



# Teacher Capability Policy and Procedure

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*Together, pursuing life in all its fullness*

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# **SECTION 1. TEACHER CAPABILITY AND PROFESSIONAL SUPPORT POLICY AND PROCEDURE**

## **PRINCIPLES UNDERLYING THIS POLICY**

### ACAS Code of Practice on Disciplinary and Grievance Procedures

The Capability procedure will be implemented in accordance with the provisions of the ACAS Code of Practice.

### Confidentiality

All matters, including written records, relating to the application of the capability procedure will be treated as confidential by all parties concerned except where it is necessary to notify or involve other parties in order to meet legal or regulatory requirements.

### Consistency of Treatment and Fairness

The Trust is committed to ensuring consistency of treatment and fairness and will abide by all relevant equality legislation including the Equality Act 2010.

This Policy is to be used in conjunction with the Trust's Appraisal Policy, see paragraph 8.4 section outlining the 'Teachers Experiencing Difficulty' process which acts as informal capability process. This procedure applies once the 'Teachers Experiencing Difficulty' process has been exhausted.

## **PURPOSE AND APPLICATION**

The Trust is required by law to establish procedures for dealing with the capability of staff at the Trust (The School Staffing (England) Regulations 2009). This procedure applies only to Teachers and Headteachers where there is serious underperformance which the Appraisal process has been unable to address.

Good management, clear expectations and appropriate support go a long way towards addressing weaknesses in performance. This Trust recognises the need to facilitate professional development for Teachers throughout their careers and that as much support and help as appropriate should be given to Teachers who experience difficulties. Early identification of problems through performance appraisal carried out in a constructive and supportive way will help to avoid the need for formal capability procedures. Also, as concerns will have been discussed with the Teacher as part of the Appraisal process, the need and reason for transition to the capability procedure should not come as a surprise to the Teacher.

This policy and its associated procedure apply to Teachers or Headteachers about whose performance there are serious concerns that the Appraisal process has been unable to address. It should be noted that the intention of this policy is still to be supportive and to give the Teacher or Headteacher the opportunity to resolve any performance issues they may have. There may, however, be circumstances in which it is necessary to invoke the Capability Policy without going through the Appraisal Procedure, for example if a capability issue arises from a Disciplinary Process.

The application of these procedures only relates to the employment of an individual as a Teacher in the Trust. This policy does not apply to Newly Qualified Teachers whose performance is managed by the induction process and non-teaching staff in the Trust, as separate capability procedures will be in place.

This document must be operated in conjunction with Section 2 Guidance Notes.

This policy has been agreed with the JCC.

## **ROLES AND RESPONSIBILITIES**

### Headteacher/Deputy Chief Executive - Education

Responsibility for initiating, and the subsequent operation of, the capability procedure for Teachers lies with the Headteacher, and for Headteachers with the Deputy Chief Executive - Education following consideration of a recommendation by an Appraiser.

The Headteacher/Deputy Chief Executive - Education will make a recommendation to the Trust to dismiss.

The Headteacher/Deputy Chief Executive - Education will provide staff with support and training to undertake the role of Appraiser.

### Appraiser

Where the Headteacher/Deputy Chief Executive - Education has delegated the appraisal process to an Appraiser, that person will be responsible for the appraisal process up to the transition to capability procedure. The Appraiser will be responsible for making a recommendation to the Headteacher/Deputy Chief Executive - Education that a Teacher should be moved into the capability procedure, by submission of a written report. The Appraiser will be required to submit information/evidence at a Formal Capability Meeting.

### The Trust

As the employer of all staff, the Trust will attend and offer advice at proceedings relating to the dismissal of a Teacher/Headteacher.

The Trust will ensure staff receive support and training to undertake the role of Appraiser.

### HR Department - The role of HR is to:

- Provide support and guidance on the implementation and operation of the policy.
- Review letters that emanate from the process to advise on procedural and legal correctness.
- Provide advice and guidance on legality and risk in any proposed actions.
- Provide officer support to hearings as appropriate.
- Support Academies through further processes (e.g., Employment Tribunals).

## **RIGHTS TO REPRESENTATION**

Employees should be reminded of the right to be accompanied by a recognised Trade Union Representative (or a person approved by the Trade Union) or a work colleague nominated by the employee during each stage of the procedure. If the employee's chosen representative is not available, the employee can suggest an alternative time and date, so long as it is reasonable and it is not more than five working days after the original date.

## **PROCEDURE**

### **1. Transition to Capability Meeting**

Where the decision is to move to the formal capability procedure, the written notification will confirm that the Appraisal system will no longer apply, that the Teacher's performance will be managed under the capability procedure, and the Teacher will be invited to a Transition to Capability Meeting. The notification will also include a copy of this policy and procedure

document, which signifies initial entry into the capability procedure and confirmation that their contract of employment may be at risk. This meeting will take place as soon as possible and the Teacher (Headteacher) will be given a minimum of five working days written notice and will be given the opportunity to be accompanied by a Trade Union Representative or work colleague.

A review of the support plan to date in the Appraisal stage will take place between the Headteacher, Human Resources, the employee, and their Representative. Following the meeting, the employee will either move to Stage 2 of the formal capability procedure or have a further period of support; this period of support will not exceed four weeks.

## **2. Formal Capability Meeting**

At least five working days' notice will be given of the Formal Capability Meeting. The notification will contain sufficient information about the concerns about the Teacher's performance, including copies of any written evidence, and their possible consequences to enable the Teacher to prepare to respond. The notification will include details of the date, time and place of the meeting and the right to be accompanied by a Trade Union Representative or work colleague.

This meeting is intended to establish the facts. It will be conducted by the Headteacher (for Teachers capability meetings) or the Deputy Chief Executive - Education (for Headteacher capability meetings).

The meeting allows the Teacher/Headteacher, accompanied by a Trade Union Representative or work colleague, if they wish, to respond to concerns about their performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected. Details of support and help provided during the Appraisal process will also be shared at the meeting.

The person conducting the meeting may conclude that there are insufficient grounds for pursuing the matter through the capability procedure, or that it is inappropriate to use the procedure and that it would be more appropriate to address the concerns through the Appraisal process or some other process (e.g., ill-health). In such cases, the capability procedure will come to an end. 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.

In other cases, the meeting will continue. During the meeting, the person conducting it will:

- identify the professional shortcomings (for example which of the relevant Teachers' /Headteachers' standards (Section 3, Appendix B) are not being met).
- review any support that has already been given.
- give clear guidance on the improved standard of performance needed, together with specific objectives for improvement, to ensure that the Teacher/Headteacher can be removed from formal capability procedures (objectives set should be SMART, focusing on the specific weaknesses that need to be addressed. Appropriate success criteria and evidence to be used to assess whether or not the necessary improvement has been made should be clarified).
- identify and explain any support that will be available to help the Teacher improve their performance over the following weeks (ref: appendix A).
- set 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 will normally be 12 weeks unless mutually agreed to have less time. The amount of time should reflect the seriousness of the concerns. It is for the Academy to determine the set period. It should be reasonable and proportionate, but not excessively long, and will provide sufficient opportunity for an improvement to take place.
- where possible, agree a date for the next review meeting.
- warn the Teacher/Headteacher formally (verbally and then in writing) that failure to improve within the overall set period could lead to dismissal. (In very serious cases, this warning could

be a final written warning).

- confirm that the formal capability procedures have commenced and ensure that a copy of the Capability Policy and procedure has been issued.

An outcome letter will be sent to the member of staff, within five working days of the meeting, covering the main points discussed and will include the following where a formal warning is issued:

- The nature of the unsatisfactory performance.
- The standard(s) expected (relating to the relevant Teachers' Standards (Section 3, Appendix B)).
- The specific objectives for improvement and success criteria.
- The support to be given.
- The arrangements and timescale over which the performance will be monitored and reviewed.
- That failure to reach and maintain the standard(s) of performance may lead to dismissal.
- The procedure and time limits for appealing against the warning.

## **2A. Monitoring and Review Period following the Formal Capability Meeting**

A monitoring and review period (normally 12 weeks unless mutually agreed to have less time, depending on the seriousness of the concerns) will follow the Formal Capability Meeting. Formal monitoring, evaluation, guidance, and support will continue during this period. At the end of this period, the member of staff will attend a Formal Review Meeting, unless they were issued with a final written warning, in which case they will be invited to a decision meeting (see 4 below).

### **3. Formal Review Meeting**

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 by a Trade Union Representative or work colleague.

The purpose of the meeting is to review the Teacher's/Headteacher's progress against the Teachers'/Headteachers' standards expected, objectives set and success criteria, as outlined at the Formal Capability Meeting.

If the person conducting the meeting is satisfied that the Teacher/Headteacher has made sufficient improvement, the capability procedure will cease, and the Appraisal process will re-start. If the person conducting the meeting is satisfied that 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.

An outcome letter will be sent to the member of staff, within five working days of the meeting, covering the main points discussed and confirming the outcome of the meeting and will include the following where a formal warning is issued:

- The nature of the unsatisfactory performance.
- The standard(s) expected (relating to the relevant Teachers' Standards (Section 3, Appendix B)).
- The specific objectives for improvement and success criteria.
- The support to be given.
- The arrangements and timescale over which the performance will be monitored and reviewed.
- That failure to reach and maintain the standard(s) of performance may lead to dismissal.
- The procedure and time limits for appealing against the warning/final warning.

### **3A Monitoring and Review period following the Formal Review Meeting**

A monitoring and review period (normally of 12 weeks unless mutually agreed to have less time, depending on the seriousness of the concerns) will follow the Formal Review Meeting. Formal monitoring, evaluation, guidance, and support will continue during this period. At the end of this period, the member of staff will be invited to a Final Review Meeting (see 4 below).

#### **4. Final Review Meeting to Consider Dismissal**

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 by a Trade Union Representative or work colleague and of the possibility that dismissal may be an outcome.

At the decision meeting, the Headteacher (or Deputy Chief Executive - Education in the case of a Headteacher) will consider if an acceptable standard of performance has been achieved during the monitoring and review period and will provide the opportunity for the Teacher/Headteacher to comment and make any relevant representations. Where, having considered all the evidence and the Teacher's (or Headteacher's) representations, the Headteacher (or Deputy Chief Executive - Education) determines that an acceptable standard of performance has been achieved, the capability procedure will end, and the Appraisal process will re-start. The HR Department will support this process.

Where the Headteacher/Deputy Chief Executive - Education determines that performance remains unsatisfactory, and there is no evidence or significant reason to agree an extension of the monitoring and review period, they will normally suspend the Teacher/Headteacher and will refer the matter for consideration by a Dismissal Panel, with a written recommendation that the Teacher/Headteacher be dismissed or be required to cease working at the Trust.

Confirmation of the suspension and decision to recommend dismissal will be confirmed in writing within five working days of the meeting.

#### **5. Dismissal Meeting**

A Dismissal Meeting will be convened as soon as possible after the Final Review Meeting. A minimum of at least five working days written notice will be given and shall include the written recommendation with copies of any reports, documents, and evidence to be considered at the hearing.

The Headteacher or Deputy Chief Executive - Education will attend to present the case and the Teacher/Headteacher has the right to attend and be accompanied by a Trade Union Representative or work colleague. The HR Department will be in attendance. The details of the case are confidential and must not be discussed with a party not involved in the hearing.

The employee will be notified in writing of the decision by the Dismissal Panel within five working days of the Panel meeting and be notified of the right of appeal. The dismissal notice will be issued.

#### **6. Dismissal**

The Trust will issue formal written notice of termination of employment to the Teacher/Headteacher within fourteen days of the date of the dismissal panel, in accordance with the School Staffing (England) Regulations 2009. Contractual dismissal dates will be recognised in terminating the Teacher's employment (see section 10).

## **7. Appeals**

### Appeal against a warning or dismissal

If a Teacher/Headteacher feels that a decision to issue a warning is wrong or unjust, they may appeal in writing against the decision within ten working days of the decision, setting out at the same time the grounds for appeal. 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 by a Trade Union Representative or work colleague will apply as with formal review meetings and notes will be taken and a copy sent to the Teacher.

The appeal will be dealt with impartially and heard at an appeal meeting by an appropriate Senior Manager who has not previously been involved in the case. If there are any concerns with this, they can be raised with the Chief Executive Officer.

The Teacher/Headteacher will be informed in writing of the results of the appeal hearing as soon as possible.

(see Section 2, paragraphs 14/15 for information about grounds for appeal)

## **8. Recurrence of concern about performance**

Improvements in Teachers'/Headteachers' performance must be sustained. In cases where, having improved to a satisfactory standard, they subsequently fall to unsatisfactory, a decision will need to be taken about what further action should be taken.

Where a Teacher's/Headteacher's performance has improved such that, they come out of capability procedures, only for different performance concerns to emerge (through the Appraisal process), it is recommended that the capability procedure be entered at the beginning having exhausted the 'Teacher Experiencing Difficulties' process in paragraph 8.4 of the Appraisal procedure.

## **9. References**

In accordance with an amendment to the School Staffing (England) Regulations, there is a duty on schools to provide (on request), to a prospective employer, details about whether that Teacher has been the subject of formal capability procedures in the preceding two years. They must provide details of the concerns which gave rise to this, the duration of the proceedings and their outcome.

## **10. Notice Periods**

In accordance with the Burgundy Book, (with the exception of gross misconduct), a Teacher's/Headteacher's contract can only be terminated at the end of a school term defined as 31<sup>st</sup> December, 30<sup>th</sup> April and 31<sup>st</sup> August respectively. All Teachers are entitled to be given a minimum of two months' notice (three months in the summer term). For Headteachers, the notice period is a minimum of three months (four months in the summer term). If a Teacher has been continuously employed for more than eight years, the notice period must be extended by one week for each year of service, to a maximum of twelve weeks.

## **11. Monitoring and Review**

The Trust will review the outcomes of capability cases to check that the proper procedures have been followed and to identify any points that can be learned from those cases and implement any necessary changes.

Records will be treated as confidential. The procedure will be monitored to ensure consistency of application and adherence to equalities legislation, to ensure that the policy operates in accordance with the duties to promote equality, to eliminate discrimination and to promote good relations between staff with protected characteristics as required under the Equality Act 2010.

When carrying out any reviews or monitoring, the Trust will ensure that individuals' personal data is handled in accordance with GDPR.

This policy will be reviewed every three years in consultation with recognised Trade Unions.

## **SECTION 2. GUIDANCE TO THE CAPABILITY PROCEDURE**

This guidance accompanies the capability policy and has been written to help Academies deal fairly, in a constructive and supportive way and in accordance with good employment practice, with Teachers who, having exhausted the Appraisal process, continue not to meet the required standard of performance.

Good management, clear expectations and appropriate support go a long way towards addressing weaknesses in performance. Early identification of problems and the implementation of effective support and development to address these through performance appraisal will help to avoid the need for formal capability procedures. Also, as the concerns will have been discussed with the Teacher as part of the Appraisal process, the need and reason for transition to the capability procedure should not come as a surprise to the Teacher.

### **1. Application**

The capability procedure applies to Teachers, including Headteachers. It does not apply to non-teaching members of Academy staff (e.g., teaching assistants, admin, premises staff). Such staff will be covered by different arrangements (see appropriate Trust policies).

### **2. Definition**

Unless indicated otherwise, all references to “Teacher” include the Headteacher.

Capability refers to an individual employee’s ability to perform the work expected of them to the required standard. Where concerns emerge with an individual’s performance, it is essential that these are addressed immediately as part of the on-going Appraisal process. Both the employee and the Academy must understand their responsibilities in achieving an improvement in performance to the required standard(s) and the prime objective of the Appraisal process is to improve an individual’s performance. Only where the Appraisal process has not achieved the necessary improvement in performance, should the capability process be commenced.

This procedure applies only to Teachers and Headteachers where there is serious underperformance which the Appraisal process has been unable to address.

The capability procedure is not intended to be used where poor performance is the result of carelessness, wilful neglect of duty, deliberate failure to carry out reasonable directions or other such actions that are considered as misconduct. These cases should be considered as potential disciplinary matters and be dealt with under the Trust’s Disciplinary procedures. The Capability procedure is not intended to be used where concerns arise as a result of ill-health or disability-related illness. Such cases should be considered under the Trust’s Enabling Attendance Policy, as appropriate.

#### *Examples of concerns constituting capability:*

- Serious and persistent failure to undertake planning with appropriate objectives to promote good progress by pupils.
- Consistently ineffective management of pupil behaviour resulting in poor outcomes for pupils and/or an unsafe learning environment.

#### *Examples of concerns constituting misconduct:*

- Breach of confidentiality e.g., commenting about a work-related incident on a social networking site.
- Failure to safeguard information related to pupils and/or families.

### **3. Roles and Responsibilities during the Capability Procedures**

#### **The Headteacher/Deputy Chief Executive - Education**

Only the Headteacher/Deputy Chief Executive - Education will determine whether the capability procedure should be initiated (for Teachers/Headteachers) and they will operate the procedure.

In operating the capability procedures, the Headteacher/Deputy Chief Executive - Education may wish to call in the services of an appropriate independent education professional who can advise on the appropriateness of the procedures, on observing the Teacher's practice against the standards or on appropriate support strategies/activities that could be provided for the Teacher. Support will be given by the HR Department.

#### **4. Transition to Capability Meeting (1 in Procedure)**

As stated in the Trust's Teacher Appraisal Policy, if, during the Appraisal period and following review of progress, there is serious underperformance which the Appraisal process has been unable to address, the Appraiser will inform the Teacher of this. Written confirmation will be provided (within five days) to the Teacher/Headteacher, covering the concerns, actions taken, review outcomes and recommendations and a copy of this confirmation will be sent to the Headteacher/Deputy Chief Executive - Education, for him/her to determine whether the capability procedure will commence. The capability procedure will commence only if it is deemed necessary and where, following exhaustion of the Appraisal process and any relevant and appropriate support mechanisms, the Teacher continues not to meet the expected standards of performance.

Only the Headteacher/Deputy Chief Executive - Education will determine whether the capability procedure will commence, and they will inform the Teacher/Headteacher of the decision, in writing, within five working days of receipt of the Appraiser's recommendation. Where the decision is to move to the formal capability procedure, the written notification will confirm that the Appraisal system will no longer apply and that the Teacher's performance will be managed under the capability procedure, and the Teacher will be invited to a Transition to Capability Meeting.

This meeting will take place as soon as possible and at least five working days written notice of the meeting will be given and will include the time and venue and the right to be accompanied at the capability meeting by a Trade Union Representative or work colleague. Copies of any support plans, evidence reports etc. will be included in the notice. A copy of the Capability Policy will also be included, as this signifies the commencement of the formal capability procedure.

The reasonableness of the timing for the meeting will be considered, for example, it would be unreasonable to hold the meeting at 6pm on a Friday (unless agreed by all parties).

A review of the support plan to date in the Appraisal stage will take place between the Head Teacher, Human Resources, the employee and their representative. Following the meeting, the employee will either move to Stage 2 of the Formal Capability Process or have a further period of support; this period of support will not exceed four weeks.

The need and reason for transition to the capability procedure should not come as a surprise to the Teacher, as the concerns will have been discussed with them as part of the Appraisal process.

#### ***Case Study Demonstrating the Need to Make the Transition from Appraisal to Capability.***

*Serious and persistent poor management of behaviour, inappropriate pace and inability to motivate pupils has previously been identified as an area for improvement in an Appraisal objective. In spite of opportunities to shadow colleagues and to attend training on understanding*

*and managing behaviour, there is serious underperformance which the Appraisal process has been unable to address when practice observed.*

At any stage in the Capability Procedure, there is nothing to prevent any party to the proceedings from putting forward alternative suggestions for an exit strategy for the Teacher (or Headteacher) and any reasonable alternative should be considered.

## **5. Formal Capability Meeting (2 in Procedure)**

The Headteacher must conduct this meeting for Teachers and not delegate this to other members of staff. It is recommended that the Deputy Chief Executive - Education conducts this meeting for Headteachers.

The main objective of this meeting is to assist and identify support for the Teacher or Headteacher to perform at the required standard but at the same time making clear the implications of failing to improve to the standard required, including the possibility of dismissal, within a specified period. The standards to which the Teacher/Headteacher is required to perform will be the appropriate Teachers'/Headteachers' Standards, unless otherwise identified. Examples of support mechanisms and activities are given in Section 3 Appendix A and the Teachers' Standards are given in Section 3 Appendix B.

At the meeting, it will also be important to gain an understanding of any personal circumstances that may be impacting on the Teacher's/Headteachers' ability to meet the necessary standards.

Where further information or further investigation is required, or where more time is needed in which to consider any additional information, the meeting may be adjourned for an appropriate length of time to allow this to happen.

If there is new information, a different slant on the information collected or further investigation suggests that the matter is not as serious as it first seemed, it may be appropriate to drop the matter or go down a different route (e.g., counselling).

However, where the capability meeting continues:

A record will be made of the meeting, which will include the concerns about performance, the improvements required to meet the necessary standard(s), any objectives or targets set, any support and assistance to be provided, agreed monitoring and review arrangements, the criteria against which improvements will be judged and the timescale for the achievement of improvements. The record will also include any views advanced by the Teacher (or Headteacher) or their Trade Union Representative or work colleague, whether these were rejected by the Headteacher/Deputy Chief Executive - Education, and reasons for their rejection. Objectives/targets for improvement should be reasonable, SMART and should include demonstration of how they could be achieved.

A copy of the record will be supplied to the Teacher/Headteacher along with (if so determined) written confirmation of a warning that failure to improve within the set period could lead to a final warning and ultimately dismissal. This should be issued within five working days. The right to appeal against the warning will also be included in the letter (see paragraph 14 for further information about appeals).

A template for recording the outcome from the meeting is attached in Section 3 Appendix C.

## **6. Timescales for Improvement - Monitoring and Review Periods (2A/3A in Procedure)**

The timescales for review periods will depend on the circumstances of each case. The period set should be reasonable and proportionate in all cases, not excessively long, and provide sufficient

opportunity for an improvement to take place. The range of the review period will be 12 weeks unless mutually agreed to have less time, depending on the seriousness of the concerns.

A longer timescale may be appropriate where educational practice needs to change, requiring specific development, shadowing and practice.

### **7. First Monitoring and Review Period (2A in Procedure)**

During the period of review, the Teacher's/Headteacher's performance should be monitored and assessed as frequently as appropriate. Monitoring should include observations of a range of relevant duties and functions and an objective record of the monitoring should be kept and used to assist with the evaluation of performance. Any programme of support will continue during this period. Interim feedback should be given about progress against the improvements required. Good practice would be to offer initial immediate feedback but to follow this up with considered verbal feedback, supported in writing, within a reasonable timeframe (for example within three working days).

### **8. Formal Review Meeting (3 in Procedure)**

At the end of the review period, a review meeting will take place. If not previously confirmed in writing, at least five working days written notice will be given, including the time and venue and the right to be accompanied at the meeting by a Trade Union Representative or work colleague. Copies of any evidence, reports etc. will be included in the notice.

The Headteacher will conduct the meeting for Teachers (usually, the Deputy Chief Executive - Education will conduct the meeting for the Headteacher).

The person conducting the meeting will consider all the evidence presented, together with any views advanced by the Teacher/Headteacher or their Trade Union Representative or work colleague and determine whether an acceptable standard of performance has been achieved. If so, the capability procedure will end and the Teacher/Headteacher will move back into the Appraisal cycle. A written record will be made of the meeting and the outcome. Written confirmation will be sent to the Teacher /Headteacher within five working days, with a copy of the record.

Where insufficient or no improvement in performance has been made during the review period, a final written warning will be issued that failure to achieve an acceptable standard of performance within the next review period may result in dismissal. A record will be made of the meeting, including on-going concerns about performance, any improvements so far made, any further support and assistance proposed, monitoring arrangements, the criteria against which improvements will be judged and the timescale for the achievement of improvements. The record will also include any views advanced by the Teacher/Headteacher or their Trade Union Representative or work colleague, whether these were rejected by the Headteacher/Deputy Chief Executive - Education, and reasons for their rejection.

A copy of the record will be issued to the Teacher along with the final written warning. This should be issued within five working days.

The right to appeal against the warning will also be included in the letter (see below for guidance on appeals).

### **9. Second Monitoring and Review Period (3A in Procedure)**

During the next review period, the Teacher's/Headteacher's performance should continue to be assessed as frequently as appropriate. The timescale for the review period will be 12 weeks

unless mutually agreed to have less time. depending on the seriousness of the concerns. Any programme of support will continue during this period. Interim feedback should be given about progress against the improvements required.

## **10. Final Review Meeting (4 in Procedure)**

At the end of the second review period, a decision meeting will take place at which dismissal may be the outcome if the Teacher's/Headteacher's performance remains unsatisfactory following the review period. At least five working days written notice will be given and will include the time and venue and the right to be accompanied by a Trade Union Representative or work colleague. Copies of any evidence, reports etc. will be included in the notice.

The Headteacher will conduct the meeting for Teachers. The Deputy Chief Executive - Education will conduct the meeting for the Headteacher. (See paragraph 13 below re: delegation).

The person conducting the meeting will consider all the evidence presented, together with any views advanced by the Teacher/Headteacher or their Trade Union Representative or work colleague and determine whether an acceptable standard of performance has been achieved. If so, the capability procedure will end, and the Teacher/Headteacher will move back into the Appraisal cycle.

Where the Headteacher/Deputy Chief Executive - Education conducts the meeting and considers that the Teacher's/Headteacher's performance remains unsatisfactory, and depending on the delegation of authority to dismiss (see paragraph 13 below), they may decide:

- a) that the Teacher/Headteacher should be dismissed (if holding delegated authority) or
- b) to recommend to the dismissal panel that the Teacher/Headteacher should be dismissed. This will require a further meeting to be held, at which the recommendation will be presented to the dismissal panel by the Headteacher/Deputy Chief Executive - Education. The Headteacher and the Teacher will be invited to attend (see below "delegation of authority to dismiss").

In the case of a Headteacher's performance, the Deputy Chief Executive - Education will conduct the meeting and determine whether the Headteacher's performance remains unsatisfactory and whether they should be dismissed.

## **11. Process for Dismissal Meeting (5 in Procedure)**

During the period between the decision to dismiss (or to cease working at the Trust) and the actual dismissal date, consideration will need to be given as to whether or not the Teacher should remain at work. For example, it may be inappropriate for the Teacher/Headteacher to remain in a teaching post, but they may be able to work in a non-teaching post or undertake work at home. It is recommended that a discussion takes place about how best to manage this according to the circumstances of the case. Full pay will normally be paid during this period.

The Headteacher/Deputy Chief Executive - Education will present their recommendation to a meeting of the dismissal panel that the Teacher/Headteacher should be dismissed, and include copies of all relevant documentation, evidence, notes of meetings, etc.

This meeting should be convened within as reasonable time as possible (no longer than fourteen working days) from the date of the decision meeting. The Teacher/Headteacher should be given five working days' written notice of the meeting and copies of all relevant documentation should be provided.

The Teacher/Headteacher will be invited to be present at the meeting, which will be a dismissal hearing and will be conducted in accordance with the dismissal stage in the disciplinary procedure. The Teacher/Headteacher has the right to be accompanied by a Trade Union Representative or work colleague. The meeting will not be a re-run of the final review meeting, but it will give the Teacher/Headteacher the opportunity to make comment about the recommendation made and give the Headteacher the opportunity to counter-comment. The panel must be in possession of all the facts in order to make a reasonable decision.

## **12. Dismissal (6 in Procedure)**

Dismissal for reasons of capability will be in accordance with statutory and contractual notice.

Although the Trust has responsibility for determining dismissal, the making of such a decision should be approached with great care and after consulting the HR Department.

In all cases, the Headteacher/Deputy Chief Executive - Education must also notify the payroll provider of the decision.

## **13. Appeals Against Warnings (7 in Procedure)**

At all stages of the capability procedure, there will be a right to appeal. Appeals will be heard, by a person(s) not involved in the original decision and will, thus, preclude the Headteacher/Deputy Chief Executive - Education. If there are any concerns with this, they will be considered by the Chief Executive Officer.

Teachers/Headteachers will be given ten working days in which to lodge their appeal and will be notified in the warning letter of the timescale and to whom to send their appeal, stating their reasons for appeal. The appeal should be heard within a reasonable timescale.

Appeals will normally be restricted to considering the reasonableness of the decision made, any relevant new evidence, any procedural irregularities or any discriminatory procedures or there will be a full re-hearing if it is necessary. An appeal decision will be final. Where an appeal is upheld, the capability warning will be withdrawn, and the matter should be referred back to the person making the original decision to be reconsidered or for further appropriate action.

Monitoring the Teacher's/Headteacher's performance may be halted while an appeal is pending. This is particularly the case if unlawful discrimination is one of the grounds for appeal.

## **14. Appeal Against a Decision to Dismiss (7 in Procedure)**

There is a right of appeal against a decision to dismiss a Teacher/Headteacher. The appeal will be heard by an appeals panel, who have not previously been involved in the case. The principles in the section above (Appeals against warnings) shall be followed.

The appeal does not have to be heard before original decision to dismiss is actioned. If the employee is successful at appeal, they will be re-instated where this is agreed by the employee.

## **15. Staff Absent Through Illness During the Procedure**

Cases of absence that are triggered by action under these procedures and which the Headteacher believes may be long term should be referred to the Occupational Health Service for assessment of whether the member of staff is fit for continued employment and the appropriateness or otherwise of continuing with the capability procedures. In some cases, it may

be appropriate for the procedures to continue during a period of sickness absence. Advice about this should be sought from the HR Department.

Advice should be sought from the HR Department prior to any decision to proceed with a meeting required under these procedures in the absence of the member of staff concerned.

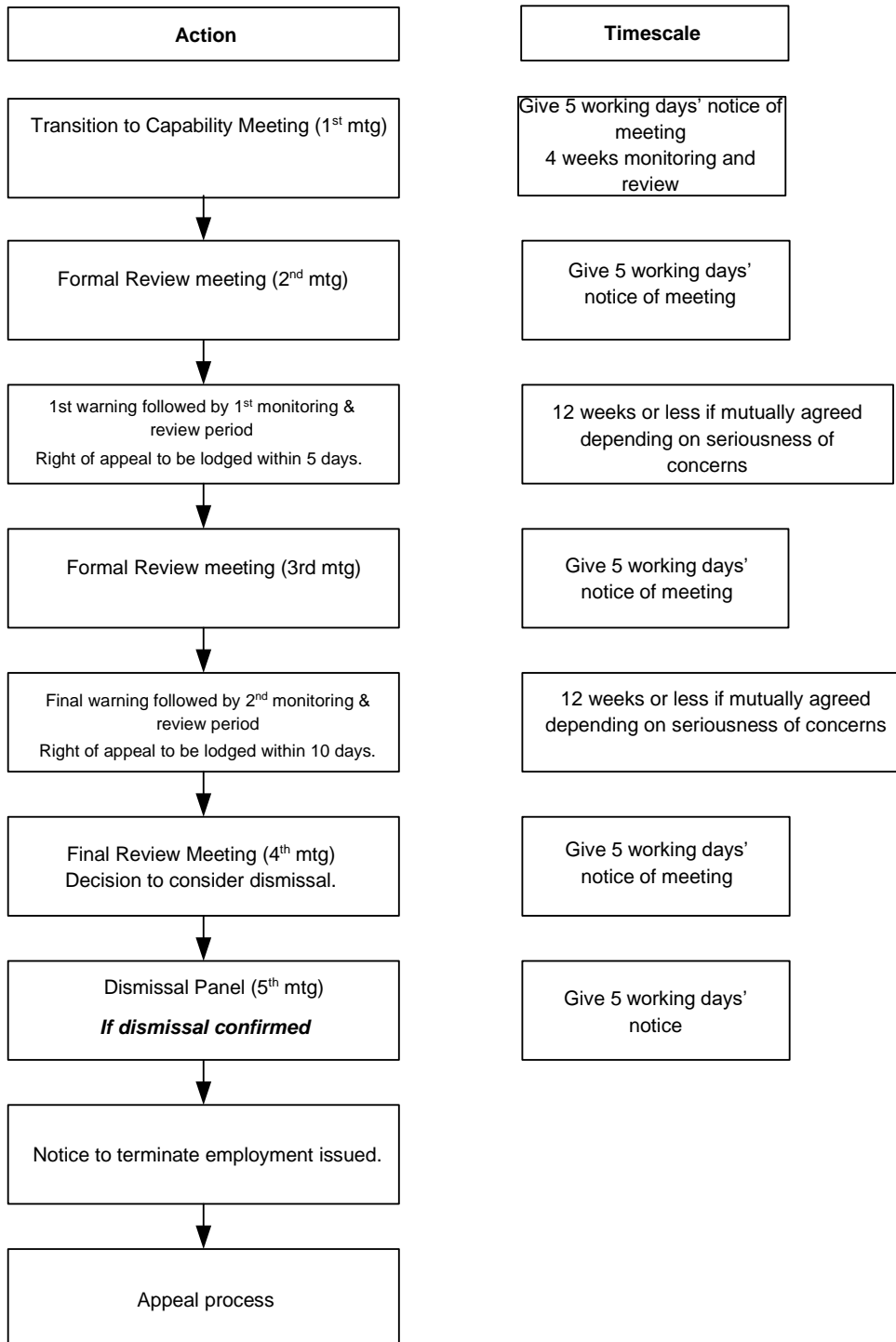
Where a member of staff is diagnosed as having a medical condition which is covered under the Equality Act 2010, consideration will need to be given, including at the point of any action under this procedure, to 'reasonable adjustments' which may be necessary to enable them to achieve the satisfactory performance of their duties and responsibilities.

## **16. Grievances**

In some circumstances, a member of staff may raise a grievance about the behaviour of the Headteacher/Deputy Chief Executive - Education or other senior member of staff during the course of this procedure. Where this relates to the management of the procedure or the exercise of a role within the operation of the procedure, and depending on the circumstances, it may be appropriate to suspend the procedure whilst the grievance is considered under the Trust's Grievance Procedure.

# Flowchart

CAPABILITY PROCEDURE FLOWCHART( the stages are not necessarily sequential. )



## **SECTION 3. APPENDICES**

### **APPENDIX A - EXAMPLES OF ACTIVITIES/SUPPORT MECHANISMS TO HELP IMPROVE PERFORMANCE AND HELP TEACHERS MEET THE TEACHER STANDARDS**

Where a Teacher/Headteacher has been experiencing difficulties in the performance of their duties and responsibilities and in meeting the Teachers'/Headteachers' standards (Section 3, Appendix B), this will have been brought to their attention during the Appraisal process. During this process, areas for improvement and strategies to support and assist the Teacher to make the necessary improvement should have been identified and carried out.

The transition to capability procedures will have occurred if, following review of progress during the Appraisal period, no or insufficient improvement has been made in a Teacher's/Headteacher's performance. It would be both impossible and inappropriate to list the areas of concern about a Teacher's/Headteachers performance, but they could include one or any of the following:

- Pupil safety
- Pupil / class behaviour
- Class management
- Academy and/or departmental management
- Communication with pupils or parents
- Timetable issues, including non-contact time
- Lesson planning
- Preparation
- Assessment
- Marking
- Pupil progress and attainment
- Trust/Academy policies and schemes of work
- Professional relationships
- Teaching practice and quality of teaching
- Personal conduct
- Professional conduct

Whilst not an exhaustive list of activities or sources of support, it might be helpful to consider the following (it is recognised that these may have been considered within the Appraisal process):

- Mentoring
- Coaching
- Counselling
- Opportunity to observe good/outstanding practice within the Academy and/or in other Academies in the Trust
- In-service support and training, including secondment
- Supportive lesson observations
- Increase in non-contact time to allow for issues to be focused on
- Careful planning of review meeting
- Availability of adequate resources
- Health or other personal factors
- Contribution of the management style and structure of the Academy to the Teacher's difficulties
- The Headteacher or another member of teaching staff working alongside the Teacher
- Subject co-ordinators advising and assisting in the planning of programmes of work in particular curricular areas and how best it might be presented to the pupils.
- Early retirement

## **APPENDIX B - TEACHERS' STANDARDS**

### **PREAMBLE**

Teachers/Headteachers make the education of their pupils their first concern and are accountable for achieving the highest possible standards in work and conduct. Teachers/Headteachers act with honesty and integrity; have strong subject knowledge, keep their knowledge and skills up-to-date and are self-critical; forge positive professional relationships; and work with parents in the best interests of their pupils.

### **PART ONE: TEACHING**

A Teacher must:

#### **1. Set high expectations which inspire, motivate and challenge pupils**

- establish a safe and stimulating environment for pupils, rooted in mutual respect
- set goals that stretch and challenge pupils of all backgrounds, abilities and dispositions
- demonstrate consistently the positive attitudes, values and behaviour which are expected of pupils.

#### **2. Promote good progress and outcomes by pupils**

- be accountable for pupils' attainment, progress and outcomes
- be aware of pupils' capabilities and their prior knowledge, and plan teaching to build on these
- guide pupils to reflect on the progress they have made and their emerging needs
- demonstrate knowledge and understanding of how pupils learn and how this impacts on teaching
- encourage pupils to take a responsible and conscientious attitude to their own work and study.

#### **3. Demonstrate good subject and curriculum knowledge**

- have a secure knowledge of the relevant subject(s) and curriculum areas, foster and maintain pupils' interest in the subject, and address misunderstandings
- demonstrate a critical understanding of developments in the subject and curriculum areas, and promote the value of scholarship
- demonstrate an understanding of and take responsibility for promoting high standards of literacy, articulacy and the correct use of standard English, whatever the Teacher's specialist subject
- if teaching early reading, demonstrate a clear understanding of systematic synthetic phonics
- if teaching early mathematics, demonstrate a clear understanding of appropriate teaching strategies.

#### **4. Plan and teach well-structured lessons**

- impart knowledge and develop understanding through effective use of lesson time
- promote a love of learning and children's intellectual curiosity
- set homework and plan other out-of-class activities to consolidate and extend the knowledge and understanding pupils have acquired
- reflect systematically on the effectiveness of lessons and approaches to teaching
- contribute to the design and provision of an engaging curriculum within the relevant subject area(s).

## **5. Adapt teaching to respond to the strengths and needs of all pupils**

- know when and how to differentiate appropriately, using approaches which enable pupils to be taught effectively
- have a secure understanding of how a range of factors can inhibit pupils' ability to learn, and how best to overcome these
- demonstrate an awareness of the physical, social and intellectual development of children, and know how to adapt teaching to support pupils' education at different stages of development
- have a clear understanding of the needs of all pupils, including those with special educational needs; those of high ability; those with English as an additional language; those with disabilities; and be able to use and evaluate distinctive teaching approaches to engage and support them.

## **6. Make accurate and productive use of assessment**

- know and understand how to assess the relevant subject and curriculum areas, including statutory assessment requirements
- make use of formative and summative assessment to secure pupils' progress
- use relevant data to monitor progress, set targets, and plan subsequent lessons
- give pupils regular feedback, both orally and through accurate marking and encourage pupils to respond to the feedback.

## **7. Manage behaviour effectively to ensure a good and safe learning environment**

- have clear rules and routines for behaviour in classrooms, and take responsibility for promoting good and courteous behaviour both in classrooms and around the school, in accordance with the school's behaviour policy
- have high expectations of behaviour, and establish a framework for discipline with a range of strategies, using praise, sanctions and rewards consistently and fairly
- manage classes effectively, using approaches which are appropriate to pupils' needs in order to involve and motivate them
- maintain good relationships with pupils, exercise appropriate authority, and act decisively when necessary.

## **8. Fulfil wider professional responsibilities**

- make a positive contribution to the wider life and ethos of the school
- develop effective professional relationships with colleagues, knowing how and when to draw on advice and specialist support
- deploy support staff effectively
- take responsibility for improving teaching through appropriate professional development, responding to advice and feedback from colleagues
- communicate effectively with parents with regard to pupils' achievements and well-being.

## **PART TWO: PERSONAL AND PROFESSIONAL CONDUCT**

A Teacher/Headteacher is expected to demonstrate consistently high standards of personal and professional conduct. The following statements define the behaviour and attitudes which set the required standard for conduct throughout a Teacher's/Headteacher's career.

- Teachers/Headteachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by:
  - treating pupils with dignity, building relationships rooted in mutual respect, and at all times observing proper boundaries appropriate to a Teacher's professional position

- having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions
  - showing tolerance of and respect for the rights of others
  - not undermining fundamental British values, including democracy, the rule of law, individual liberty and mutual respect, and tolerance of those with different faiths and beliefs
  - ensuring that personal beliefs are not expressed in ways which exploit pupils' vulnerability or might lead them to break the law.
- 
- Teachers/Headteachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach and maintain high standards in their own attendance and punctuality.
  - Teachers/Headteachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.



**APPENDIX C – RECORD OF CAPABILITY MEETING : TEMPLATE (Academy name)**

**Objective:** \_\_\_\_\_ (Teacher Standard \_\_)

**Target date for achievement:** \_\_\_\_\_

| <p><b>Success Criteria:</b><br/>(how achievement towards objectives will be evident)</p> | <p><b>Resources and actions to be taken to support progress:</b><br/>(who needs to do what and when)</p> | <p><b>Details of monitoring activities to gather evidence, with dates:</b><br/>(Lesson observations; workbook scrutiny; evaluations of planning)</p> | <p><b>Meetings to formally review progress:</b><br/>(to be completed following monitoring activities and at Review Meetings)</p> |
|------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|
|                                                                                          |                                                                                                          |                                                                                                                                                      |                                                                                                                                  |

Signature (Appraiser) \_\_\_\_\_ Date \_\_\_\_\_

Signature (Teacher) \_\_\_\_\_ Date \_\_\_\_\_

**Example: Objective - Make accurate and productive use of assessment (Teacher Standard 6)**

Target date for achievement: (xx/xx/xx)

| Success Criteria:<br>(how achievement towards objectives will be evident)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Resources and actions to be taken to support progress:<br>(who needs to do what and when)                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Details of monitoring activities to gather evidence, with dates:<br>(Lesson observations; workbook scrutiny; evaluations of planning)                                                                                                                                                                       | Meetings to formally review progress:<br>(to be completed following monitoring activities and at Review Meetings) |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|
| <p>Devising personalised learning opportunities for all pupils through use of PLCs at KS4</p> <p>Make use of PLCs to set targets for all pupils in (subject) by (date)</p> <p>Give regular, clear and precise feedback to pupils during lessons so that they are clear about their progress against the lesson learning objective.</p> <p>Provide pupils with clear assessment/ success criteria so that they can self- and peer-assess their progress</p> <p>Mark pupils' work at regular intervals following Academy/Trust policy of WWW, EBI and ACT.</p> <p>Marking and feedback are in line with the academy's policy</p> | <p>Coaching session by (person) to support differentiation in lesson planning based on assessment data on (date)</p> <p>Coaching session by (person) to support pupil target setting in (subject) on (date)</p> <p>Visit (person) lesson to observe good practice in feedback during lessons on (date) at (time). Notes to be taken and ideas for own lesson(s) discussed (time)</p> <p>Department examples developed with HoD at next department meeting (date) using exam mark scheme(s).</p> <p>Coaching session by (person) to review Academy marking policy.</p> | <p>Evaluation of Teachers' lesson planning by HOD on (date)</p> <p>Monitoring meeting with Appraiser on (date)</p> <p>Lesson observation by DoL on (date)</p> <p>Lesson observation by HoD on (date)</p> <p>Evaluation of Teachers' marking by DoL on (date)</p> <p>Lesson observation by DoL on (date)</p> | <p>Review meeting: (date) at (time)</p> <p>Formal Assessment meeting: (date) at (time)</p>                        |

Signature (Appraiser) \_\_\_\_\_

Date \_\_\_\_\_

Signature (Teacher) \_\_\_\_\_

Date \_\_\_\_\_