



**Maendy Primary School**

**Safeguarding and Child Protection Policy**

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

**Date:.....**



## **CAPABILITY PROCEDURE FOR SCHOOLS BASED STAFF**

### **1 INTRODUCTION**

- 1.1 Torfaen County Borough Council is committed to providing a first-class education for the children and young people of Torfaen. In order to ensure this, school managers and governing bodies must recognise the importance of addressing performance issues in a fair, transparent and efficient manner. Maendy is therefore committed to ensuring that all staff possess the appropriate skills, knowledge, competence and aptitude to undertake their roles effectively.
- 1.2 Effective performance management procedures demonstrate a school's commitment to develop all employees to ensure job satisfaction, high levels of expertise and progression of employees in their profession. It will also help employees to meet the needs of pupils and raise standards. Effective performance management means paying continuous attention to monitoring progress during the year by line managers, intervening early and providing support if there are concerns about the performance of an employee. It sets a framework for staff, leaders and governors to agree and review priorities and objectives in the context of professional development and the school's improvement plans.<sup>1</sup>
- 1.3 The purpose of this procedure and the *Guidance on the Capability Procedure for School Based Staff* is to help schools secure improvement - this is a joint effort between the employee, the Head Teacher and the *Governing Body*. Early identification of problems and appropriate intervention and support through effective performance management will help to avoid the need for formal capability procedures at a later date. In many cases improvement may be achieved through existing review processes often with a minimum of support and attention. In those instances where serious concerns are identified in terms of unsatisfactory performance a more formal approach may be required.
- 1.4 Where it emerges that the issue causing concern is one of misconduct because the employee has failed to do something as a result of his or her own negligence or by refusal to act, then the issue is not one of lack of capability and it is to be dealt with in line with the school's *Disciplinary Procedure*.

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<sup>1</sup> Under the *School Teacher Appraisal (Wales) Regulations 2011* there is a statutory requirement to undertake performance management procedures for teaching staff. Performance Management for support staff is undertaken in line with locally agreed procedures. These are separate procedures to the *Capability Procedure*.

1.5 Where it emerges that the issue causing concern is as a result of the employee's ill health, the issue should be dealt with in line with the school's sickness policy.

## **2 PURPOSE**

2.1 The purpose of this procedure is to enable: -

- all employees to be effective by ensuring that they achieve, sustain and improve on the levels of skill, knowledge and aptitude required of them to improve standards and achieve better outcomes for pupils;
- all employees to access an appropriate programme of monitoring, support, guidance and training to achieve and sustain a satisfactory level of performance; and
- employees to be made aware of circumstances where there is evidence that a satisfactory level of performance is not being achieved.

2.2 Sections 5 to 9 of this procedure represent a set of stages that will provide employees with opportunities to hear how or why their performance is considered unsatisfactory and to offer any explanation that they wish to put forward.

2.3 This procedure is written with the presumption that the Head Teacher will have the lead decision-making role when dealing with performance issues involving other members of staff and that line managers or other senior leaders may be designated with the responsibility of gathering and collating written evidence regarding the concerns.

2.4 Where the Head Teacher's performance is concerned the Chair of Governors should undertake the lead role at the informal stage and so where it says in the procedures what the Head Teacher will do, substitute "Chair of Governors" for "Head Teacher." In undertaking his/her role the Chair of Governors will appoint, where appropriate, a designated member of the Local Authority or Regional Consortium to investigate the issues and/or provide appropriate support during the informal stage.

## **3 GENERAL PRINCIPLES**

3.1 The main principles behind this procedure are that: -

- all employees should be treated with respect, consistency and fairness;
- matters of unsatisfactory performance will be raised promptly with employees and appropriate support, guidance and training will be provided to achieve a satisfactory level of performance will be provided in a timely manner.
- all matters of managing unsatisfactory performance and related investigations will be treated in confidence by all parties involved throughout all stages of the process;
- where reference is made in this procedure to "a satisfactory level of performance" this means the level of performance that is laid down in the job description and person specification, but also means the Leadership or

Practising Teacher Standards and the Code of Professional Conduct and Practice for Registrants with the Education Workforce Council;

- where an employee's trade union representative cannot attend a formal meeting which may lead to a sanction, an alternative date, normally within five working days, should be offered by the representative. Should the representative subsequently be unable to attend the rearranged date, the meeting may be held in their absence or written representations will be accepted.
- all meetings at the various stages of this procedure should be arranged as soon as possible within the time limits specified. If the time limits cannot be met for any justifiable reason they can be extended by agreement on both sides;
- employees subject to these procedures should be given at least five working days' notice in writing of the time and place of any meeting or hearing set up to hear the capability matter or any appeal that may follow;
- employees subject to these procedures will be advised of the performance concerns raised against them in advance of any interview, performance review or capability hearing and will be given the opportunity to state their case and present relevant evidence before any decision is made;
- at all stages of the procedure employees have the right to be represented by a work colleague or their trade union. Please note this does not include a right to representation at review meetings held with the designated member of staff for the purposes of monitoring and reviewing performance;
- appeals against warnings will be allowed under this procedure but they must not delay the on-going nature of the process. Where such appeals are made they will be heard by the Capability Appeals Committee of the Governing Body;
- where there is an appeal against a dismissal on grounds of incapability the matter will be heard by the Staff Disciplinary and Dismissal Appeals Committee (SD&DAC); and
- all stages of this procedure should be fully recorded with the Head Teacher/Chair of Governors ensuring a record of all interviews and performance reviews with employees are made, giving the date, time and explanation (if any) provided at all stages of the procedure. The meetings of the Capability, Capability Appeals Committee, SD&DC and SD&DAC will be fully recorded by the Clerk to the Governing Body.

3.2 At all formal stages of this procedure, the employee will be provided with a support plan, which will be drafted in consultation with the employee and appropriate advisors and where possible agreed by all parties, specifying:

- the performance concerns
- the targets to be achieved
- the support to be provided to achieve the targets
- who will monitor performance and progress following the formal meeting
- the monitoring process including periodic structured meetings, informal discussion and direct support
- how improvement will be monitored
- the use of external expertise to judge standards and provide support where appropriate
- the timescales in which the required level of performance is to be achieved.

- 3.3 If at any stage during the procedure the employee consistently achieves a satisfactory standard and there is evidence to suggest that this improvement is sustainable these procedures will conclude. The Head Teacher (Chair of Governors in the case of a Head Teacher) will inform the employee of this both verbally and in writing. The employee must also be encouraged to sustain and improve their performance in the future. If, however, following this successful conclusion the employee fails to sustain a satisfactory level of performance at a later date the Head Teacher/Chair of Governors will recommence the procedure as follows: -
- at the Stage where the previous procedure concluded if the failure in performance occurs within 60 working days (or one year in the case of Head Teachers) of that conclusion i.e. if it concluded at Stage 2 the procedure will recommence at Stage 3; or
  - at Stage 1 if the failure in performance occurs after 60 working days (or one year in the case of Head Teachers) after the conclusion of the procedure.
- 3.4 Where it is necessary to recommence this procedure on more than two occasions the Head Teacher/Chair of Governors may consider that there is sufficient cumulative evidence indicating serious performance issues that require the procedures to start at Stage 4 immediately.
- 3.5 Where it emerges during this procedure that the issue causing concern is one of misconduct because the employee has failed to do something as a result of their own negligence or by simply refusing to do it then the issue is not one of lack of capability and it must be dealt with under the school's Disciplinary Procedure.
- 3.6 Where an employee feels that they have been treated unfairly or have been discriminated against during the Capability Procedure they may bring a grievance at any stage of this procedure. The grievance should be heard separately so that the Capability Procedure is able to continue uninterrupted as no procedure should automatically have precedence over any other. Where the grievance is against the manager leading on the capability then another manager must be called in to deal with the capability whilst the grievance is being heard.
- 3.7 The roles and responsibilities of governing bodies, Head Teachers, Senior Leaders, middle managers, individual employees, the Chief Education Officer, the consortium representative and the HR Adviser are given in the Welsh Government "Guidance on the Capability of School Teaching Staff" and in the case of a Head Teacher "Capability of Head Teachers Guidance"
- 3.8 It is possible that either prior to or during the course of this procedure a Head Teacher (Chair of Governors in the case of a Head Teacher) may become aware that an employee has, is perceived to have or is associated with someone who has or who is perceived to have, a "Protected Characteristic." The Equality Act 2010 lists the "Protected Characteristics" as: - age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. In some circumstances where this may have significance relating to an employee's performance the Head Teacher/Chair of Governors will need to make further enquiries of the member of staff about what

assistance may help and seek advice as to any reasonable adjustments that may need to be considered.

#### **4 EXCEPTIONAL CIRCUMSTANCES**

- 4.1 In the exceptional case where the Head Teacher (Chair of Governors in the case of a Head Teacher) has overwhelming evidence that the continued employment of the employee will jeopardise pupils' education or puts them or other staff at risk of harm it will be appropriate to issue a final written warning. If the employee does not achieve a satisfactory level of performance after four weeks it will be appropriate to refer the matter to Stage 4 of these procedures. For this to occur the employee's performance must fall so far short of what is required that improvement to a satisfactory level of performance may be deemed impossible or the employee's failure in performance has a seriously detrimental effect in the school. The Head Teacher/Chair of Governors may also consider suspending the employee where it appears to be necessary for the protection of pupils, staff or property.

#### **5 INFORMAL SUPPORT**

- 5.1 Where concerns regarding an employee's performance have reached a point where the employee is failing to respond to feedback which has been given to them, the employee should be advised by their line manager (or Chair of Governors in the case of a Head Teacher) that continued failure to improve performance could result in a need to address their performance issues via the Capability Procedure. For this reason the Head Teacher will instigate an investigation of the issue and appoint a designated member of management to undertake the task. The designated manager must meet with the employee to ensure that there is complete clarity on where the performance issue lies and a plan devised to support the employee to improve their performance to the standard required. In the case of Head Teachers, the Chair of Governors should secure from the Regional Consortium the support of an individual with appropriate education expertise and no previous direct involvement in the work of the school. That person will be responsible for clarifying the concerns and gathering relevant contextualised evidence in advance of the meeting with the Head Teacher.
- 5.2 The Head Teacher will interview the employee (in the presence of a trade union representative if the employee so wishes) and provide evidence of the concerns regarding his/her performance and engender discussion and dialogue with the employee so that mutual understanding of the performance issues is established. As a result of the meeting the Head Teacher may determine one of the following actions:
- that no further action is required as the Head Teacher is satisfied with the employee's response
  - that a support plan and review period should be established to address the performance concerns

In the case of a Head Teacher, the Chair of Governors would normally be accompanied at the meeting by a Local Authority representative.

- 5.3 If a support plan is required the time period for improvement should be no more than 30 working days and the Head Teacher/Chair of Governors should set the review period meeting and establish clear targets for performance improvement.
- 5.4 The Head Teacher/Chair of Governors will:
- outline the performance concerns
  - outline the targets to be achieved
  - specify the support for the employee in achieving the targets;
  - require the designated manager to monitor performance and progress following this first meeting;
  - ensure that the monitoring process includes a range of supportive interventions;
  - ensure that the support to be provided is specific, time limited and will help them achieve an improvement in their performance;
  - ensure that throughout the monitoring process the employee is given the opportunity of commenting upon the proposed plan of support;
  - ensure that the monitoring process is conducted in a sympathetic and non-threatening way with the objective of improving the employee's work performance. However, it must be made clear that Stage 2 of the procedure will be triggered if there is no improvement within the review period.
- 5.5 During the review period the designated manager will be responsible for gathering and collating any further written evidence. In the case of a Head Teacher the Consortium representative will, on behalf of the Chair of Governors, co-ordinate the implementation of the support plan and be responsible for gathering and collating evidence relating to the performance of the Head Teacher and progress against the performance targets throughout the review period. Progress will be reported to the Head Teacher or Chair of Governors (in the case of a Head Teacher) during the review period and presented to the Head Teacher or Chair of Governors (in the case of a Head Teacher) at the end of the period.
- 5.6 In the case of a Head Teacher, at the end of the review period an interview with the Head Teacher should be conducted by the Chair of Governors (in the presence of a trade union representative or work colleague if the Head Teacher so wishes). The appointed consortium adviser will present their report and the Chair of Governors may find it helpful to be accompanied at the meeting by a local authority representative. If the Chair of Governors determines that the evidence from the informal support programme indicates that the Head Teacher's performance remains unsatisfactory, the Chair of Governors will convene a Governor Capability Committee under stage 1 of the procedure.
- 5.7 Where the Chair of Governors determines that the Head Teacher has achieved partial improvement they may determine to extend the period of the informal stage. Any such extension should not exceed the original period set for improvement, must be based upon clear expectations of the improvements to be delivered, must be confirmed in writing and should not be repeated on more than one occasion.

5.8 Where the Chair of Governors determines that the evidence demonstrates that the Head Teacher's performance has improved to a satisfactory level the chair will determine that no further action is necessary and that the procedure will cease. This will be confirmed in writing, with the Head Teacher reminded of the requirement to sustain the satisfactory level of performance and the consequences of failing to sustain this standard.

5.9 If at any time in this procedure the Head Teacher or Governor Committee determines that an employee has not engaged positively and constructively with the process of improvement then the matter may be considered to be an issue of professional misconduct and will be considered under the school's Disciplinary Procedure.

## **6 STAGE 1 REVIEW PERIOD MEETING (FOR STAFF OTHER THAN THE HEAD TEACHER)**

6.1 Shortly before the Stage 1 review meeting takes place, the designated manager should prepare for it by undertaking an assessment of the employee's performance during the agreed timescale for improvement.

6.2 The employee should be notified of the date and arrangements for the meeting in writing, giving the required 5 working days' notice of the meeting and being informed of the right to be accompanied by a trade union representative or a work colleague. All supporting documentation will also be provided at this point.

Should the employee wish to submit any documentation, it should be provided to the Headteacher at least two working days in advance of the meeting.

6.3 At the meeting the designated manager will present their report on the review period and the employee will have the opportunity to provide a response to the report.

6.4 If the evidence from the informal support programme indicates that the employee's performance has improved to a satisfactory level the Head Teacher will determine that no further action is necessary and that the procedure will cease. This will be confirmed in writing, with the employee reminded of the requirement to sustain the satisfactory level of performance and the consequences of failing to sustain this standard.

6.5 If the Head Teacher determines that the employee has achieved partial improvement they may determine to extend the period of the informal stage. Any such extension should not exceed the original period set for improvement, must be based upon clear expectations of the improvements to be delivered, must be confirmed in writing and should not be repeated on more than one occasion.

6.6 If insufficient progress has been made and the employee is still not achieving a satisfactory level of performance the Head Teacher will issue the employee with a Stage 1 oral warning, also provided in a written format that will state:

- the performance problem;
- the level of performance that is required;
- the timescale for improvement (not to exceed six weeks);
- the date on which the employee's performance will be reviewed;
- that the oral warning will remain on record for 65 working days
- the consequences of failure to meet the required standard and the potential to move to Stage 2 of the procedure;
- the support that will be given;
- in the case of teachers, the current performance management cycle will be suspended while the formal process is on-going; and
- the right to appeal (which should not stop the on-going capability procedure as the two processes can run concurrently).

#### **STAGE 1 REVIEW PERIOD MEETING (IN THE CASE OF HEAD TEACHERS)**

6.7 If in the case of a Head teacher, insufficient progress has been made and the employee is still not achieving a satisfactory level of performance. The Chair of Governors will establish a Governor Capability Committee to address the issues and consider whether to trigger the formal stage of the procedure.

6.8 The Governor Committee will consist of three members of the Governing Body and if the Chair of the Committee consents, advisors from the Consortium, Local Authority, Diocesan Authority or HR may attend in an advisory capacity.

6.9 The Consortium representative will prepare a formal report on the Head Teacher's performance identifying the performance shortfall, the actions taken at the informal stage and the impact or otherwise of those interventions. The Consortium representative will attend the meeting of the Governor Capability Committee to present the report

6.10 The Head Teacher should be notified of the date and arrangements for the hearing, including their right to be accompanied by a trade union representative or work colleague, in writing at least five working days in advance of the hearing. All documentation for the panel, including the report of the consortium representative will be provided at this point.

Should the Head Teacher wish to submit any documentation, it should be provided at least two working days in advance of the meeting of the Governing Body Committee meeting.

6.11 At the hearing the report on Head Teacher performance against required standards will be presented by the consortium representative. The Head Teacher and their representative will then have an opportunity to respond to the report and performance concerns raised.

6.12 Following the Head Teacher's response to the report the Governor Committee will consider all the evidence presented before determining

one of the following outcomes:-

- the Head Teacher's performance is satisfactory and no further action will be taken. The Head Teacher should be reminded of the requirement to sustain a satisfactory level of performance and the consequences if this is not achieved
- the Head Teacher's performance is unsatisfactory and the Head Teacher should be issued with a formal warning and advised of expected improvements within a specified timescale
- The Head Teacher has made some progress towards improving their performance but has not yet achieved the required satisfactory standard and the review period should be extended by a period no greater than the original period set. This option would not normally be considered where an extension of review period has already been provided under the informal stage.

6.13 If it is determined to issue the Head Teacher with a formal warning this will be a written warning which will state:

- the performance problem;
- the level of performance that is required;
- the timescale for improvement (not to exceed 40 working days);
- the date on which the employee's performance will be reviewed;
- that the written warning will remain on record for one year;
- the consequences of failure to meet the required standard and the potential to move to Stage 2 of the procedure;
- the support that will be given;
- the current performance management cycle for the Head Teacher will be suspended while the formal process is on-going; and
- the right to appeal (which should not stop the on-going capability procedure as the two processes can run concurrently).

## **7 STAGE 2**

7.1 At the end of the agreed review period for Stage 1, the designated manager (or Consortium Representative in the case of a Head Teacher) should gather evidence and undertake an assessment of the employee's performance against the identified targets during the timescale for improvement.

7.2 A review meeting will take place as per the process for Stage 1. If the Head Teacher (or Governor Committee in the case of a Head Teacher) determines that sufficient progress has been made and the employee is now achieving the a satisfactory level of performance that is sustainable then the review meeting will reflect this by acknowledging the improvement made by the employee and by formally concluding the Capability Procedure. This will be in writing and the employee will be reminded of the expectation of sustaining a satisfactory level of performance and the consequence of failure to sustain this standard.

- 7.3 If the Head Teacher/Governor Committee determines that the employee has achieved partial improvement they may determine to extend the review period. Any such extension should not exceed the original period set for improvement, must be based upon clear expectations of the improvements to be delivered, must be confirmed in writing and should not be repeated on more than one occasion.
- 7.4 Where the Head Teacher (or Governor Committee) is not satisfied with the employee's explanation the meeting may conclude with the employee being issued a Stage 2 written warning (or final written warning in the case of a Head Teacher) setting out:
- the performance problem;
  - the level of performance that is required;
  - the timescale for improvement (not to exceed six weeks);
  - the date on which the employee's performance will be reviewed;
  - for employees other than the Head Teacher, that the warning will remain on record for 130 working days
  - for a Head Teacher, that the warning will remain on record for one academic year;
  - the consequences of failure to meet the required standard and the potential to move to Stage 3 of the procedure;
  - the support that will be given; and
  - the right to appeal (which should not stop the on-going capability procedure as the two processes can run concurrently).

## **8 STAGE 3**

- 8.1 At the end of the agreed review period for Stage 2 the designated manager (or Consortium Representative in the case of a Head Teacher) should gather evidence and undertake an assessment of the employee's performance against the identified targets during the timescale for improvement.
- 8.2 A review meeting will take place as per the process for Stages 1 and 2. If the Head Teacher (or Governor Committee in the case of a Head Teacher) determines that sufficient progress has been made and the employee is now achieving a satisfactory level of performance that is sustainable then the review meeting will reflect this by acknowledging the improvement made by the employee and by formally concluding the Capability Procedure. This will be in writing and the employee will be reminded of the expectation of sustaining a satisfactory level of performance and the consequence of failure to sustain this standard.
- 8.3 If the Head Teacher/Governor Committee determines that the employee has achieved partial improvement they may determine to extend the review period. Any such extension should not exceed the original period set for improvement, must be based upon clear expectations of the improvements to be delivered, must be confirmed in writing and should not be repeated on more than one occasion.

### For employees other than the Head Teacher

8.4 Where the Head Teacher is not satisfied with the employee's explanation the meeting may conclude with the employee being issued a Stage 3 final written warning setting out:

- the performance problem;
- the level of performance that is required;
- the timescale for improvement (not to exceed six weeks);
- the date on which the employee's performance will be reviewed;
- that the warning will remain on record for one academic year;
- the consequences of failure to meet the required standard and the potential to move to Stage 4 of the procedure;
- the support that will be given; and
- the right to appeal (which should not stop the on-going capability procedure as the two processes can run concurrently).

#### Head Teacher

8.5 In the case of a Head Teacher, where the Governor Committee is not satisfied with the employee's explanation the meeting may conclude with the issues being referred to the Staff Discipline and Dismissal Committee to consider under Stage 4 of the procedure. If this occurs, the Governors should seek the advice and support of the Regional Consortium and Local Authority (or the Diocesan Authority or provider of HR support, if applicable).

## **9 STAGE 4**

9.1 Where the procedures detailed at Stages 1, 2 and 3 in this procedure have been followed with a final written warning issued and the employee has not achieved a satisfactory level of performance within the agreed timescale for improvement it will be appropriate to inform the employee that a hearing will be held before the Staff Discipline and Dismissal Committee of the Governing Body.

9.2 At this stage there may be circumstances where the Head Teacher or Chair of Governors may consider suspending an employee from duty on full pay where s/he considers that it is necessary for the protection of children, staff or property or where the continued presence of the person at work could have a detrimental effect on the running of the school. This is only likely to occur in exceptional circumstances and where all alternative options have been explored.

9.3 Where the Head Teacher, or Governor Committee refers a capability matter to the Staff Discipline and Dismissal Committee the Chief Education Officer must be notified and provided with full details of the case. The CEO or his/her representative has a right to attend any meeting that might lead to dismissal in schools where the Council is the employer. In voluntary aided schools where the Governing Body is the employer Governors are strongly urged to seek advice from the CEO.

9.4 The hearing will be held as soon as it can be arranged by the clerk to the Staff Disciplinary and Dismissal Committee even if the member of staff has subsequently resigned or is on sick leave.

The member of staff will be informed in writing with a minimum of five working days' notice of:

- the date, time and place for the hearing
- the purpose of the hearing and the range of possible outcomes, including that a potential outcome of the hearing is dismissal
- the right of the member of staff to be accompanied by a representative of the member of staff's trade union or a work colleague
- the membership of the staff disciplinary and dismissal committee and staff disciplinary and dismissal appeals committee
- the name of the person presenting the case against the member of staff
- the full details of the performance concerns, the evidence to be presented and the names of any witnesses to be called, etc.
- who is to be the adviser to the staff disciplinary and dismissal committee and the staff disciplinary and dismissal appeals committee
- the date by which all relevant documentation should be received by the clerk prior to the hearing.

The clerk will arrange for the documentation from both parties to be distributed to the member of staff and their representative, including up-to-date procedures, no less than five working days prior to the hearing.

All supporting documentation being provided to the committee should be provided at this point. This should include a report detailing the performance of the employee against the targets set, the actions taken and the impact or otherwise of those interventions.

Should the employee wish to submit documentation to support their case this should be provided at least two working days in advance of the meeting.

9.5 At least five working days before the hearing, the Staff Discipline and Dismissal Committee should be sent: -

- written details of the arrangements for hearing the capability matter;
- formal written notice of the capability matter and any supporting documentation such as written reports prepared by the designated manager/Head Teacher/Consortium Representative at each stage of the capability procedure; and
- written confirmation of the employee's response to the capability matter with any supporting documentation.

9.6 All evidence that will be used at the hearing is provided in confidence and this must remain so throughout the proceedings. No new material should be introduced in the capability hearing above and beyond that previously issued to the Staff Discipline and Dismissal Committee.

9.7 At no time prior to the capability hearing will members of the Committee discuss the capability matter.

9.8 The Committee will follow the procedure outlined in Appendix A. If the Committee decides that the case is proven it may recommend to the Council that

the employee be removed from the school and undertake dismissal proceedings (any dismissal proceedings to take place in accordance with Schedule 14 of the 1996 Act).

9.9 If, for whatever reason, the Committee does not recommend the dismissal of the employee but is still not satisfied with the employee's performance it will agree a further assessment period of no more than six weeks to allow the employee to achieve the required level of performance. Where this occurs the Committee must reconvene at the end of the further assessment period to review the progress of the employee and if a satisfactory level of performance is still not met recommend dismissal with the right to appeal.

9.10 Where the member of staff is to be removed from the school the Committee will confirm its decision and reasons in writing to the employee and ask the Council to proceed accordingly (please see Section 11 below). The Committee will also inform the employee that s/he has the right to appeal against the decision to dismiss them. The employee will be entitled to statutory notice of dismissal in accordance with their conditions of service, the Staffing of Maintained Schools (Wales) Regulations 2006 and the Employment Rights Act 1996.

## 10 APPEALS

### Appeals against a warning being issued

10.1 Where the employee appeals against a decision to issue a warning under the Capability Procedure the appeal will be heard by the Capability Appeals Committee of the Governing Body. The Appeals Committee will follow the procedure outlined in Appendix B.

10.2 The employee must notify the clerk to the Governing Body in writing that s/he intends to appeal, stating their grounds for appeal, within five working days of receiving written confirmation of the decision.

10.3 On receipt of the written request to appeal, the clerk to the Governing Body will arrange for the Capability Appeals Committee to hear the appeal.

10.4 The Capability Appeals Committee will have three options open to it: -

- confirm the original decision;
- agree a further assessment period of no more than six weeks to allow the employee to achieve a satisfactory level of performance. Where this occurs the Appeals Committee must reconvene at the end of the further assessment period to review the progress of the employee and if a satisfactory level of performance is still not met confirm the original decision; or
- Issue a lower sanction

There will be no further right of appeal.

### Appeals against dismissal

10.5 Where the employee appeals against the dismissal decision of the Staff Discipline and Dismissal Committee the appeal will be heard by the Staff Discipline and

Dismissal Appeals Committee. The Appeals Committee will follow the procedure outlined in Appendix B.

- 10.6 Where an employee has been dismissed and given the right of appeal s/he must notify the clerk to the Governing Body in writing that s/he intends to appeal, stating their grounds for appeal, within five working days of receiving written confirmation of the decision.
- 10.7 On receipt of the written request to appeal the decision of the Staff Discipline and Dismissal Committee, the clerk to the Governing Body will arrange for the Staff Disciplinary and Dismissal Appeals Committee to hear the capability appeal. The guidance given in paragraphs (9.4 to 9.7) will still apply.
- 10.8 The Appeals Committee will have three options open to it: -
- confirm the decision of the Staff Discipline and Dismissal Committee to dismiss the employee;
  - agree a further assessment period of no more than six weeks to allow the employee to achieve a satisfactory level of performance. Where this occurs the Appeals Committee must reconvene at the end of the further assessment period to review the progress of the employee and if a satisfactory level of performance is still not met confirm the dismissal; or
  - recommend that the employee be redeployed should suitable alternative employment be available.

There will be no further right of appeal.

## **11 DISMISSAL OF AN EMPLOYEE**

- 11.1 Whilst the management of school staff is wholly delegated to the Governing Body of a community school the Council is still the employer. The Governing Body therefore, can only recommend to the Council that an employee be dismissed from the school following completion of the Capability Procedure i.e. after the Staff Discipline and Dismissal Committee hearing or if an appeal is lodged, after the appeal stage. It is for the Council to enact the dismissal.
- 11.2 Where the school is a voluntary aided school the Governing Body is the employer of the staff who work there. The Governing Body, therefore, can enact the decision to dismiss after the Staff Discipline and Dismissal Committee have so decided whilst still giving the member of staff the right to appeal against the decision.

## **12 EMPLOYEE ABSENCE DURING THE PROCEDURE**

- 12.1 It is possible that an employee will become absent through ill health either before or during the Capability Procedure. Whilst it is reasonable for the Head Teacher or Governing Body to wait for the employee's recovery, the employee should immediately be referred to Occupational Health informing them that the

Capability Procedure has been commenced with the employee concerned. The Occupational Health Adviser will then be able to give advice on whether the: -

- sickness absence is related to the employee's performance issues; and
- Capability Procedure can continue (where the body of evidence is sufficiently strong enough and the employee is afforded the opportunity to present the case themselves or have it presented on their behalf).

12.2 Whilst it is difficult to continue to assess the performance of an absent employee, if at any stage of the procedure the body of evidence is sufficiently strong enough to proceed and the employee is afforded the opportunity to offer an explanation or have it presented on their behalf, the Head Teacher, or Chair of Governors may decide to: -

- conclude the proceedings on the basis that the employee has achieved a satisfactory level of performance and that it is sustainable; or
- continue the procedure to the next stage on the basis that the evidence shows that the employee has not consistently achieved a satisfactory level of performance. This decision should be made in consultation with Occupational Health who will be able to advise on whether the employee is well enough to present themselves or take part in the next assessment process. If the employee is not well enough the Head Teacher, or Chair of Governors, may decide to suspend the process until they are.

12.3 Where the evidence is sufficiently strong enough to proceed to Stage 4 of the procedure where a Capability Hearing is held and the employee is absent through ill-health, every effort should be made to ensure that the employee can attend the hearing to present themselves. Employees have the right to request a postponement of the hearing, however, this should not unduly delay the hearing taking place and written representations or representatives attending in the employee's absence will be allowed instead. Where a postponement is being requested, medical evidence in support of this request should be submitted.

12.4 Throughout this procedure if it is the advice of Occupational Health that there is no likelihood of the employee returning to work in the foreseeable future then the Head Teacher, or Chair of Governors should consider dealing with the employee's sickness absence through the School's Sickness Management of Attendance Policy. The requirement to notify EWC under the appropriate regulations dealing with professional incompetence will be unaffected by this decision.

### **13 REPORTING PROFESSIONAL INCOMPETENCE TO THE EDUCATION WORKFORCE COUNCIL**

13.1 Employers are required to report cases of professional incompetence related to Registrants with the Education Workforce Council directly to the Education Workforce Council where the employer: -

- has ceased to use the services of a registrant on grounds relating to his/her professional incompetence; or

- may have ceased to use the services of a registrant on that ground had s/he not ceased to provide these services.

### SUMMARY OF HEAD TEACHER CAPABILITY PROCEDURE





