



*'Individual Growth, Individual People'*

Head Teacher: Mrs M A Tyers

# Capability Policy

## Reviewed September 2016

**CAPABILITY POLICY  
THE PERFORMANCE OF SCHOOL STAFF**

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## **PART 1**

### **DISCIPLINARY (CAPABILITY) PROCEDURE**

#### **THE PERFORMANCE OF SCHOOL STAFF**

##### **POLICY STATEMENT**

The purpose of this procedure is to support and monitor the underperformance of teachers (including deputy head teachers and head teachers) and support staff. The aim is to improve performance by providing support and monitoring within two performance review periods. Where there is insufficient improvement, the procedure allows for warnings to be issued and ultimately consideration of dismissal based on the grounds of capability.

There are 2 parts to the procedure:

- Part 1 - Policy statement and procedure
- Part 2 - Guidance, appendices, supporting letters and flow chart

##### **Transition from Appraisal to the Disciplinary (Capability) Performance Procedure for school staff**

The Disciplinary (Capability) Performance Procedure is not a stand alone procedure but should be considered following the application of the Nottinghamshire Appraisal Policy and Guidance for school based staff. For ease of reference, this procedure will be referred to as the capability procedure throughout this document.

There is no automatic transition to the school's capability procedure. However, where performance concerns emerge, the nature and seriousness of those concerns should be discussed as soon as possible with the employee. Every effort should be made by the school to resolve performance concerns within the appraisal process through the provision of targeted additional support agreed in discussion with the employee with regular feedback and review. Where concerns are such that the employee is not performing to the required standard, the appraiser should ensure that the head teacher or other identified senior leader is included in these discussions.

If the performance concerns are not resolved through a minimum of two cycles of targeted support and feedback within the appraisal system as set out in the agreed Nottinghamshire Appraisal Policy and Guidance Documents, consideration should be given to the application of the capability procedure. The decision to consider transition from appraisal to capability should therefore not come as a surprise to the employee.

Where the appraiser considers that there is insufficient evidence of progress against the objectives based on the evidence available at interim review meetings and additional support cycles, the appraisee will be notified in writing that the appraisal process will be suspended and that his or her performance will be managed within the capability procedure.

## **Context**

Nottinghamshire County Council and the governing body of each school have an obligation to pupils and students, and to the profession as a whole, to be rigorous in its maintenance of a competent and skilled school work force. Governing bodies must, by law, have procedures for dealing with lack of capability for all members of school staff. This procedure is in line with current employment legislation, the outline capability procedure produced by the DfE and ACAS guidance, and aligns with the Nottinghamshire County Council's Appraisal Policy for Teachers adopted in 2012.

## **Principles and commitments**

It is important that the principles underpinning the procedure are clearly defined and understood.

1. The Capability Procedure will be applied fairly and consistently.
2. The employee will be provided with appropriate development and support. Their performance will be monitored through review periods as set out in this procedure.
3. Employees have the right to be accompanied by a trade union representative or colleague. The representative should be identified to the headteacher / chair of governors in advance of meetings and should not have any conflict of interest.
4. Employees will not be discriminated against because of their age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership status, pregnancy, maternity or trade union status.
5. All employees will be provided with a clear understanding of their role, job purpose/job description and the standards expected of them.
6. Head teachers will support and enable employees to reach the required standard of performance through:
  - a) Effective induction to any new role
  - b) Access to professional development opportunities, including coaching and mentoring support where appropriate
  - c) Effective application of the school's appraisal policy/support and supervision arrangements within the context of the relevant professional standards
  - d) A commitment to identify and address performance concerns at the earliest reasonable opportunity
7. Head teachers should ensure that staff are made aware of this procedure and that a copy is made available.

## **Exceptional cases**

This procedure aims to improve the performance of the identified employee within the timescales set. It is recognised that delay may not be in the interests of all parties and in extreme cases, such as where the education of pupils is jeopardised, the period given for improvement after the date of a formal warning will be reduced to four weeks in total.

### **Support to manage the process**

For teachers, appropriate arrangements from within school or via the Education Improvement Service (EIS) will secure the assistance of an appropriate advisor to attend the formal performance meeting and to act as monitoring officer throughout the review periods. For support staff, similar in-school arrangements may be put in place or other advisers may be engaged externally to support the monitoring process.

*Governing bodies are reminded that for those schools which purchase an annual HR package, specialist support to defend any employment or court proceedings arising from the application of employment processes will be made available so long as advice from the County Council HR service has been sought and followed. A failure to seek and follow this advice at each stage of the process may lead to the legal support and insurance cover being nullified.*

### **Support staff**

For all staff not subject to the School Teachers' Pay and Conditions Document (STPCD), head teachers will be guided by this procedure, but references to the appraisal policy for teachers, to Teachers' Standards 2012 and to the role of the Education Improvement Service will not apply. Otherwise, the stages of the capability procedure set out below, including order of events, timescales for action and review, notification of meetings and their outcomes including provisions in respect of warnings, hearings and dismissal will all apply to support staff. For these staff it would be expected that any performance concerns will have been raised in the first instance through routine support and supervision meetings with appropriate monitoring, support development and review measures put into place. Application of the capability procedure for support staff should only follow when a minimum of two cycles of support and feedback has not resulted in the required level of performance being achieved and maintained.

### **Trade Union Consultation**

This procedure has been agreed by the following Nottinghamshire recognised trade unions: NASUWT; ATL; ASCL; NAHT; UNISON and GMB.

## **PROCEDURE**

### **Disciplinary (Capability) Procedure – Performance of School Staff**

#### **1.0 The Procedure**

1.1 This procedure applies to all school employees, (teaching and support), about whose performance there are serious concerns that the appraisal process and/or, in the case of support staff, support and supervision has been unable to address.

1.2 Where performance concerns emerge, the nature and seriousness of those concerns should be discussed as soon as possible with the employee and recorded in line with the agreed Nottinghamshire Appraisal Policy and Guidance. Every effort should be made to resolve performance concerns in line with the appraisal process. If the concerns are not resolved through a minimum of two cycles of identified additional support and feedback within appraisal, consideration should be given to the application of the capability procedure.

1.3 The procedure will be led and managed by the head teacher (or other delegated senior leader) or chair of governors (in the case of head teacher performance issues). Where the head teacher is the subject of the capability process, the procedure assumes that the governing body will engage an appropriately qualified and experienced external adviser to undertake the monitoring and manage the process, or assist the chair of governors to do so, on behalf of the governing body. The procedure also assumes that the governing body will consult with and engage the services of the County Council HR service to provide practical advice and support to the school in the application of these procedures. Head teacher review meetings may be conducted by the chair of governors or an appropriately constituted panel.

1.4 If, at the end of the second cycle of additional support, appraisal concerns have not been resolved, the head teacher or external adviser/chair of governors should meet briefly with the employee. The purpose of this meeting is to summarise the concerns and inform the employee that a performance meeting will be arranged.

#### **STAGE 1**

##### **2.0 Performance meeting**

2.1 The written invitation to the performance meeting represents formal entry into the capability procedure and the suspension of the appraisal/support and supervision process. The meeting will be conducted by the head teacher or external adviser/chair of governors where the performance of the head teacher is the subject of concern. (Appendix 5.1 - Invitation to Performance Meeting)

2.2 The purpose of the performance meeting is to allow the employee, accompanied if they wish by a trade union representative or colleague, to respond to the on-going concerns about their performance and to make any relevant representations. The meeting may provide a different context to the information/evidence already collected by the school.

2.3 The employee will be given at least 5 working days' notice of the performance meeting. The procedure for the meeting is as set out in Appendix 3a. The invitation letter to the employee will include copies of the documentation the head teacher (or other delegated senior leader) or external adviser/chair of governors intends to consider at the meeting. The meeting will also involve a representative of the EIS and HR adviser.

2.4 The employee should be informed of their right to be accompanied by a trade union representative or colleague, to provide their own information in advance of the meeting and to call witnesses if they wish. The school should make arrangements for notes to be taken at the meeting.

2.5 The performance meeting will:

- Establish the facts by examining the concerns about performance and clarify the standards required for the job;
- Review concerns and the evidence arising out of the additional support provided to this point, including evidence from the appraiser and/or support person;

2.6 Following a full consideration of the evidence, there should be an adjournment for the person conducting the meeting to determine the appropriate action to be taken.

### **3.0 Performance meeting - Possible outcomes:**

3.1 Where it is determined by the person conducting the meeting that there is insufficient evidence for continuing the capability procedure, this will be confirmed in writing to the employee and the appraisal process will re-start.

3.2 Where it is determined by the person conducting the meeting that performance is not meeting the required standard, the first six week monitoring and review period will start straightaway within the procedure. The person conducting the meeting will:

- a. Confirm that the school appraisal process (for teachers) or the appraisal/support and supervision arrangements (for support staff) is suspended and that the capability procedure will continue;
- b. Identify the professional shortcomings. The nature of the performance concerns should be specific, clear and capable of being assessed for improvement. For teachers, it will be necessary to identify which of the relevant national Teacher Standards identified through appraisal are not being met, according to their career stage, role, post responsibilities and job description. For support staff, it will be necessary to identify the performance concerns in accordance with the employee's job description, role, responsibilities and job evaluation profile;
- c. Set reasonable targets and performance indicators, ensuring the areas of concern are specific, clear, and capable of being assessed for improvement;
- d. Provide clear information and guidance on the standard of performance required of the employee to enable their removal from the capability procedure. This should include the setting of small step targets focussed on the specific areas of concern/weakness which need to be addressed, the identification of appropriate success criteria and a determination of the evidence that will be used to assess whether or not the required improvement has been made;
- e. Outline the monitoring and review activity to be undertaken during the review period, with an indication of at what point and by whom. Note that if the monitoring or support process is undertaken by the head teacher, any review meetings will need to be conducted by a governors' panel;

- f. Explain and seek to agree the support that will be made available to help the employee improve their performance, deciding when, how and by whom the support will be delivered;
- g. Set out the first six week timetable for monitoring progress and providing support which will depend on the circumstances of the individual case. The first review period will be for a maximum period of six working weeks duration. However, the period of review/assessment may be shorter if the circumstances justify it. See paragraph 3.2.10.
- h. Confirm the date and time of the review meeting with the employee, their trade union representative or colleague, HR adviser and monitoring officer
- i. Issue a **written warning** to the employee and explain that failure to improve performance within the review period could lead to further warnings. The warning will remain current for a period of 12 months after which time it will be reviewed. A higher degree of warning may be given at this stage, thereby reducing the overall timescale, if the circumstances justify it (see paragraph 3.2.10). In extreme cases, where the education or health and/or safety of pupils is jeopardised, the warning issued at this stage could be a final written warning. In applying this procedure, no employee will be dismissed on the grounds of capability without having first received a warning.

3.3 The circumstances that may justify a shorter review period or higher degree warning may be:

- Where the seriousness of the level of under-performance means that pupils' education and/or safety and/or management of the school is jeopardised;
- Where it is evident that an acceptable level of improvement is beyond the ability of the employee being assessed;
- Where there is a lack of co-operation with the process or a serious further deterioration in performance.

3.4. The outcome of this meeting, including the level of warning and right of appeal will be confirmed in writing to the employee within 3 working days and a copy sent to their trade union representative or colleague.

3.5. Notes taken at the meeting will be provided to the employee and, if applicable, to their trade union representative or colleague.

#### **4.0 Performance meeting – Appeal against warning**

4.1 The employee has the right of appeal and must do so, in writing, briefly setting out the grounds of the appeal within 10 working days of receiving the written outcome of the performance meeting. The employee will indicate which of the original documents considered at the performance meeting they want re-submitted as evidence at the appeal. The appeal is a re-hearing and will be considered by an Appeals Panel of (normally) 3 governors who have not been previously involved with consideration of the case.

4.2 The appeal will be conducted in line with the procedure set out in Appendix 3b and guidance Appendix 4. The employee should be notified of their right to be accompanied by their trade union representative or colleague.

4.3 The outcome of the appeal should be confirmed in writing to the employee within 3 working days of the decision. Notes taken at the appeal will be provided to the employee and, if

applicable their trade union representative or colleague. Where an employee appeals against a warning issued at the Performance Meeting, this will not delay the commencement of the first review period.

## **STAGE 2**

### **5.0 First monitoring and review period**

5.1 The first monitoring and review period should start immediately and will be for a maximum of 6 working weeks. The purpose of the review period is to provide every reasonable opportunity for monitoring, support and improvement whilst at the same time recognising that the achievement of the required standard of performance remains the overriding goal.

5.2 Monitoring, evaluation, feedback, guidance and support will take place during this review period. The monitoring activities should be staged appropriately over the review period so that the employee is able to demonstrate progress within that timeframe and take action on feedback given so that the required standards can be met. Where monitoring visits take place, they will consist of announced and unannounced visits to the employee. Similarly, the cycle of support for the employee should be staged and coordinated by the school to provide the employee every opportunity to meet the required standards.

### **6.0 First review meeting**

6.1 The first review meeting will be held at the end of the review period in line with the agreed timescale. At least 5 working days prior to the review meeting, the employee will be reminded in writing of the date, time, place and purpose of the meeting, as agreed at the Performance Meeting. The letter to the employee will include copies of the documentation to be considered by the person/panel conducting the meeting. The meeting will be conducted in line with the order of events detailed in Appendix 3b and Guidance Appendix 4. The school should make arrangements for notes to be taken at the meeting.

6.2 The employee should be informed, in writing, of their right to be accompanied by a trade union representative or colleague, to provide their own information in advance of the meeting and to call witnesses if they wish.

6.3 This meeting should be convened and conducted by the head teacher (or delegated senior leader) or external adviser/chair of governors where the performance issues relate to the head teacher. The meeting will also involve the monitoring officer and the HR adviser.

6.4 Where the head teacher has undertaken the monitoring role, the head teacher should make arrangements for the outcome of the first review period to be considered as a capability hearing conducted by an appropriately constituted panel of the governing body.

6.5 In the case of a meeting to review the head teacher's performance the meeting should be convened by the external adviser (acting as monitoring officer)/chair of governors and will involve the HR adviser, any witnesses and will be referred to an appropriately constituted governors' panel.

6.6 The purpose of this review meeting is to consider the evidence from the monitoring officer obtained throughout the review period, to assess the employee's performance and focus on the extent to which improvements have or have not been made in relation to the targets for improvement and success criteria within the timescale of the review period. The meeting will also

consider the evidence relating to the degree of support made available by the school and accessed by the employee.

#### **7.0 First review meeting – Possible outcomes:**

The outcome of this meeting will be one of the following:

##### **7.1 Performance standards fully met and transition back to appraisal.**

If the person/panel conducting the meeting is satisfied that the employee has fully met all of the required performance standards and is now working to the required standard, the performance procedure will cease and, for teachers, the appraisal process will re-start. The decision will be confirmed in writing to the employee. Where, within the life of a warning, performance deteriorates resulting in a decision to suspend appraisal/support and supervision and re-apply the capability procedure the employee will be re-issued with a warning consistent with the relevant stage of the procedure. The written warning will be extended to a period of one year. The capability procedure will normally re commence at the start of the first review period.

##### **7.2 Performance standards not met.**

If the employee has not fully met the required standards of performance during the first monitoring and review period, the person/panel conducting the meeting will confirm with the employee the areas of their performance where the required standards of performance have not been met and will issue the employee with a **final written warning**. The warning will remain current for a period of 12 months after which time it will be reviewed.

7.3 Where a final written warning is issued, the decision will be confirmed in writing to the employee within 3 working days and a copy sent to their trade union representative or colleague. The employee will be informed in writing that a further failure to achieve the required standard of performance (within the set timescale), may result in dismissal. The employee will be informed of the remaining required standards for improvement, the monitoring arrangements for the second and final monitoring and review period and the arrangements for the provision of support.

7.4 The date of the next review meeting/decision meeting will be agreed with the employee and their representative or colleague, the HR adviser and any witnesses and confirmed in the outcome letter. The employee will also be given details of the process and time limits for appealing against the final written warning. To enable an appeal to be heard as soon as possible, the potential appeal date will be agreed at this meeting and stated in the outcome letter providing at least 10 working days' notice, unless an earlier date is mutually agreed.

7.5 Notes taken at the meeting will be provided to the employee and, if applicable, their union representative or colleague.

#### **8.0 First review period – Appeal against warning**

8.1 The employee has the right to appeal against this decision and must do so in writing, briefly setting out the grounds of the appeal, within 10 working days of the written outcome of the first review meeting. The employee will indicate which of the original documents considered at the first review meeting they want re-submitted as evidence at the appeal. The appeal is a re-

hearing will be considered by a panel of (normally) 3 governors who have not been involved in the monitoring or support arrangements during the first review period.

8.2 The appeal will be conducted in line with the procedure set out in Appendix 3b and guidance Appendix 4. The employee should be notified of their right to be accompanied by their trade union representative or colleague.

8.3 The outcome of the appeal should be confirmed in writing to the employee within 3 working days of the decision. Notes taken at the appeal hearing will be provided to the employee and, if applicable, their trade union representative or colleague. Where an employee appeals against a warning issued at the first review meeting, this will not delay the commencement of the second review period.

### **STAGE 3**

#### **9.0 Second monitoring and review period**

9.1 The second monitoring and review period should start immediately and will be for a maximum of six working weeks. The purpose of the review period is to provide every reasonable opportunity for monitoring, support and improvement whilst at the same time recognising that the achievement of the required standard of performance remains the overriding goal.

9.2 Monitoring, evaluation, feedback, guidance and support will take place during this period. The monitoring activities should be staged appropriately over the review period so that the employee is able to demonstrate progress within that time frame and take action on feedback given so that the required standards can be met. Where monitoring visits take place they will consist of announced and unannounced visits to the employee. Similarly, the cycle of support for the employee should be staged and coordinated by the school to provide the employee every opportunity to meet the required standards.

#### **10.0 Second review meeting - decision meeting**

10.1 The decision meeting will be held at the end of the second review period in line with the agreed timescale. At least 5 working days prior to the review meeting, the employee will be reminded in writing of the date, time, place and purpose of the meeting, as agreed at the first review meeting. The meeting will be conducted in line with the order of events detailed in Appendix 3b and Guidance Appendix 4. The school should make arrangements for notes to be taken at the meeting.

10.2 The employee should be informed, in writing, of their right to be accompanied by a trade union representative or colleague, to provide their own information in advance of the meeting and to call witnesses if they wish.

10.3 This meeting should be convened and conducted by the head teacher (or delegated senior leader) or external adviser/chair of governors. The meeting will also involve the monitoring officer and the HR adviser

10.4 Where the head teacher has undertaken the monitoring role, the head teacher should make arrangements for the outcome of the second review period to be considered as a capability hearing conducted by an appropriately constituted panel of the governing body.

10.5 In the case of a meeting to review the head teachers' performance the meeting should be convened by the external adviser (acting as monitoring officer)/chair of governors and will involve the HR adviser, any witnesses and will be referred to an appropriately constituted governors' panel. (See paragraph 12)

10.6 The purpose of this review meeting is to consider the evidence from the monitoring officer obtained throughout the review period, to assess the employee's performance and focus on the extent to which improvements have or have not been made on the targets for improvement and success criteria within the timescale of the review period. The meeting will also consider the evidence relating to the support made available and accessed by the employee.

### **11.0 Second review meeting - Possible outcomes:**

The outcome of this meeting will be one of the following:

11.1 Performance standards met and transition back to appraisal.

If the person/panel conducting the meeting is satisfied that the employee is now working to the required standard, the performance procedure will cease and, for teachers, the appraisal process will re-start. The decision will be confirmed in writing to the employee. Where, within the life of a warning, the performance deteriorates resulting in a decision to suspend appraisal/support and supervision and re-apply the capability procedure, the employee will be re-issued with a final warning consistent with the relevant stage of the procedure. The final written warning will be extended to a period of one year. The capability procedure will normally re-commence at the start of the second review period.

11.2 Performance standards not met.

If the employee has not fully met the required standards of performance during the second monitoring and review period and is not working to the required standard, the person conducting the meeting will confirm with the employee the areas of their performance where the required standards have not been met. The employee will be suspended on full pay pending a hearing conducted by a governors' panel to consider a recommendation that the employee should be dismissed from their post at the school. The employee should be informed that there is no right of appeal against the decision to suspend. Suspension is not in itself a disciplinary sanction and does not presume the outcome of the governors' hearing.

11.3 At the end of the meeting the date for the governors' hearing will be agreed with the employee and their trade union representative or colleague, monitoring officer, HR adviser and any witnesses required. This decision will be confirmed in writing to the employee in the outcome letter within 3 working days of the decision, along with the date for the hearing and the right to be accompanied.

11.4 Notes taken at the meeting will be provided to the employee and, if applicable, their union representative or colleague

### **12.0 Governors' hearing**

12.1 The employee and their representative should be notified of the governors' panel hearing date at the decision meeting.

12.2 This meeting should be convened by the presenting officer. This will either be head teacher or other delegated senior leader ( for teachers and support staff) or the external adviser acting as monitoring officer engaged to manage the process at the request of the chair of governors on behalf of the governing body where the head teacher is subject to the capability procedure.

12.3 The school/academy should consult their articles of government and convene the hearing to consider dismissal in line with the options made available within the School Staffing Regulations. Where a governors' panel is appointed it will normally comprise of 3 governors.

12.4 The purpose of the governors' hearing is to consider the recommendation for dismissal. The hearing will consider the evidence from the monitoring officer, assess the employee's performance and focus on the extent to which improvements have or have not been made in relation to the targets for improvement and success criteria within the timescale. The meeting will also consider the evidence related to the support made available by the school and accessed by the employee.

12.5 The presenting officer will formally invite the employee and their trade union representative or colleague to the hearing. The letter copied to their representative should confirm the purpose, date, time and place of the hearing at least 10 working days in advance of the hearing date, unless an earlier date is mutually agreed. The letter to the employee will include copies of the documentation to be considered by the person / panel conducting the meeting.

12.6 The employee should be informed, in writing, of their right to be accompanied by a trade union representative or colleague, to provide their own information in advance of the meeting and to call witnesses if they wish.

12.7 The school should make arrangements for notes to be taken at the meeting.

12.8 The hearing and any appeal should be held in line with the principles and procedures detailed in Appendix 3b and Guidance Appendix 4.

12.9 The decision of the panel should be confirmed to the employee within 3 working days of the meeting. If the decision is taken to dismiss the employee, the panel will issue notice of termination of employment in line with the contract of employment. The dismissal letter should confirm details about the process and time limits for submitting an appeal against the dismissal decision. Any appeal against dismissal will be arranged as soon as possible during the employee's notice period.

12.10 Notes taken at the meeting will be provided to the employee and, if applicable their trade union representative or colleague.

### **13.0 Second review period - Appeal against dismissal**

13.1 The employee has the right to appeal against a decision to dismiss and must do so, in writing to the head teacher/chair of governors, briefly setting out the grounds of the appeal within 10 working days of the written outcome of the dismissal hearing. The employee will indicate which of the original documents considered at the decision meeting they want to be re-submitted as evidence at the appeal. The appeal will be considered by an appeals panel of (normally) 3 governors. The employee appeal should be held in line with the principles and procedure as detailed in Appendix 3b and Guidance Appendix 4.

13.2 The presenting officer will formally invite the employee and their trade union representative or colleague to the appeal hearing. The letter copied to their representative should confirm the purpose, date, time and place of the appeal hearing at least 10 working days in advance of the hearing unless an earlier date is mutually agreed. The appeal is a re-hearing of the case and the appeal invite letter to the employee should include as appendices or make reference to the documentation to be considered at the governors' dismissal appeal hearing.

13.3 The employee should be informed, in writing, of their right to be accompanied by a trade union representative or colleague, to provide their own information in advance of the meeting and to call witnesses if they wish.

13.4 The school should make arrangements for notes to be taken at the meeting.

#### **14.0 Governors' Appeal Hearing - Possible outcomes**

14.1 The outcome of the appeal hearing will be confirmed in writing to the employee and their representative within 3 working days of the appeal hearing. The appeal panel will confirm or reject the decision which is subject to appeal. The decision will be final and there is no further right of appeal. If the determination of the appeal panel is to confirm the decision to dismiss the employee, the notice of termination of contract will continue. In the event of a successful appeal after the dismissal, arrangements should be made for the employee to be re-integrated into school and notice of termination of employment will be rescinded.

14.2 Notes taken at the meeting will be provided to the employee and, if applicable their trade union representative or colleague.

## **PART 2 - GUIDANCE**

### **Disciplinary (Capability) Procedure - Performance of School Staff**

This guidance should be read in conjunction with the capability procedure and is set out according to the headings used in the procedure itself.

#### **1.0 Procedure**

1.1 This procedure applies to all school employees where it has not been possible to resolve performance concerns in line with the appraisal process.

#### **STAGE 1**

#### **2.0 Performance meeting**

Notification to an employee of the need to consider and then apply the capability procedure this should take place in a meeting with the employee at an appropriate time towards the end of the normal working day, wherever possible. For part time staff this meeting should be arranged within their normal contracted hours on a day they normally work. It is the responsibility of the head teacher/chair of governors to ensure the employee can access appropriate support including the opportunity to contact their union representative or other relevant person for support. Wherever possible, Head teachers are advised to send any confirmation letters during the working week to avoid notifications arriving on a weekend, during the last 3 days of a term or during the school holidays. Where this cannot be avoided due to procedural timescales, head teachers are advised to offer to contact the trade union representative to advise them of the content of the letter and to enable the trade union representative to contact the employee if necessary. The HR adviser can support the head teacher in this communication if required.

2.1 It is important to arrange the date of the performance meeting in advance, in consultation with the employee and the appropriate trade union representative or colleague to ensure that they are able to attend. If the trade union representative or colleague is unable to attend on the date of a meeting, the law requires that a further date should be agreed within 5 working days of the original date.

2.2 Before confirming the date of the performance meeting, the head teacher should consult an appropriate adviser. For teachers this will be an Education Improvement Adviser (EIA) and an officer from the County Council's HR Service to ensure that they are available to attend.

Support from EIS - Schools and academies are charged for EIS attendance at the performance meeting and for monitoring officer support throughout the process.

Support from HR - HR support for schools and academies throughout this process, including attendance and advice at all meetings is included in the annual HR Advisory Support package.

Monitoring support for support staff issues this could be available from the DSO Area Cleaning Manager for caretaking/cleaning staff, a senior County Council finance or administrative officer for administrative staff etc.

## LETTER 5.1- Invitation to Performance Meeting

2.3 The letter inviting the employee to the performance meeting should:

- Contain sufficient information about the performance concerns and their possible consequences to enable the employee to prepare to answer the case at the performance meeting
- Contain copies of any appropriate written information/documentation which should be evidence based;
- Confirm the details of the time and place of the meeting;
- Advise the employee of their right to call witnesses and to be accompanied by a trade union representative or colleague.

Where, in exceptional cases, at short notice, the trade union representative or colleague is unable to attend on the agreed date, the representative will make every effort to ensure that a replacement is found to support the employee to enable the meeting to go ahead on the original date as planned.

2.4 The evidence required for this meeting will depend on the individual circumstances and should previously have been the subject of discussion with the employee within appraisal (for teachers) and appraisal/support and supervision (for support staff). Documentation should not be circulated for the first time at this meeting, unless it has only just come to light. For teachers the evidence will include amongst other evidence, the following:

- Appraisal statement including information relating to the concerns raised and steps taken to address them during the two periods of additional support; the outcome and details of the support provided.
- Other information gathered through the school quality assurance/evaluation systems.
- Recorded meetings held by the appraiser with the individual within the appraisal process, providing information on the nature of the concerns discussed in the context of the relevant Teachers' Standards, the role and responsibilities of the post, the job description, agreed outcomes and the details of the additional support provided.
- The results of relevant classroom observations. Note that outcomes of any lesson observations undertaken by OfSTED cannot be used as a determining factor in the capability process.
- Details of any other relevant school evaluation information, e.g. outcomes of test and examinations, progress data for groups of pupils; work scrutiny, information or evidence from colleagues, parents or other relevant external parties.

The employee should be informed that they may bring their own evidence to the meeting and they should be given a date by which this should be provided to the head teacher for consideration prior to the meeting. The outcome of the meeting should not be a foregone conclusion but should provide an opportunity to carefully review the evidence and decide the appropriate course of action.

2.5 The notes of this meeting are not intended to be a verbatim account but should be an accurate summary of the key issues discussed; provide a record of the documents considered; provide details of the outcome and in particular any agreed actions and decisions. Usually notes will be taken by a member of the support staff, but in exceptional cases it may be appropriate for the note taker to be external to the school.

2.6 The person conducting the meeting should make reference to the concerns and cycles of monitoring and support within appraisal (for teachers) and concerns arising out of regular support and supervision sessions or appraisal (for support staff). The appraiser may attend to explain the nature of the performance concerns and the steps that have taken place within appraisal to address the concerns.

2.7 A review of the concerns and the evidence arising out of the additional support provided up to this point provides an opportunity to review the information, to allow both parties to comment on the evidence provided, and to examine the cause(s) of the shortfall in performance. The head teacher may consider whether a different balance of duties or alternative position within the school may resolve the performance concerns and, if this is practicable and viable within the school discuss this option with the employee and their trade union representative or colleague.

2.8 The outcome of the performance meeting may result in:

- further investigation
- a decision not to pursue the matter further;
- additional support within appraisal (teachers), support and supervision (support staff);
- a transition to monitoring and support within the capability procedure.

### **3.0 Performance meeting - Outcome**

3.1. LETTER 2a Outcome of Performance Meeting - Further Cycle of Support within Appraisal.

#### **3.2 Monitoring and review**

3.2.2 The monitoring may be managed in school or supported/provided by an appropriate external adviser brokered by the Education Improvement Service (EIS). There will need to be a clear programme of monitoring tailored to the specific issues which may include: full use of the school's quality assurance/self-evaluation processes; announced and unannounced lesson observations or visits; work scrutiny and review of tracking data. All activity should be focussed on the specific improvement targets and success criteria.

3.2.3 At the Performance Meeting, the head teacher and employee may agree to plan the achievement of the identified improvement targets over the two review periods. This may be appropriate if the employee considers that this will assist with the overall achievement of the targets. However, this will automatically mean that the monitoring and review will be subject to two review periods with a final warning issued at the end of the first review period.

3.2.3 As a matter of good practice, performance monitoring will be undertaken and support provided by different people so that there is a clear distinction between the two roles. (See Appendix 1 paragraph 3.6 Roles and responsibilities). If the head teacher assumes this "monitoring officer" role, it will be necessary for a panel of governors to consider progress and to review each stage of the process. If the head teacher delegates the monitoring role, for example to another member of the school leadership team or an appropriate external advisor, then the head teacher may conduct the review process, consider the evidence and progress made and issue warnings as appropriate.

3.2.4 The employee is responsible for arranging their own representation throughout this procedure and after being advised to make contact, it is the employee who should take the initiative to contact their trade union or arrange for a colleague to undertake this role

### 3.3. Explaining and agreeing the support:

3.3.1 The support identified will depend upon the nature and scale of the underperformance identified. A senior leader should be given the responsibility for coordinating and recording the support made available and accessed by the employee throughout the process. At the end of each review period, the senior leader will be responsible for compiling a summary report for the head teacher/panel to consider as part of the evidence. A commitment should be obtained from the employee to fully engage in the process of accessing the support made available. Normally, support will be professional and/or personal support provided by the school. Advice may be obtained from the Education Improvement Service/HR service as appropriate.

3.4 The first six week review period should be organised to enable sufficient opportunity for improvement to take place. The timescale at this first stage will reflect the seriousness of the lack of capability of the employee, whether the problem is a specific or broader professional difficulty and whether it is of very recent concern or spanning a longer period of time. In extreme cases where, for example the education or safety of pupils is jeopardised, the period given for improvement after the date of a formal warning will be reduced to four weeks in total.

3.5 It is important to set a date to review progress at the end of the review period, whilst all parties are present, to avoid unnecessary slippage. Where the trade union is unable to attend on the proposed review date and it is not possible to agree a date within 5 days of the original date, the representative will be responsible for arranging a replacement representative to be identified to the school and available to attend the next review meeting so that employee is supported and the review can progress as planned. The name of the representative will be notified to the head teacher and the employee within 7 days of this meeting.

3.6 The letter confirming the outcome of the performance meeting should also clearly set out:

- the areas of concern;
- the performance targets and success criteria; the monitoring process;
- the support arrangements;
- dates of the review period and the review date agreed with the employee, their trade union representative or colleague, the HR adviser and any witnesses.

LETTER 2b - Outcome of Performance Meeting.: Commencement of First Review Period.

3.7. The notes taken at the meeting will be provided to the employee and, if applicable their trade union representative or colleague. The employee will be given the opportunity to comment on the accuracy of the notes. The employee should be asked to return a signed copy to signify they represent a fair summary of the meeting.

### **4.0 Performance meeting - Appeal against warning**

Letter 2c - Invitation to Governors' Appeal Hearing (Written Warning / Final Warning)

4.1 The notes taken at the appeal meeting will be provided to the employee and, if applicable their union representative or colleague. The employee should be provided with the opportunity to comment on the accuracy of the notes and be asked to return a signed copy to signify it represents a fair summary of the meeting.

## **STAGE 2**

### **5.0 First monitoring and review period**

#### **5.1 Monitoring, evaluation, feedback, guidance and support.**

5.1.1 The head teacher (or delegated senior leader) or chair of governors will ensure that the monitoring is delivered and support is provided as agreed. The person appointed as monitoring officer (head teacher or delegated monitoring officer) will gather relevant evidence through, for example, observation of practice, discussions with the employee and the collection of other documentary evidence as appropriate throughout the review period.

5.1.2 The employee will be given prompt oral feedback by the monitoring officer on their performance after any monitoring activity or support sessions. Where this is undertaken by an appropriate external adviser, the head teacher will also be advised of the progress made in achieving the set targets. This initial oral feedback will be followed by a written statement given to the employee within a reasonable timescale. Where practicable, and where requested by the employee, it may be useful to invite the person coordinating the support to these monitoring feedback sessions.

5.1.3 Full, written details of the observations, discussions, etc. will be kept together with all relevant documentation gathered, judgements made on progress and details of support given. Copies of this documentation will be given to the employee and, where requested, to their representative. Other reasonable information such as the employee's job description, timetable, work schedules, etc. should be sent promptly to the employee's representative, if this is requested.

5.1.4 The monitoring activities should be staged appropriately over the review period. It is expected that the employee will fully engage in the monitoring and support process to improve their performance. This includes proactively accessing and identifying the support available to improve their practice.

5.1.5 Towards the end of the first monitoring and review period, the member of staff should be reminded of the review date previously agreed and invited to the review meeting, unless they were issued with a final written warning, in which case they will be invited to a decision meeting (see below). Where the monitoring or support process is undertaken by the head teacher any review meeting(s) will be convened for consideration by a governors panel and will be conducted in line with the procedure set out in Appendix 3b and Guidance in Appendix 4.

### **6.0 First review meeting**

6.1 The first review meeting should be arranged during the normal working day, wherever possible, and for part time staff this meeting should be arranged on their working day and within their normal contracted hours. Every effort should be made to enable the employee to attend review meetings. If, however, the employee is unable or declines to attend, it may be appropriate for the meeting to proceed in their absence. It may be agreed that the employee could be represented by their recognised Trade Union in their absence. In such circumstances an explanation of the decision should be provided to the employee in the letter confirming the arrangements for the meeting.

6.2 It may be necessary to postpone the meeting for a period of no longer than 5 working days if the employee's trade union representative is unexpectedly and unavoidably unable to attend on

the planned date and it is not possible for a substitute representative to attend at short notice. In such cases the trade union is required to make every reasonable effort to provide the employee with a substitute representative so that the meeting can go ahead on the planned date.

6.3 The letter to the employee should include the following information relating to the review period:

- A summary monitoring report setting out the progress made against each target for improvement and any continuing areas of concern;
- A summary report setting out the support made available and accessed by the employee;
- Copies of evidence/documentation which the person conducting the meeting intends to refer to at the meeting;
- An opportunity for the employee to provide their own information/evidence;
- A reminder of their right to call witnesses and to be accompanied by their trade union representative or colleague.

### LETTER 3 - Invitation to First Performance Review Meeting

6.4 The first review meeting should be convened and conducted by the head teacher/chair of governors and will involve the monitoring officer, any witnesses, the HR advisor who will be available to provide procedural and advisory support and may include the person co-ordinating the support arrangements.

6.5 Where the head teacher has undertaken the monitoring role, immediate arrangements should be made for the outcome of the First Review Period to be considered by a panel of the governing body. The head teacher should present the monitoring evidence and call witnesses as appropriate. Where the head teacher is the subject of the performance concerns, reviews at each stage should be referred to an appropriately constituted governors' panel.

6.6 The review meeting will consider a detailed report from the monitoring officer and a summary report produced by the person nominated to coordinate the support arrangements. This should clarify what support has been offered, delivered and accessed by the employee

### 7.0 First review meeting - Possible outcomes

The outcome of this meeting will be one of the following :

#### 7.1 Performance standards met and transition back to appraisal.

The outcome of this meeting will be set out in the revision of the appraisal statement, if required. For support staff, normal support and supervision and/or appraisal process will resume. The school will keep the situation under review within appraisal for a period of one term to ensure that the progress made is sustained and that the required standards are maintained.  
LETTER 4a - Outcome of First Performance Review (Standards Met)

#### 7.2 Performance standards not met

It may be appropriate for the head teacher to consider whether or not a different balance of duties, or alternative post (at the same or reduced level of responsibility/pay), if available and, subject to the STPACD/school staffing structure would enable the employee to demonstrate the required improvement in performance. This may be explored at the review meeting.

7.3 Where a final written warning is issued, the appropriateness of the support in place should be reviewed at the meeting with the employee and their trade union representative or colleague. Where some targets have been met or part met, the monitoring will check that the improvement is sustained in the subsequent review period.

7.4 The arrangements for the next review period are extremely important and should be clarified at this meeting. It is recognised that dependant on the seriousness of the level of under-performance and the consequential effects on pupils and the management of the school, the second review period may be shortened if the circumstances justify it, e.g. where the education or safety of pupils is jeopardised or it becomes apparent that the required level of improvement is beyond the ability of the employee or where there is a lack of co-operation or a serious further deterioration in performance. In applying this procedure, no employee will be dismissed on the grounds of capability without having first received a warning. Such cases will be extremely rare and advice should be sought from the HR service before implementing such a timescale.

7.5 The employee and their representative should be provided with the opportunity to comment on the accuracy of the notes and be asked to return a signed copy to signify it represents a fair summary of the meeting.

### **8.0 First review period – Appeal against warning**

8.1 Governors involved in an earlier panel/appeal hearing need not necessarily be excluded from membership of the panel unless there is conflict of interest:

Letter 2c - Invitation to Governors Appeal Hearing (Written Warning / Final Warning)

8.2 The outcome of the appeal should be confirmed in writing and the employee should be provided with the opportunity to comment on the accuracy of the notes of the appeal hearing and asked to return a signed copy to signify it represents a fair summary of the meeting.

LETTER 4b - Outcome of First Review or Decision Meeting (required standards not met)

LETTER 4c - Outcome of First Review or Decision Meeting (required standards not met due to absence)

## **STAGE 3**

### **9.0 Second monitoring and review period**

9.1 The head teacher (or nominated senior leader) or chair of governors should ensure that the monitoring is delivered and support provided as agreed. The person appointed as monitoring officer (head teacher or delegated monitoring officer) will gather relevant evidence through, for example, observation of practice, discussions with the employee and the collection of other documentary evidence as appropriate throughout the review period.

9.2 The employee will be given prompt oral feedback by the monitoring officer on their performance after any monitoring activity or support sessions. Where this is undertaken by an appropriate external adviser, the head teacher will also be advised of the progress made in achieving the set targets. This initial oral feedback will be followed by a written statement given to the employee within a reasonable timescale. Where practicable, and where requested by

the employee, it may be useful to invite the person coordinating the support to these monitoring feedback sessions.

9.3 Full, written details of the observations, discussions, etc. will be kept together with all relevant documentation gathered, judgements made on progress and details of support given. Copies of this documentation will be given to the employee and, where requested, to their representative. Other reasonable information such as the employee's job description, timetable, work schedules, etc. should be sent promptly to the employee's representative, if this is requested.

9.4 It is expected that the employee will fully engage in the monitoring and support process to improve their performance. This includes proactively accessing and identifying the support available to improve their practice.

9.5 Towards the end of the second monitoring and review period, the member of staff will be reminded of the review date previously agreed and invited to the review meeting, unless they were issued with a final written warning, in which case they will be invited to a decision meeting (see below). Where the monitoring or support process is undertaken by the head teacher any review meeting(s) will be convened for consideration by a governors panel and will be conducted in line with the procedure set out in Appendix 3b and Guidance in Appendix 4.

#### **10.0 Second review meeting - decision meeting**

10.1 The decision meeting should be arranged during the normal working day, wherever possible, and for part time staff this meeting should be arranged on their working day and within their normal contracted hours. Every effort should be made to enable the employee to attend review meetings. If, however, the employee is unable or declines to attend, it may be appropriate for the meeting to proceed in their absence. It may be agreed that the employee could be represented by their recognised Trade Union in their absence. In such circumstances an explanation of the decision should be provided to the employee in the letter confirming the arrangements for the meeting.

10.2 It may be necessary to postpone the meeting for a period of no longer than 5 working days if the employee's trade union representative is unexpectedly and unavoidably unable to attend on the planned date and it is not possible for a substitute representative to attend at short notice. In such cases the trade union is required to make every reasonable effort to provide the employee with a substitute representative so that the meeting can go ahead on the planned date..

10.3 The letter to the employee should include the following information relating to the review period:

- A summary monitoring report setting out the progress made against each target for improvement and any continuing areas of concern;
- A summary report setting out the support made available and accessed by the employee;
- Copies of evidence/documentation the person conducting the meeting intends to refer to at the meeting;
- An opportunity for the employee to provide their own information/evidence;
- A reminder of their right to call witnesses and to be accompanied by their trade union representative or colleague.

## LETTER 5 - Invitation to Decision Meeting

10.5 This review meeting will involve the monitoring officer, the HR advisor who will be available to provide procedural and advisory support and may include the person co-ordinating the support arrangements. Where the head teacher is the subject of the performance concerns, the decision meeting should be referred to an appropriately constituted governors' panel.

10.6 The head teacher (as monitoring officer) will normally present the monitoring evidence to a panel of three governors, and may include members of a previous appeals panel so long as there is no conflict of interest. The head teacher will call witnesses as appropriate, to provide information about the monitoring and the support arrangements.

10.7 It may be appropriate for the head teacher at this point and /or governors at the hearing to re-consider whether or not a different balance of duties, or alternative post (at the same or reduced level of responsibility/pay), if available, subject to the STPACD, would enable the employee to demonstrate the required improvement in performance. This may be explored at any stage of the process.

10.8 The meeting will again consider an updated detailed report from the monitoring officer and a summary report produced by the person nominated to coordinate the support arrangements. This should clarify what support has been offered and accessed by the employee.

### **11.0 Second review meeting - Outcome**

The outcome of this meeting will be one of the following:

11.1 Performance standards met and transition back to appraisal.

The outcome of this meeting will be set out in the revision of the appraisal statement, if required. For support staff, normal support and supervision and/or appraisal process will resume. The school will keep the situation under review within appraisal for a period of one term to ensure that the progress made is sustained and that the required standards are maintained. The normal school support to aid progress during the review period should be arranged if requested:

### LETTER 6a - Outcome of Second Performance Review / Decision Meeting (Standards Met)

11.2 Performance standards not met

Where the employee has not fully met the required standards of performance the employee will be suspended, pending a hearing conducted by the appropriate governors' panel to consider dismissal. In suspending the employee, the Chair of Governors or the head teacher (or their delegated representative), should take account of the emotional impact of the suspension process and provide appropriate support.

11.3 The decision will be confirmed in writing to the employee.

### LETTER 6b - Outcome of Decision Meeting (required standards not met). Suspension and referral to a Governors Panel

11.4 The employee and representative should be provided with the opportunity to comment on the accuracy of the notes and be asked to return a signed copy to signify the notes represent a fair summary of the meeting.

## 12.0 Governors' hearing

12.1 Where an employee is invited to a meeting where dismissal is a potential outcome, the letter must be very carefully worded and should provide the required documentary evidence to the employee, their representative and the governors' panel.

12.2 This meeting will involve the monitoring officer, any witnesses, the HR adviser who will be available to provide procedural and advisory support and may include the person co-ordinating the support arrangements on behalf of the school. The meeting should be arranged during the normal working day, wherever possible, and for part time staff this meeting should be arranged on their working day and within their normal contracted hours and conducted in line with the procedure set out in Appendix 3b and Guidance in Appendix 4.

12.3 The local authority advice is that the decision to dismiss should not be made by a single person but should be delegated to a panel of three governors. The panel may comprise the members of any previous governors' appeal panel, providing there is no conflict of interest. Staff governors should therefore be excluded wherever possible and if there is any uncertainty about the composition of the panel advice should be sought from the school's HR adviser. Where the head teacher has conducted the review meeting(s) or undertaken the role of monitoring officer s/he should present the case for dismissal to the governing body panel/appeal panel. Where the head teacher has not conducted the review meeting(s) or undertaken the role as monitoring officer or support officer during previous review periods s/he may be a member of the governors' panel convened to consider dismissal.

12.4 Careful planning is required by the school to ensure that governors disciplinary hearings and appeals are properly constituted and arranged so that the process is fair to the employee and that there is no conflict of interest on the part of the members of the panel. In 2012, changes to the law allow governing bodies to have a minimum of 7 governors. In some circumstances, particularly where disciplinary panels are required, this may present difficulties in ensuring that the governing body has the required number of impartial governors for both the hearing and appeal. It is strongly recommended that staff members, wherever possible, are excluded from such panels/appeals. The overriding aim must be to avoid any conflict of interest in the constitution of the panel and to establish a panel which has balanced representation, normally consisting of three governors at both the hearing and appeal stages. Where the head teacher anticipates that there may be difficulties in establishing an appropriate panel the HR team should be contacted for advice.

12.5 The options available to governing bodies within the School Staffing Regulations to consider dismissal are as set out below:

For all Community, Voluntary Controlled, Community Special, and Maintained Nursery schools - the Corporate Director for Children, Family and Corporate Services and/or their appointed representative has the right to attend any hearing convened to consider dismissal or an appeal against dismissal, for the purpose of providing advice to the panel. Such advice will be given to the panel only and must be considered by the panel before making a decision. The school should, therefore, always consult the HR team before the arrangements for a dismissal hearing are confirmed.

The arrangements for the hearing

- The power to decide that members of staff should no longer work at this school rests with the Governing Body

12.6 The presenting officer will formally invite the employee and their representative to the hearing. The letter should include the following information relating to the review period:

- A summary monitoring report setting out the case for dismissal. The progress made against each target for improvement and any continuing areas of concern should be set out;
- A summary report setting out the support made available to and accessed by the employee;
- Copies of evidence/documentation which the person conducting the meeting intends to refer to at the meeting;
- An opportunity for the employee to provide their own information/evidence which should be submitted to the head teacher at least 5 working days in advance of the meeting so that it may be circulated to the panel and presenting officer in good time;
- A reminder of their right to call witnesses and to be accompanied by their trade union representative or colleague.

#### LETTER 7 - Invite to Disciplinary (Capability) Performance of Staff (Hearing with Governors))

12.7 Every effort should be made to enable the employee to attend review meetings. If, however, the employee is unable or declines to attend, it may be appropriate for the meeting to proceed in their absence. It may be agreed that the employee could be represented by their recognised Trade Union in their absence. In such circumstances, an explanation of the decision should be provided to the employee in the letter to the employee confirming the decision taken. The corporate director for Children, Families and Cultural Services or their representative should always be invited to attend a dismissal hearing in accordance with advisory rights conveyed upon the County Council.

12.8 It may be necessary to postpone the meeting for a period of no longer than 5 working days if the employee's trade union representative is unexpectedly and unavoidably unable to attend on the planned date.

12.9 At the hearing and any appeal the governors' panel should carefully consider the evidence presented by the school and the employee. If the panel judge that the employee has not fully met the required standards of performance, it will confirm with the employee the areas of their performance to which this judgement applies

12.10 To enable the appeal to be heard as soon as possible, the date will be agreed at this meeting with the employee and their representative or colleague present, the HR adviser and any witnesses providing at least 10 days' notice, unless an earlier date is mutually agreed.

12.11 The employee and their representative should be provided with the opportunity to comment on the accuracy of the notes and be asked to return a signed copy to signify they represent a fair summary of the meeting.

12.12 Action following a decision to dismiss

If the Governing Body has decided that the employee should no longer work at the school, it will confirm the decision made and indicate that an immediate recommendation will be made to the employer, Nottinghamshire County Council that the employee should be dismissed from their post, stating the reasons, the date on which the employment contract will end, the required

contractual notice period and confirmation of the right of appeal timescales and process.. Where the employee works solely at this school, the Local Authority must dismiss the employee within fourteen days of the date of the notification from the school. Where the employee works in more than one school, the local authority must require them to cease to work at this school.

LETTER 8a - Outcome of Hearing (Dismissal) with Notice and right of Appeal

LETTER 8b - Request from school for local authority to terminate employment contract (Community, Voluntary Controlled, Community Special, and Maintained Nursery schools only)

### **13.0 Second review period - Appeal against dismissal**

13.1 On receipt of the appeal notification, the Presenting Officer will arrange for the appeal to be heard by a further panel of the governing body whose members were not party to the original decision to dismiss. The number of governors on an appeal panel should equal the size of the original governors' dismissal panel.

13.2 The arrangements for the appeal hearing are very important as this meeting represents the final opportunity for the case to be considered within the remit of the school's internal procedures. The appeal should be heard as soon as possible and will be heard during the employee's notice period. The school should always consult the HR team before the arrangements for the dismissal appeal hearing are confirmed. This will ensure that an HR adviser is available to attend the appeal to provide advice and procedural support the governors' dismissal panel.

13.3 The presenting officer will formally invite the employee and their trade union representative or colleague to the appeal hearing. The letter should include the following documentation:

- A summary monitoring report setting out the case for dismissal. The progress made against each target for improvement and any continuing areas of concern should be set out;
- A summary report setting out the support made available and accessed by the employee;
- Copies of evidence/documentation the presenting officer intends to refer to at the meeting;
- Other documentation provided to the original governors hearing by the presenting officer;
- Copies of evidence/documentation provided by the employee/their representative prior to (or considered at) the original governors hearing;
- An opportunity for the employee to provide their own additional information/evidence which should be submitted at least 5 working days in advance of the appeal hearing so that it may be circulated to the panel and presenting officer in good time;
- A reminder of the employee's right to call witnesses and to be accompanied by their trade union representative or colleague.

LETTER 9 - Notification of Appeal Hearing

### **14.0 Outcome of Appeal Hearing**

14.1 The governors appeal panel should carefully consider the grounds of appeal and the evidence presented by the school and the employee. If the panel judge that the employee has not fully

met the required standards of performance, it will confirm with the employee the areas of their performance to which this judgement applies

14.2 If the decision is to uphold the decision to dismiss there will be no further rights of appeal against the Appeal Panel's decision other than to an Employment Tribunal if the employee has the required qualifying rights. (LETTER 10 - Outcome of Appeal - dismissal). Where the decision to dismiss the employee is not upheld, the suspension should be removed. The decision and the arrangements for the return to work should be confirmed in writing to the employee within 3 working days.

## **1. Roles and Responsibilities**

Before implementing the capability procedure it is important to establish the roles and responsibilities of each of the parties as defined below.

### **1.1 The Employee**

For teachers and support staff subject to a programme of support and monitoring their roles and responsibilities will involve them in:

- Being responsible for performing the duties of the post in accordance with the requirements of the job description and for teachers in line with the relevant national standards.
- Actively seeking to improve their practice by identifying support requirements and participating in the monitoring, review and support arrangements.
- Identifying their own sources of personal support and counselling outside of the formal procedure. It is expected that the employee will fully engage in the process of accessing support made available to them
- Contacting and briefing their trade union representative (or colleague) at the appropriate points in the procedures to ensure that professional support and representation is organised to attend review meetings/hearings at the agreed dates within the process.
- Keeping and maintaining records and evidence of their progress during the review periods and also of any written advice given to them
- Noting, responding to and make every effort to implement advice and support provided.

### **1.2 The School**

1.2.1 The school is normally responsible through its head teacher or chair of governors for implementing the procedures and for providing and managing the programme of monitoring and support. This will include carefully planning dates for meetings, review periods and governors hearings to comply with statutory notice periods. The specific roles e.g. monitoring officer may be delegated by the head teacher or chair of governors to another member of the senior management team or an appropriate external advisor. In the case of performance issues relating to the head teacher, the governing body is responsible for ensuring that the County Council is requested to undertake the monitoring and support on its behalf and for ensuring that governor panels are properly constituted by governors who are appropriately experienced and trained to undertake the role.

1.2.2. No formal action should be taken against a trade union representative until the circumstances of the case have been notified to the local secretary of the trade union concerned.

1.2.3. The role of the head teacher (in the case of other teachers/support staff) or chair of governors (in the case of the head teacher) is to ensure confidentiality and take account of the sensitivity of the situation including the welfare of the employee involved throughout the process.

1.2.4. The school is responsible for ensuring that the process is evidence based. Where the performance concerns have not been resolved within appraisal/support and supervision, the school is responsible for ensuring that the procedures are applied fairly. The application of the procedures requires a programme of monitoring and support.

1.2.5. The programme of monitoring should include the following:

- a. Informing the employee of the role and tasks of the identified monitoring officer/ adviser
- b. Undertaking an appropriate range of activities, including observation of performance, and other quality assurance activities to identify and assess the nature of the employee's difficulties so that the reasons for the programme of support and monitoring can be explained
- c. Informing the employee of the nature, content and timescales of the programme of monitoring, support and review
- d. Establishing clear and realistic targets and success criteria for the employee which can be objectively assessed through monitoring
- e. Identifying and briefing appropriate, named personnel within (or external to) the school to contribute to the programme of monitoring. If the role of monitoring officer is undertaken by an external adviser or senior leader within school, the head teacher can conduct, consider the evidence and make decisions on progress at the review meeting(s). If the head teacher undertakes the monitoring role, a panel of governors will need to conduct the review/decision meeting to assess progress towards the required standards of performance and confirm outcomes and issue warnings.
- f. Keeping a detailed written record of the monitoring undertaken and its findings, the support and advice given, notes of meetings/reviews and copies of any related correspondence
- g. Sharing written records with the employee and nominated representative, including the appraisal documentation within the terms of the agreement governing access to personal files and transparency of the process.

6. The programme of support should include the following:

- a. Informing the employee of the roles and tasks of the identified support personnel
- b. Providing every reasonable access to bespoke and targeted professional development opportunities
- c. Identifying and briefing appropriate, named personnel within the school to contribute to the programme of support. The school is responsible for ensuring that staff providing support clearly understand the remit and purpose of the support role which is to provide and/or coordinate the support activities and not to do the work for the employee. Every effort will be made to identify and agree the sources of support with the employee. Where an employee raises legitimate concerns about the nature of the support, the arrangements will be reconsidered by the head teacher
- d. Keeping a detailed written record of the support offered and accessed by the employee, any advice given, notes of support meetings and reviews and copies of any related correspondence
- e. Providing the employee with every reasonable opportunity to demonstrate that they are capable of meeting the required standards of performance (e.g. by allocating teachers an appropriate timetable in terms of class contact)

- f. Providing the employee with access to statements of school and departmental policies and practices as necessary
- g. Establishing an appropriately constituted review hearing and decision meeting so that disciplinary panels and appeals are managed in line with the agreed procedures.

### 1.3 The Governing Body

The governing body is responsible for ensuring that:

- a. This policy is adopted without amendment and communicated to staff and governors. Where the governing body amend the policy and/or guidance, they are responsible for consulting and negotiating any changes with staff and the secretaries of the recognised trade unions.
- b. Panel hearings and appeals are properly constituted, that governors prepare for meetings and that confidentiality relating to the procedures is observed at all times.
- c. Appropriate advice is sought from the local authority HR team at each stage of the process including review meetings, hearings and appeals
- d. In church schools, the Diocesan Director is informed in advance of any proposed action against the head teacher.

### 1.4 The County Council (NCC)

1.4.1. **The Education Improvement Service (EIS)** of the County Council can provide access to a comprehensive support programme for Nottinghamshire Schools and regularly updates the CPD matrix available on the following website: [www.nottsccl.gov.uk/cpd](http://www.nottsccl.gov.uk/cpd) The EIS will also:

- a. Support schools and in particular the chair of governors to manage performance concerns relating to the head teacher. In community or voluntary controlled schools, the chair of governors will inform the Strategic Director of Children, Families and Cultural Services before any action is taken against the head teacher. On request from the chair of governors, the Strategic Director for Children, Families and Cultural Services will nominate a senior officer and appropriate adviser to either manage or jointly manage with the chair of governors the process on behalf of the governing body. The HR Service will be available to provide procedural advice to the governing body at appropriate review and appeal meetings.
- b. Broker monitoring officer support for schools undertaking this process for members of the teaching staff, on request.

1.4.2. **The HR Service** will provide advice and guidance on procedural matters, employment and legal matters and advice to governing bodies on the application of the capability procedures at review meetings, hearings and appeals. The HR Service will also help the school to plan the timescales and dates for review periods to comply with statutory notice periods. The HR Service can also support schools to identify appropriate sources of support and professional advice regarding the monitoring of support staff through such agencies as the DSO Cleaning and Caretaking Services, Schools' Finance etc. Where necessary the HR Service will also support governing bodies to manage the process of redeployment.

### 1.5 Trade union

The recognised trade unions will ensure that:

- a. Employees who are members of their trade union receive appropriate and timely support throughout the process
- b. Every reasonable effort is made to attend meetings/reviews/hearings on the dates and times agreed. Where exceptionally meetings need to be re-arranged through urgent personal reasons, the trade unions will ensure that immediate contact is made with the school to explain the reason and a new date set within 5 working days of the original date.
- c. Employees understand the timescales and importance of preparing and attending meetings at the agreed date and time.

## **2. Confidentiality**

The appraisal and capability processes will be treated with confidentiality at all stages. This requirement does not impact on the quality assurance processes undertaken by the head teacher and the governing body on the operation, effectiveness and fairness of these procedures.

## **3. Recruitment and Selection**

The school's recruitment and selection process should be managed to maximise the opportunities to appoint and promote appropriately competent, capable and suitable employees to minimise the risk of performance difficulties arising. Job descriptions should accurately reflect the main purpose and scope of each job and person specifications should clearly define the type of experience, skills and abilities required. Job descriptions for teaching posts should make appropriate reference to the Teachers' Standards effective from 1 September 2012 and to existing standards relating to Advanced Skills Teachers (AST's), Excellent Teachers, Post threshold teachers, SENCO, subject leaders and head teachers. As schools must also take into account the requirements of the Equality Act and related codes of practice, they should seek advice from the HR Service regarding appropriate support for disabled applicants.

## **4. Induction**

All newly appointed staff should receive an appropriate and thorough induction programme to enable them to fully understand the requirements of the post and the standards of performance expected of them. Further guidance can be found on *Wired / HR Guidance (Schools) Community / Induction for School Staff*. For newly qualified teachers (NQTs), schools must comply with the statutory and County Council requirements for their induction. (See below). Part of this induction should include arrangements for appraisal (for teachers) and appraisal/support and supervision arrangements for all other staff.

## **5. Newly qualified teachers (NQTs)**

5.1 All newly qualified teachers are required to meet the standards necessary to obtain fully qualified status. Details of the NQT induction programme and support and monitoring arrangements can be found in the *Induction for School Staff* section of the *HR Guidance for Schools* and support is available through the EIS

5.2 It is recognised, however, that in exceptional cases the performance of the NQT may be giving serious concern because the education of pupils is at risk. In such cases advice should be sought as soon as possible from both the EIS and the HR service. Where it is agreed that further action needs to be taken, a performance meeting may be convened in line with the capability procedure. At that meeting consideration will be given to issuing a formal warning to the NQT and establishing performance targets to be met within a timescale of no more than 6

weeks. Although newly qualified teachers are not subject to the school Appraisal Policy they are required to be formally assessed on a termly basis and to have a comprehensive support system in place to address any performance issues identified during the induction period - which may be extended to ensure that they have been given every opportunity to succeed.

## **6. Probationary period - (Support Staff)**

For all school support staff who are new starters to local government service, it is important that the contractual probationary period is used to discuss any performance difficulties which arise as soon as possible. Where an employee is subject to a probationary period, extra attention should be made to ensuring they receive appropriate support to resolve any performance difficulties. Schools should seek advice from the HR service as soon as possible if they are unsure about an employee's status in relation to a probationary period or require guidance about conducting probationary reviews. Further information can also be found in the Induction for School Staff section of the HR Guidance for Schools located in WIRED.

## **7. Ill health**

7.1 In cases where the performance difficulties are linked to ill health it may be appropriate to seek medical advice through a referral to the Occupational Health Service to determine whether or not there are any adjustments required for the performance to improve. Advice should be sought from the HR Service at an early stage so that a decision can be made about an appropriate course of action.

7.2 In general, absences (both short and long term) should not necessarily impact on the application of the capability procedure. Where absence appears to be caused by the start of these procedures, the timescales within the procedures will continue and there should be an immediate referral to Occupational Health for advice on the condition, including the cause of the absence and timescale for recovery. Where the absence is long term, advice should be sought on how the school can engage with the employee during their absence as part of the continuation of the capability procedure. Depending on the nature of the illness, employees may find it difficult to attend review meetings or hearings/appeals. In such cases one option may be to provide the employee the opportunity to submit written documentation and/or to be represented by their trade union or colleague.

7.3 The procedures put in place to address the performance concerns should not be suspended as a result of sickness absence, other than in exceptional circumstances at the discretion of the head teacher/governing body. Such exceptional circumstances will include emergency hospitalisation, significant personal circumstances or urgent medical treatment. In some cases it may be appropriate to apply the attendance management procedures concurrently. NQT's are subject to particular regulations should they be absent for long periods.

## **8. Supply Teachers and Casual/Agency Staff**

Where the performance of a supply teacher (or other casual or agency staff) engaged by the school is causing concern, separate procedures will apply. Any such difficulties should always be discussed with the supply teacher/agency worker as soon as possible. It will be important to establish whether the school provided the supply worker with sufficient information, support and guidance to enable them to carry out their duties effectively and they should, if possible, be given an opportunity to improve their performance in the light of these discussions. If the problems still remain the matter should be discussed further with them before ending their placement at the school and, where relevant, informing the appropriate Agency. It will then be the responsibility of the Agency to formally address the issues and take any appropriate action

regarding their worker. Care should be taken to ensure that all teachers are appointed on the correct contractual basis and that supply staff do not remain employed on a relief basis inappropriately.

## **9. Fixed Term Contracts**

All staff employed on fixed term contracts should be recruited in line with the agreement on the use of such contracts. Staff should not be appointed on repeated fixed term contracts for convenience or for probationary purposes. In many cases, staff employed on fixed term contracts will accrue the same employment rights as permanent staff and advice should always be sought from the HR Service if schools are in any doubt as to the basis of the contract. The School Appraisal Regulations cover all teaching staff, except those on contracts of less than one term. However, all staff employed in the school, irrespective of the nature of their contract, should be subject to the principles within the Appraisal Policy and Guidance. Where performance concerns arise they should be identified and addressed through bespoke targeted support and application of the capability procedures as appropriate to the length of the contract.

## **10. Grievance**

Where an employee raises a grievance which is intrinsically linked to the application of the capability procedure, the remedy should be considered as part of the case and should not therefore frustrate the capability process and timescale. The employee is expected to raise any concerns immediately either during the period of review or at a review meeting or appeal. If the employee or their representative or colleague has any concerns about the manner in which the procedures are applied, they should immediately raise them with the head teacher or chair of governors as appropriate. These concerns should be addressed urgently by the school in the context of the capability procedure. If exceptionally, a grievance is raised which is not directly linked or relevant to the case, it should be addressed in accordance with the school grievance procedure.

## **11. Head teachers and performance issues**

In the case of a head teacher who is experiencing performance difficulties, the management of the monitoring and support function on behalf of the County Council will be undertaken by the Education Improvement Service (EIS) or other appropriate adviser within the Department nominated by the Corporate Director for Children, Families and Cultural Services and chair of governors. In such cases it will be the responsibility of the governing body to request the County Council to implement the Disciplinary (Capability) Performance Procedures on its behalf.

## **12 Personal Factors**

The school should consider whether the employee's personal circumstances may be a factor or the cause of the performance concerns. This may include personal factors outside of work, harassment, relationship difficulties in school, ill health or wellbeing issues, disability or other personal problems which may be linked to performance difficulties. In some circumstances it may be appropriate to seek further information, including medical advice from the Occupational Health Physician.

## **13. Appointment to another school and reference requests**

Where a teacher takes up an appointment in another school during the course of capability procedure, the procedure outlined in Appendix 2 should be followed.

## 14. References

14.1 References for all employees should be honest and truthful so that they can be objectively justified if challenged either by an employee or new employer.

14.2 The School Staffing (England) (Amendment) Regulations effective from 1 September 2012 require governing bodies of maintained schools to confirm, if asked for a reference by a prospective employer, whether or not a member of the teaching staff has, within the last two years, been the subject of capability procedures. This places a statutory responsibility on the governing body to provide prospective employers with teacher references which comply with this requirement.

14.3 On receipt of such requests, head teachers must:

- Advise in writing whether or not the teacher has, in the preceding two years, been the subject of the capability procedure; and
- Provide written details of the nature of the concerns, the duration of the proceedings and the outcome.

## 15. Referral to the Teaching Agency

*The National College for School Leadership (NCSL) operates as the national regulator for the teaching profession, on behalf of the Secretary of State. Employers, including local authorities, academies and free schools are **not** required to report cases of incompetence to this agency. Since 1<sup>st</sup> April 2012 only cases of serious misconduct will be considered for a prohibition order. Higher Level Teaching Assistants and other support staff are not covered because they operate under the supervision and direction of a teacher. Support staff who work regularly and directly with children will be covered by the barring procedure operated by the ISA. Given this change to the regulatory framework it is now more important for teacher references to include details of performance concerns accurately (see below).*

## **Appendix 2 - APPOINTMENT OF A TEACHER TO ANOTHER SCHOOL DURING THE DISCIPLINARY (CAPABILITY) PROCEDURE**

### **1. Appointment to another school**

1.1 If a teacher who is subject to the Disciplinary (Capability) Performance procedure at one school resigns to take up a new post at another school, it is essential that the receiving school is made aware of the circumstances and current status of the monitoring procedure in relation to the applicant. This is a legislative requirement and the School Staffing Regulations 2012 require the Governing Body of a maintained school to confirm to a prospective employer whether or not a member of the teaching staff has, within the last 2 years, been the subject of capability procedures. References that accompany the application of an employee who is currently subject to performance monitoring should be explicit about the status of the performance monitoring and areas of concern. Such references must be shown to the teacher concerned as required by the County Council and/or school's own policy on references

1.2 A fresh start may enable the teacher to improve their performance and/or sustain improvements made under the previous school's capability procedures. However, this guidance outlines the procedure to be followed where a school has appointed a teacher who was subject to the capability procedure at the time of their appointment to the new school and where subsequent concerns arise regarding their performance.

1.3 The reasons for the poor performance and consequent monitoring should be explored at interview with the teacher and, if necessary, further clarification should be sought from the head teacher of their current school before a decision to appoint is made or confirmed. However, it is important to draw a distinction between those employees who have been subject to performance monitoring at some time in the past and have improved their performance to the extent that they are no longer subject to monitoring and those who are subject to current school procedures at the time of application and/or appointment to the new school. In particular spent warnings relating to performance monitoring should not be mentioned in references unless they are within the previous two years, as per the legislative requirement.

1.4 If the school decides to appoint a teacher who is currently subject to formal monitoring, it should be made clear to the employee that the new school:-

- a) Will seek to support the member of staff as far as possible in line with the school's appraisal policy and/or capability procedure.
- b) Will take into account any live warnings issued by the previous school if performance difficulties arise which require the implementation of the new school's performance procedures. In particular, the status of the earlier warnings may be used to determine the stage at which performance monitoring should begin.

1.5 As with any new appointment, effective line management, opportunities for professional development and appropriate induction procedures will need to be arranged on appointment. In cases where it is known that the teacher had performance difficulties in their previous post, the school should take particular care to ensure that written records are kept of the induction programme, the application of the appraisal procedure and any professional development opportunities offered and/or undertaken by the teacher.

## **2. Performance Difficulties**

2.1 If concerns arise about an individual's performance following their appointment in line with the procedures outlined above, the head teacher should first seek to address these through the school's appraisal procedure. If the concerns are not resolved, the head teacher should discuss the matter with an EIS Adviser and a senior officer of the HR team. The school should seek advice on how, if necessary, the transition from appraisal to capability should be managed in these circumstances.

- a) Prior to appointment the head teacher of the new school should request information from the previous school to clarify the evidence relating to the performance concerns, including information relating to additional cycle(s) of targeted support within appraisal and/or the outcome(s) of the disciplinary (Capability) Performance procedures.
- b) In order to make a decision about whether or not the formal procedures should be applied, EIS/HR Team may be asked to assist the head teacher in identifying weaknesses that are common to the previous monitoring procedure and those which have only been identified since the teacher's appointment to the new school;
- c) On appointment the head teacher should consider the setting of performance targets and success criteria. These may be the same as those used by the previous school; a decision should be made in the light of the evidence and the level of support already provided, as to whether these concerns should be addressed within appraisal or within the Disciplinary (Capability) Performance Procedures.

2.2 The HR Team should therefore be contacted for advice and information regarding the level of warning issued by the previous school, the relevance of such warnings and the extent to which these should be taken into account in the new school's capability procedure. The HR Service will also be able to give advice regarding the appropriate stage at which the monitoring procedures should begin and the timescale to be adopted.

2.3 The timescale adopted in the monitoring procedure will reflect the seriousness of the lack of capability by the teacher, the nature of the performance weakness and other factors as outlined in the main section of the procedure.

## **3. Continuing Unsatisfactory Performance**

3.1 Depending on the seriousness of the level of under-performance and the consequent effects on school effectiveness, a higher degree of warning may be given at any stage of the procedure where:

- a) The teacher has failed to meet the targets set in a formal stage of these procedures at their previous school, and
- b) Has subsequently been unsuccessful in meeting identical or very similar targets at the new school

3.2 The head teacher and governors should take account of any live warnings issued by the previous school in deciding the appropriate level of warning to be issued. This means that the overall length of time to address the teacher's performance difficulties will not necessarily be extended by a move to another school. However, it should be noted that no individual should be dismissed by the County Council on the recommendation of a governing body on the grounds of capability without first having received a formal warning from that same governing body; and having been given the right of appeal.

**In every other respect, bearing in mind this additional guidance, the capability procedure applies throughout any subsequent performance monitoring implemented by the receiving school.**

## **Appendix 3a - Disciplinary (Capability) Performance Procedure**

### **The Performance Meeting**

#### **Order of events**

1. The head teacher (or senior leader nominated by the head teacher) or chair of governors (in the case of head teacher) will chair the meeting. The purpose of the performance meeting is to establish the facts and determine an appropriate way forward.
2. The head teacher will explain the nature of the performance concerns. The appraiser may be asked to attend the meeting to expand on the performance concerns and explain what steps have been taken to support the employee and address the concerns within appraisal/support and supervision.
3. The employee will be provided with an opportunity to respond to the evidence relating to the concerns about their performance and to make any relevant representations, supported as appropriate by their trade union representative or colleague.
4. There will be a brief adjournment, during which the head teacher (or their nominated senior leader) or chair of governors will consider the evidence and decide on the way forward.

## Appendix 3b – Review Meeting / Governors Hearing Procedure

### DISCIPLINARY (CAPABILITY) PERFORMANCE PROCEDURE - PERFORMANCE OF SCHOOL STAFF

#### REVIEW MEETING / GOVERNORS' HEARING Order of Events

1. Monitoring officer presents the case to Head Teacher/Panel<sup>1</sup>.
2. Questions from employee and/or employee representative.
3. Questions from Head Teacher/Panel.
4. Employee (or representative) presents their case to Head Teacher/panel<sup>2</sup>.
5. Questions from monitoring officer.
6. Questions from Head Teacher/Panel.
7. Monitoring officer sums up.
8. Employee (or representative) sums up.
9. Both parties withdraw.
10. Head Teacher / Panel reviews evidence/makes decision.
11. All parties reconvene. Decision given to employee.
12. Decision confirmed to employee in writing within 3 working days (including notice of right to lodge appeal within 10 working days - if appropriate).

#### N.B.

- Where the adviser is the monitoring officer, s/he will present the case to the head teacher.
- If the head teacher assumes the role of monitoring officer he/she will present the case to a panel of 3 governors who will decide on the outcome. The same panel of governors may then hear any subsequent reviews. Where the decision meeting is chaired by the head teacher s/he will present the case for dismissal to a governors' panel, calling witnesses as appropriate.
- Where the head teacher is subject to these procedures the Local Authority monitoring officer will present the case to a panel of 3 governors who will determine the outcome.

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<sup>1</sup> Where the head teacher/presenting officer calls a witness to support the management case, the following procedure applies :

- The witness will be asked questions by the presenting officer
- The witness may be asked questions by the employee or his/her representative or colleague.
- The witnesses may then be asked further questions by the head teacher/presenting officer.
- Members of the Disciplinary Panel may ask questions of the head teacher/presenting officer and witnesses on the evidence submitted.

<sup>2</sup> Where the employee or representative/ colleague calls a witnesses in support of his/her case, the following procedure applies :

- The witnesses will be asked questions by the employee / representative or colleague.
- The witness may then be asked questions by the presenting officer.
- The witnesses may then be asked further questions by the employee, representative or colleague.
- Members of the Disciplinary Panel may ask questions of the employee and her/his representative or colleague and witnesses on the evidence submitted.

**Note:** After completion of the above stages any witnesses will be:

- a) Instructed not to discuss the case in any way until after the hearing has been determined
- b) Asked to retire. Unless otherwise determined by the parties to the hearing, the witnesses may be subject to recall

## **Appendix 4 Guidance on governors' hearing**

### **DISCIPLINARY (CAPABILITY) PERFORMANCE - PERFORMANCE OF SCHOOL STAFF**

#### **GOVERNORS' PANEL HEARING**

1. It is recommended that the Disciplinary (Capability) Performance Panel should normally comprise three governors drawn, where possible, from the Pupils and Personnel Committee. In line with the 2003 School Staffing Regulations, the head teacher is also able to take such disciplinary decisions, if s/he is not acting as the presenting officer at the hearing and has not undertaken the role of monitoring officer or chaired the previous review hearings. In relation to the 2003 Staffing Regulations regarding disciplinary decisions, the County Council strongly advises schools that dismissal decisions are best made by a panel rather than by one person acting alone. It is therefore recommended that the panel should also include two governors. In cases where the head teacher will be involved in a hearing convened to consider dismissal. The selection of governors must also ensure that there is no conflict of interest which may arise in hearing the case. Staff governors should not be involved, where there is a potential conflict of interest.
2. The date of the disciplinary hearing should be agreed with the employee as soon as possible and at least 10 working days before the due date, unless an earlier date is mutually agreed between the parties. The employee should be given the opportunity to send any written submission of evidence to the Panel prior to the hearing. A copy of any submission should also be made available to the head teacher/presenting officer and the monitoring officer/adviser. The head teacher/presenting officer or monitoring officer/adviser should always submit the monitoring and support outcome report in writing to the panel with a copy to the employee. This must be sent in time to ensure this is received by the employee at least 10 working days before the date of the hearing, unless an earlier date is mutually agreed between the parties.
3. The date of the disciplinary hearing should always be determined in consultation with the person undertaking the monitoring and the HR Service to ensure that (a) an appropriate officer is available to attend and advise the panel on any procedural aspects or matters of employment law, (b) the employee's trade union or colleague is available to attend. For community schools, it is the panel's duty to consider the advice given by the County Council. This is particularly important where the hearing or appeal relates to a decision to dismiss.
4. At the hearing the head teacher/presenting officer will be responsible for presenting the evidence to the disciplinary panel in the presence of the employee and their trade union representative or colleague. Witnesses may be called individually by the head teacher/presenting officer in support of the case e.g. monitoring officer/adviser/person responsible for coordinating support.
5. The head teacher/presenting officer and any witnesses called may be asked questions by the employee or his/her representative.
6. The witnesses may then be asked further questions by the head teacher/presenting officer.
7. Members of the disciplinary panel may ask questions of the head teacher/presenting officer and witnesses on the evidence submitted.

**Note:** After completion of the above stages the witnesses will be:

- a) Instructed not to discuss the case in any way until after the hearing has been determined
  - b) Asked to retire. Unless otherwise determined by the parties to the hearing, the witnesses may be subject to recall
8. The employee or representative will state her/his case in the presence of the head teacher/presenting officer. Witnesses may be called by the employee in support of her/his case.
  9. The employee and any witnesses called may then be asked questions by the head teacher/presenting officer.
  10. The witnesses may then be asked further questions by the employee or representative.
  11. Members of the disciplinary panel may ask questions of the employee and her/his representative and any witnesses called. **Note:** After completion of the above stages the witnesses will be:
    - a) Instructed not to discuss the case in any way until after the hearing has been determined
    - b) Asked to retire. Unless otherwise determined by the parties to the hearing, the witnesses may be subject to recall
  12. The head teacher/presenting officer shall then have the opportunity to sum up the case against the employee.
  13. The employee or her/his representative shall have the opportunity to sum up on her/his behalf and offer the disciplinary panel details of any mitigating circumstances she/he would wish to be taken into account.
  14. The employee, trade union representative/colleague and head teacher/presenting officer shall then withdraw.
  15. The disciplinary panel (together with the HR adviser and any other officer(s) acting as clerk/secretary to the panel) will then deliberate in private, only recalling the employee (and her/his representative) and the head teacher /presenting officer to clear points of uncertainty on evidence already given. If recall is necessary, both parties will return, notwithstanding that only one of them is concerned with the point giving rise to doubt.
  16. After deliberating, the disciplinary panel will announce the decision to the employee, representative and head teacher/presenting officer personally. Any right of appeal against the decision will also be explained. The panel will formally write to the employee within three working days confirming the decision and any appeal rights.
  17. **APPEALS**

The procedure outlined above will also be followed to hear any appeals against decisions of formal, final warnings or dismissal given by head teachers or disciplinary panels.
  18. See appendices for appropriate letters

## Appendix 5: Model Letters – Disciplinary (Capability) Performance Procedures

These framework letters are included to assist the management of these procedures. However, they should be amended as appropriate to the specific circumstances of each case

Letter 1	Invitation Disciplinary (Capability) - Performance Meeting
Letter 2a	Outcome of Performance Meeting - Further cycle of support within Appraisal
Letter 2b	Outcome of Performance Meeting - First Review Period (Written Warning)
Letter 2c	Invitation Governors Appeal Hearing - (Written Warning)
Letter 3	Invitation to First Review Meeting
Letter 4a	Outcome of First Review Meeting: Required standards met
Letter 4b	Outcome of First Review Meeting - Final written warning
Letter 4c	Outcome of First Review Meeting: Insufficient progress due to sickness absence
Letter 5	Invitation to Second Review (Decision) Meeting
Letter 6a	Outcome of Second Review (Decision) Meeting: Required standards met
Letter 6b	Outcome of Second Review (Decision) Meeting: Insufficient Improvement (suspension and referral to governors' panel)
Letter 6c	Outcome of Second Review (Decision) Meeting: Insufficient progress due to sickness absence (suspension and referral to governors' panel)
Letter 7	Notification of Disciplinary Hearing (Governors' Panel)
Letter 8a	Outcome of Governors' Hearing - Dismissal with notice and right of Appeal
Letter 8b	Formal Request for County Council to terminate contract of employment (Community Schools only)
Letter 9	Notification of Appeal Hearing (Against Dismissal)
Letter 10	Outcome of Appeal Hearing - Appeal against dismissal
Letter 11	Confirmation of outcome of review of warning

## Letter 1: Invitation Disciplinary (Capability) - Performance Meeting

### PERSONAL

Name  
Address

Dear (Name)

### **(Name of) School Disciplinary (Capability) Procedure - Performance of School Staff**

Following our recent discussions I informed you of my continuing concerns regarding your performance and this letter confirms the commencement of the first stage of the capability procedure. You are therefore required to attend a performance meeting within the agreed Disciplinary (Capability) Procedure - Performance of staff; a copy of this procedure is available in school in (place) for your information. The purpose of the meeting is to:

- 1 Explore the identified performance concerns and clarify the standards required for your role
- 2 Consider and review the evidence relating to the concerns about your performance in the context of the two periods of additional support and monitoring provided to you within the school appraisal process. This will include consideration of evidence relating to in school monitoring and within appraisal.
- 3 Provide an opportunity to discuss the evidence and determine the appropriate way forward

The meeting will be with myself (Head Teacher or nominee), (Name, Monitoring Officer) and (Name) HR advisor and will be held in (place) on (date at least 5 working days' notice) and (time). Notes will be taken of the meeting and the outcome may be a decision to commence the first monitoring and review period of the capability procedure. You are strongly advised to be accompanied by a trade union representative or colleague.

You are entitled to receive copies of relevant information/documents which will be considered at the meeting. I attach for your information copies of relevant information:

e.g.:

- Copies of appraisal statements
- Review meeting discussions and outcomes
- Concerns identified, additional support provided and outcomes
- Other evidence

If there is any additional documentation you would like me to consider at the meeting, please let me have this by (date) so that I can circulate copies prior to the meeting. You may, if you wish, call witnesses to support your case and, if this is your intention, please let me know by the above date so that I can make arrangements to accommodate them.

Specifically, the meeting will consider your performance in relation to (insert list of details of identified concerns).

[For teachers - the concerns should be set out in line with the relevant Teachers' Standards, according to the teachers' career stage, role and responsibilities and job description

For support staff - the concerns should be identified in line with their job description, their role and responsibilities and post job evaluation profile.]

- a
- b
- c
- d

Following a consideration of the evidence, there will be an adjournment to determine an appropriate way forward. If the decision is taken to begin formal monitoring procedures the meeting will then:

- i) Set appropriate and reasonable performance targets and success criteria.
- ii) Ensure that areas of concern are identified which should be specific, clear and capable of being assessed for achievement.
- iii) Give clear guidance on the standards to be achieved/targets to be met.
- iv) Determine the monitoring procedure and monitoring officer.
- v) Agree an outline of the support to be provided and by whom.
- vi) Set the review period; a timetable for monitoring progress during the first review period and the review date.

I must warn you that if a decision is taken to commence the performance procedures. an outcome of this meeting could be a decision to issue you with a written warning.

Please confirm by (date) that you and your trade union representative or colleague will attend the meeting.

Yours sincerely

Head Teacher

Copy to:                    (Name) HR Case Officer  
                                  (Name) EIS or appropriate adviser  
                                  (Name) Trade Union Representative / Colleague

## Letter 2(a) Outcome of Performance Meeting - Further cycle of support within Appraisal

### PERSONAL

Name

Address

Dear (Name)

### **School Disciplinary (Capability) Performance Procedure Performance Meeting Outcome - Further cycle of support within Appraisal**

I wish to confirm the outcome of the performance meeting on (date), with myself, (name of HR adviser) and your representative (name, trade union / Colleague) **or** (despite being advised of your right to representation you chose not to exercise it). The meeting was arranged within the framework of the school's Disciplinary (Capability) Performance Procedure - Performance of School Staff.

During the meeting:

- 1 Reference was made to the following areas of concern raised with you about your performance within the Appraisal Policy: (State concerns set out in line with the relevant Teachers' Standards, role, responsibilities and job description)
  - a)
  - b) etc.
  
- 2 Reference was made to the two cycles of additional support provided to you in light of these concerns (provide detail)

The decision of the meeting was to provide an additional period of support and monitoring within the appraisal process. We have agreed to review the concerns about your performance on (date/time). I hope this additional period of support will fully resolve these performance concerns but I must warn you that if the decision is taken to commence the capability procedures, an outcome of the next review could be to issue you with a warning.

The additional support identified is summarised below and included within your appraisal statement.

Yours sincerely

Head Teacher

Copy to           HR case officer (Name)  
                      EIS or appropriate adviser  
                      Trade Union Representative / Colleague

## Letter 2(b) Outcome of Performance Meeting - First Review Period.

### PERSONAL

Name

Address

Dear (Name)

### **School Disciplinary (Capability) Performance Procedure - Commencement of First Review Period**

The purpose of this letter is to confirm the outcome of the Performance meeting held on (date), with myself, (name of HR adviser) and your representative (name, Trade Union) **or** (despite being advised of your right to representation you chose not to exercise it). The meeting was arranged within the framework of the school's capability procedure and the outcome was a decision to suspend the schools' appraisal process and commence a formal period of monitoring and support. This review period will last for (number) weeks between \_\_\_\_\_ (date) and \_\_\_\_\_ (date). The review meeting has been arranged for (date) at (time) in (place) at which your progress towards attaining the required standard of performance will be assessed.

At the meeting the following details were recorded:

[For teachers - the concerns should be set out in line with the relevant Teachers' Standards, according to the teachers' career stage, role and responsibilities and job description

For support staff - the concerns should be identified in line with their job description, their role, responsibilities and post job evaluation profile].

1. The areas of concern where an improvement in your performance is required in the following areas:
  - a)
  - b) etc.
  
2. The following performance targets and success criteria were set:
  - a)
  - b) etc.
  
3. The monitoring procedure will be undertaken by (name/role) and will involve (give details)
  
4. Support will be provided by (name/role) and will involve (give details)

[Either: The review date has been agreed with yourself in the presence of your trade union representative / colleague (either/or who has confirmed their availability at the time and date agreed or has confirmed that they are unable to attend on the date agreed but has agreed to ensure an alternative representative will be appointed to represent you. The representative (TU and name) has agreed to confirm the name to you and the school within the next 5 working days, OR

You were not represented at the meeting.]

You are strongly advised to be accompanied at the next review by a trade union representative or a colleague. You will receive written reminder of this meeting no later than 5 days before the agreed date along with copies of the evidence to be considered at the meeting.

In light of the above, this letter confirms the decision to issue you with a written warning/final written warning (delete as required) that your current performance is not at the required standard and that failure to achieve and maintain the required standard will result in the performance monitoring procedure continuing. Continued failure to meet and maintain the required standards could result in your dismissal on the grounds of capability. The warning will remain on your personal file for a period of 12 months after which it will be reviewed.

You have the right of appeal against this decision and if you wish to appeal you may do so by notifying me in writing at the above address within 10 working days ie. by (date) stating briefly the grounds of your appeal. If you wish to submit additional papers in support of your appeal these should also be received by the above date. You will then be offered the opportunity to be heard in person by the governors' appeal panel accompanied, if you so wish by your trade union representative or a colleague. A provisional date for the appeal hearing has been set for (+ 15 working days' time) and will take place at (location/room) on (date at time). The papers for the appeal will be the same as those presented for this meeting and will be made available to the panel of governors should it be required.

Yours sincerely

Head Teacher

Copy to (Name) HR Case Officer  
(Name) EIS or appropriate adviser  
(Name) Trade Union Representative / colleague

**Letter 2(c): Invitation to Governors Appeal Hearing (Written warning)**

**PRIVATE AND CONFIDENTIAL**

**Name**

**Address**

Dear \*\*

**Disciplinary (Capability) Performance Procedure - Governors' Appeal Hearing**

Further to the Performance Meeting / First Review Meeting / Second Review (delete as required) Meeting held on \* and to my letter dated \* informing you of the decision to issue you with a written / Final written warning, I understand from your letter dated \* that you now wish to appeal against this decision.

In accordance with the school's capability procedure I wish to inform you that I have arranged a meeting to consider your appeal. A copy of the disciplinary procedure is available in school in (location). If you require a copy please let me know. The meeting will be with myself and an Appeal Panel of the Governing Body and will be at \* on \*. (Add as appropriate \*\* will also be present to give evidence about the outcome of the monitoring and \*\*\* will be present to give information about the support offered and accessed by you)

You are entitled to receive copies of relevant information/documents which will be considered at the meeting. (List and send all of the information as previously sent out for the performance meeting / review meeting and information supplied by the employee).

I attach for your information copies of relevant information (examples below: information to be listed)

- Copies of appraisal statements
- Review meeting discussions and outcomes
- Concerns identified and additional support provided during the two periods of additional support
- Other evidence
- Outcome letter from previous meeting

Specifically, the meeting will consider your performance in relation to (insert list of details of identified concerns)

- a
- b
- c
- d

If there is any additional documentation you would like the panel to consider at the meeting, please let me have this by (+5 days before the meeting date) so that I can circulate copies prior to the meeting. You may, if you wish, call witnesses to support your case and, if this is your intention, please let me know by the above date so that I can make arrangements to accommodate them.

I would like to take this opportunity to inform you that you have the right to be represented at this meeting by your trade union representative or colleague. I must warn you that if a decision is taken to commence formal performance procedures an outcome of this meeting could be a decision to issue you with a written warning/final written warning.

Please confirm by (date) that you and your representative will be attending.

Yours sincerely

Head Teacher

Copy to:                    (Name) HR Case Officer  
                                  (Name) EIS or appropriate adviser  
                                  (Name) Trade Union Representative / Colleague

## Letter 3 Invitation - First Review Meeting

### Stage 1 and 2

#### PERSONAL

Name

Address

Dear (Name)

#### **School Disciplinary (Capability) Performance Procedure - Performance of School Staff - First Review Meeting**

Further to the completion of the First Review period on (date) I wish to inform you that you are required to attend a Review Meeting within the framework of the school's Capability Procedure - Performance of School Staff. The purpose of this meeting is to consider the concerns relating to your performance. A copy of this procedure is available in school in (place) for your information.

The meeting will be with myself (head teacher or nominee) and (monitoring officer) and (HR officer's name). At the start of the review period you were informed that the meeting will be held in (place) at the school on (date) at (time). (Add as appropriate - (name) will be present to give evidence about the monitoring undertaken during the review period and (name) will provide details of the support made available to you.) Specifically, the meeting will consider your progress towards meeting the performance targets and success criteria set at the start of the monitoring and review period and the evidence relating to the support made available and accessed by you.

Specifically, the meeting will consider your performance in relation to (insert details of the identified performance concerns and agreed success criteria as set out at the start of the Review period):

- a
- b
- c
- d

Within the provisions of the school's procedure you are entitled to receive copies of the documents which will be considered at this Review Meeting. I attach, for your information, copies of the following documents as appendices:

- Copy of the outcome letter from the performance meeting
- Summary Report: (to include monitoring information detailing progress made against each of the targets for improvement/success criteria)

- A report setting out the support agreed at the start of the review period and the extent to which this has been provided to and accessed by you during the review period
- Copies of all evidence documents to support the conclusions reached in the monitoring report relating to the review period which will be referred to during the meeting including observation reports, work scrutiny, analysis of performance data and other school evaluation evidence,
- List documents submitted by employee.

If there is any additional documentation you would like to be considered at the meeting, will you please let me have this by (date + 5 working days before the meeting ) so that I can circulate copies prior to the meeting.

You may, if you wish, call witnesses to support your case and, if this is your intention, please let me know in advance of the meeting so that arrangements can be made to accommodate them. I must advise you that if there is insufficient improvement in your performance, an outcome of this meeting could be a decision to issue you with a further warning within the school procedure.

You have the right to be accompanied at this meeting by your trade union or colleague and a copy of this letter and documentation has been sent to (name of TU Rep), your (name of union) representative/colleague. Notes will be taken of the meeting.

Please confirm by \*(date) that you will be attending the meeting on the date and time previously agreed with you and notified to you in my letter (dated).

Yours sincerely

Head Teacher

Copy to: (Name) HR Case Officer  
(Name) EIS or appropriate adviser  
(Name) Trade Union Representative / Colleague

Enclosures: Summary report  
Supporting documentary evidence (as appendices)

**Letter 4a Outcome of First Review Meeting - Required standard achieved and end of Disciplinary performance monitoring and review process**

**PERSONAL**

Name

Address

Dear (Name)

**School (Capability) Performance Procedure - Outcome of First/Second Review / Decision Meeting**

Following the completion of the (first/second) review period, a meeting with myself and (name of adviser and name HR officer) was held on (date) to review your progress. The meeting was attended by yourself and your representative (name, trade union / colleague) or despite being advised of your right to representation you chose not to exercise it. The meeting was arranged within the framework of the school's Disciplinary (Capability) Performance Procedure for School Staff.

I am pleased to confirm that based on the evidence available I and (name of monitoring officer) agreed that the improvements are significant, such that your performance is now at the required standard. I am pleased to confirm therefore that the formal performance procedures and programme of monitoring and additional support will end. However, to ensure that the standard is maintained the school will keep this situation under review for one term and (name, adviser/ monitoring officer) will remain in touch, visiting as appropriate to ensure that progress you have made is sustained. (For teachers) I can confirm that the school's appraisal procedure will re-start and the (revised) objectives and success criteria discussed and agreed at the performance review meeting will apply in line with the appraisal cycle. The revised Appraisal statement is attached.

The \* warning issued to you (date) will remain live on your file for a period of twelve months and I must advise you that any further instances concerning your performance may lead to further formal action under the capability procedure.

CONCLUDE LETTER - (You may wish to add a personalised paragraph re success in meeting targets and hoping for the improvement to be sustained).

Yours sincerely

Head Teacher

Copy to:                    (Name) HR Case Officer  
                                  (Name) EIS or appropriate adviser  
                                  (Name) Trade Union Representative/colleague

## Letter 4b Outcome of First Review Meeting - Final Written Warning

### PERSONAL

Name

Address

Dear (Name)

Dear (Name)

### **School Disciplinary (Capability) Performance Procedure - Outcome of \* First Review Period**

The purpose of this letter is to confirm the outcome of the Review Meeting held on (date), with myself, (name of HR adviser) and your representative (name, Trade Union) **or** (despite being advised of your right to representation you chose not to exercise it). The meeting was arranged to consider the outcome of the First Review Period arranged within the framework of the school's capability procedure

At the meeting reference was made to the concerns about your performance in relation to (For teachers - the concerns should be set out in line with the relevant Teacher's Standards, according to the teachers' career stage, role and responsibilities and job description. For support staff - the concerns should be identified in line with their job description, their role, responsibilities and post job evaluation profile).

During the meeting it was also recorded that: progress has been made in the following areas:-

- a)
- b)

It is expected that the improvements made will be sustained during the remaining period of monitoring and support.

However, it was also recorded that your performance in relation to the following performance targets and success criteria has not yet reached the required standard: (insert detail). Performance targets and success criteria to be achieved during next review period are:

- c
- d etc.

The monitoring procedure will be undertaken by (name/role) and will involve the following activities (give details)

- 
- 

It was agreed that the following support programme/activities would be put in place/managed by and delivered by (who)(when) give details of support

As your performance is not yet at the required standard due to insufficient progress being made against the agreed improvement targets it was agreed that a second and final review period was necessary and that a **final written warning** be issued to you in respect of your (capability) performance. This second review period will last for six weeks and commence on (date) and end on (date). The warning will remain on your personal file for a period of 12 months, after which

time it will be reviewed. Given the above warning, I must advise you that unless there is a sustained improvement in your performance at work you may be referred to a formal hearing at which you may be dismissed from your employment on the grounds of capability.

[Amend as necessary [Either: Your representative has confirmed their availability at the time and date **agreed OR** has confirmed that they are unable to attend on the date agreed but has agreed to ensure an alternative representative will be appointed to represent you. The representative (TU and name) has agreed to confirm the name to you and the school within the next 5 working days, **or** you were not represented at the meeting.]

You are strongly advised to be accompanied at the next review by a trade union representative or a colleague. You will receive written reminder of this meeting no later than 5 days before the agreed date along with copies of the evidence to be considered at the meeting.

You have the right of appeal against this decision and if you wish to appeal you may do so by notifying me in writing at the above address within 10 working days i.e. by (date) stating briefly the grounds of your appeal. If you wish to submit additional papers in support of your appeal these should also be received by the above date. You will then be offered the opportunity to be heard in person by the governors' appeal panel accompanied, if you so wish, by your trade union representative or a colleague. A provisional date for the appeal hearing has been set for (+ 15 working days time) and will take place at (location/room) on (date at time).. The papers for the appeal hearing will be circulated in due course **or** the papers for the appeal meeting are those previously circulated, including papers submitted by yourself. You may, if you wish, call witnesses to support your appeal and, if this is your intention, please let me know in advance.

Yours sincerely

Head Teacher

Copy to            (Name) HR Officer  
                      (Name) EIS or appropriate adviser  
                      (Name) Trade Union Representative / colleague

## **Letter 4c Outcome First Review Meeting: Insufficient progress through sickness absence**

### **PERSONAL**

Name

Address

Dear (Name)

### **School Disciplinary (Capability) Procedure - Performance of School Staff - Outcome of First Formal Review Meeting**

The purpose of this letter is to confirm the outcome of the Review Meeting held on (date), with myself, (name of HR adviser) and your representative (name, Trade Union) **or** (despite being advised of your right to representation you chose not to exercise it). The meeting was arranged to consider the outcome of the First Review Period arranged within the framework of the school's capability procedure

At the formal review meeting held on (date) reference was made to (details of performance issues) and the support planned to assist you achieve the required level of performance in the following areas: (insert detail)

During the meeting it was recorded that you had been absent from work through illness **Either:** throughout the monitoring and review period **Or:** insert relevant dates of absence

As a result of this, no/insufficient progress has been made against the agreed improvement targets the decision of the meeting was to issue you with a final written warning in respect of your performance. It was therefore agreed that a second and final review period is necessary. The warning will remain on your personal file for a period of 12 months, after which time it will be reviewed. Given the above decision I must advise you that unless there is a sustained improvement in your performance at work you may be referred to a governors' hearing at which you may be dismissed from your employment on the grounds of capability.

The second and final review period will last for 6 weeks and start on (date) and end on (date). A Decision Meeting has been arranged on (date) at (time) at (place) in conjunction with yourself and your trade union representative at the meeting. If you are unable to return to work during the course of this review period, it may be necessary to consider your absence in the light of the requirements of the Disciplinary (Capability) Procedures - (Performance of School Staff): Effects of Absence on Monitoring.

You will, of course, be notified in writing of the time and date of any such meeting at which you are strongly advised to be accompanied by a trade union representative or colleague. Any papers for the meeting will be circulated in due course/or the papers for the meeting are those previously circulated. If at that time there is any documentation you would like to submit for consideration, you will be asked to supply this prior to the meeting.

Finally, I recognise that this is a difficult situation for you and if you or your trade union representative would like to discuss your situation, please do not hesitate to contact me.

Alternatively, (name), HR Officer is aware of the situation and would also be pleased to discuss any concerns you may have regarding these procedures and your situation in relation to performance monitoring and / or your absence.

**Para 4 To be included where a final written warning has been issued:**

If you wish to appeal against the decision to issue you with a final written warning you may do so. A date for the potential appeal was set at the conclusion of the review meeting and I can confirm that it was agreed the appeal hearing, should you choose to appeal, will take place on (date) at (time). I should be grateful if you could notify me by (+ 5 working days) (date), whether you wish to appeal and if you do, the brief grounds of your appeal in writing. Any appeal hearing will be considered by the governors' appeal panel. You may be accompanied, if you so wish by your trade union representative or colleague. The paperwork for any appeal will be the same as considered at the first review meeting and if you wish to submit any additional papers, please let me have these by (+ 5 days before the meeting)(date). You may, if you wish, call witnesses to support your case and if this is your intention, please let me have the names of any witnesses by (+ 3 days)(date) before the meeting so that I can make arrangements to accommodate them. If I do not hear from you by (+ 5 days)(date) I will assume you do not wish to appeal.

Yours sincerely

Head Teacher

Copy to: (Name) HR Case Officer  
(Name) EIS or appropriate adviser  
(Name) Trade Union Representative / Colleague

## Letter 5 Invitation to Second Review (Decision) Meeting

### PERSONAL

Name  
Address

Dear (Name)

### **School Disciplinary (Capability) Procedure - Decision Meeting**

Further to the completion of the Second Review period on (date) I wish to inform you that you are required to attend a Decision Meeting within the framework of the school's capability procedure. The purpose of this meeting is to consider the concerns relating to your performance. A copy of this procedure is available in school in (place) for your information.

The meeting will be with myself (head teacher or nominee) and (monitoring officer) and (HR officer's name). At the start of the review period you were informed that the meeting will be held in (place) at the school on (date) at (time). (Add as appropriate - (name) will be present to give evidence about the monitoring undertaken during the review period and (name) will provide details of the support made available to you.) Specifically, the meeting will consider your progress towards meeting the performance targets and success criteria set at the start of the monitoring and review period and the evidence relating to the support made available and accessed by you.

Specifically, the meeting will consider your performance in relation to (insert details of the identified performance concerns and agreed success criteria as set out at the start of the review period):

- a
- b
- c
- d

Within the provisions of the school's procedure you are entitled to receive copies of the documents which will be considered at this review meeting. I attach, for your information, copies of the following documents as appendices:

- Copy of the outcome letter from the first review meeting
- Summary Report:(to include monitoring information detailing progress made against each of the targets for improvement/success criteria)
- A report setting out the support agreed at the start of the review period and the extent to which this has been provided to and accessed by you during the review period
- Copies of all evidence documents to support the conclusions reached in the monitoring report relating to the review period which will be referred to during the meeting

including observation reports, work scrutiny, analysis of performance data and other school evaluation evidence,

- List documents submitted by employee.

If there is any additional documentation you would like to be considered at the meeting, will you please let me have this by (date + 5 working days before the meeting ) so that I can circulate copies prior to the meeting.

You may, if you wish, call witnesses to support your case and, if this is your intention, please let me know in advance of the meeting so that arrangements can be made to accommodate them. I must advise you that if there is insufficient improvement in your performance, an outcome of this meeting could be a decision to issue you with a further warning within the school procedure.

You have the right to be accompanied at this meeting by your trade union or colleague and a copy of this letter and documentation has been sent to (name of TU Rep), your (name of union) representative / colleague. Notes will be taken of the meeting.

I must advise you that if no or insufficient improvement in your performance is identified, an outcome of the decision meeting may be to refer you to a governors' capability hearing, with a recommendation that you be dismissed on grounds of capability. You are strongly advised to be accompanied by a trade union officer or colleague. Please confirm by \*(date) that you will be attending the meeting on the date and time previously agreed with you and notified to you in my letter (dated). A copy of this letter and documentation has been sent to (name of TU Rep), your (name of union) representative / colleague

Yours sincerely

Head Teacher

Copy to:                    (Name) HR Case Officer  
                                  (Name) EIS or appropriate adviser  
                                  (Name) Trade Union Representative / Colleague

Enclosures:    Summary report  
                                 Supporting documentary evidence (as appendices)

**Letter 6a Outcome of Second Review (Decision) Meeting - Required standard achieved and end of Disciplinary performance monitoring and review process**

**PERSONAL**

Name

Address

Dear (Name)

**School (Capability) Performance Procedure - Outcome of First/Second Review / Decision Meeting**

Following the completion of the second review period, a meeting with myself and (name of adviser and HR officer) was held on (date) to review your progress. The meeting was attended by yourself and your representative (name, trade union/colleague) or despite being advised of your right to representation you chose not to exercise it. The meeting was arranged within the framework of the school's capability procedure.

I am pleased to confirm that based on the evidence available I and (name of monitoring officer) agreed that the improvements are significant, such that your performance is now at the required standard. I am pleased to confirm therefore that the formal performance procedures and programme of monitoring and additional support will end. However, to ensure that the standard is maintained the school will keep this situation under review for one term and (name, adviser/ monitoring officer) will remain in touch, visiting as appropriate to ensure that progress you have made is sustained. (For teachers) I can confirm that the school's appraisal procedure will re-start and the (revised) objectives and success criteria discussed and agreed at the performance review meeting will apply in line with the appraisal cycle. The revised Appraisal statement is attached.

The \* warning issued to you (date) will remain live on your file for a period of twelve months and I must advise you that any further instances concerning your performance may lead to further formal action under the capability procedure.

CONCLUDE LETTER - (You may wish to add a personalised paragraph re success in meeting targets and hoping for the improvement to be sustained).

Yours sincerely

Head Teacher

Copy to:                    (Name) HR Case Officer  
                                  (Name) EIS or appropriate adviser  
                                  (Name) Trade Union Representative/colleague

**Letter 6b - Outcome of Second Review (Decision) Meeting - Insufficient Improvement (Suspension and referral to Governors' Panel)**

**PERSONAL**

Name

Address

Dear (Name)

**School Disciplinary (Capability) Performance Procedure - Outcome of Decision Meeting (Second Review Period)**

The purpose of this letter is to confirm the outcome of the Review Meeting held on (date), with myself, (name of HR adviser) and your representative (name, trade union) **or** (despite being advised of your right to representation you chose not to exercise it). The meeting was arranged to consider the outcome of the second review period arranged within the framework of the school's capability procedure

At the meeting reference was made to the concerns about your performance in relation to (For teachers - the concerns should be set out in line with the relevant Teachers' Standards, according to the teachers' career stage, role and responsibilities and job description. For support staff - the concerns should be identified in line with their job description, their role, responsibilities and post job evaluation profile).

During the meeting it was also recorded that: progress has been made in the following areas:-

- a)
- b)

However, it was also recorded that your performance has not reached the required standard in relation to the following performance targets and success criteria (insert detail - performance targets and success criteria):

- c
- d etc

As your performance has not improved to the required standard and in view of the final warning previously issued you were informed that the matter would be referred to a governors' capability hearing/formal hearing (with) with a recommendation that you be dismissed from your post as (post title) at this school.

In view of the recommendation and seriousness of your performance difficulties I can confirm that you are suspended on full pay, with immediate effect. I must advise you that during the period of your suspension you should refrain from entering the school premises.

**For School Support Staff Only:**

During your period of suspension annual leave should be taken in accordance with the normal procedures and should be approved in the normal way. You should be aware that there is no provision for the carry-over of annual leave from one leave year to the next.

Your representative and yourself were notified of the date of the Governors' Disciplinary (Capability) Hearing and we agreed that this has been arranged for (date), at (time) in (place). [Amend as necessary **Either** Your representative has confirmed their availability at the time and date agreed **OR** has confirmed that they are unable to attend on the date agreed but has agreed to ensure an alternative representative will be appointed to represent you. The representative (TU and name) has agreed to confirm the name to you and the school within the next 5 working days, **OR** You were not represented at the meeting.]

I will present the case to the governors' panel and will be calling the following witnesses: (name and title). You are strongly advised to be accompanied at this meeting by a trade union representative or colleague. Any papers for the meeting are enclosed with this letter or, / will be circulated in due course, so if there are any documents you would like to submit for consideration, please let me have these by (date).

You may, if you wish, call witnesses to support your case: if this is your intention, please let me have their names in advance of the meeting so that arrangements can be made to accommodate them.

I must advise you that if insufficient improvement in your performance is identified, an outcome of the governors' hearing could be a decision to dismiss you on the grounds of capability as a result of your lack of performance. If, at any point, you or your representative wish to speak to me personally about your situation or the procedures then please do not hesitate to contact me.

Yours sincerely

Head Teacher

Copy to (Name) HR Officer  
(Name) EIS or appropriate adviser  
(Name) Trade Union Representative / colleague

Enclosures: Summary Report  
Supporting Documentary Evidence (as appendices)

**Letter 6c Outcome Second Review (Decision) Meeting : Insufficient progress through sickness absence (Suspension and referral governors' panel)**

**PERSONAL**

Name

Address

Dear (Name)

**School Disciplinary (Capability) Procedure - Performance of School Staff - Outcome of Second Review Meeting**

The purpose of this letter is to confirm the outcome of the Review Meeting held on (date), with myself, (name of HR adviser) and your representative (name, Trade Union) **or** (despite being advised of your right to representation you chose not to exercise it). The meeting was arranged to consider the outcome of the Second Review Period arranged within the framework of the school's capability procedure

At the formal review meeting held on (date) reference was made to (details of performance issues) and the support planned to assist you achieve the required level of performance in the following areas: (detail)

During the meeting it was recorded that you had been absent from work through illness **Either** throughout the monitoring and review period **Or**: insert relevant dates of absence

As your performance has not improved to the required standard, and in view of the final warning previously issued, you were informed that the matter would be referred to a governors' capability hearing/formal hearing (with) with a recommendation that you be dismissed from your post as (post title) at this school.

In view of the recommendation and seriousness of your performance difficulties I can confirm that you are suspended on full pay, with immediate effect. I must advise you that during the period of your suspension you should refrain from entering the school premises.

**For School Support Staff Only:**

During your period of suspension annual leave should be taken in accordance with the normal procedures and should be approved in the normal way. You should be aware that there is no provision for the carry-over of annual leave from one leave year to the next.

Your representative and yourself were notified of the date of the governors' capability hearing and we agreed that this has been arranged for (date), at (time) in (place). [Amend as necessary **Either**: your representative has confirmed their availability at the time and date agreed **or** has confirmed that they are unable to attend on the date agreed but has agreed to ensure an alternative representative will be appointed to represent you. The representative (TU and name) has agreed to confirm the name to you and the school within the next 5 working days **or** you were not represented at the meeting.]

I will present the case to the governors' Panel and will be calling the following witnesses: (name and title). You are strongly advised to be accompanied at this meeting by a trade union representative or colleague. Any papers for the meeting are enclosed with this letter or, / will be circulated in due course, so if there are any documents you would like to submit for consideration, please let me have these by (date).

You may, if you wish, call witnesses to support your case: if this is your intention, please let me have their names in advance of the meeting so that arrangements can be made to accommodate them.

I must advise you that if insufficient improvement in your performance is identified, an outcome of the governors' hearing could be a decision to dismiss you on the grounds of capability as a result of your lack of performance. If, at any point, you or your representative wish to speak to me personally about your situation or the procedures then please do not hesitate to contact me.

Yours sincerely

Head Teacher

Copy to            (Name) HR Officer  
                      (Name) EIS or appropriate adviser  
                      (Name) Trade Union Representative / colleague

Enclosures:     Summary Report  
                      Supporting Documentary Evidence (as appendices)

## Letter 7 Notification of Disciplinary Hearing (Governors' Panel)

### PERSONAL

Name

Address

Dear (Name)

### **School Performance Monitoring Procedure - Disciplinary Hearing**

Either - (Where the Head Teacher has been the Monitoring Officer) Further to the completion of the First / Second Review period on (date), I am writing to confirm the arrangements for the Decision Meeting which will consider the progress you have made towards meeting the required performance standards. You are required to attend this meeting which has been arranged within the framework of the school's capability procedure. Please let me know if you require a copy.

Or, - (Where the head teacher has conducted the review meetings) Further to my letter of (Insert date) setting out the outcome of the Decision Meeting and our recent meetings to consider your performance I now wish to inform you that you are required to attend a meeting within the framework of the school's capability procedure. Please let me know if you require a copy.

The meeting will be with myself/the Disciplinary (Capability) Panel of the governing body and will be held in (place) at the school on (date) at (time). (Add as appropriate - (Name(s)) will be present to give evidence about the support and (Names) will attend to present monitoring evidence on the progress you have made towards meeting the required performance standards. (Name(s) of other witnesses) will also be present to provide evidence.) Specifically, the meeting will consider your performance relating to (details of identified performance issues/ success criteria).

- a
- b etc.

Within the provisions of the school's disciplinary (capability) procedure you are entitled to receive copies of the documents which will be considered at the hearing. I attach, for your information, copies of the following documents:-

a) List and send all of the information to be considered as evidence at the hearing.

- |  |   |            |
|--|---|------------|
| • Summary Paper setting out the concerns about the employees performance | • Support and Monitoring detailing concerns/progress within the two review periods against the performance standards and success criteria | Appendix 1 |
| • Monitoring documentation   | • Observation reports   | Appendices |
|  | • notes of meetings   |            |
|  | • record of Monitoring activities and outcomes  |            |
| • Support documentation  | • Summary/record of support offered and accessed (with outcomes)  |            |

- b) List and send any additional information supplied by either side for the disciplinary hearing.

If there is any documentation you would like to submit to the governors' for their consideration, will you please let me have this by (+ 5 working days prior to hearing) (date) so that I can circulate copies prior to the meeting.

Notes of the meeting will be made and you are strongly recommended to be represented by your trade union representative or a colleague. You may, if you wish, call witnesses to support your case and, if this is your intention, please let me know in advance of the meeting by (+ 5 working days before the hearing) so that arrangements can be made to accommodate them.

I must warn you that in referring this matter to the school's Governing Body the panel will be asked to consider the progress you have made within the capability procedure. I must warn you that a possible outcome of this meeting may be a decision to dismiss you/recommend that you be dismissed from your post at this school, with appropriate notice.

If either you or your trade union require any further information or clarification about this meeting please do not hesitate to contact me. A copy of this letter and documentation has been sent to (name of TU Rep), your (name of union) representative.

Yours sincerely

Head Teacher

Copy to: (Name) HR Team  
(Name) EIS or appropriate adviser  
(Name) Trade Union Representative / Colleague  
(Names) Panel of Governors

Enclosures: Summary Report  
Supporting Documentary Evidence as appendices

**Letter 8a Outcome of Governors' Hearing (Dismissal) with notice and Right of Appeal**

**FIRST CLASS**

**PRIVATE AND CONFIDENTIAL**

Name

Address

Dear

**(Name of) School Disciplinary (Capability) Procedures - Performance of Staff Procedure - Outcome of Hearing**

I refer to the hearing with myself/Disciplinary Committee of the Governing Body held on \*(date) in the presence of the Head Teacher of the School, \*(HR Officer), (Name - Monitoring Officer) and your representative/colleague, (name, trade union)/or Despite being advised of your right to representation, you chose not to exercise it. The meeting was arranged within the framework of the school's capability procedure. At the hearing, reference was made to the concerns about your performance as a (Post title) at the school.

The governors' Panel carefully considered the evidence presented at the meeting and the decision was that your performance as a [post title] is not at the required standard in the following areas:

(For teachers - the concerns should be set out in line with the relevant Teachers' Standards, according to the teachers' career stage, role and responsibilities and job description. For support staff - the concerns should be identified in line with their job description, their role, responsibilities and post job evaluation profile).

**(If applicable)** During the meeting it was recorded that: progress has been made in the following areas:-

- a)
- b)

The add **EITHER** the following paragraph (A) or (B)

**A] Community Schools, Voluntary Controlled, Community Special and Maintained Nursery Schools:**

Given that your performance is not at the required standard and in view of the fact that you have already received a previous written warning/final written warning, the Disciplinary Panel resolved to recommend to the County Council that you be dismissed from your post of \* at this school on the grounds of capability, due to your failure to meet the required standards of performance in your post. The dismissal will take effect from (insert last day of contractual notice).

I have, therefore, notified the Corporate Director for Children, Families and Cultural Services of the decision of the Panel and s/he will write to you within the next 14 days formally terminating your contract of employment with the school and Nottinghamshire County Council. You will also be informed of your last day of paid service, any salary entitlements during your notice period which may be due to you and of any rights you may have.

Or

**B] Foundation, Academy, Voluntary Aided Schools and Foundation Special Schools, Trust Schools:**

The (name of deciding person/body) carefully considered the evidence presented at the meeting and the decision was that your performance as (post title) is not at the required standard. In view of the fact that you have already received a previous written warning/final warning, the disciplinary panel resolved that you be dismissed from your post of (post title) at this school on the grounds of capability, due to your failure to meet the required standard of performance. The dismissal will take effect from (insert Last day of contractual notice).

**(All staff - All types of school)** In view of the seriousness of your performance difficulties you will remain suspended on full pay from your post as (\*) at this school during your contractual notice period. I must advise you that during the period of your suspension you should refrain from entering the school premises.

School Support Staff only

During your period of notice and suspension annual leave should be taken in accordance with the normal procedures and should be approved in the usual way. You should be aware that there is no provision for the carry-over of annual leave from one leave year to the next.

You have the right to appeal against this decision and an appeal date has been set for (+ 10 days). Please let me know by \*(date) whether you intend to appeal. The papers for the appeal hearing will be those circulated with my letter of \*(date) together with the additional information tabled by yourself. Any additional information you may wish to submit at this stage must be received by me no later than \*(time) on \*(date) so that it may be circulated to the appeals panel.

You have the right to call witnesses to support your case and you are strongly advised to be represented at the appeal by your trade union or colleague. If you intend to call witnesses, please let me know who they are by (date) so that I can make arrangements to accommodate them. Please confirm by (\*date) whether you will be attending on the date and time arranged. In the event that you are successful in any appeal, the decision to dismiss will be rescinded and your employment will be re-instated. If at any point you or your trade union wish to speak to me personally about your situation or the procedures then please do not hesitate to contact me.

Yours sincerely

Head Teacher

cc (Name) HR Case Officer  
Name) EIS or appropriate adviser  
(Name) Trade Union Representative / Colleague

**Letter 8b Formal Request for County Council to terminate Contract of Employment  
(Community Schools, Voluntary Controlled, Community Special and Maintained Nursery  
Schools only)**

FIRST CLASS

PRIVATE AND CONFIDENTIAL

Name of (HR Case Officer)

HR Team

Nottinghamshire County Council

Trent Bridge House

Fox Road

West Bridgford

Nottingham

NG2 7QP

Dear

**(Name of School) School Disciplinary (Capability) Procedures - Performance of Staff  
Procedure - Outcome of Hearing**

(Name of Employee) (Post Title)

Further to the hearing held at this school on (date), attended by (Name) HR Officer, I write to confirm that the outcome of the meeting was a decision to dismiss the above named employee from this school. I should be grateful if you could make the appropriate arrangements for the County Council to formally terminate this employment on the grounds of lack of performance (capability) with effect from (date of termination of employment).

The decision is subject to appeal and I will inform you of the outcome of any appeal in due course. I should be grateful if you could send me a copy of the formal dismissal letter.

A copy of this letter has been sent to the HR Team.

Yours sincerely

Head Teacher

Cc Corporate Director for Children, Families and Cultural Services  
Nottinghamshire County Council  
County Hall  
West Bridgford  
Nottingham  
NG2 7QP

## Letter 9 Notification of Appeal Hearing (Against Dismissal)

### PRIVATE AND CONFIDENTIAL

Name

Address

Dear \*\*

### (Name of )School Disciplinary (Capability) Performance Procedure - Arrangements for Appeal Panel Meeting

Further to the disciplinary (capability) procedure - performance of school staff Meeting held on \* and to my letter dated \* informing you of the decision, I understand from your letter dated \* that you now wish to appeal against the decision to dismiss you from your post at the school as (post title) at the school.

In accordance with the school's capability procedure I am informing you that I have arranged a meeting to consider your appeal. If you would like a copy of the appropriate disciplinary procedure please let me know. The meeting will be with myself and an appeal panel of the governing body and will be at (time) on (date) in (location). I should be grateful if you could arrive early to ensure the meeting starts on time. A waiting room (location) has been made available for you. (Add as appropriate \*\* will also be present to give evidence about the support and \*\* will be present to provide evidence and outcomes of the monitoring process.)

Specifically the meeting will consider your performance relating to the following (set out the performance issue / success criteria as detailed in original hearing)

- a
- b etc

Within the provisions of the school's disciplinary procedure you are entitled to receive copies of the documents relating to the case which will be considered at the Appeal Hearing. I attach for your information, copies of the following documents:

a) List and send all of the information as previously sent out for the initial hearing.

- |  |   |            |
|--|---|------------|
| • Summary Paper setting out the concerns about the employees performance | • Support and Monitoring detailing concerns/progress within the two review periods against the performance standards and success criteria | Appendix 1 |
| • Monitoring documentation   | • Observation reports   | Appendices |
|  | • notes of meetings   |            |
|  | • record of Monitoring activities and outcomes  |            |
| • Support documentation  | • Summary/record of support offered and accessed (with outcomes)  |            |

b) List and send any additional information supplied by either side for the disciplinary hearing.

If there is any further information relating to this case that you would like to submit to the governors' for their consideration, will you please arrange for this to be sent to me as soon as possible and by (date +5 working days prior to hearing) at the latest so that I can circulate copies to members of the appeal committee in plenty of time for their consideration before the meeting. Notes of the meeting will be made and a copy provided to you after the meeting.

I would like to take this opportunity to inform you that you have the right to be represented at this meeting by a colleague or a trade union representative. You may if you wish call witnesses to support your case. If it is your intention to call any witnesses, please let me know their names by (insert date) so that arrangements to accommodate them can be made.

Please confirm with me that you and your representative are able to attend this meeting on the date and times given. I have sent a copy of this letter and accompanying details to your union representative/I enclose an additional copy of this letter and accompanying documents for you to send to your union representative. If either you or your trade union require any further information or clarification about this meeting please do not hesitate to contact me.

Yours sincerely

Head Teacher

Copy to: (Name) HR Team  
(Name) EIS or appropriate adviser  
(Name) Trade Union Representative / Colleague  
(Names) Appeal Panel of Governors

Enclosures: Statement of Case  
Supporting Documentary evidence (as named appendices)

## Letter 10 Outcome of Appeal Hearing - Appeal against Dismissal

### PERSONAL

Name

Address

Dear (Name)

### **School Disciplinary Performance of Staff Procedure**

I wish to confirm the outcome of your appeal hearing with the Appeal Panel of the Governing Body on (date) in the presence of the Head Teacher of the School, together with (Monitoring Officer/HR Officer) and either your colleague **or** representative (name, trade union) **or** (Despite being advised of your right to representation you chose not to exercise it). The meeting was arranged within the framework of the school's disciplinary procedure (performance monitoring).

At the hearing, reference was made to (details of capability issues considered). The decision of the appeals committee/panel was to uphold the decision to dismiss you on capability grounds due to your unacceptable performance and that you should therefore cease to work at the School.

### **Either**

#### **A] Community, Voluntary Controlled, Community Special, Maintained Nursery Schools (only)**

The County Council has already written to you to give formal notice of the termination of your employment as (Post title) to take effect from (Date of termination of employment), on the grounds of capability. In the light of the decision by the Appeals Panel/Committee this formal notice stands and your employment with the school will end on (date).

### **Or**

#### **B] Foundation, Foundation Special, Academy, Voluntary Aided/Trust**

The School/Governing Body/Academy Trust/Trust has already written to you to give formal notice of termination of your employment which will terminate on (date) at the end of your period of contractual notice.

Add in any personal comments here

Yours sincerely

Head Teacher

Copy to:                    (Name) HR Case Officer)  
                                  (Name) EIS or appropriate adviser  
                                  (Name) Trade Union Representative / Colleague

## **Letter 11 Confirmation of Outcome of review of warning**

### **PERSONAL**

Name

Address

Dear (Name)

### **School Disciplinary Performance of Staff Procedure**

I wish to confirm the outcome of the review of the written/final warning issued to you on (date) for a period of (number of) months.

Option 1 - satisfactory performance

The warning has been removed by the (head teacher/ governing body) and confirmed as spent.

Option 2- unsatisfactory performance

The warning has been reviewed by the (head teacher / governing body) and confirmed as not spent.

Yours sincerely

Head Teacher

Cc (name) HR Adviser HR Service

## Appendix 6

### Guidance on devising an appropriate performance capability support programme

1. The employee should be made fully aware that the aim of the support programme is to assist him/her in improving performance in the job to the appropriate standards.
2. The nature of the support programme will vary from case to case depending upon the difficulties faced by the employee, the amount of assistance that may be required, organisational arrangements in the school and the resources available.
3. When drawing up a support programme consideration may be given to:
  - Identifying and arranging appropriate in service training
  - Arranging for the employee to observe good practice
  - A reorganisation of work areas, classes or rooms
  - Arranging the observation of the employee's work by someone internal or external to the school, who has a relevant level of experience, and the ability to give constructive feedback on performance
  - Modifying workload for a specified period of time
  - Providing additional management support
  - Provision of a mentor to guide and support the employee towards an improvement in performance
4. The mentor's role is separate and distinct to that of monitoring officer who is responsible for assessing and reporting on performance.
5. The support programme should be confirmed in writing and contain:
  - Details of the support arrangements
  - Where appropriate, specific guidance towards the necessary improvement
  - A time period over which the support programme will be in operation and reviewed
6. A support programme should provide as much support as appropriate at the beginning of the capability process but the level of support should reduce as the process continues. This tapering level of support maximises the employee's opportunity to make improvements in performance to the required standards, whilst at the same time, allowing the employee's capabilities to be assessed alone (i.e. without the additional support) at the end of the process.

## **Appendix 7**

### **Review of warnings**

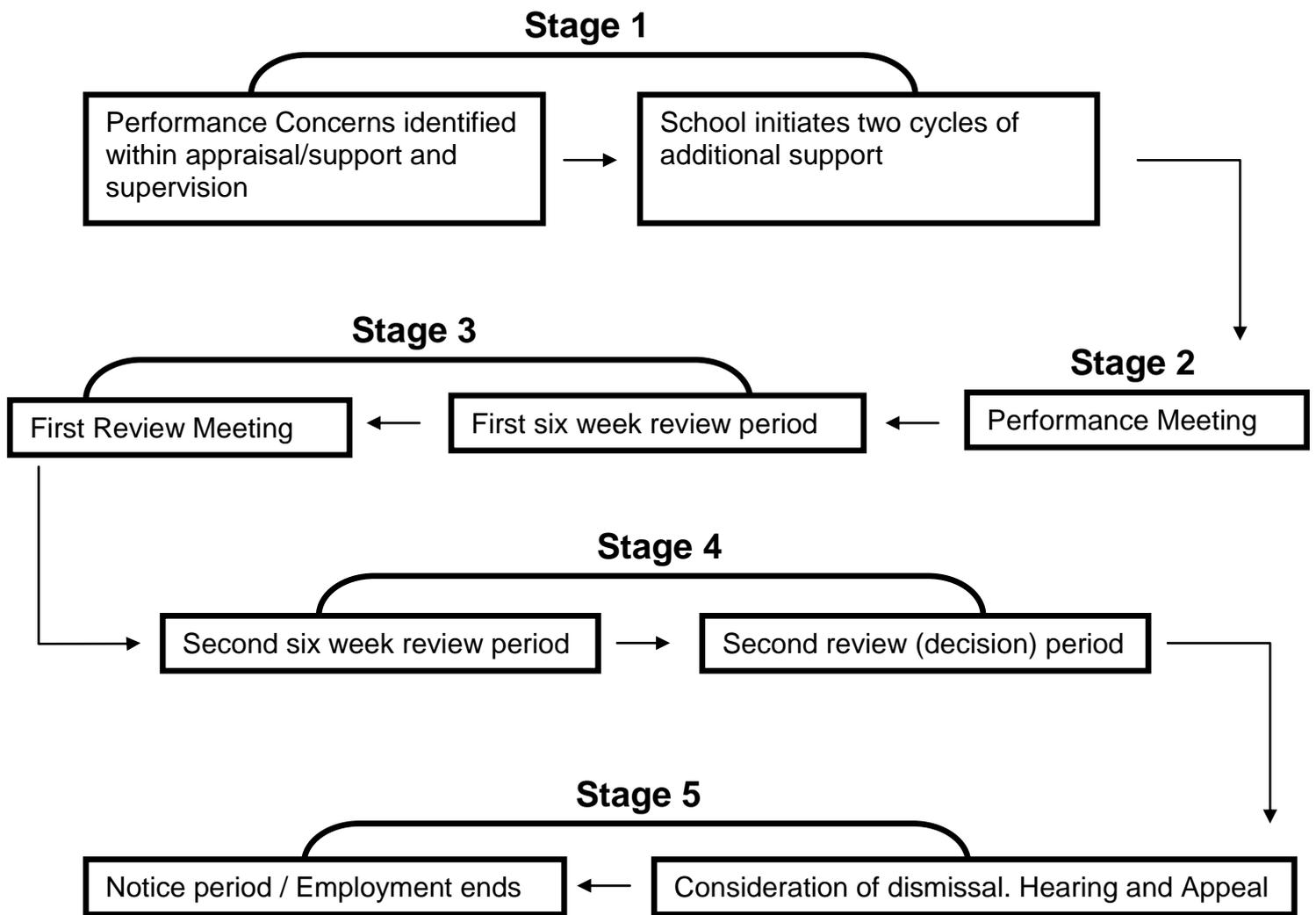
#### **Introduction**

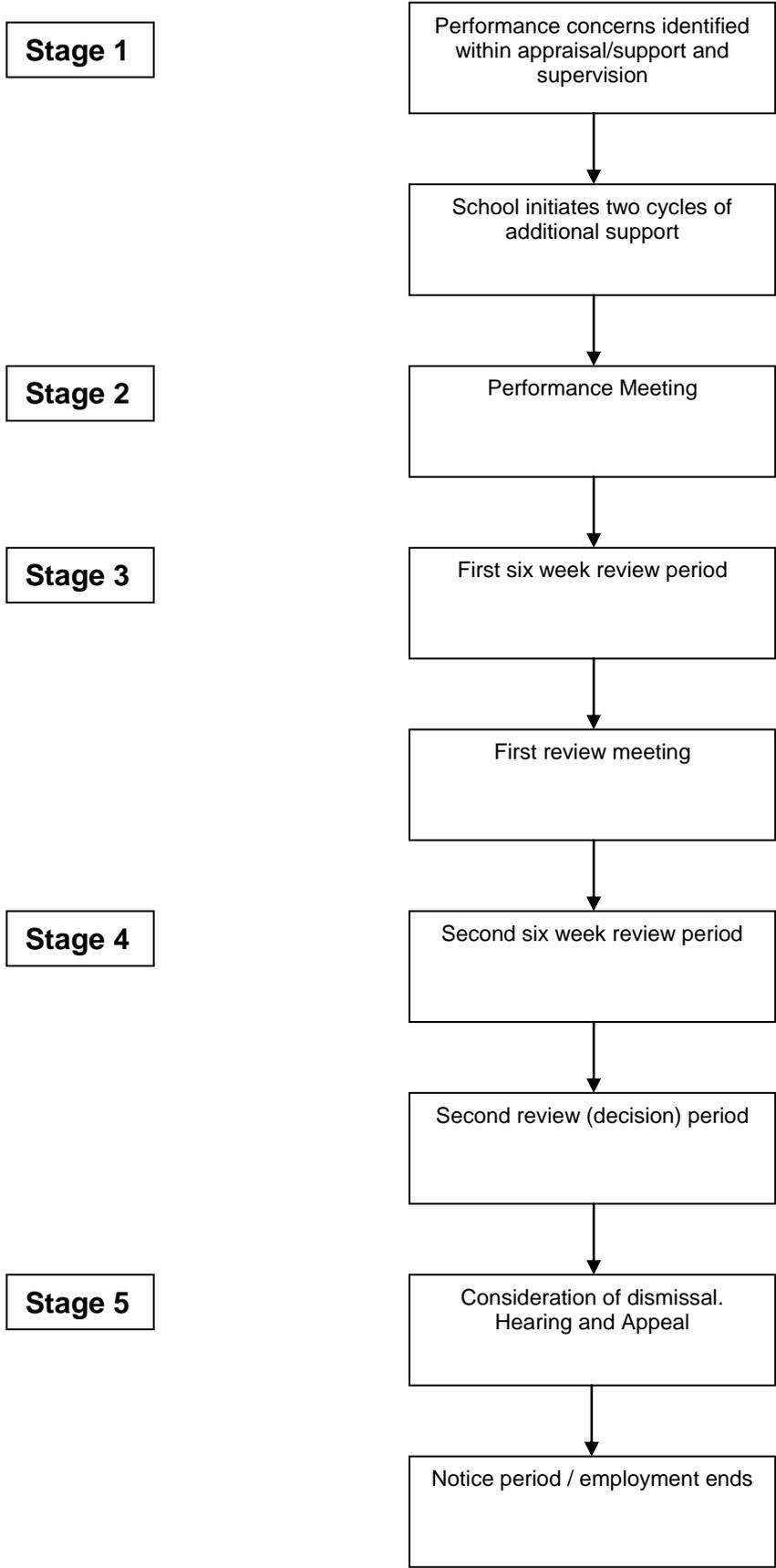
It is normal for warnings to be issued for a period of 12 months but it is necessary for the head teacher or chair of governors to review such warnings.

The purpose of reviewing a capability warning is to consider the continued validity of the warning rather than the physical removal from the personal file. Such information should never be removed from the file as it may be required as evidence if capability issues re-occur which result in an Employment Tribunal. If the warning has been reviewed and confirmed as spent, (this should be clearly recorded along with the original warning), it will not be taken into account if further disciplinary sanctions are being considered. However, it is acceptable evidence at an Employment Tribunal to look at the history of employment in deciding whether or not an employer has acted reasonably in all the circumstances, hence the need to retain documentary evidence of spent warnings.

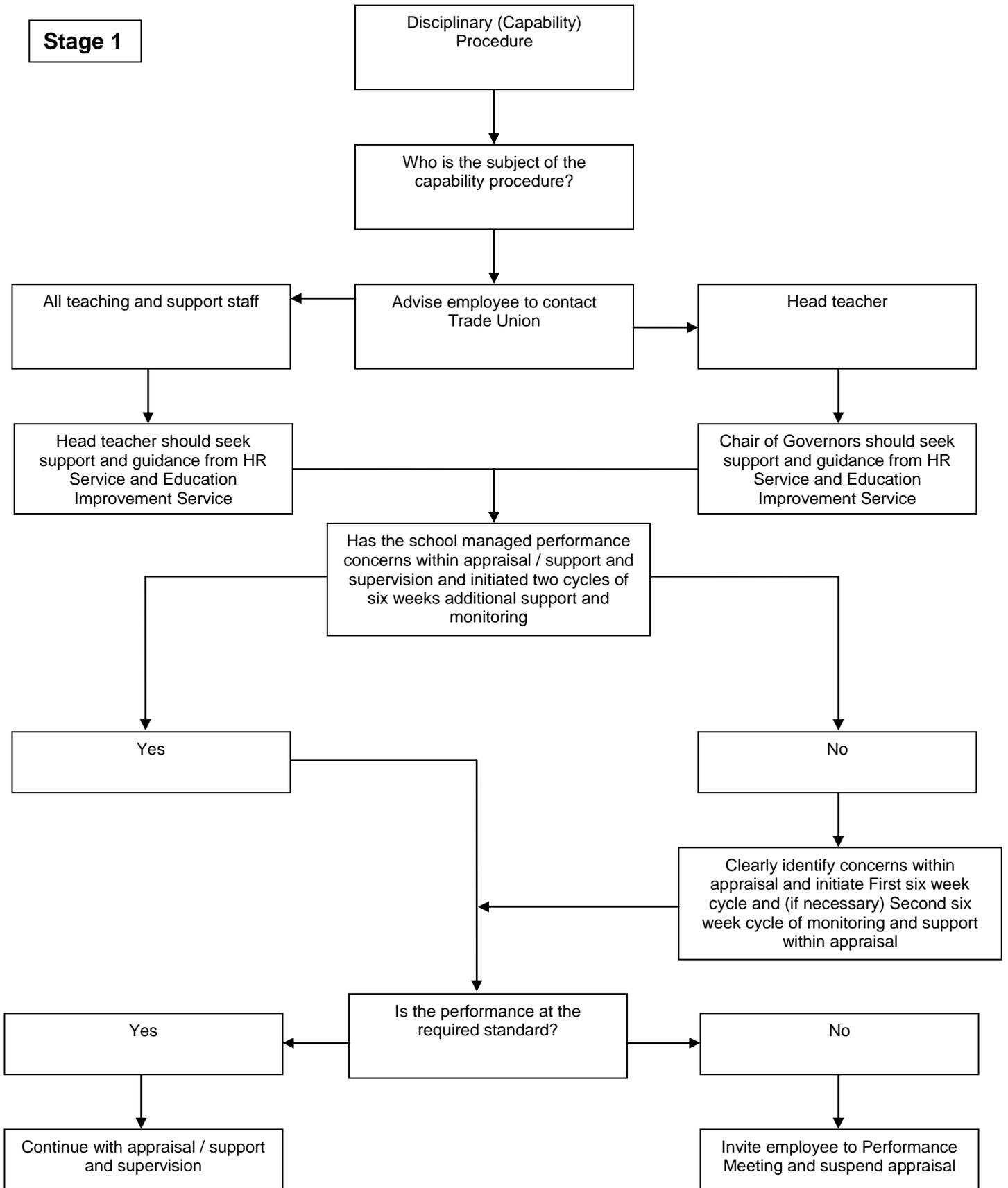
The head teacher or chair of governors should initiate a review of the warning with the employee and their representative or colleague. The employee should be notified in writing whether the warning is regarded as spent or otherwise.

**Appendix 8a Summary Flowchart of Disciplinary (Capability) Procedure**

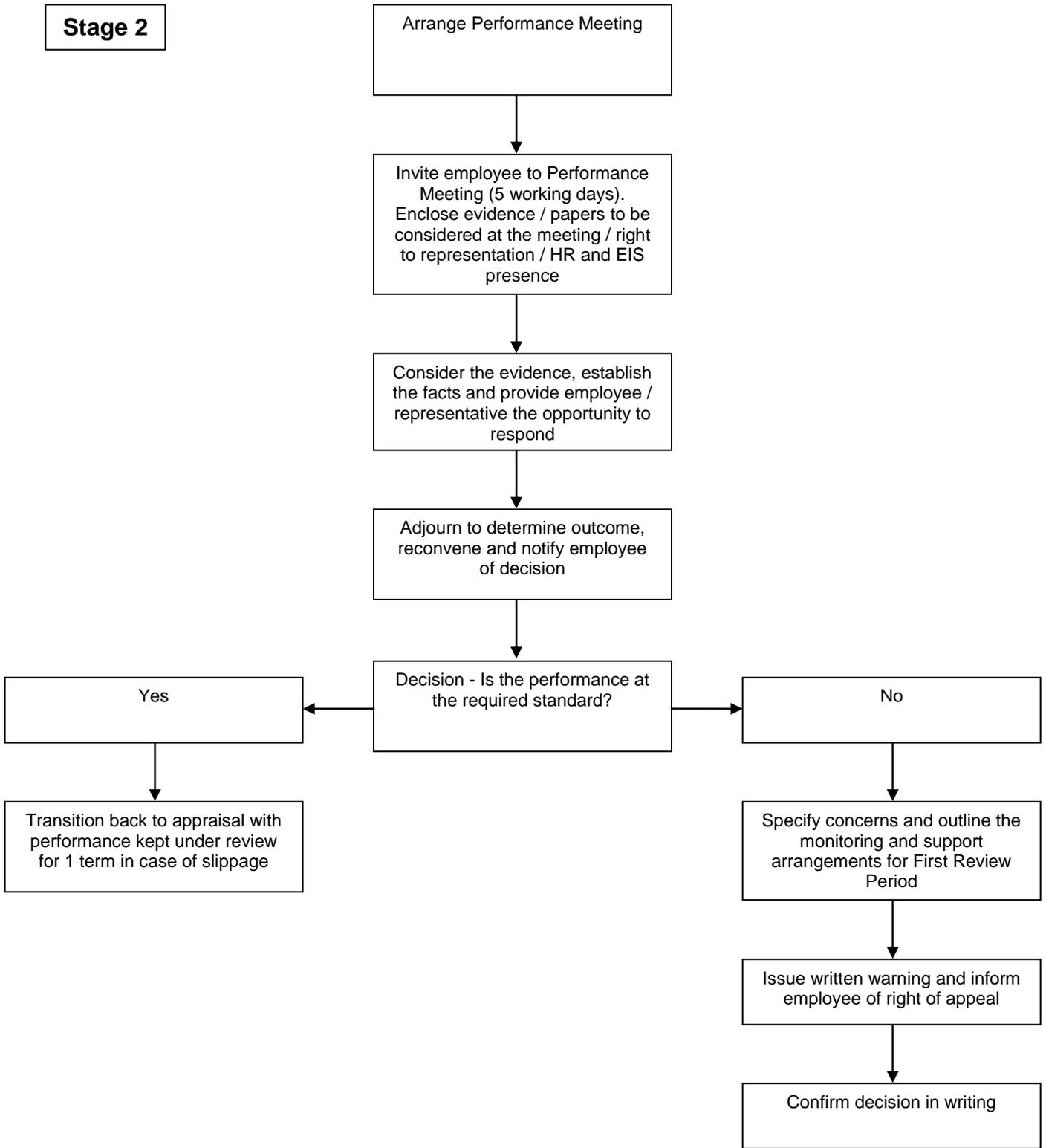




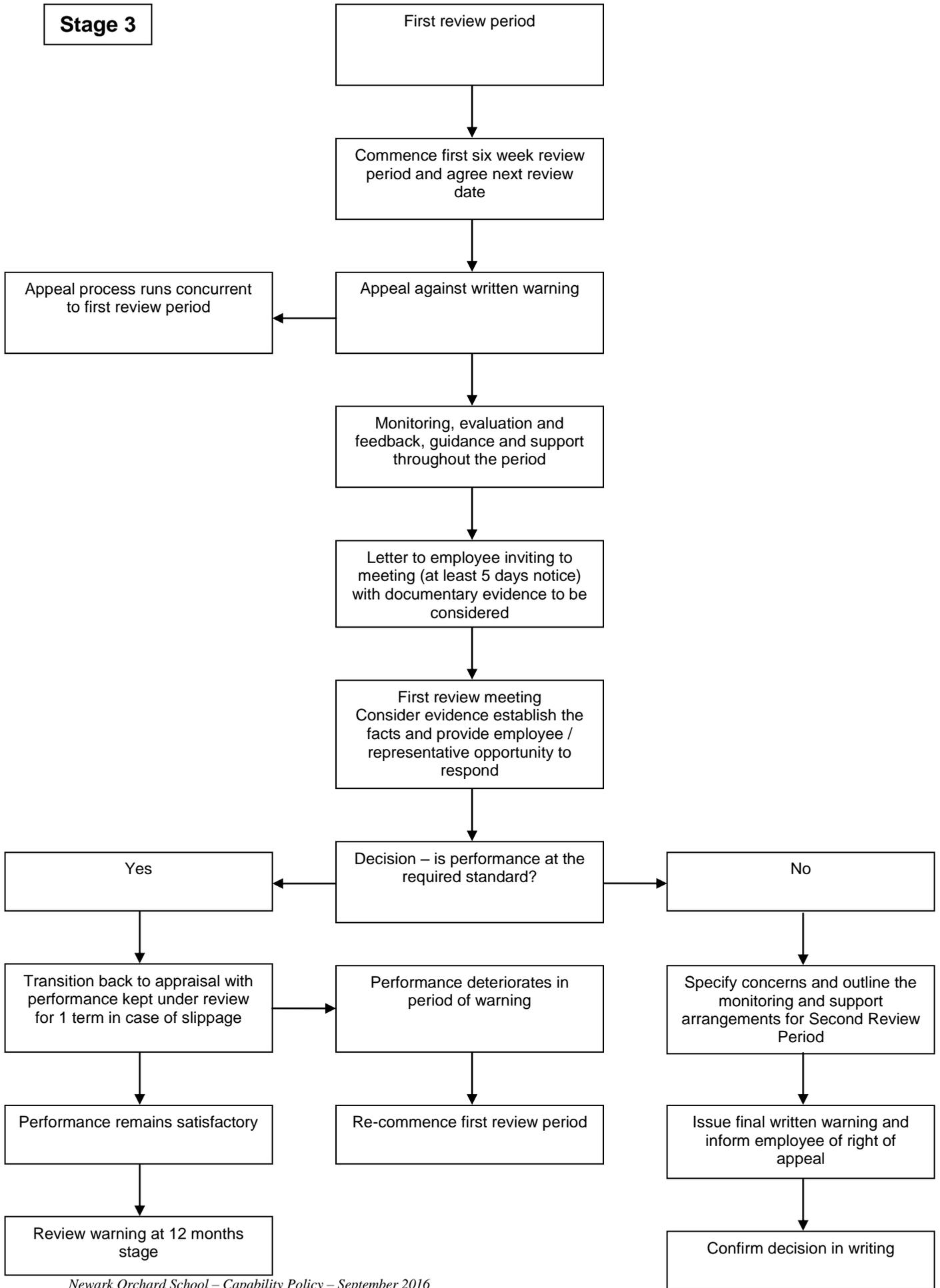
**Appendix 8b Staged Flowchart of Disciplinary (Capability) Procedure**



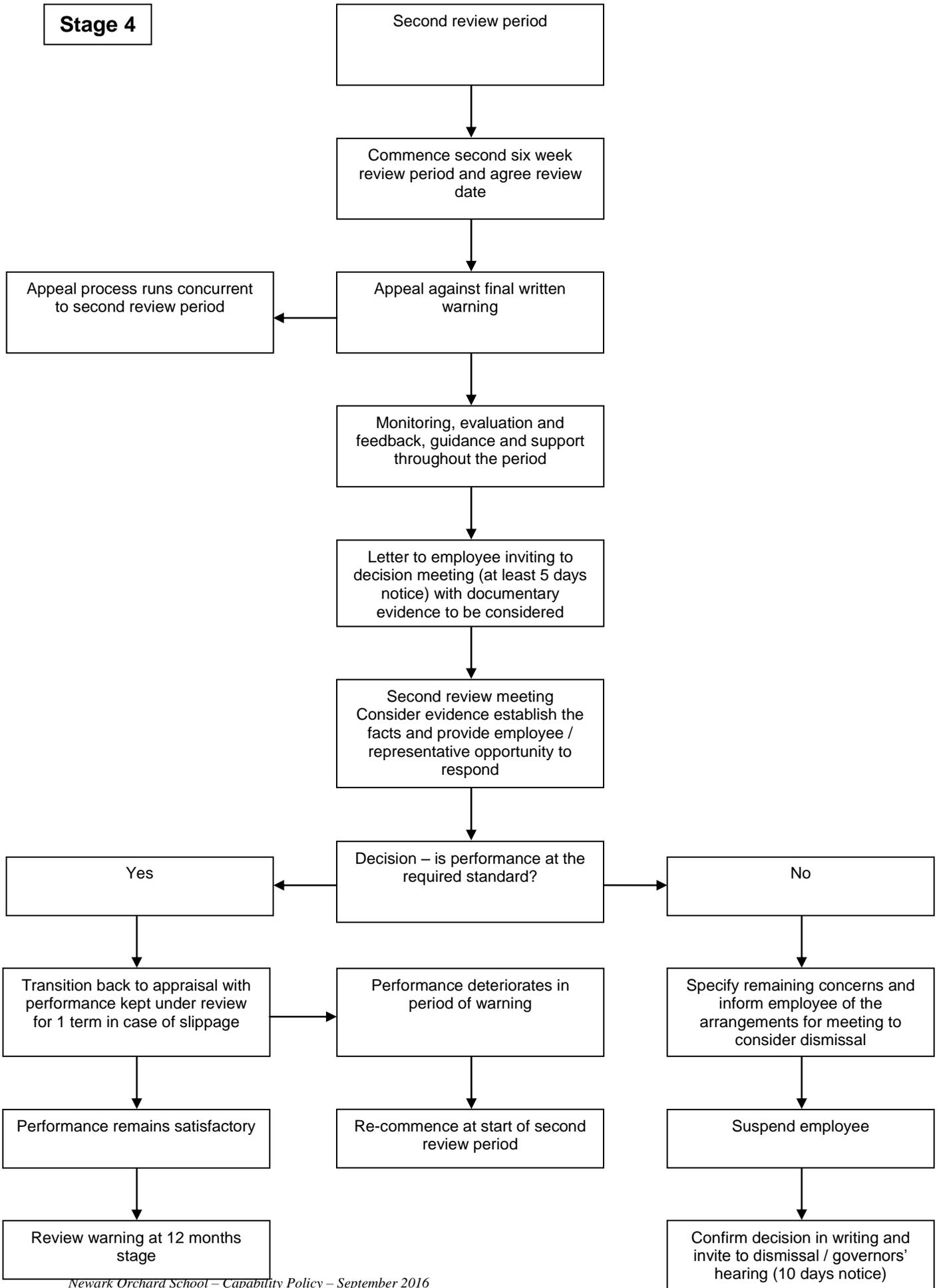
**Stage 2**



**Stage 3**



**Stage 4**



**Stage 5**

