



Capability procedure (whole school) 2012

This procedure remains current for teachers but should only be used for support staff if the Capability Procedure for Support Staff 2014 has not been adopted.

For staff in City Schools/Colleges and other establishments (including centrally based teachers)

Human Resources
Education and Children's Services
Last reviewed: 13 December 2012

Although this document refers to the Headteacher, it also applies to the Principal / Line Manager / governors as appropriate. Where there is reference to teacher in this document amendments will be required if the school decides to apply this policy to other staff.

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INTRODUCTION

This procedure applies to all employees in Local Authority Schools/Colleges and other establishments including Headteachers when adopted by the Governing Body. It also applies to teachers and Headteachers employed to work in centrally managed services. The procedure is recommended for use in Voluntary Aided schools and former maintained schools e.g. schools with Trust and Academy Status.

The procedure summarises the responsibilities of the Headteacher and Governing Body, and sets out the support provided by the Human Resources Team, assuming the school has purchased the appropriate service from them.

PURPOSE OF THE PROCEDURE

Early identification of problems through appraisal by Headteachers will help to avoid the need for formal capability procedures. In most cases an improvement may be achieved informally with appropriate management support and attention, through the agreed appraisal policy. In others a more formal approach using this policy will be necessary.

The purpose of the procedure is to:

- give employees and the Headteacher/Governing Body the opportunity to remedy serious problems of unsatisfactory performance
- provide a fair and efficient procedure in line with good employment practice
- keep employees informed of the action to be taken if they fail to maintain required standards (i.e. Teachers' Standards, if applicable)
- deal with such matters openly and with natural justice

AIM OF THE PROCEDURE

It is important to emphasise that the aim of this procedure is to ensure employees improve and perform their job to the required standard and therefore to retain them within this Authority.

This is achieved by:

- reviewing the employee's performance
- detailing the support to be provided and evaluating this
- deciding whether or not performance is satisfactory
- telling the employee if performance is satisfactory or not

The procedure applies to capability issues. This procedure does not apply where there is incapability due to ill health, which is covered by the sickness absence management procedure, or misconduct which is covered by the disciplinary procedure.

PRINCIPLES

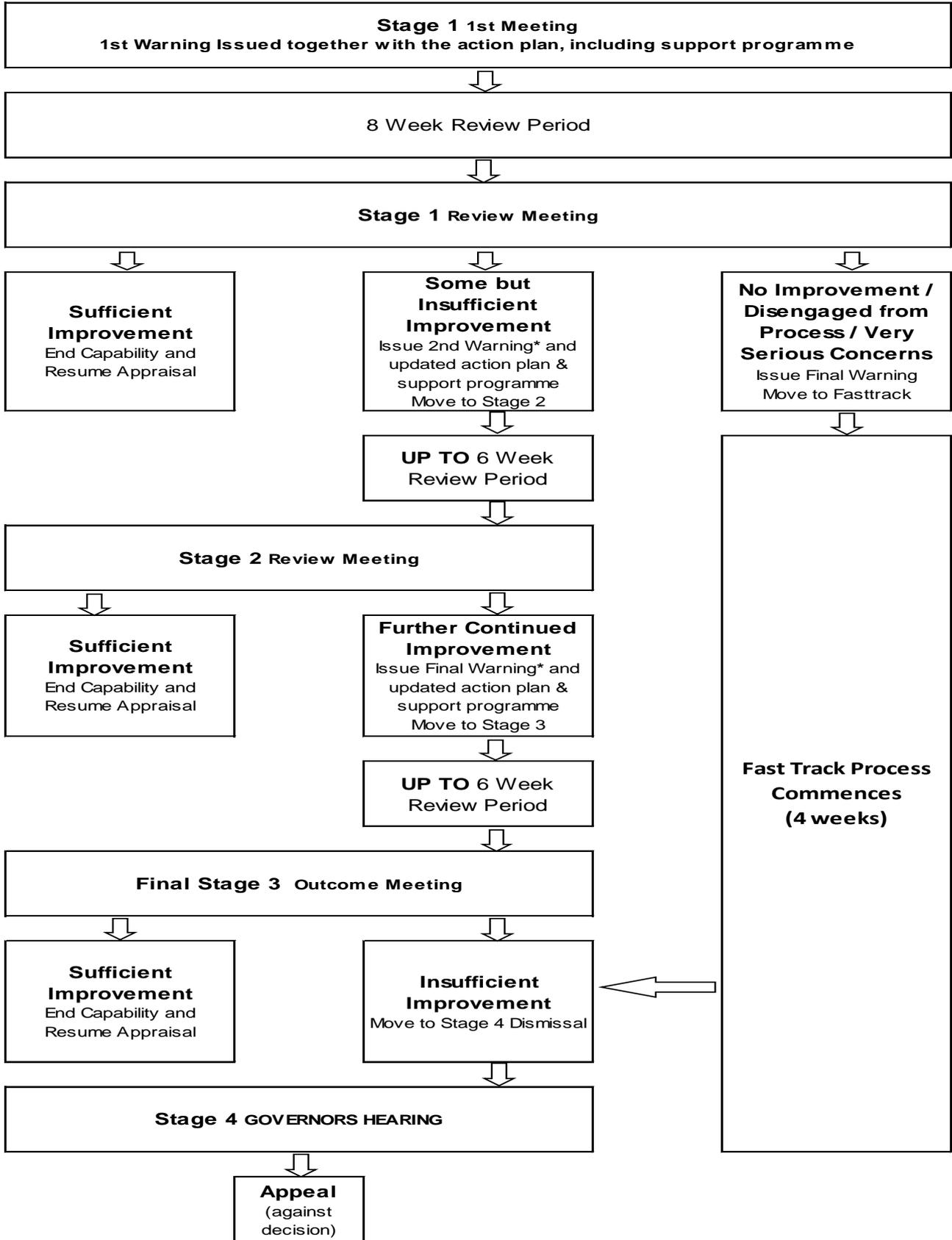
All those involved in managing issues of capability will:

- deal with under-performance as it arises
- detail specific examples of areas of under-performance
- manage all capability matters fairly and reasonably, distinguishing between cases of capability, health and misconduct and using the appropriate procedure in compliance with legal requirements, good practice and delegated authority
- identify the professional shortcomings e.g. which standards are not being met and using specific examples
- give clear guidance on the improved standard of performance required for the employee to be removed from the formal capability procedure
- make effective use of accurate and focused Job Descriptions and Person Specifications
- explain and provide appropriate support and resources to help the employee to improve their performance
- take account of the legal requirement to make reasonable adjustments to working arrangements where performance is affected by disability
- set out a timetable for improvement and how performance will be monitored and reviewed and identify the formal outcomes if performance does not improve
- state in writing to employees whose work is not satisfactory:
 - the standards which are to be achieved
 - the timescales over which they are to be achieved
 - the support that will be given to help them reach the required standard
 - the arrangements for monitoring and reviewing their achievement
 - the consequences of failure to meet the required targets set
 - the level of warning issued, as appropriate
- keep clear and accurate records of all formal meetings and send a copy to the employee/representative
- seek medical advice, where ill health may be a factor affecting performance, noting any advice/recommendations of Occupational Health
- in cases of absence, utilise the schools/college procedure for dealing with absence where appropriate
- offer access to specialist counselling and other forms of support
- encourage appropriate representation by Trade Unions/Professional Associations at all stages of this procedure
- observe any local agreements currently in use within this Local Authority e.g. LA Local Model Protocol on Classroom Observation

CAPABILITY PROCESS FLOWCHART

Appraisal is the normal process for performance management

Capability will only be invoked where serious concerns exist regarding an employee's performance and have not been successfully addressed under Appraisal



* The employee has a right of appeal against warnings issued at stages 2 & 3

CAPABILITY PROCESS

Prior to the First Meeting

Before the formal process commences, it is essential that management have clear documented evidence of concerns/poor performance available.

The Headteacher must write to the employee inviting them to the Stage 1 meeting, giving 5 working days' notice of the meeting and confirming the right to be accompanied by a Trade Union/Professional Association representative or colleague. A copy of the proposed action plan and a copy of this procedure should be enclosed with the invitation to the meeting. A copy of all the information must also be provided to the employee for their representative.

No capability action shall be taken against any known school representative of a Trade Union/Professional Association until the case has been discussed with a full time paid official of the Trade Union/Professional Association concerned. This should be done without delay. Where this is proposed, the Headteacher will discuss the matter at an early stage with an official employed by the respective union/association, after obtaining the employee's agreement.

The Headteacher should seek appropriate support and advice from the Human Resources Team before the formal process commences and at each stage of the procedure.

Stage 1 Meeting at the start of the Capability Procedure

The Headteacher, supported by HR, will meet with the employee and representative (if requested). This meeting will be a frank and open discussion to consider the facts. It should be conducted discreetly and in confidence, during the normal working day. A formal record of the meeting must be retained and a copy provided to the employee, together with the agreed action plan and support programme.

The Headteacher will:

- detail the concerns that management have regarding the employees performance
- give specific examples of areas of under-performance
- advise the employee of the seriousness of the issues and improvements required to meet performance standards and for the employee to be removed from the capability procedure
- state how the underperformance is having an effect on the school
- state how long the issues have been occurring
- detail any action/training/support provided to date
- explain the standards required/outcomes to be met
- agree and confirm the action plan and support programme:
 - offer appropriate training, support and guidance to help the employee
 - set agreed time limits, in line with policy, for the employee to achieve and maintain the required standard of work
 - confirm the arrangements for reviewing the employees progress
- warn what action will be taken if standards are not met and maintained
- issue 1st formal warning

During the meeting the Headteacher will consider any contributing causes raised by the

employee, agree the action plan and confirm the date of the review meeting.

An employee may request access to a mentor and should have no reason to feel anxious that a request for help from a mentor will be reported as further evidence of failure. The remit of the mentor will be clearly defined as being independent of the whole process and the arrangement will be agreed in advance by all parties.

It is important to ensure objectivity and a clear separation of decision making from support activities. If a mentor is requested by the employee this person must be independent of the management of the individual and particularly not be involved in managing/contributing this formal procedure.

Details of the agreed action plan, support programme and outcome of the meeting will be confirmed to the employee in writing within 2 working days and must include the **first warning**. The review period should not commence until the confirmation is provided to the employee and the agreed support is in place.

A review date will be set which allows a reasonable period to assess any change that may have taken place. In setting a review date it is important to weigh the circumstances of each case individually. In normal circumstances a review period of 8 weeks is recommended for this stage of the procedure.

During the review period, the support set out and agreed in the action plan must be provided in a timely manner to ensure the employee has sufficient time within the review period to meet the required targets/standards. Where the agreed support is not provided in a timely manner it may be necessary to review the process i.e. reconvene the Stage 1 meeting.

When monitoring activities take place there will be prompt feedback provided to the individual in line with Local Authority policies. A copy of any paperwork produced should be provided to the employee and their representative at the earliest opportunity.

Stage 1 Review Meeting

The Headteacher will reconfirm the review date in writing, giving 5 working days' notice of the meeting and confirming the right to be accompanied by a Trade Union/Professional Association representative or colleague. A copy of the previously agreed action plan should be enclosed.

At the review meeting the Headteacher, supported by HR, will meet with the employee and representative (if requested) to review performance and support during the first review period. A formal record of the meeting must be retained and a copy provided to the employee.

The following sets out the procedural options available following the Stage 1 Review Meeting.

Where a further review period is to be set, this would normally be 6 weeks but may be reduced to 4 weeks where the concerns are documented as sufficiently serious or improvement can be achieved in a shorter time frame i.e. 4 weeks.

The outcome of the review meeting will be one of the following:

- performance has improved to a sufficient level and the capability procedure ceases and the appraisal process resumes. No further warning is issued. (However, if during the following 6 months performance deteriorates in the same areas identified previously, then the Capability Procedure will recommence at the same stage at which it ceased)

Or

- there has been improvement but some concerns still exist. A 2nd warning is issued and the capability procedure continues. A further review period of up to 6 weeks is set and date agreed.

Or

- there has been no improvement and very serious concerns still exist and/or the employee has disengaged from the process. A final warning is issued and the capability procedure continues using fast track to Stage 4, recommendation to Governors for dismissal. (Further advice should be sought from Human Resources where this option is felt necessary).

The outcome, based on the options set out, will be confirmed in writing to the employee within 2 working days of the meeting. The letter will confirm the warning level, continuation of the procedure, right of appeal and review date **or** that the capability procedure has ceased and appraisal will resume, as appropriate and detailed above. A copy of the record of the meeting should also be enclosed.

The employee will have the right of appeal to governors against any warning issued at the review meeting. The appeal must be lodged with the Headteacher, in writing, within 5 working days of receiving the warning and state the reason for appeal. (See Appeal Process page 11)

Stage 2 Review Meeting

The Headteacher will reconfirm the review date in writing, giving 5 working days' notice of the meeting and confirming the right to be accompanied by a Trade Union/Professional Association representative or colleague. A copy of the previously agreed action plan should be enclosed.

At the review meeting the Headteacher, supported by HR, will meet with the employee and representative (if requested) to review performance and support during the second review period. A formal record of the meeting must be retained and a copy provided to the employee.

During the review meeting consideration may be given to alternative measures such as re-organising the job, stepping down (for teachers only) or voluntary redeployment in school. This course of action may not be acceptable for Headteachers/Principals because of the nature of their role and the limited opportunities for redeployment within the school.

The following sets out the procedural options available following the Stage 2 Review Meeting.

Where a further review period is to be set, this would normally be 6 weeks but may be reduced to 4 weeks where the concerns are documented as sufficiently serious or improvement can be achieved in a shorter time frame i.e. 4 weeks.

The outcome of the review meeting will be one of the following:

- performance has improved to a sufficient level and the capability procedure ceases and the appraisal process resumes. No further warning is issued. (However, if during the following 6 months performance deteriorates in the same areas identified previously, then the Capability Procedure will recommence at the same stage at which it ceased)

Or

- there has been further continued improvement but some concerns still exist. A final warning is issued and the capability procedure continues. A further review period of up to 6 weeks is set and date agreed.

The outcome, based on the options set out, will be confirmed in writing to the employee within 2 working days of the meeting. The letter will confirm the warning level, continuation of the procedure, right of appeal and review date or that the capability procedure has ceased and appraisal will resume, as appropriate and detailed above. A copy of the record of the meeting should also be enclosed.

The employee will have the right of appeal to governors against any warning issued at the review meeting. The appeal must be lodged with the Headteacher, in writing, within 5 working days of receiving the warning and state the reason for appeal. (See Appeal Process page 11)

Stage 3 Final Outcome Meeting

The Headteacher will reconfirm the review date in writing, giving 5 working days' notice of the meeting and confirming the right to be accompanied by a Trade Union/Professional Association representative or colleague. A copy of the previously agreed action plan should be enclosed.

At the review meeting the Headteacher, supported by HR, will meet with the employee and representative (if requested) to review performance and support during the third review period. A formal record of the meeting must be retained and a copy provided to the employee.

During the review meeting consideration may be given to alternative measures such as re-organising the job, stepping down (for teachers only) or voluntary redeployment in school. This course of action may not be acceptable for Headteachers/Principals because of the nature of their role and the limited opportunities for redeployment within the school.

The following sets out the procedural options available following the Stage 3 Final Outcome Meeting.

The outcome of meeting will be one of the following:

- performance has improved to a sufficient level and the capability procedure ceases and the appraisal process resumes. (However, if during the following 6 months performance deteriorates in the same areas identified previously, then the Capability Procedure will recommence at the same stage at which it ceased)

Or

- there has been insufficient improvement and serious concerns still exist. The capability procedure continues to Stage 4, recommendation to Governors for

dismissal. A Governors Panel Hearing will be convened to determine the outcome in this case.

The outcome, based on the options set out, will be confirmed in writing to the employee within 2 working days of the meeting. The letter will confirm continuation of the procedure and recommendation to governors for dismissal **or** that the capability procedure has ceased and appraisal will resume, as appropriate and detailed above. A copy of the record of the meeting should also be enclosed.

Stage 4 Governors' Hearing

A meeting of a Governors' Panel will be arranged to consider the Headteacher's recommendation for dismissal. This meeting must be formally clerked by the Clerk to Governors.

The Clerk to Governors will confirm the date of the hearing in writing, giving at least 10 working days' notice and the right to be accompanied by a Trade Union/Professional Association representative or colleague.

The procedure for the meeting will include, in addition to the Headteacher's report, the opportunity for the employee to present their own review of their performance and make any observations and produce evidence to the panel.

The Headteacher's report and any written evidence the employee wishes to provide to the panel must be submitted to the Clerk to Governors 5 working days prior to the hearing.

The Clerk to Governors will ensure the Headteacher's report and any written evidence is received by all parties 3 working days prior to the hearing.

The Panel of Governors will comprise 3 governors. Ideally the panel will represent a cross section of the Governing Body. The gender and/or ethnic origin of the employee and/or nature of the issue may be relevant in determining composition of the committee. Governors will need to declare any conflict of interest, which could be considered in terms of their appropriateness, as a member of the panel.

The governors will have present at the hearing a person with the appropriate experience to advise the panel. Information about people with the necessary experience/expertise can be obtained from the HR Team. A representative of the Strategic Director, Children's Services, has the right to attend the meeting and/or make written representation to make the LA's views known to the panel.

If the Governors' Panel recommends dismissal they will have two options to consider:

1. agree to immediate release, with payment of normal salary and benefits until the Termination Date

Or

2. whether the notice period should be worked

The period of notice will be in accordance with the employee's conditions of service.

The decision to dismiss lies with the governors in maintained schools. Following the hearing the Governors must notify the Strategic Director, Children's Services, via Human Resources, to arrange for notice of dismissal to be issued.

If the Governors do not agree with the recommendation to dismiss, they may recommend to the Headteacher alternative measures such as re-organising the job, stepping down (for teachers only) or voluntary redeployment in school.

A formal record of the hearing must be retained and a copy provided to the employee.

The employee will have the right of appeal against dismissal to a Governors' Appeal Panel. The appeal must be lodged with the Clerk to Governors, in writing, within 5 working days of receiving notice of dismissal, and state the reason for appeal. The appeal will be heard within 10 working days of receipt of the written appeal.

DISPUTES ABOUT THIS PROCEDURE

Any disagreements about the interpretation or implementation of this procedure, or related matters not covered in the procedure, should not normally delay the various elements of the Capability Procedure or the overall timetable determined as appropriate for handling any particular case. However, if there is an indication that the employee has been mistreated or discriminated against, a grievance may be raised.

GRIEVANCES

In exceptional circumstances, the employee may raise a grievance, in writing and addressed to the Chair of Governors and/or Strategic Director, Children's Services, about the behaviour of a Headteacher during the course of the Capability Procedure.

Any grievance must be investigated immediately, and if substantiated heard within 5 working days of the outcome of the investigation. Depending on the circumstances, it may be appropriate to temporarily suspend the procedure until the grievance can be considered. Such a delay should only be considered where there is clear evidence that the employee has been mistreated or discriminated against and if necessary consideration should be given to bringing in another Headteacher to deal with the capability case. Any records should be passed to the new Headteacher and, if appropriate, the case should be continued within the same timetable.

The procedure and appeals mechanism does not affect an employee's statutory right to pursue a grievance as defined by the Employment Act 2002.

APPEAL AGAINST 2nd AND FINAL WARNINGS

The employee will have the right of appeal against a 2nd and final warning. The appeal must be lodged with the Headteacher/Chair of Governors, in writing, within 5 working days of receiving written confirmation of the warning, and state the reason for appeal. The appeal will be heard within 10 working days of receipt of the written appeal.

The governors warning appeal panel will consider the grounds of appeal against a warning decision and reconsider the decision taken at a review meeting. The following options will be available:

- extend the review period, perhaps requesting that additional support is provided
- endorse the actions taken, the procedure to continue
- cease the procedure
- recommend other managerial action

A formal record of the appeal will be taken and a copy provided to the employee.

The procedure will continue, whilst the appeal is being considered.

RECORD OF WARNINGS

Formal warnings will be recorded on the employee's personal file and will normally remain operative for 2 terms for teachers, with 3 terms for a final warning, and for other employees normally 6 months with 12 months for a final warning, but Headteachers should not wait until the end of the period before taking action if the employee fails to maintain standards. (It is possible to convert terms to the equivalent in weeks subject to mutual agreement).

ACTION DURING SICKNESS ABSENCE

Urgent action may be required if sickness absence intervenes during a capability procedure. If long-term sickness absence appears to have been triggered by the commencement of a formal capability procedure, the case should be referred immediately to the Council's Occupational Health provider to assess the employee's health and fitness in order to continue with the procedure. Schools must take a considerate and sympathetic approach but, in general, the length of time they may wait for an employee's health to improve before considering whether to terminate employment on health grounds should be reasonable and take account of occupational health guidance and operational pressures and the needs of the individual teacher or support staff employee. In such circumstances it may be necessary to move to the Sickness Absence Management Procedure to address this matter.

This procedure will be reviewed by the City Council and updated in line with relevant legislation, case law and emerging good practice following appropriate negotiations with TNC and recognised support unions.