



Capability Procedure

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1. Scope

This procedure applies to all staff employed in schools 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 Procedure.

The procedure does not apply to support staff during their probationary period or Newly Qualified Teachers during their induction year.

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. Directors, Heads 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/management processes.
- 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
- Offered the opportunity to fully discuss and respond to the issues
- Given an opportunity to improve with appropriate support in place

- Be accompanied by a trade union representative, or a work colleague or a friend, at the formal meetings and hearing within this procedure. If the employee's companion cannot reasonably attend the meeting, there is an obligation on the school to rearrange the meeting once. In such circumstances, another date can be put forward so long as it is reasonable and is not more than **5 working days** after the original date.
- 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
- Able to appeal against a warning or a decision to dismiss

It should be ensured that confidentiality is maintained. A 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 Procedure should be invoked.

Where capability issues may be attributed to 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. Dismissal, redeployment or demotion should only take place following a Capability Review Hearing.

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.
- For support staff, performance must be carefully monitored during the probationary period 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.
- Special attention 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 taking into account 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. This action must only be taken following consultation with Schools HR.

5. Warnings within the Procedure

The Directors/Heads are able to issue the following warnings at a Formal Capability Meeting/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. Prior to Commencing Formal Action under the Capability Procedure

Employees should receive constructive feedback about their performance throughout the year and as soon as practicable. Feedback will highlight particular 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;
- 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 no or insufficient improvement is made.

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.

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

The meeting will be conducted by the Head for all employees. Where the Head is the subject of capability, the Director Schools will conduct the meeting. Where a director is the subject of capability, the CEO will conduct the meeting. Where a CEO is the subject of capability, the Chair of the Board of Trustees will conduct 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 companion who may be a trade union representative, or a work colleague, or a friend.

The Head 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 Head 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 Head should adjourn the meeting and the matter should be dealt with under the school's Disciplinary Procedure

In other cases, the meeting will continue. During the meeting the Head 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.
- Issue written/final written warning to the employee formally and advise that failure to improve within the set review period could lead to dismissal.

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.

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.

7.2 Monitoring and Review Period following a Formal Capability Meeting

During the set review period 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

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

7.3 Stage 2 - Formal Review 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 companion who may be a trade union representative, or a work colleague, or a friend.

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

- If significant progress has been made and there is confidence that more 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

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.

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.

7.4 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.

7.5 Decision Meeting

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

- If significant progress has been made and there is confidence that more 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 performance remains unsatisfactory, a recommendation to a Capability Review Hearing will be made that the employee should be dismissed.

7.6 Suspension

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

Suspension would be decided by the Head in consultation with the Director Schools , depending upon the status of the employee in question. Suspension should be a last resort and if at all possible should be avoided except where, in the considered opinion of the Head 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 panel (comprising a director and representation from the Local Advisory Board or the Trustee Board) at Capability Review Hearing, for the period until a Capability Review Hearing is convened.

Both the Head and the panel have authority to suspend an employee but only the panel has the authority to end a suspension.

The employee will be notified in writing of the suspension giving reasons for the suspension.

7.7 Stage 3 - Capability Review Hearing

The Capability Review Hearing should consist of 3 Local Advisory Board members or Trustees who have no previous involvement in the matter, and who are not staff or ideally parent members of the Local Advisory Board.

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 companion who can be a trade union representative, or a work colleague or a friend.

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.

The Head 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 Head and present any further relevant information to include mitigation.

The Capability Review Panel may ask questions of the Head and employee and seek advice from appropriate sources prior to reaching a decision. The Capability Review 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, to help achieve this.
- Redeployment/Transfer to an alternative post
- Demotion
- Dismissal (this will be with paid contractual notice)

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.

7.8 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. This will invariably be at the Capability Review Hearing.

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 given 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 on the basis of 1 week for every complete year of service up to a maximum of 12 weeks.

7.9 Appeal Hearing

An employee has the right to appeal against a warning given following the Formal Capability Meeting and/or Final Review Meeting, or the decision taken at the Capability Review Hearing. 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

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 companion who can be a trade union representative, or a work colleague, or a friend.

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

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 Adviser.

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

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
- Any other appropriate action, in consultation with the school's HR Adviser.

8. 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 appraisal/performance 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 the 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.

9. Grievances

Where a member of staff raises a grievance during the Capability Procedure, the procedure may be temporarily suspended in order to deal with the grievance. Where the grievance and capability issues are related it may be appropriate to deal with both issues at the Capability meetings.

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10. 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

11. Employment References to Prospective Employers

11.1 Teachers

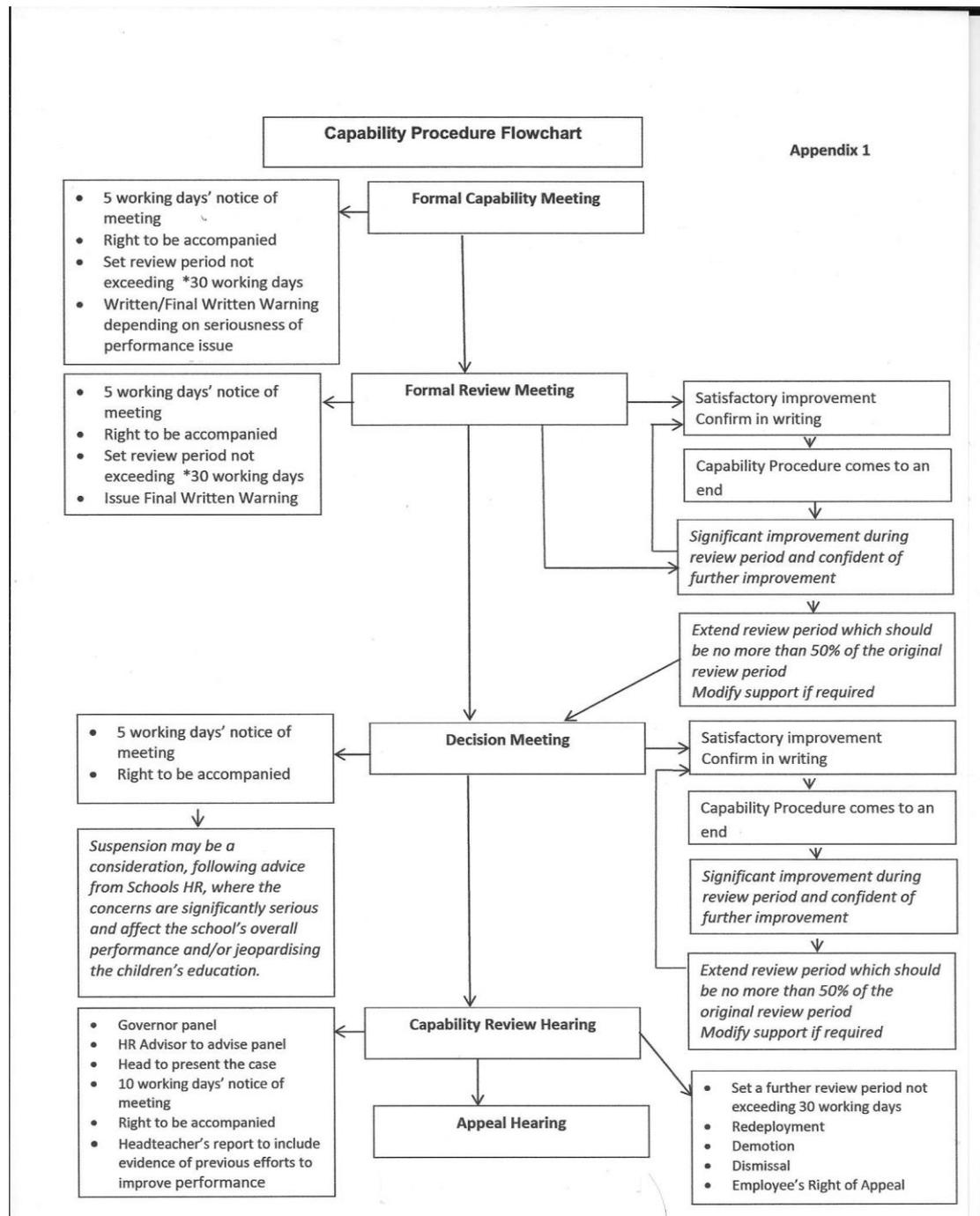
Under The School Staffing (England) (Amendment) Regulations 2012 a school must pass on to a prospective employer, on request, information about whether a teacher is or has been subject to capability in the preceding two years. The information provided should include written details of the concerns which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

11.2 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.

Appendix 1



***The review period following a Final Written Warning can be reduced to 20 working days where the concerns are significantly serious and that the work of the employee is having a serious affect on the school's overall performance and/or seriously jeopardising the children's education.**

In the flowchart above, please substitute 'Governor panel' for 'panel' and 'Headteacher' for 'Head'.

Appendix 2

Model Letter: Notification of Formal Capability Meeting

Dear

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 (place) 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 Procedure/Section 6 of this Procedure* 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)*.

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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 or a friend.

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,

Head

Appendix 3

Model Letter: Notification of Outcome of Formal Capability Meeting

Dear

Outcome of Formal Capability Meeting

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

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

- 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 would be taken in an attempt to resolve these difficulties:-

(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 Formal Review Meeting on *(date)*.

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 Capability Review Hearing stage 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 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 of the following:

- The severity of the disciplinary 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 a Governors Appeal Committee.

Yours sincerely

Head

Appendix 4

Model Letter – Notification of Formal Review Meeting

Dear

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 the 30 working day 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 or a friend.

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

Head

Appendix 5

Model Letter - Notification of Outcome of Formal Review Meeting (insufficient improvement)

Dear

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 have to 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 Capability Review Hearing, consideration will be given to your dismissal on the grounds of capability.

Yours sincerely

Head

Appendix 6

Model Letter - Confirmation of Improvement in Performance

Dear

Formal Review Meeting

Following our 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/Management Procedure.

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.

Yours sincerely

Head

Appendix 7

Model Letter - Extension of Review Period Following Formal Review/Decision Meeting

Dear

I refer to the Formal Capability/Formal Review 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.

Yours sincerely

Head

Appendix 8

Model Letter – Notification of Suspension

Dear

I am writing to confirm the decision taken under the Schools' Capability Procedure to suspend you from work with effect from 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 employment at the school..*

It is expected that the investigation will be concluded by *(enter date) / It is expected that the Capability Review Hearing will be convened by (enter 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 Body whilst the suspension is in force.

If you wish to collect any personal belongings at the school please contact (name of designated person) that 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

Head/Chair of panel

Appendix 9

Model Letter - Notification of Capability Review Hearing

Dear

Contract 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)* at *(place)*. 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 or a friend.

I enclose the 'bundle of documents', which includes a copy of the school's Capability Procedure, for consideration at the Capability Review Hearing.

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 panel

Appendix 10

Model Letter - Outcome of Capability Review Hearing (Dismissal)

Dear

I refer to the Capability Review Hearing on *(date)* and write to inform you of the decision on behalf of the Capability Review 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 is 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 weeks' notice with pay. You are not required to work your period of notice.

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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

Head/ Chair of panel

Addendums

a) Addendum by Mark Lemon October 2012 (Operational Body updated to Local Governing Body, Headteacher to Head of School):

All references to 'Governing Body' can be read interchangeably with 'Operational Board'.

7.1 Where a Headteacher is the subject of capability, the CEO will conduct the meetings, and references in the policy to the Headteacher in a reviewer capacity should be replaced by CEO.

7.5 Suspension would be decided by the Headteacher, Chair of the Operational Board, or CEO depending on the status of the employee in question. In the case of a Headteacher, the CEO and Trustee Board have the authority to suspend an employee, but only the Trustee Board has the authority to end a suspension.

b) Addendum by Susan Douglas November 2014:

i. This policy should be read in conjunction with the Scheme of Delegation (page 9), which clearly sets out the RACI for the implementation of the capability policy at each level within the Academy.

ii. As such, the use of “headteacher”, “Governing Body” or “Governor” should be replaced with Principal, CEO, Governor, Director or Board of Directors in accordance with the Scheme of Delegation

c) Addendum by Susan Douglas November 2016

i) This document has been revised in line with Schools HR guidance. Schools HR policies have been produced after consultation with union representatives.

d) Addendum by Susan Douglas September 2017

i) In accordance with the changes to the Academy’s governance structure, the terms ‘Headteacher’ were replaced with ‘Head’ and ‘Governors’ with ‘Local Advisory Board’

This document was approved and adopted by the Board of Directors in November 2016.

Name of the Chair of Directors Barry Nolan

Signature of the Chair of Directors: _____

Date: November 2016

To be reviewed: November 2019