



# Teacher Appraisal and Capability Procedure V.2



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Adoption by Governing Body:  
 With/Without Delegation of Authority to dismiss given to the Head Teacher  
 (delete as appropriate)

**School** .....

**Date of Implementation** .....

**Signature of Chair of Governors** .....

**Signature of Head Teacher** .....

**Review Date** .....

## 1. Introduction

1.1 This procedure is in two separate sections:

- Part A covers appraisal and follows the DfE Education (School Teachers Appraisal – England) Regulations 2012 which replace the Education (School Teacher Performance Management – England) Regulations 2006. The 2006 Regulations continue to apply to any performance management cycle which is already in progress on 1st September 2012, unless the Governing Body or Council decides to end that cycle early and to begin a new appraisal period starting on or after that date.
- Part B sets out the formal capability procedure and reflects the ACAS Code of practice on disciplinary and grievance procedures. It follows a DfE model policy **which replaces the statutory guidance “Capability Procedures for Teachers”** that was issued in July 2000.  
Capability procedures only apply to teachers and Head Teachers about whose performance there are serious concerns and that the appraisal process has been unable to address.

## 2. Scope

2.1 This procedure applies to the Head Teacher and to all teachers employed by the school or local authority, except those on contracts of less than one term, those undergoing induction (i.e. Newly Qualified Teachers).

2.2 Teachers who are employed on a fixed term contract of less than one year will have their performance managed in accordance with the principles underpinning this policy. The length of the period will be determined by the duration of their contract.

2.3 Teachers in Academies, Free Schools and other Independent Schools are not covered by this procedure, although they may wish to adopt it as a good practice model.

2.4 Separate procedures apply to:

- Misconduct cases (please refer to Schools Disciplinary Policy and Procedure)
- Ill health cases (please refer to [Schools Sickness Absence Policy and Procedure](#))

## 3. General principles underlying the procedure

ACAS Code Of Practice on Disciplinary and Grievance Procedures

3.1 The formal capability stage will be undertaken in accordance with the provisions of the ACAS Code of Practice.

## Consistency of Treatment and Fairness

- 3.2 The Governing Body is committed to ensuring consistency of treatment and fairness and will abide by all relevant equality legislation.

## Grievances

- 3.3 Where a teacher raises a grievance during the appraisal or capability process, the appraisal or capability process may be temporarily suspended in order to deal with the grievance. Where the grievance and appraisal or capability cases are related it may be appropriate to deal with both issues concurrently.

## Confidentiality

- 3.4 The appraisal and capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the Head Teacher and Governing Body to quality-assure the operation and effectiveness of the appraisal system. The Head Teacher or appropriate colleague might, for example, review all **teachers' objectives and written appraisal records personally** – to check consistency of approach and expectation between different appraisers (see also section 8 of appraisal procedure).

## Part A – Appraisal Procedure

### 1. Introduction

- 1.1 The aim of the appraisal process is to provide support and development to ensure that all teachers have the skills and support they need to carry out their role effectively. It will help to ensure that teachers are able to continue to improve their professional practice and to develop as teachers.
- 1.2 The appraisal and process will be treated with confidentiality. However, the desire for confidentiality does not override the need for the Head Teacher and Governing Body to quality-assure the operation and effectiveness of the appraisal system.
- 1.3 Schools may decide how they wish to quality assure the appraisal process. For example, the Head Teacher (or another designated teacher) may review a sample of **teachers'** objectives and written appraisal records personally, in order to check consistency of approach and expectation between different appraisers.
- 1.4 The Governing Body and Head Teacher is committed to ensuring consistency of treatment and fairness and will abide by all relevant equality legislation.

### 2. The appraisal period

- 2.1 The appraisal period should run for twelve months from 1st September to 31st August.
- 2.2 Where a teacher starts their employment at the school part-way through a cycle, the Head Teacher or, in the case where the employee is the Head Teacher, the Governing Body shall determine the length of the first cycle for that teacher, with a view to bringing his/her cycle into line with the cycle for other teachers as soon as possible.
- 2.3 Where a teacher transfers to a new post within the School part-way through a cycle, the Head teacher or, in the case where the employee is the Head Teacher, the Governing Body shall determine whether the cycle shall begin again and whether to change the appraiser

### 3. Appointing appraisers

- 3.1 The Head Teacher will be appraised by the Governing Body. It is a statutory requirement that the Governing Body is supported by a suitably skilled and/or experienced external adviser appointed by the Governing Body for that purpose. The external advisor could be another Head Teacher from within the Authority or an appropriate colleague from the Authority's School Improvement Service.
- 3.2 The responsibility for appraising the Head Teacher, including the setting of objectives, will be delegated to a sub-group consisting of at least two and no more than three members of the Governing Body.
- 3.3 The Head Teacher will decide who will appraise other teachers. All appraisers appointed by the Head Teacher will be qualified teachers and will have current or recent teaching experience.

- 3.4 **If the Head Teacher appoints an appraiser who is not the teacher's line manager,** the appraiser to whom she/he delegates those duties will have an appropriate position in the staffing structure, together with the necessary background knowledge, skills and training to undertake the role.
- 3.5 **If a teacher has concerns over the Head Teacher's choice of appraiser, they will have** an opportunity to discuss these concerns with the Head Teacher who may decide to appoint alternative appraiser where appropriate and feasible.
- 3.6 Where it becomes apparent that the appraiser appointed by the Head Teacher will be absent for the majority of the appraisal cycle, the Head Teacher may perform those duties herself/himself or delegate those duties to another teacher for the duration of that absence.
4. **Setting objectives**
- 4.1 **The Head Teacher's objectives will be set by the Governing Body after consultation** with the external adviser and the Head Teacher.
- 4.2 Objectives for each teacher will be set before or at the start of each appraisal period by the Head Teacher or their nominated appraiser.
- 4.3 The objectives set for each teacher, will be Specific, Measurable, Achievable, Realistic and Time-bound and will be **appropriate to the teacher's role and level of experience.** The appraiser and teacher will seek to agree the objectives but, if that is not possible, the appraiser will determine the objectives. Objectives may be revised if circumstances change.
- 4.4 The agreed objectives will contain a description of what success may look like. Where use of numerical targets is appropriate, these will be reasonable, in the circumstances in which the teacher works and it will be recognized that factors **outside teachers' control** may significantly affect success.
- 4.5 **The number of objectives set for each teacher will vary depending on the teacher's** role and level of experience and should be reasonable, taking into consideration **each teacher's workload.**
- 4.6 The appraiser will **take into account the effects of an individual's circumstances,** including any disability, when agreeing objectives. For example, this might include a reasonable adjustment to allow an individual slightly longer to complete a task or additional practical support. When staff return from a period of extended absence (e.g. maternity leave), objectives may be adjusted to allow them to readjust to their working environment.
- 4.7 The objectives set for each teacher must **contribute to the school's plans for improving the school's educational provision and performance and improving the** education of pupils at that school.
- 4.8 Before, or at the start of each appraisal period, each teacher will be informed of the standards against which their performance in that appraisal period will be assessed.
- 4.9 With the exception of those who are qualified teachers by virtue of holding and maintaining Qualified Teacher Learning and Skills (QTLS) status, all teachers must be assessed against the set of standards contained in the document called **"Teachers' Standards" published in July 2011.**

- 4.10 The Head Teacher or Governing Body (as appropriate) will need to consider whether certain teachers should also be assessed against other sets of standards published by the Secretary of State that are relevant to them.
- 4.11 For teachers who are qualified teachers by virtue of holding QTLS status, it is for the Governing Body or Head Teacher to decide which standards are most appropriate. Such teachers may be assessed against the [Teachers' Standards](#), against any other sets of standards issued by the Secretary of State, against any other professional standards relevant to their performance or any combination of those three.

## 5. Reviewing performance

### Observation

- 5.1 Observation of classroom practice and other responsibilities will be used both as a **way of assessing teachers' performance** (to identify any particular strengths and areas for development they may have) and of gaining useful information which can inform school improvement more generally. All observation will be carried out with the aim of providing constructive support and development.
- 5.2 Schools should determine their own written guidance on how classroom observations are conducted and recorded. **This includes informal "drop in" sessions** (please see section 5.4 below). The guidance should be communicated to all teachers. The guidance should include:
- Aims and scope of the classroom observation
  - Criteria for assessment
  - Duration and frequency
  - How and when notice will be given of forthcoming observations
  - How and when constructive feedback will be given (verbal and/or written)
- 5.3 **Teachers' performance** should be regularly observed but the amount and type of classroom observation will depend on the individual circumstances of the teacher and the overall needs of the school. Classroom observation will be carried out by those with QTS.
- 5.4 In addition to formal observation, the Head Teacher (or designated teachers with responsibility for teaching standards) **may "drop in" in order to evaluate the standards of teaching and to check that high standards of professional performance are established and maintained. The length and frequency of "drop in" observations will vary depending on specific circumstances.**
- 5.5 Teachers (including the Head Teacher) who have responsibilities outside the classroom should also have their performance of those responsibilities observed and assessed.

### Development and support

- 5.6 Appraisal is a supportive process which will be used to inform continuing professional development. The School wishes to encourage a culture in which all teachers take responsibility for improving their teaching through appropriate professional development. Professional development will be linked to school improvement priorities and to the ongoing professional development needs and priorities of individual teachers.

## Feedback

- 5.7 Teachers will receive constructive feedback on their performance throughout the year and as soon as practicable after observation has taken place or other evidence has come to light. Feedback will highlight particular areas of strength as well as any areas that need attention.
- 5.8 When progress is reviewed, if the Head Teacher (or other designated teacher) is satisfied that the teacher has made, or is making, sufficient improvement, the appraisal process will continue as normal, with any remaining issues continuing to be addressed through that process.
6. Dealing with concerns about performance
- 6.1 When dealing with a teacher experiencing difficulties, the objective is to provide support and guidance through the appraisal process in such a way that the **teacher's performance improves and the problem is, therefore, resolved.**
- 6.2 **Where it is apparent that a teacher's personal circumstances are leading to** performance problems at school (e.g. following bereavement), support will be offered as soon as possible, without waiting for the formal annual assessment.

## Communicating concerns

- 6.3 Where the **teacher's** performance is causing concern, this should be discussed with them at the earliest opportunity, normally at a one-to-one/supervision or appraisal meeting. The Head Teacher (other designated teacher) should:
- Explain the nature and seriousness of the concerns;
  - Confirm any previous discussions and support offered/given;
  - Give the teacher the opportunity to comment and discuss concerns.
  - Agree any support (e.g. coaching, structured observations) that will be provided to help address specific concerns.

## Monitoring

- 6.4 Normally a monitoring period should be set as part of the appraisal procedure, in order to give the teacher an appropriate time to improve their performance. However, if the performance has rapidly deteriorated or is so poor that pupil education is jeopardised, the Head Teacher may decide to move the teacher concerned directly to the [Capability Procedure](#). If this is the case, the Head Teacher should consult an HR Employment Relations Adviser.
- 6.5 When setting a monitoring period, the Head Teacher (or other designated teacher) should clarify:
- The targets for future performance (in addition to existing appraisal objectives);
  - How progress will be monitored, by whom and when it will be reviewed;
  - The possible consequences if no improvement or insufficient improvement is made.
- 6.6 The length of the monitoring period will depend on the seriousness of the issues and individual circumstances, but should only be as long as is necessary to allow reasonable time for improvement. This should normally be between 4 and 8 school

weeks. In exceptional circumstances (e.g. where there has been a significant improvement or there has been significant absence during the monitoring period) an extension of up to 4 additional school weeks may be granted.

- 6.7 The Head Teacher should confirm full details of these meetings and any decisions made to the teacher in writing.

#### Transition to capability

- 6.8 In the most serious cases, and where there has been unsatisfactory or no improvement following any monitoring period, the appraisal process will be suspended and the [capability procedure](#) will be invoked. The Head Teacher should notify the teacher, in writing, that the appraisal process will no longer apply and that their performance will be managed under the [capability procedure](#), and request them to attend a formal capability meeting. At this point, the Head Teacher should consult with an HR Employment Relations Adviser.

### 7. Annual appraisal assessment

- 7.1 Each teacher's performance will be formally assessed in respect of each appraisal period. In assessing the performance of the Head Teacher, the Governing Body must consult the external adviser.
- 7.2 This assessment is the end point to the annual appraisal process, but performance and development priorities may be reviewed and addressed during the year in one-to-one/supervision meetings as appropriate.
- 7.3 Following the end of each appraisal period, the Head Teacher (or other designated teacher) should send the teacher a written copy of their appraisal report. This should be done without undue delay.
- 7.4 The teacher should be given the opportunity to comment in writing on their report. Teachers should receive their written appraisal reports by 31 October (31 December for the Head Teacher).
- 7.5 The appraisal report should include:
- **Details of the teacher's objectives for the appraisal period in question;**
  - **An assessment of the teacher's performance of their role and responsibilities against their objectives and the relevant standards;**
  - **An assessment of the teacher's professional development needs and identification of any action that should be taken to address them;**
  - **A space for the teacher's own comments;**
  - Any additional information to support the appraisal of the teacher, as decided by the School.
- 7.6 The assessment of performance and of professional development needs will inform the planning process for the following appraisal period.
- 7.7 The Governing Body and Head Teacher should ensure that all written appraisal records are retained in a secure place for six years and then destroyed.

### 8. Monitoring the appraisal process

- 8.1 The Head Teacher is responsible for monitoring the appraisal process to ensure fairness and consistency of approach. This may include reviewing a sample of appraisal documentation including: classroom observations, objectives and appraisal reports.

## Part B – Capability Procedure

### 1. Introduction

- 1.1 The performance of teachers in the School is monitored and managed on a day to day basis by the Head Teacher (and other designated teachers) and through the [appraisal procedure](#).
- 1.2 However, where there are serious concerns about performance or where the appraisal process and subsequent development/support has failed to address performance problems, the capability procedure should be used.
- 1.3 For the purposes of this procedure, lack of capability is defined as a situation where a teacher or the Head Teacher fails consistently to perform his or her duties to a professionally acceptable standard.
- 1.4 In the cases where there may be a capability issue concerning the Head Teacher, reference should be made to section 10 of this procedure.
- 1.5 The Governing Body is required to establish the following committees:
  - Capability Committee - to hear cases concerning the capability of the Head Teacher (and to dismiss teachers where the Head Teacher does not have delegated authority to dismiss \*)
  - Appeals Committee – to hear appeals against any warnings or dismissal decision as a result of capability

The quorum for both is at least three Governors, to be chosen from those appointed by the Governing Body. No member of either Committee should have been involved in the procedure prior to the formal stage. It is strongly recommended that an Employment Relations Advisor is requested to support any Committees.

\* The DfE advises that dismissal decisions should be delegated to the Head Teacher unless there is a good reason not to do so. Governing Bodies who choose not to delegate dismissal decisions to the Head Teacher should formally record their decision not to delegate authority, when adopting this procedure.

### 2. General principles

- 2.1 At every stage of the procedure the Head Teacher (or other designated teacher) should clearly identify and specify:
  - The expected performance standards
  - The improvements required and how these will be measured
  - A timetable for monitoring and review
  - Any support which will be put in place

This should be discussed with the teacher concerned and always confirmed in writing.

- 2.2 The teacher's performance should be closely monitored throughout any review period and they should be given feedback on their progress and be invited to

comment.

- 2.3 The teacher has the right to be accompanied by their Trade Union representative or Professional Association representative or a work colleague and should be strongly advised to exercise this right.
- 2.4 **If the teacher's chosen representative is not available at the time proposed for any meeting or hearing, one alternative date will be set, normally no later than 5 school days from the original date.**
- 2.5 The Head Teacher is advised to consult with the Council's Human Resources Employment Relations Team before taking action and to invite an ER Adviser to attend meetings where appropriate.
- 2.6 Where the Head Teacher intends to implement this procedure, s/he should ensure that the teacher concerned is provided with a copy.
- 2.7 The teacher has the right of appeal against any warning issued as part of the procedure and also the right of appeal against dismissal by reason of capability.
- 2.8 In exceptional cases, the Head Teacher (or other designated teacher) may foreshorten or miss out a stage of the procedure. For example:
- Where a **teacher's** performance falls far short of an acceptable standard and where support and guidance fail to produce any significant improvement
  - Where the **teacher's** lack of competence is leading to the education of pupils being jeopardised.

Where it appears that this may be necessary, the Head Teacher should ensure that the employee and his/her Trade Union or Professional Association representative are advised of this at the earliest possible stage.

- 2.9 Teachers cannot raise a grievance to complain about, or object to the fact that the School may take action under this procedure. The only exception would be if the grievance is that the action amounts to, or would amount to discrimination, bullying or harassment. In such cases, consideration should be given to suspending the capability procedure for a short period whilst this is looked into. The decision about whether or not to suspend the capability procedure, and for how long, is at the sole discretion of the Head Teacher, who should consult HR Employment Relations for advice.
- 2.10 Where the capability concerns a trade union representative, this should be discussed at the earliest opportunity with the Branch Secretary/Convenor or full time official, who should be invited to accompany the individual to any meetings under the Procedure. Advice must be sought from the Employment Relations Manager before commencing any action under the procedure.
- 2.11 While it is recognised that the capability procedure can be distressing and may sometimes lead to a teacher **feeling unwell, it is in everyone's best interest to** conclude matters as quickly as possible. The School will work with the teacher to achieve this. If sickness absence appears to have been triggered by the commencement of the capability procedure, the teacher will be referred immediately to an Occupational Health Adviser to assess their fitness for participating in the procedure. Where a teacher remains off sick, this will be dealt with in accordance with the Sickness Absence Procedure.

### 3. First capability meeting

#### Prior to the meeting

- 3.1 If the teacher's **performance is unsatisfactory and has not reached the required** standard despite target setting, monitoring and support as part of the appraisal process, they will be required to attend a capability meeting.
- 3.2 The meeting will be conducted by the Head Teacher or another designated teacher. Where the Head Teacher is the subject of the procedure the meeting will be conducted by a Chair of Governors.
- 3.3 The teacher will be given at least 5 school days notice, in writing, of the time, date and location of the meeting. The letter should also:
  - Specify the nature and details of the unsatisfactory performance;
  - Include a copy of any evidence which is to be considered at the meeting;
  - Confirm the teacher's **right to be accompanied by a Trade Union or Professional Association** representative or a work colleague;
  - Inform the teacher of who will be involved in the meeting;
  - Give an indication of the possible sanction which could be imposed if the concerns are found to be substantiated.
- 3.4 If the teacher intends to be represented or accompanied at the meeting (by their Trade Union representative or Professional Association representative or a work colleague), they must supply the name and status of their representative no later than 2 school days before the meeting.
- 3.5 If the teacher intends to submit a written statement or other supporting written evidence they may do this either directly or through their representative no later than 2 school days before the meeting.

#### The meeting

- 3.6 At the meeting, the Head Teacher should set out the specific concerns regarding the teacher's **performance, together with any evidence to support this, referring as** appropriate to how this was dealt with under the Appraisal Procedure and any support that has been offered to the teacher.
- 3.7 The teacher and their representative will then be given an opportunity to give their response, and to present their case. This may provide new information or a different context to the information/evidence already collected.
- 3.8 Having considered all the statements and evidence presented, The Head Teacher may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases, the capability procedure will come to an end.
- 3.9 The Head Teacher may also adjourn the meeting, for example if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.

3.10 In other cases, the meeting will continue. During the meeting, or any other meeting which could lead to a formal warning being issued, the Head Teacher will:

- Confirm the standards of performance which are not being met;
- Give clear guidance on the improved standard of performance needed to ensure that the teacher can be removed from formal capability procedures (this may include the setting of new objectives focused on the specific weaknesses that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made);
- Explain any support that will be available to help the teacher improve their performance;
- Set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case. In extreme cases where the education of pupils is jeopardised, the period given for improvement after the date of a formal warning should be as quickly as possible within a reasonable period of time. In very serious cases, this warning could be a final written warning.
- Warn the teacher formally that failure to improve within the set period could lead to dismissal.

Following the meeting

3.11 A letter summarising the content and outcome of the meeting should be sent to the teacher within 5 school days of the meeting taking place. If no further action is to be taken under the procedure, this should be confirmed to the teacher, explaining that performance will be monitored through the Appraisal Procedure. If this is not the case, the letter should clearly set out all the points covered in section 3.10 above. The teacher will be responsible for forwarding a copy to their representative.

3.12 Where a warning is issued, the teacher must be informed of the duration of the warning (normally one year) and of their right to appeal (please see section 7 below).

#### 4. Monitoring and review period

4.1 A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period.

4.2 The length of the monitoring period will depend on the circumstances of the individual case. In extreme cases where the education of pupils is jeopardised, this should be as quickly as possible within a reasonable period of time.

4.3 The teacher will be invited to a second capability meeting, unless they were issued with a final written warning, in which case they will be invited to a capability hearing (please see section 6 below.)

#### 5. Second capability meeting

Prior to the meeting

- 5.1 The Head Teacher should write to the teacher concerned, giving at least 5 school days notice of the formal review meeting. The letter should advise the teacher:
- Of the purpose of the meeting (i.e. to formally review **the Teacher's** progress/improvement in the areas of performance and/or targets set at the first capability meeting;
  - Of any evidence which is to be considered at the meeting (including a copy of any written evidence);
  - Of their right to be accompanied by a Trade Union or Professional Association representative or a work colleague;
  - Who will be involved in the meeting;
  - That should the meeting find that no or insufficient improvement has been made, the likely outcome will be a final warning.
- 5.2 If the teacher intends to be represented or accompanied at the meeting (by their Trade Union representative or Professional Association representative or a work colleague), they must supply the name and status of their representative no later than 2 school days before the meeting.
- 5.3 If the teacher intends to submit a written statement or other supporting written evidence they may do this either directly or through their representative no later than 2 school days before the meeting.

#### The meeting

- 5.4 At the meeting, the Head Teacher should summarise the performance improvements/targets which were set at the first capability meeting and review how far these have been met by the teacher concerned, considering evidence to support this. This should include the outcomes of any interim meetings at which progress was reviewed.
- 5.5 The teacher and their representative will then be given an opportunity to give their response, and to present their case.
- 5.6 If the Head Teacher is satisfied that the teacher has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start.
- 5.7 In some circumstances, if the teacher has made some improvement and the Head Teacher feels that the performance problems can be eliminated within a reasonable time, s/he may extend the monitoring and review period;
- 5.8 Where there has been no improvement or insufficient improvement in the teacher's performance, the Head Teacher may, depending on the severity of the performance issues and the circumstances:
- Issue a final warning (which will normally be of 1 year's duration) OR
  - Move to a capability hearing (which could lead to dismissal) - see section 6.

#### Following the meeting

- 5.9 A letter summarising the content and outcome of the meeting should be sent to the teacher within 5 school days of the meeting taking place. If no further action is to be taken under the procedure, this should be confirmed to the teacher, explaining that performance will be monitored through the Appraisal Procedure.

- 5.10 Where a final warning is issued, the teacher must be informed:
- Of the duration of the warning (normally one year)
  - That failure to achieve an acceptable standard of performance within the set timescale, may result in dismissal (following a capability hearing – see section 6 below)
  - Of the procedure and time limits for appealing against the final warning (see section 8).
- 5.11 The teacher will be responsible for forwarding a copy of the letter to their representative.

## 6. Capability hearing

### Prior to the hearing

- 6.1 In Schools where the Head Teacher has delegated authority to dismiss, s/he will convene and chair the capability hearing and issue correspondence accordingly as set out below. In Schools where the Head Teacher does not have delegated authority, the hearing will be convened by the Chair of Governors and heard by the School's Capability Committee, who will be responsible for issuing the correspondence.
- 6.2 In cases where the Head Teacher is the subject of the capability hearing, the case will be heard by the Capability Committee.
- 6.3 The Head Teacher/Capability Committee should write to the teacher concerned, giving at least 5 school days notice of the capability hearing. The letter should advise the teacher:
- Of the purpose of the hearing (i.e. to consider the **teacher's** capability and whether their employment at the School should continue)
  - Of any evidence which is to be considered at the hearing (including a copy of any written evidence);
  - Of their right to be accompanied by a Trade Union or Professional Association representative or a work colleague;
  - Who will be involved in the hearing;
  - That should the hearing find that **the teacher's performance is unacceptable**, the likely outcome will be dismissal.
- 6.4 If the teacher intends to be represented or accompanied at the hearing (by their Trade Union representative or Professional Association representative or a work colleague), they must supply the name and status of their representative no later than 5 school days before the hearing.
- 6.5 If the teacher intends to submit a written statement or other supporting written evidence they may do this either directly or through their representative no later than 5 school days before the hearing.

### The hearing

- 6.6 At the hearing, the Head Teacher should set out the specific concerns regarding the **teacher's performance, together with any evidence to support this, referring as**

appropriate to previous capability meetings held with the teacher, targets set, support offered and degree of improvement or lack of improvement.

- 6.7 The teacher and their representative will then be given an opportunity to give their response, and to present their case. This may provide new information or a different context to the information/evidence already collected.
- 6.8 Having considered all the available **evidence and the teacher's case**, if the Head Teacher/Capability Committee feels that dismissal is not warranted, existing warning will remain in place. And this should be confirmed verbally to the teacher and then in writing.
- 6.9 If the Head Teacher/Capability Committee decides that dismissal is warranted, they will confirm this to the teacher, verbally and then in writing.

Following the hearing

- 6.10 The letter confirming the decision of the meeting should be sent to the teacher within 5 school days. The letter should:
- Summarise the issues discussed at the capability hearing
  - Confirm the decision of the hearing

If the decision was to dismiss, the teacher must be informed of their last day of service, their right to appeal and the necessary time limits for this (see section 7 below).

- 6.11 The letter to the teacher confirming dismissal must be authorised and signed as follows:
- Community Schools (i.e. where teachers are employees of the Council) – by the **Director of Children's Services**
  - **Foundation and Voluntary Aided School's** – by the Head Teacher
- 6.12 Dismissal will normally be with notice.
- 6.13 When a teacher is dismissed for reasons of capability or incompetence, or where they resign in circumstances where dismissal was a possibility, the Head Teacher or Governing Body (where the case involves the Head Teacher) is required to notify the Department for Education (DfE) in writing.

## 7. Appeals against warnings or dismissal

- 7.1 A teacher may appeal against any disciplinary action taken against him/her by giving notice in writing setting out their grounds for appeal within 5 school days (or 10 school days in the case of dismissal) to the Chair of Governors, who will arrange for a meeting of the Appeal committee to be convened as soon as reasonably practicable (and normally within 15 school days) and inform all concerned of the date, time and place of the hearing at least 10 school days beforehand.
- 7.2 At an appeal hearing, the teacher and the Head Teacher shall each be entitled to appear and to be assisted. The teacher may be accompanied/represented by a representative of a Professional Association, Trade Union or a work colleague. The Head Teacher may be assisted by an Employment Relations Adviser or another HR Colleague.

- 7.3 The purpose of the appeal is to review the decision taken by the Head Teacher/Governing Body, not to re-hear the case. The Appeal Committee may ratify, nullify or reduce the severity of the disciplinary action taken by the Head Teacher/Governing Body. The comments of the Appeal Committee may be recorded alongside any warning it ratifies, nullifies or reduces.
- 7.4 The teacher should be notified by the Chair of the Appeal Committee, in writing, of the outcome of the appeal within 10 school days. If this is not possible, the Chair of Governors should write to the teacher and give them an indication of when they will be notified of the outcome.
- 7.5 **The Appeal Committee's decision will be final and may be either to uphold or reject the appeal.**
- 7.6 If the Appeal Committee upholds the appeal it may either nullify or reduce the severity of the disciplinary sanctions (for example, a successful appeal against dismissal may result in the employee being reinstated, with a final warning).

## 8. Records

- 8.1 Details of any formal action, including any warnings, should be retained on the **teacher's personal file. Warnings should be disregarded after the expiry of their life** (normally one year).

## 9. Provision of information about teaching staff capability

- 9.1 Where a teacher applies for a teaching post in another school (either a maintained school or an Academy school), the Governing Body (in consultation with the Head Teacher) **must, at the request of the other school's Governing Body/proprietor:**
- Advise in writing whether or not the teacher has been the subject of the **School's Capability Procedure in the preceding two years and, if so**
  - Provide written details of the concerns which gave rise to this, the duration of the proceedings and their outcome

## 10. Capability of Head Teachers

- 10.1 In cases where the capability of the Head Teacher is being considered by the Governing Body of the school, Governors are strongly recommended to seek advice from the HR Employment Relations Manager before taking any action under this procedure.
- 10.2 **In such cases all references to the "Head Teacher" within this procedure should be replaced by "the Chair of Governors or his/her nominated representative" and any dismissal recommendation must be made to the Capability Committee.**
- 10.3 In dealing with such cases, governing bodies should follow the procedures outlined above.