



Capability Policy and Procedure for All School Based Staff

Effective from 1 September 2012

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1. Policy Statement

- 1.1 This policy and procedure is recommended for adoption by Governing Bodies of all schools, including Foundation and Voluntary Aided schools. The Governing Body is responsible for ensuring that fair, consistent and objective procedures exist for matters relating to employee capability.
- 1.2 Where the Governing Body wishes to deviate from this proposed policy or adopt any other policy, it is the responsibility of the Governing Body to arrange consultation with recognised trade unions.
- 1.3 The use of the word 'term' in this procedure assumes a 6-term school year.
- 1.4 Notice of meetings is given in 'working days' as schools are increasingly open all year round. Whenever working days are mentioned, these are defined as school working days.

2. Scope

- 2.1 This policy and procedure has been developed in consultation with the recognised trade unions. It applies to all school based staff (including Head Teachers) with the exception of:
 - Newly qualified teachers during their period of induction (unless there are serious concerns in which case the Capability Procedure may be applied). Further guidance on teacher induction can be found in The Education (Induction Arrangements for School Teachers) (England) Regulations 2012.
 - Support staff during a probationary period under a Probationary Policy adopted by the Governing Body.
- 2.2 This procedure is not intended to be used for misconduct, which is handled under the disciplinary procedure. However, where there is a refusal to comply with this procedure, it may be appropriate to use the disciplinary procedure.

3. Management Support for Performance – Advice and Guidance on Best Practice

The advice and guidance in this section does not form part of the formal capability procedures.

3.1 Management of performance provides the Line Manager and employee with an opportunity to discuss performance issues on a one-to-one basis outside of formal processes and it is not appropriate for third parties to be involved in these meetings.

3.2 Informal discussions with the employee should:

- ensure that the employee is fully aware of the standards required
- ensure that the required standards have been set at a reasonably attainable level
- consider whether the context in which the employee works has altered significantly
- explore whether there are underlying health problems affecting performance and whether an occupational health referral is appropriate
- consider whether poor performance is due to a training issue
- agree what support will be given to assist the employee and who within the school will give that support
- agree a timescale for review (a minimum of 6 weeks) and set a date for follow up action

The employee should be advised that further support can also be obtained from:

- Employee Assist, Mon-Fri 9.00am to 5.00pm
Telephone: 01604 626787, employeeassist@relatenorthants.org.uk
- Teacher Support Network telephone: 08000 562561,
www.teachersupport.info/
- A Trade union representative

3.3 It is recommended that the discussion and the main action points agreed during the meetings are recorded on a simple pro forma and a copy retained by both line Manager and the employee. The pro forma used during the informal process will not be added to the employee's personnel record.

3.4 Mechanisms to support the employee in reaching the agreed level of performance may include mentoring, further training and development, an agreed temporary removal of additional responsibilities, closer supervision by

a senior colleague including regular feedback sessions and the observation of other colleagues' practices within the school. (This is not an exhaustive list.)

- 3.5 Before the Line Manager invokes the formal stages, the employee who is experiencing difficulty in achieving or maintaining the required level of performance agreed during the support process should be informed that this will be the case and that further support can also be obtained from the sources outlined above.
- 3.6 If the employee makes satisfactory progress and has met the agreed targets, this should be recognised, the support ended and the outcome recorded on the pro forma.
- 3.7 Whilst the duration of management support may vary from employee to employee, if the situation continues for more than 2 terms, the Line Manager will discuss with the Head Teacher the appropriateness of extending the period of support or moving to the Formal Stage of the Capability Procedure or the Fast Track Capability Procedure. The Head Teacher/Line Manager is advised to discuss on-going capability issues with their HR Advisor at the earliest opportunity.

4. Principles of a Formal Procedure

The advice and guidance in this section does not form part of the formal capability procedures.

- 4.1 The purpose of a capability procedure is to help and encourage all employees to achieve and maintain an acceptable standard of performance.
- 4.2 Lack of capability is defined as a situation in which an employee fails to consistently perform his/her duties to a professionally acceptable standard. Account should be taken of the following considerations:
 - The required standard should be appropriate to the level of the job and to the skills and experience reasonably expected of an individual in that position.
 - For teaching staff, the relevant nationally recognised standards should be referred to.
 - The Head Teacher/Line Manager will need to ensure that each member of staff has the ability, knowledge, guidance and support to perform their job to an acceptable standard.
- 4.3 A capability procedure provides a fair and consistent approach for dealing with individuals who are unable to achieve, or maintain, the required standard. The role of the Line Manager is to identify any concerns with performance and to discuss them with the individual concerned.

For the purposes of this document, “Line Manager” means the senior member of staff who has line management responsibility for that employee.

- 4.4 A capability procedure is not intended to replace the day-to-day support and supervision that is in place to support employees in their work.

It is important that supportive action is fully undertaken before any formal procedure is invoked unless there are exceptional circumstances (see Fast Track Capability Procedure).

- 4.5 If an issue of capability arises, it is strongly recommended that the Head Teacher/Line Manager seeks early advice from their HR Advisor and employees are strongly encouraged to seek the advice of their trade union.
- 4.6 Where a Head Teacher’s capability is in question, the Chair of Governors should consult with the Improvement Partner and the school’s HR Advisor at an early stage.
- 4.7 Where the formal procedure is ended at any stage, as the required improvement has been reached but performance subsequently falls below the agreed standard within a reasonable timeframe (up to 2 terms), the formal procedure may be reinstated at the point where it stopped, or escalated to the next stage.
- 4.8 No action will be taken under the formal procedure in respect of a trade union representative until the circumstances of the case have been discussed with a senior representative or paid official of the trade union, with the consent of the employee. The Head Teacher/Line Manager is advised to seek HR advice before taking any action.
- 4.9 The employee has the right to be accompanied at meetings under the formal procedure. As outlined in the ACAS Code, the chosen companion may be a fellow worker, a trade union representative, or an official employed by a trade union. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany a worker.
- 4.10 The Code also states that to exercise the statutory right to be accompanied, the employee must make a reasonable request. What is reasonable will depend on the circumstances of each individual case. However, it would not normally be reasonable for workers to insist on being accompanied by a companion whose presence would prejudice the hearing nor would it be reasonable for a worker to ask to be accompanied by a companion from a remote geographical location if someone suitable and willing was available more locally.
- 4.11 In accordance with the Code, if an employee’s first unsatisfactory performance is sufficiently serious, it may be appropriate to move directly to a final written warning or to the fast track procedure as appropriate. This might

occur where the employee's actions have had, or are liable to have, a serious or harmful impact on the school.

- 4.12 In accordance with the ACAS Code, where an employee is persistently unable or unwilling to attend a capability meeting without good cause the employer should make a decision based on the evidence available.

THE FORMAL CAPABILITY PROCEDURE

5. Formal Capability Procedure – Overview

- 5.1 Should it be necessary to move to the Formal Capability Procedure, the process will begin with a meeting between the Head Teacher/Line Manager, who may be accompanied by the school's HR Advisor, and the employee, who may be accompanied by a trade union representative or work colleague. This is the first meeting to which third parties will be invited to attend.
- 5.2 Meetings associated with any stage of the Formal Procedure will only be postponed once. A postponed meeting should be re-arranged within 5 working days.
- 5.3 If the employee is signed off by their GP at the start of or during any stage of the Formal Capability Procedure, the Attendance Management Procedure will commence. An Occupational Health referral will be made to seek a medical opinion; this may include seeking an opinion on the employee's fitness for continued employment and the appropriateness, or otherwise, of continuing with monitoring or formal procedures.
- 5.4 In some cases, where the medical opinion is that the employee is not fit to attend meetings, it may be appropriate for subsequent monitoring and/or meetings to proceed in the absence of the employee, or with a trade union representative attending on the employee's behalf. In this instance the Head Teacher/Line Manager will write to the employee to confirm the outcome of the meeting and ask the employee to comment if they wish. The process under the Attendance Management Procedure may also continue in an individual's absence with the medical evidence available.
- 5.5 In some circumstances it may be appropriate to defer the capability procedure until the employee returns to work e.g. absence due to a broken limb or other relatively short term sickness absence with a defined return date. If a decision is made for the capability process to be deferred until the employee returns to work, the process will continue from the point at which it was stopped.

6. Formal Capability Procedure – Stage 1 Meeting

- 6.1 The employee will be sent a letter asking them to attend the Stage 1 meeting. The letter will outline the reason for the meeting and advise that they may be accompanied by a work colleague or trade union representative. The Head Teacher may be supported by their HR Advisor.
- 6.2 The employee should be given at least 5 working days notice of this meeting. Meetings should be planned to ensure that timings and locations are

reasonable to both parties. In the event that the employee or their companion is unable to attend the meeting, one alternative date within 5 working days of the original meeting will be arranged.

If the employee, their trade union representative or work colleague is unable to attend on the revised date, the meeting will take place as scheduled.

2 working prior to the meeting, the employee must provide the name of their companion/trade union representative.

- 6.3 The purpose of the Stage 1 Meeting is to identify the on-going areas of concern and to agree a way forward. The Head Teacher/Line Manager should prepare for the meeting by ensuring that they have all available documents to evidence the concerns and an outline of support already given e.g., feedback from lesson observations, notes of one-to-one meetings, pupil data, etc.
- 6.4 Evidence in connection with the employee's capability which has been collected will be considered at the meeting. At least 5 working days prior to the meeting, the employee will receive copies of all documentation to be presented by the Head Teacher/Line Manager. The employee may present further evidence to support their case; this should be submitted at least two working days before the meeting.
- 6.5 At the meeting, it is important to:
- ensure that the employee was fully aware of the standards required
 - ensure that the required standards had been set at a reasonably attainable level
 - consider whether the context in which the employee works has altered significantly
 - explore whether there are underlying health problems affecting performance and whether an occupational health referral is appropriate
 - explore whether there are any personal issues or problems affecting performance
 - consider whether poor performance is due to a training issue
 - recap on support already provided
 - consider what further support will be given, or maintained, to assist the employee and who within school will give that support
 - Set targets to monitor improvement
 - agree a timescale for improvement
 - set a review date

The employee should be reminded that further support can also be obtained from:

- Employee Assist, Mon-Fri 9.00am to 5.00pm
Telephone: 01604 626787, employeeassist@relatenorthants.org.uk
- Teacher Support Network telephone: 08000 562561,
www.teachersupport.info/
- A Trade union representative

- 6.6 The timescale to monitor improvement under the formal procedure will depend on the complexities of the job, the targets set, the advice, support and monitoring provided and the method of evaluation. It is recommended that the timeframe for this stage should be no less than 6 weeks and no more than 2 terms unless there are exceptional circumstances (**see Fast Track Procedure**).
- 6.7 At the end of the meeting, both parties will have a clear agreed understanding of the performance issues causing concern, the levels of support to be maintained or put in place, the targets set and the period set for review.
- 6.8 This will be confirmed in writing by the Head Teacher/Line Manager within 2 working days of the meeting, including a copy of any actions agreed. The letter from the Head Teacher/Line Manager will also give the employee a first written warning. This letter will set out the specific concerns, the advice given, the target(s) established, any further support identified. The letter will also specify the period set for review and the proposed date of the Formal Review Meeting.
- 6.9 The employee must be informed that the warning letter is the outcome of Stage 1 of the formal procedure, and that failure to improve could lead to dismissal. The warning will remain live for 12 months.
- 6.10 The employee has the right to appeal against the warning by writing to the Appeal Committee of the Governing Body. Any appeal must be lodged within 5 working days from receipt of the warning letter. The appeal procedure will run concurrently with the review period and will be heard as soon as possible and in any event within 20 working days of the appeal being lodged.
- 6.11 If during the review period the employee has concerns about any issues which may impact on their ability to meet or sustain the set targets, they should discuss these with, or provide a written statement to, the named support or the Head Teacher/Line Manager as soon as they occur, rather than waiting for the review meeting.

Stage 1 Review

- 6.12 At the end of the review period a meeting to assess performance will take place between the Head Teacher/Line Manager and the employee. The letter will advise the employee that at this meeting, if the agreed standards are judged to have been met, the procedure will end at that stage. However, if the standards are judged not to have been met, the meeting will progress to stage two of the procedure. The Head Teacher/Line Manager may be accompanied by an HR Advisor and the employee by a work colleague or a trade union representative.
- 6.13 If the employee **has reached the agreed standard of performance**, the procedure may cease at this point and this will be confirmed to the employee in writing by the Head Teacher/Line Manager within five working days of the review meeting. The warning letter given at the Stage 1 Meeting will remain live for 12 months.
- 6.14 The Head Teacher/Line Manager has the discretion to extend the review period for a further time to ensure that the required level of performance is consistently sustained without support. An extension of the review period can also be considered if the standards have been partially met.

Where an employee has a live first written warning in place, further capability issues or failure to maintain agreed levels of performance within this 12 month period will be dealt with under Stage 2 of the capability procedure.

- 6.15 **If the agreed standard has not been reached** the meeting will progress to Stage 2 of the procedure.

The employee will already have been advised that the meeting would progress to Stage 2 if the agreed standard had been judged not to have been reached (paragraph 6.12)

7. Formal Capability Procedure – Stage 2

- 7.1 The purpose of the Stage 2 Meeting is to reiterate the on-going areas of concern and to agree a way forward. At the Stage 2 meeting, the Head Teacher/Line Manager will also address the areas outlined in 6.5 above.
- 7.2 At the end of the meeting, both parties will have a clear agreed understanding of the performance issues which are continuing to cause concern, the levels of support to be continued or put in place, the targets set and the period set for review.
- 7.3 The timescale to monitor improvement under the Stage 2 process will depend on the complexities of the job, the targets set and those previously set, the advice, support and monitoring provided and the method of evaluation. It is recommended that the timeframe for this stage should be no less than 6 weeks and no more than 2 terms unless there are exceptional circumstances.
- 7.4 The outcomes from this meeting will be confirmed in writing by the Head Teacher/Line Manager within 2 working days of the meeting, including a copy

of any actions agreed. The letter from the Head Teacher/Line Manager will also issue a final written warning and advise the employee that failure to maintain the agreed standards may lead to dismissal. This warning will remain live for 18 months. This letter will also set out the specific concerns, the advice given, the target(s) established, any further support identified. The letter will also specify the period set for review and the proposed date of the Stage 2 Review Meeting.

- 7.5 The employee has the right to appeal against the warning by writing to the Appeal Committee of the Governing Body. Any appeal must be lodged within 5 working days from receipt of the warning letter. The appeal procedure will run concurrently with the next review period and will be heard as soon as possible and in any event within 20 working days of the appeal being lodged.
- 7.6 Where an employee has a live final written warning in place, further capability issues or failure to maintain the agreed performance standards within this 18 month period will be dealt with at the Decision Meeting stage of this procedure.
- 7.7 At the end of the review period, a Stage 2 Review Meeting will take place between the Head Teacher/Line Manager and the employee, who has the right to be accompanied by a trade union representative, or work colleague. The Head Teacher may be supported by their HR Advisor.
- 7.8 At this meeting, the Head Teacher/Line Manager can decide to move to a Decision Meeting with a panel of Governors where a decision can be made that the employee should be dismissed with notice on grounds of capability.
- 7.9 **If the employee has reached the agreed standard of performance**, the employee will be told that the procedure ceases and this will be confirmed to the employee in writing by the Head Teacher within five working days of the meeting. The existing final written warning will remain live for a period of 18 months and further capability issues that occur within this 18 month period will be dealt with under Decision stage of the capability procedure.
- 7.10 The Head Teacher/Line Manager has the discretion to extend the review period to ensure that the required level of performance is consistently sustained without support. An extension of the review period may also be considered if the standards have been partially met.
- 7.11 **If the employee has failed to achieve the agreed standards**, the Head Teacher will advise the employee that the process will move to the final stage and arrange for a Decision Meeting to be held with the appropriate committee of the Governing Body.

8. Formal Capability Procedure – Decision Meeting

- 8.1 The employee will be sent a letter asking them to attend the Decision Meeting. The letter will outline the reason for the meeting and advise that

they may be accompanied by a work colleague or trade union representative. The Head Teacher may be supported at the Decision Meeting by their HR Advisor. The panel of Governors may also be supported by a second HR Advisor.

The letter will outline the purpose of the meeting and advise the employee that a possible outcome of the Decision Meeting may be dismissal.

- 8.2 The employee should be given at least 5 working days notice of this meeting. Meetings should be planned to ensure that timings and locations are reasonable to both parties. In the event that the employee or their companion is unable to attend the meeting, one alternative date within 5 working days of the original meeting will be arranged.

If the employee, their trade union representative or work colleague is unable to attend on the revised date, the meeting will take place as scheduled.

2 working days prior to the meeting, the employee must provide the name of their companion/trade union representative.

- 8.3 Evidence in connection with the employee's capability which has been collected throughout the formal process will be considered at the Decision Meeting. At least 5 working days prior to the meeting, the employee will receive copies of all documentation to be presented by the Head Teacher. The employee may present further evidence to support their case; this should be submitted at least two working days before the meeting.

- 8.4 An outcome of the Decision Meeting may be that the panel of Governors determine that the employee will not be dismissed. In this event, the final written warning will remain in place for 18 months and the employee will be expected to sustain the agreed level of performance. Where the employee fails to sustain the agreed level of performance within the 18 month period, a further decision meeting will be arranged.

- 8.5 The panel of Governors may determine at the Decision Meeting that the employee should be dismissed from the school, with notice, on the grounds of capability. If a decision is made that the employee should be dismissed, this will be confirmed in writing by the Chair of the panel of Governors advising the employee of the reason(s) for dismissal, giving the appropriate notice and detailing the employee's right of appeal.

- 8.5 The employee may appeal against the dismissal by writing to the Appeal Committee of the Governing Body, stating their reasons for appeal. Any appeal must be lodged within 5 working days from receipt of the letter confirming the dismissal. The appeal will be heard as soon as possible and in any event within 20 working days of being lodged.

- 8.6 The Governing Body will inform the Council of its decision to dismiss. (See section 9.2 below).

9. Additional Information

9.1 Notice Periods

- 9.1.1 Teachers are entitled to a minimum of 2 months' notice (subject to their continuous service) in Terms 1-2 and 5-6, and 3 month's notice in Terms 3-4. Teachers' employment can only be terminated on 30 April, 31 August or 31 December.
- 9.1.2 Support staff are entitled to statutory notice of between 1 and 12 weeks' subject to their continuous service. However, it is likely that their contractual notice will be a minimum of 1 month. Support staff employment may be terminated at any time of the year.
- 9.1.3 Governors may decide that the employee need not attend work during the notice period in which case the employee will receive payment in lieu of notice.

9.2 Dismissal Decision

- 9.2.1 The School Staffing (England) Regulations 2003 (in accordance with sections 35 and 36 of the Education Act 2002) allow that the Head Teacher should have the delegated responsibility to make the initial dismissal decision following which there will be an opportunity to appeal to a panel of Governors. However, it is recommended that, where possible, dismissal decisions under this Procedure are made by a panel of Governors as it is likely that the Head Teacher will have taken a lead role in managing performance of employees. Appeals will be heard by a separate Appeal Committee panel.
- 9.2.2 If the matter concerns the performance of the Head Teacher any decision to dismiss must be made by a panel of Governors. As it is likely that the Chair of Governors will have taken a lead role in managing the performance of the Head Teacher, the Chair should not be a member of the panel of Governors at the Decision Meeting.
- 9.2.3 Where the Council is the employer, the Head Teacher must notify their HR Advisor, in writing, of the determination that the member of staff should cease to work at the school and the Council will carry out the formal dismissal within 14 days, giving the appropriate notice. Following dismissal there is an opportunity for appeal to a panel of Governors.

9.3 Provision of information about staff capability

- 9.3.1 The School Staffing (England) (Amendment) Regulations 2012 come into force on 1st September 2012. They insert a new regulation which requires 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 2 years, been the subject of capability procedures (that is to say, procedures established in accordance with regulation 8 of the 2009 Regulations for dealing with lack of capability on the part of staff at the school).
- 9.3.2 If a teacher has been the subject of capability procedures in the preceding two years, the school is required to 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. The school must also provide written details of the concerns which gave rise to this, the duration of the proceedings and their outcome.
- 9.3.3 Guidance should be sought from a Senior HR Advisor in respect of the revised Regulations.

THE FAST TRACK CAPABILITY PROCEDURE

10. Principles of the Fast Track Capability Procedure

- 10.1 This section sets out the Fast Track process which is designed for use in exceptional circumstances and where action must be taken as a matter of urgency.
- 10.2 The Fast Track Procedure is designed to be used to address serious issues relating to unacceptable performance and should only be considered in cases where an employee's standard of performance raises serious cause for concern; for example, the education of pupils is in jeopardy, the health and safety of pupils is at risk or where a situation requires an immediate intervention.
- 10.3 Where use of the Fast Track Capability Procedure is being considered, the case must be discussed with an HR Advisor before taking any action. During this discussion, consideration must be given to whether the issue to be addressed is one of conduct or capability. Any issues relating to conduct must be dealt with under the Disciplinary Procedure.
- 10.4 The Fast Track Capability procedure can be invoked at any time during management of performance and there will be two stages each of 4 weeks duration. A final written warning may be issued at the end of the first review period by the Head Teacher/Line Manager (in the case of a Head Teacher, this warning will be issued by the Chair of Governors).

- 10.5 Meetings associated with any stage of the Formal Procedure will only be postponed in exceptional circumstances. A postponed meeting should be re-arranged within 5 working days.
- 10.6 The Head Teacher/Line Manager may consider it appropriate to suspend the employee on full pay pending the hearing. It will be explained to the employee that suspension is not itself a disciplinary action and does not indicate or presume the outcome of the process. In the case of a Head Teacher, the decision to suspend will be made by the Chair of Governors.
- 10.7 If the employee is signed off by their GP at the start of or during any stage of the Fast track Capability Procedure, an Occupational Health referral should be made immediately; this may include seeking an opinion on the employee's fitness to attend meetings. If the medical opinion is that the employee is fit to attend meetings, the process will go ahead as planned.
- 10.8 Where the medical opinion is that the employee is not fit to attend meetings, subsequent meetings will proceed in the absence of the employee. The employee may submit supporting documentation and/or a representative may attend on the employee's behalf. In this instance the Head Teacher/Line Manager will write to the employee to confirm the outcome of the meeting and ask the employee to comment if they wish.
- 10.9 In order to offer as much support as possible to any employee experiencing difficulty with reaching the required level of performance, the Head Teacher/Line Manager should make the employee aware of the services offered which are outlined in 3.6 above, i.e.
- Employee Assist, Mon-Fri 9.00am to 5.00pm
Telephone: 01604 626787, employeeassist@relatenorthants.org.uk
 - Teacher Support Network telephone: 08000 562561, www.teachersupport.info/
 - A trade union representative
- 10.10 No action will be taken under the fast track procedure in respect of a trade union representative until the circumstances of the case have been discussed with a senior representative or paid official of the trade union, with the consent of the employee. The Head Teacher must seek HR advice before taking any action.
- 10.11 Appeals raised as specified in section 13 or section 14 below will be heard within 15 days to ensure that scheduled meeting dates can be met.

11. Fast Track Capability Procedure – Consideration of Evidence

- 11.1 As outlined above, it is essential that clear and objective facts are gathered before making a decision on whether to proceed with the fast track capability

procedure and the Head Teacher/Line Manager must have discussed the issues with their HR Advisor before taking action.

11.2 The following is not an exhaustive list but, such evidence is likely to include:

- Written or electronic documents, reports or records
- Formal or other serious complaints from parents
- Complaints or concerns raised by professionals
- Failure to comply with legal or statutory requirements or responsibilities e.g. health and safety
- Evidence that confirms that a pupil / pupils have been placed 'at risk'

11.3 Where a decision has been made to proceed under the fast track capability procedure, the steps specified below should be taken.

12. Initial Meeting

12.1 Where the Head Teacher/Line Manager has identified a serious performance issue and the evidence has determined that this procedure should be used, the Head Teacher/Line Manager should ask the employee to attend a meeting where formal notification that the fast track capability procedure is being invoked will be given and the reasons for this.

12.2 Details of the meeting should be confirmed in writing by the Head Teacher/Line Manager, informing the employee of the reasons for the meeting, provide information about the performance issue and the possible outcomes. A copy of the procedure should be provided to the employee, and they must be advised of their right to be accompanied by a work colleague or trade union representative. All relevant information and documents will be provided to the employee in advance of the meeting.

12.3 The employee should be given at least 5 working days notice of this meeting. Meetings should be planned to ensure that timings and locations are reasonable to both parties. In the event that the employee or their companion is unable to attend the meeting, one alternative date within 5 working days of the original meeting will be arranged.

If the employee, their trade union representative or work colleague is unable to attend on the revised date, the meeting will take place as scheduled.

12.4 Subsequent meetings may proceed in the absence of the employee or with a trade union representative attending on the employee's behalf. In this

instance the Head Teacher/Line Manager will write to the employee to confirm the outcome of the meeting and ask the employee to comment if they wish.

12.5 The Head Teacher/Line Manager should begin the meeting by clarifying the purpose of the meeting and the areas of concern. During the course of this meeting, the Head Teacher/Line Manager should:

- Ensure that the employee is fully aware of the issues arising and the standards required
- Ensure that the employee is informed of the aspects in which the required standard has not been met
- Ensure that the required standards had been set at a reasonably attainable level and targets are realistic
- Establish whether the context in which the employee works has altered significantly
- Explore whether there are any personal issues or problems affecting performance
- Explore whether there are any underlying health problems that may be affecting performance and discuss a referral to occupational health
- Explore whether the poor performance is the result of a training issue which can be addressed
- Agree and confirm what support that will be given to assist the employee, who will provide it and when
- Confirm what the employee needs to do if they experience any difficulty during the review period (i.e. to immediately contact their Head Teacher/Line Manager or other agreed mentor to discuss any issues rather than waiting until the review meeting).
- Agree how monitoring will take place e.g. lesson observation, pupil's work monitoring and who will carry this out.

12.6 Areas for discussion should include mechanisms to support the employee in reaching the agreed level of performance e.g. reasonable lesson observations, further training and development, an agreed temporary removal of additional responsibilities, closer supervision by a senior colleague including regular feedback sessions and the observation of other colleagues' practices within the school.

At the end of the meeting, both parties will have a clear understanding of the performance issues causing this level of concern, the levels of support to be put in place, have agreed set targets.

12.7 A written warning will be issued at this stage which will remain live for 12 months. The letter will specify the concerns, any agreed actions and a date for a review meeting set for 4 weeks time.

- 12.8 The warning letter issued by the Head Teacher/Line Manager must ensure that the employee is clear that failure to achieve the agreed levels of performance will result in a final written warning being issued at the end of the review period and that subsequent action under the fast track procedure may lead to dismissal.
- 12.9 The employee has a right to appeal against the written warning by writing to the Appeal Committee of the Governing Body. Any appeal must be lodged within 5 working days from receipt of the letter confirming the written warning. The appeal procedure will run concurrently with the second stage of these procedures and will be heard as soon as possible and in any event within 15 working days of the appeal being lodged. The outcome of the appeal must be available prior to commencement of the next stage.

13. First Review Meeting

- 13.1 At the end of the 4 week review period, a meeting to discuss performance will take place between the Head Teacher/Line Manager and employee. The Head Teacher/Line Manager may be accompanied by an HR Advisor, and the employee may be accompanied by a work colleague or a trade union representative.
- 13.2 If the employee **has achieved** the agreed standards, the procedure may cease at this point. A letter will be issued to confirm that the procedure has ceased and advising the employee that a record of the issues which resulted in the fast track procedure being instigated will remain on file for 12 months.
- 13.3 If within the 12 month period there is a repeat of the issues that led to the instigation of the fast track procedure, the process will commence from the next stage. This will relate only to the issue(s) which were dealt with on a fast track basis and not to any other performance issues which may arise.
- 13.4 If the agreed standards **have not been achieved**, the employee will be given a final written warning which will remain live for 18 months. The letter will list the specific concerns that are being addressed through the fast track capability procedure, the agreed actions and the date of the final review meeting to be held in 4 weeks time.
- 13.5 The employee must be advised that the final review meeting will be conducted by the Head Teacher and that the Head Teacher may make a decision to arrange for a Decision Meeting to be held with the appropriate committee of the Governing Body. The employee will also be advised that the committee may, at that meeting, take a decision to dismiss the employee on grounds of their capability under the fast track procedure.
- 13.6 The employee has a right to appeal against a final written warning by writing to the Appeal Committee of the Governing Body. Any appeal must be lodged within 5 working days from receipt of the letter confirming the final written warning. The appeal procedure will run concurrently with these procedures

and will be heard as soon as possible and in any event within 15 working days of the appeal being lodged. The outcome of the appeal must be available prior to the final review meeting.

14. Final Review Meeting – Part A

- 14.1 At the end of the 4 week review period, a meeting to discuss performance will take place between the Head Teacher/Line Manager and employee. The Head Teacher/Line Manager may be accompanied by an HR Advisor, and the employee may be accompanied by a work colleague or a trade union representative.
- 14.2 Evidence relating to the employee's capability that has been collected during the fast track procedure will be admissible as part of the final review meeting proceedings.
- 14.3 Any individuals who have been monitoring the employee or providing support may be asked to attend for part or all of the meeting. The employee will be notified who will be present at the final review meeting.
- 14.4 **If the employee's performance has achieved the agreed standards**, the procedure may cease at this point. A letter will be issued to confirm that the procedure has ceased and advising the employee that a record of the issues which resulted in a final written warning being issued will remain on file for 18 months.
- 14.5 If within the 18 month period there is a repeat of the issues that led to the instigation of the fast track procedure, the process will commence from the final stage. This will relate only to the issue(s) which were dealt with on a fast track basis and not to any other performance issues which may arise.

15. Final Review Meeting – Part B

- 15.1 **If the employee has failed to achieve the agreed standards**, the Head Teacher will arrange for a Decision Meeting to be held with the appropriate committee of the Governing Body. The employee will be advised that the appropriate committee of the Governing Body, may at that meeting, determine that the employee should no longer work at the school on the grounds of capability.
- 15.2 The employee will be sent a letter asking them to attend the Decision Meeting. The letter will outline the reason for the meeting and advise that they may be accompanied by a work colleague or trade union representative. The Head Teacher may be supported at the Decision Meeting by their HR Advisor. The panel of Governors may also be supported by a second HR Advisor.

The letter will outline the purpose of the meeting and advise the employee that a possible outcome of the Decision Meeting may be dismissal.

- 15.3 The employee should be given at least 5 working days notice of this meeting. Meetings should be planned to ensure that timings and locations are reasonable to both parties. In the event that the employee or their companion is unable to attend the meeting, one alternative date within 5 working days of the original meeting will be arranged.

If the employee, their trade union representative or work colleague is unable to attend on the revised date, the meeting will take place as scheduled.

2 working prior to the meeting, the employee must provide the name of their companion/trade union representative.

- 15.4 Where the outcome of the Decision Meeting is that the panel of Governors determine that the employee will not be dismissed, the final written warning will remain in place for 18 months and the employee will be expected to sustain the agreed level of performance. Where the employee fails to sustain the agreed level of performance within the 18 month period, a further decision meeting under the fast track procedure will be arranged to review the decision.

- 15.5 Where panel of Governors determine that the employee should be dismissed from the school, with notice, on the grounds of capability, this will be confirmed in writing, giving the appropriate notice and advising the employee of the reason(s) for dismissal, confirming the date on which the contract is to end and detailing the employee's right of appeal.

- 15.6 The employee has a right to appeal against the dismissal by writing to the Appeal Committee of the Governing Body. Any appeal must be lodged within 5 working days from receipt of the letter confirming the dismissal. The appeal will be heard as soon as possible and in any event within 20 working days of the appeal being lodged.

- 15.7 The Governing Body will inform the Council of its decision where the Council is the substantive employer (See section 9.2 above).

16 The Appeal Hearing

- 16.1 Please see the Disciplinary Policy for the procedures relating to appeals.

17 Rights of Representation

- 17.1 The employee has the right to be represented by a trade union representative or work colleague at all formal meetings under the standard capability procedure and all meetings in the fast track procedure.

- 17.2 Where the employee is accompanied by a trade union representative or work colleague at a hearing the companion will be allowed to address the hearing and to put and sum up the employee's case and respond to views. However,

the companion will not have the right to answer questions on the employee's behalf.

- 17.3 The Head Teacher/Line Manager will be supported at all formal meetings under the standard capability procedure and all meetings in the fast track procedure by an HR Advisor.

18. Misconduct or lack of co-operation during the Standard or Fast Track Capability Procedure

- 18.1 If issues of misconduct occur during the time that the fast track procedure has been invoked, the Disciplinary Procedure will also be invoked and run in parallel with the fast track procedure.
- 18.2 Dependent upon the severity of the misconduct, the disciplinary procedure may result in dismissal on grounds of conduct.

19. Sickness Absence at the start of, or during the Fast Track Capability Procedure

- 19.1 Meetings associated with any stage of the Fast Track Capability Procedure will only be postponed once in exceptional circumstances. A postponed meeting should be re-arranged within 5 working days.
- 19.2 Employee absences should not delay any part of the formal stage of the capability procedure or any stage of the fast track capability procedure. Reasonable steps should be made to enable the employee to attend meetings, but where the employee is unable to attend, these may proceed in the employee's absence. In such circumstances a full account of the decision making process should be provided in the letter confirming any decisions taken.

APPENDIX A

Management Support Meeting Pro Forma

Name (line Manager)

Name..... (employee)

Date of meeting

Line Manager's comments

Employee's comments

Employee's outline of required support

Action points and overview of agreed support

Next meeting (if applicable)

Employee's Signature:..... Date of signing:.....

Head Teacher/Line Manager's

Signature:.....

Date of signing:.....

APPENDIX B

ACTION PLAN

(This document can be used as a general outline of support to be offered or as part of the informal or formal procedure)

NAME OF EMPLOYEE:

NAME OF HEAD TEACHER/LINE MANAGER:

DATE OF MEETING:

Areas of Concern (please give specific examples)	Standard required (target to be set)	Support requested or to be provided (and by whom)	Expectation	How Measured	Time period/review period

Revised May 2012

APPENDIX C

Guidance for Initial Hearing

1. Introductions

The Head Teacher/Line Manager/chair of the committee introduces him/herself and invites all others to introduce themselves. The Head Teacher/Line Manager/chair of the committee runs through the agenda.

2. Nature of the complaint

The Head Teacher/Line Manager/chair of the committee specifies that the complaint refers to capability and checks that all parties have the relevant documents.

3. Presentation by management

The Head Teacher/senior Manager presents the management's case referring to evidence from the formal stages of the Capability Procedure. Witnesses may be called.

4. Questions by member of staff

The employee and/or representative may question the person presenting the management's case and each of the management's witnesses after they have given their evidence.

5. Questions by Head Teacher/Line Manager/committee members

The Head Teacher/Line Manager/members of the committee may question the person presenting the management's case and each of the management's witnesses after they have given their evidence and been asked any questions by or on behalf of the employee.

6. Presentation by member of staff

The employee and/or the representative present their case. Witnesses may be called.

7. Questions by the person presenting the management's case

The person presenting the management's case may question the employee and each of the employee's witnesses after they have given their evidence.

8. Questions by Head Teacher/Line Manager/committee members

Head Teacher/Line Manager/members of the committee may question the employee, representative and each of the employee's witnesses after they have given their evidence and have been asked any questions by the person presenting the management's case.

9. Final statement by management

The person presenting the management's case may make a final statement.

10. Final statement by employee

The employee and/or representative may make a final statement.

12. Withdrawal

Both parties withdraw to allow the Head Teacher/Line Manager/committee to discuss findings and come to a decision. The note-taker and/or HR representative remain. The parties may be asked to remain available in case the Head Teacher/Line Manager/committee need to clarify any point.

13. Adjournments

Either party may request adjournments during the course of the hearing.

APPENDIX D

Guidance for Appeal Hearing

1. Introductions

The chair of the Appeal Committee introduces him/herself and invites all others to introduce themselves. The chair of the Appeal Committee runs through the agenda.

2. Nature of the complaint

The chair of the Appeal Committee specifies that the complaint refers to capability and checks that all parties have the relevant documents.

3. Presentation by management

The Head Teacher/senior Manager/Chair of the Dismissal Committee presents the management's case, referring to evidence from the formal stages of the Capability Procedure. Witnesses may be called which may include the Head Teacher/senior Manager who undertook the capability process or the Chair of the Dismissal Committee (depending on who is presenting the case).

4. Questions by member of staff

The employee and/or representative may question the Head Teacher or person presenting the management's case and each of the management's witnesses after they have given their evidence.

5. Questions by committee members

Members of the committee may question the person presenting the management's case and each of the management's witnesses after they have given their evidence and been asked any questions by or on behalf of the employee.

6. Presentation by member of staff

The employee and/or representative present their case. Witnesses may be called.

7. Questions by Head Teacher/Line Manager or his /her representative

The person presenting the management's case may question the employee and each of the employee's witnesses after they have given their evidence.

8. Questions by committee members

Members of the committee may question the member of staff and each of the employee's witnesses after they have given their evidence and have been asked any questions by the person presenting the management's case.

10. Final statement by management

The Head Teacher/Line Manager or their representative may make a final statement.

11. Final statement by employee

The employee and /or representative may make a final statement.

12. Withdrawal

Both parties withdraw to allow the Appeals Committee to discuss findings and come to a decision. The note-taker and/or HR representative remain. The parties may be asked to remain available in case the committee need to clarify any point.

13. Adjournments

Either party may request adjournments during the hearing.