through sickness, disability or maternity may cite written evidence from previous years in support of their application.

To be assessed successfully, a tutor will be required to meet the criteria set out in the STPCD:

- the tutor is 'highly competent' in all the elements of the Teachers' Standards
- the tutor's achievements and contribution to the provision are 'substantial' and 'sustained'.

Highly competent

The tutor's performance is assessed as having excellent depth and breadth of knowledge, skills and understanding of the Teachers' Standards in the particular role they are fulfilling and the context in which they are working.

Substantial

The tutor's achievements and contribution to the provision are significant, not just in raising standards of teaching and learning in their classroom but also in making a significant wider contribution to provision improvement, which impacts on learners' progress and the effectiveness of staff and colleagues.

Sustained

The tutor must have had two consecutive successful appraisal reports and made good progress towards their objectives; they will have been expected to have shown their teaching expertise has grown over the relevant period and is consistently good to outstanding.

Leading practitioner role

Typically, the additional duties of a leading practitioner role will include the following:

- a leadership role in developing, implementing, and evaluating policies and practices in a provision that contribute to provision improvement.
- the improvement of teaching within the provision that impacts significantly on learners' progress.
- improving the effectiveness of staff and colleagues, e.g. lesson planning. The leading practitioner must demonstrate the following:
 - they have made good progress towards their objectives.
 - they are an exemplar of teaching skills, which should impact significantly on learners' progress in provision and the wider community.
 - they have made a substantial impact on staff and colleagues, including any specific elements of practice that have been highlighted as in need of improvement.
 - they are highly competent in all aspects of the Teachers' Standards.
 - they have shown strong leadership in developing, implementing, and evaluating policies and practices in their workplace that contribute to provision improvement.

(See NAHT's [model pay policy](#) and [accompanying guidance](#) for 2023/24.)

Staff experiencing difficulties – tutors and support staff

When a member of staff is experiencing difficulties, support and guidance will be provided through the appraisal process. Where it's clear that a member of staff's personal circumstances are leading to difficulties at work, appropriate support should be offered at the earliest opportunity.

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 provision's absence policy. It will also be referred to the occupational health service to assess the member of staff's health and fitness for continued employment and whether either continuing with informal monitoring or formal procedures is deemed to be appropriate. Timely advice will be sought from the provision's HR provider, as necessary.

If the appraiser identifies through the appraisal process or other sources of information (e.g. parental complaints) that the difficulties experienced by a tutor could lead to the application of the capability procedure, the appraiser will, as part of the appraisal process, meet the member of staff to do the following:

- Give clear written feedback to the tutor about the nature and seriousness of the concerns.
- Give the tutor the opportunity to comment on and discuss the concerns.
- Give the tutor at least five working days' notice that a meeting will be held to discuss targets for improvement (alongside a programme of support) and remind them that they have the right to be accompanied by a work colleague or trade union representative at any future meetings where capability will be discussed.

- Agree and establish, in consultation with the tutor, an action plan with the support that will help to remedy specific concerns.
- Make clear how progress will be monitored and when it will be reviewed.
- Explain the implications and process if no (or insufficient) improvement is made.

The tutor's progress will continue to be monitored **as part of the appraisal process** and a reasonable time given for the tutor's performance to improve. During this monitoring period, the tutor will be given regular feedback on progress and arrangements will be made to modify the support programme if appropriate.

If sufficient progress is made, the tutor should be informed of this at a formal meeting, and the appraisal process will continue as normal.

If no (or insufficient) improvement has been made, the tutor will be invited to a 'transition meeting' to determine whether formal capability proceedings will be invoked.

As a final check and balance to invoking the capability procedure, it's advised that line managers ensure the following have been put in place:

- the employee has undergone an appropriate period of induction to their role.
- an up-to-date job description has been issued to the employee.
- professional standards and overall expectations of performance have been made clear.
- the employee's performance has been monitored, and feedback has been provided.

Transition to capability

Performance concerns should be dealt with through the staff appraisal policy, but if progress towards addressing performance concerns is insufficient or the concerns are sufficiently serious, a 'transition meeting' should be held; the expectation is that this meeting will reduce the likelihood of invoking the capability procedure or triggering a prolonged period of sickness absence. In this event, further support should be granted through the appraisal procedure.

A meeting of this nature doesn't constitute part of the formal capability procedure.

The employee, their line manager and the Director will be present at the meeting. Because the outcome of the meeting may have serious consequences, the employee should be encouraged to be accompanied by a work colleague or trade union representative.

Guiding principles to the overall approach to the transition meeting:

- ensure practical support, advice and guidance is provided to the employee.
- training should be provided where this is a reasonable expectation.
- performance criteria should be clear and monitored in agreed time schedules.
- the employee's shortcomings are clearly set out in writing.

The meeting will consider the following matters:

- the evidence that has given rise to the specific concerns about the employee's performance.
- the seriousness of the concerns and their impact on the performance of the provision.
- the support that has been provided to date.
- the time for which the concerns have persisted.
- the degree of improvement that has been achieved and whether or not this has been sustained.
- the extent to which the employee has shown insight and has engaged with the support provided throughout the appraisal process.
- any mitigating factors.

Once these matters have been considered, the chair should close the meeting and reflect on the findings, take advice, and reach a decision. The employee will be informed of the decision in writing and normally in five working days. The decision will be **either to continue with the appraisal process or to invoke the capability procedure** by convening a formal capability meeting.

The transition to the capability procedure won't normally be made unless there's evidence of the following:

- underperformance against agreed objectives and/ or standards has prevailed for some time.
- the underperformance is either serious or has persisted despite the provision of support.

Capability procedure

The principal purpose of a capability procedure is to support and ensure staff can perform their duties, and deal with underperformance on a formal basis. The aim is to deal with those cases where, despite appropriate management support (see above) a member of staff presents as deficient in key areas of ability, skill, competence, or knowledge; and is consequently unable to perform their duties to an acceptable standard.

It is important that underperformance is managed to ensure the quality of teaching and learning is maintained and the general performance of the provision isn't compromised. The overall approach to capability should be supportive, constructive, and helpful to the employee.

This procedure complies with the provisions of the ACAS code of practice.

The capability procedure applies only to tutors, support staff and Directors where there are serious concerns about their performance **that can't be addressed by the appraisal procedure**. The purpose of a capability meeting is to establish the facts, and it will usually be led by the Directors. The employee who is the subject of the capability meeting, will be able to respond to concerns about their performance and present any relevant evidence.

Employees should be made aware that while the concerns with regards to their performance are being considered by way of the capability procedure, the normal appraisal arrangements

will be suspended. Employees are expected to cooperate constructively with arrangements that are put in place to address underperformance. Where an employee believes they are being unfairly treated, they may raise an informal complaint or a formal grievance as appropriate.

As is the case in all formal procedures, the chair of each meeting should ensure clear written records are kept, in particular, the management concerns about the employee's performance.

A flowchart that outlines capability procedures can be found in **Annex 2**.

Timescales

Under the procedure, timescales may be adjusted as appropriate:

- This model procedure proposes a period of between four and 10 weeks for the implementation of the 'informal stage', where a member of staff is typically supported by a 'support plan' or what may also be known as an 'action plan'. The agreed period may be adjusted to suit the merits and circumstances in each individual case (for example, you would expect an experienced tutor or a senior member of staff to make improvements in a shorter period whereas you may wish to grant a longer period of time to an employee at early career stage).
- In particularly serious cases where for example, the education, health or well-being of learners may be at risk, a shorter period for monitoring is, in all likelihood, going to be more appropriate (e.g. where a tutor's control of the class is poor, or where learner progress is inadequate despite support).
- If the implementation of the capability procedure triggers an episode of sickness absence, the case should be immediately referred to the provision's occupational health service. They will then assess the employee's health and fitness for continued employment. The length of time a provision should wait for an employee's health to improve before considering whether to terminate the employment on health grounds should be subject to ongoing occupational health guidance in accordance with the absence management procedure and informed by timely advice from the provisions HR provider.

Formal capability meeting

The first meeting under the capability procedure, often referred to as the formal interview, initiates the capability procedure. At least five working days' notice will be given of the formal capability meeting. The notification will contain sufficient information about performance concerns and the possible consequences to enable the tutor to prepare to present their case at the meeting. The notification of a capability meeting will be accompanied by copies of written evidence, include details of the date and time of the meeting, and confirm the tutor's entitlement to be accompanied by a companion who may be a work colleague or trade union representative.

The chair of the capability meeting will aim to do the following:

- a) identify the tutor's / employees' professional shortcomings.
- b) give clear guidance on the improved standard of performance needed.
- c) explain any support that will be available to help the tutor improve to a point where they can be removed from the capability procedure.

- d) set out the timetable for improvement and explain how performance will be monitored and reviewed.
- e) warn the tutor / employee formally that failure to improve in the set period could lead to dismissal (in very serious cases, the warning could be a final written warning).

Notes will be taken of the formal meeting, and a copy will be sent to the member of staff. There are three possible outcomes from the formal capability meeting:

1. a return to the appraisal process where it's determined that there is insufficient evidence to progress the matter further in the capability procedure.
2. a first written warning.
3. a final written warning.

Options two and three are relevant to any case where continued concern about the standards of performance is justified. The level of warning should be determined by the seriousness of the concerns that relate to the performance of the tutor or other member of staff. Low level concerns are likely to lead to a first written warning and a period of up to six to eight weeks may be granted for improvement; conversely, higher level concerns would normally lead to a final written warning and a shorter monitoring period of no more than four weeks.

The employee will be notified of the decision arising from the meeting, the timescales for monitoring and the anticipated next steps in the process.

An employee may appeal against the decision arising from the first formal meeting within five working days of receiving notification of the decision, and their appeal will normally be heard in 10 working days unless alternative timescales are agreed between the parties to the dispute.

Monitoring and review period following a formal capability meeting

A performance monitoring and review period will follow the formal capability meeting. This period will include regular task/ classroom observation, performance evaluation and monitoring, training, management support and guidance.

Formal review meeting

Following the conclusion of a monitoring and review period, the member of staff will be invited to a formal review meeting. At the formal review meeting, if the person conducting the meeting is satisfied that the tutor/ employee has made sufficient improvement, the capability procedure will end, and the appraisal process will restart.

If some progress has been made and there's 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 tutor/ employee will receive a final written warning. If, following a final written warning, performance doesn't improve to an acceptable standard, the case will be referred to an appropriate panel of, typically, a Director and a HR representative.

A further monitoring period will be set, and a subsequent and final review meeting will be scheduled.

Decision meeting

At the decision meeting, if an acceptable standard of performance has been achieved overall during the monitoring and review period, the capability procedure will end, and the appraisal process will restart.

Dismissal

If performance remains unsatisfactory (i.e. where sufficient improvement can't be achieved despite comprehensive support or where performance concerns are of gravity), a decision (or recommendation to the Directors) will be made that the tutor should be dismissed or required to cease working at the provision as soon as possible.

Once the decision to dismiss has been taken, the Directors will dismiss the tutor / employee with notice.

Appeal

If a tutor feels the decision to dismiss them is wrong or unjust, they may appeal in writing against the decision. The tutor will be informed in writing of the results of the appeal hearing without unreasonable delay.

The appeal will be heard by the provisions HR consultant who weren't involved or have no knowledge of the case in which the appeal has been brought.

The decision of the appeal panel is final.

Management guidance: applying the procedures

Role of the Directors

The Directors will be responsible for taking the decision to invoke the capability procedure unless of course, they are the subject of the procedure.

Role of advisors

Local authority and other advisors (including HR providers) may be invited to participate in the capability procedure or with the monitoring process or with providing support.

Employee representation

If the employee's chosen companion isn't available to join them and the employee proposes an alternative date and time that is reasonable and falls within five working days of the original date, this should be given careful consideration and advice should be sought to ensure that revised arrangements can be made.

Monitoring arrangements

Any monitoring undertaken should be across the range of principal job responsibilities so that a balanced view can be reached to support the evaluation of performance.

Written records

Formal warnings should be disregarded after a specified period of satisfactory performance.

- First written warning – 12 months
- Final written warning – 24 months

Grievances

Where an employee raises a grievance that relates to the capability procedure and its management and/ or implementation, it may be appropriate to suspend the capability procedure until the grievance can be considered. But such a delay should only be considered where there's a strong indication that the employee has been mistreated.

Equalities considerations – The Equality Act 2010 and the Public Sector Equality Duty

To discharge this statutory duty, provisions must have due regard to doing the following:

- I. Eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited by or under the Act.
- II. Advance equality of opportunity between people who share a protected characteristic and those that do not.
- III. Foster good relations between people who share a protected characteristic and those that do not.

Compliance with the duty will help provisions to avoid direct and/or indirect discrimination.

The provision ensures all staff are treated fairly, and they also take particular care in respect of those staff who have different working patterns or those with particular 'protected characteristics' under equality legislation – age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

An employee will be discriminated against if they can argue they have been (or have good reason to believe they are likely to be) treated less favourably than a comparator employee and the less favourable treatment can be attributed to reasons directly or indirectly associated with a protected characteristic. At the same time, provisions should ensure part time and fixed-term employees are not treated less favourably.

Appraisers, pay recommendations and decisions in provisions should be assessed to establish whether there are implications for people with particular protected characteristics. So, for example, to avoid discrimination, provisions should consider how objectives can be fairly weighted, how pay progression can be made fairly available to all eligible employees irrespective of their individual circumstances and how pay decisions and appeals against pay decisions can be supported by a narrative that reflects the fair treatment of employees.

A pay audit will help to ensure the rate of pay for each job is equitable and equal pay principles can be fulfilled – men and women doing the same job should be paid the same or broadly the same. And any differences, while permitted, must be capable of being objectively justified.

Long-term absentees

There's nothing in the statutory provisions that prevents a provision from making performance-related pay decisions for tutors / employees who are on long-term absence or that would mean doing so would place provisions in breach of the provisions of the Equality Act 2010.

Avoiding discrimination

In relation to absence due to maternity leave, if a woman is denied an appraisal because of her maternity, this will amount to discrimination.

The Directors will ensure that pregnant employees or employees on maternity leave, will complete their appraisals before the employee commences maternity leave (even if this is early in the appraisal year) and then base any assessment of performance on the evidence to date in the relevant appraisal period. Account could also be taken of performance in previous appraisal periods if there's very little to go on in the current appraisal period.

An employee should be given the opportunity to attend provision during their maternity leave (on a 'keep-in-touch' day) or make written representations so that a reliable appraisal can take place and be recorded as usual.

Similarly, employees returning from a career break may be unintentionally discriminated against because they have been absent from the workplace – if their absence is, say, related to their caring responsibilities, this is likely to be vulnerable to discrimination.

As a provision we will ensure that no disadvantage is suffered by a disabled tutor, due to their disability. The Directors will check that adjustments that can be reasonably made to accommodate a tutor in that position are incorporated.

This policy will be reviewed on an annual basis.

Annex 1 - Appraisal Process Flow Chart

Start of Appraisal Process
Planning Meeting Complete by 31st October • Discuss role, performance, contribution to provision goals • Set SMART objectives aligned with provision priorities
Objective Setting & Standards • Confirm applicable Tutor Standards/ Support Staff Standards • Agree evidence sources and support required • Moderated by Directors
Monitoring and Evidence Gathering • Observe practice (classroom/ task) • Collect evidence on progress outcomes, and impact
Mid-Year Review Meeting February • Check progress, discuss challenges, adjust objectives/ support if needed
End of Year Review Meeting July • Assess performance against objectives and standards • Identify development needs • Discuss future CPD opportunities
Evidence Gathering & Finalising Objectives August – September • Extended period to finalise any outstanding appraisal matters and to gather evidence
Appraisal Report By the 31st October • Written assessment provided by appraiser • Include overall performance rating towards targets • Pay recommendations
Pay Progression Decision • Directors review recommendations • Pay progression based on evidence presented
Appraisal Cycle Begins October

Transition to Capability

Performance concerns should be dealt with through the staff appraisal policy, but if progress towards addressing performance concerns is insufficient or the concerns are sufficiently serious, a 'transition meeting' should be held.

Annex 2 – Capability Process Flow Chart

Transition Meeting Informal – 10 weeks Support Plan • Move from appraisal to informal capability processes • Ensure practical support, advice and guidance • Training should be provided • Performance criteria should be clear and monitored in agreed time schedules • The employee's shortcomings are clearly set out in writing
Transition Meeting Decision Within 5 Days The decision will be either to continue with the appraisal process or to invoke the capability procedure by convening a formal capability meeting.
Move to Capability Process Formal There is evidence to supporting the following: • Underperformance against agreed objectives and/ or standards has prevailed for some time. • The underperformance is either serious or has persisted despite the provision of support.
Appraisal Process Suspended
Formal Capability Meeting Give 5 days' notice with information about the concerns • Staff member can bring a companion • Chair to follow script or procedures • Concerns presented and staff member can provide evidence • Decision from meeting given in writing • Staff member can appeal
Monitoring and review period • This period will include regular task/ classroom observation, performance evaluation and monitoring, training, management support and guidance.
Formal Review Meeting • Satisfied that the tutor/ employee has made sufficient improvement, the capability procedure will end, and the appraisal process will restart. • If some progress has been made and there's 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 tutor/ employee will receive a final written warning.
Decision Meeting Including Directors & HR representative • If following a final written warning, performance doesn't improve to an acceptable standard, the case will be referred to an appropriate panel. • A further monitoring period will be set, and a subsequent and final review meeting will be scheduled. • If an acceptable standard of performance has been achieved overall during the monitoring and review period, the capability procedure will end, and the appraisal process will restart.
Dismissal • If performance remains unsatisfactory a decision (or recommendation to the Directors) will be made that the tutor should be dismissed or required to cease working at the provision as soon as possible. • Directors will dismiss the tutor / employee with notice.
Appeal • If an employee feels the decision to dismiss them is wrong or unjust, they may appeal in writing against the decision. • The employee will be informed in writing of the results of the appeal hearing without unreasonable delay. • The decision of the appeal panel is final.