The Schools HR Co-operative Limited
Every School Matters

Capability Procedure

Policy created: 05/2011
Policy reviewed and updated: 06/2021
Scheduled date of next review: 06/2023

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Update Information

This model policy will be subject to ongoing review and may be amended prior to the scheduled date of the next review in order to reflect changes in legislation, statutory guidance, or best practice (where appropriate).

1. Scope

This procedure applies to all employees in schools and academies to deal with poor performance due to lack of capability resulting from a lack of knowledge, skill, ability, experience or health. Poor performance due to lack of application, or wilful carelessness or negligence should be dealt with as misconduct through the school's Disciplinary Policy & Procedure.

The procedure does not apply to support staff during their probationary period or to Early Career Teachers (ECTs) during their two school year induction period.

For academies, all reference to Headteacher should, where appropriate, be replaced with Principal/Head of School, all reference to the Governing Board should, where appropriate, be replaced with the Academy Trust, and all reference to

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school should, where appropriate, be replaced with Academy or Trust.

The recognised trade unions have been consulted.

2. Policy Purpose

The aim of this policy is to identify and address poor standards of performance and/or lack of capability resulting from a lack of knowledge, skill, ability, experience, or health. (Note: Attendance issues resulting from sickness absence are dealt with through the school's Managing Attendance Policy, however on occasions poor health where the employee is at work may result in capability issues. Headteachers and line managers are advised to take advice from Schools HR if this seems to be the case).

This policy provides a fair and consistent process to support an employee to improve their performance to acceptable and agreed standards.

It is important to recognise that genuine incapability is not misconduct and should be treated supportively. It can occur for a variety of reasons e.g.; previous learned skills have now been overtaken by new technology; reorganisation or changing patterns of work; increased complexity; revised working methods; increased expectations; revised standards etc. There is an expectation that all employees are provided with the appropriate support, assistance and training to develop new skills to fulfil their duties and responsibilities.

The continued success of the school is dependent on its employees achieving and maintaining high standards of performance in their roles, and it is the responsibility of every manager and supervisor to:

- Regularly monitor performance of employees through the school's performance appraisal process for teachers and the performance management process for support staff
- Ensure that required standards of performance are achieved
- Ensure that their employees have up to date job descriptions
- Deal with and seek to remedy any performance issues promptly and effectively.

Employees are entitled to:

- Be informed of the specific areas of work where there are concerns about performance
- Be offered the opportunity to fully discuss and respond to the issues
- Be given an opportunity to improve with appropriate support in place
- Be accompanied by a trade union representative or a work colleague, at the formal meetings and hearing within this procedure. If the employee's representative cannot reasonably attend the meeting, there is an obligation on the school to rearrange the meeting on one occasion. In such circumstances, another date can be put forward so long as it is within **5 working days** after the original date. If the employee is not a member of a trade union and is unable to find a suitable work colleague to support them, they can make a request to the school to bring a friend
- Be treated fairly and consistently with any decisions taken being the result of a fair and reasonable process
- Have the consequences of any failure to meet the required standards fully explained at each stage of the procedure
- To appeal against a warning or a decision to dismiss.

It should be ensured that confidentiality is maintained. Any matter subject to the following proceedings should only be discussed on a need-to-know basis and then normally with the knowledge of the employee concerned.

If at any stage in the process poor work performance is attributed to misconduct such as wilful negligence, laziness, carelessness or other wilful acts, the school's Disciplinary Policy & Procedure should be invoked.

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Where capability issues may be attributed to the employee's disability, the school must seek to provide reasonable adjustments. Advice should be sought from Schools HR and, where appropriate, from Occupational Health.

This policy provides for a range of appropriate actions to be taken according to the significance and seriousness of the performance issue. Redeployment, demotion or dismissal should only take place following a Stage 3 - Capability Review Hearing (see para 7.4 below).

3. Reducing the Risk of Poor Performance

To minimise the risk of problems arising relating to capability, managers and supervisors should ensure that:

- Job descriptions accurately describe the main purpose, scope, tasks and responsibilities of the job and should be current and relevant.
- Recruitment and selection is thorough to ensure that only those with the necessary skills and abilities to do the job are appointed.
- Standards of performance are set and explained with arrangements in place for training and supervision and that the employee understands what is expected of them.
- Where a probationary procedure applies, performance must be carefully monitored during the probationary period (as set out in the school's Probationary Procedure for Support Staff), to identify specific development needs and check that performance is developing as expected.
- Performance is discussed regularly with each employee so that they are aware of how they are doing. There should be no surprises at any performance review meeting as any concerns in performance should be discussed with the employee at the earliest opportunity. It must be noted that performance reviews carried out as part of the performance appraisal/management process should not be considered as a formal stage of this procedure.
- Consequences of not meeting the required standard are fully explained to the employee.
- Where standards change because of a management decision, such as the introduction of new technology or new methodologies etc., the employee is informed, trained as required and made fully aware of their new obligations and the required standards.
- Workloads are manageable and resources sufficient.
- The needs of an employee with a disability are discussed with them in relation to possible impact on performance. Advice may be sought from Occupational Health/Schools HR to consider any reasonable adjustments that may overcome potential difficulties.
- Care and consideration is given to ensuring that employees, for whom English may not be their first language, understand instructions and expected standards and targets.

4. Monitoring and Review Periods

Targets and review periods must be realistic and reasonable taking account of the nature of the job, extent of the failure to achieve the required performance standards and available training and support. For example, a job with few and simple tasks, a review period of no less than 10 working days may be reasonable, particularly where the lack of capability is in a task which is fundamental to the job. Where the job is complex and effectiveness cannot be assessed in a short time, a longer review period may be necessary. However, review periods should not exceed 30 working days.

When setting review periods, a consistent approach needs to be applied considering the nature of the job role and the extent of the underperformance.

The review period following a Final Written Warning can be reduced to no less than 20 working days where the Headteacher can demonstrate that the concerns are significantly serious and that the work of the employee is having a serious effect on the school's overall performance and/or is seriously jeopardising the children's education. Advice should

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be sought from Schools HR.

5. Warnings within the Procedure

The Headteacher can issue the following warnings at the Stage 1 Formal Capability Meeting or at the Stage 2 Formal Review Meeting, where performance remains unsatisfactory:

- Written warning to remain on record for a period of twelve months
- Final written warning to remain on record for a period of two years

The decision about which level of warning to issue will depend on the seriousness of the problem. If performance is unsatisfactory a written warning will normally be issued at a Formal Capability Meeting and will invoke a review period not exceeding 30 working days. However, in cases of particularly serious concerns, where the education of the children is in jeopardy, it would be reasonable to move directly to a final written warning and possibly invoking a shorter review period of no less than 20 working days.

6. Initial Feedback Stage

Employees should (as part of the performance appraisal/management process) receive constructive feedback about their performance throughout the year and as soon as practicable. Feedback will highlight areas of strength as well as any areas that need attention. Where there are concerns about any aspect of the employee's performance the appraiser/line manager should meet the employee to:

- Give clear feedback about the nature and seriousness of the concerns;
- Give the employee the opportunity to comment and discuss the concerns;
- Set clear objectives for required improvement;
- Agree any support (e.g. coaching, mentoring, structured observations), that will be provided to help address those specific concerns;
- Make clear how, and by when, the appraiser/line manager will review progress (it may be appropriate to revise objectives and modify support, and it will be necessary to allow sufficient time for improvement. The amount of time is up to the school but should reflect the seriousness of the concerns and should be no more than 30 working days);
- Explain the implications and process if insufficient or no improvement is made e.g., impact on pay progression and potential to move to formal capability process.

When progress is reviewed, if the appraiser/line manager is satisfied that the employee has made, or is making sufficient improvement, the appraisal/performance management process will continue as normal with any remaining issues continuing to be addressed through that process.

If, however, when the progress is reviewed, the appraiser/line manager is not satisfied with the progress, the employee will be notified in writing that the appraisal/performance management system will no longer apply and that their performance will be managed formally under the school's Capability Procedure.

7. Formal Capability Procedure

7.1 Stage 1 - Formal Capability Meeting

7.1.1 Who conducts the meeting?

The meeting will be conducted by the Headteacher for all employees. Where the Headteacher is the subject of

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capability, the Chair of Governors will conduct the meeting.

7.1.2 Giving notice of the meeting:

The employee should be given at least **5 working days'** written notice of the Formal Capability Meeting.

The notification will contain sufficient information about the concerns about performance and their possible consequences to enable the employee to prepare to answer the case at the meeting. It will also contain copies of any written evidence e.g., notes of meetings during feedback stage; details of the time and place of the meeting, and will advise the employee of their right to be accompanied by a trade union representative or a work colleague. See template letter at Appendix 2.

7.1.3 What takes place at the meeting and potential outcomes:

At the meeeting, the Headteacher may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the concerns through the performance appraisal/management process. In such cases, the capability procedure will come to an end.

The Headteacher may adjourn the meeting if it is felt that further investigation is needed, or that more time is needed in which to consider any additional information.

If during the meeting it becomes evident that the lack of performance is due to wilful carelessness or negligence, the Headteacher should adjourn the meeting and the matter should be dealt with under the school's Disciplinary Procedure

In all other cases, the meeting will continue. During the meeting the Headteacher will:

- Identify the professional shortcomings
- Give clear guidance on the improved standard of performance needed to ensure that the employee can be removed from the formal capability procedure (this may include the setting of new objectives focused on the specific weaknesses that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made)
- Explain any support that will be available to help the employee improve their performance
- Set out the timetable for improvement and explain how performance will be monitored and reviewed (see Section 4 of this Procedure).
- Issue a written or a final written warning to the employee formally and advise that failure to improve within the set review period could lead to dismissal.

7.1.4 Confirming the outcomes to the employee:

The outcome of the Formal Capability Meeting will be confirmed in writing to the employee **within 5 working days** of the meeting including time limits for appealing against the warning issued. A copy of the notes taken at the meeting will also be sent to the employee. See template letter at Appendix 3.

The review and monitoring of performance should continue as discussed at the Formal Capability Meeting whilst any appeal, which may be lodged by the employee, is being considered.

7.1.5 Monitoring and Review Period following a Formal Capability Meeting:

During the set review period (see Section 4 of this Procedure) the employee's performance will be monitored and reviewed as indicated in the Formal Capability Meeting and the recommended support will be provided. At the end of the set review period the employee will be invited to attend a Stage 2 Formal Review Meeting, unless they were

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issued with a final written warning, in which case they will be invited to a Decision Meeting (see below).

7.2 Stage 2 - Formal Review Meeting

7.2.1 Who conducts the meeting?

Same as para 7.1.1. above.

7.2.2 Giving notice of the meeting:

As with Stage 1, at least **5 working days'** notice in writing will be given to the employee, and the notification will give details of the time and place of the meeting and will advise the employee of their right to be accompanied by a trade union representative or a work colleague. See template letter at Appendix 4.

7.2.3 What takes place at the meeting and potential outcomes:

If the Headteacher is satisfied that the employee has made sufficient improvement, the Capability Procedure will cease and the performance appraisal/management process will re-start. In all other cases:

- If significant progress has been made and there is confidence that further progress is likely, it may be appropriate to extend the monitoring and review period and if deemed appropriate, modify the support put in place. The period of extension should be in relation to the nature of the job and the level of underperformance but it should be no more than half the term of the original review period.
- If no or insufficient improvement has been made during the monitoring and review period, the employee will receive a final written warning. The final written warning will invoke a further monitoring and review period of 30 working days which can be reduced, depending on the seriousness of the problem, to not less than 20 working days.
- The employee will be informed of:
    - Where the concerns remain around performance
    - Give clear guidance on the improved standard of performance needed to end the Capability Procedure
    - Explain the support that will be available to help improve performance
    - Set out the timetable for improvement and explain how performance will be monitored and reviewed.

7.2.4 Confirming the outcomes to the employee:

The outcome of the Formal Review Meeting will be confirmed in writing to the employee **within 5 working days** of the meeting including time limits for appealing against the warning issued. A copy of the notes taken at the meeting will also be sent to the employee. See template letter at Appendix 5.

The review and monitoring of performance should continue as discussed at the Formal Review Meeting whilst any appeal which may be lodged by the employee, is being considered.

7.2.5 Monitoring and Review Period following a Formal Review Meeting

During the set review period the employee's performance will be monitored and reviewed as indicated in the Formal Review Meeting and the recommended support will be provided. At the end of the set review period the employee will be invited to attend a Decision Meeting.

7.3 Decision Meeting

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At the end of the monitoring and review period following a final written warning, the employee will be invited to attend a Decision Meeting.

7.3.1 Who conducts the meeting?

Same as para 7.1.1. above.

7.3.2 Giving notice of the meeting:

As with the other formal meetings, at least **5 working days'** notice in writing will be given to the employee, and the notification will give details of the time and place of the meeting and will advise the employee of their right to be accompanied by a companion who may be a trade union representative or a work colleague. See template letter at Appendix 6.

7.3.3 What takes place at the meeting and potential outcomes:

- If significant progress has been made and there is confidence that further progress is likely, it may be appropriate to extend the monitoring and review period and if deemed appropriate, modify the support put in place. The period of extension should be in relation to the nature of the job and the level of underperformance but it should be no more than half the term of the original review period. During the set review period the employee's performance will be monitored and reviewed as indicated in the Decision Meeting and the recommended support will be provided
- At the end of the set review period the employee will be invited to attend a further Decision Meeting
- If performance remains unsatisfactory, a recommendation will be made to progress to a Capability Review Hearing where dismissal will be a consideration.

7.3.4 Confirming the outcomes to the employee:

The outcome of the Decision Meeting will be confirmed in writing to the employee **within 5 working days** of the meeting. A copy of the notes taken at the meeting will also be sent to the employee. See template letter at Appendix 7.

7.4 Stage 3 - Capability Review Hearing

7.4.1 Who conducts the hearing?

The Capability Review Hearing should consist of three (3) governors who have no previous involvement in the matter, and who are not staff governors, and ideally not parent governors

7.4.2 Giving notice of the hearing:

The employee will be informed in writing of the meeting. The employee will be given **at least 10 working days'** notice of the meeting and will have the right to be accompanied by a trade union representative or a work colleague. See template letter at Appendix 11.

The letter will set out the reasons for the meeting, clearly detailing the poor performance and enclosing copies of relevant documentation e.g., outcome of the Formal Capability Meeting, Formal Review Meeting and Decision Meeting, and outcomes of any appeals to these meetings, action plans, notes from the monitoring and review, details of the support provided, job description etc.

A copy of the documentation should also be sent to the Capability Review Hearing Panel and the HR Adviser.

7.4.3 What takes place at the hearing and potential outcomes:

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The Headteacher will present the information on the poor performance including information on the nature of the job, specific examples of poor performance against the standards of performance set and the measures taken to date to improve performance.

The employee will have the opportunity to respond to the information provided by the Headteacher and present any further relevant information to include mitigation.

The Capability Review Hearing Panel may ask questions of the Headteacher and employee and seek advice from appropriate sources prior to reaching a decision. The Capability Review Hearing Panel may choose to adjourn to consider the information presented or to seek further information. Where further information is provided, both parties will have the opportunity to comment.

When considering possible outcomes of the Capability Review Hearing the Panel may wish to consider the following:

- Nature and level of the job
- Level of incapability and the impact on the job
- Impact upon pupils, the department and school
- Level of improvement achieved and whether this is sufficient
- Actions taken to date to resolve the difficulties and whether these were sufficient
- A pattern where capability remains satisfactory throughout previous review periods only to lapse soon afterwards.
- Any other relevant factors.

A possible outcome of the Capability Review Hearing could be to:

- Allow a further opportunity for the employee to reach the standard required indicating what support needs to be given (which has not already been provided) and the relevant review period
- Redeployment/Transfer to an alternative post
- Demotion
- Dismissal (this will be with paid contractual notice).

In certain schools, where there is an ongoing relationship with the Local Authority, the Local Authority has a statutory entitlement to send a representative to attend all proceedings relating to the dismissal of any teacher (including the Headteacher and Deputy Headteacher) and offer advice.
Any advice offered by the Local Authority representative at these proceedings must be considered when reaching a decision. All advice offered by the Local Authority representative, and decisions reached in the light of that advice should be fully documented.

7.4.4 Confirming the outcomes to the employee:

The decision should be confirmed to the employee in writing **within 5 working days** of the Capability Review Hearing. The employee should be notified of their right to appeal. A copy of the notes taken at the Hearing will also be sent to the employee. See template letter at Appendix 12.

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7.5 Appeal Hearing

7.5.1 Right of Appeal:

An employee has the right to appeal against:

- A warning given following the Stage 1 Formal Capability Meeting
- A warning given following the Stage 2 Formal Review Meeting
- The decision taken at the Stage 3 Capability Review Hearing.

7.5.2 How to Appeal:

If an employee wishes to appeal they must submit their appeal in writing within **10 working days** of receipt of the letter notifying them of the warning or the decision of the Capability Review Hearing. The employee must state in the letter their grounds for appeal which can be:

- The severity of the action and/or
- The finding of the Formal Capability Meeting/Formal Review Meeting/Capability Review Hearing on a point of fact and/or
- A failure to adhere to agreed procedure.

7.5.3 Who conducts the Appeal Hearing:

The Appeal Hearing Panel will consist of three (3) governors who have had no previous involvement in the case and who are not staff and, ideally, not parent governors.

7.5.4 Giving notice of the Appeal Hearing:

An Appeal Hearing should be held within 6 working weeks following receipt of the appeal letter from the employee. The employee should be informed in writing of the Appeal Hearing and given **at least 10 working days'** notice of the meeting. The employee will be entitled to be accompanied by a trade union representative or a work colleague.

7.5.5 Where the appeal is against any warning given following the Stage 1 or Stage 2 Meetings:

The Headteacher or Chair of Governors, where appropriate, should complete a management statement detailing the decision taken and reasons, and deal with issues raised in the appeal statement submitted by the employee. This should be sent to the employee ideally with the letter informing them of the Appeal Hearing together with documentation from the Stage 1 or Stage 2 meetings Formal Capability Meeting.

7.5.6 Where the appeal is against the decision taken at the Stage 3 Capability Review Hearing:

The Chair of the Capability Review Hearing Panel should complete a management statement detailing the decision taken and reasons, and deal with issues raised in the appeal statement. This should be sent to the employee ideally with the letter informing them of the Appeal Hearing together with documentation from the Capability Review Hearing. A copy of the documentation should also be sent at the same time to the Appeal Hearing Panel and the HR Advisor.

7.5.7 What takes place at the appeal hearing and potential outcomes:

The procedure to be followed at the Appeal Hearing is the same as the Capability Review Hearing but with the employee or their representative presenting the case first.

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The outcome of the Appeal Hearing may include the following:

- Uphold the appeal and dismiss the decision taken at Capability Review Hearing
- Substitute a less severe level of action as defined under the Capability Review Hearing outcomes
- Dismiss the appeal and uphold the decision taken at the Capability Review Hearing
- Any other appropriate action, in consultation with the school's HR Advisor.

8. Notice Periods

The period of notice for **support staff** is one week's pay for each year of service in the post up to a maximum of 12 weeks. The notice period starts from the date when the employee is informed that they are to be dismissed.

The period of notice for **teachers** must be as stated in the Conditions of Service for School Teachers (Burgundy Book). Notice to terminate employment must be given by the specified dates (by 31st October to end employment on 31st December, by 28th February to end employment on 30th April and by 31st May to end employment on 31st August) and notice pay will be to the end of that term. Teachers who have over 8 years continuous employment are entitled to longer notice based on their total continuous service, which is calculated based on one week for every complete year of service up to a maximum of 12 weeks.

Employees are not required to work their period of notice.

9. Suspension

If, at any stage during the procedure, the manager, following advice from Schools HR, considers the education of pupils to be jeopardised, they may consider suspending the employee.

Suspension would be decided by the Headteacher or Chair of Governors, depending upon the status of the employee in question. Suspension should be a last resort and, if possible, should be avoided except where, in the considered opinion of the Headteacher and professional advisers, the employee's continued presence would place the education of pupils in jeopardy.

The school may consider suspension following a Decision Meeting, where the decision is to recommend dismissal to a Governor panel at Capability Review Hearing, for the period until a Capability Review Hearing is convened.

Both the Headteacher and the Governing Board have authority to suspend an employee but only the Governing Board has the authority to end a suspension.

The employee will be notified in writing of the suspension giving reasons for the suspension. See template letter at Appendix 10.

10. Reverting to the Performance Appraisal/Management Process from Capability

The Capability Procedure will end if the Headteacher is satisfied that the employee is at the desired standard of performance and the performance appraisal/management process will recommence.

Warnings within the Capability Procedure are time limited e.g., 12 months for a written warning and two years for a final written warning. Where a warning has been issued and there are further concerns around the employee's performance within the period of warning, Section 6 of this procedure must be followed before reverting to the formal Capability procedure. Where this is the case, it is expected that the next stage of the Capability Procedure will apply. For example, if the process ended previously at Stage 1 – Formal Capability Meeting, then you would proceed to Stage 2 – Formal Review Meeting when returning to the formal Capability Procedure within the period of the warning.

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11. Grievances

Where the employee raises a grievance during the Capability Procedure, the procedure may be temporarily suspended in order to deal with the grievance. The school should seek advice from Schools HR.

12. Sickness Absence

If long term sickness absence appears to have been triggered by the formal action taken under the Capability Procedure, the matter will be dealt with in accordance with the school's Managing Attendance Procedure. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence. The school should seek advice from Schools HR.

13. Employment References to Prospective Employers

13.1 Teachers

Under The School Staffing (England) (Amendment) Regulations 2012 a school must pass on to a prospective employer, on request, information about whether a teacher is or has been subject to capability in the preceding two years. The information provided should include written details of the concerns which gave rise to this, the duration of the proceedings and their outcome.

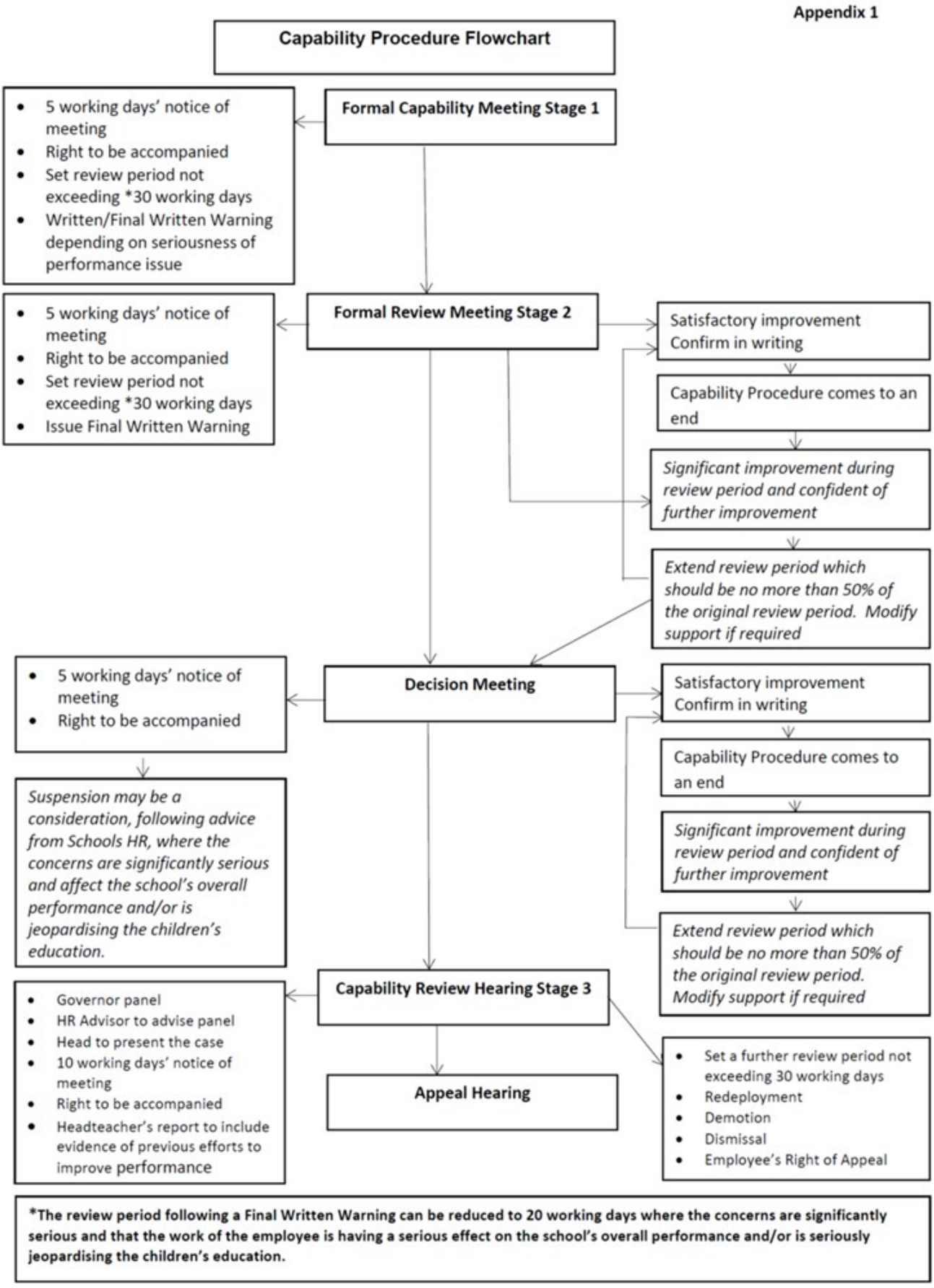
It is considered that this will prevent the recycling of poor teachers from school to school.

13.2 Support Staff

When the school is providing a reference to a prospective employer on behalf of an employee, the reference should only disclose details of capability issues if the employee is undergoing capability procedures at the time of writing the reference. Where the employee has previously undergone capability procedures but the issue has been resolved at the time of writing the reference, this should not be disclosed in the reference unless there is an unspent warning on the employee's file which has been issued relating to capability.

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14. Appendix 1 - Capability Procedure Flowchart



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15. Appendix 2 - Notification of Formal Capability Meeting (Stage 1)

Dear *(employee name)*

Stage 1 Formal Capability Meeting

In accordance with the school's Capability Procedure, I would like you to attend a meeting with me on *(date)* at *(time)* in *(venue)* to discuss the concerns about your performance which are detailed below and explore ways in which the school may be able to support you in reaching the required standard in the areas identified.

State clearly the areas of concern here

1.
2.
3.
4.

I attach copies of evidence from the Feedback stage of the *Performance Appraisal/Management Procedure (delete as approrpriate)* which will be considered at the meeting. These include *(list what is being attached e.g. the objectives and support plan agreed for the Feedback stage, notes from review meetings, observations, details of support provided etc).*

At the meeting you have will have the opportunity to present your case and any acceptable reasons in response to the allegation of poor performance.

If during the meeting there is evidence that the poor performance is due to wilful carelessness or negligence on your part, the meeting will be adjourned and the matter will be dealt with in accordance with the school's Disciplinary Procedure.

You have the right to be accompanied to the meeting by a trade union representative or a work colleague. It is your responsibility to arrange for a representative to accompany you to the meeting and to arrange for them to have a copy of the paperwork.

I enclose a copy of the Capability Procedure for your information.

I appreciate that this may be an anxious time for you and would like to inform you that the school's free employee counselling service is available if you require support at this time. You can contact them on *(insert contact details and/or I enclose a leaflet)*

Please inform me directly if you require any clarification about the process.

Yours sincerely,

Headteacher

Encl.

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16. Appendix 3 - Notification of Outcome of Formal Capability Meeting (Stage 1)

Dear *(employee name)*

Outcome of Stage 1 Formal Capability Meeting

I refer to the Formal Capability Meeting held on *(date)* and write to confirm the outcome.

We discussed the areas of concern in your performance which are as below:

State clearly the areas of concern here

1.
2.
3.
4.

You explained that *(insert any explanation that the employee gave about their perception of their own performance and any reasons given for the performance issues raised).*

After full consideration of the points raised, it was agreed that the following action will be taken in an attempt to resolve these difficulties/assist you to reach the required standard:

(insert details of constructive action to be taken by the manager and/or employee to address the performance issues i.e. details of performance standard to be achieved, type of support which will be provided by the school and the areas in which this support will be provided, frequency of review meetings during the review period etc.)

A review period of *(enter number of working day for review period)* is being set from *(date of meeting)* and your performance will be reviewed at a Stage 2 Formal Review Meeting on *(date).*

OR

In view of the poor performance it is my decision that you should receive a written warning to remain on your record for 12 months. I must inform you that if you fail to achieve the required standard and the matter was to progress to the Stage 3 Capability Review Hearing consideration will be given to your dismissal on the grounds of capability.

I attach a copy of the notes of the meeting for your information.

You have the right to appeal against the written warning in accordance with the school's Capability Procedure. If you wish to appeal, you must submit a written statement of appeal to me within 10 working days of receipt of this letter. The letter should clearly state the grounds of the appeal, which should be based on any or all the following:

- The severity of the action and/or
- The finding of the Formal Capability Meeting on a point of fact and/or
- A failure to adhere to agreed procedure.

Any appeal will be heard by an Appeal Panel of three Governors.

Yours sincerely

Headteacher
Encl.

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17. Appendix 4 - Notification of Formal Review Meeting (Stage 2)

Dear *(employee name)*

Stage 2 Formal Review Meeting

I would like you to attend a Formal Review Meeting on *(date)* at *(time)* in *(venue)*. The purpose of this meeting is to review your performance over *(insert, in days, the review period)* agreed at the Formal Capability Meeting on *(date)*.

I attach written evidence obtained during the review period for consideration at the meeting and this includes:

(List supporting evidence to be considered at the meeting)

You have the right to be accompanied to the meeting by a trade union representative or a work colleague. It is your responsibility to arrange for a representative to accompany you to the meeting and for them to have a copy of the paperwork.

I appreciate that this may be an anxious time for you and would like to inform you that the school's free employee counselling service is available if you require support at this time. *You can contact them on (insert contact details and/or I enclose a leaflet)*.

Please inform me directly if you require any clarification about the process.

Yours sincerely

Headteacher

Encl.

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18. Appendix 5 - Notification of Outcome of Formal Review Meeting (Insufficient Improvement)

Dear *(employee name)*

Outcome of Formal Review Meeting

I refer to the Formal Review Meeting on *(date)* and write to confirm the outcome.

Following the meeting and review of the evidence obtained during the set review period I must inform you that there has been *no/insufficient* improvement in your performance.

(Points discussed should be entered here around how the previous review period has gone)

In view of *no/insufficient* improvement achieved, it is my decision that you should receive a final written warning to remain on your record for 2 years.

This invokes a further review period of 30 working days to be set and your performance will be reviewed at a Decision Meeting to be held on *(date)*.

During the review period *(insert details of constructive action to be taken by the manager and/or employee to address the performance issues i.e., details of performance standard to be achieved, type of support which will be provided by the school and the areas in which this support will be provided, frequency of review meetings during the review period etc.)*

I must inform you that if you fail to achieve the required standard and the matter was to progress to a Stage 3 Capability Review Hearing, consideration will be given to your dismissal on the grounds of capability.

I attach a copy of the notes of the meeting for your information.

You have the right to appeal against the final written warning in accordance with the School's Capability Procedure. If you wish to appeal, you must submit a written statement of appeal to me within 10 working days of receipt of this letter. The letter should clearly state the grounds of the appeal, which should be based on any or all the following:

- The severity of the action and/or
- The finding of the Formal Capability Meeting on a point of fact and/or
- A failure to adhere to agreed procedure

Any appeal will be heard by an Appeal Panel of three Governors.

Yours sincerely

Headteacher

Encl.

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19. Appendix 6 - Notification of Decision Meeting

Dear *(employee name)*

Decision Meeting

I would like you to attend a Decision Meeting on *(date)* at *(time)* in *(venue)*. The purpose of this meeting is to review your performance over the *(insert, in days)* review period agreed at the Formal Review Meeting on *(date)*.

I attach written evidence obtained during the review period for consideration at the meeting and this includes:

(List supporting evidence to be considered at the meeting)

You have the right to be accompanied to the meeting by a trade union representative or a work colleague.

I appreciate that this may be an anxious time for you and would like to inform you that the school's free employee counselling service is available if you require support at this time. You can contact them on *(insert contact details and/or I enclose a leaflet)*.

Please inform me directly if you require any clarification about the process.

Yours sincerely

Headteacher

Encl.

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20. Appendix 7 - Notification of Outcome of Decision Meeting (Insufficient Improvement)

Dear *(employee name)*

Outcome of Decision Meeting

I refer to the Decision Meeting on *(date)* and write to confirm the outcome.

Following the meeting and review of the evidence obtained during the set review period I must inform you that there has been *no/insufficient* improvement in your performance.

(Points discussed should be entered here around how the previous review period has gone)

In view of *no/insufficient improvement* achieved it is my decision that the matter should progress to the Stage 3 Capability Review Hearing where dismissal may be a consideration.

The Capability Review Hearing will be held in accordance with the school's Capability Procedure and you will be informed about the details once these have been finalised.

I attach a copy of the notes of the meeting for your information.

Yours sincerely

Headteacher

Encl.

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21. Appendix 8 - Notification of Confirmation of Improvement in Performance Model Letter

Dear *(employee name)*

Following the *Formal Capability/Formal Review/Decision meeting* on *(date)* to review your performance I am pleased to inform you that your performance has improved to the required standard and, consequently, I do not intend to take any further action under the Capability Procedure.

Your performance will revert to being managed under the school's *Performance Appraisal/Performance Management Procedure (delete as appropriate depending on whether employee is a teacher or support staff)*.

I must inform you that should any further problems in your work performance arise further action under the Capability procedure may be necessary.

I would like to congratulate you on the effort you have put in to improve the standard of your work in the areas specified. I hope that you will be able to sustain this improvement and would encourage you to seek help immediately should you experience any problems with your work in the future.

I attach a copy of the notes of the meeting for your information.

Yours sincerely

Headteacher

Encl.

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22. Appendix 9 - Notification of Extension of Review Period Following Formal Capability/Formal Review/Decision Meeting

Dear *(employee name)*

I refer to the *Formal Capability/Formal Review/Decision meeting* held on *(date)* when your performance at work was discussed.

I am very pleased to confirm that you have achieved the expected standard of performance in the following areas:

(State the areas where the expected performance standards have been achieved)

I would like to congratulate you on the effort you have put in to achieving the required standard in the areas specified.

However, as discussed, concerns remain in respect of the following:

(State here the areas of concern which remain, these should be very specific detailing in what way performance standards have not reached so that the employee is left in no doubt)

You explained that *(insert any explanation that the employee gave about their perception of their own performance and any reasons given for the performance issues raised)*.

After full consideration of the points raised, it was agreed that the following action would be taken in an attempt to resolve *these difficulties/assist you to reach the required standard*:

(Insert details of constructive action to be taken by the manager and/or employee to address the performance issues i.e., details of performance standard to be achieved, type of support which will be provided by the school and the areas in which this support will be provided, frequency of review meetings during the review period etc.)

In the circumstances the current review period will be extended by a further *(number of working days, this should be no more than half the original review period)* days to enable you to achieve the expected standard in the area(s) specified. Therefore, a *Formal Review Meeting/Decision Meeting* to consider your performance will be held on *(date)*.

I must inform you that if you fail to achieve the required standard and the matter was to progress to the Capability Review Hearing, consideration will be given to your dismissal on the grounds of capability.

I attach a copy of the notes of the meeting for your information.

Yours sincerely

Headteacher

Encl.

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23. Appendix 10 - Notification of Suspension

Dear *(employee name)*

I am writing to confirm the decision taken under the Schools' Capability Procedure to suspend you from work with effect from *(insert date)* until further notice. Your suspension is without prejudice and on full pay.

The reason for your suspension *is to facilitate a full investigation into the allegation of poor performance (state details of poor performance)/is that your poor performance at work is considered to jeopardise the education of pupils and will be until a Capability Review Hearing is convened to consider your continued employment at the school.*

It is expected that the investigation will be concluded by *(insert date)/It is expected that the Capability Review Hearing will be convened by (insert date)*. However, if due to unforeseen circumstances, it has not been possible to *complete the investigation/convene the Capability Review Hearing* by the given date, you will be informed of any extension to your suspension.

Please do not return to the school unless it is with my express agreement.

The decision to suspend will be reviewed regularly and may be reconsidered at any time in the light of new evidence during the investigation. As suspension can be lifted at any time, during this time you are regarded as being available for work or to attend for any other reason.

Following the investigation, if it is considered that you have a case to answer, the *school's Disciplinary Procedure/school's Capability Procedure* will be followed and you will be notified accordingly.

(Name of designated person) will be your designated point of contact at the school during the period that you are away from the school. *He/she* will keep you informed of general activities and news at the school. If you wish to contact the school for any reason please telephone *(name of designated person)* on *(insert telephone number)*. I must ask you not to contact any other member of staff, pupil at the school or any member of the Governing Board whilst the suspension is in force.

If you wish to collect any personal belongings at the school please contact ***(name of designated person)*** who will make the appropriate arrangements.

I appreciate that this will be a difficult time for you and would like to inform you that the school's free employee counselling service is available if you require support at this time. You can contact them on *(insert contact details and/or I enclose a leaflet)*.

Yours sincerely

Headteacher/Chair of Governors

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24. Appendix 11 - Notification of Capability Review Hearing (Stage 3)

Dear *(employee name)*

Stage 3 Capability Review Hearing

I write to inform you that in accordance with the school's Capability Procedure you are required to attend a Capability Review Hearing in relation to your performance at work.

The Capability Review Hearing will be held on *(date)* at *(time)* in *(venue)*. The Capability Review Panel will consist of:

(List the names of the 3 governors)

The purpose of the Capability Review Hearing is to review your employment with the school as *(enter job title)* following unsatisfactory assessments of your capability for the post. The following areas have been identified where you have failed to reach the required standard.

(i)

(ii)

(iii)

The purpose of the Capability Review Hearing is also to confirm that all the appropriate procedures have been followed and that any proposed action is reasonable in all the circumstances. This will include that you have previously been advised that there will be consideration given to your dismissal if you do not meet the standards required for the post which you are employed to.

You have the right to be accompanied to the Hearing by a trade union representative or a work colleague. It is your responsibility to arrange for a representative to accompany you to the hearing.

I enclose the 'bundle of documents', which includes a copy of the school's Capability Procedure, for consideration at the Capability Review Hearing. It is your responsibility to arrange for your representative to have a copy of the paperwork.

I would be grateful if you could confirm your attendance as soon as possible. If you wish to submit any documentation to be considered at the Hearing, please forward this no later than 3 working days before the Hearing.

I appreciate that this may be an anxious time for you and would like to inform you that the school's free employee counselling service is available if you require support at this time. You can contact them on *(insert contact details and/or I enclose a leaflet)*.

Yours sincerely

Chair of Governors

Encl.

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25. Appendix 12 - Notification of Outcome of Capability Review Hearing (Dismissal)

Dear *(employee name)*

I refer to the Capability Review Hearing on *(date)* and write to inform you of the decision on behalf of the Capability Review Hearing Panel.

The panel considered all the information presented which included:

(Enter information considered which can include the following)

- *Nature and level of the job*
- *Level of incapability and the impact on the job*
- *Likely level of improvement and whether this is sufficient*
- *Actions taken to date to resolve the difficulties, whether these are sufficient and further possible actions*
- *A pattern where capability remains satisfactory throughout the review period only to lapse soon afterwards.*
- *Any other relevant factors (these need to be specified).*

The panel are of the view that you have been given sufficient opportunity and assistance to improve your performance to the required standard but you have failed to reach this standard. Consequently, I have no alternative but to dismiss you on the grounds of capability. You are entitled to *(insert number of weeks)* weeks' notice with pay. You are not required to work your period of notice.

A copy of the notes of the hearing are attached for your information.

You have the right to appeal against your dismissal. If you wish to appeal, please let me know in writing within 10 working days of receiving this letter stating your grounds for appeal which can be:

- The severity of the action and/or
- The finding of the Capability Review Hearing on a point of fact and/or
- A failure to adhere to agreed procedure.

In the meantime, if you should have any queries please contact me.

Yours sincerely

Chair of Capability Review Hearing Panel

Encl.

Policy created: 05/2011

25 Jun 2021
Policy has been reviewed and refreshed. Refer to the Schedule of Amendments for full detail. Schedule of amendments

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