

Governing Body Meeting  
Autumn term 2019

Report by the Director of Business  
Development

<p style="text-align: center;"><b>CAPABILITY PROCEDURES (TEACHING &amp; SUPPORT STAFF)</b></p>
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## **1. INTRODUCTION**

- 1.1 We have an ongoing commitment to review all Human Resources (HR) policies periodically.
- 1.2 The capability procedures drafted for teaching and support staff are separate, to allow for the differences in their terms and conditions of employment and recommendations made by the DfE. Consequently, the policies in this report have been reviewed and minor revisions have now been made to these model policies. The revisions have been consulted on with teacher associations and trade unions.

## **2. BACKGROUND**

- 2.1 There have been some minor revisions to the policy that have no material change on its practice or implementation. Following advice from the charity Stonewall the gender specific language in all policies, e.g. “he/she” had been updated to “they”. In addition, job titles of officers or specific council departments referred to within the individual policies had been updated to reflect changes in the council structure.
- 2.2 The minor changes made are detailed below.

## **3. INFORMATION**

- 3.1 Capability procedure (support staff) – within the procedure paragraphs 5 and 6 which outlined the employees responsibilities and expectations have been merged together. This has impacted upon the paragraph numbering throughout the document.
- 3.2 Capability procedure (teaching) - Paragraph 4 has been deleted as it required each individual school to manually change the procedure. Paragraph 5 has been moved to the end of the procedure to mirror the formatting of all other model documents. This has impacted upon paragraph numbering throughout the document. References that have been made to individual support at formal meetings has been clarified to workplace colleagues and trade union representatives rather than the generic term “companion”.

#### **4. ISSUES FOR CONSIDERATION**

- 4.1 The governing body is asked to consider the adoption of the revised model policies. Voluntary aided schools and academies which are part of the HR service level agreement, are asked to receive the policies for information and consideration.
- 4.2 Should the governing body decide not to adopt the model policies it should produce appropriate alternatives in consultation with the recognised teacher associations and trade unions. Community schools will be required to provide alternatives to the council, which the council as employer is satisfied, meets the necessary standard.
- 4.3 All governing bodies who adopt any alternative document or modify the models provided are requested to submit final documents to [schoolsHRpolicy@northlincs.gov.uk](mailto:schoolsHRpolicy@northlincs.gov.uk)
- 4.4 The governing body is reminded of the need to communicate any policy changes to all staff at the earliest opportunity.

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# **NORTH LINCOLNSHIRE COUNCIL**

## **CAPABILITY PROCEDURE (TEACHERS)FOR [REDACTED] SCHOOL/ACADEMY**

### **INTRODUCTION**

1. This procedure sets out the arrangements that will apply when teachers fall below the levels of competence that are expected of them.
2. It also describes the steps to be taken at a capability hearing (paragraph 16 onwards), where the earlier stages of the Sickness Absence policy have been exhausted, the required standard of attendance has not been achieved and there is insufficient or no evidence that it will.
3. The Governing Body is committed to ensuring consistency of treatment and fairness and will abide by all relevant equality legislation.

### **APPLICATION OF THE PROCEDURE**

4. This procedure applies only to teachers or head teachers, about whose performance there are serious concerns that the appraisal process has been unable to address.
5. A capability hearing (paragraph 16 onwards) in accordance with the sickness absence procedure will also apply in the following circumstances:
  - Where the required standard of attendance has not been achieved and all other possibilities have been explored.
  - Where, in the case of long term absence cases, there is no likelihood of a return to work within a reasonable period of time and ill-health retirement is not recommended.
6. At all stages of the procedure the teacher whose capability is in question should be reminded of the availability of the council's confidential staff welfare and counselling service.

### **FORMAL CAPABILITY MEETING**

7. At least five working days' notice will be given of a formal capability meeting. The notification will contain sufficient information about the concerns regarding performance and their possible consequences to enable the teacher to prepare to answer the case at a formal capability meeting. It will also contain copies of any written evidence; the details of the time and place of the meeting; and will advise the teacher of their right to be accompanied by a workplace colleague or trade union representative.

8. If the teacher or their representative is not available on the date given for the meeting an alternative date will be sought, and the meeting will be convened normally within 10 working days of the original date.
9. This meeting is intended to establish the facts. It will be conducted by the Chair of Governors (for **Headteacher/Principal** capability meetings) or **Headteacher/Principal** (for other teachers). The meeting allows the teacher, 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.
10. The person conducting the meeting may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases, the capability procedure will come to an end.

*Note 1: 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.*

11. In other cases, the meeting will continue. During the meeting, or any other meeting which could lead to a formal warning being issued, the person conducting the meeting will:
  - identify the professional shortcomings, *for example which of the standards expected of teachers are not being met*;
  - give clear guidance on the improved standard of performance needed to ensure that the teacher 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 teacher 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 but in straightforward cases could be *(insert time period e.g. between four and ten weeks)*. It is for the school/academy to determine the set period. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place); and
  - warn the teacher formally that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning.
12. Notes will be taken of formal meetings and a copy sent to the teacher whose performance is in question. Where a warning is issued, the teacher will be informed in writing of the matters covered in the bullet points above and given information about the timing and handling of the review stage and the procedure and time limits for appealing against the warning.

## **MONITORING AND REVIEW PERIOD FOLLOWING FORMAL CAPABILITY MEETING**

13. A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. The member of staff will be invited to a formal review meeting, unless they were issued with a final written warning, in which case they will be invited to a capability hearing.

*Note 2: Monitoring and review periods may vary from case to case but will be sufficient to give the teacher reasonable time to reach the required standard, e.g. where teachers work part time. Regular review meetings should take place throughout the period and notes kept of all meetings with copies provided to the teacher. Teachers who go on maternity leave or are absent for an acceptable reason for a large part of the monitoring and review period may have it suspended until they return to work. Advice should be sought from HR in these circumstances.*

## **FORMAL REVIEW MEETING**

14. 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 teacher of their right to be accompanied. If the person conducting the meeting is satisfied that the teacher has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start. In other cases:
- If some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period;
  - If no, or insufficient improvement has been made during the monitoring and review period, the teacher will receive a final written warning.
15. As before, notes will be taken of formal meetings and a copy sent to the teacher. The final written warning will mirror any previous warnings that have been issued. Where a final warning is issued, the teacher will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale), may result in dismissal and given information about the handling of the further monitoring and review period and the procedure and time limits for appealing against the final warning. The teacher will be invited to a capability hearing.

## **CAPABILITY HEARING**

16. 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 teacher of their right to be accompanied.
17. The person conducting the hearing will listen to the factual submissions of the manager and the teacher and/or their companion and make a decision as to whether there is any realistic expectation of the teacher achieving an acceptable level of attendance/performance by extending the time-scale and/or assistance offered at any previous Sickness Absence/Capability meeting. The agenda for the hearing is given in Appendix 1.

## **POSSIBLE OUTCOMES/SANCTIONS**

### **No further action**

18. If an acceptable standard of attendance/performance has been achieved during the further monitoring and review period, the capability procedure will end and the sickness absence/appraisal process will re-start.
19. The teacher will be advised of the decision and this will be confirmed in writing and a copy provided, where relevant, to the trade union representative.

### **Written warning & further review**

20. If there is evidence that acceptable attendance/performance may be possible within a reasonable timescale, or where new issues or mitigation has arisen during the hearing, a further monitoring period may be set.
21. The length of this monitoring period will be determined by factors such as previous record, personal circumstances, medical opinion and the likelihood of improvement. The nature of the work and the impact of poor attendance/performance on service provision and colleagues will also be taken into account.
22. The teacher will be issued with clear objectives detailing the improvement required, the timescale for the review and the support to be provided. This will be accompanied by a written warning, which makes it clear that failure to meet the required standard may result in dismissal.
23. A further capability hearing will be arranged at the conclusion of the review period.

### **Potential dismissal**

24. If attendance/performance remains unsatisfactory the following options should be considered before reaching a decision to dismiss.

#### **Redeployment**

- a. If the decision of the governors hearing the matter is that performance or attendance will not become acceptable in the current post, consideration should be given to whether or not suitable alternative employment is currently available as per the redeployment code of the **school/academy**.
- b. The governors hearing the matter may ask HR to advise them on any available posts. If necessary the meeting will be adjourned and re-arranged to allow this to take place.
- c. The offer of another post in these circumstances is an alternative to dismissal. The job will be offered without any protection of terms and conditions of employment. If the teacher accepts the post they will be subject to a further monitoring period in accordance with this procedure, of a maximum of three months.

## **Career break**

- d. In cases of long-term absence, where there is no likelihood of a return to work within a reasonable period of time and ill-health retirement is not recommended or available, a career break may be considered as an alternative to dismissal, subject to the needs of the **school/academy** and individual circumstances.
  - e. A career break may also be appropriate in circumstances where performance has deteriorated as a result of a life event which will improve given time (e.g. relationship breakdown, bereavement etc.)
  - f. The terms of the career break will be in accordance with the **school/academy's** agreed policy.
25. If no suitable alternative employment opportunities are identified, the teacher rejects redeployment as an alternative to dismissal or a career break is not suitable, the teacher will be dismissed with contractual notice.

## **DECISION TO DISMISS**

26. **Headteachers/Principals** and the governing body have the authority to dismiss an employee. However in the majority of **schools/academies** the **Headteacher/Principal** will have been involved in the case. Therefore the designated committee of the governing body will hear the matter.
27. **The Director of Learning, Skills and Culture or their representative, as joint employer, is entitled to attend and offer advice on all proceedings relating to a potential dismissal from employment within maintained schools.**
28. The teacher will be advised of the decision and this will be confirmed in writing and a copy provided, where relevant, to the trade union representative.

## **APPEAL**

29. If a teacher feels that a decision to dismiss them, or other action taken against them, is wrong or unjust, they may appeal in writing against the decision within five days of the decision, outlining the grounds for appeal.
30. Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied will apply as with formal capability and review meetings and, as with other formal meetings, notes will be taken and a copy sent to the teacher.
31. The appeal will be dealt with impartially and, wherever possible, by governors who have not previously been involved in the case. The Appeals Committee will have the authority to uphold the original decision or to substitute a lesser penalty or to reject the original decision. The minutes of the Appeals Committee will be circulated to the governing body.

32. The Director of Learning, Skills and Culture or their representative, as joint employer, is entitled to attend and offer advice on all proceedings relating to a potential dismissal from employment within maintained schools.
33. The teacher will be informed in writing of the results of the appeal hearing as soon as possible.
34. Action to implement decisions to dismiss will not be suspended pending the appeal but should the appeal be upheld, the appellant will be reinstated to their original post without a break in service.

### **Referral to Regulatory Bodies**

35. In circumstances where a teacher is dismissed for capability (performance) reasons or leaves in circumstances where dismissal was a possibility, the school/academy with support from HR will refer the matter to any relevant statutory body as appropriate.
36. All teachers who are subject to referral in accordance with the above paragraph should be given confirmation of this action in writing.

### **Retention of records and references**

37. Records will be retained to fulfil obligations to provide factual information for employment references.

### **Review**

38. This procedure be reviewed every 3 years or sooner as required by any changes in regulation and/or statutory guidance.

# Capability Procedure (Teachers)

## Appendix 1

### HEARING PROCEDURE

1. The **Headteacher/Principal** will present the case in the presence of the employee and their representative. They will outline the action taken to date and the reason for any recommendations made.
2. The employee and/or their representative may ask questions on the evidence given by the **Headteacher/Principal**.
3. The governors hearing the matter will then have the opportunity to ask questions of the **Headteacher/Principal** and any other officer in attendance.
4. The employee and/or their representative shall present their case in the presence of the **Headteacher/Principal**.
5. The **Headteacher/Principal** may ask questions on the evidence given by the employee and/or their representative.
6. The governors hearing the matter shall have the opportunity to ask questions of the employee and representative.
7. The **Headteacher/Principal** shall have an opportunity to sum up his/her case by making a final statement.
8. The employee and/or their representative shall have an opportunity to sum up their case by making a final statement.
9. The **Headteacher/Principal** and the employee and their representative shall withdraw while the governors hearing the matter consider the outcome. If recall is necessary, both parties are to return notwithstanding that only one party is concerned with the point needing clarification. An opportunity should be given to each party to question or comment upon any additional information.
10. The parties concerned will be recalled to hear the decision of the governors hearing the matter.
11. The decision of the governors will be confirmed in writing to all parties concerned, normally within 5 working days of the hearing.

# NORTH LINCOLNSHIRE COUNCIL

## CAPABILITY PROCEDURE (SUPPORT STAFF)

### CAPABILITY PROCEDURE FOR \_\_\_\_\_ SCHOOL/ACADEMY

#### INTRODUCTION

1. This procedure describes the steps to be taken to enable employees to achieve and maintain a high standard of performance in their work. It also provides a framework of informal and formal intervention, where performance is inadequate.
2. This procedure is designed to ensure that an employee whose performance is inadequate is clearly informed of the expected standards and receives the necessary support and time to achieve those standards.
3. Nothing contained within this procedure should replace normal day to day management and any issues should be discussed and addressed with an employee, as they arise.
4. This procedure will apply to all support staff in the school/academy.

#### RESPONSIBILITIES

5. All employees have a contractual responsibility to exhibit a high standard of work performance. Employees are therefore expected to:
  - Meet relevant standards of practice and work in a lawful, safe and effective way.
  - Maintain clear and accurate records as required by procedures established for their work.
  - Be aware of and comply with policies, procedures and good practice that they have been informed of.
  - Participate constructively in employee appraisals and undertake relevant training to maintain and improve their knowledge and skills.
  - Seek assistance from their Headteacher/Principal or nominated officer if they do not feel able or adequately prepared to carry out any aspect of their work, or are not sure about how to proceed in a work matter.

*Note 1: Standards of practice may not always be written but will generally be known and will include professional standards, the job description for the post, competencies etc. This is not an exhaustive list.*

6. **The Headteacher/Principal will ensure that the performance of employees is managed by:**
  - Giving clear information and guidance about employees' roles and responsibilities.
  - Giving clear information about the performance expected of employees.
  - Managing and supervising employees to support effective working, good conduct and supporting employees to identify areas for improvement in their performance.
  - Having systems in place to enable employees to report inadequate resources, or operational difficulties, which might impede their performance or health and safety.
  - Drawing attention to policies, procedures and good practice and ensuring adequate training is provided.

## PERFORMANCE FRAMEWORK

7. Employment performance is supported by a framework of related policies and practices as detailed below.

### Recruitment

8. Performance standards are set before an employee commences in the post. Consideration should be given to these standards prior to recruitment.
9. The job description and employee specification must be reviewed and updated if necessary, before any recruitment commences, so that the expected standards can be reinforced throughout the process. This should ensure that the appointee has the necessary skills and abilities to meet the requirements of the post and fulfill the performance expectations.

*Note 2: Any changes to job descriptions or employee specifications should be discussed with HR and are subject to consultation with the relevant trade unions, to ensure the job evaluation and diversity implications are assessed.*

### Induction

10. Once the successful candidate is appointed they should be given an effective induction. This should reinforce the performance standards expected, and outline the measures that will be used to monitor performance in their role.

### Employee appraisal

11. All employees should receive an appraisal on at least an annual basis. This should feature a review of achievements against those agreed for the previous period. A discussion about the employee's actions and objectives for the following year should also take place. An employee should be given a chance to reflect on their performance, discuss areas of difficulty and talk about their career aspirations.
12. The appraisal should not be a substitute for normal day to day management of performance issues. It should provide an employee with a clear picture of what they need to achieve over the next 12 months and the necessary support they will receive to achieve those actions.
13. Actions set for the next 12 months should be clearly defined and appropriate milestones identified. Targets and standards should be SMART (Specific, Measurable, Achievable, Relevant and Time-limited). Targets and standards should be revised as necessary during the year, through one to one discussions or supervision meetings.

### One to one meetings/Supervision

14. Performance should be monitored during regular one to one meetings between the **Headteacher/Principal** or nominated officer and the employee. They should feature an update on targets and objectives and the prioritisation of day to day workloads, to ensure that agreed actions are met. These discussions should be documented, as appropriate.
15. Where it is not practical or appropriate to conduct regular one to one meetings, there must be at least an arrangement where employees and their **Headteacher/Principal** or nominated officer are able to contact each other to arrange a meeting when either party has concerns regarding performance. Again, these discussions should be documented, as appropriate.

## Record keeping

16. It is important that records are maintained by the **Headteacher/Principal** or nominated officer, of **any** action taken in respect of performance and notes diarised or placed in a confidential and secure location. The Performance Improvement Plan (Appendix 1) may be utilised at any stage for this purpose.
17. Where this procedure indicates that notice or confirmation of action(s) should be provided in writing, this can be an email providing all other requirements in relation to content and timescales are satisfied.

## INADEQUATE PERFORMANCE

18. Inadequate performance may be as a result of an inability to undertake the duties of a post due to capability (would but can't) or as a result of conduct (can but won't). If the inadequate performance is due to misconduct the **school/academy's** Disciplinary procedure should be invoked.
19. If the concern arises as a result of sickness absence then the **school/academy's** Sickness Absence procedure should be followed. In such cases a capability hearing may result but only after the earlier stages of the Sickness Absence procedure have been followed.
20. Inadequate performance which may be attributable to health conditions that are not resulting in periods of sickness absence, should be addressed in accordance with this Capability procedure but should be fully investigated beforehand, with support and advice sought from HR as appropriate. This may require a referral to occupational health for further guidance.

## Informal discussion

21. Where there are concerns that an employee's performance is inadequate, an informal discussion will be held between the **Headteacher/Principal** or nominated officer and the employee to try to establish the reason(s) for this. The discussion should alert the employee to the concerns and give the **Headteacher/Principal** or nominated officer the opportunity to assess the situation, on the basis of the response provided.
22. The required standard of performance should be clearly established and targets for improvement should be set. Where appropriate, informal support mechanisms should be engaged and a review period established. Support may include:
  - In-service training;
  - coaching/mentoring;
  - provision of special equipment;
  - work observation by a suitably experienced person (either from within the team or another department);
  - work shadowing of a more experienced person;
  - visits to other **school/academies** to observe good practice.

*This list is not exhaustive.*
23. The outcome of any informal discussions should be confirmed in writing to the employee concerned. The Performance Improvement Plan (Appendix 1) may be used where appropriate.
24. The employee should be informed of the availability of the confidential Staff Welfare and Counselling service as appropriate.

25. If the required standard of performance is not achieved following the engagement of informal support mechanisms, a formal performance improvement meeting will be arranged.

### **Temporary redeployment/Precautionary suspension**

26. In exceptional circumstances, where there are concerns that an employee's capability represents a significant danger to themselves, colleagues, pupils or the financial/physical resources of the school/academy, temporary redeployment (where available) or suspension on full pay may be considered, pending a referral to occupational health and/or a performance improvement meeting.
27. Advice should be sought from HR prior to contacting the employee where temporary redeployment or suspension is a possibility. The reason for temporary redeployment or suspension will be confirmed in writing to the employee.
28. If the employee is a trade union representative, then a senior trade union representative or full time official should normally be notified at the same time or as soon as possible thereafter. This notification should only occur however **with the agreement** of the trade union representative whose performance is in question.

### **Performance improvement meeting**

29. Where an employee has failed to improve following informal action, or the employee has been temporarily redeployed or suspended, they will be asked to attend a performance improvement meeting. They should be informed that they have the right to be represented by a trade union representative or accompanied by a fellow worker of the school/academy. The employee should be provided with a copy of this procedure in advance of the meeting. An HR representative can be available to support as required.
30. Where the employee concerned is a trade union representative, a performance improvement meeting should not normally be scheduled at any stage of this procedure until the circumstances of the case have been discussed with a senior trade union representative or full-time official. This notification should only occur however **with the agreement** of the trade union representative whose performance is in question.
31. At the meeting the Headteacher/Principal or nominated officer will:
- clearly explain the shortfall between the employee's performance and the required standard;
  - establish the possible causes of the inadequate performance;
  - identify the action taken to date;
  - identify other potential remedial action, including training, development, support or other interventions such as reasonable adjustments to the work or times of work.
- then
- obtain the employee's commitment to reaching the required standard
  - set out the required standard using the Performance Improvement Plan (see Appendix 1);
  - establish a reasonable period of time (the monitoring period) for the employee to reach the required standard;
  - determine a system to regularly monitor their progress and to evaluate the success of support mechanisms;
  - inform the employee that failure to meet the required standard may result in referral to a capability hearing.

or

- where medical advice states that the employee is not capable of undertaking the role they are employed to do and reasonable adjustments cannot be made, or in exceptionally serious cases (see paragraph 26), inform the employee that they are to be referred to a capability hearing

*Note 3: The monitoring period may vary from case to case but will be sufficient to give the employee reasonable time to reach the required standard. Regular review meetings should take place throughout the period and notes kept of all meetings with copies provided to the employee.*

- The outcome of the meeting will be confirmed in writing to the employee and, where relevant, their trade union representative. The confirmation must clearly indicate that the employee's performance is a serious cause for concern, and
- which aspects of the employee's performance must improve;
- what support will be available;
- what timescale and against what targets and criteria the employee's performance will be assessed;
- that failure to meet the required standards may lead to further action within the managing performance procedure which could include dismissal after a capability hearing;
- the date of the end of the monitoring period when a final review meeting will be held.

## **Final Review**

32. At the end of the monitoring period, or earlier if the employee's performance represents a significant danger to themselves, colleagues, service users or the financial/physical resources of the **school/academy**, the performance of the employee will be examined.
33. The employee will be given notice in writing of the review and will again be advised that they have the right to be represented by a trade union representative or accompanied by a fellow worker of the **school/academy**.
34. If the required improvement has been achieved, the employee will be thanked for their effort and achievement and advised that the monitoring is at an end. No further action will be taken provided that acceptable performance is maintained. Failure to maintain the agreed performance within a period of 12 months may result in an immediate return to a formal performance improvement meeting.
35. If some improvement has been made but the standard has not yet been met, or where new issues or mitigation has arisen, the monitoring period may be extended if there is evidence that there is realistic chance of acceptable performance being achieved. In such cases:
  - The Performance Improvement Plan (Appendix 1) will be modified to reflect the outstanding improvements required and any further action to be taken;
  - a further timescale will be set for improvement, which other than in exceptional circumstances will not be longer than three months, following which a second review meeting will be held;
  - the arrangement for the second review meeting will reflect the first.
36. Where there is no, or insufficient, evidence of improvement, the **Headteacher/Principal** or nominated officer will explain to the employee that they have failed to meet the required standard and the matter will be referred to a capability hearing.
37. The outcome of the meeting will be confirmed in writing to the employee and a copy provided, where relevant, to the trade union representative.

## **DISPUTES**

38. Any complaints arising from the application of this procedure or the processes in support should be addressed in line with the school/academy's Grievance procedure.

## **REVIEW**

39. This procedure will be reviewed in three years time or sooner if changes in legislation or feedback necessitates.

# **NORTH LINCOLNSHIRE COUNCIL**

## **CAPABILITY HEARING PROCEDURE (SUPPORT STAFF) FOR SCHOOL/ACADEMY**

### **INTRODUCTION**

1. This procedure describes the steps to be taken, where the earlier stages of the Sickness Absence or Capability procedures have been exhausted, the required standard has not been achieved and there is insufficient or no evidence that it will.
2. The **Headteacher/Principal** or nominated officer (with the support of Human Resources (HR) as appropriate), having satisfied themselves that the earlier stages of the Sickness Absence or Capability procedure have been fulfilled and that any reasonable adjustments have been made, will refer the matter to the relevant committee and a capability hearing will be held. An HR representative will be available to support the officer hearing the matter where required.
3. The employee will be given 10 working days' notice in writing of the time and place of the hearing and be reminded that they have the right to be represented by a trade union representative, or accompanied by a fellow worker of the **school/academy**.
4. If the employee or their representative is not available on the date given for the hearing an alternative date will be sought, and the meeting will be convened normally within 10 working days of the original date.
5. The **Headteacher/Principal** and the governing body have the authority to dismiss an employee. However in the majority of schools the **Headteacher/Principal** will have been involved in the case. Therefore the designated committee of the governing body will hear the matter.
6. **The Director of Learning, Skills and Culture or their representative, as joint employer, is entitled to attend and offer advice on all proceedings relating to a potential dismissal from employment.**
7. The person conducting the hearing will listen to the factual submissions of the **Headteacher/Principal** and the employee and/or their representative and make a decision as to whether there is any realistic expectation of the employee achieving an acceptable level of attendance/performance by extending the time-scale and/or assistance offered at any previous Sickness Absence/Performance improvement meeting.

### **PROCEDURE**

8. The **Headteacher/Principal** or nominated officer will present the case in the presence of the employee and their representative. They will outline the action taken to date and the reason for any recommendations made.
9. The employee and/or their representative may ask questions on the evidence given by the **Headteacher/Principal** or nominated officer.
10. The governors hearing the matter will then have the opportunity to ask questions of the **Headteacher/Principal** or nominated officer.

11. The employee and/or their representative shall present their case in the presence of the **Headteacher/Principal** or nominated officer.
12. The **Headteacher/Principal** or nominated officer may ask questions on the evidence given by the employee and/or their representative.
13. The governors hearing the matter shall have the opportunity to ask questions of the employee and representative.
14. The **Headteacher/Principal** or nominated officer shall have an opportunity to sum up his/her case by making a final statement.
15. The employee and/or their representative shall have an opportunity to sum up their case by making a final statement.
16. The **Headteacher/Principal** or nominated officer, the employee and their representative shall withdraw while the governors hearing the matter consider the outcome. If recall is necessary, both parties are to return notwithstanding that only one party is concerned with the point needing clarification. An opportunity should be given to each party to question or comment upon any additional information.
17. The parties concerned will be recalled to hear the decision of the governors hearing the matter.
18. The decision of the governors will be confirmed in writing to all parties concerned.

## **POSSIBLE OUTCOMES/SANCTIONS**

### **No further action**

19. The employee will be advised of the decision and this will be confirmed in writing and a copy provided, where relevant, to the trade union representative.

### **Written warning & further review**

20. If there is evidence that acceptable attendance/performance may be possible within a reasonable timescale, or where new issues or mitigation has arisen during the hearing, a further monitoring period may be set.
21. The length of this monitoring period will be determined by factors such as previous record, personal circumstances, medical opinion and the likelihood of improvement. The nature of the work and the impact of poor attendance/performance on service provision and colleagues will also be taken into account.
22. The employee will be issued with clear objectives detailing the improvement required, the timescale for the review and the support to be provided. This will be accompanied by a written warning, which makes it clear that failure to meet the required standard may result in dismissal.

### **Potential dismissal**

23. The following options should be considered before reaching a decision to dismiss:

## **Redeployment**

- 23.1. If the decision of the governors hearing the matter is that performance or attendance will not become acceptable in the current post, consideration should be given to whether or not suitable alternative employment is currently available.
- 23.2. The governors hearing the matter may ask HR to advise them on any available posts. If necessary the meeting will be adjourned to allow this to take place.
- 23.3. The offer of another post in these circumstances is an alternative to dismissal. The job will be offered without any protection of terms and conditions of employment. If the employee accepts the post they will be subject to a further monitoring period in accordance with this procedure, of a maximum of three months.

## **Career break**

- 23.4. In cases of long-term absence, where there is no likelihood of a return to work within a reasonable period of time and ill-health retirement is not recommended, a career break may be considered as an alternative to dismissal, subject to the needs of the school/academy and individual circumstances.
- 23.5. The terms of the career break will be in accordance with the school/academy's adopted scheme.
24. If at the end of an agreed career break the employee remains medically unfit for work, a further capability hearing will be scheduled, at which the dismissal will be confirmed. The effective date of termination will be at the end of the contractual notice period given at this meeting.
25. If no suitable alternative employment opportunities are identified, the employee will be dismissed with contractual notice.
26. If the employee rejects a career break or redeployment as an alternative to dismissal the employee will be dismissed with contractual notice.
27. The employee will be advised of the decision and this will be confirmed in writing and a copy provided, where relevant, to the trade union representative.

## **RIGHT OF APPEAL**

28. If an employee feels that a decision to dismiss them, or other action taken against them, is wrong or unjust, they may appeal in writing against the decision within five days of the decision, providing the grounds for appeal.
29. Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied will apply as with formal capability and review meetings and, as with other formal meetings, notes will be taken and a copy sent to the employee.
30. The appeal will be dealt with impartially and, wherever possible, by governors who have not previously been involved in the case. The Appeals Committee will have the authority to uphold the original decision or to substitute a lesser penalty or to reject the original decision.
31. The Director of Learning, Skills and Culture or their representative, as joint employer, is entitled to attend and offer advice on all proceedings relating to a potential dismissal from employment.

32. The employee will be informed in writing of the results of the appeal hearing as soon as possible.

Action to implement decisions to dismiss will not be suspended pending the appeal but should the appeal be upheld, the appellant will be reinstated to his or her original post without a break in service.

#### **Retention of records and references**

33. Records will be retained to fulfil obligations to provide factual information for employment references.

#### **REVIEW**

34. This procedure will be reviewed in three years time or sooner if changes in legislation or feedback necessitates.

# Capability Procedure (Support Staff) – Performance Improvement Plan Appendix 1

Employee:  Start date:  Informal:  Formal:

Please tick as appropriate

School/academy:  Post:

Area requiring improvement	Improvement required	Support / training identified	Timescale for tasks to be achieved	Review dates	Progress

Signature of head teacher/principal or nominated officer: \_\_\_\_\_

Date: \_\_\_\_\_

Signature of employee: \_\_\_\_\_

Date: \_\_\_\_\_