

**CAPABILITY POLICY AND PROCEDURE FOR TEACHERS, INCLUDING
HEADTEACHERS, AND ALL SUPPORT STAFF EMPLOYED IN SCHOOLS WITH
DELEGATED BUDGETS**

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Please note that following conversion to Wolds Learning Partnership, all reference to the Council and Council roles within this policy now relates to Wolds Learning Partnership as the employer in line with the Scheme of Delegation of the Trust.

1. CAPABILITY POLICY

1.1 Scope and Background

- 1.1.1 This Capability Policy and Procedure applies to all teaching staff, including Headteachers, and all support staff, (the employee) employed to work in schools with delegated budgets where it has been adopted by the respective governing body. It will not apply to those employees serving their induction year or trial period and all support staff during their probation period.
- 1.1.2 The success of the Council and its schools is dependant upon the effectiveness of its employees. The Governing Body will endeavour to ensure that all employees are adequately trained to undertake their duties. This policy and procedure is designed to help and encourage employees to achieve and maintain the required level of performance whilst ensuring consistent and fair treatment for all.
- 1.1.3 This policy and procedure incorporates the relevant provisions of the Conditions of Service for Schoolteachers in England and Wales, the ACAS Code of Practice “Disciplinary and Grievance Procedures” and the accompanying advisory handbook “Discipline and Grievance at Work”, the Articles of Government for Schools, employment legislation and the Education (School Teacher’s Appraisal) (England) Regulations 2012.
- 1.1.4 At every stage, concerns about an employee’s performance must be discussed with them, by the Headteacher or line manager in the case of teachers and support staff, and by the Chair of Governors or LA representative in the case of a Headteacher. The employee should be advised of the nature of the underperformance and be given the opportunity to state their case before any decision is made.
- 1.1.5 At all formal stages, the employee must be advised of their right to be accompanied by a trade union representative or fellow worker at any meeting where the matter is to be discussed.
- 1.1.6 It is important that all information associated with this procedure is treated as strictly confidential and not discussed with a party not directly involved in the process, including

other governors. This is necessary not only to respect the privacy of the individual concerned, but also to ensure fair procedures.

- 1.17 This policy and procedure should be followed where an employee's ability to perform the duties of their post is giving cause for concern. In this context, lack of capability is defined as a situation in which an employee fails consistently to perform their duties to a professionally acceptable standard.
- 1.18 This policy and procedure does not apply to those matters of conduct which are dealt with under the School's Disciplinary Policy and Procedure, for example, inadequate performance which is the result of wilful misconduct.
- 1.19 Capability due to un-resolving ill-health will be dealt with under the School's Attendance at Work Policy and Procedure.
- 1.1.10 In accordance with The Education (School Teacher's Appraisal) (England) Regulations 2012, if the appraisal process, as adopted by the school, is unable to address an employee's performance concerns the Capability Procedure will be instigated.
- 1.1.11 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.
- 1.1.12 In accordance with the ACAS Code of Practice "Disciplinary and Grievance Procedures", before any action is taken against an employee who is a trade union representative, except for the initial concerns, the matter should be discussed with a full-time official of their trade union, after obtaining the employee's agreement. Human Resources will be responsible for making the appropriate contact with a full-time official of the trade union.
- 1.1.13 Throughout this document reference is made to action being taken by the Headteacher. However, where the Headteacher is not the direct line manager for the employee and therefore not providing the guidance and support, references to Headteacher should be replaced with Line Manager as appropriate.

2. CAPABILITY PROCEDURE

2.2 Support through Appraisal

- 221 This procedure only applies to support staff in schools, teachers and Headteachers about whose performance there are concerns that the appraisal process adopted by the school has been unable to address. When following this policy and procedure it is important that the professional advice of the Director of Children, Family and Schools or their representative is also sought - normally Children and Young People, Education and Schools and Human Resources. This is especially important when the concern relates to the performance of the Headteacher as, in these cases, the procedures will normally be instigated by the Chair of Governors or the Local Authority (LA), where an adviser or officer of the LA will investigate the matter and recommend the action to be taken to the Chair of Governors.
- 222 Before any formal action is taken against an employee, any concerns relating to lack of skill, aptitude, ability, and/or to alleged weakness in performance, should in the first instance be brought to their attention by the Headteacher, or the Chair of Governors or LA representative in the case of the Headteacher, through the appraisal system. The areas of concern should be discussed in a constructive way and every effort made to investigate the nature of the problem, paying particular attention to discovering any underlying factors which may be affecting the employee's performance and any explanation put forward by the employee. The employee should be given time for improvement and offered support, guidance and/or training as appropriate.
- 223 If the Headteacher or Chair of Governors in the instance that the employee is the Headteacher is not satisfied with progress under the Appraisal system, the employee will be notified in writing that the appraisal system will no longer apply and that their performance will be managed under the capability procedure.
- 224 In the majority of cases it is anticipated that the areas of concern will be resolved and the appraisal process will continue as normal, with any remaining issues continuing to be addressed through that process.

2.3 Stage 1 - Formal Support

- 231 Where discussions and actions under the Appraisal Stage above has not resolved the area(s) of concern, a formal meeting should be convened to discuss the issues.
- 232 The employee will be given 5 working days written notice of the date, time and venue of the meeting. The letter will also include details of the unsatisfactory work expressed in specific rather than general terms, and advise of the right to be accompanied by a trade union representative or fellow worker. The employee should also be issued with a copy of this policy and procedure.
- 233 At the meeting, details of the inadequate performance should be discussed to ensure that the employee is aware that their performance is considered to be unsatisfactory to enable them to respond to the concerns, discuss ways in which performance might be improved and draw up a specific action plan with focus on the employee's needs. Every effort must be made to ensure that the action plan is, where possible, mutually agreed and signed. Appendix A lists a number of factors that it may be appropriate to examine and areas that may be considered appropriate for inclusion in the action plan. The Action Plan should be deliverable within the agreed timeframes and resources. If circumstances

change the programme of support should be revised accordingly. At this stage there should also be discussion about who will circulate paperwork to the employee and trade unions. Normally, it will be the Headteacher who circulates papers to the employee and the employee who is responsible for keeping their trade union representative informed. Consideration should also be given to circulating documents electronically.

- 234 A timescale for improvement should also be agreed with the employee. The timescale will depend on the circumstances of the individual case but normally should be no longer than one school term in duration, .i.e. 12 weeks maximum. It is for the school to determine the set period. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place. A shorter timescale may be implemented if justified, for example where it becomes clear that an acceptable level of improvement is beyond the ability of the employee being assessed, or where there is a lack of co-operation with reasonable measures to achieve improvement. In particularly serious cases where the education of pupils is jeopardised, eg, where the employee's classroom control is so poor that no order can be established to enable teaching to take place, or where all the children under the employees' care fail to progress in that employee's lessons, the timescale for improvement should be no more than four teaching weeks. The advice of the Director of Children Family and Schools must always be sought before applying the four-week timescale.
- 235 A written record of the meeting should be kept showing the nature of the unsatisfactory work, any comment offered by the employee, any guidance given and details of the action plan. The employee should also be given the opportunity to submit written comments at this stage. A copy of this record should be supplied to the employee within five working days of the meeting.
- 236 The employee's subsequent performance should be assessed as objectively and as frequently as reasonably appropriate, bearing in mind particularly the nature of the duties being undertaken and content of the action plan. A written record should be kept of those assessments, which will build up a picture of the employee's performance during the period of support, including details of any satisfactory or unsatisfactory work. The employee must be given a copy of the record within 5 working days every time an entry is made and allowed to make a written comment if they so wish.
- 237 The date of a formal review meeting at the end of the period of support must also be agreed to assess progress against agreed targets in the action plan. In addition, there should be at least one planned interim meeting where progress will be reviewed and consideration given to removing from the process any targets already achieved and where evidence suggests that the improvement can be maintained. No additional notice of these meetings will be given unless they are rearranged.
- 238 At the formal review meeting the employee will be advised of their right to be accompanied by a trade union representative or work colleague. The meeting shall be conducted by the Headteacher, or in the case of the Headteacher, the Chair of Governors or LA Officer. A member of the Improvement and Learning Team may be present. In the case of a Headteacher the Director of Children Family and Schools, or nominated representative, shall also be present.
- 239 If the review indicates that there has been a satisfactory improvement within the terms of the action plan, the employee shall be informed in writing that they have reached the

required level of performance and that no further action will be taken provided the improvement is maintained, and the appraisal process will re-start.

23.10 If the review produces evidence that there has been some improvement, consideration should be given to an extension of the action plan or the introduction of an alternative action plan in line with paragraph 2.3.3 above.

23.11 If there has been no improvement, or the level of improvement is unsatisfactory, it will be necessary to move to Stage 2 - Formal Warning. The Headteacher, the Chair of Governors or LA representative, shall use the remainder of the meeting to discuss precisely why the employee's performance is considered to be unsatisfactory, indicating the improvements required. A date and time will be arranged for a further meeting to progress to Stage 2 under the procedure.

2.4 Stage 2 - Formal Warning

2.4.1 At the Stage 2 meeting the employee will be issued with a written warning, which specifies clearly the nature of the unsatisfactory work and required improvement and refers to any further action plan, with a timescale for the achievement of the required standard as in paragraphs 2.3.3 to 2.3.5 above. It is important that the implications of failing to reach this standard, including the possibility of dismissal, are made clear and included in the letter.

243 A record will be made of the meeting, which will include the original criticisms in the performance report with any agreed amendments, a statement of support and assistance proposed and of monitoring arrangements made an account of the criteria against which improvements will be judged, and the timescale for the achievement of improvements. The record will also include any views advanced by the employee, or their trade union representative or fellow worker, but rejected by the Headteacher or Chair of Governors, together with the reasons for their rejection. A copy of this record will be supplied to the employee with the written warning within 5 working days of the meeting.

244 The timescale for improvement referred to in paragraph 4.4 should be as set out in paragraph 2.3.4 above.

245 During this period the employee's performance shall be assessed as frequently as reasonably appropriate taking into account the nature of the areas of concern. The programme of guidance and support shall continue, and due emphasis shall be maintained on the aim of giving help and encouragement to the employee. A written record of the employee's performance of duties and responsibilities will be kept as in paragraph 2.3.6 above, and a copy given to the employee every time an entry is made.

246 Any visit by a member of the Children, Young People, Education and Schools Team shall be followed by a discussion with the employee if applicable, and by a written report. A copy of the written report shall be given to the employee within 5 working days of the visit. The employee should be given the opportunity to make written comments on the report.

247 The date of a formal review meeting at the end of the period of support must also be agreed to assess progress against the action plan. In addition, there should be at least one planned interim meeting where progress will be reviewed and consideration given to removing from the process any targets already achieved and where evidence suggests that the improvement can be maintained. No additional notice of these meetings will be

given unless they are rearranged. At the formal review meeting the employee will have been advised of their right to be accompanied by a trade union representative or fellow worker. In the case of the Headteacher, the Director of Children, Family and Schools or nominated representative shall also be present. A member of the Children, Young People, Education and Schools Team may also be present where considered appropriate.

- 248 Where, as a result of the review the Headteacher, or in the case of the Headteacher the Chair of Governors, is satisfied that the level of performance has reached the level of performance laid down in the record referred to in paragraph 2.4.3 above and there is confidence that they are capable of maintaining that level of performance under normal timetabling and teaching circumstances, they will be informed in writing that they have reached the required level of performance and no further action will be taken provided the improvement is maintained, and the appraisal process will re-start.
- 249 Where, as a result of the review the Headteacher, or in the case of the Headteacher the Chair of Governors, is satisfied that there has been substantial improvement towards the level required, but that the employee's performance is still not completely satisfactory, consideration may be given to a further period of support following the programme outlined in paragraph 2.4.3 above. However, the Headteacher, or in the case of the Headteacher the Chair of Governors, must be confident that targets are likely to be achieved during any additional period of support.
- 2410 Where the formal review meeting at paragraph 2.4.8 above concludes that there has been insufficient improvement and there is unlikely to be adequate improvement even if a further period of support is given, consideration should be given to a different balance of duties or alternative teaching post in the school.
- 2411 If no alternative employment is immediately available then the employee must be told that they will be required to attend a further formal meeting where their future employment with the Council/School will be considered.

2.5 Stage 3 - Dismissal

- 251 Under the School Staffing (England) Regulations 2009 it is expected that the Governing Body will delegate authority to the Headteacher to take the initial decision on dismissal of staff. Where any governor has been involved in the procedure, eg the Chair of Governors in the case of capability of the Headteacher or a member of the Governor's Disciplinary Committee considering the dismissal of an employee, they will be ineligible to be a member of any subsequent Governors Committee.
- 252 It is not appropriate for the Headteacher to both provide direct support and guidance to an employee and take initial dismissal decisions. For this reason, if the Headteacher is the person providing direct support and guidance to the employee the decision on dismissal must be taken by a Governors Committee Panel. However, where the employee's line manager is not the Headteacher, and it is the line manager who has provided the support and guidance under this policy and procedure, then the Headteacher will make the initial decision to dismiss provided that they have been given the delegated authority.
- 253 The employee will be given 5 working days written notice of the time, date, place and purpose of the meeting at which their dismissal will be considered. The letter will also confirm their right to be represented at the meeting by a trade union representative or work colleague. The Hearing will be conducted in accordance with Appendix B.

- 254 If the decision is to dismiss the reason for dismissal under this procedure will be on the grounds of capability and will be confirmed in writing. The letter will also confirm the employee's right of appeal against their dismissal.
- 255 The employee will be given the full period of notice to which they are contractually entitled. During this period the employee may not be required to attend work unless they are being offered suitable alternative employment.

2.6 Stage 4 - Appeals

- 261 The employee shall have the right of appeal against any decision to dismiss them. Any appeal against dismissal will be heard by the Appeals Committee of the Governing Body.
- 262 To exercise their right of appeal the employee must write to their Chair of Governors within 10 working days from the date of the letter confirming their dismissal. The letter of appeal must state the specific reason for the employee's appeal.
- 263 For a general, non-specific appeal, the procedure will be as detailed in Appendix B and will be a full re-hearing of the case. If the appeal is against a specific issue and it is clear that witnesses need not be recalled, and new evidence will not be submitted, the procedure detailed at Appendix C may be used. The employee must make it clear when exercising their right of appeal whether it is a full or limited appeal and state the specific reason for their appeal.

3 ALTERNATIVES TO DISMISSAL

- 31 At the final review meeting (paragraphs 2.4.8 above) consideration must be given to the possibility of offering the employee an alternative post within the School. During the notice period prior to dismissal alternative employment will be sought throughout the Council under the Council's Retraining and Redeployment Policy. Where alternative employment is identified and offered, details of the post will be confirmed in writing to the employee.
- 32 An offer of alternative work will be made on a trial basis of up to 4 weeks. During the trial period, the salary and conditions of the employee's current post will continue to apply and they will remain in their current Headteacher's responsibility until they are actually confirmed in post if the trial is successful. If the employee is appointed to the post at the end of the trial period the salary and conditions of the new post will be applied from the date of appointment. The employee must be informed in writing when being offered alternative employment that should it be refused or should it turn out, after the trial period, to be unsuitable to the employee then no further work will be offered and they will be dismissed at the end of their period of notice.

**AREAS WHICH MAY BE EXAMINED AND CONSIDERED WHEN
DISCUSSING A PROGRAMME OF SUPPORT**

- 1 Availability of adequate resources.
- 2 Consideration of the contribution of the management style and structure of the school to the difficulties of the employee.
- 3 Consideration of whether specific policies of the Authority or governors are a contributory factor.
- 4 Personal factors.
- 5 Where poor performance is agreed to be a result of promotion, stepping back down to a post of less responsibility.
- 6 Counselling by appropriate bodies.
- 7 An examination of and, if possible, reduction or alteration of timetable commitment and other responsibilities without detriment to other members of staff.
- 8 In-service support and training, including secondment.
- 9 Opportunities to observe good practice within the school and other similar schools.
- 10 An appropriate and agreed member of staff working alongside the employee.
- 11 Advice on educational aims and objectives, classroom organisation and expectations of the pupils.
- 12 Subject co-ordinators advising and assisting in the planning of programmes of work in particular curriculum areas, and how best it might be presented to pupils.
- 13 Any other measures whose desirability is suggested by the discussions.

PROCEDURE TO BE FOLLOWED AT A GOVERNING BODY CAPABILITY HEARING OR FULL APPEAL HEARING

- 1 Introduction by the Chair of the Governors Committee Panel and a reminder to all present of:
 - (a) the Capability Procedure under which the hearing has been called;
 - (b) the manner in which the hearing will be conducted as set out below;
 - (c) the degree of confidentiality;
 - (d) those present and the purpose of the hearing;
 - (e) the nature of the complaint;
 - (f) that any evidence has been previously circulated.
- 2 Presentation of the case by the Headteacher or, in the case against the Headteacher, the Chair of Governors or other nominated person (the presenting officer), including evidence from witnesses (where appropriate). Witnesses may be questioned by the presenting officer, the employee, their representative and members of the Governor's Committee. Witnesses should leave the room once they have given evidence and answered all questions put to them.
- 3 Questions by the employee and/or their representative and members of the Governors Committee Panel to the presenting officer.
- 4 Statements by the employee and/or their representative, including evidence from witnesses (where appropriate). Witnesses may be questioned by the employee, their representative, the presenting officer and members of the Governors Committee Panel. Witnesses should leave the room once they have given evidence and answered all questions put to them.
- 5 Questions by the presenting officer and members of the Committee to the employee.
- 6 Opportunity for the presenting officer to make a final statement.
- 7 Opportunity for the employee, and/or representative, to make a final statement.
- 8 Withdrawal by all parties except the clerk to the hearing, whilst the Governors Committee Panel considers the matter.
- 9 Consideration of the matter by the Governors Committee Panel.

The Director of Children, Family and Schools or their nominated representative together with the clerk of the hearing will be present during the deliberations. (NOTE: the nominated representative must not be the same LA representative who prepared and presented the case on behalf of the Chair of Governors). In the event that further information or clarification is needed from any of the persons who have left the meeting, then all persons should return to the meeting when such information is obtained. An

opportunity should be given to each party to question or comment upon this additional information.

- 10 Recall of parties concerned to hear the decision of the Governors Committee Panel orally.
- 11 The decision will be confirmed in writing by the Chair of the Governors Committee Panel within 5 working days.

NB Where the presenting officer is not the Headteacher, ie the Chair of Governors or Local Authority Officer in the case of capability of the Headteacher, or the employee's line manager where it is the Headteacher who is considering the dismissal of the employee, the above procedure should be amended accordingly.

The procedure to be followed at an appeal hearing will be similar to the above particularly in terms of the order. However, the Chair of the Governors Committee Panel will be replaced by the Chair of the Appeals Committee.

**PROCEDURE FOR HEARING LIMITED APPEALS BY THE APPEALS
COMMITTEE OF THE GOVERNING BODY**

- 1 Introduction by the Chair of the Appeals Committee Panel and a reminder to all present of:
 - (a) the Capability Procedure under which the hearing has been called;
 - (b) the manner in which the hearing will be conducted as set out below;
 - (c) the degree of confidentiality;
 - (d) those present and the purpose of the hearing;
 - (e) the nature of the complaint;
 - (f) that any evidence has been previously circulated.
- 2 Statement(s) by the employee and/or their representative indicating specific issue of appeal.
- 3 Questions by the Headteacher, Chair of Governors or LA representative and members of the Appeals Committee Panel, on the specific issue of appeal.
- 4 Statement by the Headteacher, Chair of Governors or LA representative presenting the case to the Appeals Committee Panel.
- 5 Questions by the employee and/or their representative and members of the Appeals Committee on the evidence.
- 6 Opportunity for the employee and/or representative to make a final statement.
- 7 Opportunity for the Headteacher, Chair of Governors or LA representative presenting the case to make a final statement.
- 8 Withdrawal by the employee and representative, and the Headteacher, Chair of Governors or LA representative whilst the Appeals Committee Panel considers the matter.
- 9 Consideration of the matter by the Appeals Committee Panel of Governors.
The Director of Children, Family and Schools or their nominated representative together with the clerk of the hearing will be present during the deliberations. (NOTE: the nominated representative must not be the same LA representative who prepared and presented the case on behalf of the Chair of Governors), In the event that further information or clarification is needed from any of the persons who have left the meeting, then all persons should return to the meeting when such information is obtained. An opportunity should be given to each party to question or comment upon this additional information.

- 10 Recall of parties concerned to hear the decision of the Appeals Committee Panel orally.
- 11 The decision will be confirmed in writing by the Chair of the Appeals Committee Panel within 5 working days.

NB Where the presenting officer is not the Headteacher, ie the Chair of Governors or Local Authority Officer in the case of capability of the Headteacher, the above procedure should be amended accordingly.

NOTES OF GUIDANCE FOR HEADTEACHERS AND GOVERNING BODIES ON DEALING WITH CAPABILITY ISSUES AMONGST SUPPORT STAFF IN SCHOOLS, TEACHERS, INCLUDING HEADTEACHERS

Capability or Conduct

- 1 Capability is defined in the Employment Protection (Consolidation) Act 1978 as meaning ‘capability’ assessed by reference to skill, aptitude, health or any other physical or mental quality.
- 2 A key factor of this Policy and Procedure is the assessment of performance. This must continue to be the prior responsibility of school management, which should be able to access professional support from the Local Authority or diocesan body at school level. Clear job descriptions and clearly defined expectations will assist in establishing clear performance standards.
- 3 Where an employee takes sick leave whilst subject to capability procedures, the school’s Attendance at Work Policy and Procedure will be used to support the employee. It may be appropriate to continue with actions under the Capability Policy and Procedure but, as the circumstances of each case will be different, the advice of Human Resources must always be sought in determining the most appropriate course of action.
- 4 Where an employee has not come up to standard through their own carelessness or negligence, the matter may be more appropriately dealt with under the terms of the school’s Disciplinary Policy and Procedure. However, the Disciplinary Policy and Procedure are not generally appropriate for instances involving poor performance or lack of capability unless the performance at work is wilfully inadequate, or a combination of competence and misconduct. Advice from Human Resources must be sought to assist in deciding the most appropriate course of action.
- 5 In all cases where it is believed that an employee’s performance is inadequate the primary objective must be to help them, in whatever way possible, to improve to the required standard.

Establishing Lack of Capability

- 6 The first task is to determine whether a problem exists. The Headteacher, or Chair of Governors in the case of a Headteacher, will need to be satisfied that there are reasonable grounds for believing the issue to be one of capability, and evidence has been produced to show how and why the conclusion was reached that the employee was failing to meet the requirements of their post. The following might be considered:
 - (i) what are the indications that the employee is not meeting the requirements of the job?
 - (ii) have there been unsolicited complaints about or criticisms of the employee’s work from colleagues, parents, Governors, members of the public, Local Authority officer etc.? (In these instances, the confidentiality statement contained in paragraph 1.5 of the Scope and Background to this document must be observed)

- (iii) are there any factual grounds to indicate inadequate performance (eg, poor results, work not completed)?
- (iv) have the Headteacher's, Chair of Governor's or Local Authority officer's own observation of the employee at work given rise for concern about their performance?

Procedure

- 7 At all Stages the advice and support of a member of the Children, Young People, Education and Schools Team or officer of the LA should be sought, and the employee given the opportunity to be accompanied by a trade union representative or work colleague.
- 8 The first stages of the procedure for responding to concerns about performance will be conditioned by the extent to which the deficiencies show themselves. The initial, discussion with the employee should take place during the appraisal process and should focus on:
 - (i) how the employee is failing to perform satisfactorily;
 - (ii) ascertaining whether the employee accepts there is a problem;
 - (iii) if there is acceptance, whether the employee will respond to constructive suggestions to bring about improvement.
- 9 The employee's reaction to this initial discussion will influence how the situation is dealt with subsequently. There may be a number of responses which indicate the employee will be receptive to what is being suggested:
 - (i) the employee accepts there is a problem and leaves it to the Headteacher or, in the case of the Headteacher, the Chair of Governors or Local Authority Officer, to suggest ways in which the problems could be overcome. This is most likely to occur where there is insufficient knowledge to do the work adequately;
 - (ii) the employee does not acknowledge directly that there is a problem but is willing to respond to suggestions for improvements. This enables the Headteacher or, in the case of the Headteacher, Chair of Governors or Local Authority Officer, to discuss with the employee a number of possible solutions and agree the most appropriate;
 - (iii) the employee acknowledges the problem and asks for help to resolve it.
- 10 In these cases the Headteacher or, in the case of the Headteacher, the Chair of Governors may be able to suggest remedies and provide support through the Appraisal process without further recourse to the Capability Procedure. If the issues are more complex or difficult to resolve the Headteacher or, in the case of the Headteacher, the Chair of Governors, should proceed to investigate the problem in a supportive and non-threatening way as detailed in the schools appraisal policy. If the shortcomings are very serious or if the member of staff denies the existence of any problem and refuses to cooperate in its resolution, and it is considered that the education of the pupils is jeopardised, it may be necessary to impose a timescale for improvement of not more than four teaching weeks. Advice from Human Resources must be sought if this is contemplated.

- 11 Discussions should be followed by arrangements to monitor performance and record observations. This should be done as objectively as possible and as frequently as reasonably appropriate given the nature of the job and the length of time considered reasonable to allow for improvement.
- 12 At the hearing, the Governors committee shall be presented with a history of the case by the Headteacher or, in the case of the Headteacher by the Chair of Governors or LA representative, and made aware of all the steps taken to support and guide the employee. The employee will be given an opportunity to respond and to be accompanied by a trade union representative or fellow worker.
- 13 If dismissal is considered to be the appropriate course of action, the employee should be dismissed with notice, or with pay in lieu of notice. Dismissal without notice should not be used in cases of capability.
- 14 Although the Governing Body has responsibility for dismissal, the making of such a decision should be approached with great care and after seeking the advice of the Director of Children, Family and Schools. The Director, or their representative, is entitled to attend all proceedings of the Governing Body relating to dismissal, for the purpose of giving advice. The Governing Body has a duty to consider any such advice before reaching a decision.
- 15 Dismissal of staff can lead to Employment Tribunal hearings. The school will be liable for any costs arising out of any Employment Tribunal or other court proceedings where the school takes action outside of, fails to seek or ignores the verbal or written advice from the Local Authority's, Human Resources department

Action Plan

Objective	Action	Support/Training	Date to be completed	Comments