

E-ACT POLICY

PARKWOOD ACADEMY

Capability – Support Staff

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|---------------------------------|--------------------------------------|
| Date agreed by Governors | |
| Date of review | |
| Responsible officer | Principal / Business Director |

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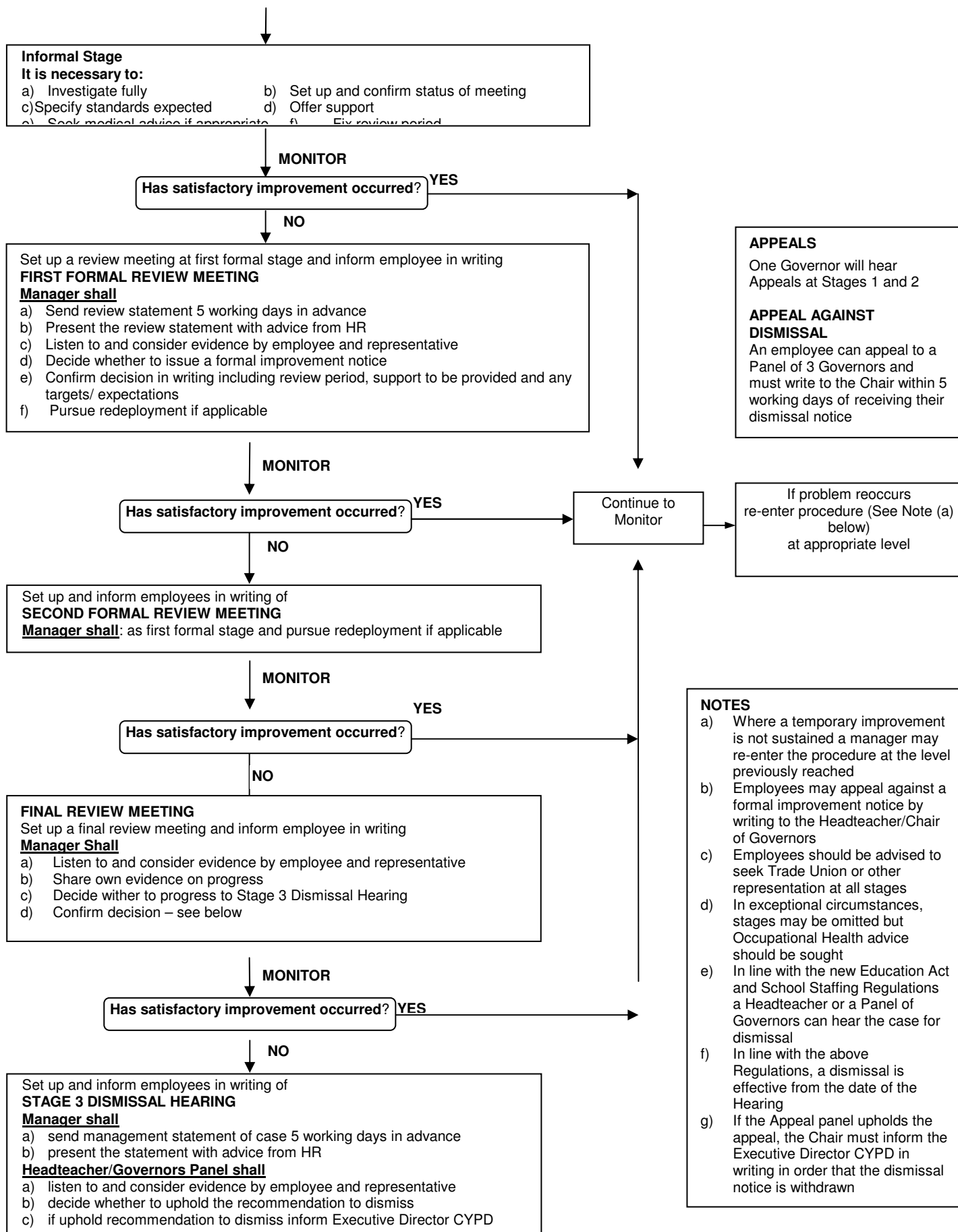
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Managing the Capability Procedure (Support Staff in Schools)

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CAPABILITY PROCEDURE FOR SUPPORT STAFF

Preamble

It is recognised by the CYPD that the vast majority of Support Staff in its Schools make a valuable contribution, directly or indirectly, to the education of children. The Capability procedure outlined below is only to be used to manage the minority of Support Staff whose capability in their job is causing concern, having an adverse effect on colleagues and potentially (directly or indirectly) jeopardising the education of pupils.

It is recognised that one of the most difficult areas for Managers' and Trade Union Representatives is where there are concerns about the capability of an employee which affects their ability to perform work which the employee is normally employed to do. When dealing with issues of capability it is important to take into account the circumstances of the individual at work and, if appropriate, at home. It is equally important to consider the potentially adverse impact (directly or indirectly) that this can have on colleagues and the standards of education received by the pupils.

PART 1

1. Introduction

This procedure applies to Support Staff of locally managed Schools and deals with matters relating to capability and performance.

This procedure replaces the LEA Model Capability Procedure (Support Staff) circulated in 2000.

References to 'Managers' means Managers or Headteachers as applicable, or Chair of Governors where the employee concerned is the Headteacher.

The Procedure is based upon the revised Managing Attendance and Capability Procedure (2002) for Council employees, but adapted for use by Schools.

However, as Teachers have a separate Capability Procedure, based upon the outline Capability Procedure agreed at national level and updated summer 2005, a separate Capability Procedure for Support Staff is appropriate which reflects the principles and policies in the City Council's Procedure, and the Capability Procedure for Teachers to ensure, where appropriate, consistency of approach.

The procedure deals with both the pre-formal and the formal stages of managing issues of the capability of a member of the Support Staff which

could result in that member of staff receiving formal Improvement Notices or ultimately being dismissed from their post.

Matters relating to sickness absence should be managed under the School's Management of Sickness Absence Procedure.

The procedure will not apply to matters relating to conduct. The School's Disciplinary Procedure will be used in such circumstances.

Specific Guidance on the application of this procedure in these circumstances is given in Part Three of this document.

2. Policy

- 2.1 The School aims to continuously improve standards of education.
- 2.2 It is the responsibility of the managers/supervisors to set standards for performance.
- 2.3 The contribution of all employees in achieving high standards of work is a key factor in achieving the above aim
- 2.4 The School has an obligation to take account of the general duty of care on employers but also to consider the effects of poor performance on the quality and provision of education and on other employees.
- 2.5 The School recognises that employee performance may be influenced by a number of factors. The School will offer reasonable assistance to its employees to resolve issues of poor performance. A range of appropriate options and outcomes may result from this.
- 2.6 It may not be reasonable or feasible, however, to sustain employment in all circumstances. Consequently, persistent unsatisfactory work performance may, after due consideration, lead to termination of employment.

3. Principles

- 3.1 Managers have the right to meet with an employee when they have concerns about performance. Similarly, employees have the right to raise with their manager concerns and problems which they believe may affect their performance.

- 3.2 Managers will consider the full range of support and options available in determining appropriate outcomes.
- 3.3 Managers have the right to expect employees to attend a medical and/or interview with the Occupational Health Nurse so that information can be gained to help manage the issues of capability and performance.
- 3.4 The School accepts the legitimate role of Trade Union Representatives to represent their members at all formal stages of this procedure.
- 3.5 The School will comply with the relevant statutory requirements
- 3.6 The School will seek to ensure that poor performance is not caused by failure to properly manage health and safety risks as required by legislation and the School's Safety, Health & Welfare Policy.
- 3.7 Confidentiality of information will be maintained in relation to personal details and circumstances. Information to be shared with colleagues and others on a 'need to know' basis will be agreed with the employee concerned.
- 3.8 The School will adhere to its internal policies and procedures.
- 3.9 As good employment practice, it is strongly advised that the manager ensures the following have taken place:-
 - The employee has received the appropriate induction to the job.
 - The employee has been issued with an appropriate, up to date job description.
 - The employee has been told clearly what their roles and responsibilities are.
 - The employee has a regular performance review.
- 3.10 It should be recognised that the success of any arrangements to improve the performance of an employee depends on the constructive co-operation of the individual concerned. To this end, individuals will be expected to:-
 - accept and act upon the advice of managers to carry out reasonable directions which are designed to improve performance,

- participate positively and constructively in discussions about her/his performance and how it can be improved,
- do all she/he can to act upon advice with regard to any in-service training opportunities made available.

Equally the School will be committed to helping the employee to overcome her/his problems and will be willing to make reasonable adjustments to working arrangements if and when appropriate.

3.11 Whilst it is important that these provisions are considered in order to ensure fairness and equity in the treatment of employees, it may be that ultimately sanctions have to be imposed. Therefore, the manager will reserve the right after previously having provided agreed support to consider recommending termination of employment to Governors/Head/Manager. This will be on the grounds of capability where problems persist and alternatives to dismissal, including redeployment and early retirement on health grounds have been considered but are inappropriate or unavailable. In very serious cases it may be necessary for the manager to move immediately to suspension and dismissal/termination.

3.12 The procedure is designed to ensure that if an individual fails to improve her/his performance, any subsequent action is based upon: -

- structured information gathering and systematic recording which demonstrates that an employee is not performing to the required standards,
- a fair procedure used to reach this conclusion,
- the fact that the employee was given reasonable assistance to overcome such failings (specifying support and training given,
- the employee knowing the level of seriousness of the problem, the employee being given clear written information on the nature of their performance problems, and the employee's problems being given appropriate consideration and support at the earliest possible stage,
- the employee being given reasonable time to improve within the timescales given.

3.13 The formal capability procedure is described in stages of increasing seriousness to avoid ambiguity about the employee's position. It must be noted however, that some circumstances may be of such an

exceptional nature that they will immediately need to be considered under the second or final stage in the formal procedure.

- 3.14 Prior to a Formal Review/Hearing taking place under this procedure, an employee should be informed in writing of the level at which the case is being considered. Where a manager departs from the usual practice of operating the procedure sequentially, that decision must be justified and be subject to scrutiny at the Formal Review/Hearing.
- 3.15 If at any stage in the procedure the employee regards the steps being taken as unreasonable, she/he will have the opportunity to raise their concerns during relevant meetings, hearings or appeals, and by submitting a letter to their manager outlining their concerns. The School's Grievance Procedure is **not** appropriate in these circumstances.

4. Roles and Expectations

Managers/Headteachers/Chair of Governors

Managers are expected to:

- communicate regularly with employees. In the normal course of their management/supervision of staff they will be expected to identify where a problem exists or may arise which impacts on an employee's performance. They should take responsibility for managing and providing support in order to resolve the matter in the appropriate way.
- meet with employees seeking to discuss issues which they feel may affect their performance as soon as they become apparent.
- prepare 'Review Statements' for Formal Review Meetings at Stage one and Stage two, and Appeals at these levels
- prepare a 'Statement of Case' for dismissal hearings and appeals (Stage 3)
- Unless the case has been delegated, the Headteacher will be the manager

Stage 1 and 2

In accordance with the Education Act and School Staffing (England) regulations 2003 the Headteacher or other delegated manager can issue Improvement Notices to employees at the end of First and Second Stage Formal Review meetings

Stage 3

In accordance with the above regulations, the Headteacher can also be given delegated responsibility to make an initial dismissal decision (IDD) at Stage 3. However, there will be circumstances when the Governors will make the IDD. These include:-

- in a small school
- where there are allegations against the Head by the employee
- where the Head has had prior involvement with the case
- where the Head has carried out the investigation
- where the Head is unwilling to perform this function or does not have the necessary skills or capability
- where the Head is subject to an investigation

Governors are advised to make a policy decision when adopting this procedure as to whether the Headteacher will be delegated the responsibility to make an Initial Dismissal Decision (IDD)

Employees

Employees are expected to:

- communicate with their manager about difficulties and problems so that efforts to resolve these can be made at the earliest opportunity.
- co-operate fully in resolving difficulties by taking advantage of support offered such as referral to the Occupational Health Nurse, training opportunities etc.

Governors

Governors are expected to:

- have regard to this policy when dealing with capability issues with staff
- make fair and objective decisions when dealing with appeals against Improvement Notices issued by a manager at formal stages one and two

- make fair and objective decisions when dealing with dismissal hearings and appeals against dismissal
- notify the Executive Director: Children's and Young People's Services (CYPD) in writing when the outcome is a decision to dismiss an employee
- notify the Executive Director: Children's and Young People's Services (CYPD) in writing if the Appeal Panel upholds the Appeal against dismissal in order that the dismissal notice can be withdrawn

Occupational Health Service

- The Occupational Health Nurse will provide guidance to managers based on professional medical advice to assist them to make informed decisions and take appropriate action where performance is affected by health issues.

Children and Young People's Human Resources

- Offer guidance and support to employees and managers
- Offer guidance and support to governors during hearings and appeals
- Liaise where appropriate with Occupational Health and other agencies

5. Recruitment and References

Before making an appointment, Schools should seek factual information about candidates by asking for references, including one from their previous employer.

Schools should provide information to employees at induction stage about policies, procedures and standards.

6. The Procedure in Brief

The procedure is designed to ensure that issues of capability are dealt with by managers promptly, thoroughly and equitably in a sensitive, constructive and understanding manner, recognising the needs of the employee concerned and their particular circumstances.

The school will provide, as appropriate and subject to available resources, at every stage of the procedure: -

- the practical and consistent application of support, advice and guidance to the employee by a professional approach,
- training or re-training as necessary following any identification of an employee's needs,
- the establishment of performance criteria and monitoring of performance against the criteria within pre-determined time periods,
- clear written information regarding the alleged shortcomings in the employee's performance.

The employee will be fully involved in the process by being invited to participate in discussions about her/his performance, advised clearly on the specific areas of concern and made fully aware of the comments being made by those whose role it is to offer support and guidance. She/he will also be made fully aware of the stage which has been reached, her/his performance at each stage, the timescale by which improvement is expected and the consequences of failure to improve to the required standards.

The support and guidance provided for the employee will be appropriate and if necessary, include in-service training and attendance on appropriate courses. The costs will be met by the School.

The detail of the procedure is contained in Part Three.

PART TWO

1. Scope

This procedure will be used where a manager has identified problems in an employee's performance at work which may be caused by lack of skill or aptitude.

2. Application

- 2.1 This procedure will apply to all levels and categories of support staff.
- 2.2 The manager taking responsibility for the case under this procedure will continue to manage the process up to the point where dismissal is to be considered. During the process however, particular support and supervision may be delegated to an appropriate manager.
- 2.3 If at any time during the procedure the employee improves her/his performance to the standard required, she/he should be informed of this in writing. The employee will continue to be monitored to avoid future problems. This will also be contained in the letter. If a lapse does occur, the matter may be taken up again at the same stage in the process, or a lower stage as appropriate.
- 2.4 The manager will specify timescales (for review and improvement) throughout the procedure which are relevant and appropriate to the circumstances of the case, in order to manage the problem within a reasonable period of time.
- 2.5 Employees will be advised of their right to be accompanied by a Trade Union or representative of their choice, at all stages of the procedure.
- 2.6 Throughout the process, guidance/advice will be available to the manager from Children and Young People's Human Resources and the Occupational Health Nurse.
- 2.7 In very serious cases it may be reasonable to bypass a stage or stages in the procedure.
- 2.8 Formal Improvement notification/confirmation of resolution of problems will be stored on the employee's file.

PART THREE

The Capability Procedure for Support Staff in Schools

The procedure consists of the following sections: -

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| Section A | Identification, Support, Monitoring and Evaluation |
| Section B | Trade Union Representation |
| Section C | The Composition of Panels for Formal Hearings and Appeals |
| Section D | Appeal Rights |
| Section E | Records |
| Section F | Management Intervention Prior to Entry into the Formal Stages of the Procedure |
| Section G | The Formal Stages of the Capability Procedure including Reviews |
| Section H | Sickness Absence during the Capability Procedure |
| Section I | Suspension from Duty |
| Section J | Options Available |
| Section K | Sources of Assistance |
| Section L | Redeployment |
| Section M | Important notes for planning the formal stages |

Section A

Identification, Support, Monitoring and Evaluation

It is important that performance problems are clearly identified and given appropriate consideration and support at the earliest possible stage. The nature of the problem, its level of seriousness and cause(s) must be investigated and identified by structured information gathering and systematic recording.

Following a specified period of support, monitoring and evaluation the next decision will be to assess the outcome. In the event that the employee has failed to satisfy the targets and/or performance standards set, it may be necessary to enter the formal stages of the procedure.

Section B

Trade Union Representation

Trade Union representation will be encouraged. An employee has the right to be accompanied by her/his Trade Union or another employee of the City Council at every stage of the procedure, including the informal stage. Each employee will be informed of this right throughout the procedure.

Details of any actions previously taken or now possible will be given in writing to the employee's representative if the employee so desires.

No action should take place with regard to any individual who is a recognised representative of a Trade Union until, following notification to the individual, the circumstances of her/his case have been discussed with a full-time official or other appropriate official of the individual's Trade Union. Should the individual not wish her/his Trade Union official to be involved the procedure will be followed normally. The process will not be unreasonably delayed in these circumstances.

Section C

Formal Review Meetings at Stage One and Stage 2

At Stages One and Two of the Procedure, the manager or Headteacher can issue an improvement Notice at the end of the Review Meeting. See also 'Roles and Expectations' Managers/Headteachers/Governors on page 9

Composition of Panels for Formal Stage 3 Dismissal Hearings and Appeals at all Stages

In accordance with the Education Act, the School Staffing (England) Regulations 2003 and relevant governor regulations, Governing Bodies of delegated schools must appoint two separate sub-committees of not less than three governors each to consider capability at work cases at the third and final stage when dismissal of an employee is being considered. Where this number is not reasonably practicable it can be reduced to two. There should not be fewer governors on the appeal panel than were on the original panel.

In the interests of natural justice these sub-committees must comprise different governors. It is recommended that these are not employees of the school.

However, governors can delegate the responsibility for dismissals to the Headteacher. (see Roles and Responsibilities)

For appeals at Stages 1 and 2 of the procedure, normally one Governor will hear the case.

A Human Resources Advisor will be present to advise the Panel and manager/governor at formal hearings and appeals.

Section D

Appeal Rights

The school will give the employee the right of appeal against any Formal Improvement Notification issued under the first two formal stages of the procedure and the right of appeal against a decision to dismiss her/him at a Stage Three Hearing. In order to register an appeal the employee will need to write to the Headteacher or Chair of Governors, as appropriate, within five working days of the hearing/review meeting and will need to specify the reasons for appeal.

Normally one governor will hear appeals at Stages 1 and 2 of the procedure

A panel of 3 Governors will hear appeals at Stage 3 of the procedure

It can be reduced to 2 where 3 is not reasonably practicable and where there were 2 on the original panel.

Dismissals and notice periods are effective from the initial dismissal decision (IDD) also known as the dismissal hearing, and not from the appeal hearing.

The Executive Director CYPD must give notice of dismissal within 14 days of receiving the IDD.

If the panel upholds the employee's appeal, the chair must inform the Executive Director CYPD in order that the dismissal notice is withdrawn.

Appeals should normally be restricted to:-

- the reasonableness of the decision
- any relevant new evidence
- procedural irregularities

An Appeal against dismissal will be a rehearing and no new evidence will be submitted unless agreed and presented in advance

The conduct of Hearings and Appeals are appended at the end of this document.

Section E

Records

Notes of any meetings held at formal stages of the procedure and any formal Improvement Notices issued will be recorded on the employee's personal file. Throughout the procedure an employee will be supplied with copies of any reports prepared and these, with their agreement, will also be supplied to their chosen representative. A written record should be kept of any observations made of an employee's work and a summary of the record handed to the employee concerned at the end of the period of observation.

Section F

Management Intervention Prior to Entry into the Formal Stages of the Procedure (Informal Stage)

Before entering into the formal stages of the procedure, managers have the right and the duty to bring matters of concern to employees' attention. These may arise from complaints, supervision sessions, at formal or informal appraisals or work reviews etc. When it appears that an employee lacks the capability of performing to the required standard they will be requested to attend a meeting with the manager. (See Appendix 1 for suggested format). The objective of the meeting is to draw to the attention of the individual the way in which their performance is alleged to be deficient and to: -

- Have investigated to provide information/evidence to put to the employee.
- Confirm the status of the meeting.
- Make the employee aware in specific terms of the standards expected and the shortfall.
- Give the employee an opportunity to respond and consider the response.
- Confirm any support/supervision/training/job redesign or informal means to assist resolve the problem.
- Seek medical advice, via the Occupational Health Nurse where a health issue may be affecting performance.
- Assess the seriousness of the problem which exists.
- Confirm a time period over which monitoring will take place.

- Note and confirm the discussion outcomes and review period/date.

Where the manager considers that the matter is resolved or can be managed within the informal stage the manager will confirm this in writing to the employee but continue to monitor to avoid future problems.

An appropriate support programme shall be arranged and the employee will be given a reasonable period of time in which to show acceptable improvement. The period of time given to the employee to improve their performance will reflect the seriousness of the concern and in extreme cases will be short. The employee will be informed that their subsequent performance will be monitored and also how it will be assessed. This will be done as objectively as possible, bearing in mind particularly the nature of her/his duties and length of time which could be considered reasonable for her/him to improve. A date for a review of the individual's performance will be clearly specified as part of the programme of action determined. The employee will be notified of the period of time in which improvement is expected and advised of the consequences of a failure to improve their performance.

Where improvement is not adequate, at the end of the specified period the employee will be requested, in writing, to attend the formal Review Meeting with the manager to discuss the case. The outcome of this may be that the Manager decides to issue a Formal Improvement Notice.

Section G

The Formal Stages of the Capability Procedure

Formal Review Meetings

The purpose of the Formal Review meeting, which is pre-planned, is to assess progress against targets set at the informal stage of the Procedure or following the issuing of formal Improvement Notices. The Manager should share and discuss appropriate information/evidence at these meetings. Dependent upon the circumstances the outcome could be:

- confirmation that a first/second formal Improvement Notice is to be issued
- confirmation of a Stage 3 dismissal hearing with the Headteacher/Panel of Governors
- confirmation of a further monitoring period
- confirmation that the matter is resolved/concluded

First Formal Stage

Where, at the end of a formal Review meeting (normally following a period of informal management intervention) any of the following circumstances exist:-

- 1 a failure by the employee to improve after earlier management intervention
- 2 continued unsatisfactory performance
- 3 a level of performance which is causing such concern that the Manager assesses it needs to be dealt with immediately within the formal Procedure

A first formal improvement notice will be issued by the manager. (see Appendix 4 for suggested format)

At least 5 working days before the Review meeting the employee will be given, in writing, a "Management Review Statement". This is the evidence that the Manager will present at the Review meeting. This should also be copied to the employee's Trade Union or other Representative. The Manager may call witnesses to support their case.

The employee will have the opportunity to challenge facts or evidence and will have the opportunity to submit their own facts or evidence for consideration and to call witnesses to support their case

The decision will be sent in writing within 3 working days of the Review meeting. The Stage 1 Improvement Notice letter will confirm: -

- the nature of the concerns over how current performance fails to meet the required standards, and the improvements expected,
- details of the support programme and any additional training or other support that will be provided in order to help the employee meet the standard required,
- the time period in which to achieve the standard required, how this will be monitored, the criteria to be used, and the date at which a review will take place,
- the consequences of continued failure to meet the required standard,
- the employee's appeal rights as detailed in this procedure at Section D.

The Manager will continue to maintain regular contact with the employee to ensure that the action plan is adhered to, that progress is made and to consider new information as appropriate. This may be by means of interim meetings.

If redeployment is agreed by Head/Governors as a possible solution, opportunities will be actively pursued by the employee, manager and Children and Young People's Human Resources accordingly. (see Section L)

If the Manager/Governor believes that the employee's performance has improved to the required standard, he/she will confirm this in writing. The employee will then revert to the normal monitoring to which all employees are normally subjected.

Second Formal Stage

An employee will be required to attend a formal Review meeting at the second stage of the Procedure in either of the following circumstances: -

1. If after the defined review or monitoring period, following a Stage 1 Improvement Notice, there is a continued failure to improve performance, they will be required, in writing, to attend such a Review meeting and be given the reasons for it.
2. If a manager assesses the case is so serious they will commence the formal stage of the Procedure at Stage 2.

A Management Review Statement will be required in both of the above circumstances. Please refer to the First Formal Stage above for details.

The next stages for the Second Formal Stage are as the First Formal Stage.

A Stage 2 Formal Improvement Notice specifying the above will be confirmed in writing within 3 working days of the Review meeting. The employee must also be advised at this stage, in writing, that continued failure to attain the standards expected may lead to a third and final review meeting. The outcome of this could be that the employee will be required to attend a Hearing where the termination of the employee's employment will be considered.

If redeployment is agreed by Head/Governors as a possible solution, opportunities will be actively pursued by the employee, manager and Children and Young People's Human Resources accordingly. (see Section L)

If the Manager believes that the employee's performance has improved to the required standard, he/she will confirm this in writing. The employee will then revert to the monitoring to which all employees are subjected.

Third and Final Stage

An employee will be required to attend a formal review meeting at the third and final stage of the Procedure in either of the following circumstances:

- a continued failure to improve or continued unsatisfactory performance within the time specified at Stage 2,
- or**
- a manager assessing that a case is so serious that an employee is not capable of improving their performance to the required standard, the dismissal of an employee may be considered by the Headteacher/Governing Body. At any such Hearing the Executive Director: CYPD will be represented to offer advice to the Governing Body or Headteacher

Following this final Review Meeting, the employee will be suspended (unless on long term sickness absence) and a Stage 3 Hearing will be arranged by the manager to which the employee will be invited formally in writing. The letter will advise that dismissal is a possibility and will remind the employee of her/his right of representation. (See Appendix 4 for suggested format)

At least five working days in advance of the hearing the manager will provide the employee and the Head/Governors panel with a written management statement of case detailing the nature of the capability concerns in respect of the employee, along with any documentary evidence to be presented at the Hearing.

The employee (or employee's representative) will provide the manager and the Head/Governors Panel, at least one working day in advance of the Hearing, with a written case along with documentary evidence to be presented at the Hearing.

At the Hearing the manager will present the capability case to the Headteacher/Governors Panel, including the areas of under performance, the evidence upon which this is based and the action taken to encourage improvement and manage the matter, including any previous Formal Improvement Notices.

The employee will have the opportunity to challenge facts or evidence.

Following an adjournment to give full consideration of the evidence presented, the Head/Chair of the Governors panel will give her/his decision.

The result of a Hearing at which dismissal has been considered must be confirmed to the employee in writing within 3 working days of the date of the Hearing. If the decision is to dismiss the employee must be informed in writing of the right to appeal to the Governing Body. The employee must confirm their decision to appeal by writing to the Chair of Governors within three working days of receiving the written decision of the Head/Governors Panel.

The decision to dismiss must be communicated to the Executive Director CYPD after the outcome of the Hearing has been confirmed. The Executive Director CYPD will then issue the dismissal notice within 14 days of receiving the IDD.

All dismissal letters must give the employee appropriate contractual or statutory notice (whichever is the longer), specify the reasons for dismissal and notify the employee of her/his right of appeal to an Employment Tribunal, mentioning the specific time limits. All dismissal letters will be sent to her/his home address by recorded delivery as appropriate. Recorded delivery letters will be deemed to have been received.

Pay in lieu of notice may be offered when an employee is dismissed on grounds of capability. Offering payment in lieu of notice to an employee will have to be justified by the manager presenting the case. Pay in lieu is not a contractual right.

If payment in lieu of notice is not agreed by all parties, an employee who is dismissed on grounds of capability will remain on suspension from their duties whilst serving their period of notice.

Resignations

An employee may reach a voluntary decision to resign at any stage of the Procedure. The manager will have a duty to reflect the circumstances under which the employee resigned in any reference requested

Section H

Employee Sickness Absence During the Capability Procedure

1. Long Term Absence

Absence which appears to have been triggered by the capability procedure and which management believe is likely to be long-term should be managed as follows:-

- (i) the employee to be immediately referred to the Occupational Health Service by the manager for an assessment of their health and fitness for continued employment
- (ii) the manager to take a considerate and sympathetic approach but in general the length of time they may wait for an employee's health to improve before considering whether to terminate employment on health grounds (in line with the school's Sickness Absence Management policy) should be subject to Occupational Health guidance.

2. Short Term Absence

Short term absence should not normally delay any part of the formal stage of the capability procedure. However reasonable steps should be taken to enable the employee to attend Review meetings. It may be necessary to reschedule a meeting to allow for their recovery but where appropriate these may proceed in the employee's absence.

Section I

Suspension from Duty

1. Where investigation and consideration of the evidence by a manager results in a decision that the employee's continued presence in the school is either a risk to their own health and safety, or a risk to the pupil's health and safety, the employee may be suspended from duty on full pay to allow proper consideration by the manager of how to deal with the employee.
2. Suspension from duty will take place where it is decided that an employee's lack of capability is so severe that she/he will be required to attend a Stage 3 Dismissal Hearing at the Final Stage of the Procedure.

Suspension should not take place if the employee is absent due to long term sickness.

Section J

Options Available

At any stage within the procedure, the manager managing the capability of the employee may wish to give consideration to the options available to enable them to resolve the issues presented.

Using the information gathered, it may be appropriate in some cases to consider the following:-

- retraining and/or help from a skilled worker
- medical assessment
- redeployment in accordance with established arrangements and as outlined in Section L
- any other appropriate counselling or advice
- job redesign or other changes to working arrangements
- reasonable adjustments under the Disability Discrimination Act.

Section K

Sources of Assistance

In Primary Schools the Headteacher and Deputy Headteacher will normally be involved in the process of assistance and review. However, in the smaller Primary School this may only be the responsibility of the Headteacher.

In Secondary Schools the Headteacher, Deputy Headteacher, Heads of Departments and other managers will normally have this responsibility.

In all cases the School may also request assistance from the appropriate support service of the C&YP Directorate, particularly Human Resources and Occupational Health.

Section L

Redeployment

Redeployment will not be used as a means of passing an employee's capability problem from one school to another, or to another Council Directorate. Redeployment will only be considered where the available evidence suggests an employee's performance will improve to a satisfactory level if they moved to another post.

There can be no guarantee of redeployment under this procedure. Where it is appropriate and if suitable posts are available, redeployment to an alternative post more suited to an employee will be considered.

Section M

Important Notes to Consider when Planning Timetables for Managing the Formal Stages of the Capability Procedure.

1. Normally it is advisable to avoid arranging Hearings and Appeals for holiday periods and it will not be possible to monitor employees during holidays. However, depending on the circumstances of the case, it may be possible by agreement to hold Hearings and Appeals in school holiday periods.
2. Where there is absence due to sickness of the employee who is causing concern, or of any relevant manager/witness, it may be necessary to reschedule the timetable to allow for their recovery.
3. Any dismissal must comply with contractual or statutory notice periods as applicable (see appendix 3).

Model Informal Stage Letter – Outcome of a Meeting at the Informal Stage of the Support Staff Capability Procedure

Dear _____

Management of Capability Procedure - Informal Stage

This letter confirms the outcomes of our meeting held on at the informal Stage of the above Procedure. At the meeting I discussed my concerns about your performance with you and your representative.

As identified at the meeting, I confirm that my specific concerns about your performance are as follows:

- ◆
- ◆

In determining the above I have taken account of:

- ◆
- ◆

A period of monitoring and support will be provided betweenand and a further review meeting will take place on ----

If, at the end of the review meeting I am satisfied that the problems are resolved, then I will confirm this to you in writing and provide ongoing support and monitoring.

If however, I feel that significant problems remain, I may have no alternative but to progress to the appropriate formal stage of this Procedure.

Meanwhile do not hesitate to contact me if you have any further queries about this letter, or the monitoring and support process.

Yours sincerely

cc trade union rep
human resources

Model Letter requiring attendance at a Formal Review Meeting

Dear -----

Support Staff Capability Review meeting (Formal Stage One/Two/Three)

I am writing to confirm that you are required to attend a review meeting at formal stage one/two/three of the above Procedure. At the review meeting I want to discuss the continuing concerns I have about your performance.

This review meeting will be held on (date) at (time) in (venue).

You are entitled to be represented at the meeting by either your trade union representative or other Sheffield City Council employee. At the meeting the following people will be present: (list names).

Please find attached a Management Review Statement which is the evidence that I will be presenting.

You are entitled to present information at the meeting and you will have the opportunity to respond to my concerns. The agenda for the meeting is as follows:-

- Introductions and purpose of interview.
- My concerns about your performance
- An opportunity for you or your representative to ask me questions.
- Your response to my concerns.
- An opportunity for me to ask you questions.
- An adjournment whilst I consider the next step(s).
- My decision and the next step(s).

I must advise you that a possible outcome of this meeting is that I will issue you with a formal stage1/formal stage 2 written Improvement Notice which will be recorded on your personal file.

or

I must inform you that a possible outcome of this meeting will be that I will convene a dismissal hearing.

If you do not attend this meeting, a decision may be taken in your absence.

If you have any queries please do not hesitate to contact me.

Yours sincerely
cc trade union rep/human resources

APPENDIX 5

Model Letter - Decision to Issue a Formal Improvement Notice Following a Formal Review Meeting

Dear _____

Formal Stage 1/Stage 2 Improvement Notice in accordance with the Support Staff Capability Procedure

This letter confirms the outcomes of the review meeting held on at the end of **the informal Stage/Stage 1** review period of the above Procedure. You were present and were represented by Also present at the meeting were (eg HR). At the meeting I discussed my continuing concerns about your performance with you and your representative.

Following the meeting, I confirm my decision to **issue you with a formal stage 1/stage 2 Improvement Notice** under the above procedure. This letter constitutes this Improvement Notice.

My decision takes account of:

- Concerns about your performance (summarise)
- How your performance does not meet the required standard
- The support programme provided by the school and the CYPD (where appropriate - summarise)
- Previous Improvement Notices (specify as appropriate)

A further period of monitoring and support will be provided between ----- and ----
-----, with a formal/final review meeting on ----- at -----.

At the above review meeting, progress/new developments/evidence/information will be discussed. If the problems are resolved and there are no longer concerns about your performance, I will confirm this to you in writing and provide ongoing support and monitoring to avoid any future recurrence of these problems.

If however, I feel that significant problems remain, I may have no alternative but to progress to Stage 2 of this procedure/Stage 3 of this Procedure where your dismissal will be considered by the Headteacher/a Panel of Governors.

You have the right of appeal against this decision by writing to the Headteacher/Chair of Governors within 5 working days of receiving this letter and will need to specify the reasons for your appeal.

Please do not hesitate to contact me if you have any further queries about this letter, or the support and monitoring process.

Yours sincerely

cc trade union rep/human resources

APPENDIX 6

Model Letter to Convene a Dismissal Hearing at Stage 3 under the Support Staff Capability Procedure

This letter confirms the outcome of the review meeting held on at the end of the formal **Stage 2** review period of the above Procedure. You were present and were represented by At the meeting I discussed my continuing concerns about your performance with you and your representative.

Following the meeting, I confirm my decision to convene a Stage 3 Hearing under the above Procedure where your dismissal will be considered by the Headteacher/a Panel of Governors.

My decision takes account of:

- Concerns about your performance (summarise)
- How your performance does not meet the required standard
- The support programme provided by the school and the CYPD (where appropriate - summarise)
- Previous Improvement Notices (specify as appropriate)

At the Hearing I will be asking the Headteacher/a panel of Governors of _____ School (with advice provided by a Personnel Officer from Human Resources) to dismiss you from your post of _____ because of your continued failure to reach the required standards of performance.

The details will be contained within a statement of case which will be shared with you 5 days in advance of the hearing.

I must advise you that should the Management case be found to be proven, you will be dismissed from your post of _____ at _____ with effect from _____, or earlier by agreement with payment in lieu of notice. You would have the right of appeal against a decision to dismiss you by writing to the Chair of Governors and you will need to specify the reasons for your appeal.

I must inform you that because dismissal is a potential outcome of the Hearing, you are suspended from duty on full pay until _____ (if not on long term sickness).

May I strongly advise you of your right to be represented at the Hearing by a trade union or other City Council employee representative. If you do not attend, a decision may be taken in your absence.

Meanwhile do not hesitate to contact me if you have any further queries about this letter.

Yours sincerely

cc trade union rep/human resources

Appendix Five

Procedure to be Followed at Formal Review Meetings at Stage 1 and Stage 2 and Dismissal Hearings at Stage 3

1. Introduction

For Stages 1 and 2 the person hearing the case will either be the Headteacher (subject to circumstances outlined in the section on 'roles and responsibilities) or a Governor advised by a Human Resources Adviser

For a Stage 3 Hearing, either the Headteacher or a panel of 3 Governors will hear the case (again depending on the above circumstances) advised by a Human Resources Advisor

Where this number is not reasonably practicable it can be reduced to two

At Stage 3, dismissal is effective from the Initial Dismissal Decision (IDD)

2. The Purpose of Review Meetings and Stage 3 Hearings

At Stages 1 and 2

To consider whether Formal Written Improvement Notices should be issued to employees about their need to improve their capability

To consider allegations of unfair procedure and/or unreasonable Management practice

At Stage 3

To consider whether an employee should be dismissed from their post with contractual notice

3. The Parties – Stage 1 and 2 Review Meetings

The Headteacher/Governor chairing the meeting will be advised by a Human Resources Adviser. The other parties will be the employee (and usually their representative).

A witness or witnesses may be called by either side where they have a relevant contribution to make to the consideration of the case.

4. Stage 3 Hearings

The Headteacher/Governor chairing the meeting will be advised by a Human Resources Adviser. The other parties will be the employee (and representative) and other relevant Manager (also advised by a Human Resources Adviser if required).

A witness or witnesses may be called by either side where they have a relevant contribution to make to the consideration of the case.

5. Conduct of The Meeting – Stages 1 and 2

The Headteacher introduces all parties and outlines the purpose of the Review Meeting

The Headteacher outlines concerns about capability using information shared

The employee/representative asks questions

The employee has the opportunity to respond to concerns raised

The Headteacher asks questions

An adjournment to consider the next steps

The Headteacher reports their decision

Stage 3 Dismissal Hearing

The Headteacher/Chair of Panel introduces all parties and outlines the purpose of the Hearing

The Headteacher (or CYPD representative in the case of Headteachers) to present the case to justify why an employee should be dismissed at Stage 3

If a witness is to be used he/she will be called by the Headteacher at the appropriate time to give evidence. He/she may be questioned by those present and will then withdraw.

The employee and their representative will have the opportunity to ask questions of the Headteacher/CYPD representative and any witnesses.

The Headteacher/Governor(s) hearing the case to have the opportunity to ask questions of the Manager/CYPD representative and any witnesses.

The employee and their representative will then have the opportunity to present their case.

If a witness is to be used he/she will be called by the employee at the appropriate time to give evidence. He/she may be questioned also by those present and will then withdraw.

The Headteacher/CYPD representative to have the opportunity to ask questions of the employee and any witnesses.

The Headteacher/Governors hearing the case to have the opportunity to ask questions of the employee and any witnesses

The parties will have the opportunity of summing up following a short adjournment if required: the Headteacher/ CYPD representative first, followed by the employee and their representative. The parties will then withdraw while the Manager/Governors considers the information presented.

The parties will be called back into the meeting to hear the decision of the Headteacher/Governors which will be confirmed in writing to the parties within 3 working days of the meeting.

If at a Stage 3 Hearing the Headteacher/Panel decide to uphold a decision to dismiss an employee, they will notify the Executive Director CYPD in writing at the same time that they notify the employee of their decision as this will be the effective date of dismissal (not after an appeal). The Executive Director CYPD will issue the dismissal letter following receipt of this notification. Right of appeal to an Employment Tribunal will also be confirmed in this letter.

Decision Making

The Headteacher/Governors will deliberate in private with their HR Adviser. His/her decision will be based on consideration of the relevant evidence and information presented and will be reasonable given all the circumstances of the case.

In relation to capability matters there could be a range of outcomes which may include confirming the Headteacher/Chair of Governors action or not upholding the recommendation to dismiss. There could also be a revision of the specific targets, timescales or standards required, identification of other support etc with the purpose of assisting the employee to achieve the standards required as confirmed by the Chair of the meeting.

If points of uncertainty are identified during the Headteachers/Governor's deliberations or clarification is required from the parties, both sides will be recalled.

Appendix Six

Procedure to be followed at a Formal Appeal

1. Introduction

Appeals against formal Improvement Notices issued at Formal Stages 1 or 2 by the manager will normally be heard by an individual governor. This governor will be advised by a different Human Resources officer from the one advising the manager.

For an appeal against dismissal a Governors Appeal Panel comprising three governors will hear the appeal. These governors will not have had any prior involvement in the procedure relating to this particular employee. Where it is not reasonably practicable for a panel of three governors to hear the appeal, then two governors may hear it. However, at stage three there should not be fewer governors involved at the appeal stage than were involved at the Stage 3 dismissal hearing.

If at an Appeal against dismissal the Governors Appeal Panel decide to uphold a decision to dismiss an employee, they will notify in writing the Executive Director: CYPD at the same time that they notify the employee of their decision in writing.

2. Purpose of the Appeal

At Stages 1 and 2

To consider appeals against the reasonableness of the decision to issue formal written Improvement Notices.

To consider allegations of unfair procedure and unreasonable management practice.

To consider any relevant new evidence.

At Stage 3

An appeal against a dismissal will be a rehearing and no new evidence will be submitted unless agreed and presented in advance

To consider appeals against the reasonableness of the decision to dismiss an employee

To consider allegations of unfair procedure or unreasonable management practice.

3. Conduct of the Appeal Hearing

Chair of the Panel introduces all parties and outlines the purpose of the Hearing.

The Manager or Chair of Governors (in the case of Headteachers) to present the management case to justify either why the Formal Improvement Notice issued at Stages 1 or 2 should remain in place or to justify why an employee should be dismissed at Stage 3.

If a witness/es is to be used, they may be called by the manager at the appropriate time to give evidence. They may be questioned by those present and will then withdraw

The employee and their representative to have the opportunity to ask questions of the Manager/Chair of Governors.

The Manager/Governor(s)/Adviser hearing the case to have the opportunity to ask questions of the Manager/Chair of Governors.

The employee and their representative then have the opportunity to present their case.

The Manager/Chair of Governors to have the opportunity to ask questions of the employee.

The Manager/Governor(s)/Adviser hearing the case to have the opportunity to ask questions of the employee.

The parties will have the opportunity of summing up following a short adjournment if required: the Headteacher/ CYPD representative first, followed by the employee and their representative.

The Manager/Chair of Governors and the employee and their representative will withdraw to allow the Manager/Governor or panel of governors hearing the case to deliberate.

The Manager/Governor or the Chair will announce his/her/their decision orally and then confirm this decision in writing within three working days of the date of the hearing.