

**THIS POLICY COVERS ALL ACADEMIES/SCHOOLS WITHIN
ARDEN MULTI-ACADEMY TRUST**

Name of Policy	Capability Policy	
Lead	Martin Murphy, CEO	
Governor Committee	Business & Personnel Committee	
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	September 2019 – minor amendments to reflect Trust status	



1. Overview

The School Staffing [England] Regulations 2009 require governing bodies to have procedures for dealing with any lack of capability of their employees. They must also have regard to any guidance from the Secretary of State in managing capability. This procedure is consistent with such guidance. In April 2012, the Secretary of State for Education published revised guidance entitled “Teacher appraisal and capability”.

The Education (School Teachers’ Appraisal) (England) Regulations 2012 come into force on 1 September 2012.

This policy pays due regard of changes to procedures proposed by the Secretary of State.

This procedure does not apply to Newly Qualified Teachers who are undergoing induction, or employees who are still subject to a probationary period.

2. Introduction

Employees are normally competent, effective and are able to develop through the range of developmental opportunities provided by the school. There are, however, occasions when a significant gap may develop between the requirements of a job and the individual’s performance and, if not appropriately addressed, the situation may affect pupils’ education and the performance of the school.

The purpose of capability procedures is to support members of staff to perform their duties fully and to address issues of under-performance on a formal basis. The aim is to deal with cases where, despite appropriate management support, the employee is lacking in key areas of ability, skill, competence or knowledge and is consequently unable to carry out their required duties to an acceptable standard. This procedure sets out the process for managers or governors to follow when addressing issues of under-performance, which have not been possible to resolve through the appraisal procedure.

Where concerns arise, the appraiser/line manager should, at all stages, work with the employee to consider what measures and support can be put in place to try and help improve their performance. Where there are concerns about any aspects of the teacher’s performance the appraiser (or relevant manager) will meet the teacher to:

- Give clear feedback to the teacher about the nature and seriousness of the concerns;
- Give the teacher the opportunity to comment and discuss the concerns;
- Agree any support (e.g. coaching, mentoring, structured observations) that will be provided to help address those specific concerns;
- Make clear how, and by when, the appraiser will review progress - it may be appropriate to revise objectives, and it will be necessary to allow sufficient time for improvement. The amount of time will reflect the seriousness of the concerns);

- Explain the implications and process if no – or insufficient – improvement is made.

When progress is reviewed, if the appraiser 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.

However, if serious or persistent weaknesses are identified in an employee's performance, and are not resolved through informal monitoring and support, appraisal should cease and the school's capability procedure be substituted.

Any decision to cease appraisal and move to capability procedures will be made by the Associate Headteacher or Executive Headteacher/CEO where the capability of the Associate Headteacher is in question.

Where an Associate Headteacher has concluded that it may be necessary to move into the capability procedure an "Investigatory/Transition Meeting" should be arranged to review the weaknesses in performance and to consider the evidence of whether appraisal should cease and capability procedures commence.

An investigatory/transition meeting of this type does not form part of the formal capability procedure, which would not begin unless a formal interview is held. Until that point, the employee remains subject to appraisal.

The transition to the capability procedure will not normally be made unless there is robust evidence provided through the teacher appraisal procedure, including the informal stage of support and monitoring, that:

- Specific underperformance, against identified standards, has existed for a significant period of time;
- The underperformance is either serious or has persisted despite the provision of appropriate support.

The investigatory/transition meeting will, if capability procedures are instigated, inform the formal interview in the capability procedure where the employee and their representative should be provided with the evidence from the appraisal and monitoring procedures which have prompted its implementation.

3. The investigatory/transition meeting

The employee, appraiser/line manager and Associate Headteacher (or Executive Headteacher/CEO where the capability of the Associate Headteacher is in question) will be present at the meeting. As the outcome of the meeting may have serious consequences, the employee should be encouraged to be accompanied by a recognised trade union representative (or person approved by the trade union) or a nominated work colleague.

The meeting will consider:

- The evidence which has given rise to specific concerns about the employee's performance;
- The seriousness of the concerns and their impact on the performance of the school;
- The support that has been provided to date;
- The time for which the concerns have persisted and over which the support has been provided;
- The degree of improvement that has been achieved and whether or not this has been sustained;
- The extent to which the employee has shown insight and engaged with the support provided through the appraisal process;
- Any mitigating factors and response from the teacher concerned.

Once these matters have been considered, the Chair will adjourn the meeting. The decision will be communicated to the employee, in writing, normally within 5 days.

The decision will be either to continue with appraisal procedures or to initiate the Capability Process through the convening of a formal interview.

The aim of capability procedures is to improve the performance of the employee causing concern, to a level that is acceptable, i.e. meeting all teacher standards and no longer unsatisfactory or inadequate and are working towards 'Good' (Ofsted) as quickly as possible. Employees whose performance reaches an acceptable level will cease to be the subject of capability procedures. Their performance will then be the subject of normal monitoring under appraisal arrangements.

4. Key features of the procedure

The timings are recommendations which may be varied where it is appropriate to do so.

The procedure proposes a period of 8 to 12 weeks (as determined by the Associate Headteacher/Chair of Governors) of support provided through an informal stage of support and monitoring through the teacher appraisal procedure. This period of support and assessment may be shortened where, for example, it becomes clear that an acceptable level of improvement is beyond the ability of the person assessed, or where there is a refusal to accept that improvement is required despite the reasonableness of the proposed measures to achieve improvement.

A shortened capability procedure of up to four weeks would be appropriate in particularly serious cases.

The shortened capability procedure of up to four weeks will apply in particularly serious cases where the education, health or wellbeing of children is in jeopardy. Examples of this might be where a teacher's classroom control is so poor that teaching and learning are seriously compromised, or where the majority of children under a teacher's care fail to progress in that teacher's lessons despite significant support already having been provided through the school's appraisal arrangements.

5. The formal capability procedure

5.1 This procedure will only be used where the reasons for using it have been fully explained to the employee subject to capability. The use of capability procedures should be totally open and transparent and the employee should be provided with a copy of the procedure.

Formal interview

5.2 The formal interview initiates the capability procedure. It provides an opportunity to deal with serious problems in a more structured way than is appropriate under the appraisal procedure. It allows the employee to prepare a response to serious concerns about performance and make a case in the company of a union representative or colleague. At least 5 working days' notice must be given for the interview, explaining clearly to the employee that they are now moving from arrangements that are part of the appraisal process into formal capability procedures. There should be no ambiguity about this step taking place and the possible consequences of following the capability procedures should be clearly explained.

5.3 The interview may provide new information or put a different perspective on the evidence collected including any evidence gathered as part of the appraisal process. If it becomes clear that further investigation is needed the interview should be adjourned for an appropriate length of time to allow this to happen.

5.4 There are three options at formal interview:

- A return to the appraisal process (where new information, a different perspective on the information collected, or further investigation suggests that the matter is not as serious as it first seemed)
- A first written warning
- A final written warning

5.5 The latter options are relevant to any case where continued concern about the standard of performance is justified. The decision regarding which level of warning to issue will depend on the seriousness of the problem and/ or consideration of any live warnings. If performance is unsatisfactory a first warning will normally be the next step and will commence an assessment period of up to 8 weeks. In cases of particularly serious concern, for example, where the health and safety or education of children is in jeopardy, it is possible to move directly to a final written warning. This will invoke an assessment period not exceeding 4 weeks.

5.6 A decision should be made after all the facts and any representations from the employee have been considered. The Chair should adjourn the meeting to consider the appropriate option before delivering a decision to the employee. Any appeal against a warning must be made within 5 working days of receipt of the written confirmation, and will normally be heard within 10 working days of notification of appeal; and must not interrupt the progress of the procedure, unless the appeal decision leads to the matter being reconsidered.

5.7 Where a written warning is issued, the Associate Headteacher, manager or governor leading the procedure should ensure the remainder of the meeting is used to:

- Set out the professional shortcomings;
- Give clear guidance on the improved standard of performance needed to end the capability procedure and set appropriate objectives/targets;
- Explain the support that will be available, and how performance will be monitored over the following weeks;
- Depending on the level of warning issued, to identify the timetable for improvement and agree a date for the next or final evaluation meeting;
- Make it clearly understood that failure to improve may lead to dismissal;
- Make sure the employee and their representative are given suitable opportunity to contribute to the meeting.

5.8 Written notification should be sent to the employee immediately after the formal interview recording the result of the investigations, the main points discussed at the meeting, confirming the decision, and where a warning is issued, giving information about the handling of the next stage.

First assessment stage: following a first written warning

5.9 Weeks 1 to 8 comprise a period of regular observation, monitoring and evaluation of performance, with guidance, training if necessary, and support to the employee.

5.10 If at any point during this stage the evidence suggests a more serious problem, a decision may be taken to consider the evidence at a further interview at which a final written warning may be issued.

5.11 In the week following completion of the assessment stage (i.e. week 9), there should be an evaluation meeting to assess performance over the previous weeks.

At least 5 working days' notice must be given for the meeting and the employee may be accompanied by a union representative or colleague. If the level of performance has been satisfactory and there is confidence that it can be sustained the capability procedure can end here with a letter from the Associate Headteacher/governor.

5.12 Where performance is satisfactory, but there is a genuine expectation that the improvement will not be maintained, a further period of assessment may be instigated at the discretion of the Associate Headteacher/governor. This should be long enough to allow performance to be properly evaluated. Once this period, of no more than 4 weeks, has passed a further evaluation meeting should be held to assess performance and next steps.

5.13 If an evaluation meeting concludes that performance has continued to be unsatisfactory a final written warning should be issued. Formal monitoring, evaluation, guidance and support should continue for a further period. Arrangements for this should be explained at the meeting. The employee must be told clearly that failure to achieve an acceptable standard, with confidence that it can be maintained, may result in dismissal. The decision and main points of the meeting should be recorded in writing to the employee, as soon as possible. Any appeal against a final warning must be made within 5 working days, and normally heard within 10 working days of notification of appeal and must not interrupt the progress of the procedure, unless the appeal decision leads to the matter being reconsidered.

Second assessment stage: following a final written warning

5.14 Weeks 1 to 4 comprise a period of regular monitoring and evaluation of performance, with guidance, training if necessary, and support to the employee.

5.15 In week 5 (i.e. the week following the second assessment stage), there should be a final evaluation meeting to report the assessment of performance over the previous weeks.

At least 5 working days' notice must be given for the meeting and the employee may be accompanied by a union representative or colleague. If performance has been satisfactory, and there is sufficient confidence that it can be maintained, the capability procedure can end here.

5.16 If performance is unsatisfactory the employee should be told that the matter will be referred with a recommendation of dismissal to the Associate Headteacher or the Governing Body's Staff Dismissal Committee. The result of the assessment, main points of the meeting and date of the dismissal committee hearing (if known), should be recorded in writing to the employee as soon as possible.

Dismissal committee stage

5.17 The Business & Personnel Committee will arrange a Staff Dismissal Committee with at least three governors/trustees. The Business & Personnel Committee or Associate Headteacher must hear the representations and recommendations brought by the Associate Headteacher, line manager or governor conducting the capability evaluation, and any representations that the employee may wish to make. The Business & Personnel Committee will consider an appeal through its Staff Appeal Committee set up for this purpose.

Appendix 1

Further guidance on operating the capability procedure

Capability is a separate, albeit related, procedure from appraisal that should be adopted in such a way that is supportive, constructive and helpful to the individual.

It should provide an opportunity for:

- Encouragement, support and assistance
- The setting of clear, constructive objectives (targets) for improvement
- Discussion and consideration of all relevant factors
- The manager and individual to work together to address the concerns
- Employee representation

Managing performance

Good management, clear expectations and appropriate support will go a long way towards addressing weaknesses in performance. Any concerns a manager has about the performance of any employee should be raised with the individual as early as possible. Normally this will be part of the appraisal procedure. Early identification of problems through that procedure will help to avoid the need for formal capability procedures.

It is important that all information associated with this procedure is treated as strictly confidential and should not be discussed with anyone who is not directly involved in the procedure.

As good employment practice it is strongly advised that managers ensure the following have taken place:

- The employee has received appropriate induction to their job (including statutory induction for newly qualified teachers).
- The employee has been issued with a clear job description.
- The employee has been told clearly what is expected of them in terms of the level of their performance.
- The employee's performance has been regularly monitored and feedback has been given.

Managers and governors must provide as appropriate at every stage of the procedure:

- The practical and consistent application of support, advice and guidance to the individual by a professional approach;

- Training or retraining as necessary following any (mutual wherever possible) identification of an individual's needs;
- The establishment of performance criteria and monitoring of performance against the criteria within predetermined time periods;
- Clear written information regarding the alleged shortcomings in the employee's performance.

Individual employees should co-operate constructively with arrangements put in place to address weaknesses in performance. Where an employee believes a manager is behaving unreasonably these concerns should be raised within this procedure or a school's grievance procedure.

Throughout the operation of appraisal and capability procedures the manager or governor(s) should keep clear written records and make sure that the concerns about performance are fully explained and set out in writing for the individual employee.

Role of governors

Governors should not normally be involved with a capability procedure before the dismissal stage. The exception to this is where a governor or governors are involved in considering an appeal against a warning or in a capability procedure against a head teacher. It is important to be prepared for the possibility of dismissal. The use of governors to hear any grievances or appeals against warnings should be limited to ensure that a sufficient number of impartial governors remain available for the dismissal and dismissal appeal committees. Normally at least three governors are required for the dismissal committee and no fewer for the appeal, but where this number is not reasonably practicable it can be reduced to two.

Role of Associate Headteacher

The Associate Headteacher may act as the line manager for an individual employee, but in any case will take any decision to initiate the capability process.

Where the Associate Headteacher has performed both of these roles, the Governing Body will not normally delegate the initial dismissal decision to the Associate Headteacher.

Role of advisers

Advisers with education and personnel experience may be invited to advise those involved in capability procedures and where appropriate assist with the process, including classroom/task observation and providing support.

Support for the employee

Those monitoring performance should offer feedback, instruction, advice and guidance to help the employee improve performance. If further training, mentoring or assistance from colleagues would be helpful, these should be arranged as soon as possible and should be organised within the timing of the procedure.

Monitoring arrangements

Monitoring should include observations of a range of relevant duties and functions. An objective record of the monitoring should be kept and used to assist with the evaluation of performance.

Written records

A written record should be made of all interviews with the employee and any action taken following such an interview should be set out in writing and shared with the employee. Except in agreed circumstances any formal warnings should be disregarded for future capability purposes after a specified period of satisfactory performance. The qualifying period for the written warning to stay on record should be made clear in the written notification of the outcome.

Staff who are absent through illness during the procedure

If long term sickness absence (see definition in the Sickness Absence Management Policy) appears to have been triggered by the commencement of capability procedures, the case will be referred immediately to the occupational health service to assess the person's health and fitness for continued employment and their ability to attend relevant formal meetings whilst they may be off work sick. The school/academy will take a considerate and sympathetic approach, but in general the length of time they may wait for a person's health to improve before considering whether to terminate employment on health grounds will be subject to relevant medical reports/occupational health evidence and advice available.

Short absences should not delay any part of the capability procedure. Reasonable steps should be made to enable the employee to attend evaluation meetings, but where the employee is unable to attend, these may proceed in their absence if delay would otherwise compromise the maximum time set aside for the procedure. In such circumstances a full account of the evaluation should be provided in the letter confirming the decision taken.

Disputes about the procedure

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

Appeals against warnings or dismissal

Appeals will be heard by the governing body's appeal panel, normally comprised of previously uninvolved governors. Appeals should normally be restricted to considering the reasonableness of the decision made, any relevant new evidence, or any procedural irregularities. An employee is entitled to be accompanied at an appeal hearing by a trade union representative or colleague. The appeal decision should be confirmed in writing and the employee told that there is no further appeal against the decision. Where the reasonableness of the decision is being questioned the test, that should apply for overturning it, is whether the decision was so unreasonable that it was one that no other decision maker, acting with proper regard to his or her responsibilities, could have chosen to take. Where monitoring would otherwise be continuing, it should not be halted while an appeal is pending.

Grievances

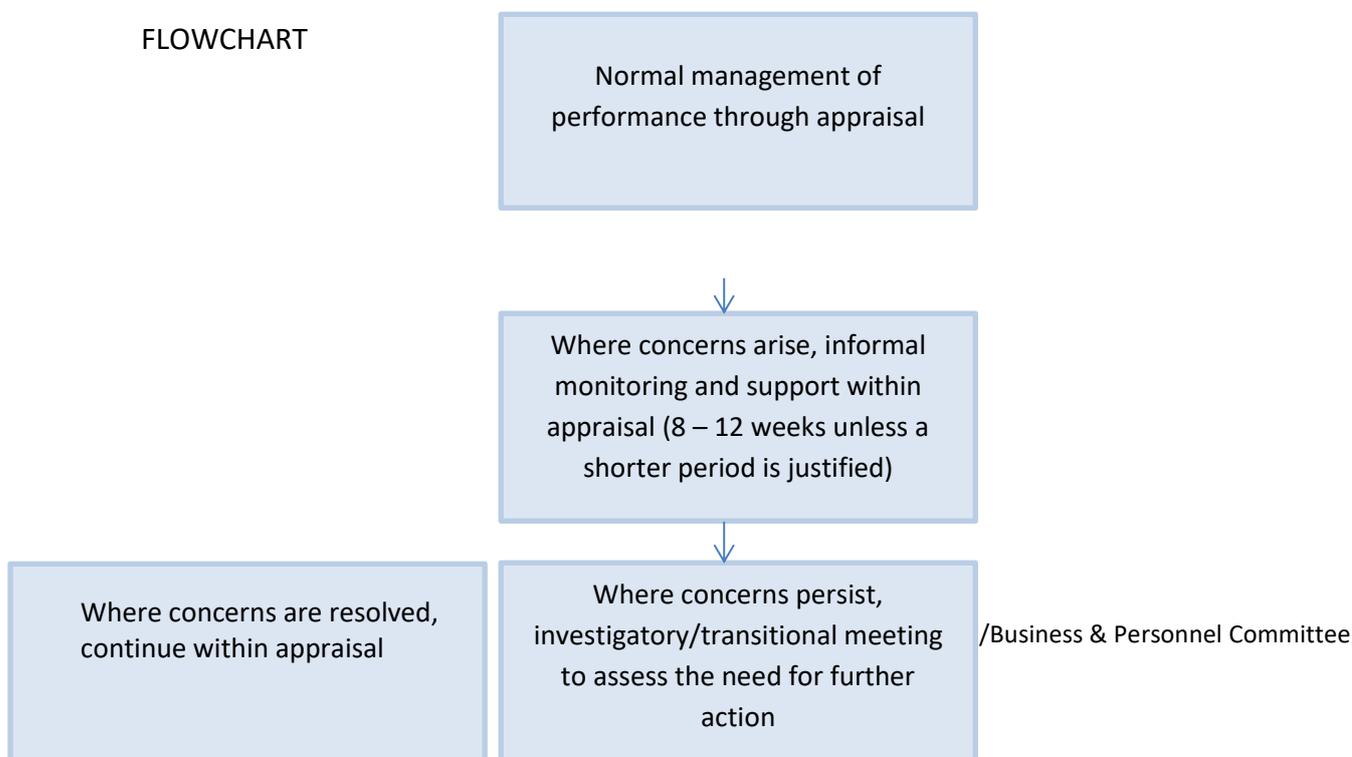
In exceptional circumstances an employee may raise a grievance about the behaviour of the Associate Headteacher, another manager or governor during the course of a capability procedure. Exceptionally it may be appropriate to suspend the procedure until the grievance can be considered. Such a delay should only be considered where there is a strong indication that the employee has been mistreated.

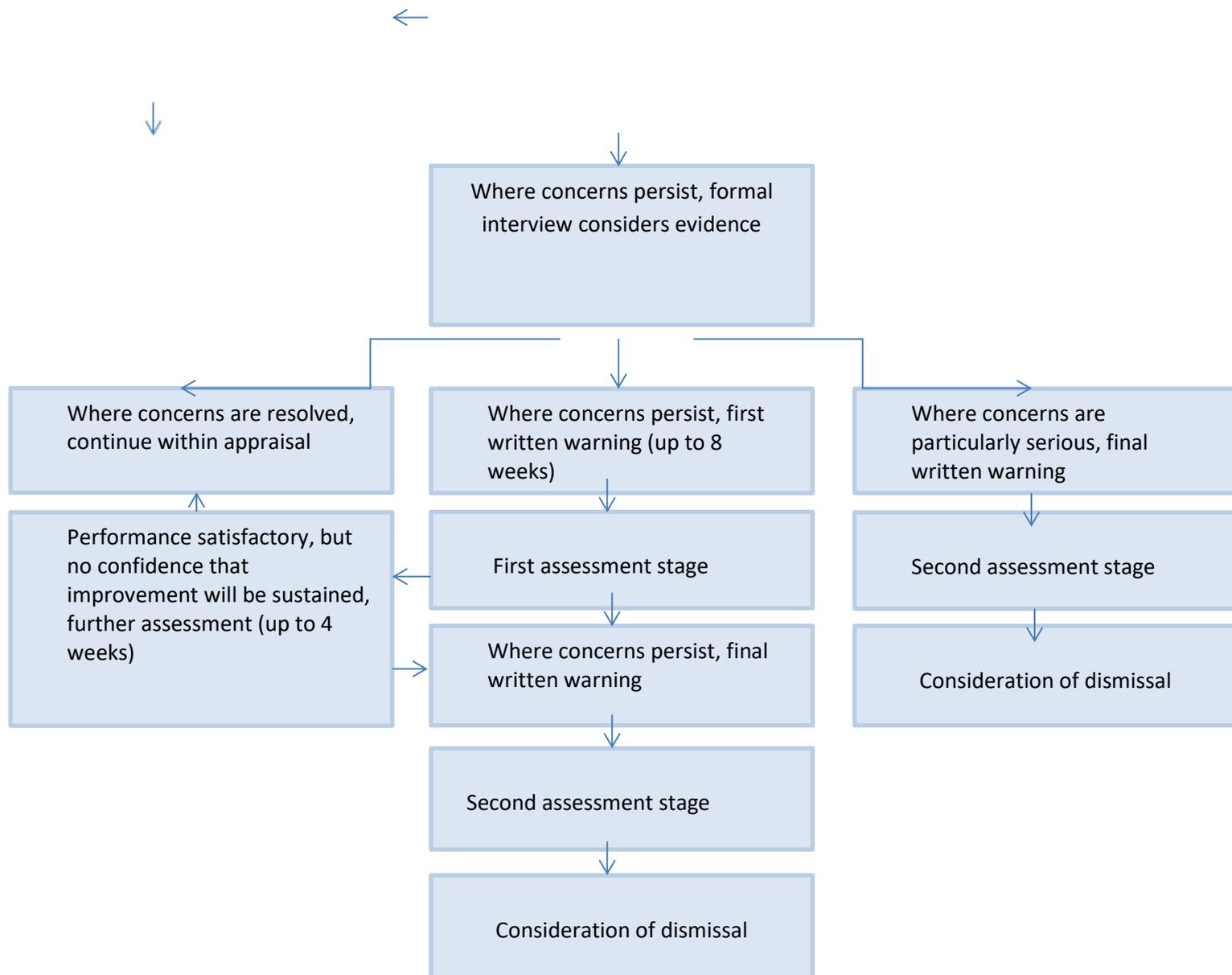
References

Under an amendment made in 2012 to the School Staffing (England) Regulations 2009, schools are advised to request from the applicant's current or previous employer details of any capability history that may have occurred in the previous two years, and the reasons for this. Where a such a request is received from a governing body of any maintained school or the trust of an academy school to which an application for a teaching post has been made, confirmation in writing must be provided to confirm whether or not that person has been the subject of capability procedures within that period and, if so, the details of the concerns which gave rise to this, along with the duration of the proceedings and their outcome.

Appendix 2

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Appendix 3

Formal Procedures

Agenda for formal capability/review/decision meeting:

1. Introduce those present and confirm the purpose of the meeting and that employee understands the procedure.
2. Confirm the employee understands their representation rights.
3. Detail the details of capability case.
4. Allow the employee to reply and make any representations.
5. Ask any questions or pursue specific points.
6. Allow employee to make any final points.

7. Adjourn to consider decision
8. Reconvene meeting and ask employee and representative to return
9. Give decision to employee

Where decision is to issue a formal warning:

10. Identify professional shortcomings.
11. Give clear guidance on the improved standard of performance needed to end the capability procedure.
12. Explain the support that will be available, and how performance will be monitored over the following weeks.
13. Identify the timetable for improvement and agree a date for the formal review/decision meeting.
14. Explain the level of warning awarded and make it clearly understood that failure to improve may lead to dismissal.

Appendix 4**Model letters**Letter indicating areas of improvement, support and timescales

Date

Confidential

Dear

I write to confirm the outcome of our discussion on *(insert date)* regarding some areas where your performance has dipped. These are:

List areas and required outcome and support

We agreed that this support will take place for a week period and at the end of that period we'll meet again to review. I will also take the opportunity to catch up with you between times to see whether I need to amend the support that has been put in place.

I do hope that this support will help you to make the improvements and achieve sustained good performance.

I have included a copy of the counselling leaflet and capability procedure for your information and if you have any questions of this or have any further queries or suggestions regarding the support, please do not hesitate to contact me.

Yours sincerely

Associate Headteacher/Manager/Governors

Encs.

Counselling Leaflet

Capability Procedure

(action plan if appropriate)

Letter confirming decision to initiate formal capability

Confidential

Dear

I write to confirm the outcome of our discussion on *(insert date)*.

At our meeting we discussed that improvement is required in your performance in the following areas:

Insert areas

We discussed the support / action plan that had been put in place between ...date and which would address these needs. This is in line with the support provided under the remit of the school's capability procedure.

I enclose a copy of this action plan / support which includes the areas of concerns, agreed outcomes and timescales.

As we discussed, the aim is for you to sustain good levels of performance.

Unfortunately, you haven't achieved the outcomes within the given time scales and therefore I will need to continue this support under the formal stages of this procedure. A copy of this procedure is attached for your information.

I therefore require you to attend a formal capability meeting in line with the capability procedure.

This meeting will be held at *(location)* on *(date)* at *(time)*.

You have the right to be accompanied by a trade union representative or colleague.

The matters to be discussed at this meeting are covered in the attached documentation.

If for any reason you are unable to attend the meeting you must inform me as soon as is possible.

Yours sincerely

Associate Headteacher/Manager/Governors

Encs.

Counselling Leaflet

Capability Procedure

Completed action plan/record of support, agreed & actual outcomes

Letter to Employee Confirming the outcome of the formal capability meeting

Date

Dear

Outcome of the formal capability/review meeting - WRITTEN / FINAL WRITTEN WARNING (*select as appropriate*).

This letter confirms my decision taken at the formal capability meeting of the capability procedure held on (*date*) which issued you with a written/final written warning (*select as appropriate*) under the terms of the capability procedure. This warning is effective under the terms of the capability procedure for (*specify period*) from the date of the formal interview.

This is a serious matter and you must take note of the following points.

This warning is issued to you due to the following professional shortcomings identified at the meeting (details of shortcomings identified as result of investigations).

As agreed at the meeting I will make the following arrangements to support and assist you to secure an improvement in your performance (*give details*). If you believe that you require any further support, assistance or training you must discuss this with me as soon as possible.

I will make the following arrangements to monitor your performance (*give details*).

The timetable for this process is (*give details*).

As a consequence of this you must achieve the following standards of performance in order for the capability procedure to be ended (*give clear guidance on standards of performance required*).

You must note that continued unsatisfactory performance may lead to further and more serious formal action being taken against you including possible dismissal.

The formal review/decision meeting (*select as appropriate*) will be held on date, at, location, at time. You have the right to be accompanied at this meeting by a union representative or colleague.

You have the right to appeal against the issue of this warning under the terms of the capability procedure. If you wish to appeal you must inform me in writing within 5 working days of receipt of this letter. You have the right to be accompanied at appeal by a union representative or colleague.

The issue of this warning is a serious matter and I require you to take careful note of the points made in this letter.

Yours sincerely

Associate Headteacher/Manager/Governors

Letter inviting employee to attend appeal hearing against the issue of a formal warning

Date

Dear

Following your letter of (date) lodging your appeal against the written/final warning (*select as appropriate*) issued to you on (date) under the terms of the capability procedure, I have arranged for your appeal to be heard by Chair of governors/governor(s) nominated under this procedure (*select as appropriate*) at (location) on (date) at (time).

You have the right to be accompanied by a trade union representative or colleague at this hearing.

You have already received a copy of the capability procedure and Appendix X details the agenda that will be followed at the hearing.

Yours sincerely

Associate Headteacher/ Manager/Governors