



Children's



Endeavour



Trust

Capability Procedure

The Children's Endeavour Trust comprises:

- Abbot's Hall Community Primary School
- Bosmere Community Primary School
- Broke Hall Community Primary School
- Chilton Community Primary School
- Combs Ford Primary School
- Freeman Community Primary School
- Springfield Junior School
- Whitehouse Community Primary School

Document Control

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1. Introduction

Every job carries standards of performance that employees are expected to achieve, but occasionally an employee's performance may fall short of the standards expected.

This school seeks to provide each employee with the direction, development and support necessary to assure a productive and rewarding career. This procedure ensures that the school has a fair and consistent framework for dealing with capability matters effectively, consistently and in a timely manner to ensure that no individual is discriminated against.

This policy sets out the procedure that line managers/headteachers must apply in cases of capability. Its emphasis is one of support and it is important that the right procedure is used according to the situation under review.

The Capability Procedure is designed to:

- Support staff to meet agreed standards of behaviour, conduct and job performance
- Deal fairly and consistently with staff who do not meet the required standards and identify ways to help them improve
- Be applied in a consistent, fair prompt and supportive way.

An employee's performance may sometimes raise concerns. Evidence may suggest they are unable to carry out the duties and responsibilities of their role to an acceptable standard. This could be due to a lack of capability, aptitude, skill or ability and not through any lack of willingness or effort on the employee's part. One important factor will be the impact of the employee's performance on pupils' achievement, progress and well-being.

Another reason for concerns about performance may be genuine but unacceptable absence due to ill health. This may affect the long-term ability for employees to continue to carry out the requirements of the role and may have a detrimental effect upon service delivery. In these circumstances, issues should be addressed by using the absence management procedures.

This policy has been subject to full and meaningful consultation with the recognised Trade Unions. The policy will be reviewed in with any legislative or organisational change.

For specific advice and guidance, line managers should refer to their HR Provider.

2. Scope

This procedure applies to all teaching and support staff in the Children's Endeavour Trust Schools (including those seconded to other schools or organisations) in which the governing body has adopted them for use.

Where the concerns relate to the Headteacher, the CEO will manage the procedure and, where concerns persist, and it is necessary to proceed to formal stage 2 (decision meeting), a Special Committee of the Board of Trustees will be convened to determine what action should be taken. A Headteacher who is the subject of this procedure will have all the rights accorded to other employees at the various stages.

Where the concerns relate to the CEO, the Chair of the Board of Trustees will manage the procedure and, where concerns persist, and it is necessary to proceed to formal stage 2 (decision meeting), a Special Committee of the Board of Trustees will be convened to determine what action should be taken. A CEO who is the subject of this procedure will have all the rights accorded to other employees at the various stages.

An employee working within a school but employed on another organisation's terms and conditions of employment should be managed under their appropriate policy/procedure.

3. Exclusions

Disciplinary procedures exist to deal with misconduct, wilfully underperforming, refusal to follow instructions, negligence and other similar situations, and should be used where such considerations form a significant part of any complaints.

The assessment and treatment of employees undergoing an induction, probationary period or early career framework (including Early Career Teachers), or similar, will be dealt with according to the terms of their probationary period, unless the employee's performance falls so far below professionally acceptable standards as to require immediate action.

Separate guidance also exists for dealing with problems arising from alcohol dependence. However, this procedure may be applied where this or substance abuse has a significant effect on the employee's performance.

4. Purpose

While it is important to deal with capability issues fairly and effectively, it is just as important to look at ways of preventing problems escalating in the first place, for example, through:

- Careful recruitment, selection and training
- Clear standards, expectations and effective communication
- Regular supervision and performance development reviews
- Identification and assistance in resolving underlying problems

Many factors can contribute to poor performance, including those which are not directly related to the workplace. Assistance with resolving underlying issues could include reference to:

- The Wellbeing Service
- The Trust's stress toolkit
- Referral to Occupational Health (where appropriate)

Good performance management is an all-year process, with regular supervision and feedback. Concerns about performance should be addressed promptly and not left until formal review meetings.

The purpose of the capability procedure is to:

- 1) Positively and constructively support employees to improve their performance through advice, guidance and support, when it is identified they are not performing to the required standard
- 2) Ensure that all employees are treated in a fair, consistent, understanding and timely manner and in accordance with all relevant legal requirements
- 3) Contribute towards the improvement of the performance and effectiveness of the school
- 4) Support managers in carrying out their responsibilities for the maintenance of high standards of work performance by all employees

5) Ensure the employee is aware of each stage of the procedure and the possible outcomes

6) Ensure all members of the school community receive services of the highest standard

5. Application of the Procedure

5.1 Normal Performance Management Arrangements

In many cases, the right word, at the right time and in the right way may be all that is needed to address poor performance. Managers must, in the first instance, seek improvement through normal performance management. This should include a two-way discussion, with the objective of encouraging and helping the employee to improve and for the improvement to be sustained. Although there is no automatic right for the employee to be accompanied at this stage, it may be helpful for the employee's Trade Union representative to be involved at an early stage. Additional training, coaching or advice may be agreed.

Informal feedback on performance does not form part of this procedure as this should be given through 'normal performance management arrangements' i.e. performance review meetings, one to one meetings, etc.

Feedback through normal performance management arrangements must include positive, proactive feedback on performance and constructive feedback when performance is not at the required standard – this must include

- confirmation of the required standard,
- the standard the employee is currently performing at,
- an agreement of how the required standard will be achieved and
- the consequences if standards are not achieved.
- outcomes once standards are achieved

Every effort should be made to resolve performance issues on an informal basis.

Live informal capability processes will not be mentioned in a reference.

Where concerns continue, line managers should follow 5.3 of this policy to progress to the next stage of the procedure and seek advice from your HR Provider if required.

5.2 Timescales

Capability issues should normally be resolved within ten to twelve weeks. However, it is acknowledged that there may be circumstances when the process will take longer to complete. These may include annual leave, working patterns or disability where reasonable adjustments need to be made under the Equality Act 2010. Where this is anticipated, advice must be obtained from the Schools' HR Provider.

The period of monitoring and support under a first or final written warning will not normally exceed six weeks, (excluding school closure periods where appropriate), according to the needs of the individual and the school. Whilst every effort should be made to agree the appropriate length of this period of monitoring, where agreement cannot be reached, it will set by the line manager/headteacher.

5.3 Progressing to the next stage of the procedure

All employees should progress through each stage of the procedure, and in accordance with agreed timescales.

Exceptions can apply in the following circumstances and consequently, line managers/headteachers can decide to progress the employee to the next stage of the procedure earlier than agreed if they:

- Are deteriorating in their performance
- Are not meeting the targets in the Development Plan

6. Informal stage

Before action under the formal stages of this procedure is considered, the employee should be invited to an informal meeting to discuss the performance concerns. There is no requirement to give notice of this meeting or for the invitation to be in writing.

At this meeting, discussions should include clear advice, and the agreed improvements needed, support available and how and when the employee's performance will be reviewed. Any relevant training and specific support should be identified, such as mentoring or shadowing.

When an employee meets the disability definition under the Equality Act 2010, reasonable adjustments should be put in place to support the employee in undertaking parts of the job which places that at substantial disadvantage compared to non-disabled employees. This may require a referral to occupational health to understand the reasonable adjustments needed.

An informal action plan will be written in conjunction with the employee which will include the objectives linked to the improvement of the employee's performance for the agreed review period.

SMART Principles should be used to assist with setting objectives i.e.

- **Specific** – they are well defined
- **Measurable** – both quantitatively and qualitatively
- **Achievable** – they are not set too high to make it impossible to achieve them
- **Resources** – the resources necessary are readily available
- **Timed** – the timescales are reasonable

Following this meeting the line manager/headteacher, will send a letter to the employee within ten working days of the meeting to confirm the discussions, the review period, a date for a review meeting and should enclose a copy of the informal action plan. The letter will also confirm that if there is no appropriate or sustained improvement, then the school may proceed to the formal stages of the school's capability procedures.

The employee should be invited to regular meetings to discuss their progress and discuss the informal action plan.

At the final review meeting the line manager/headteacher will review and assess whether the objectives set out in the informal action plan have been achieved. This assessment will be based on evidence collated to date which may have been obtained from a variety of sources, as well as assessing the impact of the additional support. The line manager/headteacher will then confirm to the employee whether:

- All targets have been met so no further action is needed
- Further support is needed as part of normal performance management

- Most or all of the targets have not been met so formal action under this procedure, the employee will move to formal stage 1 capability

In all cases, the outcome will be confirmed in writing to the employee within ten working days of the final review meeting.

Where the recommendation is made to take formal action under this procedure because the employee has made insufficient improvement despite the support and monitoring, the employee will be invited to a formal meeting under Formal Stage 1 of the procedure.

6 Formal stage 1 – Meeting (Written Warning)

6.1 Purpose

The purpose of Formal Stage 1 is to support the employee in improving their performance to meet the required standard against an agreed Development Plan (a template Development Plan is enclosed).

6.2 Procedure

The employee will be sent a letter inviting them to attend a formal capability meeting. They will be provided with at least ten working days' notice of the meeting. The notification will contain sufficient information about the performance concerns and the possible consequences to enable the employee to prepare to answer the case at a formal capability meeting. It will also contain copies of any written evidence; the details of the time and place of the meeting and will advise the employee of their right to be accompanied by their accredited Trade Union Representative, or a work colleague.

This meeting is intended to establish the facts. It will be conducted by the CEO (for head teacher capability meetings) or the head teacher (or other senior school leader/the employee's line manager) for other employees.

At the formal review meeting the following will be discussed:

- a) Confirm that the employee has the right to be accompanied by a union representative or work colleague;
- b) Confirm that the meeting is being held under the school's capability procedure and explain the process that will be followed and the possible outcomes;
- c) Confirm the expected standard of performance and the standard at which the employee is currently performing, i.e. identify the professional shortcomings, e.g., for teachers, which of the standards expected of teachers, or pupil progress targets, are not being met;
- d) Ensure the employee has the opportunity to respond to and explain any factors affecting their current performance and consider this when determining the appropriate course of action (it may be necessary for new information on performance to be disclosed);
- e) Confirm the impact to the school and pupils of the under-performance;
- f) Confirm the options available to support the employee in improving their performance (i.e. support, development, reasonable adjustments, training, mentoring or shadowing etc.);
- g) Ensure the employee is aware of what support is available to them e.g., the Employee Assistance Programme (EAP), Trades Union support, etc;
- h) Confirm that Formal Stage 1 constitutes a 'written warning' which if no further action is taken, will remain active for 6 months from the end of Formal Stage 1.

On occasion, the manager may decide to adjourn the meeting if they decide that further investigation is needed, or that more time is needed in which to consider any additional information provided by the employee at the meeting.

At the meeting the manager and employee will discuss and agree:

- a. The employee's current and expected levels of performance;
- b. The objectives for the Development Plan, how they will be achieved, the timescales for achieving them and when progress against each objective will be reviewed;
- c. The reasons the employee is not meeting the expected standards (which may be as a consequence of personal issues);
- d. When review meetings will be held;
- e. Warn the employee formally that failure to improve within the set period could lead to the progression to the next stage of the process which could lead to dismissal. (In very serious cases, this warning could be a final written warning);
- f. Write, agree and sign the Development Plan whether any further reasonable adjustments may need needed
- g. Any agreed reasonable adjustments to be made under the Equality Act 2010.

At the end of the meeting the manager will:

- a. Summarise the meeting;
- b. Ensure the employee understands what is expected of them, the process that will be followed and the possible next stages of the procedure, including the right of appeal against the warning (any appeal must be lodged, in writing, within 14 days of the date of the letter issuing the warning. The grounds of the appeal must also be detailed at this stage);
- c. Agree what support, development and reasonable adjustments (if appropriate) will be put in place

After the meeting the manager will:

- a. Confirm the outcome of the meeting in writing within ten working days of the meeting, the letter shall include the following:
 - i. that a written warning has been issued;
 - ii. Include the dates of any agreed review meetings
 - iii. invite to the formal review meetings
 - iv. enclose copy of Development Plan
- b. Ensure that the employee receives the support agreed in the Development Plan in a timely manner
- c. Ensure that the agreed review meetings and any further review meetings deemed necessary take place;
- d. Continue to monitor the employee's progress against the Development Plan and progress the employee through the procedure as appropriate and in line with this procedure;

Ensure that the employee is informed of any signs that they are not likely to achieve their targets at an early stage.

After the meeting the employee will:

- a. Make every effort to meet the objectives agreed in the Development Plan;
- b. Attend the agreed review meetings and any further review meetings deemed necessary;
- c. Give honest feedback on their current performance and progress against the Development Plan and pupil progress targets.

6.3 Formal Review Meeting

The letter confirming the outcome of the first formal meeting and a copy of the Development Plan will be sent to the employee and will invite the employee to a formal review meeting at the end of the agreed review period (***this can be brought forward if necessary (see section 5.3)***). The employee has the right to be accompanied at the formal review meeting by their accredited Trade Union Representative, or a work colleague.

At the formal review meeting, the manager and employee will review the employee's progress against the Development Plan and the manager will confirm one of the possible at the end of the formal stage 1, stated below.

Possible Outcomes at the end of Formal Stage 1

The manager will confirm one of the following outcomes:

1) The required standard of performance has been met

The employee's performance will be managed under normal performance management arrangements and the written warning will remain active for 6 months from the date of the Formal Review Meeting.

2) The required standard of performance has not been met or significant progress has not been made towards meeting the required standards

The employee will be progressed to Formal Stage 2 of the procedure (see section 7) and a 'final written warning' will be given. Until the hearing takes place, the employee will continue to be supported to meet the requirements of the Development Plan.

The outcome of the formal review meeting will be confirmed to the employee in writing within ten working days of the review meeting. If the employee has been progressed to Formal Stage 2 of the procedure, the letter will include an invitation to a hearing (see section 7) and confirmation that a final written warning has been issued, which if no further action is required, will remain active for 12 months from the end of Formal Stage 2, and warning the employee that failure to achieve an acceptable standard of performance (within the set timescale) may result in dismissal. The letter will also give information about the handling of the further monitoring and review period and the procedure and time limits for appealing against the final warning.

7 Formal stage 2 – Decision Meeting

As with the formal capability meetings and formal review meetings, at least ten working days' notice will be given, and the notification will give details of the time and place of the meeting and will advise the employee of their right to be accompanied.

7.1 Purpose

The purpose of Formal Stage 2 is to determine:

- a. If the school has exhausted all options in supporting the employee to improve their performance;
- b. What the outcome of the procedure should be.

7.2 Procedure

The procedure for the hearing will follow the procedure set out in Appendix 2.

The possible outcome of the hearing will be one of the following:

1) The required standard of performance has been met

The employee is performing to the required standard and will be managed under normal performance management arrangements.

2) The required standard of performance has not been met but it has been determined that the required standard can be met within a short period

A further review period (it is recommended this is no more than two working weeks from receipt of the Development Plan) and Development Plan will be implemented (under Formal Stage 2 of this procedure).

In these circumstances:

- a) The additional support to be given to the employee and the duration of the extended review period will be explained to the employee verbally at the meeting and a development plan detailing this will be forwarded to them with the letter confirming the outcome of the meeting
- b) A review meeting will take place at the end of the extended review period and one of the three outcomes set out within Section 7.2 will be determined.

c) The required standard of performance has not been met and the panel has determined:

d) The required standard cannot be met within a short period

OR

e) The employee is capable of performing at the required standard but does not due either to negligence or carelessness or idleness, or unwillingness or a combination of some or all of these.

If performance remains unsatisfactory, a decision, or recommendation to the Governing Body/Special Committee of the Board of Trustees will be made that the employee should be dismissed or required to cease working at the school/Trust. However, it could be agreed that the employee will not return to work at the school/Trust in a capacity which directly affects the education of pupils, or they may be granted paid leave for the duration of the notice period.

¹ The employee is dismissed with notice (unless their performance has been so negligent so as to amount to gross misconduct, in which case they may be dismissed without notice).

The outcome of the hearing will be confirmed to the employee in writing within 5 working days, and will include information about the employee's right of appeal. If a further review period has been granted (see outcome 2 above), the letter will include an invitation to the further review hearing.

8 Returning to Earlier Warnings

If there is evidence within six months of the procedure ceasing (for a first written warning or within twelve months for a final written warning) that the employee has not sustained the level of performance required, the procedure may be resumed at any stage up to and including that stage previously reached.

9 Exceptional Circumstances

In exceptional cases where the level of performance could have serious consequences successive warnings may not be appropriate. For example;

- where the employee's performance falls so far short of an acceptable standard, that improvement to an acceptable level may reasonably be deemed impossible; or

- where a lack of competence has a seriously detrimental effect on the education of pupils and students; or
- where the employee's lack of competence could have other serious consequences, e.g. safety considerations

In such circumstances, the school may proceed directly to consideration of a final written warning or dismissal, as appropriate. Schools should seek advice from their HR provider before taking such a decision.

10 Appeals

Employees have the right to appeal against the first written warning, final written warning and any outcome of the Formal Stage 2 decision meeting. If the employee feels the action taken against them has been wrong or unjust they have the right to appeal within 14 days of the outcome they are appealing against. As part of the appeal, the employee must set out in detail the grounds of the appeal. The procedure for any appeal will follow that set out in Appendix 2, "Procedure for a Hearing", except that the running order will be reversed.

11 Headteachers/CEO

If there are concerns about the capability of the Headteacher, it would clearly be inappropriate for them to carry out the roles normally assigned to the Headteacher in this procedure. This section sets out how these roles may be appropriately reassigned, within the spirit and intent of this procedure.

Concerns about the performance of a Headteacher may emerge from either the CEO, Governing Body or from external sources such as Ofsted inspection or the Local Authority (LA) in its monitoring role.

The CEO may discuss concerns about the Headteacher's performance as part of the normal dialogue between the Headteacher and Chair of Governors. Such discussions will precede the informal stages detailed in this procedure.

The CEO may consult the Governing Body or their HR Provider and arrange for help and support to be provided. Consultation with the Headteacher's trade union may also assist the process. However, if the matter is, or becomes, sufficiently serious, (formal stage 2) the Headteacher should be advised that if the identified deficiency persists, it may be necessary to convene a Special Committee of the Board of Trustees to consider the matter under the formal stages of this procedure. This possibility should be set out in writing.

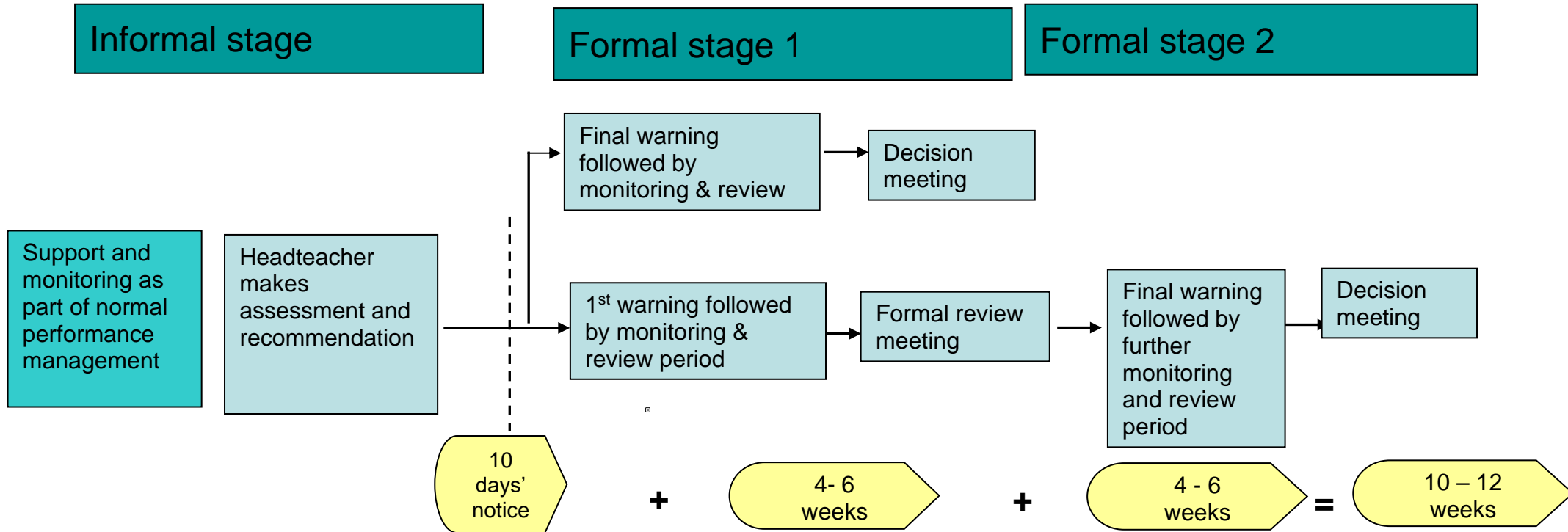
If there are concerns about the CEO, the Chair of the Trustees may consult the Board of Trustees and convene a Special Committee of the Board of Trustees to consider under the formal stages, should the deficiency persists.

A Headteacher/CEO who is the subject of this procedure will have all the rights accorded to other employees at the various stages.

Capability Procedure – Illustrative Timeline

Appendix 1

It is anticipated that most cases of capability will be resolved within ten to twelve working weeks (including informal feedback as part of normal performance management arrangements). However, it is acknowledged that there may be circumstances when the process takes longer to complete. Where this is anticipated, advice must be obtained from HR.



Note: The timings given above are illustrative only. Schools will tailor the length of their monitoring and review periods to suit individual circumstances.

Procedure for a Hearing

Hearings will be held in as informal a manner as possible and the employee will be afforded every reasonable assistance to put forward their case. The conduct of the hearing is at the discretion of the Headteacher, Chair of the committee or manager hearing the case, but they will allow the parties every reasonable opportunity to present their case.

In the case of an appeal the order of presentation set out below would normally be reversed, with the employee as appellant presenting his/her case first. However, by prior agreement or where the appeal constitutes a re-hearing of the full case, the case against the employee may be presented first as at the initial hearing. Chairs of appeal committees or managers hearing appeals should ensure that all parties have a common understanding and agreement on the order of presentation.

Introduction

The Headteacher, Chair of the appropriate committee or manager hearing the case will ensure that those present are introduced to each other and that they are aware of the procedure to be followed.

Presentation of the Case

The person presenting the case against the employee may make an opening statement outlining the case. The person is usually the individual who has overseen the process up until this point e.g conducted the review meetings, compiled the development plan etc. The committee hearing the case and the employee responding to it may ask questions.

The Presenting Officer will then call any witnesses and ask them to give their evidence. The employee or their representative may then ask each witness questions. The person or committee hearing the case may also ask questions of any witness. The person presenting the case may then re-examine the witness.

Where evidence is presented in the form of documents, the person presenting the case, or an appropriate witness, will explain the nature and significance of the documents.

The Employee's Case

The employee or their representative (union or work colleague) may make an opening statement. The person or committee hearing the case and the person presenting the case against the employee may ask questions.

They may call any further witnesses and invite them to give their evidence. The person presenting the case against the employee may ask questions of each witness after they have given their evidence. The person or committee hearing the case may then ask questions. The employee or their representative may re-examine the witness.

Where there is any documentary evidence, the employee or any witness on their behalf will explain its significance.

Re-examination

Both parties will be asked if they wish to re-examine any evidence. The person or committee hearing the case may also do so at its discretion.

Final Statements/closing speech

The person presenting the case against the employee may make a final statement. The employee or representative may then also make a final statement.

Adjournment

Either party may ask for an adjournment at any stage. The decision to adjourn is at the discretion of the Chair, who will consider a request in the light of the reason given for it.

Consideration of the Case

All parties will withdraw. The Headteacher or the committee will deliberate.

If it is necessary to recall either party or any witnesses, to resolve a point of uncertainty, both parties will be invited to be present, whether or not the point of doubt concerns one party or both.

Decision

If possible, the decision will be communicated verbally to the employee after the hearing depending on the circumstances. The decision will be confirmed in writing to the parties involved as soon as possible after the hearing.

General principles underlying this policy

Confidentiality

The capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the head teacher and governing body to quality-assure the operation and effectiveness of the capability system. Schools to say here how they might achieve this, for example, the head teacher or appropriate colleague might review all teachers' objectives and written appraisal records personally, in order to check consistency of approach and expectation between different appraisers. The head teacher might also wish to be aware of any pay recommendations that have been made.

Consistency of Treatment and Fairness

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

<https://www.gov.uk/government/publications/equality-act-2010-advice-for-schools>

Definitions

Unless indicated otherwise, all references to "teacher" include the head teacher.

Delegation

Normal rules apply in respect of the delegation of functions by governing bodies and headteachers.

Grievances

Where a member of staff raises a grievance during the capability procedure the capability procedure may be temporarily suspended in order to deal with the grievance. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.

Sickness

If long term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case will be dealt with in accordance with the school's absence policy and will be (*e.g. referred immediately to the occupational health service to assess the member of staff's health and potential fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures*). In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

Monitoring and Evaluation

The governing body and headteacher will monitor the operation and effectiveness of the school's capability arrangements.

Retention

The governing body and headteacher will ensure that all written capability records are retained in a secure place for six years and then destroyed.

