



Highlands

School & Sixth Form

Dare to
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Capability Procedure Policy

Governor Committee	Finance & Resources
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Capability procedure (performance) - For all teaching and support staff

Policy and Procedure for use by maintained schools, PRUs, academies and others

Section A: Policy

IMPORTANT NOTES RELATING TO THIS DOCUMENT

(1) Terminology Used in this Document

This procedure may be adopted and used by maintained schools, PRUs, Academies and/or other schools. Therefore, where the words 'Headteacher', 'Governing Body', 'Governors', 'school', 'PRU Management Committee' or PRU are used in this document, this should also be interpreted (and can be adapted) to mean, or read, 'Principal', Chief Executive, Head of School, 'Proprietor', Members, Directors, Board of Trustees, Local Governing Body, Governing Board, 'Academy' or 'Academy Trust' etc., as relevant to type of school and structure in place.

(2) Operation of this Policy Document

During any periods of exceptional national or local circumstances, for example, where social distancing is a requirement or deemed to be advisable, it may be necessary and appropriate to temporarily operate and progress individual cases using this procedure, or any aspect of it, by alternative means. This could include, for example:

- utilising telephone and video-conferencing for investigations, meetings and hearings via electronic means
- where meetings are able to be held in physical form, observing any requirements for travel and social distancing that may be in place;
- putting in place any other changes or adjustments that may be prudent and practical in the prevailing circumstances, e.g. adjustments to timescales set out in the Policy document. It should be noted that in such circumstances, each case will be assessed individually by Headteachers/Governors and the Schools' Personnel Service (or HR provider), in consultation with the relevant Professional Association/Trade Union, in terms of progressing it and any adjustments that may be required.

Section 1: introduction

Governing Bodies of Schools with delegated budgets are required, under the School Staffing Regulations 2009 and any subsequent amendments, to establish procedures for the regulation of dealing with lack of capability on the part of staff at the school. This requirement also applies to PRU Management Committees who must adhere to relevant sections of the School Staffing Regulations. Academies and other types of Independent school are bound by any requirements set out in the Education (Independent School Standards) Regulations 2014, their Funding Agreements and Articles of Association.

In any event, all employers should have capability procedures in place as the law requires all employers to act reasonably when dealing with capability issues. Employers are also strongly advised to have regard to the ACAS

(Advisory, Conciliation and Arbitration Service) Code of Practice on 'Disciplinary and Grievance Procedures' when handling capability matters in the workplace. The Code makes clear that it includes, under the heading of 'Disciplinary', situations including both misconduct and poor performance. Employment Tribunals are legally required to take the Code into account when considering relevant cases. They are able to adjust any compensatory award made in these cases by up to 25 per cent for unreasonable failure to comply with any provision in the Code.

This *School/PRU* is committed to ensuring that the Capability Procedure contained within this document follows all the principles of natural justice, as highlighted in the ACAS Code and associated guidance.

Section 2: The purpose of a capability procedure

The aim of the formal capability process is to seek to achieve an improvement in an individual's performance within the context of the *School's/PRU's* plan for improving educational provision and performance, and the standards expected of both teachers and support staff. It also sets out the process that will apply when sufficient improvement cannot be achieved.

The Policy and Procedure contained within this document is intended to be implemented in a fair, efficient manner, 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 appraisal and performance review will help to avoid the need for initiating a formal capability process. In many cases, an improvement may be achieved informally with appropriate minimum support and attention. However, it must be acknowledged that, in other cases, the more formal process set out in this document will be necessary.

Where the performance of an employee is in question, it is expected that *Headteachers* and/or designated senior members of staff will take the following steps before implementing the formal procedure:

- The matter will be drawn to the employee's attention;
- The employee will be informed of what is required to achieve a satisfactory standard of performance, as relevant;
- There will be an assessment of the employee's need for training and support and this will be provided if appropriate;
- The employee will be given a suitable period of time within which to obtain a satisfactory standard of performance.

This ensures that potential issues are dealt with informally, at an early stage, with a view to resolving problems as quickly as possible outside of the scope of formal procedures.

If an employee's capability is, or may be, affected by illness or injury, a medical opinion will be sought from the *School's/PRU's* Occupational Health Service, as appropriate. Medical opinions will take into account any report from the employee's medical adviser.

The formal capability procedure is the means by which management ensures that standards are maintained. When informal measures have failed to bring about an improvement in performance, or are inappropriate, formal action may be necessary where:

- An employee fails to maintain an acceptable standard of performance;
- An employee's performance is prejudicial to staff relations or the maintenance of the service.

Section 3: Application of the capability procedure

This Capability Procedure relates to those employees for whom the *Governing Body/PRU Management Committee* has a direct responsibility.

Where an employee is not the direct responsibility of the *Governing Body/PRU Management Committee*, for example, an unattached teacher or centrally employed member of staff, an alternative procedure is likely to apply.

Any action to be taken against a worker employed by an Agency or external company would need to be addressed by that Body. In any such circumstances, further advice should be sought from the Schools' Personnel Service.

This procedure applies to **teaching staff and support staff** in respect of capability (performance) issues. The only exceptions to this are:

- Early Career Teachers (ECTs) whose capability is addressed as part of the statutory induction process; and
- Support staff who are subject to capability procedures under the 'Induction and the Probation and Assessment Period for Support Staff in Schools'.

Section 4: The scope of the formal capability procedure

The 'Capability Procedure (Performance)' applies to:

- Teachers (including the *Headteacher*) about whose performance there are serious concerns that the Appraisal process has been unable to address; and
- Support staff about whose performance there are serious concerns that Performance Management has been unable to address.

The procedure aims to:

- Outline the rights and responsibilities of management, employees and employees' representatives, when capability action is contemplated, and to ensure that the practice of management is in line with the duties imposed by legislation and guidance;
- Protect the employee against unfair capability action, whilst enabling managers to fulfill their responsibility to manage the service in accordance with its stated aims.

In general, the procedure is intended to ensure that no employee is subjected to capability action without:

- Having first been given details of the alleged shortcomings in performance;
- Attempts having been made to improve matters informally, where appropriate;
- Being given the opportunity to respond to the alleged shortcomings in performance before decisions are reached;
- Being afforded the opportunity of being accompanied by an appropriate professional association/trade union representative or a work colleague to speak on their behalf;

- Being afforded the right of appeal against capability action;
- Being given an explanation for any decision reached.

The Capability Procedure (Performance) does not apply where an employee's services are proposed to be terminated for one of the following reasons:

- Ill-health;
- The end of a temporary or pre-determined fixed term contract;
- Redundancy;
- Misconduct;
- Where continuation of employment would contravene a duty or restriction imposed by statute, e.g. expiry of permission to work in the UK or any other statutory bar, prohibition or disqualification.

Section 5: Consideration of a capability case

(a) Delegation of Authority

Regulations allow the *Governing Body/PRU Management Committee* to delegate many of its functions relating to staff employment to:

- the *Headteacher*;
- one or more *governors (or members of the PRU Management Committee, as appropriate)*; or
- one or more *governors (or members of the PRU Management Committee, as appropriate)* and the *Headteacher*.

With the exception of decisions relating to the *Headteacher*, this includes capability decisions up to and including dismissal. The *Governing Body/PRU Management Committee* may delegate any such decisions relating to the *Headteacher* to one or more *governors (or members of the PRU Management Committee, as appropriate)* nominated by the Chair.

In terms of this procedure:

- **For decisions relating to all staff except the Headteacher - the *Governing Body/PRU Management Committee* will normally delegate functions relating to all capability and dismissal decisions to the *Headteacher*, unless there are particular circumstances where it considers that this would be inappropriate. Where the latter is the case, functions relating to capability and dismissal decisions will be delegated to one *governor/member of the PRU Management Committee* nominated by the Chair.**
- **The *Governing Body/PRU Management Committee* will also consider and agree at the relevant time, whether the delegation of functions should continue in the event of an *Acting Headteacher* being in place or if a *Deputy Headteacher* is asked to undertake the duties of the *Headteacher* in the event of his/her long term absence.**
- **Subsequent appeals will be delegated to one or more *governors/members of the PRU Management Committee* not involved in the original determination in order to provide a greater degree of impartiality. However, the intention is that appeals will normally be heard by a Panel of **three *governors/members of the PRU Management Committee*** unless there are not enough *governors/members* who have not been involved in any previous action or decision connected with the capability/dismissal, or there is otherwise a**

conflict of interest.

- **For such decisions relating to the *Headteacher*** - functions relating to **capability action and dismissal will be delegated to a Panel of one or more governors/members of the PRU Management Committee.** (At this stage, when determining numbers, the *Governing Body/PRU Management Committee* will need to ensure that there will be a sufficient number of different *Governors/members of the PRU Management Committee* to hear an appeal, if required. See below in relation to Appeal Panel numbers).
- Any subsequent **appeal will be delegated to a Panel of one or more governors/members of the PRU Management Committee not involved in the original determination** in order to provide a greater degree of impartiality. The intention is that an appeal will normally be heard by a Panel of **three governors/members unless** there are not enough governors who have not been involved in any previous action or decision connected with the capability/dismissal, or there is otherwise a conflict of interest. In any event, the Appeal Panel will consist of no fewer members than the first Panel.

Where functions have been delegated, the person, or persons, to whom they have been delegated cannot delegate them to another person or persons.

The delegation of functions will be agreed by the whole *Governing Body/PRU Management Committee* and reviewed at least annually, taking into account the factors set out in the School Staffing Regulations and associated guidance.

The *Governing Body/PRU Management Committee* will fully document all decisions made.

(b) Schools/PRUs that have had their delegated budget suspended

While staff capability and dismissal decisions are normally a matter for the *school/PRU*, the Local Authority will be responsible for determining these arrangements where the delegated budget has been suspended.

Where the Local Authority is responsible for taking direct action for such matters in respect of Community schools, including PRUs, this will be carried out in accordance with the relevant Council Policies and Procedures applicable to centrally-employed staff, as appropriate. In respect of Foundation and Voluntary Aided Schools, the Local Authority may issue the Governing Body (or others controlling the use of the premises, as relevant) with directions.

These arrangements will be applied as required by Part 1 of Schedule 2 of the Education Act 2002 and associated guidance, and any subsequent amendments.

(c) Schools/PRUs that have an Interim Executive Board (IEB) in Place

In circumstances where an IEB takes on the responsibilities of the *Governing Body/PRU Management Committee*, any reference to the *Governing Body or PRU Management Committee* in this document should be interpreted as meaning the IEB.

(d) Collaboration Arrangements and Federations

School Federation arrangements allow two or more schools to federate under one Governing Body, subject to the procedures set out in the relevant Regulations.

School Collaboration arrangements enable the Governing Bodies of two or more maintained schools to work together in relation to staffing functions. Each school within a collaborative arrangement will retain its own Governing Body and will have joint committees. Collaborating Governing Bodies may delegate functions to a Headteacher or a joint committee in the same way that they may delegate them to the Headteacher or a committee of a single Governing Body. (Similarly, one or more Governing Bodies may make collaboration arrangements with one or more Further Education Bodies).

The framework for the above arrangements are set out in specific legislation relating to School Governance (Federations, Collaborations, Constitution and Procedures, as relevant) as well as within Education and Inspections, Standards and Framework Acts and School Staffing Regulations. These apply to Federation and Collaboration arrangements, as appropriate.

Any references in this document to schools, Head teachers, Governing Bodies and Governing Body Panels shall, normally, also be taken to include:

- Schools, Headteachers, Governing Bodies and Panels working together under **Collaboration** arrangements (as well as Principals, Further Education Bodies and Committees, where relevant); and
- Those staff and others attached to, or associated with, schools which are part of a statutory **Federation** under the Federation Regulations and should be interpreted accordingly.

The above arrangements will also apply in the case of PRUs and PRU Management Committees, as well as Academies and Proprietors, Governing Bodies and/or Academy Trusts, as relevant and if applicable at any time.

Section 6: Transition from appraisal (teachers) or performance management (support staff)

A flowchart setting out the Capability Process following transition from Appraisal or Performance Management is attached at Appendix 1 to this document.

(a) Transition from Appraisal – Teachers:

If the *Headteacher*, or a member of staff nominated by the *Headteacher*, is not satisfied with progress, having raised a formal ‘cause for concern’ and following a period of support and review as part of the appraisal process, the teacher will be notified in writing that:

- the appraisal system will no longer apply;
- his/her performance will be managed under the capability procedure; and that ● s/he will be invited to a capability meeting.

A model letter ‘Transition from Appraisal (Teachers)’ is attached at Appendix 3A to this document.

(b) Transition from **Performance Management – Support Staff:**

If the *Headteacher*, or Line Manager, is not satisfied with progress having raised the matter with the member of staff and following a period of **Performance Management**, s/he will be notified in writing that:

- his/her performance will no longer be managed informally but will now be managed under the capability procedure; and that
- s/he will be invited to a capability meeting.

A model letter 'Transition from Performance Management (Support Staff)' is attached at Appendix 3B to this document.

Section 7: Precautionary suspension

Suspension is the temporary exclusion of an employee from his or her duties or place of work (or both).

In most situations, suspension will not apply to an employee who is subject to formal capability proceedings.

The intention is to give the employee the opportunity to improve his/her performance, with appropriate support and review, where shortcomings have been identified before any further action is taken. **However, in exceptional circumstances, suspension may be considered necessary.** This may apply (for example) where it is considered that allowing the employee to continue in his/her role constitutes a health and safety risk.

The Headteacher, in addition to the Governing Body/PRU Management Committee, may suspend from work any employee (confirming this in writing, and providing details of the reasons for the suspension within 48 hours) if he/she considers suspension necessary in the interest of the school or any person in its care or custody, or of the employee him/herself.

In the case of a need to suspend a *Headteacher*, any such decision will be taken only by the *Governing Body/PRU Management Committee*, or the Chair or Vice-Chair acting on their behalf. Any such action shall be reported to the *Governing Body/PRU Management Committee* at the earliest opportunity. However the details should not be discussed as this may hinder impartiality at a later stage. The suspension of any employee at a school shall be notified to the relevant Local Authority Director within 48 hours.

In relation to school federations, the relevant regulations provide that both the *governing body* and the *Headteacher* of the federation (if any) shall have the power to suspend any person employed to work at the federation, and the *Headteacher* of a federated school shall have the power to suspend any person employed to work at that federated school. Similar arrangements apply in relation to *PRUs*.

During suspension, the employee shall be paid the contractual remuneration applicable to the post immediately prior to the suspension. For this purpose contractual remuneration shall include contractual overtime, bonus, shift or other allowances. In the case of School Caretaker/Site Managers, the remuneration will include payment for any regular lettings to which the employee is entitled under their terms and conditions of service. Annual pay awards shall not be withheld during a period of suspension. An employee who is resident at his or her place of work will be subject to such special arrangements as may be necessary solely for the purpose of allowing him or her reasonable access to the residence, unless suitable alternative residential accommodation is made available for the period of the suspension.

The suspension will be for the shortest possible period to allow for capability proceedings to take place. In normal circumstances, the period of suspension will not exceed 20 working days, unless notice of a capability meeting is given within that period, in which case the suspension will continue until the date of the meeting. In

exceptional circumstances, it may be necessary to extend the period of suspension for example, if it is considered necessary or appropriate before deciding what further action, if any, to take under this procedure. Where any period of suspension is extended the employee will be notified in writing and will be given the reasons for this decision.

A suspended employee who wishes to seek access to information at the workplace, for the purpose of preparing a response to capability proceedings being initiated against him/her, **must first apply to the *Headteacher* to so do** and must comply with any conditions imposed on such arrangements. Similarly, the employee must not contact other employees or workers to discuss or obtain information relating to the case, or on any other matter, without the permission of the *Headteacher*. Any such request will not be unreasonably refused. This provision does not apply to the professional association/trade union representative acting on behalf of the suspended employee.

A suspended employee may not undertake any other paid employment during periods when (but for the suspension) the employee would normally be at work for the *school/PRU*, except with the written agreement of the *Headteacher*. A suspended employee must also ensure that s/he makes him/herself available to participate in the capability process when required. In these circumstances, s/he would need the express consent of the *Headteacher* should s/he wish to take any holiday, or otherwise be unavailable, at any time during the period of suspension.

Any breach of the above obligations may result in disciplinary allegations. This will be detailed in the letter of suspension to the employee.

As stated above, in most situations, suspension will not apply to an employee who is subject to formal capability proceedings. However, if, in exceptional circumstances, suspension is deemed to be necessary, the model letter contained within the Disciplinary Procedure will be adapted for use, as appropriate to the circumstances of the case.

Note that where a suspension letter is issued at the start of the process, it will then need to be followed by the letter referred to in Section 6 above, **'Transition from Appraisal (Teachers)' or 'Transition from Performance Management (Support Staff)' attached at Appendices 3A and 3B to this document.**

Section 8: General principles relating to the capability procedure and capability meetings, including appeals

(a) Definition of Working Days

In the context of this procedure, 'working days' will be regarded as school working days (determined according to the particular terms and conditions of employment of the staff concerned).

(b) Confidentiality

All proceedings covered by this document will be treated with the strictest confidence. Confidentiality will be observed fully by all parties involved, prior to, during and subsequent to any formal meetings. Records relating to capability matters will be safeguarded carefully.

(c) Employee Representation

As soon as it becomes evident that formal capability action is being considered, the employee will be informed of his/her right to be represented at any interviews and at any subsequent capability meetings.

Any employee subject to capability action will be informed, at each stage during the formal capability procedure, that they have the right to be represented and/or accompanied by:

- a local area or regional official of a Trade Union/Professional Association;
- a workplace Trade Union/Professional Association Representative, as long as s/he has been reasonably certified in writing by their union as having experience of, or having received training in, acting as an employee's companion at capability meetings. Certification may take the form of a card or letter; or
- a work colleague.

In the event of an official of a recognised Professional Association or Trade Union being the subject of capability proceedings, the relevant Local Authority Director or his/her representative will be advised of the position, in order that the full-time official can be notified in writing of the investigation as soon as reasonably practicable.

In relation to the employee's chosen companion, the following points should be noted.

The companion will be allowed to address any meeting that takes place in order to:

- Put the employee's case
- Respond on the employee's behalf to any view expressed at any meetings
- Sum up the employee's case.

The companion may also confer with the employee during meetings.

The companion may not:

- Answer questions on the employee's behalf
- Address any meeting that takes place if the employee does not wish it
- Prevent the employer from explaining their case.

(d) Where an Employee Raises a Grievance during the Capability Process

On occasion, an employee may raise a grievance during a capability process. In these circumstances, it may be decided to temporarily suspend the capability process to deal with the grievance. Alternatively, where the grievance is related to the capability matter or process, it could be decided that it is more appropriate for the employee to present the grievance as part of his/her case at a capability meeting or appeal. An impartial person, normally a *Governor/member of the PRU Management Committee* who has not been involved in and has no personal interest in the matter, will decide upon the appropriate course of action to follow in this situation.

(e) Headteacher's Attendance at Governor/PRU Management Committee Meetings

In circumstances where s/he is not hearing the case under delegated authority, the *Headteacher of a school/PRU* may, of right, be present at any capability to give advice to the *Governors/PRU Management Committee* but, in the interests of natural justice, may be requested by the members of the panel to withdraw at any time during the

proceedings.

Where the possibility of dismissal or removal of any employee from a *school/PRU* arises, the attendance of the *Headteacher*, for the purpose of giving advice, is a statutory right under the terms of the School Staffing (England) Regulations 2009 and any subsequent amendments.

The above provisions will not apply where the *Headteacher* is formally presenting the case against the employee, or is a witness, or where the *Headteacher* is the subject of the capability action.

(f) Local Authority Representation at Meetings

Where the possibility of dismissal or removal of any teacher from a Community school arises, the LA's representative will be entitled to attend for the purpose of giving advice. The Chairperson or Panel, as appropriate, are required to consider any advice given before reaching any such determination. This is a requirement under the terms of the School Staffing (England) Regulations 2009 and any subsequent amendments. This entitlement does not exist in relation to Voluntary Aided or Foundation schools but it may do so where an agreement is put in place between the parties.

(g) Attendance of Others at meetings

The Chairperson or Panel, as appropriate, may also have present a Human Resources (HR) and/or legal adviser for the purpose of advising on procedure and law.

(h) Note Taking at Meetings

The Chairperson or Panel presiding over any meetings that are part of this procedure will normally have a clerk (notetaker). Others present at any such meetings may take their own notes. However, they may not record a meeting, or any part of it, unless this is with the agreement of the person chairing the meeting and with the knowledge of all participants, including witnesses.

(i) Variations to the Procedure

All matters relating to the procedure or evidence to be received at a meeting will be at the discretion of the Chair of the Capability or Capability Appeal Panel (as appropriate). This procedure will only be varied with the agreement of both parties, where the Chair of the Panel considers it fair and reasonable to do so.

(j) Where an Employee Fails to Attend a Capability Meeting or Capability Appeal Meeting

If an employee fails to attend a capability meeting, the Chair will decide whether to proceed in the employee's absence or whether to reconvene the hearing at some other time. Before such a decision is taken, and where no prior notification of non-attendance has been received from the employee, all reasonable attempts will be made to contact the employee or to consider any reasons presented by him/her for not attending, in order to ascertain and take account of the reason for his/her absence. Where an employee is unable to attend through sickness, medical evidence to that effect will be required to enable a postponement to be considered. The Chair may seek HR advice before reaching a decision to proceed or otherwise.

(k) Adjournment

The Chair may adjourn the meeting at any stage, for any reason, and both parties will be given reasonable notice of the reconvened meeting and of the nature of any new evidence to be dealt with at that time.

Either party may request an adjournment. In circumstances where an adjournment is requested **other than** for a brief pause on the day of the meeting itself, they must provide the Chair with reasons for their request in order for the Chair to consider this and to decide if an adjournment is reasonable. The decision of the Chair in this matter will be final. Where necessary, the period of adjournment will be reviewed by the Chair after 2 weeks.

(l) Termination of Employment By Notice

Any notice to be given to an employee under this procedure will be deemed properly delivered to, and received by, the employee if:

- It is handed to the employee; or
- It is hand-delivered to the employee's last known residence as notified by the employee; or
- It is posted first class in an envelope addressed to the employee at the employee's last known address, in which case it will be regarded as having been received in the ordinary course of post.

The employee's notice period will begin from the date that the notice is deemed to have been properly delivered and received in accordance with the above.

The employee may also be asked to provide a personal email address. Where this is the case, the notice may be emailed to him or her IN ADDITION to any of the above.

The minimum period of notice to which **AN ESTABLISHED** TEACHER** will be entitled (unless the contract is terminated by summary dismissal should gross misconduct or gross negligence occur), is two months' notice in the Autumn and Spring Terms, and three months' in the Summer Term, terminating at the end of a school term.

Additionally, all established teachers with more than 8 years' continuous service are entitled to receive a minimum of one week's notice for each year of service up to a maximum of 12 weeks for 12 or more years of service. Minimum notice periods are summarised below.

MINIMUM NOTICE PERIODS – ALL TEACHERS BELOW THE HEADTEACHER			
Period of Continuous Service	Termination of service 31st December	Termination of service 30th April	Termination of service 31st August
Less than 9 years	2 months	2 months	3 months
At least 9 years but less than 10	9 weeks	9 weeks	3 months
At least 10 years but less than 11	10 weeks	10 weeks	3 months
At least 11 years but less than 12	11 weeks	11 weeks	3 months
12 years or more	12 weeks	12 weeks	3 months

The minimum period of notice to which **AN ESTABLISHED** HEADTEACHER** will be entitled (unless the contract is terminated by summary dismissal should gross misconduct or gross negligence occur), is three months' notice in the Autumn and Spring Terms, and four months' notice in the Summer Term, terminating at the end of a school term. Minimum notice periods are summarised below.

MINIMUM NOTICE PERIODS – HEADTEACHERS		
Termination of Service 31 st December	Termination of Service 30th April	Termination of Service 31 st August
3 months	3 months	4 months

The minimum period of notice to which **AN ESTABLISHED** MEMBER OF THE SUPPORT STAFF** will be entitled is:

- One month in respect of an employee with up to 5 years' continuous service
- One week for each year where the employee has 5 years or more but less than 12 years of continuous service
- Not less than 12 weeks where the employee has 12 years or more continuous service. Minimum notice periods are summarised below.

SUPPORT STAFF	
Period of Continuous Service	Minimum Notice Period
Up to 5 years	One month
5 years or more but less than 12 years	One week for each year (e.g. 5 years or more but less than 6 years = 5 weeks, 11 years or more but less than 12 years = 11 weeks)
12 years or more	Not less than 12 weeks

N.B. Although the notice periods set out above for support staff will often be the norm, individual contracts will need to be checked in advance as a particular post, or posts, may for various reasons have additional notice requirements incorporated. For example, senior posts may have a notice period of two or three months.

*****For the purposes of this document, 'Established' should be interpreted as not including casual workers, workers supplied by a third party, or employees on fixed term contracts (with or without a predetermined end date).***

It should be noted that **different arrangements may apply where AN EMPLOYEE IS ON A FIXED TERM CONTRACT (WITH OR WITHOUT A PREDETERMINED END DATE).** Any notice that may apply will be determined by the individual's fixed term contract of employment.

ADDITIONAL NOTE: Summary dismissal (dismissal without notice) will NOT apply in circumstances where an employee is dismissed due to a lack of capability.

(m) Pay After Effective Date of Dismissal

Payment of remuneration for any period after the effective date of a dismissal shall only be made if an appeal against the dismissal is successful.

(n) Resignation of an Employee

At any stage of the capability procedure, the *Headteacher* or *Governing Body/PRU Management Committee* may decide to accept the resignation of the employee (with or without due notice), subject to any conditions which may be agreed at that time.

(p) The Clerk's (Note taker's) Report

The formal written report of formal capability meetings will not be presented to the *Governing Body/PRU Management Committee* for consideration until after any appeal against a capability decision has been concluded, or the timescale for lodging an appeal has lapsed. The report will be a Part II item on the *Governing Body/PRU Management Committee* agenda. The Clerk's report will be confined to reporting the minimum essential details i.e. the findings and the sanction, as appropriate.

(q) Provision of Information Relating to Teacher Capability

It should be noted that the School Staffing (England) Regulations 2009, as amended by the School Staffing (England) (Amendment) Regulations 2012, require the Governing Body of a maintained School to confirm whether or not a member of the teaching staff at that school has, within the last two years, been the subject of capability procedures and, if so, provide details, if asked to do so by the Governing Body of a maintained school, or the Proprietor of an Academy School, to which that person has applied for a teaching post. In such circumstances, the Governing Body must provide written details of the concerns which gave rise to this, the duration of the proceedings and their outcome. Similarly, Academies and others may also be required to provide, if asked, such information to other Academies, maintained schools and FE Institutions in accordance with **their** Funding Agreements, Articles of Association and/or Regulations applicable to Independent Schools.

Section 9: Data protection

The *School/PRU* will collect and process personal data in full compliance with its obligations under the General Data Protection Regulation (GDPR) (EU) 2016/679 and the Data Protection Act 2018 by keeping employees' personal data up-to-date, by storing and destroying it securely, by not collecting or retaining excessive amounts of data, by protecting personal data from loss, misuse, unauthorised access and disclosure and by ensuring that appropriate measures are in place to protect personal data.

The *School/PRU* will keep employees' personal data confidential and share it only with persons with a genuine need to know, such as the Local Authority, Department for Education (DfE), Disclosure and Barring Service (DBS) and/or the Teaching Regulation Agency (TRA), in relation to relevant matters. The *School/PRU* may also share employees' personal data with other third parties, but only where this is necessary to comply with a legal obligation or is permitted under UK law.

For further information relating to the Data Protection arrangements, employees should refer to the *School's/PRU's* Privacy Notice and other associated documents. These can be located on the *School's/PRU's* website or otherwise by contacting the *School/PRU* Office.

Section B: Procedures

The Formal Capability Procedure

IMPORTANT NOTES:

(i) This procedure is written on the basis that the *Headteacher* will hear the case and reach a decision at this stage. However, if this is inappropriate, the formal Meetings will be conducted by one *governor/member of the PRU Management Committee*, as set out under 5. (a) of this document 'Delegation of Authority' and should, therefore, be substituted for the *Headteacher* in the following procedure.

(ii) Prior to using this procedure, it is important to read Section 8. above 'General Principles relating to the Capability Procedure and Capability Meetings, including Appeals'.

(iii) Formal meetings under this procedure will normally follow the general format described in Appendix 2 to this document 'General Format of Formal Capability Meetings and Appeals'.

Section 1: Prior to the Formal Capability Meeting

Having been informed that the Appraisal (teachers) or Performance Management (support staff) will no longer apply and that s/he will be invited to a formal capability meeting, formal notification of the meeting will be sent to the employee.

At least 5 working days' notice will be given of the formal capability meeting. (This should be interpreted to mean that if the meeting is to take place on a Wednesday (for example) the notification must be sent to arrive by the Wednesday of the previous week). The notification will contain:

- (a) 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;
- (b) Copies of any written evidence;
- (c) Details of the time and place of the meeting;
- (d) Confirmation of the employee's right to be accompanied; and
- (e) If relevant, the names of any witnesses to be called to the meeting.

A model letter 'Requirement to Attend a Formal Capability Meeting' is attached at Appendix 3C to this document.

Section 2: The Formal Capability Meeting

The purpose of the meeting is for an informed judgment to be made following a presentation of the facts. A senior member of staff, or the employee's Line Manager, who has gathered the evidence relating to the employee's performance, will normally present the evidence to the *Headteacher*. The employee and his/her companion may, if they wish, respond to the concerns about his/her performance and make any relevant representations. This may provide new information or a different context to the information/evidence already collected.

During, or at the end of, the meeting, the *Headteacher* may:

(a) **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/Performance Management** process. In such cases, the capability procedure will come to an end;

(b) **Adjourn the meeting**, for example, if s/he decides that further investigation is needed, or that more time is needed in which to consider any additional information;

(c) **Decide that concerns about the employee's performance have been substantiated**. In these circumstances, s/he will –

- **identify the professional shortcomings** (for example, in the case of a teacher, which of the standards expected of teachers are not being met, details of objectives not being met; in the case of a member of the support staff, which duties and/or responsibilities of the role are not being met etc);
- **give clear guidance on the improved standard of performance needed** to ensure that the employee can be removed from formal capability procedures. (This may include, for example, 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 his/her 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 this could be, for example, between **four and ten weeks**. (The precise time period set will be reasonable and proportionate, but not excessively long, and will 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. This warning may take the form of a formal written warning or, in very serious cases, a final written warning.

Where a warning is issued, as in (c) above, the employee 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.

A model letter 'Outcome of Formal Capability Meeting (Warning)' is attached as Appendix 3D to this document.

Section 3: Monitoring and Review Period Prior to Formal Capability Review 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 employee will be invited to a formal review meeting**, unless s/he was issued with a final written warning, in which case s/he will be invited to a decision meeting.

At least 5 working days' notice will be given of the formal capability review meeting. (This should be interpreted to mean that if the meeting is to take place on a Wednesday (for example) the notification must be sent to arrive by the Wednesday of the previous week). The notification will contain:

- (a) Details and copies of any written evidence gathered during the monitoring and review period and the possible consequences to enable the employee to prepare to answer the case at the formal capability review meeting;
- (b) Details of the time and place of the meeting;
- (c) Confirmation of the employee's right to be accompanied; and
- (d) If relevant, the names of any witnesses to be called to the meeting.

A model letter 'Requirement to Attend a Formal Capability Review Meeting' is attached as Appendix 3E to this document.

Section 4. The Formal Capability Review Meeting

At the meeting the *Headteacher* may:

- (a) **Be satisfied that the employee has made sufficient improvement**, that the capability procedure will cease and that the appraisal/performance management and review process will restart;
- (b) **Decide that some progress has been made**, there is confidence that more is likely and that it is appropriate to extend the monitoring and review period. (A further review meeting will then be arranged as in 3. above. At that meeting, the Headteacher will decide whether sufficient improvement has been made, the capability procedure will cease and the Appraisal/Performance Management process will re-start OR that no, or insufficient improvement has been made and that a final written warning will be issued. In exceptional circumstances only, it may be decided that an extension to the period of monitoring and review would be appropriate);
- (c) **Decide that no, or insufficient, improvement has been made** during the monitoring and review period and that the employee will receive a final written warning.

In relation to (c) above, **the final written warning will mirror any previous warnings that have been issued.** Where a final written warning is issued, the employee will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale) may result in dismissal. S/he will also 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.

At this stage, the employee will also be invited to a formal capability decision meeting. S/he will be given details of the time and place of the meeting and confirmation of his/her right to be accompanied.

A model letter 'Outcome of Formal Capability Review Meeting (Final Warning)' and Requirement to Attend a Formal Capability Decision Meeting' is attached as Appendix 3F to this document.

Section 5: Prior to the Capability Decision Meeting

5 working days' prior to the date previously arranged for the formal capability decision meeting, the employee should be reminded about the meeting and be provided with further evidence relating to his/her performance gathered during the 4-week monitoring and review period to enable him/her to respond at the meeting. If relevant, the employee should also be given the names of any witnesses to be called to the meeting.

(5 working days should be interpreted to mean that if the meeting is to take place on a Wednesday (for example) the notification must be sent to arrive by the Wednesday of the previous week).

There is NO SPECIFIC model letter available for the purpose of reminding the employee about the formal capability decision meeting but the model attached to this document at Appendix 3E 'Requirement to Attend a Formal Capability Review Meeting' may be adapted for this purpose.

Section 6: At the Capability Decision Meeting

At the meeting the *Headteacher* may:

- (a) **Be satisfied that the employee has made sufficient improvement**, that the capability procedure will cease and that the **Appraisal/Performance Management** and review process will re-start;
- (b) **Decide that no, or insufficient, improvement has been made** during the further monitoring and review period and that the employee will be dismissed in accordance with his/her terms and conditions of employment. (See also Section A Para. 8 (h) of this document 'Termination of Employment by Notice').

And, in exceptional circumstances only,

- (c) **Decide that there has been some improvement** and that a period, or further period, of monitoring and review would be beneficial before reaching a final decision. In this case, a further review period will be put in place and a new Capability Decision Meeting arranged.

A model letter 'Outcome of Capability Decision Meeting (Dismissal)' is attached at Appendix 3G to this document.

The Formal Capability Appeals Procedure

IMPORTANT NOTES:

(i) Capability Appeals will be delegated to one or more *governors/members of the PRU Management Committee* not involved in the original determination. However, the intention is that Capability Appeals will normally be heard by a Panel of three *governors/members of the PRU Management Committee* unless there are not enough *governors/members* who have not been involved in the original determination, or there is otherwise a conflict of interest. Any Appeal Panel established will, in any event, consist of no fewer members than the first Panel.

(ii) Prior to using this procedure, it is important to read Section 8. above 'General Principles relating to the Capability Procedure and Capability Meetings, including Appeals'. (iii) Formal meetings under this procedure will normally follow the general format described in Appendix 2 to this document 'General Format of Formal Capability Meetings and Appeals'.

Section 1: Appeal Meeting Arrangements

If an employee considers that a decision to dismiss him/her, or other action taken against him/her, is wrong or unjust, **s/he may appeal in writing against the decision within 5 working days of the date of the decision letter**, setting out the grounds for appeal.

Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place.

A model letter 'Invitation to a Capability Appeal Meeting' is attached as Appendix 3H to this document.

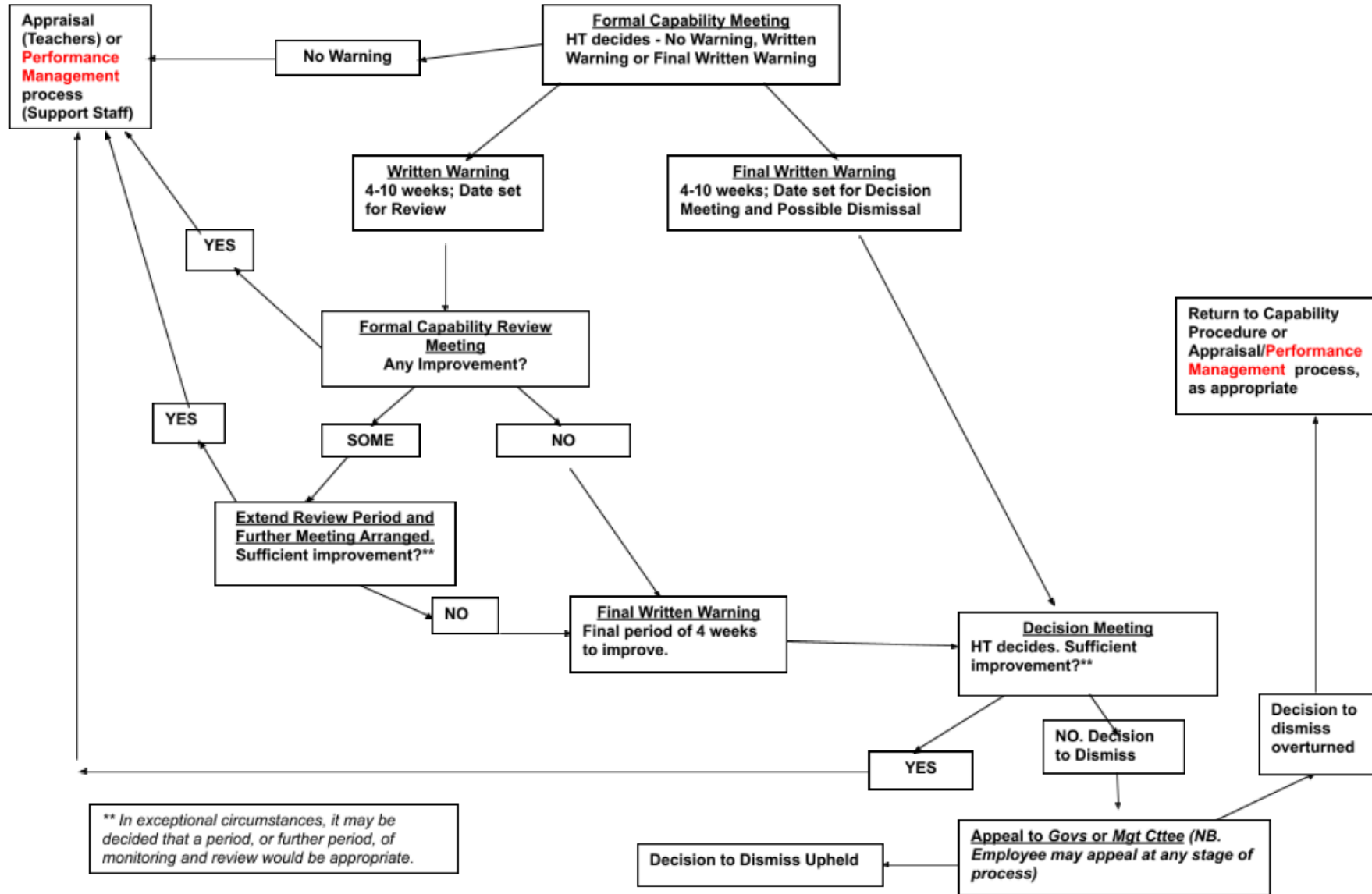
The same arrangements for notification and the right to be accompanied will apply as with formal capability and review meetings and will normally follow the same format. **However, where the grounds for appeal and/or the circumstances of the case mean that this approach is unnecessary and/or would be inappropriate**, then the format of the appeal will be adapted accordingly. (See Appendix 2 to this document 'General Format of Formal Capability Meetings and Appeals').

Following the conclusion of the Appeal Meeting, the employee will be informed in writing of the outcome as soon as possible.

A model letter 'Outcome of Capability Appeal Meeting' is attached as Appendix 3J to this document.

Section C: Appendices

Appendix 1: FLOWCHART: CAPABILITY PROCESS (Following Transition from Appraisal[Teachers]/Performance Management [Support Staff])



Appendix 2 - General Format of Formal Capability Meetings and Appeals

The general format outlined in (A) and (B) below is written on the basis that the *Headteacher* will hear the case and reach a decision at the first stage (i.e. the formal capability meetings prior to any appeal). However, if this is inappropriate, the formal Meetings will be conducted by one *governor/member of the PRU Management Committee*, as set out under 5. (a) of this document 'Delegation of Authority' and should, therefore, be substituted for the *Headteacher* in the following text.

(A) Formal Capability Meetings

1. Preliminaries

The *Headteacher* will make the introductions, identify all those present and explain the purpose of the meeting.

2. Case of Presenting Officer

(a) The Presenting Officer will outline the case;

(b) The employee (and/or their companion if present) may question the Presenting Officer; (c) The *Headteacher* may question the Presenting Officer;

(d) The LA representative and/or HR Adviser, as appropriate, may question the Presenting Officer on issues of a factual nature.

And, if witnesses are being called:

(e) The Presenting Officer will call, individually, any witnesses;

(f) Each witness may be questioned by the employee (and/or their companion if present); (g) The *Headteacher* may ask questions of each witness;

(h) The LA representative and/or HR Adviser, as appropriate, may ask questions of the witnesses on issues of a factual nature;

(i) If the Presenting Officer so wishes s/he may re-examine the witnesses.

3. The Employee's Case

(a) The employee (or his/her companion) may outline their case;

(b) The Presenting Officer may question the employee (and/or his/her companion); (c) The *Headteacher* may question the employee (and/or his/her companion);

(d) The LA representative and/or HR Adviser, as appropriate, may question the employee (and/or his/her

companion) on issues of a factual nature.

And, if witnesses are being called:

(e) The employee (or his/her companion) will call, individually any witnesses; (f) Each witness may be questioned

by the Presenting Officer;

(g) The *Headteacher* may ask questions of the witnesses;

(h) The LA representative and/or HR Adviser, as appropriate, may ask questions of the witnesses on issues of a factual nature;

(i) If the employee (or his/her companion) so wishes s/he may re-examine the witnesses.

NB. In exceptional circumstances the *Headteacher* may wish to recall witnesses to clear up points of uncertainty. Representatives/companions of both parties should also be present in these circumstances and should be given the opportunity to ask questions of the witnesses should they wish in accordance with 2. and 3. above.

At this stage neither party may introduce new evidence.

4. **Summing Up**

At the conclusion of the presentation by both parties the *Headteacher* will invite both parties to:

(a) Sum up the main points of the case if they wish. No new evidence may be introduced at this stage. The Presenting Officer will sum up first to be followed by the employee (or his/her companion);

(b) Withdraw during the consideration of the case by the *Headteacher*;

(c) If the *Headteacher* finds a complaint proven then s/he will invite both parties to address it further on the question of mitigation and what capability action should be taken. The employee (or his/her companion) will have the final address. (In circumstances where the *Headteacher* considers that s/he will not be able to reach an immediate decision in the matter, s/he will invite the parties to address the question of mitigation in advance).

5. **The Decision**

The representative of the LA, the HR and/or the legal adviser (if one is present) will remain to give advice on procedural or legal matters to the *Headteacher*. The Clerk (notetaker for the *Headteacher*) will also remain.

Both parties will be recalled and the decision will be communicated orally to them. If this is not possible immediately, the decision will be communicated as soon as possible. The decision will be confirmed in writing in accordance with the main body of this document.

(B) Formal Capability Appeal Meetings

The grounds of the appeal and all the prevailing circumstances surrounding the case will determine whether or not the appeal hearing takes the form of a full rehearing or, alternatively, whether the *Headteacher* will attend the appeal to present his/her findings. The Chair of the Appeal Panel will reach a decision on whether the Appeal will take the form of a re-hearing or not, after seeking HR advice, as appropriate.

Where the Chair decides, after due consideration of the matter, that the appeal will be by way of a 're-hearing' the format will be as described in (A) above (with the Chair/Appeal Panel replacing the *Headteacher* in that process).

In other cases, where a re-hearing is considered unnecessary or would be inappropriate, taking account of all the circumstances, the process for the appeal meeting should be conducted as set out below.

1. Before the Appeal Meeting

The named contact will advise the employee (or the employee's companion) and the *Headteacher* that they should prepare a written statement in support of their respective cases. (The *Headteacher* may choose to use his/her decision letter from the first Hearing for this purpose either in place of, or in addition to, any other written statement s/he may provide). **These should be sent to the named contact within a timescale determined by the Chair of the Appeal Panel.** Should either party fail to provide a written statement, in accordance with this procedure, they will be limited, at the appeal hearing, to providing an oral statement only.

2. Preliminaries

The Chair of the Appeal Panel will make the introductions, identify all those present and explain the purpose of the hearing.

3. Case of the *Headteacher*, as the person responsible for the capability decision

(a) the *Headteacher* will present a written statement in support of that decision, in the presence of the employee (and his/her companion if attending)

(b) the employee (and/or his/her companion) may ask questions of the *Headteacher*. (c) the appeal panel may ask questions of the *Headteacher*.

(d) the LA's representative and/or HR Adviser may ask questions of the *Headteacher* of a factual nature.

4. The employee's case

(a) the employee will present a written statement in support of his/her case, in the presence of the *Headteacher*.

(b) the *Headteacher* may ask questions of the employee.

(c) the appeal panel may ask questions of the employee.

(d) the LA's representative and/or HR Adviser may ask questions of the employee of a factual nature.

5. At the conclusion of the presentation by both parties the Chair of the Appeal Panel shall:

(a) invite both parties to sum up. The *Headteacher* will sum up first to be followed by the employee (or their representative). No new evidence shall be introduced at this stage.

(b) invite both parties to withdraw during the consideration of the case by the panel. **6. Reaching the Decision**

The LA's representative, the HR and/or the legal adviser (if one is present) will remain to give advice on procedural

or legal matters to the Panel. The Clerk (notetaker for the Panel) will also remain.

Both parties will be recalled and the decision will be communicated orally to them. If this is not possible immediately, the decision will be communicated as soon as possible. The decision will be confirmed in writing in accordance with the main body of this document.

The Panel may confirm, quash or vary downwards the capability decision under appeal (i.e. the Panel may not issue a more severe penalty). For example, the Panel will have the ability to reinstate any employee dismissed at a capability meeting, but will not be able to substitute dismissal for a lesser penalty. **The decision of the Appeal Panel in such matters will be final.**

If the appeal has not been determined when the dismissal would otherwise have taken effect, the contract will be deemed to be in suspension, with the employee on nil pay. If any subsequent appeal is successful the employee will be reinstated with effect from the last day of service, as previously notified in the original dismissal letter. Where any subsequent appeal is unsuccessful (or is withdrawn), the last day of service will be as stated in the original dismissal letter.

Appendix 3: Model letters

IMPORTANT: It should be noted that the attached model letters are intended as a guide only and are likely to need adapting according to the particular requirements of each individual case. Additional letters may also be required, depending upon the progression of the case and/or the action decided upon at each stage. The Schools' Personnel Service can provide further advice and guidance on request.

Appendix 3A - Model Letter 'Transition from Appraisal (Teachers)'

(This letter is a model which may need to be adapted according to the circumstances, for example, if it is the Headteacher who has been dealing with the matter to date, rather than a senior member of staff)

PRIVATE AND CONFIDENTIAL

To: Ref.

Date:

Dear

Management of Performance under the Formal Capability Procedure

You are aware from previous correspondence and meetings that concerns have been raised about your performance. To date, this has been monitored under the *school's/PRU's* Appraisal Policy and arrangements. However, despite an appropriate period of monitoring and review, I do not consider that your performance has reached an acceptable standard. In these circumstances, I now have no alternative but to inform you that the Appraisal process will no longer apply and that your performance will be managed under the formal Capability Procedure.

As the first step in the capability process, you will be required to attend a formal capability meeting with the *Headteacher (or as appropriate)*. In advance of the meeting, you will receive information and written evidence relating to the concerns about your performance and their possible consequences. You will be given the opportunity to respond to the concerns at the meeting and you will have the right to be accompanied by:

- a local area or regional official of a Trade Union/Professional Association;
- a workplace Trade Union/Professional Association Representative, as long as s/he has been reasonably certified in writing by their union as having experience of, or having received training in, acting as an employee's companion at capability meetings. Certification may take the form of a card or letter; or
- a work colleague.

You will shortly receive a letter confirming details of the formal capability meeting, which will also include the information referred to above.

A copy of the *school's/PRU's* Capability Procedure is enclosed for your information.

Yours sincerely,

Name/Status (Senior member of Staff nominated by the Headteacher, or as appropriate) Enc.

APPENDIX 3B: Model Letter ‘Transition from Performance Management (Support Staff)’

(This letter is a model which may need to be adapted according to the circumstances, for example, if it is the Headteacher who has been dealing with the matter to date, rather than a senior member of staff)

PRIVATE AND CONFIDENTIAL

To: Ref.

Date:

Dear

Management of Performance under the Formal Capability Procedure

You are aware from previous correspondence and meetings that concerns have been raised about your performance. To date, this has been monitored under a Performance Management process *(or as appropriate)*. However, despite an appropriate period of monitoring and review, I do not consider that your performance has reached an acceptable standard. In these circumstances, I now have no alternative but to inform you that the support and review process will no longer apply and that your performance will be managed under the formal Capability Procedure.

As the first step in the capability process, you will be required to attend a formal capability meeting with the *Headteacher (or as appropriate)*. In advance of the meeting, you will receive information and written evidence relating to the concerns about your performance and their possible consequences. You will be given the opportunity to respond to the concerns at the meeting and you will have the right to be accompanied by:

- a local area or regional official of a Trade Union/Professional Association;
- a workplace Trade Union/Professional Association Representative, as long as s/he has been reasonably certified in writing by their union as having experience of, or having received training in, acting as an employee’s companion at capability meetings. Certification may take the form of a card or letter; or
- a work colleague.

You will shortly receive a letter confirming details of the formal capability meeting, which will also include the information referred to above.

A copy of the *school’s/PRU’s* Capability Procedure is enclosed for your information.

Yours sincerely,

Name/Status (Senior member of Staff nominated by the Headteacher, or as appropriate) Enc.

APPENDIX 3C: Model Letter 'Requirement to Attend a Formal Capability Meeting'

PRIVATE AND CONFIDENTIAL

To: Ref.

Date:

Dear

Requirement to Attend a Formal Capability Meeting

Further to the earlier correspondence you have received in relation to concerns about your performance, I am writing to inform you that you are required to attend a formal capability meeting on *(date)* at *(time)*. The meeting will be conducted by the *Headteacher*, who will be accompanied by *(state name and title as appropriate)*.

The purpose of the meeting is to consider concerns in relation to your performance in the following areas and to afford you the opportunity to respond and make any relevant representations.

(Details of concerns about performance, as appropriate).

I enclose a copy of the written evidence that I will be presenting to the *Headteacher*. This is as follows: *(Insert details of written evidence relating to the concerns about performance detailed above)*. *(If relevant)* I intend to call the following witnesses *(state name[s] of any other witnesses)*.

You are entitled to be accompanied at the meeting by:

- a local area or regional official of a Trade Union/Professional Association;
- a workplace Trade Union/Professional Association Representative, as long as s/he has been reasonably certified in writing by their union as having experience of, or having received training in, acting as an employee's companion at capability meetings. Certification may take the form of a card or letter; or
- a work colleague.

I must advise you that the outcome of this meeting could result in you being issued with a written warning or a final written warning in relation to the above concerns about your performance.

Should you fail to attend the meeting it may take place in your absence and you will be notified of the outcome. If you are unable to attend through sickness the *Headteacher* will require medical evidence to that effect.

Yours sincerely,

Designated senior member of staff/Line manager (as appropriate)

Appendix 3D: Model Letter ‘Outcome of Formal Capability Meeting (Warning)’

(Note that this letter assumes that the employee is being given a formal written warning at this stage. In circumstances where s/he may be issued with a final written warning, the letter will need to be adapted appropriately).

PRIVATE AND CONFIDENTIAL

To: Ref.

Date:

Dear

Outcome of Formal Capability Meeting

Following the formal Capability Meeting held on *(date)* in *(venue)* at *(name of school)* School, I am writing to you to confirm details of our discussion and my decision in the matter, as well as to set out the requirements for you to reach a satisfactory level of performance.

The purpose of the meeting was to discuss concerns in relation to your performance and to afford you the opportunity to respond.

In considering all the evidence, both written and that presented to me orally by *(state name and post title of Presenting Officer)*, as well as you and your companion, I found the concerns about your performance to be proven.

I found that your performance is of an unacceptable standard in the following areas:

(State details of professional shortcomings, e.g. in the case of a teacher, the standards expected of teachers not being met, objectives not being met; in the case of a member of the support staff, which duties and/or responsibilities of the role are not being met etc).

At the meeting we discussed the improvements that are needed to your standard of performance before it will be possible for you to be removed from capability proceedings. In order to reach an acceptable level of performance, you will need to meet the following criteria:

(State details of requirements – e.g. new objectives focused on specific weaknesses, appropriate success criteria and evidence that will be used to assess whether or not the necessary improvement has been made).

To help reach the required standard of performance, the following support will be put in place:

(State details of any help and support to be put in place – e.g. training, personal support in the form of mentoring, work shadowing etc).

I expect to be able to see a satisfactory level of improvement in your performance within *(state appropriate period of between 4 and 10 weeks depending upon all the circumstances of the case)*. During this time your performance

will be monitored and reviewed (*state how monitoring and review will be applied and by whom*).

You will be required to attend a formal capability review meeting at the end of the monitoring and review period. You will be notified of the arrangements for that meeting nearer the time.

This letter constitutes a formal written warning that a failure to improve within the set time period may lead to a final written warning which could ultimately lead to your dismissal.

You are entitled to appeal against my decision. Any appeal you may make must be lodged, in writing, within 5 working days of the date of this letter. The appeal notice should be sent to (*state name and address of the person to whom the appeal must be sent*). The written appeal notice must state the grounds for appeal.

Yours sincerely,

Headteacher

Appendix 3E: Model Letter 'Requirement to Attend a Formal Capability Review Meeting'

PRIVATE AND CONFIDENTIAL

To: Ref.

Date:

Dear

Requirement to Attend a Formal Capability Review Meeting

I refer to my letter of *(state date of earlier letter detailing the outcome of the formal capability meeting)* and the period of monitoring and review of your performance which is shortly coming to an end. The purpose of this letter is to inform you of the arrangements I have now put in place for you to attend a formal capability review meeting so that I can decide on the way forward.

You are required to attend the formal capability review meeting on *(date)* at *(time)*. The meeting will again be conducted by myself. I will be accompanied by *(state name and title as appropriate)*.

As set out previously, I have found your performance to be of an unacceptable standard in the following areas:

(State details of professional shortcomings, e.g. in the case of a teacher, the standards expected of teachers not being met, objectives not being met; in the case of a member of the support staff, which duties and/or responsibilities of the role are not being met etc).

At the review meeting I will consider the evidence gathered in relation to your performance during the monitoring and review period and you will have the opportunity to respond and make any relevant representations. I am enclosing with this letter written evidence in the form of *(details of written evidence relating to the concerns about performance detailed above)*. At the meeting, this will be presented by *(as relevant, state name of Presenting Officer and also any witnesses to be called)*.

You are again entitled to be accompanied at the meeting by:

- a local area or regional official of a Trade Union/Professional Association;
- a workplace Trade Union/Professional Association Representative, as long as s/he has been reasonably certified in writing by their union as having experience of, or having received training in, acting as an employee's companion at capability meetings. Certification may take the form of a card or letter; or
- a work colleague.

I must advise you that the outcome of this review meeting may result in you being issued with a final written warning which could ultimately lead to your dismissal.

Should you fail to attend the meeting it may take place in your absence and you will be notified of the outcome. If you are unable to attend through sickness I will require medical evidence to that effect.

Yours sincerely,

Headteacher

APPENDIX 3F: Model Letter ‘Outcome of Formal Capability Review Meeting (Final Warning)’ and Requirement to Attend a Formal Capability Decision Meeting’.

PRIVATE AND CONFIDENTIAL

To: Ref.

Date:

Dear

Outcome of Formal Capability Review Meeting and Requirement to Attend a Formal Capability Decision Meeting

Following the formal Capability Review Meeting held on *(date)* in *(venue)* at *(name of school)* School, I am writing to you to confirm details of our discussion and my decision in the matter, as well as to set out a final opportunity for you to reach a satisfactory level of performance.

Following a period of monitoring and review, the purpose of the meeting was to discuss the concerns relating to your performance in the following areas and to afford you the opportunity to respond.

In considering all the evidence, both written and that presented to me orally by *(state name and post title of Presenting Officer)*, as well as you and your companion, I found that the concerns remain and that your performance continues to be of an unacceptable standard in the following areas:

(State details of professional shortcomings, e.g. in the case of a teacher, the standards expected of teachers not being met, objectives not being met; in the case of a member of the support staff, the duties and/or responsibilities of the role are not being met etc).

At the meeting we discussed the improvements that are needed to your standard of performance if it is going to be possible for you to be removed from capability proceedings. In order to reach an acceptable level of performance, you will need to meet the following criteria:

(State details of requirements – e.g. new objectives focused on specific weaknesses, appropriate success criteria and evidence that will be used to assess whether or not the necessary improvement has been made).

To help reach the required standard of performance, the following support will be put in place:

(State details of any help and support to be put in place – e.g. training, personal support in the form of mentoring, work shadowing etc).

I expect to be able to see a satisfactory level of improvement in your performance within 4 weeks. During this time your performance will be monitored and reviewed *(state how monitoring and review will be applied and by whom)*.

You need to be aware that this is your final opportunity to improve your performance to a satisfactory standard. You will be required to attend a formal capability decision meeting at the end of the 4-week period. A final decision in the matter will then be taken. The meeting has been arranged for:

(Date) at (time)

You are again entitled to be accompanied at the meeting by:

- a local area or regional official of a Trade Union/Professional Association;
- a workplace Trade Union/Professional Association Representative, as long as s/he has been reasonably certified in writing by their union as having experience of, or having received training in, acting as an employee's companion at capability meetings. Certification may take the form of a card or letter; or
- a work colleague.

Five working days prior to the above decision meeting, you will be provided with any further evidence relating to your performance gathered during this final 4-week monitoring and review period. You will have the opportunity to respond and make any relevant representations at the meeting.

Should you fail to attend the meeting it may take place in your absence and you will be notified of the outcome. If you are unable to attend through sickness I will require medical evidence to that effect.

This letter constitutes a formal, final, written warning that a failure to improve within the 4-week time period could lead to your dismissal.

You are entitled to appeal against my decision. Any appeal you may make must be lodged, in writing, within 5 working days of the date of this letter. The appeal notice should be sent to *(state name and address of the person to whom the appeal must be sent)*. The written appeal notice must state the grounds for appeal.

Yours sincerely,

Headteacher

Appendix 3G: Model Letter ‘Outcome of Capability Decision Meeting (Dismissal)’

PRIVATE AND CONFIDENTIAL

To: Ref.

Date:

Dear

Outcome of Formal Capability Decision Meeting

Following the formal Capability Decision Meeting held on *(date)* in *(venue)* at *(name of school)* School, I am writing to you to confirm details of our discussion and my decision in the matter.

Following a final period of monitoring and review, the purpose of the meeting was to discuss the concerns relating to your performance in the following areas, to afford you the opportunity to respond and for me to reach a final decision in the matter.

In considering all the evidence from the final monitoring and review period, both written and that presented to me orally by *(state name and post title of Presenting Officer)*, as well as you and your companion, I found that the concerns remain and that your performance has continued to be of an unacceptable standard in the following areas:

(State details of professional shortcomings, e.g. in the case of a teacher, the standards expected of teachers not being met, objectives not being met; in the case of a member of the support staff, the duties and/or responsibilities of the role are not being met etc).

You are aware that this was your final opportunity to improve your performance to a satisfactory standard. Despite providing you with additional support and guidance your performance has continued to fall short of the level required and, in these circumstances, I now have no alternative but to inform you that my decision in the matter is that you be dismissed from your post at *(name of)* School on the grounds of incapability. *(In the case of **Community Schools and PRUs**, where the Authority is the employer in law, the letter should go on to state that it is for the relevant Local Authority Director to issue formal notice within 14 days of the date of this letter. **Voluntary Aided and Foundation Schools**, as the employer in law, issue notice themselves and should state that the letter constitutes formal notice of the termination of employment and also the date on which the employee’s employment will cease, i.e. his/her last day of service).*

You are entitled to appeal against my decision. Any appeal you may make must be lodged, in writing, within 5 working days of the date of this letter. The appeal notice should be sent to *(state name and address of the person to whom the appeal must be sent)*. The written appeal notice must state the grounds for appeal.

You should be aware that the date of your dismissal will be put into effect even if you decide to lodge an appeal. Payment of remuneration for any period of time after the effective date of dismissal will only be made if the appeal against your dismissal is successful.

Yours sincerely,

Headteacher

Appendix 3H: Model Letter 'Invitation to Attend a Capability Appeal Meeting'

(Note that this letter assumes that the appeal will take the form of a re-hearing. If the appeal is to proceed other than by way of a re-hearing, then the letter will need to be adapted accordingly).

PRIVATE AND CONFIDENTIAL

To: Ref.

Date:

Dear

Invitation to Attend a Capability Appeal Meeting

Further to your letter of *(date of employee's letter requesting an appeal)*, I am writing to advise you that an Appeal Meeting has been arranged to take place as follows:

(State date, time and venue for Appeal Meeting)

The Appeal will be heard by three members of the *Governing Body/PRU Management Committee (as appropriate)*. The Chair will be *(state name)* and the other Panel Members will be *(state names)*. The Panel will be advised, on behalf of the relevant Local Authority Director, by *(state name and title as appropriate)*.

After consideration of your grounds for appeal and the prevailing circumstances of the case, the Chair of the Appeal Panel has decided that the appeal will take the form of a re-hearing, including all the evidence previously presented and *(if relevant)* the witnesses called.

You are again entitled to be accompanied at the Appeal meeting by:

- a local area or regional official of a Trade Union/Professional Association;
- a workplace Trade Union/Professional Association Representative, as long as s/he has been reasonably certified in writing by their union as having experience of, or having received training in, acting as an employee's companion at capability meetings. Certification may take the form of a card or letter; or
- a work colleague.

Should you fail to attend the Appeal Meeting, it may take place in your absence and you will be notified of the outcome or, your non-attendance may be interpreted as a withdrawal of your appeal. If you are unable to attend through sickness the panel will require medical evidence to that effect.

You have already received a copy of the Capability Procedure. However, please let me know if there is anything about which you are unclear.

Yours sincerely,

Appendix 3J: Model Letter ‘Outcome of Capability Appeal Meeting’

(Note that this letter assumes that the employee’s appeal was a re-hearing at the final stage of the Procedure, i.e. appeal against dismissal. If there is an appeal at an earlier stage of the process, or the appeal does not take the form of a re-hearing and/or the outcome is other than dismissal, then the letter will need to be adapted accordingly).

PRIVATE AND CONFIDENTIAL

To: Ref.

Date:

Dear

Outcome of Capability Appeal Meeting

I am writing to confirm the Panel’s decision following the Capability Appeal Meeting held at *(venue)* on *(date)*.

The Appeal took the form of a re-hearing and the Panel had full access to all the evidence, both written and that presented orally. After careful consideration, the Panel has found that, despite providing you with appropriate additional support and guidance throughout both an informal process and subsequently the formal capability procedure, your performance is of an unacceptable standard in the following areas:

(State details of professional shortcomings, e.g. in the case of a teacher, the standards expected of teachers not being met, objectives not being met; in the case of a member of the support staff, the duties and/or responsibilities of the role are not being met etc. Also state any other specific findings of the appeal panel, as applicable).

In these circumstances, the Appeal Panel upholds the original decision taken to dismiss you from your post on the grounds of incapability. Therefore, your employment is terminated as previously notified *(state details of previous correspondence terminating service and re-confirm last day of service).*

You have now exercised your final right of appeal under the *School’s/PRU’s* Capability Procedure. The decision of the Appeals Panel in the matter is, therefore, final.

Yours sincerely,

Chair of Capability Appeals Panel