

**Decision Makers:** **Education Policy Development and Scrutiny Committee**  
**11 September 2012**

**General Purposes and Licensing Committee**  
**26 September 2012**

**Decision Type:** Non-Urgent                      Non-Executive                      Non-Key

**Title:** **TEACHER APPRAISAL AND CAPABILITY ARRANGEMENTS**

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**Chief Officer:** Charles Obazuaye Assistant Chief Executive HR

**Ward:** N/A

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1. Reason for report

- 1.1 From 1 September 2012 revised arrangements come into force in relation to managing Teacher performance.
- 1.2 This report sets out the main changes and proposes changes to the council's current procedures and policies already in place.

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2. **RECOMMENDATION(S)**

- 2.1 **That the Education PDS Committee consider and comment on the report and the attached DFE model policy for teachers' appraisal and capability.**

**Members of the General Purposes and Licensing Committee are asked to:**

- 2.2 **Consider the comments of the Education PDS committee;**
- 2.3 **Agree that the model policy be adopted by all Community and Voluntary Controlled schools and in respect of centrally based teaching staff employed by the Local Authority; and**
- 2.4 **Agree the minor change to the current Capability Procedure enabling the informal capability process to be dealt with as part of the appraisal process.**

### Corporate Policy

1. Policy Status: Existing Policy
  2. BBB Priority: Children and Young People Excellent Council
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### Financial

1. Cost of proposal: Not Applicable
  2. Ongoing costs: Not Applicable
  3. Budget head/performance centre: N/A
  4. Total current budget for this head: N/A
  5. Source of funding: N/A
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### Staff

1. Number of staff (current and additional): All Teachers and Head Teachers in Community and Voluntary Controlled Schools.
  2. If from existing staff resources, number of staff hours: N/A.
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### Legal

1. Legal Requirement: Statutory Requirement Non-Statutory - Government Guidance
  2. Call-in: Applicable
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### Customer Impact

1. Estimated number of users/beneficiaries (current and projected): N/A
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### Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments: N/A

### **3. COMMENTARY**

- 3.1 At present schools and the Local Authority have their own model policies in place relating to Teacher and Head Teacher Appraisal and Capability. These policies were formulated on the basis of statutory guidance and the 2006 Performance Management Regulations applicable to Teachers.
- 3.2 Founded on the principles and proposals in the DfE 2010 White Paper “The Importance of Teaching” the Education Act 2011 focuses school inspection on educational standards and strengthens school accountability to drive continued improvement in academic standards.
- 3.3 With a focus on managing Teacher Performance revised arrangements come into force on 1 September 2012 relating to Teacher Appraisal and Capability. These revised arrangements are supported by the New Teacher Standards also coming into force from 1 September 2012.

#### **Appraisal**

- 3.4 Revised appraisal arrangements are set out in the Education (School Teachers' Appraisal) (England) Regulations 2012.
- 3.5 They retain the key elements of the 2006 regulations i.e.:
- Governing bodies and local authorities will have to have a written appraisal policy for their teachers
  - Governing bodies will have to appoint an external adviser to advise them with appraising the head teacher
  - Objectives will have to be set for each teacher which contribute to improving the education of pupils
  - Schools will have to have an annual appraisal process for teachers
  - Teachers will have to be given a written appraisal report which sets out:
    - an assessment of their performance
    - an assessment of their training and development needs
    - where relevant, a recommendation on pay progression.

but allow schools and Local Authorities more freedom to design arrangements to suit their own individual circumstances.

- 3.6 The key changes are that:
- each year, teachers' performance of their role and responsibilities will be assessed against the relevant new Teachers Standards and their objectives (Previously the standards were a back drop to performance discussions);
  - the 3 hour limit on classroom observation has been removed so that schools have the flexibility to decide what is appropriate for themselves;

- the overlap between the current appraisal and capability systems has been removed so that under performance can be tackled more swiftly and effectively.

## Capability

- 3.7 It is intended that capability procedures should apply only to teachers about whose performance there are serious concerns that the appraisal process has been unable to address.
- 3.8 It is advised by DfE that timescales for improvement should be shortened and the informal part of the capability procedure has been removed. In addition there will be a requirement for employers to pass on information to prospective employers if they request such information about Teachers and Head Teachers' who have been in capability. This information will provide details of the duration of the capability process and an explanation of the outcome. This measure is intended to prevent the recycling of underperforming teachers and the School Staffing Regulations 2009 have been amended to reflect this new requirement.

## Model Policy

- 3.9 In order to support these revised arrangements the DfE has produced a new model policy that schools and LA's may wish to use. Part A deals with appraisal arrangements and Part B deals with capability arrangements. Part B is consistent with the ACAS Code of Practice on Disciplinary and Grievance Procedures.
- 3.10 The Head of Learning has reviewed the model policy published by DfE in relation to Teacher and Head Teacher appraisal and is broadly in agreement with the model she has however made the following observations:
- The use of an external adviser will continue to have a cost implication for schools.
  - In the interests of best practice, feedback should be written as well as oral.
  - There is sufficient flexibility within the policy for schools to determine the number of observations that they consider appropriate.
- 3.11 The DfE model appraisal policy (including a copy of the new teacher standards) and a revised version of Bromley's current capability procedure was circulated for consultation to all the Teacher Trade Unions and Head Teachers during the summer term (attached as **Appendices A and B**).
- 3.12 A formal written response was received from the NASUWT together with a copy of NASUWT's suggested policy. These can be found at **Appendix C and as a background document to this report**. Also included is management's response to the issues raised.

## 4. POLICY IMPLICATIONS

- 4.1 The model policies are consistent with BBB priorities to provide strategic leadership and support to schools in the Borough to assist and underpin the Government's Education Reform Programme and ensuring the organisation has a workforce of appropriate skills and experience to meet future challenges in delivering local priorities.

## 5. FINANCIAL IMPLICATIONS

- 5.1 There are no new costs arising from adopting the new model policy for teachers' appraisal and capability processes. However, as stated above, the use of external adviser for Head Teachers' appraisal will continue to have a cost implication for schools.

## 6. LEGAL IMPLICATIONS

- 6.1 As set out in this report.

## 7. PERSONNEL IMPLICATIONS

- 7.1 As set out in this report.

<b>Non-Applicable Sections:</b>	N/A
Background Documents: (Access via Contact Officer)	<a href="#">Model Performance Management Policy - NASUWT The Teachers' Union</a>



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## MODEL APPRAISAL POLICY FOR TEACHING STAFF IN COMMUNITY AND VOLUNTARY CONTROLLED SCHOOLS

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Appraisal in this school will be a supportive and developmental process designed to ensure that all teachers have the skills and support they need to carry out their role effectively. It will help to ensure that teachers are able to continue to improve their professional practice and to develop as teachers.

### **The appraisal period**

**The appraisal period will run for twelve months** from \_\_\_\_\_ to \_\_\_\_\_ (*insert dates*).

Teachers who are employed on a fixed term contract of less than one year will have their performance managed in accordance with the principles underpinning this policy. **The length of the period will be determined by the duration of their contract.**

*There is flexibility to have a longer or shorter appraisal period when teachers begin or end employment with a school or local authority or when unattached teachers change post within the same authority.*

### **Appointing appraisers**

**The head teacher will be appraised by the Governing Body, supported by a suitably skilled and/or experienced external adviser who has been appointed by the Governing Body for that purpose.**

In this school the task of appraising the head teacher, including the setting of objectives, will be delegated to a sub-group consisting of two/three (*delete as appropriate*) members of the Governing Body.

The head teacher will decide who will appraise other teachers.

### **Setting objectives**

**The head teacher's objectives will be set by the Governing Body after consultation with the external adviser.**

**Objectives for each teacher will be set before, or as soon as practicable after, the start of each appraisal period.** The objectives set for each teacher, will be Specific, Measurable, Achievable, Realistic and Time-bound and will be appropriate to the teacher's role and level of experience. The appraiser and teacher will seek to agree the objectives but, if that is not possible, the appraiser will determine the objectives. Objectives may be revised if circumstances change.

**The objectives set for each teacher will, if achieved, contribute to the school's plans for improving the school's educational provision and performance and improving the education of pupils at that school.** This will be ensured by ... *(for example – quality assuring all objectives against the school improvement plan).*

**Before, or as soon as practicable after, the start of each appraisal period, each teacher will be informed of the standards against which that teacher's performance in that appraisal period will be assessed.** *All teachers should be assessed against the set of standards contained in the document called "Teachers' Standards" published in July 2011 and attached as Appendix 1 to this policy. The head teacher or governing body (as appropriate) will need to consider whether certain teachers should also be assessed against other sets of standards published by the Secretary of State that are relevant to them.*

## **Reviewing performance**

### **Observation**

This school believes that observation of classroom practice and other responsibilities is important both as a way of assessing teachers' performance in order to identify any particular strengths and areas for development they may have and of gaining useful information which can inform school improvement more generally. All observation will be carried out in a supportive fashion. *(Schools may like to be more specific here about how observations will be conducted – or to refer to any separate document that clarifies how classroom observation will be conducted in their school).*

In this school teachers' performance will be regularly observed but the amount and type of classroom observation will depend on the individual circumstances of the teacher and the overall needs of the school. Classroom observation will be carried out by those with QTS. In addition to formal observation, head teachers or other leaders with responsibility for teaching standards may "drop in" in order to evaluate the standards of teaching and to check that high standards of professional performance are established and maintained. The length and frequency of "drop in" observations will vary depending on specific circumstances *(schools may wish to be more specific about "drop in" observations).*

Teachers (including the head teacher) who have responsibilities outside the classroom should also expect to have their performance of those responsibilities observed and assessed.

### **Development and support**

Appraisal is a supportive process which will be used to inform continuing professional development. The school wishes to encourage a culture in which all teachers take responsibility for improving their teaching through appropriate professional development. Professional development will be linked to school improvement priorities and to the ongoing professional development needs and priorities of individual teachers.



## Feedback

Teachers will receive constructive feedback on their performance throughout the year and as soon as practicable after observation has taken place or other evidence has come to light. Feedback will highlight particular areas of strength as well as any areas that need attention. Where there are concerns about any aspects of the teacher's performance the appraiser will meet the teacher formally to:

- give clear feedback to the teacher about the nature and seriousness of the concerns;
- give the teacher the opportunity to comment and discuss the concerns;
- agree any support (eg coaching, mentoring, structured observations), that will be provided to
- help address those specific concerns;
- make clear how, and by when, the appraiser will review progress (*it may be appropriate to revise objectives, and it will be necessary to allow sufficient time for improvement. The amount of time is up to the school but should reflect the seriousness of the concerns*);
- explain the implications and process if no – or insufficient – improvement is made.

When progress is reviewed, if the appraiser is satisfied that the teacher has made, or is making, sufficient improvement, the appraisal process will continue as normal, with any remaining issues continuing to be addressed through that process.

## Transition to capability

If the appraiser is not satisfied with progress, the teacher will be notified in writing that the appraisal system will no longer apply and that their performance will be managed under the capability procedure, and will be invited to a formal capability meeting. The capability procedures will be conducted in accordance with the school's Model Capability Procedure.

## Annual assessment

**Each teacher's performance will be formally assessed in respect of each appraisal period. In assessing the performance of the head teacher, the Governing Body must consult the external adviser.**

This assessment is the end point to the annual appraisal process, but performance and development priorities will be reviewed and addressed on a regular basis throughout the year in interim meetings which will take place (*eg once a term*).

**The teacher will receive as soon as practicable following the end of each appraisal period – and have the opportunity to comment in writing on - a written appraisal report.** In this school, teachers will receive their written appraisal reports by 31 October (31 December for the head teacher). **The appraisal report will include:**

- details of the teacher’s objectives for the appraisal period in question;
- **an assessment of the teacher’s performance of their role and responsibilities against their objectives and the relevant standards;**
- **an assessment of the teacher’s training and development needs and identification of any action that should be taken to address them;**
- **a recommendation on pay where that is relevant** (*NB – pay recommendations need to be made by 31 December for head teachers and by 31 October for other teachers*);
- (*schools to say here what else, if anything, their appraisal reports will include*).

The assessment of performance and of training and development needs will inform the planning process for the following appraisal period.

# Teachers' Standards

## TEACHERS' STANDARDS IN ENGLAND FROM SEPTEMBER 2012

### INTRODUCTION, LEGAL STANDING AND INTERPRETATION

1. The new Teachers' Standards published by the Secretary of State for Education introduce some significant changes in terms of structure, content and application. This introduction is designed to assist those who will be using the standards to understand those changes and to implement the new standards effectively.
2. The Teachers' Standards contained in this document come into effect on 1 September 2012, though the Teaching Agency will use the conduct elements from 1 April 2012 as a reference point when considering whether a teacher's conduct has fallen significantly short of the standard of behaviour expected of a teacher. They replace the standards for Qualified Teacher Status (QTS) and the Core professional standards previously published by the Training and Development Agency for Schools (TDA),<sup>1</sup> and the General Teaching Council for England's *Code of Conduct and Practice for Registered Teachers*.
3. **The new standards will apply to the vast majority of teachers regardless of their career stage.** The Teachers' Standards will apply to: trainees working towards QTS; all teachers completing their statutory induction period; and those covered by the new performance appraisal arrangements. Part 2 of the Teachers' Standards relating to professional and personal conduct will be used to assess cases of serious misconduct, regardless of the sector in which the teacher works.
4. The new standards define the minimum level of practice expected of trainees and teachers from the point of being awarded QTS. The standards set out in this document constitute the 'specified standards' within the meaning given to that phrase in Schedule 2 of The Education (School Teachers' Qualifications) (England) Regulations 2003.<sup>2</sup>
5. The new standards will need to be applied as appropriate to the role and context within which a trainee or teacher is practising. Providers of Initial Teacher Training (ITT) will assess trainees against the standards in a way that is consistent with what could reasonably be expected of a trainee teacher prior to the award of QTS. Providers will need to ensure that their programmes are designed and delivered in such a way as to allow all trainees to meet these standards, as set out in the Secretary of State's *Requirements for Initial Teacher Training*.<sup>3</sup>
6. Similarly, head teachers (or appraisers) will assess qualified teachers against the standards to a level that is consistent with what should

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<sup>1</sup> [www.tda.gov.uk/standards](http://www.tda.gov.uk/standards)

<sup>2</sup> <http://www.legislation.gov.uk/2003/1662>

<sup>3</sup> <http://www.tda.gov.uk/training-provider/itt/qts-standards-itt-requirements.aspx>



reasonably be expected of a teacher in the relevant role and at the relevant stage of their career (whether a Newly-Qualified Teacher (NQT), mid-career teacher, or a more experienced practitioner). The professional judgement of head teachers and appraisers will therefore be central to appraisal against these standards.

7. The new standards replace the existing Core professional standards, and will be used to assess an NQT's performance at the end of their induction period in employment. The standards themselves do not specify any new or different elements to the expectations placed on NQTs as opposed to those required for the award of QTS. The decision about whether an NQT has met the standards to a satisfactory level at the end of their first year of full employment will therefore need to be made on the basis of what should reasonably be expected of an NQT working in the relevant setting and circumstances, within the framework set out by the standards. That judgement should reflect the expectation that NQTs have effectively consolidated their training, and are demonstrating their ability to meet the standards consistently over a sustained period in their practice.
8. Following the period of induction, the standards will continue to define the level of practice at which all qualified teachers are expected to perform. From September 2012, teachers' performance will be assessed against the standards as part of the new appraisal arrangements in schools.

### **Presentation of the Standards**

9. This document is presented in three parts, which together constitute the Teachers' Standards: the **Preamble**, **Part 1** and **Part 2**.
10. The **Preamble** summarises the values and behaviour that all teachers must demonstrate throughout their careers. **Part 1** comprises the Standards for Teaching; **Part 2** comprises the standards for Professional and Personal Conduct.
11. In order to meet the standards, a trainee or teacher will need to demonstrate that their practice is consistent with the definition set out in the **Preamble**, and that they have met the standards in both **Part 1** and **Part 2** of this document.
12. The new standards are presented as separate headings, numbered from 1 to 8 in **Part 1**, each of which is accompanied by a number of bulleted sub-headings. The bullets, which are an integral part of the standards, are designed to amplify the scope of each heading. The bulleted sub-headings should not be interpreted as separate standards in their own right, but should be used by those assessing trainees and teachers to track progress against the standard, to determine areas where additional development might need to be observed, or to identify areas where a trainee or teacher is already demonstrating excellent practice relevant to that standard.

## Progression and Professional Development

13. The new standards have been designed to set out a basic framework within which all teachers should operate from the point of initial qualification. Appropriate self-evaluation, reflection and professional development activity is critical to improving teachers' practice at all career stages. The standards set out clearly the key areas in which a teacher should be able to assess his or her own practice, and receive feedback from colleagues. As their careers progress, teachers will be expected to extend the depth and breadth of knowledge, skill and understanding that they demonstrate in meeting the standards, as is judged to be appropriate to the role they are fulfilling and the context in which they are working.

## Date of introduction of the new standards

14. The revised standards come into effect on 1 September 2012, on which date they become the 'specified standards' as defined in Schedule 2 of The Education (School Teachers' Qualifications) (England) Regulations 2003. The Regulations require that in order to be recommended for the award of QTS, in most cases<sup>4</sup> a person must meet the specified standards that are in place at the time of assessment. Providers of initial teacher training will need to ensure that all trainees who complete their training on or after 1 September 2012 are assessed against the standards that are in place as at the time of assessment, in accordance with the Regulations.
15. NQTs who qualified under the previous standards but started induction on or after 1 September 2012, or have started but not completed induction by 1 September 2012, will need to be assessed against the new standards at the end of their induction.
16. Existing teachers who have already passed induction will be expected to use the new standards instead of the previous Core standards for appraisal, identifying professional development, and other related purposes.
17. When considering new cases of serious misconduct received from 1 April 2012, the Teaching Agency, acting on behalf of the Secretary of State, will have regard to the personal and professional conduct aspects of the new Teachers' Standards document instead of the General Teaching Council for England's (GTCE) *Code of Conduct and Practice for Registered Teachers*. The Teaching Agency will still be able to refer to the GTCE's *Code of Conduct* for any partially completed cases it receives from the GTCE at the point of its abolition.

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<sup>4</sup> For some categories QTS can be awarded without undertaking ITT in England and meeting the QTS standards. Those exempt from meeting the QTS standards are individuals who have already successfully completed ITT or are recognised as teachers in another UK country and EEA nationals who are recognised as teachers in another EEA member state.



## Note on Terminology Used / Glossary

Specific terminology used in the standards should be interpreted as having the following meaning:

- **'Fundamental British values'** is taken from the definition of extremism as articulated in the new Prevent Strategy, which was launched in June 2011. It includes 'democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs'.
- **'Parents'** is intended to include carers, guardians and other adults acting *in loco parentis*.
- **'Pupils'** is used throughout the standards, but should be taken to include references to children of all ages who are taught by qualified teachers, including those in the Early Years Foundation Stage, and those in post-16 education.
- **'School'** means whatever educational setting the standards are applied in. The standards are required to be used by teachers in maintained schools and non-maintained special schools. Use of the standards in Academies and Free Schools will depend on the specific establishment arrangements of those schools. Independent schools are not required to use the standards, but may do so if they wish.
- **'Special educational needs'**, as defined by the Department for Education's *Special Educational Needs Code of Practice (2001)*, refers to children who have a learning difficulty. This means that they either: have a significantly greater difficulty in learning than the majority of children of the same age; or have a disability which prevents or hinders them from making use of educational facilities of a kind generally provided for children of the same age in schools within the area of the local education authority.
- **'Statutory frameworks'** includes all legal requirements, including but not limited to the requirement to promote equal opportunities and to provide reasonable adjustments for those with disabilities, as provided for in the Equality Act 2010. The term also covers the professional duties of teachers as set out in the statutory School Teachers' Pay and Conditions Document.

# TEACHERS' STANDARDS

## PREAMBLE

Teachers make the education of their pupils their first concern, and are accountable for achieving the highest possible standards in work and conduct. Teachers act with honesty and integrity; have strong subject knowledge, keep their knowledge and skills as teachers up-to-date and are self-critical; forge positive professional relationships; and work with parents in the best interests of their pupils.

## PART ONE: TEACHING

A teacher must:

- 1 Set high expectations which inspire, motivate and challenge pupils**
  - establish a safe and stimulating environment for pupils, rooted in mutual respect
  - set goals that stretch and challenge pupils of all backgrounds, abilities and dispositions
  - demonstrate consistently the positive attitudes, values and behaviour which are expected of pupils.
  
- 2 Promote good progress and outcomes by pupils**
  - be accountable for pupils' attainment, progress and outcomes
  - be aware of pupils' capabilities and their prior knowledge, and plan teaching to build on these
  - guide pupils to reflect on the progress they have made and their emerging needs
  - demonstrate knowledge and understanding of how pupils learn and how this impacts on teaching
  - encourage pupils to take a responsible and conscientious attitude to their own work and study.
  
- 3 Demonstrate good subject and curriculum knowledge**
  - have a secure knowledge of the relevant subject(s) and curriculum areas, foster and maintain pupils' interest in the subject, and address misunderstandings
  - demonstrate a critical understanding of developments in the subject and curriculum areas, and promote the value of scholarship
  - demonstrate an understanding of and take responsibility for promoting high standards of literacy, articulacy and the correct use of standard English, whatever the teacher's specialist subject
  - if teaching early reading, demonstrate a clear understanding of systematic synthetic phonics



- if teaching early mathematics, demonstrate a clear understanding of appropriate teaching strategies.

#### **4 Plan and teach well structured lessons**

- impart knowledge and develop understanding through effective use of lesson time
- promote a love of learning and children's intellectual curiosity
- set homework and plan other out-of-class activities to consolidate and extend the knowledge and understanding pupils have acquired
- reflect systematically on the effectiveness of lessons and approaches to teaching
- contribute to the design and provision of an engaging curriculum within the relevant subject area(s).

#### **5 Adapt teaching to respond to the strengths and needs of all pupils**

- know when and how to differentiate appropriately, using approaches which enable pupils to be taught effectively
- have a secure understanding of how a range of factors can inhibit pupils' ability to learn, and how best to overcome these
- demonstrate an awareness of the physical, social and intellectual development of children, and know how to adapt teaching to support pupils' education at different stages of development
- have a clear understanding of the needs of all pupils, including those with special educational needs; those of high ability; those with English as an additional language; those with disabilities; and be able to use and evaluate distinctive teaching approaches to engage and support them.

#### **6 Make accurate and productive use of assessment**

- know and understand how to assess the relevant subject and curriculum areas, including statutory assessment requirements
- make use of formative and summative assessment to secure pupils' progress
- use relevant data to monitor progress, set targets, and plan subsequent lessons
- give pupils regular feedback, both orally and through accurate marking, and encourage pupils to respond to the feedback.

#### **7 Manage behaviour effectively to ensure a good and safe learning environment**

- have clear rules and routines for behaviour in classrooms, and take responsibility for promoting good and courteous behaviour both in classrooms and around the school, in accordance with the school's behaviour policy
- have high expectations of behaviour, and establish a framework for discipline with a range of strategies, using praise, sanctions and

- rewards consistently and fairly
- manage classes effectively, using approaches which are appropriate to pupils' needs in order to involve and motivate them
- maintain good relationships with pupils, exercise appropriate authority, and act decisively when necessary.

## **8 Fulfil wider professional responsibilities**

- make a positive contribution to the wider life and ethos of the school
- develop effective professional relationships with colleagues, knowing how and when to draw on advice and specialist support
- deploy support staff effectively
- take responsibility for improving teaching through appropriate professional development, responding to advice and feedback from colleagues
- communicate effectively with parents with regard to pupils' achievements and well-being.

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## **PART TWO: PERSONAL AND PROFESSIONAL CONDUCT**

A teacher is expected to demonstrate consistently high standards of personal and professional conduct. The following statements define the behaviour and attitudes which set the required standard for conduct throughout a teacher's career.

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by:
  - treating pupils with dignity, building relationships rooted in mutual respect, and at all times observing proper boundaries appropriate to a teacher's professional position
  - having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions
  - showing tolerance of and respect for the rights of others
  - not undermining fundamental British values, including democracy, the rule of law, individual liberty and mutual respect, and tolerance of those with different faiths and beliefs
  - ensuring that personal beliefs are not expressed in ways which exploit pupils' vulnerability or might lead them to break the law.
  
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach, and maintain high standards in their own attendance and punctuality.
  
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

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# MODEL CAPABILITY PROCEDURE FOR TEACHING STAFF IN COMMUNITY AND VOLUNTARY CONTROLLED SCHOOLS

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# MODEL CAPABILITY PROCEDURE FOR TEACHING STAFF IN COMMUNITY AND VOLUNTARY CONTROLLED SCHOOLS

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## **1. PURPOSE AND SCOPE**

- 1.1 This procedure is designed to help and encourage all staff achieve and maintain good standards of job performance.
- 1.2 Throughout the operation of this procedure, the Head Teacher/Chair of Governors and/or Governors' Committee will have due regard to the requirements of the ACAS Code of Practice on Disciplinary and Grievance Procedures, and the Equality Act 2010 to ensure consistency of treatment and fairness.
- 1.3 This procedure applies only to teachers or Head Teachers about whose performance there are serious concerns that the appraisal process has been unable to address. The Line Manager must make it clear to the employee when the formal procedure is being used.
- 1.4 This procedure does not cover the normal day-to-day supervision where a Line Manager may have to counsel, train or otherwise discuss with an employee instances of poor performance. It is intended to cover those cases where an employee's work performance is below the required standard through lack of capability. It does not cover instances of misconduct or incapability due to ill-health, both of which are dealt with under separate procedures.
- 1.5 If an employee commences sick leave whilst subject to the capability procedure, the capability procedure should continue unless medical advice sought from an Occupational Health Adviser reveals an underlying medical condition, in which case the situation will be considered in the light of the facts and circumstances of the particular case.
- 1.6 Concerns about a Head Teacher's performance may be identified by the Governors or LA Officers at an early stage through their normal involvement in the management of the school. The Director of Education and Care Services should also be advised of such concerns at an early stage.
- 1.7 An Ofsted inspection or similar formal review of the school might also reveal deficiencies in performance which need to be addressed.
- 1.8 The procedure is designed to provide assistance and encouragement to staff to achieve and maintain good standards of performance in their duties. With this objective in mind, the procedure provides for the employee to receive guidance, support and feedback over a reasonable period of time to meet realistic targets and standards. The employee must also accept responsibility for meeting any standards and targets set. These procedures are therefore

aimed at achieving the required improvement, not punishment, but if all else fails, they will help ensure a fair dismissal.

- 1.9 The procedure applies to all teachers, including Head Teachers, employed under the School Teachers' Pay and Conditions Act 1991 and any successor Act, and the Conditions of Service for School Teachers in England and Wales with the exception of staff employed on a casual day-to-day basis.
- 1.10 In the circumstances where a Newly Qualified Teacher is significantly failing to meet the requirements of his/her statutory induction period, the formal capability procedure will be used including the fast track, where appropriate, to resolve the matter.
- 1.11 During the course of the capability procedure an employee might raise a grievance against the actions of the manager handling the case or against other Senior Managers. Normally this will be dealt with as part of consideration of the facts of the case under this procedure. However, the manager investigating the case will seek advice from the appropriate professional adviser and, depending on the circumstances, it may be appropriate to suspend the formal capability procedure for a short period until the grievance can be considered.
- 1.12 The Governing Body and Head Teacher will monitor the operation and effectiveness of this procedure.

## **2. RIGHTS OF REPRESENTATION**

- 2.1 Employees have the right to be accompanied at all stages of the formal capability procedure. They may be accompanied by a companion who may be a work colleague, a friend of their choice or a trade union representative who has been certified by their union as being competent.
- 2.2 Employers also have the right to be accompanied at all stages of the formal capability procedure. The Director of Education and Care Services or his/her representative has a right to attend to give advice as to the law and procedure only when a dismissal is being considered.
- 2.3 The Director of Education and Care Services may also attend any other stage of the procedure to give advice as to the law and procedure as required at the invitation of the Head Teacher or Governors' Committee.
- 2.4 It is also possible for the Chairman of Governors or Head Teacher to request that the LA or some other professional adviser either conducts or assists in the conduct of the investigation, and the operation of this procedure.
- 2.5 If the employee is a trade union official, no formal action under the procedure should be taken until the circumstances of the case have been discussed with the appropriate branch secretary or full-time official.

### 3. DEFINITIONS AND AUTHORITY TO INITIATE ACTION

3.1 The following definitions will apply throughout this procedure:

The Governing Body may delegate its power to dismiss any member of staff to the Head Teacher, an individual Governor or group of Governors with or without the Head Teacher.

The Head Teacher is normally expected to lead in all initial staff dismissal decisions. The Head Teacher may involve other Governors in dismissal processes (e.g. investigations) but where responsibility for staff dismissal has been delegated to the Head Teacher, the final decision on whether to terminate an individual's employment rests with the Head Teacher. However, if the Head Teacher has been extensively involved in the individual case, he/she should consider whether to refer the dismissal to a relevant committee.

Where the Governing Body has delegated responsibility for staff dismissal to a relevant committee, the provisions below regarding the constitution of such a committee shall apply.

- |   |   |
|---|---|
| Line Manager                            | - anyone who has been delegated supervisory responsibilities by the Head Teacher for the operation of this procedure. Only in secondary schools may this authority be delegated by the Head Teacher to those below Deputy Head Teacher.   |
| Head Teacher                            | - Head Teacher of the school. Where the person subject to the procedure is the Head Teacher, the Senior Manager should be the Chairman of Governors.  |
| Committees and Appeal Committees        | - Committees established by the Governing Body to deal with capability matters. The Governing Body may establish the committees it thinks necessary to deal with a particular function. However, the Regulations provide for Governing Bodies to establish a Staff Dismissal Committee and a Staff Dismissal Appeal Committee to deal with staff dismissals. The Capability Committee and the Staff Dismissal Committee may be the same Committee. An Appeal Committee should consist only of Governors who have taken no part in the decision against which the appeal is made.<br><br>All committees should comprise a minimum of three Governors unless exceptional circumstances apply. |
| Director of Education and Care Services | - includes any Officer or Adviser with specific delegated power.  |
| Days                                    | - working days or consecutive days if it is necessary and/or possible to progress matters outside term time.  |



- 3.2 Reference throughout this procedure to the Line Manager, Head Teacher, Director of Education and Care Services, Chairman of Governors and employee shall include their personal representatives as appropriate. In most instances, the Director of Education and Care Services representative will be a member of the LA's Human Resources Consultancy Service. In some cases the Line Manager and the Head Teacher may be the same person (eg smaller schools).
- 3.3 The following table details the maximum action which can be imposed at various levels of authority, and the various stages of the formal capability procedure applicable to these levels:

<b>Level of Authority</b>	<b>Authorised to</b>
Line Manager	<ul style="list-style-type: none"> <li>- carry out investigations and assessment and decide what action is required in consultation with the Head Teacher and any other professional adviser</li> <li>- initiate action under the formal capability procedure in consultation with the Head Teacher if s/he is not the Head Teacher</li> <li>- issue formal oral and written warnings in consultation with the Head Teacher if s/he is not the Head Teacher.</li> </ul>
Head Teacher	<ul style="list-style-type: none"> <li>- carry out investigations and assessment and decide what action is required.</li> <li>- initiate action under the formal capability procedure</li> <li>- issue formal and oral warnings including a final written warning</li> <li>- withhold an incremental rise</li> <li>- suspend (in consultation with the Chairman of Governors)</li> <li>- refer a case to the Governors' Committee for consideration</li> <li>- dismiss (in consultation with the Director of Education and Care Services)</li> </ul>
Committee	<ul style="list-style-type: none"> <li>- hear appeals against a final written warning issued by a Head Teacher</li> <li>- suspend or order a Head Teacher to end a suspension</li> <li>- issue formal or final written warnings or some other penalty if appropriate</li> <li>- hear appeals against a decision not to remove a warning from the personal file</li> </ul>

<b>Level of Authority</b>	<b>Authorised to</b>
Staff Dismissal Committee	<ul style="list-style-type: none"> <li>- conduct formal capability hearings where dismissal is under consideration where authority has not been delegated to the Head Teacher or where the Head Teacher has been involved in the preparation of the case and also issue formal or final written warnings or some other penalty if appropriate</li> <li>- dismiss (in consultation with the Director of Education and Care Services)</li> </ul>
Appeal Committee	<ul style="list-style-type: none"> <li>- hear appeals against any penalty imposed by a Committee except termination of employment.</li> <li>- order an end to a suspension</li> </ul>
Staff Dismissal Appeal Committee	<ul style="list-style-type: none"> <li>- hears appeals against the Staff Dismissal Committee or Head Teacher's decision to dismiss.</li> </ul>

3.4 To ensure fairness throughout the procedure, different people must participate at the original committee and appeal committee hearings. However, where the case concerns a continuing or related matter, the same Committee can hear the case on subsequent occasions.

3.5 In the event that the school's delegated budget is suspended then dismissal decisions will be taken by the Director of Education and Care Services, and any subsequent appeal will be heard by a Committee appointed under arrangements agreed by the Local Authority. In other cases the Staff Dismissal Committee and Staff Dismissal Appeal Committee should have regard to the LA's financial interest in dismissals, including the requirement to consult Human Resources in such circumstances.

#### **4. STAGES IN THE FORMAL CAPABILITY PROCEDURE**

4.1 This procedure applies where there are serious concerns regarding performance which the appraisal process has been unable to address. The period set for improvement will be reasonable and proportionate providing sufficient opportunity for improvement to take place. This period will normally be between four and ten weeks. Where the education of pupils is jeopardised, the period given for improvement under the formal procedure is to be not more than four weeks (in which case a final written warning will be issued). The stages are as follows:

##### **Formal capability meeting**

4.2 At least five days' notice will be given of the formal capability meeting. The notification will contain sufficient information about the concerns about performance and their possible consequences to enable the teacher 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 teacher of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

- 4.3 This meeting is intended to establish the facts. It will be conducted by the Chair of Governors (for Head Teacher capability meetings) or Head Teacher or Line Manager (for other teachers). The meeting allows the teacher, accompanied by a companion if they wish, to respond to concerns about their performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected.
- 4.4 The person conducting the meeting may conclude 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. In such cases, the capability procedure will come to an end. The person conducting the meeting may also adjourn the meeting. In other cases, the meeting will continue. During the meeting, or any other meeting which could lead to a formal warning being issued, the person conducting the meeting will:
- (i) identify the performance professional shortcomings;
  - (ii) consider any factors contributing to the poor performance including those submitted by the Teacher/Head Teacher and his/her representative;
  - (iii) give clear guidance on the improved standard of performance needed to ensure that the Teacher/Head Teacher can be removed from formal capability procedures;
  - (iv) explain any support that will be available to help the teacher improve his/her performance;
  - (v) set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case, and will be in accordance with the seriousness of the lack of capability of the employee. Should the teacher be absent due to ill health, this may need to be reviewed accordingly in the timescale allowed for improvement. In such circumstances, the employee must be referred immediately to the Occupational Health Physician to enable an assessment to take place of his/her health and fitness for continued employment.
  - (vi) **Normally, the period given for improvement will be no more than ten weeks after the date of entry into the formal procedure.**  
*(Additional text to be inserted following outcome of consultation: "The period set for improvement will however be reasonable and proportionate providing sufficient opportunity for improvement to take place and may be longer dependent on the circumstances".* **In extreme cases, where the education of pupils is jeopardised, the period given for improvement after the date of a final written warning will be no more than four weeks;**
  - (vii) warn the teacher formally of the consequences of a failure to improve within the set period and that this could lead to dismissal. In very serious cases, this warning could be a final written warning;
  - (viii) notes will be taken of formal meetings and a copy sent to the member of staff. Where a warning is issued, the Teacher/Head Teacher will be informed in writing of the matters covered in the points above and given

information about the timing and handling of the review stage and the procedure and time limits for appealing against the warning.

### **Formal Capability Review Meeting**

- 4.5 Following this structured period of assessment, support, monitoring and evaluation, the next stage will be to arrange a formal capability review meeting to provide feedback and review progress and outcomes.
- 4.6 At least five days' notice of the meeting will be given and the notification will include the time and place of the meeting and will advise the Teacher/Head Teacher of their right to be accompanied.
- 4.7 Where in the opinion of the person/committee conducting the meeting:-
- 4.7.1 a satisfactory and sustained level of performance has been achieved there will be no further action under the formal procedure except to monitor the situation as part of normal management meetings in accordance with the appraisal process which will re-start. Any formal warning issued will remain on file until the Head Teacher/Committee is of the view that this can be removed.
- 4.7.2 the employee has failed adequately to satisfy or maintain targets and/or performance standards set, one of the following will apply:
- (a) a further formal written warning (which may be a final written warning) and a further period of support, monitoring and evaluation. The teacher must be told clearly that failure to achieve an acceptable and sustained standard of performance may result in dismissal. This letter must also record the main points of this meeting and improvements required.
  - (b) a different balance of duties, if possible and appropriate;
  - (c) an alternative suitable post in the school, if possible and appropriate;  
(NB: (b) and (c) would not normally be appropriate for Head Teachers)
  - (d) referral of the matter to a Governors' Committee for consideration of dismissal due to failure to improve, in which case consideration will also need to be given to suspension of the teacher and/or alternative teaching arrangements. This Committee must be convened as a 'Staff Dismissal Committee';
  - (e) referral of the matter to the Head Teacher where responsibility for consideration of dismissal has been delegated by the Governing Body and the Head Teacher has not been directly involved in the procedures leading to capability action and instigated the proposal to dismiss in question.

Whatever the outcome under 4.81 or 4.82 above the decision will be confirmed in writing to the employee within 5 days of the review meeting.

## **5. FORMAL CAPABILITY HEARINGS**

- 5.1 If the decision is to deal with the matter at a capability hearing under (d) or (e) above, the letter to the employee must be received not less than **5 working or 7 consecutive days** before the hearing itself and must:

- (i) instruct the employee to attend a formal hearing;
- (ii) contain a written statement of the specific concerns against the employee (confirming the seriousness and that dismissal could be a possible outcome);
- (iii) advise the employee that the hearing forms part of the formal capability procedure (including a copy of the procedure if this has not already been provided);
- (iv) advise the employee of his/her rights of representation;
- (v) contain copies of any relevant documents to be submitted to the hearing;
- (vi) request details of any documents to be submitted and witnesses to be called by the employee.

A duplicate copy of the letter and all documentation must be included for his/her representative.

## 5.2 Preparing for the Hearing

5.2.1 It is good practice to agree a mutually convenient date for the capability hearing with the employee and their representative. This is to ensure that the hearing does not have to be delayed or postponed at the last minute. Where the chosen representative cannot attend the date proposed, the employee can offer an alternative date and time so long as it is reasonable and falls before the period of **5 working or 7 consecutive days** beginning with the first day after the day proposed by management.

5.2.2 The employee must have regard to the availability of the managers involved in the case. The location and timing of any alternative hearing should be convenient to both the employee and management.

**The Head Teacher/Governing Body must arrange for a clerk to be available to take note of the key points during the hearing.**

5.2.3 Consideration must be given to requesting the presence of LA advisers for any hearing conducted by the Head Teacher, the Staff Dismissal Committee or Staff Dismissal Appeal Committee. The Director of Education and Care Services' **representative has a right to attend in cases where dismissal could be the outcome**. Any advice given in this respect must be considered before any decision is taken.

5.2.4 The Line Manager/Head Teacher presenting the case is also entitled to be assisted by an officer of the LA acting in an advisory capacity. Such an officer should at no time take part as a witness in the proceedings.

5.2.5 The Head Teacher/Committee will decide at the hearing whether the case for further formal action has been established after considering all the evidence presented by both sides.

5.2.6 If an employee is dismissed as a result of this procedure (serious professional incompetence) or resigns before the formal capability process is completed,

the Head Teacher will inform him/her of their statutory duty to report the case to the Teaching Agency.

### 5.3 Penalties

The possible penalties available to the Head Teacher/Staff Dismissal Committee are:

<b>Level of Performance</b>	<b>Possible Capability Penalty</b>
Continued failure to work to required standards after previous formal written warning(s)	Final written warning, withholding of an increment, transfer or relegation to another post, dismissal with notice

### 5.4 Decision Letters

5.4.1 The decision on the outcome of the formal capability hearing will be confirmed in writing, within **5 working or 7 consecutive days** of the hearing. At the same time as the employee is informed of the outcome of the hearing, he/she will be advised of any right of appeal.

5.4.2 If a penalty is to be imposed, the employee must be informed in writing, as appropriate, of:-

- (i) details of the specific concerns;
- (ii) a brief summary of the findings as to the facts presented at the capability hearing;
- (iii) the nature of the penalty imposed or alternative course of action decided upon;
- (iv) the opportunity to ask for clarification of the action to be taken and from whom.

5.4.3 Where dismissal is not the outcome, the decision letter must state:

- (a) the level of performance required in the future;
- (b) the time scale within which the performance will be monitored and improvement assessed and who will be responsible for carrying this out;
- (c) arrangements for guidance, feedback, supervision or training, where appropriate;
- (d) what will happen if work performance fails to meet the required standards;
- (e) the specified period of time after which he/she may request removal of a warning from file and to whom;
- (f) the employee's right of appeal and how and to whom this should be presented.

5.4.4 A copy of this letter should be sent to the employee and his/her representative, the Director of Education and Care Services, and a copy retained on file. As indicated in the letter an employee may request the Committee or Head

Teacher, after a specified period of time, to have any warning letter on file removed for the purpose of future capability proceedings. Such a request shall be fully considered and not unreasonably refused and the Committee or Head Teacher will respond in writing to this request normally within **5 working or 7 consecutive days**, giving reasons if this request is refused.

## 6. APPEALS

6.1 Under this procedure an employee has the right to appeal against:

- a final written warning
- a decision not to remove a warning from the employee's file
- dismissal
- lesser penalties

6.2 In all other cases the employee is entitled to register his/her dissent against a formal warning and to have his/her reason(s) for this recorded as part of the decision letter.

6.3 The appeal will be heard by an Appeal Committee as appropriate but there will be no further right of appeal beyond a hearing by one such Committee. In the case of an appeal against dismissal the Appeal Committee must be convened as the Staff Dismissal Appeal Committee.

6.4 The Appeal hearing provides an opportunity for a rehearing of the case to determine whether the original decision was reasonable in the circumstances.

APPEAL AGAINST	RIGHT OF APPEAL
Final written warning issued by Head Teacher	Committee
Head Teacher's decision not to remove a warning from the personal file	Committee
Any decision of the Committee except a decision arising from an earlier appeal stage	Appeal Committee or Staff Dismissal Appeal Committee

6.5 A request for an appeal must be made to the Head Teacher within **5 working or 7 consecutive days** of the receipt of the letter detailing the decision.

## 7. DISMISSAL

7.1 A Staff Dismissal Committee or Head Teacher (where in receipt of delegated powers) is authorised to determine the dismissal with notice of an employee (in consultation with the Director of Education and Care Services). The Capability Committee and the Staff Dismissal Committee may be the same Committee.

- 7.2 The decision to dismiss will be confirmed in writing to the employee, his/her representative and the Director of Education and Care Services. The letter will also contain the reasons for the dismissal and the right of appeal to the Staff Dismissal Appeal Committee within **5 working or 7 consecutive days** of receipt of the letter.
- 7.3 Where the Staff Dismissal Appeal Committee decides to uphold the decision of the Staff Dismissal Committee to dismiss there will be no further internal right of appeal. This decision may be communicated verbally to the employee at the conclusion of the hearing but will in every case be confirmed in writing to the employee, his/her representative and the Director of Education and Care Services within **5 working or 7 consecutive days**.
- 7.4 Within **5 working or 7 consecutive days** of the date of written notification of the decision to dismiss by the Head Teacher / Staff Dismissal Committee, the Director of Education and Care Services will give notice to terminate the employee's contract of employment at the school.
- 7.5 If the appeal to the Staff Dismissal Appeals Committee overturns the decision of the Staff Dismissal Committee to dismiss, the termination notice may be rescinded.



## PROCEDURE FOR CONDUCTING FORMAL HEARINGS BEFORE A GOVERNORS COMMITTEE/THE STAFF DISMISSAL COMMITTEE/HEAD TEACHER

Once a decision has been made to hold a formal hearing the employee will be sent a letter notifying him/her of the hearing (with a duplicate copy for his/her representative) to be received not less than **five working or seven consecutive days** before the hearing itself.

Reference to the Supervisor, the employee, the Director of Education and Care Services and the Senior Manager shall include their personal representative as appropriate. In certain circumstances (eg small schools), the Supervisor and Senior Manager will be the same person.

1. The Senior Manager's report shall be submitted to the hearing setting out the specific concerns, together with any written statement made by the employee. Copies of the written statement(s) and any other relevant documents shall be sent to the employee and members of the panel/Head Teacher at the same time as the notice of the date and time of the meeting. The employee shall be entitled to attend the hearing and to be represented by his/her Trade Union or a fellow employee/friend of his/her choice and to call witnesses and produce documents relevant to his/her case.
2. The Chairman of the Committee/Head Teacher hearing the case will introduce those present, explain the purpose of the hearing and the procedure to be followed.
3. The Chairman/Head Teacher will establish whether witnesses are to be called by either side.
4. The evidence will be presented by the Senior Manager ensuring that the employee and his/her representative are made aware of the content of any witnesses statements or relevant records and documents. In presenting the case, witnesses may be called as appropriate. Each witness will leave the room after giving evidence.
5. The employee may question the evidence and witnesses called by the Senior Manager.
6. The employee will present his/her evidence and call any witnesses.
7. The Senior Manager may question the evidence presented by the employee and witnesses.
8. The Head Teacher/ Committee, the Director of Education and Care Services' representative and any advisory officer(s) present will have the opportunity to ask questions of both sides and witnesses at any time during the proceedings. Late evidence can only be admitted with the agreement of the Committee/Head Teacher.
9. After questioning, each witness will be asked to leave the room but possibly not the venue, in case further evidence is required.

10. The Committee/Head Teacher may request an adjournment at any stage in order to seek clarification.
11. The Senior Manager will then sum up his/her case.
12. The employee or his/her representative will then sum up his/her case.
13. The Senior Manager, the employee and their representatives will then withdraw.
14. The Head Teacher/Committee will then deliberate in private together with the Clerk and any advisory officer(s) present to give advice as to law and procedure as required. If it is necessary to clear any points of uncertainty on the evidence already given both sides are to be recalled together even if only one is concerned with the point giving rise to doubt. If further investigations are necessary it may be appropriate to adjourn the hearing at this stage, in which case both parties are to return and be advised accordingly by the Chairman.
15. The Chairman/Head Teacher will give the Committee's/his/her decision and/or recommendation to the Senior Manager and employee and/or representative personally and/or in writing as appropriate. The employee will be informed of any action which will be taken and of his/her rights of appeal as appropriate. The findings shall in any case be confirmed in writing within five working or seven consecutive days together with the employee's right of appeal.

## PROCEDURE FOR CONDUCTING FORMAL APPEAL HEARINGS BEFORE A GOVERNORS APPEAL COMMITTEE/STAFF DISMISSAL APPEAL COMMITTEE

Reference to the Senior Manager, employee and Director of Education and Care Services shall include their personal representatives as appropriate.

- (i) The employee should write to the Senior Manager requesting an appeal within **five working or seven consecutive days** of receiving a formal letter notifying the decision of the Staff Dismissal Committee/Head Teacher and any action to be taken under the Procedure.
- (ii) The Appeal/Staff Dismissal Appeal Committee will consist of members appointed by the full Governing Body excluding those Governors who have been part of a Committee which has already heard the case.
- (iii) The Hearing will be arranged as soon as practicable. The employee will be sent a letter (with a copy for his/her representative) to be received at least **five working or seven consecutive days** before the date of the appeal hearing itself.
- (iv) The employee may be represented by his/her trade union/friend or a work colleague. Witnesses may be called and documents produced at the hearing by both sides.
- (v) The Chairman of the Committee hearing the case will introduce those present, explain the purpose of the hearing and the procedure to be followed.
- (vi) The Chairman will establish whether witnesses are to be called by either side.
- (vii) The employee will put his/her case in the presence of the Senior Manager and will call any witnesses.
- (viii) The Senior Manager may then ask questions of the employee and witnesses.
- (ix) The Senior Manager will put the management's case in the presence (if any) of the employee and will call any witnesses.
- (x) The employee may ask questions of the Senior Manager and witnesses (if any).
- (xi) The Appeal/Staff Dismissal Appeal Committee and the Director of Education and Care Services' representative and any advisory officer(s) will be entitled to ask questions of the Senior Manager, the employee and the witnesses at any time during the proceedings.
- (xii) After questioning, each witness will be asked to leave the room but possibly not the venue, in case further evidence is required.
- (xiii) The Appeal/Staff Dismissal Appeal Committee may request an adjournment at any stage in order to seek clarification.
- (xiv) The employee or his/her representative will then sum up his/her case.
- (xv) The Senior Manager will then sum up his/her case.
- (xvi) The Senior Manager and the employee and their representatives will then withdraw.
- (xvii) The Appeal/Staff Dismissal Appeal Committee, with a Clerk in attendance and any advisory officer(s) present, will consider the evidence in private. They may recall either party to clear points

of uncertainty on the evidence already given. If recall is necessary, both parties are to return even if only one is concerned with the point giving rise to doubt.

- (xviii) The Appeal/Staff Dismissal Appeal Committee will give their decision to the Senior Manager and employee and/or representative personally and/or in writing as appropriate. Their findings will in any event be confirmed in writing, together with reasons for any formal action taken within **five working or seven consecutive days**. Where notice of termination has been given the Appeal/Staff Dismissal Appeal Committee may request that the LA rescinds the notice as appropriate.

## SUMMARY OF CONSULTATION RESPONSE FROM NASUWT

Consultation Response	Management Comment
<p>The Bromley proposals for changes to its Model Capability Procedure are unacceptable to the NASUWT for the following reasons: -</p> <ul style="list-style-type: none"> <li>• The 'informal stage' of the Borough's current Procedure has been excised.</li>   <li>• Once in the procedure the period for improvement is reduced from up to two terms to 'no more than ten weeks ....' [p. 7, para 4.4 (vi)].</li>   <li>• Whoever is conducting the Formal Capability Meeting, at the start of the procedure, is able to issue a formal warning [p.7, para 4.4, preamble to this para ] which will remain on file even if the employee then achieves a satisfactory and sustained level of performance' ...until [that/those person(s)] is[/are] of a view that this can be removed'. [p.8, para 4.7.1].</li>   <li>• Information and judgements about an employee derived from OFSTED inspections and/or appraisal may be directly used in the proposed new Capability Procedure.</li> </ul>	<p><b>This is consistent with guidance issued by DfE. By removing the informal stage of the Borough's procedure problems can be addressed initially through the formal appraisal process with only serious cases being placed in formal capability where the appraisal process has been unable to address performance concerns. The school staffing regulations apply a duty to an employer to provide details to a prospective employer of an individual's lack of capability if they have been subject to formal procedures within the previous two years.</b></p> <p><b>It is expected that 10 weeks is a satisfactory period to achieve an improvement in performance however from initial warning through to final written warning and then potential dismissal would on average take two terms. The wording of this section has therefore been revised to reflect this and is consistent with the ACAS code of practice.</b></p> <p><b>We have asked NASUWT for further clarification regarding their objection to this point. At the time of writing this summary this had not been received.</b></p> <p><b>It is our view that information from an OFSTED inspection can be used in the capability procedure but this should only be part of other evidence that would be available to support capability concerns. It should not be used in isolation but as part of a decision making framework allowing informed decisions to be made about an individual's performance.</b></p>

Consultation Response	Management Comment
<p>In the view of the NASUWT the current version of Bromley’s Model Capability (Version 1) should be retained.</p> <p>Bromley’s new ‘Model Appraisal</p> <p>Policy .....’ is almost entirely unacceptable to the NASUWT for the following reasons: -</p> <ul style="list-style-type: none"> <li>• All the safeguards in the current procedure for teachers and headteachers have been removed, viz. especially re the limit on the number of lesson observations, the controls on ‘drop-ins’ and the limit on the number of appraisal objectives.</li> <li>• There is no appeal process or even an arrangement for the teacher [appraisee] to dispute LO verdicts and/or the ‘Annual Assessment’.</li> <li>• The arrangements for ‘drop-ins’ outside formal observation have been changed from the 2006 Regulations to be specifically about evaluating ‘teaching standards’ and ‘professional performance’. They are even called “‘drop-in” observations’ in the Bromley document.</li> <li>• There are no rules about ‘Feedback’ to teachers (deadlines, having feedback in writing, etc) set down for reviewers and their schools to follow.</li> <li>• There is no direction on confidentiality which must therefore be assumed not to apply to the whole appraisal process.</li> <li>• There is no direction on reviewer training.</li> <li>• There is no mention of a teacher being able even to request a change of reviewer.</li> <li>• There is no direction placed upon schools/other settings to evaluate the operation of appraisal.</li> <li>• The link between successful appraisal and pay progression has been made discretionary.</li> </ul>	<p><b>We are of the view that it is timely to review the procedure and the proposed revised changes as set out above will help to clarify the use of the procedure.</b></p> <p><b>For management comments in relation to the issues raised by the NASUWT in relation to the appraisal policy please refer to the main body of the report.</b></p>