



**MODEL
TEACHER CAPABILITY
(PERFORMANCE) PROCEDURE**

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INDEX

Content	Page	
PART 1 - Introduction		
Introduction	3	
Purpose and Scope	3	
Application of Capability Procedures to Headteachers, Secondees and Centrally Employed teachers	4	
Application of the Capability Procedure to Representatives of Trades Unions/Professional Associations	5	
Glossary/Definitions	5	
Key Principles	5	
a) Management Support	5	
b) Identification of problems	6	
c) Role of LA	6	
d) Role of Trades Unions/Professional Associations	6	
e) Job Descriptions	7	
General Principles - Teacher Capability (Performance) Procedures	7	
Sickness	8	
Training	9	
Review of Procedure	9	
Fast Track Procedure	9	
Target Setting	9	
PART 2 - Teacher Capability (Performance) Procedure		
11		
The Procedure in Operation (Summary table)	12	
Supporting teacher performance	13	
Stage 1 -	Formal Capability Meeting (1)	13
	Monitoring and Review Period (2)	14
	Review Meeting (3)	15
Stage 2 -	Meeting (4)	15
	Monitoring and Review Period (5)	16
	Review Meeting (6)	16
Stage 3	Meeting(7)	16
	Monitoring and Review Period (8)	17
	Review Meeting (9)	17
Stage 4 -	Dismissal Hearing (10)	17
Stage 5 -	Appeals (11)	19
Grounds of appeal	19	
Appeal Hearing - Dismissal	19	
Appeal Process - Warnings	21	
Appendix A - Guidance for conducting capability interviews and support programmes	22	

PART 1 - Introduction

Introduction

This document sets out the model framework and Procedure for addressing issues of poor work performance by teachers.

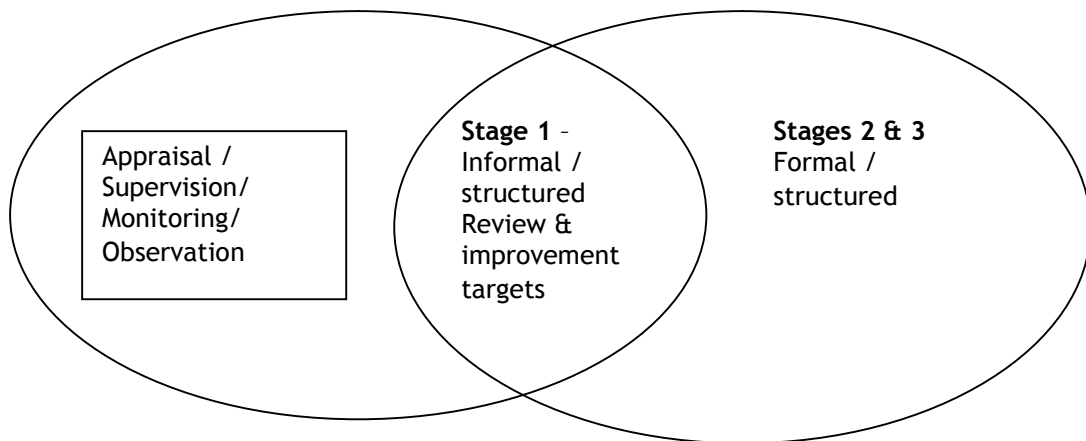
Part 2 of this document covers the Capability Performance Procedure, providing a model procedure for tackling underperformance that has been identified through the appraisal cycle and/or through supervision. It is expected that efforts to address poor performance are made through appraisal and supervision in the first instance, only moving to the Capability Procedure if performance cannot be improved through the setting of agreed targets and the use of less formal interventions such as counselling, supervision, observation feedback, mentoring etc.

The Capability Poor Performance Procedure incorporates good practice, the relevant ACAS Code of Practice on Disciplinary and Grievance Procedures as well as statutory guidance.

The contents of this procedure have been discussed and agreed with recognised Teacher unions and are presented in the form of a model Procedure for formal adoption by School Governing Bodies.

1. Purpose and Scope

- 1.1 The **purpose** of any action taken under any part of this Procedure is threefold:
 - to provide support to help a teacher overcome any difficulty;
 - to consider whether there are any reasons for the difficulties (e.g. health, other personal reasons, workload, the work environment) and to take mitigating action where appropriate; and
 - to provide a structured framework within which performance can be monitored, recorded and evaluated and, if performance does not improve to a satisfactory level, to take steps which could lead to dismissal.
- 1.2 At times these aims may appear to conflict, and care must be taken to see that support is positive and realistic and that monitoring does not create excessive burdens or contribute to the difficulties being experienced by the teacher.



- 1.3 The above diagram shows how the processes of Appraisal and Supervision interlock with the Capability Procedure at Stage 1.
- 1.4 The **scope** of this procedure extends to all teachers, Headteachers, Deputy Heads, Assistant Heads, as well as teachers on secondment to other schools and centrally employed teachers.
- 2. Application of Capability Procedures to Headteachers, Secondees and Centrally Employed teachers**
- 2.1 In the case of Headteachers it is recommended that operation of the procedure is led by an officer of the LA, appointed by the Director of Education, Social Services and Housing, and that the Chair of Governors should be jointly involved in these considerations. In cases such as this, where the text refers to “Headteacher” this should be substituted for an officer of the LA appointed by the Director.
- 2.2 Where a seconded member of staff is underperforming the Capability Procedures should be used jointly by the teacher’s substantive Headteacher alongside the Headteacher in the host school.
- 2.3 In the case of Centrally Employed Teachers the assigned line manager will carry out the role of “Headteacher” as described in this policy. Where the teacher has been assigned to one or more schools, there will need to be joint working between the manager and the Headteacher(s) to apply the Capability Procedure.

3. Application of the Capability Procedure to Representatives of Trades Unions/Professional Associations

- 3.1 The LA should be notified before any application of the Capability Procedure to a trades union/professional association representative. No action should normally be taken under the procedure until the circumstances have been discussed with a full time official of the union concerned.

4. Glossary/Definitions

Representative - the person accompanying the member of staff to any interview/appeal under the procedure. This includes a trade union representative, work colleague or some other person of their choice.

Working weeks - a period of five school working days including INSET but excluding weekends, Public Holidays, half term, Easter, Christmas or summer vacations.

Working days - school working days including INSET but excluding weekends, Public Holidays, half term, Easter, Christmas or summer vacations.

Objective - a target set to improve or maintain performance and/or personal development.

Standards - refers to the Teacher Standards published in July 2011. Certain teachers may also be assessed against other sets of relevant standards published by the Secretary of State, or any other relevant professional standards.

Capability - capability is defined as where a teacher/Headteacher fails to adequately perform his/her teaching and/or management duties to the required standard.

5. Key Principles

a) Management Support.

All matters relating to teacher performance and capability should take place within a framework of a positive programme of management support and a clear statement of monitoring and review arrangements. The types of activity, which might be covered, are detailed at **Appendix A**.

While the implementation of performance capability procedures, under Local Management of Schools, will remain a matter for the Headteacher (and ultimately the Governing Body), the LA will provide detailed guidance and professional advice to schools in implementing these procedures.

b) Identification of problems.

It is good management practice that performance capability issues should be identified and discussed with the individual at the earliest opportunity. The appraisal scheme and cycle, with the supervision and ongoing review enshrined within it, is the first opportunity to identify and discuss poor performance, and provide the support for improvement.

Under normal circumstances formal capability procedures would not be used until any shortcomings (including underlying reasons for poor performance) have been identified and explored with the employee.

c) Role of the LA.

It is important that the LA is brought in at the earliest opportunity if there is a concern about a member of staff, which may lead to use of the formal performance capability procedure. At a minimum, the situation should have been discussed with the LA prior to any action being taken.

Headteachers are advised that in order to avoid possible cases of discrimination or unfair treatment, they should seek advice and assistance from the LA throughout the operation of the procedure. The LA should particularly be advised whenever a written warning is issued to a teacher and also where an appeal is to be heard.

The Director of Education, Social Services and Housing or his/her representative shall be entitled to attend all meetings of the governing body where dismissal is being considered. Any advice offered by the Director of Education, Social Services and Housing or their representative shall be taken into consideration.

The LA is the employer and the Director of Education, Social Services and Housing on behalf of the LA is responsible for the termination of the contract of employment. In the case of dismissal the clerk to the governing body must inform the Director of Education, Social Services and Housing of the details of the case, the findings of the Committee(s) of the governing body, the reasons for the dismissal and the outcome of any appeal. This information should be given in writing and as soon as possible after the decision to dismiss (or appeal) and in any case must be within 10 working days.

d) Role of Trades Unions/Professional Associations.

The role of professional associations & trades unions in supporting individual members of staff is fully acknowledged within the performance capability procedures. The individual teacher concerned should be reminded in writing that he/she has the right to have present a representative at any interview stage under the performance capability procedure, and should be

advised to consult his or her trades union /professional association to act in this capacity.

e) Job Descriptions.

Any discussions of teacher capability should be undertaken within the context of the teacher's job description under the Teachers' Pay and Conditions Act and any outline of specific duties which should be undertaken by the post holder.

6. General Principles - Teacher Capability Performance Procedure

- a) No one procedure in the teachers' conditions of employment should automatically have precedence over another.
- b) Where it is intended to move to any stage of the Capability Performance Procedure, the Headteacher should ensure that the teacher concerned is provided with a copy of this document. The teacher concerned will be responsible for providing a copy to his/her representative.
- c) Throughout the Capability Performance Procedure, as far as possible, confidentiality should be maintained.
- d) At all meetings and interviews under Stages 1 to 5 of this Procedure the teacher shall be entitled to be accompanied by a representative and should be advised of this right.
- e) At all stages the teacher must be given the opportunity to prepare and present his/her case - either directly or through their representative.
- f) A teacher will have the right to appeal against any written warning issued as part of this procedure.
- g) At every stage of the procedure the lack of capability should be clearly identified with reference to specific targets for improvement and a timetable for improvement.
- h) At all stages the aim should be to provide support to enable the teacher to improve their performance so that the continuation of the procedure is no longer necessary.
- i) The teacher should be informed in writing at least **five working days** in advance of any meeting/interview to be held under this procedure. (For specific meetings referred to in the procedure this period may be extended). The teacher should be given sufficient notice of the interview/meeting to have time to prepare supporting documentation. In exceptional circumstances an employee may submit a request for a formal deferment to prepare documentation

for the interview. A deferment will not be unreasonably refused but such deferment will not normally exceed five working days.

- j) Where documentation is to be presented at any meeting/interview this should ideally be circulated at least **five working days** in advance of the meeting. It is anticipated that in the majority of instances the notification period will be longer than five working days and therefore the teacher will have adequate time to prepare supporting documentation. Where a teacher needs to prepare documentation and only five days notice of the meeting/interview has been given, it will normally be appropriate for the Headteacher to agree a reduced timescale such that any written response to be made by the teacher is available at least one working day (24 hours) in advance of the meeting/interview.
- k) As far as is possible written communication should be delivered by hand and receipt acknowledged.
- l) Although these guidelines have been primarily written with teachers employed by a school operating under local management in mind, the timescales and principles equally apply to those teachers employed in centrally managed services. Any decision to dismiss as a result of the application of this procedure will be taken by the Director of Education, Social Services and Housing and the right to appeal against this will be an appropriate committee/subcommittee of the Council.
- m) The application of this procedure should not necessarily be constrained by the absence of a teacher on sick leave or other absence (except for authorised leave) unless such absence would seriously undermine the practical application of the procedure. A decision in this respect would depend upon the circumstances of the particular case.

7. Sickness

- 7.1 If long term sickness absence appears to have been triggered by the commencement of monitoring or a formal performance capability procedure, the case will be dealt with in accordance with the school's ill health capability policy and will normally be referred to the Occupational Health service to assess the teacher's health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures. In some cases it may be appropriate for formal procedures to continue during a period of sickness absence. The views of the Occupational Health physician will be taken into account before a decision is reached, and will be communicated to the teacher concerned.

8. Training

- 8.1 All Headteachers, Governors, LA Officers and Trade Union Representatives required to operate this procedure will be given training in its use. Appropriate training will be offered on an annual basis by the LA as part of the generic training programme for schools.

9. Review of Procedure

- 9.1 This procedure will be formally reviewed after it has operated for twelve months from the date it commences. The purpose of the review will be to establish how the procedure has operated and to determine if any changes to it are necessary or desirable. This review will be conducted through the Schools Joint Forum (SJF) or such body as the SJF decides is appropriate.

10. Fast Track Procedure

- 10.1 This model procedure has been written assuming progression through stages 1 to 5 in sequence, and in accordance with expected timescales. However, there is scope for using a fast track procedure where the education or welfare of children may be at serious risk or otherwise justified. A decision to escalate or accelerate shall be taken in consultation with the Director of Education, Adults and Children's Services (or their nominated representative), and the appropriate trade union or professional association representative.
- 10.2 In the event that such a decision is taken, the teacher/Headteacher will be provided with a written statement setting out the grounds for this assessment prior to the consultation commencing.
- 10.3 In such cases the consultation will include the stages and timescales that are proposed to deal with the specific case in addition to the risk identified.

11. Target Setting

- 11.1 The targets set at any stage of this procedure must be designed to improve the teacher's performance in the area(s) identified and so flow from an analysis of the evidence of poor performance.
- 11.2 For example, pupil data may show that pupils in a class are not showing the required levels of development (progress/attainment). This may be a primary indicator of poor performance but may require closer analysis and assessment at Stage 1. The primary shortcoming may have several causes such as teacher performance in areas such as planning, preparation, differentiation, etc. or could have a wider context such as a disrupted class the year before that is still showing

the effects of the problems that year. The important factor is that achievement targets must have resulted from a thorough review of all the circumstances, including input from the teacher whose performance is under review.

- 11.3 If areas of under-performance are found, improvement targets should be focused and fit within the timescale of the relevant stage of the procedure, or should have milestones that allow for monitoring of progress towards the required level of performance.
- 11.4 Areas of under-performance / target setting for teachers may include, but are not limited to:
 - Planning / preparing / delivering lessons
 - Marking
 - Differentiation
 - Behaviour management
 - Subject/curriculum knowledge
 - Contribution to the team / working with others
 - Delivery against areas of additional responsibility
- 11.5 For Headteachers, in addition the following might be covered, and are not limited to:
 - Effective leadership, for example through motivating, supporting and challenging staff
 - Areas of responsibility such as safeguarding, health and safety, and school improvement
 - Effective working relationships with the SLT
 - Effective working relationships with the Governing Body
- 11.6 Under-pinning the performance of teachers are the Teacher Standards, re-launched from September 2012, which set out a range of professional standards against which every teacher, including members of the Senior Leadership Team, are required to deliver.
- 11.7 Referencing back to the Teacher Standards may help with framing targets, the required level of performance, and the support needed to achieve it.
- 11.8 Further general guidance on establishment of performance support programmes can be found at Appendix A to this Procedure.

PART 2

MODEL TEACHER CAPABILITY (PERFORMANCE) PROCEDURE

THE PROCEDURE IN OPERATION

The Procedure in Operation (Summary)

(To be read in conjunction with the full explanation set out in the following procedure)

Stage	Activity	Action	Timescale	Warning Issued	Warning on file	Right of appeal	Appeal to whom
1	Informal / Structured Review (1)	Consider evidence of poor performance & teacher's responses to concerns. Identify areas for improvement and appropriate support, and set targets.	5 days notice of meeting	Achievement Targets	Supervision file for 12 months	No	N/A
	Review Period (2)	Monitor performance against targets, adjust support plan as necessary.	12 weeks				
	Meeting to review stage 1 (3)	Consider performance against targets. If OK - abort process. If not, move to stage 2.	Meeting date agreed as part of review timescale				
2	Meeting to start stage 2 (4)	Consider the targets and the support provided so far. Adapt the programme of support to suit.	5 days notice of meeting	Written warning	Personal file for 1 year	Yes	Director of DEACS
	Review Period (5)	Monitor performance against targets, adjust support plan as necessary.	12 weeks				
	Meeting to review stage 2 (6)	Consider performance against targets. If OK - abort process. If not, move to stage 3.	Meeting date agreed as part of review timescale				
3	Meeting to start stage 3 (7)	Consider the targets and the support provided so far. Adapt the programme of support to suit.	5 days notice of meeting	Final written warning	Personal file for 2 years	Yes	Director of DEACS
	Review Period (8)	Monitor performance against targets, adjust support plan as necessary.	6 weeks				
	Meeting to review stage 3 (9)	Consider performance against targets. If OK - abort process. If not, move to a dismissal hearing.	Meeting date agreed as part of review timescale				
4	Dismissal Hearing (10)	Case put to panel of Governors. Dismissal either confirmed or rejected.	10 days notice of hearing. Notice period.		N/A	Yes	Governing Body Appeal Panel
5	Appeal (11)	To Governing Body appeal panel. Appeal either upheld or rejected.			N/A	No	N/A

Notes - The **timescales** referred to in this procedure are advisory and can be shortened where circumstances warrant a faster response - for example where the education or welfare of children may be at serious risk. Where a "fast track" approach is to be made, an assessor not linked to the school will be appointed by the Director of Education, Adults and Children's Services after consultation with the appropriate professional association. (see Section 10, Part 1 of this Procedure)

Trades Union / Professional Association representatives are allowed to attend any of the meetings set out above.

The Procedure in Operation

(Figures in brackets refer to the preceding summary chart)

1. Supporting teacher performance

- 1.1 It is expected that Headteachers and line managers will, on an ongoing basis, monitor, support, challenge and otherwise assist staff to reach the highest standards of performance. This will involve formal and informal systems and relevant development techniques. These are not set out in detail in this procedure. Support and development under this heading does not constitute formal action and is seen as being an integral part of the day to day work environment.
- 1.2 For Headteachers it is expected that the Governing Body will, on an ongoing basis, monitor, support, challenge and otherwise assist the Headteacher to reach the highest standards of performance and leadership. This will involve formal and informal systems and relevant development techniques. Support and development under this heading does not constitute formal action and is seen as being an integral part of the day to day work environment.

2. Stage 1 - Informal / Structured Capability Meeting (1)

- 2.1 In the event that the performance of a teacher / Headteacher has not met the required standard, then it may be necessary to move to Stage 1 of this Procedure. Notification of this meeting will be given in writing at least five working days in advance of the meeting, confirming the date, time and venue. The teacher will be informed in the letter that they have the right to be accompanied by a representative. The letter should clearly and concisely set out the areas of concern, the action taken so far, and the shortfall in performance. It may be appropriate to enclose copies of any support plans and notes of actions and discussions that have taken place so far.
- 2.2 This meeting will be conducted by the Headteacher, or the Chair of Governors for Headteacher capability meetings. The purpose of the meeting is to inform the teacher that they have not met the required standard of performance, to review the performance concerns, to review the actions and support put in place to address the poor performance so far, and the progress made towards reaching the required standards.
- 2.3 The teacher should be given the opportunity to comment on and address the concerns and there should be a meaningful and constructive discussion around why the performance concerns remain.

- 2.4 The required improvements/standards should be re-stated, along with details of the continuing support as well as any newly identified interventions that are identified as being necessary.
- 2.5 Consideration and discussion may be pursued at this stage (if the teacher is so willing) to examine the possibility of the teacher being given a different balance of duties or an alternative teaching post. (The latter course would not normally be appropriate in the case of Headteachers). If these discussions are pursued then this must be entirely voluntary on behalf of the teacher concerned at this stage and there needs to be a clear understanding from the outset that a different balance of duties or an alternative post may result in a change in terms and conditions, including pay.
- 2.6 The Headteacher can then decide on one of the following:
- If further information is needed to determine a course of action, adjourn the meeting so that this can be gathered.
 - To refer the matter back to the manager who has identified the concerns for further support to be provided through the appraisal or other supervision process.
 - Continued / ongoing support - this will be appropriate where there is reasonable prospect of improvement in performance if support continues, but with the expectation that support measures will eventually be removed without detriment to performance.
 - Continue with Stage 1 of the Performance Capability Procedure and issue formal achievement targets.
- 2.7 Where improvement targets are issued under this procedure the maximum timescale to achieve those targets is 12 working weeks in this first stage. The consequences of failing to improve must also be made clear to the employee.
- 2.8 Notes should be taken of the meeting and the outcome, and a copy given to the teacher. A letter will be sent to the teacher within five working days of the meeting explaining the areas of concern, the required standard of performance in each area, the support being put in place, and the length of the review period with the date of the review meeting at the end of the period stated.
- 2.9 Unless there is a fast track procedure in operation the improvement targets will remain noted on the teacher's supervision file for 12 months .

3. Stage 1 Monitoring and Review Period (2)

- 3.1 A review meeting (3) date and time will be set when the review period is agreed. The maximum review period to achieve those targets is 12 working weeks. If for any reason the teacher has not

been notified of the date and time of the review meeting, or if the date is changed, at least five working days notice of the date, time and venue must be given in writing. The teacher should be reminded that they can be accompanied by a representative.

- 3.2 The support plan, monitoring and evaluation continues throughout the review period, with regular progress meetings planned in as necessary.

4. Stage 1 Review Meeting (3)

- 4.1 At the end of the review period the Headteacher will meet with the teacher and their representative to review progress against the improvement targets. Notes of the meeting will be shared with the teacher. The possible outcomes from the first review period are as follows:

- If adequate progress has been made the procedure can be stopped and the teacher will have this confirmed in writing.
- If some progress has been made the review period could be extended.
- If no, or insufficient improvements have been made the teacher will be notified that the procedure will move onto Stage 2, this being a further review period of a maximum of 12 working weeks.

- 4.2 A move to Stage 2 will be confirmed in writing setting out the areas of poor performance, and the short-falls that are still causing concern, the support already put in place, the next review period, as well as the date, time and venue for the meeting that will mark the beginning of Stage 2 (there should be 5 working days notice given). It may be appropriate to enclose copies of any support plans and notes of actions and discussions that have taken place so far. The right of the teacher to be accompanied must be stated.

5. Stage 2 - Meeting (4)

- 5.1 Where a further monitoring period has been agreed a further review period of a maximum of 12 working weeks will be put in place, and started with a Stage 2 meeting.
- 5.2 During the meeting the support plan, monitoring and progress should be reviewed to date and any adjustments made ready for the review of performance.
- 5.3 Targets and required standards will be restated and should be reissued to the teacher along with a plan of support together with a written warning. The warning will state that performance is below the required standard and that there is the possibility of dismissal if performance does not improve to the required standard. The right to

appeal against the written warning must be included, and to whom that appeal should be made.

6. Stage 2 - Monitoring and Review Period (5)

- 6.1 The maximum review period at stage 2 is 12 working weeks. A review meeting (6) date and time (towards the end of the period) will be set when the review period is agreed. If for any reason the teacher has not been notified of the date and time of the review meeting, or if the date is changed, at least five working days notice of the date, time and venue must be given in writing. The teacher should be reminded that they can be accompanied by a representative.
- 6.2 The support plan, monitoring and evaluation continues throughout the review period, with regular progress meetings planned in.

7. Stage 2 - Review Meeting (6)

- 7.1 At the end of the review period the Headteacher will meet with the teacher and their representative to review progress against the targets. Notes of the meeting will be shared with the teacher. The possible outcomes from the second review period are as follows:
- If adequate progress has been made the procedure can be stopped and the teacher will be written to confirming this, and the appraisal process will restart.
 - If some progress has been made the review period could be extended.
 - If no, or insufficient improvements have been made the teacher will be notified that the procedure will move onto Stage 3, this being a further review period of a maximum of 6 working weeks.
- 7.2 A move to Stage 3 will be confirmed in writing, setting out the areas of poor performance, and the short-falls that are still causing concern, the support already put in place, the next review period, as well as the date, time and venue for the meeting that will mark the beginning of Stage 3 (there should be 5 working days notice given). It may be appropriate to enclose copies of any support plans and notes of actions and discussions that have taken place so far. The right of the teacher to be accompanied must be stated.

8. Stage 3 - Meeting (7)

- 8.1 Where a further monitoring period has been agreed a further review period of no more than 6 working weeks will be put in place, and started with a Stage 3 meeting.
- 8.2 During the meeting the support plan, monitoring and progress should be reviewed to date and any adjustments made ready for the review period.

- 8.3 Targets and required standards will be restated and should be reissued to the teacher along with a plan of support for the next review period, and a final written warning. The final written warning needs to say that performance is below the required standard and that there is the possibility of dismissal if performance does not improve to the required standard. The right to appeal against the written warning must be included, and to whom that appeal should be made.

9. Stage 3 - Monitoring and Review Period (8)

- 9.1 The maximum review period at stage 3 is 6 working weeks. A review meeting (9) date and time (towards the end of the period) will be set when the review period is identified. If for any reason the teacher has not been notified of the date and time of the review meeting, or if the date is changed, at least five working days notice of the date, time and venue must be given in writing. The teacher should be reminded that they can be accompanied by a representative.
- 9.2 The support plan, monitoring and evaluation continues throughout the review period, with regular progress meetings planned in.

10. Stage 3 - Review Meeting (9)

- 10.1 At the end of the review period the Headteacher will meet with the teacher and their representative to review progress against the targets. Notes of the meeting will be shared with the teacher. The possible outcomes from the final review period are as follows:
- If adequate progress has been made the procedure can be stopped and the teacher will be written to confirming this, and the appraisal process will restart.
 - If some progress has been made the review period could be extended.
 - If no, or insufficient improvements have been made the teacher will be notified that the procedure will move onto Stage 4, this being a dismissal hearing with a panel convened from the Governing Body. The teacher should be written to setting out the areas of poor performance, and the short-falls that are still causing concern, and that the decision is to move on to a Stage 4 dismissal hearing (10).

11. Stage 4 - Dismissal Hearing (10)

- 11.1 The teacher will be notified in writing of the arrangements for the dismissal hearing, as follows:
- Be given 10 working days notice of the hearing,
 - Notify the date, time, and venue of the meeting,

- Confirm the teacher’s right to be accompanied,
 - Set out the purpose of the hearing, that it is a dismissal hearing under stage 4 of the schools performance capability procedure,
 - Outline the areas of poor performance to be considered,
 - Give the names of any witnesses to be called to give evidence,
 - Give the names of the governors who will be sitting on the panel,
 - Give the names of anyone else attending, e.g. a minute taker, HR adviser, etc.
 - If the Director of DESSH is attending, or anyone else is attending to represent the Director, give their name and position,
 - Inform the teacher that the panel have the power to make a decision to dismiss,
 - Enclose any evidence that will be submitted to the panel by the school for their consideration at the hearing,
 - Ask the teacher to submit any evidence to the clerk to governors at least five working days before the hearing, along with the names of any witnesses s/he will be bringing
- 11.2 Note, the Director of Education, Social Services and Housing, or a nominated representative, must be informed as soon as possible that a hearing is being held, as the LA may wish to exercise its right to attend.
- 11.3 In conducting the hearing the panel should have regard for the process for formal hearings, as set out in the “Hearings and Appeals Before Governing Bodies” procedure.
- 11.4 The panel may determine that:
- No further action is taken;
 - The matter is referred back to the Headteacher for further actions and/or supervision, together with any specific recommendations the panel may wish to make;
 - The teacher should be dismissed on a date in accordance with the standard period of notice, or immediately, with salary in lieu of notice;
 - There be a recommendation to the Governing Body that the teacher be offered an alternative post at the school, which is to be at the same salary and/or grade;
 - Any other specific recommendation within their powers of delegation.
- 11.5 The decision shall be confirmed in writing, by the clerk to the panel, to the teacher within five working days. This written confirmation should include:
- The decision;
 - If applicable, the date and arrangements for review;
 - If applicable, details of the level of improvement required;
 - If applicable, further support to be given;

- The right to appeal, to whom the appeal should be made (in writing), and by when.

12. Stage 5 - Appeals (11)

- 12.1 Appeals can be made against written and final written warnings and dismissal. An appeal against a warning must be made in writing and addressed to the Director of Education, Social Services and Housing within five working days of the decision by the Headteacher. The letter of appeal must state clearly, and in full, the grounds on which the appeal is being requested, in relation to the findings and decisions confirmed in writing to the teacher following the issuing of the warning.
- 12.2 An appeal against a decision to dismiss must be made in writing to the Clerk to the Governing Body within five working days of the decision of the dismissing panel of Governors. The letter requesting an appeal hearing must state clearly, and in full, the grounds on which the appeal is being requested, in relation to the findings and decisions confirmed in writing to the employee following the dismissal hearing.
- 12.3 Employees have the right to be accompanied at any stage in the appeal process by a Trades Union representative or other representative of their choice. The Appeal Panel of the Governing Body hearing the appeal may be accompanied by a HR Advisor who will act in an advisory capacity only. The appeal decision will rest with the Appeal Panel.

13. Grounds of Appeal

- 13.1 An appeal may be presented on the grounds that the employee contends one or more of the following:
- (a) The procedure - e.g. the procedure was not followed and a procedural failure affected the decision
 - (b) The decision - e.g. the Designated Officer/Panel did not come to the right conclusion because the evidence did not support the finding
 - (c) The penalty - e.g. the penalty was too harsh taking into account the type of unsatisfactory conduct, the mitigating circumstances and/or the employee's previous service.

14. The Appeal Hearing - Dismissal

- 14.1 The appeal will be arranged by the Clerk to the Governing Body on behalf of the Panel who conducted the dismissal hearing. The employee will be notified, within 5 working days of receipt of the appeal request, of the date and arrangements for the appeal, which will be heard as soon as is reasonably practicable.

- 14.2 To consider an appeal against a decision to dismiss, the appeals panel shall consist of at least two but not more than four members of the Governing Body who were not involved in any of the previous stages of the appraisal or performance capability process.
- 14.3 The appeal hearing will not be a re-hearing of the whole capability case. However, if the employee contends that the earlier proceedings were fundamentally flawed, the Appeal Panel will have discretion to arrange for a re-hearing of the case at appeal stage. It will be for the employee and/or their trades union representative to state clearly why they believe the proceedings were fundamentally flawed if this is alleged.
- 14.4 The response to the appeal should be presented by the Headteacher/1st Panel Chair who made the original decision.
- 14.5 The employee and management side must supply any relevant documents to be used in the process not less than 3 working days before the appeal date. New documents will not normally be admissible unless new information has come to light which was not available at the original hearing. In exceptional circumstances, genuinely new evidence may become available which the Appeal Panel may accept at the hearing.
- 14.6 The appeal hearing will be conducted as follows:
- The Chair of the Appeal Panel will introduce all parties and state the purpose of the hearing. They will then summarise the order of proceedings and answer any issues with regard to procedure. Notes must be taken of the appeal hearing.
 - The employee or their representative may present their case based on the grounds of the appeal, calling any witnesses.
 - The Headteacher/1st Panel Chair and the Appeal Panel and HR Advisor may ask questions of the employee and any witnesses, including any questions on the documents presented.
 - The Headteacher/1st Panel Chair will then present the response, call any witnesses and use relevant documents.
 - The employee or their representative and the appeal officer and HR Advisor may then ask questions of the Headteacher and any witnesses.
 - The Headteacher/1st Panel Chair will summarise his/her case.
 - The employee and/or their representative will summarise their appeal case.

- The appeal hearing will then be adjourned for the Appeal Panel to consider their decision.
- The parties will be recalled and given the decision. The decision must state whether the employee's appeal has been upheld or not upheld, in full or in part. If the employee's appeal has been upheld in full or in part, the decision must also state whether the sanction applied is upheld or overturned. If the original sanction is overturned, the employee must be advised whether a different sanction is substituted (although this cannot be a more severe sanction than originally imposed). The Appeal Panel retains the right to overturn the decision(s) of the original dismissal hearing.
- The appeal decision and the reasons for it will be confirmed to the employee in writing by the clerk to Governors within 5 working days of the hearing.
- The decision of the Appeal Panel of the Governing Body is final.

15. Appeal Process - Warnings

- 15.1 The appeal will be arranged by the Clerk to the Governing Body on behalf of the Headteacher, in liaison with the Director of Education, Social services and Housing. The Director may nominate another Designated Officer to hear the appeal.
- 15.2 The employee will be notified, within 5 working days of receipt of the appeal request, of the date and arrangements for the appeal, which will be heard as soon as is reasonably practicable.

Appendix A

GUIDANCE FOR CONDUCTING MEETINGS AND BUILDING SUPPORT PROGRAMMES UNDER THIS PROCEDURE

The nature of a programme of support to improve performance will vary from case to case, depending upon the difficulties faced by the individual, the amount of support required, and the circumstances of the school and its resources. What follows is a general guide, which must be adapted to meet the individual needs of each situation.

- 1 In devising a programme the general aim should be to provide as much support as possible initially, reducing it as the programme continues. It must be possible at the end of the period to assess the teacher's capabilities unclouded by any special help.
- 2 If a programme has stages provided within it, review meetings should be arranged at the end of each stage to review progress and, by agreement with all concerned, to modify any remaining stages.
- 3 Within five working days after any review meeting, the appraiser or Headteacher, as appropriate, will give to the teacher:
 - a) Written confirmation of the review meeting, stating the area(s) of unsatisfactory performance.
 - b) After consultation with the teacher and other appropriate persons (e.g. relevant school staff, and/or officers of the LA), a programme which will set out what will happen during the period of review and a date and time when the next interview will take place.
- 4 Counselling may be provided to the teacher, if requested, by appropriate persons. Records should not be kept of counselling other than a note that the meeting took place. Otherwise, records should be kept of all meetings and discussions, with copies circulated to those directly involved.
- 5 The content of the programme could include one or more of:
 - in-service training
 - help with planning, content of work and any follow-up
 - observation by the teacher of good practice
 - observation of the teacher's work by someone (either from the school or outside) with appropriate experience and that such observation be promptly fed back to the teacher
 - a modified workload or timetable for a specified period
 - re-organisation of work area, classes or rooms
 - work-sharing or team teaching with experienced persons

- visits to other schools or workplaces
- temporary attachment to another school or workplace
- a mentoring arrangement to the teacher concerned. This is particularly recommended where practical and would involve a suitable person acting as a confidential mentor to the teacher concerned.

(Wherever and whenever possible and practical, there will be merit in inviting an independent and external person to assess and assist the teacher concerned).

- 6 The person who monitors the teacher's performance should be someone with experience and responsibility. The Headteacher will have regard to the need for that person to exercise and encouraging a constructive approach to improvement; the person may be the line manager/appraiser or the Headteacher. In large schools deputies and heads of department or faculties, and others charged with the responsibility for staff, should have a key role.
- 7 Where the Headteacher is conducting a capability meeting/interview without the support of a senior colleague the Headteacher may wish to arrange for an observer to be available who will also be able to maintain a written record of the proceedings. There will need to be careful selection of the observer to ensure that confidentiality is not compromised or that there is no conflict of interest.
- 8 At 'Assessment' Stages in this procedure, specific assessments of the teacher's capabilities must be made by the Headteacher and by another appropriate person. That person could be as named in 6 above, or someone asked to undertake the assessment as a specific task. An appropriate person would be someone such as a senior teacher at the school, or an officer of the LA.
- 9 Towards the end of the programme, the person responsible for monitoring performance should see that all records are completed and reports prepared in time to meet the requirements specified for the meeting which completes the period of review.