Capability Procedure

Halley Primary School

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1. POLICY STATEMENT

1.1 This policy and procedure has been agreed with schools and the relevant trade unions and is primarily intended to support staff whilst enabling schools to manage capability issues in a way which is fair and consistent and adheres to employment, equalities, and education legislation.

1.2 All employees are expected to fulfil their duties and responsibilities and to achieve and maintain acceptable and agreed standards of performance and perform their jobs to the best of their ability.

1.3 The school seeks to provide each employee with the direction, development and support necessary to assure a productive and rewarding career. The school will help and encourage staff to maintain good levels of performance through the application of this policy, effective line management, access to Occupational Health advice, and appropriate health and safety policies and procedures.

1.4 While it is important to deal with capability issues fairly and effectively, it is just as important to look at ways of preventing problems escalating in the first place,for example, through:

- Careful recruitment, selection and training
- Clear standards, expectations and effective communication
- Regular supervision and performance development reviews.
- Identification and, where appropriate, assistance in resolving underlying problems

1.5 It is recognised that the use of the capability procedure is likely to be a stressful experience for the employee concerned, should she/he fail to achieve the required standards and expectations, then use of the procedure will inevitably lead to dismissal. If necessary, employment may be fairly and legitimately terminated by the school on the grounds of lack of capability due to under performance.

1.6 Very few employees choose to perform their work badly, make mistakes or fail to complete tasks. Consequently, in the event that an employee is underperforming, a Headteacher/manager should examine the circumstances to identify underlying causes and provide additional support to the employee to help them to improve to the required standard of performance, including an agreed support porgramme.

1.7 Documentation involved in this procedure will be treated confidentially and only circulated to those directly involved.

1.8 Where an employee's poor performance is related to behaviour rather than lack of application it should be dealt with through the disciplinary procedure.

1.9 The employee has a right to be accompanied by a trade union representative or work colleague at any meeting held under the formal stages of this procedure.

1.10 This document reflects Government guidance from the Secretary of State in determining staff capability by providing a model capability procedure for teachers and support staff which governing bodies should either adopt or use to review their school's procedure.

2. SCOPE OF THE PROCEDURE

2.1 This procedure applies to all teaching and support staff employed in schools under the control of governing bodies who are permanently employed and not subject to a probationary period. Staff on probation will have their performance managed through the probation procedure.

2.2 Where the concerns relate to the Headteacher, the Chair of Governors will manage the procedure with the support of the appraising governors. They should seek advice from their HR provider and the Local Authority. A Headteacher who is the subject of this procedure will have all the rights accorded to other employees at the various stages.

2.3 This procedure is to help schools deal with problems of employee capability. It describes a process that is fair, efficient and in accordance with good employment practice.

2.4 This procedure is used to manage under-performance, because of lack of aptitude, skill and/or ability, which the performance management process has been unable to address.

2.5 Good management, clear expectations and appropriate support will go a long way towards addressing weaknesses in performance. Early identification of problems through performance review will help to avoid the need for formal capability procedures. In some cases, an improvement may be achieved informally with a minimum of support and attention. In others a more formal approach will be necessary.

2.6 In community, voluntary-controlled and maintained nursery schools, the Local Authority has a statutory entitlement to send a representative to all proceedings

relating to the selection or dismissal of any teacher (including the headteacher and deputy headteacher) and offer advice. Therefore, the Local Authority should be advised of all formal meetings under this procedure which may result in dismissal. If the Local Authority decides to send a representative, they must be allowed to attend. Any advice offered as a result must be considered by the governing body, (or those to whom the function has been delegated) when reaching a decision.

2.7 The Local Authority provides maintained schools with an indemnity to cover the legal costs and settlements awarded by Employment Tribunals. This indemnity requires that the advice of the Local Authority is always followed in cases which its Human Resources and Legal Teams are involved. This procedure also constitutes advice which schools are always expected to follow. Schools that adopt another policy or make changes to this document, are responsible for ensuring that it complies with all applicable legislation and good practice in managing employee capability.

3. DEFINITION

3.1 Capability in employment law is assessed by reference to skill, aptitude, health or any other physical or mental quality. For the purposes of this procedure, incapability can be defined as:

> "The identification of an employee's inadequate performance which can arise for a number of reasons and may be attributable to an employee's lack of knowledge, skills or aptitude for the position to which they are appointed".

3.2 The issue for managers is how to deal effectively with inadequate performance in order to ensure that job requirements are met, service provisions are fulfilled, and the employee is given appropriate opportunity to meet the performance standards required.

4. EQUALITIES ISSUES

4.1 If a Headteacher/designated manager considers that an individual's under-performance may be related to a disability, health condition or industrial injury they shall first investigate, verify, and then address the circumstances. This will normally include referral to Occupational Health (OH) to seek advice and/or confirm whether there is a health related reason impacting on performance. This

referral can be as part of the normal management process that precedes this procedure or at any time during the formal stages.

4.2 It is important to consider whether the employee's condition is covered under the Equalities Act. Under the Equality Act 2010 a person has a "disability" if s/he has a physical or mental impairment that has a substantial and long-term adverse impact or her or his ability to carry our normal day-to-day activities. A disabled person is discriminated against if they are treated unfavourably because of something arising in consequence of their ability, and the person discriminating cannot show that the treatment is a proportionate means of achieving a legitimate aim (s.15 Equality Act 2010). Advice is available from OH and your HR Provider. Reasonable adjustments must be considered for disabled employees, for example, special equipment or facilities to enable them to continue to perform their job to the required standard. Reasonable adjustments can be put in place either prior to the start of the procedure or at any stage once it has commenced. There is also protection for direct and indirect disability discrimination.

4.3 In order to establish whether any single person or group of employees is being treated less favourably than others under this procedure, it is important that all action taken is monitored. If details are not already available, employees may be asked to provide information (e.g. about their ethnic origin) to enable the school and the Local Authority to review the impact of this procedure.

5. APPLICATION OF OTHER HR PROCEDURES DURING CAPABILITY

5.1 When absence is triggered by the capability procedure, and management believe it is likely to be long term, the employee should be referred immediately to Occupational Health. A considerate and sympathetic approach should be taken, but in general, the length of time to wait for a person's health to improve before considering dismissal will be managed through the sickness procedure.

5.2 Short periods of absence should not delay any part of the formal stage of the capability procedure. Reasonable steps should be made to enable the employee to attend formal meetings, but where they are unable to attend, these may proceed in their absence. In these circumstances a full account of the meeting will be provided in the letter confirming the decision taken.

5.3 It is recognised that the capability procedure may increase the levels of stress and anxiety experienced by an employee. However, it is in their best interests to return to the workplace as soon as they are able to in order to address the underlying causes of any unsatisfactory performance and any related ill health.

5.4 Where the submission of a grievance against an appraiser or other person responsible for assessing performance follows the initiation of the capability procedure or action to support the employee informally, an initial assessment should be made of its merits and evidence immediately available as soon as possible. This may require responsibility for appraising/supporting the employee to be temporarily moved until the grievance process can be concluded. It should not automatically delay any planned support or capability action. The procedure should only be suspended if there is strong evidence that an employee has been mistreated.

6. INFORMAL CAPABILITY- STAFF EXPERIENCING DIFFICULTIES

6.1 When dealing with an employee experiencing difficulties, the objective is to provide support and guidance through the appraisal process in such a way that the employee's performance improves, and the problem is resolved.

6.2 Where it is apparent that an employee's personal circumstances are leading to difficulties at school, support will be offered as soon as possible, without waiting for the formal annual assessment. This part of the support process does not need to be disclosed in references provided for employees.

6.3 If an appraiser identifies through the appraisal process, or via other sources of information, that the difficulties experienced by an employee are such that, if not rectified, could lead to capability procedures, the appraiser, the Headteacher, or a member of the leadership team, will meet the employee.

6.4 The employee should be provided at least 5 working days' notice that a meeting will be held to discuss targets for improvement as part of a programme of support, and informed that they can have a trade union representative or work colleague present at this and any future meetings where capability will be discussed . Although there is no statutory right to be accompanied outside of the formal stages of capability or other HR procedures, the Local Authority encourages schools to allow a trade union representative or work colleague to attend to support the employee during what will be a difficult period for them. The appraiser or Headteacher holding the meeting can have a member of the leadership team or someone from human resources in attendance if they require it.

6.5 The purpose of the meeting with the employee is to:

- give clear written feedback about the nature and seriousness of the concerns which provides a full explanation of where the employee is not

meeting the required standard, including defining the expected standard of performance;

- review the occasions where these standards have not been met and establish the reasons why the desired level of performance have not been achieved;

- explain the implications and process if no, or insufficient, improvement is made;

- give the employee the opportunity to comment on and discuss the concerns;

- produce a support plan in consultation with the employee and her/his trade union representative (for example coaching, training, in-class support, mentoring, structured observations, visits to other classes or schools or discussions with advisory teachers), that will help address those specific concerns;

- make clear how progress will be monitored and when it will be reviewed;

- Use SMART principles to assist in objective setting, i.e.:

  Specific: they are well defined
  Measurable: both quantitatively and qualitatively
  Achievable: they are not set too high to make it impossible to achieve them
  Resourced: the resources necessary are readily available
  Timed: the timescales set are reasonable

6.6 The employee's progress will continue to be monitored as part of the appraisal process and a reasonable time given for their performance to improve. This will depend upon the circumstances but will be for a timescale which is reasonable and proportionate, with appropriate support as agreed in the support plan, in order that the aim of recovering and improving performance can be achieved. During this monitoring period, the employee will be given regular feedback on progress and arrangements will be made to modify the support plan if appropriate.

6.7 If sufficient progress is made within this period which results in the employee performing at a level that indicates there is no longer a possibility of capability procedures being invoked, the employee should be informed of this at a meeting to review progress against the support plan with the appraiser or Headteacher. Following this meeting, the appraisal process will continue as normal.

6.8 If no, or insufficient, improvement has been made over this period, the employee will be informed of the intention at a meeting with the appraiser or Headteacher, to review progress against the support plan. Following this meeting the employee will be invited to a formal capability meeting.

6.9 In cases where there is particularly serious concern, such as the health and safety of others being placed at risk or the education of children is in jeopardy, the formal procedure can be commenced immediately without the need for referral to the informal stage.

7. FORMAL CAPABILITY

7.1 This procedure applies only to those employees about whose performance there are serious concerns that appraisal, informal capability and other support processes have been unable to address. As during the previous stage, the focus of formal capability is to support the employee to achieve the required level of performance for their role. Schools are required to include information on use of the formal capability procedure in references provided for teachers.

7.2 At least five working days' notice will be given 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 a formal capability meeting. It will also contain the 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.

7.3 If performance deteriorates to an unacceptable level within 12 months of a formal capability process ending, the Capability Procedure can be resumed at the stage the previous process reached. Before restarting the formal process, the employee should be advised of any concerns and given an opportunity to explain why their performance has not been maintained. If the areas of concern are different to those previously addressed, the employee should be given a reasonable period of support to achieve an improvement before restarting the procedure.

7.4 Formal capability meeting

7.4.1 This meeting is intended to establish the facts and to determine a course of action. It will be conducted by the appraiser as nominated by the Headteacher, which will usually be the line manager who may be supported

by a more senior manager. For Headteachers, it will be conducted by the appraising governors.

7.4.2 The meeting allows the employee, accompanied by a trade union representative or work colleague if they wish, to respond to concerns about their performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected.

7.4.3 The person conducting the meeting may conclude that there are insufficient grounds for pursuing the capability issue formally and that it would be more appropriate to continue to address the remaining concerns through the appraisal, informal capability, or other processes. In such cases, the formal capability procedure will not have commenced. The person conducting the meeting may also adjourn the meeting, for example, if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.

7.4.4 In other cases, the meeting will continue, and the formal capability process will commence. During this and any subsequent meetings, the person conducting the meeting will:

- identify the professional shortcomings, for example which of the standards or targets expected of the employee are not being met;

- give clear guidance on the improvements needed to ensure that the employee can be removed from formal capability procedures (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. The timetable will depend on the circumstances of the individual case and be appropriate to the issues that need to be addressed. It is for the Headteacher/manager/governor conducting the meeting to determine a suitable period taking into account the individual circumstances of each case. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place;

- warn the employee formally that failure to improve within the set period could lead to dismissal.

7.4.5 Notes will be taken of formal meetings and a copy sent to the employee. The improvements required and the measures to help the employee achieve them, will be recorded in a support plan which should be completed in consultation with the employee and trade union representative, if they have one.

7.4.6 The employee will be provided with a copy of the support plan, which must include information about the timing and handling of the review stage.

7.5 Monitoring and review period

7.5.1 A performance monitoring and review period as recorded in the support plan, will follow the formal capability meeting. Formal monitoring, evaluation,guidance, and support will continue during this period. The employee will be invited to a formal review meeting in line with the timescales given at the formalcapability meeting and recorded in the support plan.

7.6 Formal review meetings

7.6.1 As with formal capability meetings, at least five working days' notice will be given, 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 work colleague.

7.6.2 If the person conducting the meeting is satisfied that the employee has made sufficient improvement, and that this improvement will be sustained, the capability procedure will cease. In other cases:

- It may be appropriate to extend the review period if for example some progress has been made, and there is confidence that more is likely. In these circumstances, the support plan should be updated, and a further review meeting scheduled to formally review progress.

- At either the first or any subsequent review meetings, if no or insufficient improvement has been made against the support plan during the monitoring and review period, the employee will be informed of the timescale for holding a decision meeting.

7.6.3 Notes will be taken of formal meetings and a copy sent to the employee.

7.6.4 If no or insufficient improvement has been made, the employee will beinformed in writing, that failure to achieve an acceptable standard of performance within a set timescale may result in dismissal. They should be given an updated support plan and information about the handling of the furthermonitoring and review period.

7.6.5 A second formal review meeting should be scheduled to take place at the end of the next review period. If the outcome of this second formal review meeting is that no or insufficient improvement has been made, a decision meeting should be arranged.

7.6.6 If the required level of performance has not been achieved at this stage but the employee is considered to be making satisfactory progress against the support plan, a further formal review meeting can be scheduled if it is not yet considered appropriate to progress to a decision meeting. However, formal capability processes should not continue indefinitely.

7.7 Decision meeting

7.7.1 The decision meeting will be conducted by the Headteacher and one governor (other than the Chair of governors) or where the meeting relates to the Headteacher, two governors (other than the appraising governors).

7.7.2 As with formal capability meetings and formal review meetings, at least five working days' notice will be given 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 work colleague. A clerk to the governing body or other official minute taker should minute these meetings.

7.7.3 The panel will consider evidence presented on the employee's performance and the support that has been provided, to decide which of the following options is appropriate:

- If an acceptable standard of performance has been achieved and there is confidence that this will be sustained, the capability procedure will end.

- If there has been some improvement which is sufficient to provide confidence that an acceptable level of performance can be achieved within an acceptable period or, the panel requires evidence that any further and sustained improvement can be achieved, they may decide that a further period of monitoring and review is appropriate. In these circumstances the decision meeting will reconvene at the end of this period.

- If there has been insufficient progress and a realistic opportunity given to demonstrate an acceptable level of performance, the panel may dismiss the employee. The panel must be satisfied that all reasonable efforts to support the employee have been made. If dismissal is the outcome, Community Schools must send a determination to dismiss to the Local Authority notifying them of the decision and the reasons for it. In the case of Foundation, Voluntary Aided Schools and Foundation Special Schools where the power to dismiss has not been delegated to the Headteacher, a recommendation to dismiss will be made to the Governing Body.

7.7.4 The panel will communicate their decision in writing to the employee within 5 working days of the meeting. If possible, the panel will verbally inform the employee of the Panel's decision at the conclusion of the meeting. If dismissal is the outcome, notice will start from the date of the determination to dismiss letter. Dismissal under this procedure is not a dismissal for misconduct and employees are entitled to their full contractual notice period.

8. APPEALS

8.1 If an employee feels that a decision to dismiss them is wrong or unjust, they may appeal in writing against the decision within ten working days of being informed of the decision, setting out at the same time the grounds of their appeal. Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place.

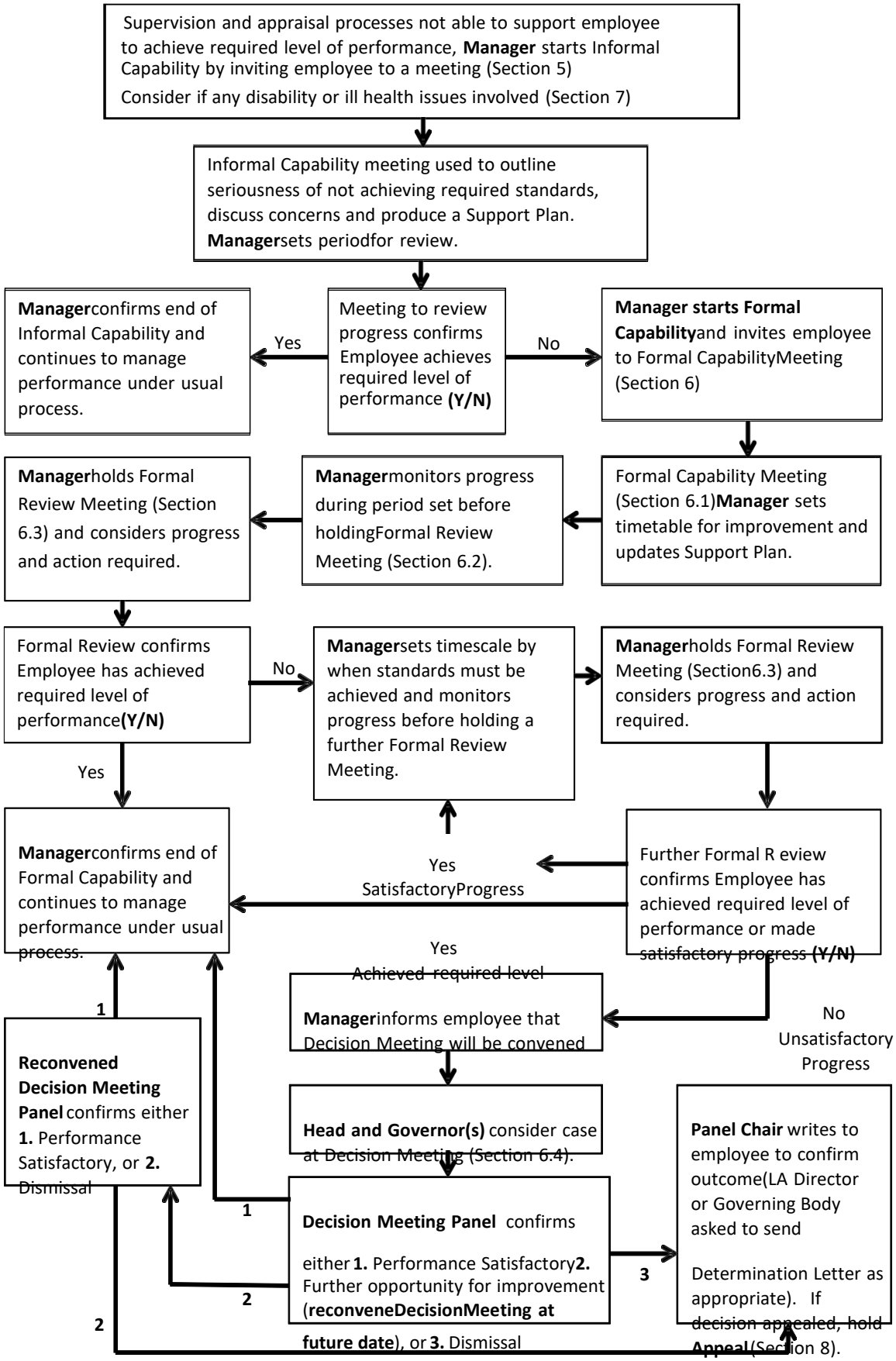
8.2 The Chair of Governors will write to the employee giving details of the appeal hearing. The employee will be advised in writing of their right to be accompanied at the appeal hearing by a trade union representative or work colleague. Appeals will be heard by 3 governors (normally including the Chair of Governors). The appeal will be dealt with, if possible, by governors who have not previously been involved in the case.

8.3 The Chair of the Panel will communicate their decision in writing to the employee within ten working days of the appeal hearing. If possible, the Chair will verbally inform the employee of the Panel's decision at the conclusion of the hearing. The panel's decision is final and is the end of the procedure. There is not further right of appeal. This decision must be reported to the full Governing Body.

9. FURTHER INFORMATION

For further information please contact your HR provider.

10. SCHOOLS CAPABILITY PROCEDURE FLOW DIAGRAM



APPENDIX 1: MANAGEMENT GUIDANCE

This guidance is intended to help support Headteachers/managers who are managing concerns around an employee's performance. If taking action under the Capability Procedure, it is important that the Headteachers/managers can evidence the steps previously taken to try and support the required improvement.

Any concerns regarding an employee's performance should be discussed at the earliest opportunity, and Headteachers/managers should try to resolve issues of incapability informally and in a supportive manner.

Employees should receive constructive feedback on their performance throughout the year, as part of the performance management process, and as soon as practicable after agreed lesson observation has taken place. Feedback should highlight particular areas of strength as well as any areas that require support.

Appropriate action should be taken promptly as soon as it is noticed that an employee is not performing certain aspects of their job satisfactorily. Delaying or doing nothing may cause the performance problem to escalate and cause delay in providing the necessary support.

The employee should be advised to seek professional advice from their trade union representative; the school acknowledges that this may help to expedite resolution. However, there is no right to be accompanied to meetings taking place as part of the usual performance management process.

It should be recognised that capability problems may be related to issues outside the employee's direct control and may be symptomatic of underlying work problems or other personal issues. Particular care should be taken when disability or health issues are involved, and advice should be sought from HR / Occupational Health Service as appropriate.

Where there are concerns about any aspects of an employee's performance, the manager should meet with them to:

- Give clear feedback about the nature and seriousness of the concerns
- Give the employee the opportunity to comment and discuss the concerns and provide information on any issues impacting on the situation
- Agree any support (e.g. coaching, mentoring, structured observations, training, professional courses) that will be provided to help address those specific concerns
- Make clear how, and by when, progress will be reviewed (it may be appropriate to revise objectives and/or agree other appropriate & clear targets, and it will be

necessary to allow sufficient time for improvement. The amount of time will need to reflect the seriousness of the concerns)

- Explain the implications and process if no – or insufficient – improvement is made (i.e. entry into the formal capability procedure).

It is recommended that a note of the discussion is confirmed in writing (e.g. by email with receipt acknowledged by the employee, or in Performance Management documentation). If the discussion outlined above results in the required improvement, it would be helpful to 'draw a line under it' by confirming that the issue(s) have been addressed and the performance management process will continue as normal providing the improved performance is maintained.

Where this informal approach has been tried and has not succeeded in improving performance, or where the underperformance is more serious, formal action should be taken by organising a formal Capability Meeting.

APPENDIX 2: SUPPORT PLAN TEMPLATE

Employee name:		**Date of meeting:**	

Concern / Area of performance for review	**Objective (*managers may wish to link these to the appropriate professional standards*)**	**Support to be provided (nature of support, who should make arrangements)**	**Monitoring Mechanisms**	**Evidence to be considered**	**Timescales for improvement / review date(s)**	**Objective Met? Yes/No**	**Comments**

**Actions agreed under this improvement note / support plan should be "SMART": specific, measurable, achievable, relevant, time-related, in other words it should be very clear what is required, by whom and by when, and clear how this will be evaluated and reviewed.*

I understand that the consequence of my performance not improving to the required level within the agreed time period will be the continuation of the Capability Procedure, which could include my dismissal.			
Employee signature:		**Date:**	
Manager signature:		**Date:**	

APPENDIX 3: ORDER OF PROCEEDINGS FOR CAPABILITY DECISION MEETING

Introduction

- Introduce those present and explain why they are there. Someone who is not directly involved in the hearing should be appointed to take notes on the proceedings and Human Resources may be present throughout the hearing.

- Explain the purpose of the meeting i.e. to establish as fully as possible the facts, and to consider the case for dismissal in accordance with the school's Capability Procedure.

- Explain how the meeting will be conducted

Statement of capability issue

- The Headteachers/manager presenting the case for dismissal should state precisely what the capability issue is and outline the case for dismissal by going through the evidence that has been gathered.

- Ensure that the employee and their trade union representative or work colleague are allowed to see any statements made by witnesses and to raise questions.

Employee's reply

- Give the employee the opportunity to state their case against dismissal, and to respond to the evidence that has been put forward. They should be able to ask questions, present their own evidence and call witnesses. The employee and their trade union representative or work colleague should be given the opportunity to confer privately if necessary.

General questioning and discussion

- The person(s) hearing the matter should:
    - Use this stage to establish all the facts

- Ask the employee if there are any special circumstances to be taken into account to Keep the approach formal and polite and encourage the employee to speak freely; it should be a two-way process.
- Use questions to clarify the issues and check that what has been said is understood.

- If new facts emerge, it may be necessary to adjourn the hearing to investigate.

Summing up

- Summarise the main points of the discussion after questioning is completed, to remind all parties of the nature of the capability issue, the arguments and evidence put forward, and to ensure nothing is missed.
- Ask the employee if they have anything further to say.

Adjournment before decision

- Adjourn before a decision is taken about whether dismissal is appropriate, to allow reflection and proper consideration. It also allows for further checking of any matters raised, particularly if there is a dispute over facts.

Giving the decision

- Unless a mutual agreement has been reached otherwise, the meeting will be reconvened, and the employee be informed of the outcome of the hearing.
- The decision will be communicated in writing within 5 working days.