



St Albans RC High School

# Capability Procedure Guidance for School Based Staff

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## **GUIDANCE ON THE CAPABILITY PROCEDURE FOR SCHOOL BASED STAFF**

### **1 INTRODUCTION**

- 1.1 Torfaen County Borough Council is committed to providing a first-class education for the children and young people of Torfaen. In order to ensure this, school managers and governing bodies must recognise the importance of addressing performance issues in a fair, transparent and efficient manner. Torfaen County Borough Council is therefore committed to ensuring that all staff possess the appropriate skills, knowledge, competence and aptitude to undertake their roles effectively. It is the responsibility of the individual employee, however, to take whatever action is required to improve their performance and meet the high professional standards expected of them. Torfaen County Borough Council recognises that the vast majority of its employees meet and often exceed the performance requirements of their roles. There will be occasions, however, when this is not so and individual employees will require support to help them improve their performance to the required standard.
- 1.2 This guidance and the “*Capability Procedure for School Based Staff*” is written with the aim of helping schools and individual employees to seek improvement because under performance is not good for the school, pupils or the employee. The Welsh Government (WG) has also produced guidance “*Capability of School Teaching Staff: No 111/2013*” and “*Capability of Headteachers: No 153/2014*” that schools will also find helpful when dealing with issues of under performance.
- 1.3 Schools must have procedures in place to ensure that they continue to employ staff who:-
- are most able to share best practice, raise standards, work together effectively and build communities of professional practice so that children do not become disaffected, disengaged or excluded;
  - understand and have the knowledge to integrate best practice in the school and to develop effective multi – agency and multi – disciplinary practices with other schools and agencies; and
  - are able to demonstrate that they are best motivated and can work with other colleagues to ensure that children are kept safe.
- 1.4 Governing Bodies, Headteachers and other school managers have the responsibility to create the circumstances in which all employees can perform well and to provide the necessary support to assist them in achieving their full potential through regular monitoring and feedback. Pupils and parents have the right to expect that schools in Torfaen County Borough Council are able to offer the highest standards of education that can be achieved.

This guidance will help Headteachers and Governing Bodies achieve and sustain the levels of skills and knowledge required by all employees.

- 1.5 The “*Capability Procedure for School Based Staff*” provides a fair and consistent approach towards dealing with capability at work where under performance has been identified. It has been developed to comply with legal requirements and in accordance with the Welsh Government guidance and ACAS best practice principles. The aim is to ensure that school based employees are treated fairly and consistently. This guidance will enable school managers to work with employees to promptly address performance concerns and take all reasonable steps to encourage, support and enable employees to improve and sustain their performance.
- 1.6 Where reference is made to the required level of performance in these guidelines it means the level of performance as laid down in the job description and person specification. For teachers it also means achieving and sustaining the Practising Teacher Standards. Headteachers are required to meet the Leadership Standards.
- 1.7 Where there are concerns about the performance of the Headteacher it will be the Chair of Governors (CofG) who will have the lead role in consultation with the designated member of the Local Authority (LA) or Regional Consortium and so in this guidance where it says what the Headteacher will do substitute “Headteacher” for “CofG”.

## 2.0 SUPPORTING SATISFACTORY PERFORMANCE

- 2.1 There are numerous processes that should be in place in school to ensure that the performance of staff is at a satisfactory level. This begins at the recruitment stage and continues through appropriate induction processes and performance management processes.

### 2.2 Recruitment and Selection Process

Every school should have in place a recruitment and selection process that ensures that it appoints high calibre employees with the right skills, knowledge and aptitude to improve standards and raise outcomes for learners. The job description will define the job tasks whilst the person specification provides a useful baseline for identifying under performance because it details the key competencies in terms of the skills, knowledge and aptitude required to do the job. The person specification identifies those elements that are:-

- **essential** i.e. a candidate has to exhibit these qualities in order to deliver the task effectively; and
- those that are **desirable** i.e. such qualities would add value to an individual’s application.

### 2.3 Induction/Probation

Schools should have in place induction/probation programmes for all newly appointed staff. Such programmes should be designed to ensure that newly

appointed staff possess the required skills, knowledge and competencies to do the job they were appointed to.

## 2.4 **Performance Management**

Standards of performance reflect skills, knowledge, experience and behaviours required by employees to perform their duties efficiently and to a satisfactory level. Effective performance management procedures demonstrate a school's commitment to the development of all staff to: -

- ensure they achieve job satisfaction and high levels of expertise; and
- meet the needs of pupils and raise standards.

Effective performance management means paying continuous attention to monitoring progress during the year by school managers, intervening early and providing support to individual employees where required.

Whilst the Capability Procedure is separate to the performance management arrangements, it must be seen in the context of the whole school performance management process because it involves the continuous assessment, review, monitoring and evaluation of performance.

## 3.0 **CAPABILITY OR MISCONDUCT**

- 3.1 Where an individual's performance is deemed to be less than satisfactory it is important that it is dealt with under the appropriate procedure and that the correct support is provided. A clear understanding of what is deemed to be unsatisfactory performance needs to be noted including whether the issue is lack of capability due to ill health, lack of competence or a matter of professional misconduct. For the purpose of this guidance the following definitions are used: -

**Capability due to ill-health** – relates to any inadequacy in health or any other physical or mental quality which results in unsatisfactory performance.

**Capability due to lack of competence** – performance considered to be less than satisfactory for reasons connected with skills, knowledge and aptitude.

**Misconduct** – action or inaction which contravenes the rules laid down by the school and/or the (EWC) code of professional conduct and practice. Misconduct should be dealt with in accordance with the school's disciplinary procedures.

- 3.2 School managers need to understand the distinction between capability and disciplinary. Essentially the difference can be explained as one of "can't do" (inadequate performance) and "won't do" (wilfully failing to do something). An employee's performance may be defined as unacceptable when they are

unable to carry out satisfactorily the duties for which they are employed. Examples include: -

- unacceptable standard or quality of work performance;
- unacceptable level of work output; or
- inability to perform tasks or achieve objectives outlined in the role profile to the standard required.

3.3 Where an employee fails to do something as a result of his/her own carelessness, conduct, negligence, idleness or by simply refusing to do it the issue is not one of lack of capability but one of disciplinary and it must be dealt with under the school's Disciplinary Procedures. Evidence of such action/inaction may also emerge during the capability procedure. Wilful disregard of professional standards of performance or refusal to cooperate with fair and reasonable measures designed to improve performance may be considered as misconduct and in extreme case cases gross misconduct.

#### **4.0 KEY PRINCIPLES OF THE CAPABILITY PROCEDURE**

4.1 The "*Capability Procedure for School Based Staff*" applies to all employees whether they are on permanent or fixed-term contracts of employment. The aim of the capability procedure is to deal fairly and consistently with under performance. The objective is to enable the employee to achieve and consistently sustain a satisfactory level of performance through an appropriate programme of monitoring, support, guidance and training and relevant feedback at all stages of the procedure.

4.2 The Capability Procedure cannot be used until attempts have been made to resolve capability concerns through the performance management process and informal support. The employee must be made aware that there is a problem, what that problem is and what needs to be done to address it. It is only where the performance management process and/or informal support have not produced the required improvement that the employee may be moved on to Stage 1 of the capability procedure.

4.3 There should be no reluctance on behalf of school managers to invoke the Capability Procedure where employees are under performing. Where employees are under performing it is essential that the capability procedure is invoked promptly so that the required improvement can be achieved as quickly as possible and within the timescales agreed.

4.4 When identifying under performance it is important to remember that it is the level of performance set against the required standard that should be addressed and not the employee's performance when compared with other members of staff.

#### **4.5 Confidentiality**

The use of the Capability Procedure with an employee is confidential and information should only be shared with those who need to be involved. Where

an employee discloses personal or private information during this procedure, this should be treated confidentially and handled sensitively. Headteachers will be accountable for the security of paperwork related to the capability procedure.

#### 4.6 **Record Keeping**

A written record should be made of all interviews, meetings and hearings with the employee at all stages of the capability procedure. The record will include an account of the action taken. Where possible the notes of any meetings should be agreed with and signed by the employee. Where the employee disputes the accuracy of any notes they should be asked to submit their alterations and return them with a copy of any note taken by them or their representative upon which they base their alterations.

#### 4.7 **Equalities and Diversity**

It is possible that either prior to or during the course of this procedure a Headteacher may become aware that an employee has, is perceived to have or is associated with someone who has or who is perceived to have, a "*Protected Characteristic*." The Equality Act 2010 lists the "*Protected Characteristics*" as: - age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. In some circumstances where this may have significance relating to an employee's performance the Headteacher will need to make further enquiries of the employee about what assistance may help and seek advice as to any reasonable adjustments that may need to be considered.

### 5.0 **EXCEPTIONAL CIRCUMSTANCES**

- 5.1 In exceptional circumstances, the Headteacher, following advice from the Local Authority representative/school's Challenge Adviser and HR may bypass the sequential order of the capability procedure and issue a final written warning where there is overwhelming evidence that the continued employment of the employee will jeopardise pupils' education or put them and other users of the school at risk of harm. The review period in these circumstances will be no more than four weeks and if the employee does not reach the required standard of performance at the end of the period they will be moved to Stage 4 and a hearing will be held before the Staff Discipline & Dismissal Committee. For this to occur the employee's performance must fall so far short of what is expected of them that improvement to the required standard may be deemed impossible or the employee's failure in performance has a seriously detrimental effect in the school.

The employee must be given written notice of the impending capability review meeting and advised that the agenda for the interview will have the additional proviso that where pupil's education is in jeopardy the Headteacher must consider shortening the assessment period to one of four weeks. The Headteacher may also consider suspending the employee where it appears to be necessary for the protection of pupils, staff or property.

## 5.2 **Suspension from Duty**

It is not expected that there will be many instances where it is required to suspend an employee from duty where the Capability Procedure has been invoked because of the need to continuously monitor performance. There will be exceptional circumstances, however, where suspension from duty is considered. If so, Headteachers should contact HR and check whether the issue(s) causing concern are related to conduct and if so should be dealt with under the school's Disciplinary Procedure or are about performance where the "*Capability Procedure for School Based Staff*" will be used. In these rare circumstances the potential outcome may be that the case goes directly to the Staff Discipline & Dismissal Committee (SD&DC) who will be asked to consider dismissal on the grounds of capability. In such circumstances the suspension of an employee should only be considered where it appears to be necessary for the protection of pupils, staff or property. Suspension from duty under the "*Capability Procedure for School Based Staff*" is not an automatic requirement and should only occur where there has been: -

- ineffective management of behaviour in class so that no order can be established to enable teaching and learning to take place or that harm is caused to or children and/or other staff are put at risk of harm;
- ineffective performance in the use of the school's child protection procedures causing harm to or putting children at the potential risk of harm;
- ineffective performance that resulted in damage to property; or
- ineffective use of the school's health and safety procedures causing harm to or putting staff, children and other users of the premises at risk of harm.

## 6.0 **ROLES AND RESPONSIBILITIES**

### 6.1 **Role of the School representatives**

Senior Managers/Heads of Department will: -

- ensure that employees have received a full induction into the school;
- meet regularly and undertake individual supervision with the employee;
- be fully familiar with relevant policies relating to performance management and the prevention of underperformance;
- ensure that the required standards and expectations of the job are clearly explained to the employee. For teachers this will mean being fully aware of the Practising Teacher Standards and the (EWC) code of professional conduct and practice;
- monitor the performance of their staff, making clear the required standard of performance the school expects;

- identify concerns regarding performance, take action and a considered approach in all cases when there are concerns about an employee's performance and inform the Headteacher, as appropriate;
- ensure standards of fairness, objectivity and consistency of treatment of employees in all cases;
- address concerns of unsatisfactory performance and seek to assist employees to achieve the required standard;
- maintain regular communication with employees being managed at all stages under the capability procedure;
- provide evidence and advise the Headteacher at all times during the process; and/or
- keep comprehensive records of all meetings and discussions with the employee held in accordance with the capability procedure (including dates, times and reason for the meeting or discussion).
- Seek further guidance from the Headteacher where appropriate on any other matter related to this procedure.

Headteachers will: -

- as above for Senior Managers/Heads of Department;
- be responsible for enacting the policy of the governing body;
- support and advise employees on effective performance management procedures;
- support and advise school managers who express concerns about the unsatisfactory performance of an employee;
- consult with the local authority and HR as appropriate throughout the capability procedure.
- initiate formal investigation of the issue and take appropriate action at any stage in the management of underperformance;
- ensure that an appropriate programme of support and guidance is put in place for the employee whose performance is deemed to be unsatisfactory;
- conduct Capability Review Meetings and where appropriate issue Warnings (up to the Final Written Warning); and
- be responsible for preparing the management statement of case for a Hearing to be conducted by the SD&DC and Appeal Hearing to be conducted by the Capability Appeals Committee or SD&DAC.

Chair of Governors will: -

- as above for Headteacher;
- meet with school's Challenge Adviser and HR to discuss performance concerns relating to the Headteacher and receive advice. CofG may nominate another governor to manage process at this stage;
- hold an informal support meeting for the Headteacher and if required establish a support plan to address the performance concerns;
- appoint, where appropriate, a designated member of the regional consortium to investigate the issues and/or provide appropriate support during the procedure.
- lead throughout review period, arranging support and monitoring of performance having regard to the Leadership Standards for Headteachers including setting performance targets; and

- work with the school's Challenge Adviser/consortium representative in assessing written reports and evidence received.
- meet with school's Challenge Adviser/consortium representative and HR to assess progress with performance following the informal support stage;
- conduct a Capability Review Meeting and the end of the Informal Support Stage and where appropriate, refer the matter for consideration to the Capability Committee.

School Governing Body will: -

- ensure that the policies relating to the management of the performance and unsatisfactory performance of employees are implemented and are working effectively;
- ensure that such policies are available to employees and reviewed regularly;
- ensure that the appropriate committees (Capability Committee, Capability Appeals Committee, SD&DC and SD&DAC) of the governing body are established and that governors are aware of their responsibilities and receive appropriate training to support them in their roles; and
- seek advice and support from the local authority, school's Challenge Adviser and HR where necessary.

## 6.2 **Role of the Employee**

Employees being managed under this procedure will: -

- be fully aware of the standards that they are expected to achieve and sustain.
- co-operate with school managers in agreeing performance targets to achieve the required standard of performance;
- take responsibility for their own training and development and be proactive in seeking arrangements where needs have been identified;
- have responsibility to take reasonable care of their own health and safety;
- commit to achieving the necessary improvements required to satisfactorily perform in their role;
- make all attempts to ensure that they understand the performance concerns identified and the process involved;
- draw to the attention of their line manager any factors that may be impacting adversely on their performance;
- make every reasonable effort to attend all meetings held under the Capability Procedure; and
- agree reasonable and achievable targets and or comply with any parts of this procedure.

## 6.3 **Role of the Appropriate Authority**

Where the LA is the employer the Chief Education Officer or their representative: -

- has a right to attend all formal meetings of the governing body and its committees for the purpose of giving advice.

In a voluntary-aided school the diocesan officer or their representative: -

- has a right to attend all formal meetings of the governing body and its committees for the purpose of giving advice.

#### 6.4 **Role of the consortium** (Capability Procedure – Headteachers)

To: -

- identify performance concerns of the Headteacher and raise with CofG and the LA lead officer for Education;
- appoint a suitably experienced officer to support the governing body and CofG;
- meet with CofG and HR to discuss and advise on performance concerns. CofG may nominate another governor to manage process at this stage;
- attend informal support meeting for Headteacher if required and provide advice to CofG throughout review period;
- meet with CofG and HR to assess progress with performance following the informal support stage;
- support CofG in leading review period, arranging support and monitoring of performance having regard to the Leadership Standards for Headteachers including setting performance targets;
- support CofG in assessing written reports and evidence received;
- on behalf of the CofG, prepare a formal report on the performance of the Headteacher and attend the review period meeting as a professional witness to present this report to the Capability Committee;
- attend hearings for Headteacher as professional witness.

#### 6.5 **Role of Human Resources: -**

##### Capability Procedure – Headteachers

To: -

- meet with CofG and Challenge Adviser. CofG may nominate another governor to manage process at this stage;
- attend informal support meeting for Headteacher and provide advice to (CofG) throughout review period;
- meet with CofG and Challenge Adviser to provide advice on procedure once the assessment of progress with performance following informal support stage has been completed;
- attend the capability review meetings for Headteacher to provide advice; and
- attend capability hearings for Headteacher.

##### Capability Procedure – Staff other than Headteacher

To: -

- meet with Headteacher to provide advice on addressing the performance issues;

- provide advice to Headteacher and attend the capability review meetings; and
- attend capability hearings to provide advice

## 6.6 Role of the Representative

Representatives will: -

- accompany the employee at all stages of the Capability Procedure; and
- support the employee in presenting their evidence and seek clarification on any issues raised.
- Make every reasonable effort to make themselves available to attend meetings on order to meet the timescales defined within the procedure.

## 7.0 MANAGING UNSATISFACTORY PERFORMANCE

- 7.1 Effective line management arrangements, including the effective use of the procedures outlined in the policy, will help prevent under performance through early identification, support and intervention.
- 7.2. It is recognised that from time to time there will be circumstances that will hinder or prevent a satisfactory level of performance. This may be through the employee's lack of competence or something that is beyond their control. School managers should, therefore, provide support to the employee so that their performance improves to the required standard and in such a way that they are able to sustain and improve upon this again.
- 7.3 School managers will also need to recognise, however, that whilst the performance management culture should be one of support and nurturing there needs to be recognition that they will have to invoke the school's capability procedure where a satisfactory level of performance is not being achieved. Good management, with clear expectations and appropriate support, will go a long way towards identifying and handling under performance. This may lead to school managers invoking the capability procedure. Wilful refusal on behalf of the employee to respond to any of the support mechanisms put in place may result in the matter being dealt with under the school's Disciplinary Procedure.
- 7.4 Employees subject to the capability procedure will cease to be involved in the performance management cycle for the school until such time that the capability proceedings cease.
- 7.5 If at any stage during the procedure the employee consistently achieves a satisfactory level of performance and there is evidence to suggest that this improvement is sustainable, the capability procedure will conclude. The Headteacher will inform the employee of this both verbally and in writing. The employee must also be encouraged to sustain and improve their performance in the future which will now be monitored under the performance management

arrangements<sup>1</sup>. If, however, following this successful conclusion the employee fails to sustain a satisfactory level of performance at a later date the Headteacher will revert back to the capability procedure as follows:-

- at the Stage where the previous procedure concluded if the failure in performance occurs within 60 working days (or one year in the case of Head Teachers) of that conclusion i.e. if it concluded at Stage 2 the procedure will recommence at Stage 3; or
- at Stage 1 if the failure in performance occurs after 60 working days (or one year in the case of Head Teachers) after the conclusion of the procedure. The Headteacher should however assess the reasonableness of commencing at Stage 1 based on the length of time that has passed after the stated timescales or whether it would be appropriate to address the repeated performance concern through informal support in the first instance. For example, if the performance concerns reoccur 6 months after the conclusion of the procedure it would be reasonable to commence the process at Stage 1. However, if the performance concerns reoccur 2 years after the conclusion of the previous procedure, it would be more appropriate to provide informal support in the first instance rather than commence the formal stages of the procedure.

7.6 Where it is necessary to recommence the capability procedure on more than two occasions the Headteacher may consider that there is sufficient cumulative evidence indicating serious performance issues that require the procedures to start at Stage 4 immediately i.e. a capability hearing before the SD&DC.

7.7 Where failures in the Headteacher's performance have been identified the Chair of Governors should, after consultation with the school's Challenge Adviser and HR, arrange for the:-

- matter to be investigated and collect evidence; and
- ensure that the Headteacher is provided with support and monitoring as appropriate.

7.8 The recommended timescales given in the "*Capability Procedure for School Based Staff*" are recommended timescales which should be adhered to where possible, however it is recognised that in some circumstances, alternative timescales may need to be set and agreed. For more complex issues/roles a longer assessment period may be required. In setting timescales the Headteacher should also take account of when the support needed can be made available to the employee and the time period the employee then has within the 30 working days to demonstrate how the support has enabled them to improve their performance to a satisfactory level. It is the performance issue itself and the impact that the under performance is having on the school

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<sup>1</sup> Under the School Teacher Appraisal (Wales) Regulations 2011 there is a statutory requirement to undertake performance management procedures for teaching staff. Performance Management for support staff is undertaken in line with locally agreed procedures. These are separate procedures to the Capability Procedure.

and children's education that should be the key when determining what is a reasonable period to assess performance.

7.9 An employee must be given at least five working days written notice of any interview or meeting held under the capability procedure. The employee has a right to be accompanied by a trade union representative or work colleague at all stages of the capability procedure. Where the employee's chosen representative is not available at the time of the proposed interview, meeting or hearing it is not unreasonable to rearrange the event to an alternative date so long as it falls within five school days of the original date.

7.10 **Employees Inability / Refusal to accept lack of capability:**

In some cases the employee may refuse to accept that a performance problem exists. In these circumstances the manager should still:

- Continue to follow the procedure
- Advise the employee of the consequences of failure to reach required standards of performance and the time period within which the improvement is expected
- Set out the support mechanisms available to/to be implemented for the employee

If the employee refuses to accept and respond to the support provided, and the performance does not improve to an acceptable standard, it may be necessary to proceed straight to Stage 2 of the procedure.

## 8.0 GUIDANCE ON THE PROCEDURE

### 8.1 Clarify the Issue

Where concerns regarding an employee's performance have reached a point where they are failing to respond to the feedback that has been given to them by their manager, the employee should be advised that it is necessary to clarify the possible reason(s) for their under performance. At this stage the Headteacher will instigate an investigation of the issue and may appoint a designated senior member of the staff to undertake the task.

**N.B. if the employee is a teacher then the investigator should also be a qualified teacher in a more senior position.**

### 8.2 Investigate the Issue

The designated senior member of staff will have knowledge of the employee's area of work. S/he will be responsible for gathering and collating written evidence regarding the concerns and present a report. S/he can draw upon the outcomes of routine line management and monitoring such as relevant information from the performance management process, lesson observations, data, etc. For this reason s/he must meet with the employee to ensure that there is complete clarity on where the performance issue lies in terms of capability due to ill health or capability due to lack of competence or misconduct.

### 8.3 **Informal Support Meeting**

Once the facts are gathered and the seriousness of the problem is determined the Headteacher will arrange an informal support interview with the employee. During the interview the Headteacher should:-

- Provide details and evidence of the concerns regarding the performance of the employee;
- give the employee the opportunity to respond and allow them to produce and use documentary evidence to support their response;
- discuss and agree, where possible, performance targets with the employee and/or review the targets set previously setting new ones if required;
- provide clear guidance on the improved standard of performance needed to end the capability procedure;
- discuss and agree the support that will be available and how performance will be monitored over the assessment period;
- determine a timescale for assessment of not more than 30 working days (or four weeks in exceptional circumstances) and agree a date for the next review meeting.
- In conjunction with the employee where possible, draft a performance improvement plan detailing the performance concerns, performance targets, the improvement required, the timescale for the improvement and the guidance, support, monitoring and review arrangements;

The performance improvement plan (PIP) should be based on the requirements for the job role. It is, therefore, reasonable to expect that the employee will agree the PIP. However, where an employee does not agree, their objections should be discussed with them, their reasons considered and the PIP amended if appropriate.

### 8.4 **Performance Targets and Timescales for Improvement**

The setting of performance targets is intrinsic to securing better outcomes. Maximum timescales should also be agreed in advance with progress monitored throughout the review period. Timescales should where possible be agreed with the employee and where such agreement cannot be reached they should not usually exceed 30 working days.

Targets should be challenging but realistic. Targets should be set to encourage the improvement in performance and motivate people where there is a probability of success.

Headteachers will want to: -

- set a number of targets against which performance can be measured;
- ensure that each target is demonstrably relevant to the performance concern;
- ensure that targets are either the completion of certain tasks or results expected from the individual; and
- ensure that each target is reasonable but sufficient to achieve the desired level of performance.

## 8.5 Timescales

Timescales will generally depend upon the nature of the unsatisfactory performance, the role of the employee, the improvements identified as necessary and the support and development to be provided. Timescales must be sufficiently reasonable for the employee to demonstrate that they are capable of achieving and sustaining the required standard of performance and sustaining it. Review periods should not usually be longer than 30 working days. In exceptional circumstances a longer review period may be considered but unnecessary delay should be avoided.

## 8.6 Monitoring and Review

The monitoring process should include periodic structured meetings, informal discussion and direct support. It should be conducted in a sympathetic and non-threatening way with the objective of improving the employee's performance. Those providing support must give regular feedback and instruction to help the employee improve their performance to the required standard. Training courses or assistance from colleagues must be provided as soon as possible but should not interrupt the on-going nature of the capability procedure. An objective record of the monitoring should be kept and used to assist the evaluation of performance. It is important to stress that the employee must receive the agreed support for the process to be seen to be fair. If there are difficulties in providing the support then the timescales will need to be extended to reflect this.

Regular review meetings are important because they provide a guide to the progress that is being made. They will also highlight matters where difficulties are being experienced (perhaps with respect to any support being given) in advance of the end of the review period so that any action can be quickly taken. Headteachers may also agree to extend the period of review if, in their opinion, matters outside of the employee's control have hindered his/her ability to meet the performance targets in the prescribed period.

## 8.7 Conducting a Capability Review Meeting

Capability Review Meetings are part of the formal stage of the Capability Procedure and could result in action being taken against an employee. The Headteacher will conduct the Capability Review Meetings because only s/he can issue written warnings under the "*Capability Procedure for School Based Employees.*" Where the performance of the Headteacher is a cause for concern the review meetings will be conducted by the Governor Capability Committee with a report being presented by the school's Challenge Adviser and support and advice from HR.

Shortly before the capability review meeting takes place, the Headteacher should prepare for it by undertaking an assessment of the employee's performance during the previously agreed timescale for improvement. If

sufficient progress has been made and the employee is now achieving the required standard of performance that is also sustainable then the capability review meeting will reflect this and the employee will be commended for the

improvement and the capability procedure will be concluded. If, however, insufficient progress has been made and the employee is still not achieving the required standard of performance the capability review meeting must focus on this.

8.7.1 The purpose of the Capability Review Meeting is to:-

- establish facts;
- present management case;
- hear the employee's explanation;
- make a decision after considering evidence provided; and
- decide whether further action is necessary as a result

8.7.2 In making a decision the Headteacher must be satisfied that: -

- all relevant circumstances have been fully investigated;
- the capability procedure has been complied with;
- the facts have been established;
- requirements of the Equalities Act have been complied with (where applicable);
- mitigating or personal circumstances have been considered; and
- the action contemplated is justified in the circumstances of the case.

8.7.3 Where the Headteacher judges that the employee has achieved the required standard of performance and there is evidence available to show that this is sustainable then the improvement will be acknowledged. The capability procedure will be concluded and the performance management cycle resumed.

8.7.4 Where the Headteacher issues a warning s/he should use the remainder of the meeting to:-

- identify the continuing professional shortcomings;
- consider whether new targets need to be set or previous ones re-stated depending upon the continuing nature of the under performance. If new targets need to be given however they should be commensurate with the original ones;
- give clear guidance on the required standard of performance needed to bring the capability procedure to an end;
- explain the support that will be available and how performance will be monitored over the agreed assessment period;
- identify the timescale for improvement (not more than 30 working days) and agree a date for the next review meeting; and
- make it clearly understood that continual failure to improve within the agreed timescale will mean moving the employee to a higher stage in the procedure and could ultimately lead to their dismissal.

8.7.5 Where the employee is issued a warning s/he will have the right to appeal. If the employee decides to appeal the decision s/he must notify the Clerk to the Governing Body, stating their grounds for appeal, within five working days of receiving written confirmation of the decision.

## **8.8 Hearing before the SD&DC**

Where the previous stages of the capability procedure have been followed with a final written warning issued by the Headteacher and the performance of the employee continues to remain unsatisfactory it will be appropriate to refer the matter to a hearing held before the SD&DC. The SD&DC will hear the capability matter and if it decides to dismiss the employee the SD&DAC will hear any appeal.

All evidence that will be used at the hearing is provided in confidence and this must remain so throughout the proceedings. No new material should be introduced in the hearing above and beyond that previously issued to the SD&DC.

At no time prior to the capability hearing will members of the SD&DC discuss the capability matter.

## **9.0 APPEALS**

9.1 Appeals against a warning being issued will be heard by the Capability Appeals Committee of the Governing Body.

9.2 Appeals against the decision of the SD&DC to dismiss will be heard by the Staff Discipline & Dismissal Appeals Committee (SD&DAC) of the Governing Body.

9.3 Appeal Hearings will focus on the issues set out in the written appeal notification and, therefore, the appeal process may not always take the form of a complete hearing. However, under certain circumstances e.g. where new evidence comes to light or the first hearing process was flawed or biased it may be appropriate to rehear part, if not all, of the case.

9.4 In making its decision the Capability Appeals Committee/SD&DAC needs to consider: -

- whether the grounds under which the appeal has been made are justified;
- whether the appeal should be upheld; or
- what will be the next course of action if any i.e. a further review period, no further right of appeal, etc?

9.5 The relevant Committee will have three options open to it: -

- confirm the original decision;
- agree a further assessment period of no more than six weeks to allow the employee to achieve the required standard of performance. Where this occurs the Appeals Committee/SD&DAC must reconvene at the end of the six weeks to review the progress of the employee and if the required standard of performance is still not met confirm the original decision; or
- Issue a lower sanction
- In the case of the SD&DAC hearing an appeal against the decision to dismiss, the Committee also have the option to recommend that the employee be redeployed should suitable alternative employment be available and the employee be agreeable to this option.

## **10.0 REPRESENTATION**

- 10.1 Employees subject to the capability procedure have the right to be accompanied at all stages of the capability procedure by a work colleague or trade union representative. The employee has the responsibility to arrange for a work colleague or trade union representative to be present at meetings and hearings. The school, however, will seek to arrange a time and date suitable to both. An employee being managed under this procedure must be given the time to contact a work colleague or their trade union representative and prepare their case.
- 10.2 If the employee's choice of representative is not acceptable they may be required to choose someone else, for example, if the work colleague or trade union representative: -
- has a conflict of interest or may prejudice the hearing; or
  - is unavailable at the time of the hearing and will not be available for more than five school days.
- 10.3 Consideration may also have to be given to allowing the employee to be accompanied by someone else where this will help overcome a particular difficulty caused by a disability.

## **11.0 DISMISSAL/REDEPLOYMENT**

### **11.1 Dismissal**

Whilst the management of school based employee's is wholly delegated to the governing body of a community school the Council is still the employer. The governing body, therefore, can only recommend to the Council that an employee be dismissed from the school following completion of the capability process i.e. after the appeal stage. It is for the Council to enact the dismissal. The governing body will, therefore, need to inform the Council of its decision. The Chief Education Officer must dismiss the employee within fourteen school days of notification of the decision of the SD&DC or by the SD&DAC.

Where the school is a voluntary aided school the governing body is the employer of the staff who work there. The governing body, therefore, must enact the decision to dismiss after the SD&DC has so decided whilst still giving the employee the right to appeal against the decision.

Following the Capability Review Meeting at the end of Stage 3, where it is evident that all previous attempts to assist the employee to improve their performance to an acceptable standard have failed the matter must be moved to Stage 4 where a capability hearing will be held before the SD&DC. No decision to dismiss should take place unless an employee has previously been given guidance about their performance.

The outcome of the capability hearing before the SD&DC could be the employee's dismissal with pay in lieu of notice. Where an employee is dismissed for serious professional incompetence the employer must provide them with written notice of the reasons for dismissal.

## 11.2 **Redeployment**

Where a decision has been taken to seek redeployment the employee will (usually) be issued with notice during which time redeployment will be sought. If redeployment cannot be found within the employee's notice period dismissal will be on the grounds of capability. In cases where the issue is performance, finding alternative employment should be considered as an alternative at the point at which the decision to dismiss is being considered, as appropriate.