

**St Patrick's RC Primary School  
Fairfield**

*'May Christ Be Seen In Us'*



**Capability Policy & Procedure  
for Teaching Staff in Schools**

Approved Autumn 2020  
Review Autumn 2021

# St Patrick's RC Primary School Fairfield

This procedure has been consulted with the Professional Associations/Trade Unions and is recommended for adoption

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## **1.0 Introduction and Objectives**

- 1.1 For the purpose of this document, capability will be assessed by reference to skill, aptitude, efficiency, health or any other physical or mental quality. Lack of capability is defined as a situation in which a teacher fails consistently to perform his or her duties to a professionally acceptable standard. Capability concerns may be about a single matter or a number of separate issues.
- 1.2 The procedure is designed to help and encourage all teachers to achieve and maintain acceptable standards of capability, efficiency, attendance and work performance. The main purpose of the capability procedure is to encourage a teacher, whose work performance is unsatisfactory, to improve. Capability action may, at its extreme, lead to dismissal.
- 1.3 The Headteacher or Governing Body has overall responsibility for promoting and maintaining standards of work performance. Informal guidance does not form part of the formal capability procedure.
- 1.4 The following capability procedure has been established by the Governing Body in line with the powers given under the School Staffing Regulations 2009. In establishing these procedures, care has been taken that the procedure is consistent with the Education Act and Regulations, employment legislation and codes of practice, as well as good personnel practice. The Headteacher will have the delegated responsibility to take capability action up to initial dismissal decisions, following which there will be an opportunity to appeal to a panel of governors.
- 1.5 The Governing Body has a responsibility to apply the provisions of this procedure fairly and with full regard to the School Staffing Regulations 2009 and in accordance with the LA-School Relations Code of Practice.
- 1.6 All proceedings under this procedure shall be held in private and shall be confidential.
- 1.7 The use of days out of term time is only used by mutual agreement in writing if it is necessary and appropriate to progress matters outside term time.
- 1.8 The submission of a grievance or a complaint of harassment or discrimination, will not suspend the operation of the capability procedure or prejudice the Headteacher/Governing Body's right to pursue capability action against a teacher. Concerns relating to the substance and conduct of the capability action taken against a teacher cannot be dealt with under the schools grievance procedure, but should be raised by the teacher during and as part of the capability process.

## **2.0 Teacher Capability Procedures**

- 2.1 This procedure relates to the underperformance of teaching staff and is called the *Teacher Capability Policy & Procedure*. All other capability concerns that relate to the health or any other physical or mental fitness of teaching staff are contained in the *Attendance Management Policy and Procedure*.

### **3.0 Representation**

- 3.1 At all stages of the capability process teachers have the right to be represented or accompanied by an accredited official of a trade union or a work colleague, and should be so advised. The representative or work colleague may address the meeting and/or interview and confer with the teacher but may not answer questions on their behalf.
- 3.2 The teacher should make their own arrangements to be represented or accompanied. Where the teacher's chosen Trade Union representative or colleague is not available at the proposed time and date, the teacher may propose an alternative time. If this suggestion is reasonable and falls within 5 working days of the original date, the meeting should be postponed to that date and time.

### **4.0 Issues of Capability of Trade Union Officials**

- 4.1 Any capability action being contemplated in respect of staff representatives of recognised trade unions within this procedure should not be instigated without the prior involvement of the full-time official or nominee, of the appropriate Trade Union.

### **5.0 Scope of Procedure**

- 5.1 This procedure applies to the under-performance of all teaching staff who are permanent or fixed term teachers within the establishment of a school, whether full-time or part-time, in teaching posts, including Headteachers and Deputies. Please note where the capability concerns are about the Headteacher, the Chair of Governors should seek advice from the Corporate Director of Children, Education and Social Care (or nominated representative).
- 5.2 Teaching staff on daily or hourly supply have a right to be given an appraisal interview before a decision is reached on termination of their employment as a result of poor performance.

### **6.0 Transition from Appraisal Procedures to Capability Procedures**

- 6.1 The capability procedure should not be implemented unless an action support plan has been in place for an agreed period and the teacher has been provided with reasonable time for their performance to improve under the Appraisal process.
- 6.2 At the end of the action plan if the teacher is performing at a level that indicates there is no longer a possibility of capability procedures being invoked the teacher should be informed of this and the Appraisal process will continue as normal.
- 6.3 Where there has been none or insufficient improvement; a transition meeting will take place to determine whether formal capability proceedings need to be commenced or if the areas of concern can be dealt with under the Appraisal process.

### **7.0 CAPABILITY PROCEDURE**

#### **Initial Stage**

- 7.1 The fundamental principles of good management practice must apply in all cases with the school's systems and procedures for management of performance being followed and used to raise areas of concern.

- 7.2 Where it has been determined at the transition meeting that there has been no or insufficient improvement as a result of the action plan, the teacher will be invited to a formal capability meeting where it will be agreed what action should be taken to address those concerns with the objective of assisting the teacher to achieve acceptable standards of performance in carrying out their duties.
- 7.2 It is advisable to approach all capability issues from the view that each teacher has individual reasons for inadequate performance and to try to remedy the causes as this is a more positive and effective approach.
- 7.3 The individual supervising the teacher should be of sufficient competence and experience to assist with his/her work. The person conducting the meeting must give at least five working days' notice of the meeting in writing. It will contain sufficient information about the concerns about performance and the possible consequences to enable the employee to prepare to answer the case at the meeting and enclose copies of any written evidence. The employee has the right to be accompanied at the meeting by a trade union representative or work colleague. The meeting may be postponed by up to five working days if the employee's chosen representative is not available on the original date.
- 7.4 At the meeting, (if there is a mentor system in place it may be appropriate for the mentor to attend); the Headteacher/Line Manager will draw the teacher's attention to the ways in which his/her performance is considered to be deficient. Any shortcomings should be discussed as specifically as possible and required standards should be made clear. It should be conducted discreetly.
- 7.5 The emphasis throughout the initial stage shall be considering support measures and monitoring their effect. Examples would include:
- Training, including external courses;
  - Guidance, support and informal coaching which should aim to encourage and help the teacher to improve;
  - Medical assessments;
  - Constructive discussions (aimed at pointing out any shortcomings in job performance and encouraging improvement);
  - Other assistance which it is considered would facilitate improvement (e.g. job redesign, job shadowing, if these are possible);
  - Arranging closer supervision;
  - Making more time available for discussions;
  - Using trial periods to allow time for the problem(s) to be addressed.

A brief note of any support measures and effectiveness should be kept for reference.

- 7.6 If the performance concerns continue they must be shared with the teacher, who should be given reasonable opportunity to comment and explain. Remedies should be discussed with advice from an appropriate education professional (e.g., School Adviser, who may have observed a teacher at work). An action plan detailing objectives and any agreed support and training should be drawn up in writing.
- 7.7 The teacher should be advised that the Headteacher/Line Manager will monitor his/her performance over a period of 6 weeks to be kept under review and provided with regular feedback on progress. The period should, have regard to the action planned and the improvement required. During this period, part of the normal work programme will be to provide ongoing advice, support and feedback to the teacher as necessary.

The teacher should also seek and accept help from other sources, as appropriate, and attend relevant in-service training.

- 7.8 Where progress is made, the Headteacher/Line Manager may decide that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process and the appraisal process will restart.
- 7.9 If more serious concerns arise, or if the teacher fails to co-operate, the formal interview may be instigated to deal with the matter in a more structured and objective manner.
- 7.10 The Headteacher/Line Manager should keep management notes of action taken and of guidance issued. This record will not be placed on the teacher's personal file but may be used as evidence at a later stage if further action under this procedure is necessary. It is also essential that the Headteacher is kept generally informed of such concerns where he/she is not leading/managing the process.
- 7.11 Where however, following a reasonable period of support and supervision no significant improvement is evident and a second opinion has been sought from an appropriate professional adviser to confirm the existence of performance problems, the Headteacher/Line Manager will, formally meet with the teacher to make them aware of the need for improvement with a statement of the aspects of work which are causing concern. This will constitute the date of entry into the formal part of the procedure, as outlined in paragraph 8.

## **Formal Stage**

### **8.0 Formal Interview**

- 8.1 If following a reasonable period of support measures and monitoring no significant improvement is evident, a second opinion should be sought from an appropriate professional adviser. If this confirms the existence of performance problems, the Headteacher/Line Manager will, in consultation with the Headteacher, convene a formal interview with the teacher. If appropriate, this will constitute the date of entry into the formal procedure.
- 8.2 The formal interview provides an opportunity to deal with more serious problems in a structured way; to make them aware of the need for improvement with a written statement containing the aspects of work which are causing concern. It allows the teacher to prepare a response to concerns about performance and make a case in the company of a union representative or colleague. At least 5 working days' notice must be given for the interview and for providing all documentation that will be referred to at the formal interview.
- 8.3 The interview may provide new information or put a different slant on evidence collected. If it becomes clear that further investigation is needed the meeting should be adjourned for an appropriate length of time to allow this to happen.
- 8.4 There are four options following formal meeting:
  - No further action;

- Further support measures and monitoring under the initial stage (this would apply where new information, a different slant on the information collected, or further investigation suggests that the matter is not as serious as it first seemed);
- Invoke Formal Stage 1 - issue written warning;
- Invoke Formal Stage 2 - issue final written warning<sup>1</sup>.

It may be necessary to move directly to a final written warning in cases of particularly serious concern, where the education of children is in jeopardy. This would invoke an assessment period not exceeding 4 working weeks.

8.5 A letter should be sent to the teacher within 5 working days recording the content of the interview and should:

- identify the professional shortcomings;
- give clear guidance on the improved standard of performance needed to end the capability procedure;
- explain the support that will be available, and how performance will be monitored over the following weeks;
- depending on the level of warning issued (if any), identify the timetable for improvement and agree a date for the next/final evaluation meeting;
- make it clearly understood that failure to improve may lead to dismissal.

Where a formal written/final written warning is issued, giving information about the right to appeal to a panel of Governor's. (Final written warnings will remain live for eighteen months and written warning for 12 months).

## **9.0 Formal Stage 1 (8 - 12 working weeks)**

- 9.1 Regular observation, monitoring and evaluation of performance, with guidance, training if necessary, and support to the teacher. Review meeting(s) should be included throughout the monitoring period to assess progress.
- 9.2 If at any point during this stage the circumstances suggest a more extreme problem, a meeting should be convened as under paragraph 7 and a decision may be taken to move directly to a final written warning.
- 9.3 An evaluation meeting should be included at the end of the Formal Stage 1 to assess performance over the previous weeks. At least 5 working days' notice must be given for the meeting. The teacher may be accompanied by a union representative or colleague.
- 9.4 If the level of performance has improved to the required standard the performance procedure shall end here with confirmation in writing.
- 9.5 If there has been subsequent progress towards meeting targets but the Headteacher/Line Manager is not confident that they are fully met and sustained a further review period can be considered. This will be followed by a further evaluation period to decide whether the procedure is concluded or to go to the next stage.

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<sup>1</sup> Written Warnings and Final written warnings can only be issued by those with delegated authority

- 9.6 If performance continues to be unsatisfactory a final written warning should be issued. Formal monitoring, evaluation, guidance and support should continue, arrangements for this should be explained at the meeting.
- 9.7 The teacher must be told clearly that failure to achieve an acceptable standard, with confidence that it can be maintained, may result in dismissal.
- 9.8 The decision and main points of the meeting should be recorded in a letter to the teacher. Any appeal against a final written warning must be made within 5 working days, and heard by the Governors Appeal Committee within 20 working days of notification of appeal, and must not interrupt the progress of the procedure, unless the appeal decision leads to the matter being reconsidered.

#### **10.0 Formal Stage 2 (4 working weeks)**

- 10.1 Regular monitoring and evaluation of performance, with guidance, training if necessary, and support to the teacher.
- 10.2 **Week 4** - Final evaluation meeting to report the assessment of performance over the previous weeks. At least 5 working days' notice must be given for the meeting and the teacher may be accompanied by a Trade Union representative or colleague.
- 10.3 If performance has improved to the required standard and there is sufficient confidence that it can be maintained, the capability procedure can end and the appraisal process can restart.
- 10.4 If performance has not reached the required standard the teacher should be informed that the matter will be referred to a Hearing.
- 10.5 The Headteacher will normally hear the case. Where the Headteacher has been directly involved in the procedures leading to capability action, has instigated the proposal to dismiss (or the Headteacher is being considered for capability action), the hearing decision can be delegated to a panel of at least three governors.
- 10.6 The result of the assessment, main points of the meeting and date of the Hearing (if known), should be recorded in a letter to the teacher. The teacher may be suspended from teaching duties.

#### **11.0 Sickness Absence**

- 11.1 Short term absences will not normally interfere with monitoring or other formal procedures.
- 11.2 If long term absence appears to have been triggered by the commencement of this procedure, the case will be dealt with in accordance with the school's attendance policy/procedures and referred immediately to the Occupational Health service to assess the teachers' health and fitness.

## PROCEDURE FOR THE HEARING

### 12.0 At the Hearing

- 12.1 When a case is to be considered by the Hearing Committee it shall be heard by a panel of no less than three governors.
- 12.2 In exceptional circumstances, where it is not reasonably practicable to comply with the requirement of a minimum of three members on the panel, the membership of the panel shall be determined by governors in such a way as to ensure that any subsequent Appeal Committee includes no fewer members than on the Hearing Committee.
- 12.3 The Corporate Director of Children, Education and Social Care (or nominated representative) may attend the meeting at which the capability complaint is considered for the purposes of giving advice. Any advice given by the Corporate Director of Children, Education and Social Care (or nominated representative) must be considered by those concerned before a decision is made; but they will not be party to the decision.
- 12.4 A representative from the Human Resources Service will be available to attend a Capability Hearing if required. Where dismissal is thought to be a possible outcome it is essential that a representative from Human Resources attends the Hearing.
- 12.5 If the teacher fails to attend the hearing the case will be heard in their absence, unless the Hearing Committee agrees to postpone the hearing to a later date having received acceptable reasons.
- 12.6 The Hearing Committee should have before them copies of all relevant papers that will be referred to during the Hearing including those submitted by the teacher concerned.
- 12.7 At the Hearing, the panel will decide whether late evidence from either side will be accepted. The views of both sides should be heard when considering whether to accept late evidence, along with general considerations of reasonableness and fairness. If late evidence is accepted in the form of written documentation, the hearing will normally be adjourned for a brief period to provide reading time.
- 12.8 The hearing will be aimed at enabling the panel to come to a decision as to what has taken place and then to make a decision about the appropriate action and/or sanction.
- 12.9 The panel must provide an opportunity for both sides to put their case fully and make sure that both sides have a fair and reasonable hearing. In particular the panel must allow the employee the opportunity to be represented or accompanied by a Trade Union representative or work colleague. The panel must ensure the procedure outlined below is adhered to as far as possible.
- 12.10 The Chair will open the proceedings by:
- stating the purpose of the hearing;
  - introducing all present;
  - saying how the hearing will be conducted;
  - confirming that all have the same documentation;
  - confirming the number and names of witnesses attending on both sides;
  - asking for any points of clarification to be stated;

- reading the capability allegations.

12.11 The Chair will then ask each side to present their case and is responsible for ensuring that all presentations, evidence and questions are relevant and questioned if any area is unclear.

12.12 The order of the proceedings is as follows:

1. The Management representative to present the facts of the case and may call witnesses.
2. The employee or his/her representative to have the opportunity to question the Management representative and any witnesses about the facts provided.
3. Members of the Committee to have the opportunity to question the Management representative and any witnesses
4. The employee or his/her representative to put his/her case and to call such witnesses as he/she wishes.
5. The Management representative to have the opportunity to ask questions of the employee or his/her representative and witnesses.
6. Members of the Committee to have the opportunity to ask questions of the employee or his/her representative, or the witnesses.
7. The Management representative to have the opportunity to sum up his/her case (no new evidence shall be submitted at this stage)
8. The employee or his/her representative to have the opportunity to sum up his/her case (no new evidence to be submitted at this stage)
9. The Management representative and the employee and his/her representative to withdraw.
10. The members of the Hearing Committee to consider the facts presented to them.

12.13 The hearing may also be adjourned at the deliberation stage, in order to allow for further investigation if the Committee feels that there are points that need clarification. Opportunity may be given to re-examine the evidence/witnesses.

### **13.0 The Decision**

13.1 All parties other than the assigned officer(s) advising the panel shall withdraw when the panel considers its decision.

13.2 Following careful consideration of the case, the Chair will normally announce the decision and the formal action, if any, to be taken. The Chair will also give an explanation for that action and will explain the employee's right of appeal under this procedure. These points will be confirmed in writing to the employee and copied to their representative unless the employee indicates otherwise.

## **14.0 Dismissal**

- 14.1 Where the panel believes the employee's performance will not improve sufficiently, the final stage of the process will be dismissal. The employee will be informed of the reasons for the dismissal, the date on which their employment will terminate, the appropriate period of notice and their right of appeal. Notice of dismissal will be issued only by the Corporate Director of Children, Education and Social Care, on receipt of the notification of the decision of the panel.

## **15.0 Appeal**

- 15.1 An employee can appeal against any formal action taken as a result of this procedure. All appeals will be conducted as a full re-hearing of the case.
- 15.2 An appeal must be sent to the Chair of Governors. A pro-forma will be included with the written notification of formal action, on which the employee can give notice of appeal, including identification of the grounds for appeal. Notice of appeal must be received within 5 working days of receipt of the decision letter. This time limit will be strictly observed.
- 15.3 Arrangements for the appeal will be made on receipt of the appeal request. Wherever possible the appeal should be heard within 20 working days of the lodging of the appeal and the employee should have at least 5 working days' notice of the Appeal Hearing.
- 15.4 Appeal Hearings will consider the representations made by the employee or his/her representative, together with the information given by the Headteacher/Line Manager and any witnesses and will then decide whether to uphold the warning/dismissal or allow the appeal. If allowing the appeal, the record of the warning will be removed from the employee's record.

## **16.0 The Appeals Committee**

- 16.1 No member of the Hearing Committee shall be a member of the Appeals Committee.
- 16.2 All papers presented to the Hearing, together with the decision of the Chair of the Committee and any subsequent correspondence must be available to the Appeals Panel. Any new evidence, which the employee wishes to introduce, should be copied to all parties at least 5 working days in advance of the Appeal Hearing.

### **At the Appeals Hearing:**

- 16.3 The Appeals Procedure will be the same as the procedure for the Hearing (as set out in paragraph 12 of this document).
- 16.4 The Appeals Committee will consider the grounds for the appeal, paying particular attention to any new evidence that has been introduced by the employee and hear representations from both management and the employee or their representative in order to determine whether the decision of the hearing was fair and reasonable in view of the evidence available.
- 16.5 The decision of the Appeals Committee is final and binding on all parties and, once made must then be notified to the employee and the Local Authority in writing.

## 17.0 Records

- 17.1 The maintenance of accurate and contemporaneous records is essential, particularly in the event of referral to an Employment Tribunal. Notes are not necessarily verbatim, and there is no requirement for agreed minutes. It should be noted that consideration by an employment tribunal may be an extended time after the matter was considered internally.
- 17.2 Records should be held in a secure and confidential manner, often the issues raised by a teacher are particularly sensitive and it is essential that information is kept in accordance with the Data Protection Act 1998.
- 17.3 Documentation which should normally be retained includes:
- all papers presented at the Hearing and Appeals Committee;
  - notes of meetings (contemporaneous or otherwise);
  - information collated by the panel or used to assist in making a decision;
  - confirmation of the decision, or other supplementary correspondence;
  - clarity on how decisions were reached and capability action determined.

## 18. HR Advisory Service - Contact Details

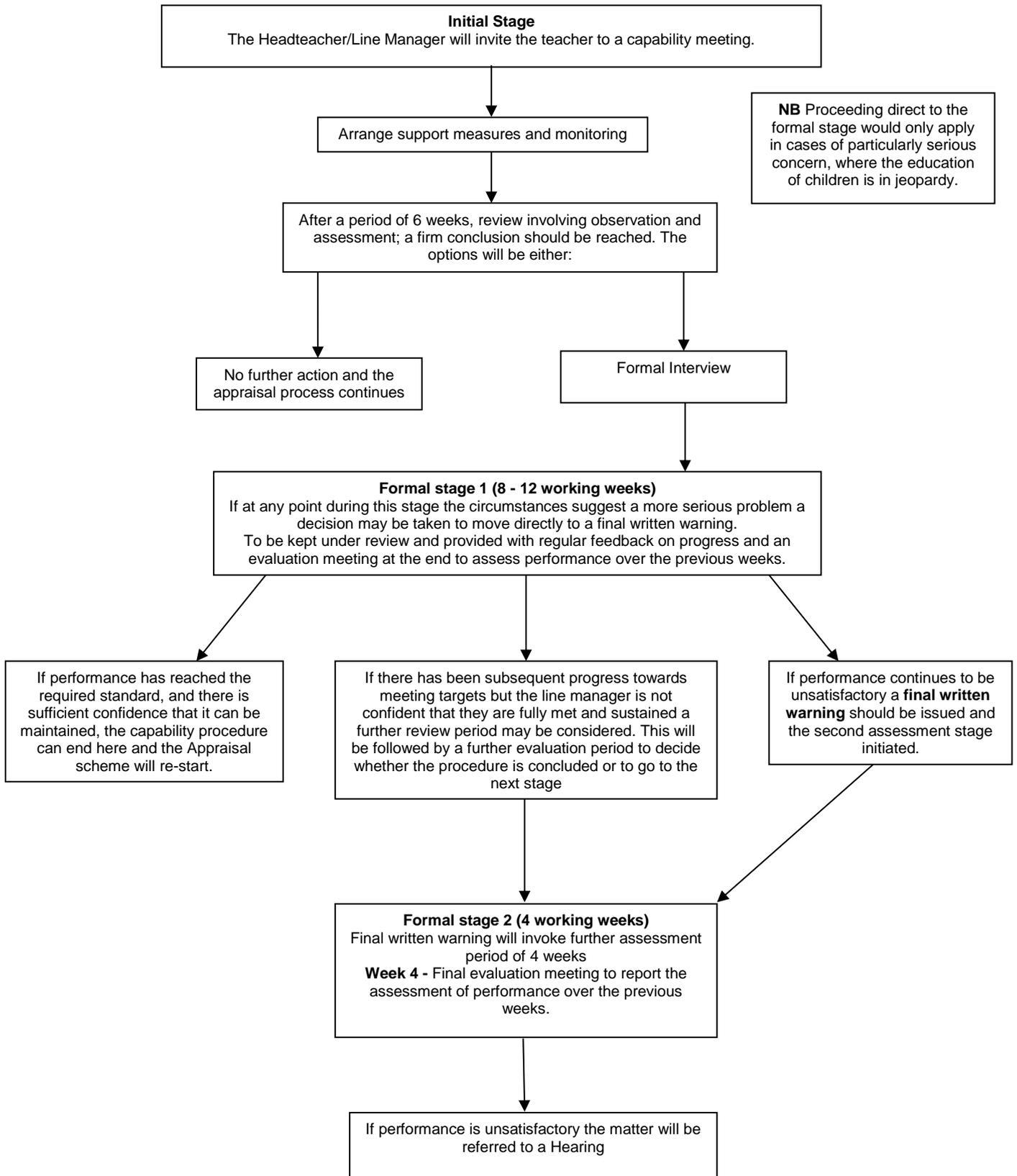
If you have any questions in relation to this procedure, please contact the Schools HR Advisory Team:

		<b>Telephone (01642)</b>	<b>Email</b>
Joanne Mylan	Senior HR Advisor	526954	<a href="mailto:joanne.mylan@stockton.gov.uk">joanne.mylan@stockton.gov.uk</a>
Shellena Hussain	Senior HR Advisor	528271	<a href="mailto:shellena.hussain@stockton.gov.uk">shellena.hussain@stockton.gov.uk</a>
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### Address

Schools HR Advisory Service  
Human Resources,  
1st Floor, Municipal Buildings,  
Church Road,  
Stockton-On-Tees,  
TS18 1LD.

## TEACHERS CAPABILITY PROCEDURE FLOWCHART



**CAPABILITY POLICY & PROCEDURE FOR TEACHING STAFF IN SCHOOLS  
APPEAL PRO-FORMA**

NAME: ..... TRADE UNION: .....

POST TITLE: ..... UNION REPRESENTATIVE  
NAME AND CONTACT DETAILS:

SCHOOL NAME:.....

CONTACT NUMBER: .....  
.....  
.....

DATE OF HEARING: ...../...../.....

DECISION:  
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DATE LETTER ISSUED: ...../...../.....

**THE GROUNDS FOR MY APPEAL ARE:**

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Continue on a separate sheet if necessary. Please ensure that additional sheets are signed, numbered and dated.

SIGNED: ..... DATE: ...../...../.....

**PLEASE RETURN THIS PRO-FORMA WITHIN 5 WORKING DAYS OF RECEIPT OF THE  
DECISION LETTER TO:**

.....  
.....

**(Time limits for appeal will be strictly observed)**