



Managing Job Performance Capability Policy and Procedure

Tachwedd 2024



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1. Capability Procedure

1.1 Purpose

The school is committed to providing high standards of education to pupils. Therefore, it is reasonable to expect employees to achieve and maintain acceptable standards of behaviour and performance.

The required standard should be appropriate to the level of the job, the skills and experience reasonably expected of an individual in that position or the professional standards for teaching employees. The school is committed to providing assistance to employees in order that they can achieve the standards expected of them.

There are occasions, for whatever reason, when an employee's level of performance is inadequate. In this event, the school will have a fair, transparent and supportive procedure in place to ensure that continuing delivery of a high standard of education for its pupils.

The aim is to provide a framework to ensure every opportunity is given to support employees in obtaining the required level of performance before any formal action is taken. This procedure contained in this policy would only be used where an employee is considered to be unable, for whatever reason, to perform their duties to the required standard.

1.2 Scope

This policy applies to all employees who are employed by the Governing Body e.g. salaries are charged directly to the School's budget, this includes full-time, part-time, permanent and temporary employees.

This procedure will not apply to:

- Newly qualified employees who are subject to specific monitoring and support procedures during their period of induction. Any capability issues would be addressed within these procedures.
- Support staff during their probationary period. Support staff are subject to a six-month probationary period and any capability issues should be addressed within this procedure.
- Supply/ relief/ casual or temporary employees appointed for less than 13 weeks.

1.3 Principles

Prior to invoking the use of this policy, the school will raise any concerns of underperformance with employees and support measures will be agreed to improve performance.

Nothing in this procedure is intended to prevent Headteachers/ Managers from dealing with employees' day-to-day performance problems should they arise, as such early informal discussions are vital in preventing problems from developing. It is expected that



most matters are best resolved informally with reference to the Schools Performance Management Policy.

The emphasis in this procedure is placed on trying to support the employee to achieve a satisfactory level of work performance, including meeting professional standards, through training, coaching, goal setting, and progress monitoring. This support will also take into account elements of a role, for example a Head of Department, a member of the leadership team, may not be meeting the standards of performance in one aspect of the role, but may be achieving acceptable standards in their teaching in the classroom. Areas of job role requiring improvement need to be clearly stated to the employee.

In most cases, performance issues will be discussed informally with the employee and their Headteacher/ Manager. Only if matters are more serious, or informal arrangements have not resulted in acceptable improvement, will more formal measures be applied.

If a decision is made to move from an informal stage to a formal stage; to move through the formal stages, or to shorten timescales, there will be clear, objective and unequivocal evidence to support this decision.

Matters arising from ill health may be treated differently to those relating to skill and aptitude.

For those employees subject to an appraisal process, information obtained during this process will be used to identify whether an employee's performance is giving cause for concern. The appraisal timescales defined for the review periods will be used to enable the required performance to be obtained.

The Council's HR Service will review the policy and procedure periodically to make any amendment(s) necessary to reflect any changing legal requirements or make minor alterations. A full review of the procedure will take place every three years.

1.4 Roles and responsibilities

The Governing Body is responsible for:

- Adoption of a policy and procedure.
- Any arrangements associated with the coordination and governance of Governor committees and taking decisions on dismissing staff on capability grounds and appeals against such decisions.
- Performance management support and arrangements for the Headteacher, with support from the Local Authority.

The Headteacher/or designated Managers are responsible for:

- Management of the process and whilst the Headteacher may nominate another senior member of staff to undertake this process, the Headteacher holds the ultimate responsibility for the management of the process.



- Ensuring new employees have met any staff qualification requirement which are applicable in relation to the role.
- Managing and monitoring performance routinely.
- Supporting employees and providing the framework in which they can perform to their best ability.
- Creating a culture where employees know that they will be supported.
- Recognising early signs when an employee may be struggling and provide appropriate interventions to enable them to achieve and offering support in a fair, reasonable and sensitive manner.
- Invoking the capability procedure based on clear evidence and having demonstrated that the informal stage has been exhausted.
- Liaising with an HR Officer for advice and guidance if the formal stages are invoked.

The Human Resources team are available to:

- Provide advice and guidance to Schools on procedural and policy matters on the application of their policy.
- Provide guidance to Schools/ Managers on the referral process in the event of a dismissal related to capability to ensure compliance with legislation.
- Advise governor panels and governor appeal panels where sufficient notice to attend is given.

The employee is responsible for:

- Ensuring, to the best of their ability, that they meet the standards of performance expected in their role required under their contract of employment.
- Engagement with the school through any informal process or in the event of the formal procedure being invoked.

Failure to comply with clear advice and instruction or negligence, which involves inadequate performance where thought to be attributable to willful disinclination by the employee to carry out his/ her duties effectively will be dealt with under the school's disciplinary procedure.

1.5 Right to representation

An employee may be accompanied / represented by a work colleague or a trade union representative under the informal and formal stages of this policy.

1.6. Right to appeal against formal warnings

Appeals against all warnings will be allowed under the capability procedure but they must not delay the ongoing nature of the process, as no procedure should automatically have precedence over any other.

Notification of an intention to appeal against a warning should be received by the school in writing within five working days of the date of the warning. This notice should also include the grounds for the appeal. An appeal hearing would normally be held within 10



working days as the process of managing the capability procedure will not necessarily cease, pending the outcome of a hearing. The employee will be expected to continue to work towards the targets identified in their performance improvement plan while arrangements are made for the appeal hearing to be held.

1.7 Equality Act 2010

When reviewing an employee's performance, consideration must be given to the Equality Act 2010. This defines a disabled person as someone who has a physical or mental impairment that has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities. Long-term means that the effect of the impairment has lasted or is likely to last for at least **twelve** months.

Where an employee has a disability or medical condition that is considered under the Equality Act 2010, the Headteacher/Manager will ensure that reasonable adjustments are made to help such employees carry out their job, and to have the same opportunities to perform well and develop during their employment as any other employee.

The principles set out in this policy, aim to provide clear guidance to enable Headteachers/Managers to apply a fair and consistent approach to unacceptable performance.

2.0 Informal stage - identifying performance problems.

If an employee's performance gives cause for concern and becomes unacceptable, the Headteacher or designated Manager will need to discuss the issues with the employee, initially on an informal basis and in addition to the Performance Management or Appraisal process. The purpose of this discussion will be to make the employee aware of his/her concerns and put supportive measures in place to assist the employee in achieving the agreed performance improvement plan.

This should also include the following:

- The Headteacher/ manager should make it clear what issues need to be addressed, for example, quality of teaching, preparation, behaviour management or leadership skills, in the case of a TLR holder or on the Leadership spine.
- Appropriate support, advice and guidance is offered to the employee.
- The employee is made aware this is an informal stage, it should not replace the professional dialogue which normally takes place in order that employees are clear about their roles and responsibilities.
- Such discussions should be supportive, non-threatening and managed with the endeavor of raising awareness of concerns with a view to ensuring the employee is clear on the appropriate strategies in place to address concerns.

In the case of the Headteacher then the Chair of the Governing Body will discuss this with the Head of Lifelong Learning.



If an employee is subject to an appraisal process, the annual appraisal and review will be used to identify performance which gives cause for concern. In the event of serious poor performance, it may not be appropriate to delay a review until the six-monthly appraisal review meeting. If this is the case the Headteacher/ Manager may set earlier review dates or invoke the formal stage of this procedure earlier. If an employee is subject to performance management, the policy should be referred to in these cases.

Although there is an informal stage, the importance of meetings and observations are critical in terms of bringing about the required improvement in an employee's performance. The record of any meeting and the agreed performance improvement plan will be recorded on file.

A review of the employee's performance will be held at the end of the agreed time period, or before if circumstances require it. Normally this period of review would be between 6 and 8 working weeks. If performance has improved and there is no longer any cause for concern, the Headteacher or designated Manager will write to the employee to confirm that this is the end of the process, providing the employee continues to perform to the required standard. The employee's ongoing performance will be monitored in accordance with existing performance management arrangements and/or the appraisal process.

Should the employee fail to reach and maintain the standard of performance required following the period of informal review, and this is clearly evidenced, then the Headteacher or designated Manager will advise that the matter will proceed to the formal capability procedures.

This informal stage may be invoked at any time if the employee's lack of performance warrants this, and at any stage as deemed appropriate by the Headteacher. The employee will be given the opportunity to explain his/her view of his/her performance at all stages of this procedure.

3.0 Capability procedure - formal

In circumstances when the employee is unable to improve their performance at work under the Performance Management arrangements and has been provided with at least a 6 - 8 working week informal review period, or an appraisal process and/or informal discussion, and action planning with their Manager has taken place, or a serious incident occurs, the Headteacher may instigate the formal action under this procedure. The employee will be given a formal oral warning that performance is no longer being reviewed at the informal stage and that the procedure will immediately move on to the first formal stage. The oral warning will remain on file for a period of 6 months. A Stage 1 formal performance improvement plan will be documented and agreed with the employee.

Where a decision is taken to move to the first formal stage of the capability procedure, then the capability procedure supersedes performance management arrangements. The



performance management process may be suspended at any time during the performance management cycle where such a decision is made.

3.1 First Formal Stage – formal capability meeting

At the end of the first formal review period, a meeting will be convened with the Headteacher and the employee, to review progress against the Stage 1 performance improvement plan.

The employee will be given:

- At least **five** working days' notification in writing of any requirement to attend a first formal capability meeting. This can be extended by mutual agreement between the school and a Trade Union representative.
- The right to be accompanied by a work colleague or a trade union representative.
- A copy of this procedure and an outline of the reasons for the formal meeting. Any evidence will also be shared with the employee.

Also present at the meeting will be:

- A HR representative. The role of the HR representative is to ensure that any action taken is fair and appropriate, given all the circumstances, and that it is consistent with action taken elsewhere within the Council.
- the employee's representative.

At the meeting the Headteacher will:

- Explain the purpose of the meeting.
- Outline the current position with regard to the employee's performance, including all causes for concern, and review the performance improvement plan and any progress made.

The employee will then:

- Respond to these concerns that he/she has failed to make the required improvements.

The outcomes following this meeting may be:

- Confirmation that performance has improved satisfactorily, and targets have been met, in which case no further action will be required. This will be confirmed in writing to the employee.
- Significant improvement has been made but the review period is to be extended to allow the employee additional time to meet all the targets set.
- Unsatisfactory improvement to performance in which case the employee will be advised that a **Written Warning** is now being issued and that the process will progress immediately to the **Second Stage – second formal action**. The employee has the right to appeal against the Written Warning.

In the case of unsatisfactory improvement, the employee should be advised that if performance does not improve by the next review meeting, a **Final Written Warning** may be issued.



The Headteacher will consider whether the targets set need to be re-evaluated in discussion with the employee and consider what additional support may be provided to assist the employee to achieve the required standard of performance. A Stage 2 formal performance improvement plan will be documented and agreed with the employee.

A date will be set for the next review meeting, the timescales of which will be within 6 to 8 working weeks. A letter confirming this in writing will be sent to the employee within **five** working days detailing the outcomes of the meeting.

3.2 Second Formal Stage – formal capability meeting

At the end of the second formal review period, a meeting will be convened with the Headteacher and the employee, to review progress against the Stage 2 performance improvement plan.

The employee will be given:

- At least **five** working days' notification in writing of any requirement to attend a first formal capability meeting. This can be extended by mutual agreement between the school and a Trade Union representative.
- the right to be accompanied by a work colleague or a trade union representative.
- any evidence will also be shared with the employee.

The outcomes following this meeting may be;

- Performance has improved satisfactorily and targets have been met in which case no further action will be required. This will be confirmed to the employee in writing.
- Significant improvement has been made but the review period may be extended to allow the employee additional time to meet all the targets set.
- Unsatisfactory improvement to performance in which case the employee will be advised that a **Final Written Warning** is now being issued. The employee has the right to appeal against the Final Written Warning.

In the case of unsatisfactory improvement, the employee should be advised that, if performance does not improve by the next review meeting, a capability hearing may be scheduled that may result in the employee's dismissal.

The Headteacher will consider whether the targets set need to be re-evaluated in discussion with the employee and consider what additional support may be provided to assist the employee to achieve the required standard of performance. A Stage 3 formal performance improvement plan will be documented and agreed with the employee.

A date will be set for the next review meeting, the timescales of which will be within 6 to 8 working weeks. A letter confirming this in writing will be sent to the employee within **five** working days detailing the outcomes of the meeting.

3.3. Third formal Stage – Final formal action



At the end of the third formal review period, a meeting will be convened with the Headteacher and the employee, to review progress against the Stage 3 performance improvement plan. At least **five** working days' notice must be provided. This can be extended by mutual agreement between the school and a Trade Union representative. The employee will be provided with any necessary evidence.

The outcomes following this meeting may be:

- Performance has improved satisfactorily and targets have been met in which case no further action will be required. This will be confirmed to the employee in writing.
- Significant improvement has been made but the review period may be extended to allow the employee additional time to meet all the targets set.
- Unsatisfactory improvement to performance in which case the employee will be advised that, as a **Final Written Warning** has been issued, a formal Capability Hearing will be convened (see section 4).

3.4 Alternative process in serious cases

The alternative process will be used in extreme cases, where the requirements of the service do not permit any delay, including where pupils' education is jeopardised, or where performance has seriously deteriorated.

In a particularly serious case, for example where an employee's classroom control is so poor that order cannot be established, or where there are serious implications on the ability of the school to maintain the effective learning environment for pupils, or there are serious concerns in a support role, it will be appropriate to move directly to issue a **Final Written Warning**. This relates to performance and not absence.

The Headteacher must arrange a formal interview providing at least **five** working days notice and allowing the right to be accompanied by a colleague or Trade Union representative.

At the meeting the employee must be advised of all the areas of concern and given the opportunity to put forward any explanations for performance issues. In the event of unsatisfactory explanation, the Headteacher should make recommendations and seek the agreement of the Staffing committee that the next step needs to be a 6 to 8 working week assessment procedure. The employee should be advised that failure to improve may lead to dismissal and this should be outlined in writing to the employee. This has the status of a **Final Written Warning**, as per the formal procedure.

Weeks 1 to 6 – Regular monitoring and evaluation of performance, with support and guidance including training, if necessary, for the employee.

Weeks 6 or 8 – Final evaluation meeting to report the assessment of performance over the previous weeks.



If performance has been satisfactory the capability procedure can cease at this point, and this will be confirmed in writing by the Headteacher. This will be recorded as a final warning which will remain on file for 6 terms or the equivalent term time in weeks. The employee has the right to appeal against the final written warning.

If performance remains unsatisfactory in this 6 to 8 working week period, or subsequently falls below standards in the period of warning, the Headteacher may either:

- Implement a further assessment period, or
- Refer the matter to the staff disciplinary/dismissal committee.

If referred during a warning period, the decision will be based on the length of time that has elapsed during the warning period and the extent of the performance issues. The letter to the employee should make this clear.

4.0 Capability hearing

The purpose of this capability hearing is for the Governing Body committee to determine whether, based on all the evidence presented, that:

- The employee has had an appropriate level of support and evidence, and indicates a serious lack of capability, which should result in dismissal on grounds of capability, or action short of dismissal – eg redeployment
- Support has been insufficient, or other mitigating circumstances have come to light, and a further period of support and monitoring can be undertaken which may improve the employee's level of performance at work

The employee may be accompanied at this meeting by a work colleague or a trade union representative.

The employee must be advised in writing of the date of the Capability Hearing, and provided with **five** working days notice to attend. This can be extended by mutual agreement between the school and a Trade Union representative.

The letter should provide the details of the areas of concern and include any supporting evidence which will be considered at the Hearing, including any witnesses who will be asked to attend.

The employee will also be advised that they need to provide any information which they intend to rely on in advance for the panel, including any names of witnesses that they may wish to call.

The HR Officer will be present to act in an advisory capacity and will remain in attendance throughout the process. The school will need to provide advance notice of this meeting to ensure HR Officer availability.

4.1 Format of hearing

The procedure to follow for a formal capability hearing is set out in Appendix 2.



The Capability Hearing will comprise of at least three governors to form the Hearing Committee and no fewer for the appeal.

The hearing should be convened within **five** working days of the third stage meeting.

The Headteacher will make available for the Hearing Committee a copy of the information that will be discussed at the hearing; this will include evidence regarding the employee's level of performance and copies of performance improvement plans and/or Performance Management/ appraisal information.

The employee can submit in advance any information which they wish to rely on at the hearing.

The Headteacher would normally set out evidence to the Hearing Committee in relation to performance.

The employee or their representative will present his/her case to the panel.

A representative of the Authority can also be present to advise the Panel, as a witness, and this may be an advisor with education experience who can be requested to advise the school on teaching and learning.

An HR Officer will also attend to advise the panel on the policy and procedure.

4.2 Deciding on appropriate action

The Hearing Committee will either:

- Extend or vary any special arrangements made to support/train or coach the employee.
- Consider redeployment, this would not involve salary protection if the alternative job is paid at a lower rate, or
- Dismiss the employee on the basis that no improvement in performance is foreseeable.

If an employee is dismissed, they should be advised that there is a duty to make a referral to the General Teaching Council for Wales. The Governors will write to the Head of Lifelong Learning confirming the dismissal. The HR Service will action the dismissal.

4.3 Communicating the decision

The employee will be sent a letter which confirms in writing the outcome of the hearing within **five** working days, and advising of their right of appeal.

5.0 The Appeal

An employee may appeal against the outcome of the Capability Hearing.



The 'Notice of Appeal' form should be used for this purpose. This should state the reasons for the appeal and must be submitted within **five** working days of the date of the letter confirm the outcome of the hearing.

The Appeal Hearing would normally be held within 10 working days. This can be extended by mutual agreement between the school and a Trade Union representative.

No redeployment or dismissal will take effect until after the appeal is concluded.

The main grounds for appealing would be:

- That an inconsistent/inappropriate or harsh sanction has been given
- That the process or procedure applied was in some way unfair or biased
- New evidence has come to light that was not considered at the original hearing

The Appeal hearing outcome will be one of the following:

- Confirm original decision.
- Substitute original decision with a different sanction eg. further review period/warning or reduce duration of the warning.

In the case of a Panel overturning a decision to dismiss, the record will be amended with effect from the original date of the dismissal decision/warning.

The decision will be confirmed in writing to the employee normally within **five** working days of the outcome.

The Appeal decision shall be final as far as the School is concerned.

If a dismissal is confirmed as the outcome of an appeal, they should be advised that a referral will be made to the General Teaching Council of Wales. The Governors must advise the Head of Lifelong Learning of the final decision. The HR Service will then action their decision.

6.0 Other special Cases

6.1 Capability of a Headteacher

In the event that the issues involve the performance of the Headteacher, the procedure will remain the same but it will be conducted by the Chair of the Governing Body who must seek the involvement of the Head of Lifelong Learning.

6.2 Employees absence due to illness

Absence which occurs during the capability which is believed to be long term, should be referred immediately to the Occupational Health adviser, to assess whether the employee is fit for continued employment. The school will take a considerate and sympathetic approach to any reported absence, but in general the length of time necessary to wait for an employee's health to improve before considering whether to terminate should be subject to occupational health advice.



Short term absences should not unreasonably delay any part of the formal stage of this procedure but assessment periods may be extended by up to one week maximum to accommodate this. Reasonable steps should be made to enable the employee to attend formal meetings, but in the event of short term illness the meeting may be postponed once, and heard within **five working days** of the original date. This can be extended by mutual agreement between the school and a Trade Union representative. In the event that the employee is still unable to attend, the meetings may proceed in the employee's absence if delay would otherwise compromise the maximum time set aside for the procedure. Their representative may attend on their behalf in these circumstances. In such circumstances a full account of the evaluation should be provided in the letter confirming the decision taken.

6.3 Meetings and hearings – attendance

Meetings associated with this procedure may be postponed only once on grounds of self certificated or medically certificated illness. Subsequent arrangements will proceed in the absence of the employee if delay would otherwise compromise the maximum time set aside for the procedure. In such circumstances a full account of the outcomes of the meeting will be provided to the employee.

If an employee fails to attend an arranged hearing for reasons that are outside of their control and unforeseeable when the hearing was arranged, the hearing will be rearranged in the first instance. If the reason for non-attendance was due to circumstances that were foreseeable or within the employee's control, the hearing will continue in the employee's absence.

If the date is inconvenient it should be made explicit in writing that an alternative date may be offered within **five** working days of the first date. If the second date is inconvenient then the employee and their representative must be informed that the meeting will go ahead in their absence, and advised they can ask their representative to attend or submit their case in writing for consideration.

6.4 Disputes in the procedure

Any disagreements about the interpretation of the procedure, or the application of any related matters not covered in the procedure, must not delay the various elements of the capability procedure or the overall timetable determined as appropriate for handling any particular case.

The Appeal stage sets out the arrangements to deal with the outcome of the Capability Hearing.

In the event of a grievance being submitted during the course of this procedure, this procedure would only be delayed in cases where there is strong evidence, or indication that the employee has been mistreated, and consideration should be given to bringing in another Headteacher or Senior Leadership Team member to deal with the capability issue.



6.5 Support staff - Probationary Employees

New NJC entrants to the service of the Council/School are subject to a probationary period of six months from date of appointment, except in cases where it is accepted that the employee is transferring from a similar post with another local authority, which would render a probationary period inappropriate.

The length of the probationary period may be reduced for short term appointments.

Probationary employees will be assessed at intervals during the period. This will normally be at **twelve, sixteen and twenty two** weeks. Employees should be interviewed about the contents of the Probationary Service Assessment at the appropriate time and should sign a copy of the record at the interview. If there is any cause for dissatisfaction then a warning should be given and an opportunity afforded to improve before further action is taken. If at the stage of the final assessment, performance is still unsatisfactory, the appointment will not be confirmed, subject to a formal Governor hearing. The assessment of performance will be based on the formal reports submitted at stipulated intervals.

However, the above does not imply any right to be employed for the whole of this period and where a lack of capability / suitability for the job becomes apparent then employment may be terminated during the probationary period with payment made in lieu of statutory notice (i.e. one week following completion of one month's service).

When a complaint is made about a probationary employee arising out of matters other than those contained in the probationary service assessment e.g. acts of misconduct and gross misconduct, then the standard disciplinary procedure may be invoked.

7.0 Records

Where a matter is heard at a Capability Hearing, records will be kept detailing the nature of the allegations, the School's response and the outcome. Details of these will be kept on file by the HR Department, who will ensure the records are held in accordance with the Data Protection Act 1998. The employee and/or their representative may wish to take a note of the meetings for their own record.

8.0 Confidentiality

Performance matters should be dealt with sensitively and with due respect for the privacy of the individuals involved. All employees must treat as confidential any information communicated to them in connection with a matter which is subject to capability procedures.

9.0 Monitoring and Review

The Head of Corporate & Customer Services will also be responsible for making arrangements for the capture of statistical data relating to this policy, if the HR support



has been accessed, and will ensure the appropriate use of such information for monitoring purposes.

10.0 Training and Support

Training will be provided to ensure that those with management responsibility for employees are clear about the policy, the procedures contained within it and their own responsibilities.

11.0 Capability action against Trade Union Representatives

Normal performance standards apply to Trade Union Representatives in their roles.

No formal procedures will be taken against a recognised Trade Union official (*see below) until the circumstances have been discussed with either the Regional Trade Union official, in the case of the action being against the Local Secretary, in the case of stewards, the Local Secretary.

*A recognised Trade Union official is defined as:

- the Secretary, Branch Officer or Chair of a Trade Union recognised by the Council;
- a departmental representative/steward of that Union.

The Head of Lifelong Learning would also be made aware of these particular circumstances.

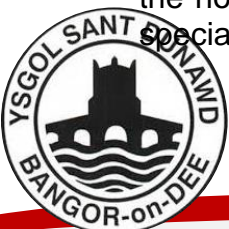
12.0 Other references

Legal - Notification in accordance with the Education Supply of Information (Wales) Regulations 2003

The regulations require the employer to report cases of serious professional incompetence on the part of employees to the GTCW and to report cases of misconduct on the part of employees and other school staff to the Independent Safeguarding Authority (ISA).

If an employee is dismissed as part of this procedure, the case will be reported in accordance with these regulations. If the procedure is not concluded during the formal stage because the employee resigns, the Governing Body committee must still reach a view on whether dismissal would have been the outcome on the basis of evidence available.

The school must notify the Human Resources team who will then prepare with the school the notification to the GTCW. In the case of voluntary aided, foundation or foundation special schools, the notification to the GTCW must be made by the Governing Body.



Appendix 1

Timescales and duration of warnings

Stage	Action	Resulting Sanction	Review Timescale	Duration of warning
Informal	Informal Stage (Headteacher/ nominated Individual)	Formal Oral Warning	6 – 8 working weeks	2 terms
Stage 1	First formal stage (Headteacher/ nominated Individual)	Written Warning	6 – 8 working weeks	3 terms
Stage 2	Second formal stage (Headteacher/ nominated Individual)	Final Written Warning	6 – 8 working weeks	6 terms
Stage 3	Third formal stage (Governing Body panel)	Dismissal or action short of dismissal		



Appendix 2

Formal procedure for Capability Hearing

Present:

- The Panel of Governors.
- The investigator presenting the case against the employee eg. the Headteacher/ Manager.
- The employee.
- The employee's representative.
- Witnesses – these may only be present to provide their evidence, then will leave the hearing.
- A HR Adviser will be present at the hearing to act in an advisory capacity and will remain in attendance throughout the process.
- A designated note taker.

It is the responsibility of the Headteacher/or Chair of the panel to arrange for notes to be taken of the proceedings as a management record for the file. This record will not be circulated, but a minute of the proceedings will be provided by the committee.

The employee or their representative may also arrange to take notes during the hearing.

Format

The Headteacher/or other designated person shall present details of the case against the employee and may call witnesses and/or produce documentary evidence relevant to the hearing.

The employee and./or their representative shall be given the opportunity to respond and may also call witnesses and/or produce documents relevant to the hearing.

Note: in both cases – all relevant papers to be shared, should have been provided in advance of the hearing by both parties including information on witnesses to be called.

The Panel members/HR representative may then ask questions (via the Chair) of either party to the hearing throughout the proceedings in order to seek clarity and to fully understand what measures have been taken to resolve the performance issues.

The Headteacher and the employee (and/or their representative) may then also ask questions of each other.

When all the evidence has been heard, then both parties to the hearing will withdraw.

The Panel will then, with advice from the Local Authority officers, will consider all the evidence submitted.



This must include the level of support provided to the employee, the evidence of their performance, and the procedure that has been followed.

The parties may be recalled if it is necessary to seek further points for clarification. In such cases, both parties must return even if clarity is sought from one party.

Once the panel has arrived at their decision, they will call both parties back in and verbally confirm the outcome and advise of the right of appeal.

In exceptional circumstances, it may be that the panel determine that they will adjourn and agree a time on the following day to advise of the outcome, or in discussion with the employee/their representative agree that the outcome will be provided in writing.

The outcome of the Capability Hearing will also be confirmed in writing. In the case of dismissal, the Council will write to the employee within five working days of receiving written notification from the Governors, to confirm dismissal and the final date of employment.

