



Capability Procedure for School Based Staff

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Responsible Officer: Ellen Williams /
Bethan Davies

Telephone Contact: 01443 444538 /
01443 444537



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1. Introduction

- 1.1 The Governing Body of _____ School is committed to providing high standards of education to pupils. It is recognised that the capability and commitment of its staff is fundamental to the achievement of this goal. The Governing Body is therefore committed to ensuring that all staff have the appropriate skills, knowledge, competence and aptitude to undertake their roles effectively.
- 1.2 In the vast majority of cases, staff meet and exceed the performance requirements of their roles. However, in some circumstances, individuals may experience difficulties in demonstrating the levels of competence required to perform their job effectively.
- 1.3 If staff are performing below expectations, the role of the Headteacher will be to bring this to the attention of the individual and to work closely with them to improve their performance to an acceptable level. The objective of this policy will be to set out a constructive approach to achieving improved work performance through effective supervision, mentoring, training, and performance review and development.
- 1.4 *'Individuals have a contractual responsibility to perform to a satisfactory level and should be given every help and encouragement to do so. Employers have a responsibility for setting realistic and measurable standards of performance and for explaining these standards carefully to employees.'*

ACAS Disciplinary and Grievance Procedures, para. 22

2. Purpose of policy

- 2.1 The purpose of this policy is to provide the Headteacher with the necessary information in order to:
 - 2.1.1 Make every effort to help and support an individual with any competency issues, whilst recognising that the Governing Body cannot guarantee to maintain employment;
 - 2.1.2 Ensure staff are performing their roles effectively and capably and to deal with staff not performing, in a fair and consistent manner;
 - 2.1.3 Encourage supportive, sensitive, realistic and constructive approaches from all concerned when dealing with capability issues;
 - 2.1.4 Clarify and confirm that the managerial responsibility for resolving capability issues rests with the Headteacher, with advice and support from Human Resources as required;
 - 2.1.5 Ensure that competency issues are dealt with efficiently within agreed time periods (according to circumstances) and with clear outcomes at all stages.

3. Scope of Policy

- 3.1 This Procedure applies to all staff employed by the Governing Body under governors' delegated powers. If the Procedure is applied to a Headteacher, the role of the "Headteacher" in the procedure will be undertaken jointly by a representative of the Director for Education and Lifelong Learning and the Chair of Governors, or other nominated Governor.

4. Definition of capability

- 4.1 "Capability" refers to the skills, ability, aptitude and knowledge of a member of staff in relation to the post they are appointed to.
- 4.2 A capability issue may arise when a member of staff is failing in a significant or persistent way to carry out their responsibilities or duties in a satisfactory manner. This may be due to a lack of professional insight, an inability to cope with reasonable workloads or not being able to meet identified standards. Alternatively, it may be due to an inability to prioritise work, a lack of aptitude for the work itself, inadequate training or difficulty in adapting to changes in the workplace.

5. Distinction between capability and conduct

- 5.1 A capability issue exists where 'no matter how hard a member of staff tries', he or she is simply unable to perform the job to the standards required by the Governing Body. It is the agreed standard that is relevant, and not the manager's personal opinion of the member of staff.
- 5.2 If, however, a member of staff fails to come up to the required standard as a result of his or her own carelessness, negligence (e.g. continued failure by a teacher to maintain a healthy and safe learning environment) or idleness, this is not a capability issue but could be regarded as misconduct and as such must be dealt with in accordance with the School's Discipline Policy.
- 5.3 One of the key distinctions between capability and conduct is that a capability issue will usually be outside the direct control of the member of staff. It can sometimes be difficult to establish whether poor performance is due to a capability issue or lack of effort, laziness or negligence. In some cases, there may be an element of both capability and conduct. Headteachers should give the member of staff the benefit of the doubt initially and proceed to manage the performance in accordance with this policy, rather than instigating disciplinary proceedings. However, if subsequent evidence suggests wilful negative conduct or misconduct, the Headteacher should pursue the School's Discipline policy.

6. Distinction between capability and ill-health

- 6.1 Where a member of staff's performance does not meet the required levels due to an underlying medical condition, or where there are unacceptably high levels of sickness absence that impact on performance, this must be dealt with in accordance with the School's Sickness Absence policy. Such circumstances do not constitute a capability issue and should therefore not be dealt with in accordance with this policy.
- 6.2 Where it is unclear to the Headteacher that the performance issue is due to an underlying medical condition, or in circumstances where the underlying medical condition is hidden by the member of staff, the Headteacher may proceed to manage the performance of the member of staff in accordance with this policy. However, as soon as the Headteacher becomes aware of the underlying medical condition, he/she should deal with this matter in accordance with the School's Sickness Absence policy.
- 6.3 In the event that a member of staff is unable to attend work due to ill-health the Headteacher will need to consider at what stage the procedure has progressed to and to seek medical advice from the Occupational Health Unit. In the event that the absence occurs at the end of a period of review medical advice should be obtained on whether the member of staff is medically fit to present themselves or take part in the review meeting. Whilst it is difficult to continue to assess the performance of an absent member of staff if at any stage of the procedure the body of evidence is sufficiently strong enough to proceed and the member of staff is afforded the opportunity to offer an explanation or have it presented on their behalf the Headteacher may decide to: -
- 6.3.1 conclude the proceedings on the basis that the member of staff has achieved the required sustained standard of performance; or
 - 6.3.2 continue the procedure to the next stage on the basis that the evidence shows that the member of staff has not consistently achieved the required standard of performance.
- 6.4 If the medical evidence indicates that the member of staff is not well enough to participate in the process the Headteacher may decide to suspend the procedure. The capability procedure will re-engaged at such time when the member of staff is deemed fit to return to work by the Occupational Health Unit.

7. Exclusions

- 7.1 The following matters cannot be considered under this procedure:
 - 7.1.1 Matters of misconduct, which are more appropriately dealt with under the disciplinary procedure.
 - 7.1.2 Matters of capability resulting from persistent ill-health for which the school's Sickness Absence policy will apply.
 - 7.1.3 Concerns with regards to the competency of Newly Qualified Teachers for whom separate procedures should apply.
 - 7.1.4 Termination of a fixed-term contract of employment where the term of that contract expires without being renewed.
 - 7.1.5 Termination of a temporary appointment where the reason for the termination is that the requirement for the employee's service has ceased or diminished, or is expected to cease or diminish.
 - 7.1.6 Termination of employment by reason of redundancy. Competence and performance are inappropriate criteria to be taken into account when selecting for redundancy.
 - 7.1.7 Inadequate performance believed to be attributable to a wilful refusal to work satisfactorily, which is liable to be regarded as a matter for action under the disciplinary procedure, i.e. as an offence of misconduct, rather than capability.

8. Timescales

- 8.1 Review periods, must be reasonable in length, depending on the nature of the targets and the stage of the process.
- 8.2 The following timescales are deemed to be reasonable recommendations and should be agreed at the commencement of each stage of the procedure wherever possible:-
 - 8.2.1 Support Plan – 8 weeks
 - 8.2.2 Stage One – one term/12 weeks
 - 8.2.3 Stage Two – one term/12 weeks

- 8.3 In the exceptional case of a teaching member of staff where:-**
- 8.3.1 the requirements of the service do not permit any delay and pupil's education is jeopardised; or**
- 8.3.2 where performance has seriously deteriorated and staff/pupils are placed at risk of harm**
- 8.4 the Headteacher may reserve the right to fast track the procedure to stage two following the completion of a support plan. The Headteacher may also determine to shorten the timescale for the period of review, however regard must be given to the ability of the teacher to achieve the outcomes required. In such circumstances the Headteacher is advised to discuss the matter with Human Resources (HR).**

9. Performance Management for Teaching staff

- 9.1 The performance management process may identify serious weaknesses in the performance of a teacher or Headteacher. However, performance management is not a capability procedure. If serious weaknesses are revealed performance management should be suspended to allow this procedure to be implemented.
- 9.2 Please note that the minutes of the review meeting and the appraisal statements undertaken as part of the performance management cycle do not form part of the capability procedure but may be taken into account by the Headteacher/Chair of Governors when making decisions in relation to this procedure.
- 9.3 Further guidance with regards to Performance Management for Teachers is outlined in the Welsh Government Document no 073/2012

10. Representation

- 10.1 Where a member of staff is invited to attend a formal meeting in relation to this procedure whether it be to agree a support plan or as part of stage one, stage two or referral to the staff dismissal's committee he/she may choose to represent himself/herself or request to be represented / accompanied by a fellow worker, a lay trade union official, or an official employed by a trade union ['representative']. A trade union official must comply with the following (as laid down in the Employment Relations Act 1999):-
- 10.1.1 Be employed by a trade union of which he/she is an official within the meaning of section 1 and 119 of the Trade Union and Labour Relations (Consolidation) Act 1992;

- 10.1.2 An official of a trade union (within the meaning) whom the union has reasonably certified in writing as having experience of, or as having received training in, acting as a worker's companion at disciplinary or grievance hearings.
- 10.2 The Trade Union and Labour Relations (Consolidation) Act 1992 specifies that the Certification Officer shall keep a list of trade unions. The fact that the name of an organisation is included in the list of trade unions is evidence that the organisation is a trade union.
- 10.3 A member of staff may ask an official from any trade union to accompany them regardless of whether or not they are a member of that Union.

11. Support Plan

- 11.1 *'It is important that workers understand what needs to be done, how performance will be reviewed and over what period'* (ACAS *Disciplinary and Grievance Procedures*).
- 11.2 Where there is poor or unsatisfactory performance the Headteacher should point this out to the member of staff as soon as possible and remind him/her, in a constructive, supportive and positive manner, of the standard required. Wherever possible this should be done at normal regular supervision or regular performance management meetings subject to 7(c) and 9 above. If, however, the issue is identified at a time when a regular meeting is not planned, a specific meeting may need to be arranged. The Headteacher is required to seek advice from a HR Adviser at this stage. The member of staff should be afforded the right to be accompanied at this meeting by a trade union representative or work colleague as outlined in section 10.
- 11.3 Following this meeting, a support plan should be prepared by the Headteacher. This plan will focus on the elements of performance which are unsatisfactory via agreed targets and standards and will note the agreed timescale(s) and the evidence that will be used to judge progress. In addition it should identify support which may take the form of training, visits to other schools, team teaching or in some cases it may be appropriate to engage the services of an adviser or senior member of the school staff to assess standards and achievement and to provide feedback to the member of staff. In the case of teaching staff this may include their lessons being observed. The frequency of these observations will not normally exceed three within a 12 week period. It is anticipated that the majority of competency related issues will be resolved promptly and informally at this level. However, the member of staff should be advised that failure to meet the required targets will result in the formal capability procedure being engaged.

- 11.4 Regular meetings should be held between the Headteacher and the member of staff during the agreed timeframe. At the end of the set timeframe a meeting will be held to review performance and the Headteacher will decide whether:-
 - 11.4.1 Performance has improved and targets have been met, in which case no further action will be required. This will be confirmed in writing.
 - 11.4.2 Significant improvement has been made, but the period of support may be extended to allow the member of staff additional time to meet all the targets set.
 - 11.4.3 Targets have not been met and stage one of the capability procedure will be engaged.

12. Stage One

- 12.1 Stage one of the capability procedure will be engaged when:-
 - 12.1.1 The Headteacher has initiated a support plan however targets have not been met and the level of performance remains unsatisfactory;
 - 12.1.2 Where the Headteacher is able to evidence that a support plan has been provided to the member of staff within the last 12 months which has led to improvement, however performance has subsequently deteriorated to a significant and sustained level;
 - 12.1.3 there is a more persistent or more serious performance issue which in extreme cases, the requirements of the service does not permit any delay e.g. where pupil's education is jeopardised, or where performance has seriously deteriorated.
- 12.2 A meeting should be arranged between the Headteacher, the member of staff, their representative and a HR Adviser. This meeting should be confirmed in writing and sent out no less than 5 working days prior to the meeting and will include:
 - 12.2.1 The reason for the meeting;
 - 12.2.2 The officers who will be present in the meeting;
 - 12.2.3 The member of staff's right to be represented by a trade union representative or work colleague who may speak on their behalf;
 - 12.2.4 Copies of any documentation to be used at the meeting; and
 - 12.2.5 A copy of the capability procedure setting out the process that will be followed.
- 12.3 No formal action will be taken against a trade union representative under this policy until the regional trade union officer has been informed.**
- 12.4 The objective of this meeting is to:
 - 12.4.1 Clearly identify to the member of staff where and how work performance is below the required standard;

- 12.4.2 Give the member of staff an opportunity to explain and explore the issues of their underperformance;
- 12.4.3 Identify possible reasons for the issue(s) identified;
- 12.4.4 Devise an action plan to improve performance to the required standard; and
- 12.4.5 Identify a timescale for improvement.

12.5 Action Plan

At the end of the meeting, the Headteacher should agree (wherever possible) an action plan (please see appendix one for template) with the member of staff to resolve the issues identified. This plan will identify:-

- 12.5.1 targets for improvement;
- 12.5.2 support mechanisms aligned to the targets identified e.g. additional training, supervision/mentoring, visits to other schools to observe good practice etc;
- 12.5.3 how improvement will be monitored e.g. lesson observations, review of documentation, scrutiny of pupils' work, records of departmental / other meetings, interviews with relevant staff / pupils. The use of an outside agency to judge standards and provide support may be considered;
- 12.5.4 criteria for success i.e. the standard that the member of staff is required to achieve;
- 12.5.5 a mentor to provide support to the member of staff;
- 12.5.6 review dates and timescales.

12.6 Notes

The HR Adviser will make a note of the meeting. Copies of this and the action plan should be sent to the member of staff within 10 working days.

12.7 Monitoring and review

Regular meetings should be held with the member of staff during this stage in order that the member of staff is kept informed of his/her progress. This will normally be delegated to a member of the Senior Management Team (SMT). At the end of the agreed timescale a formal meeting will be held which will be attended by:-

- 12.7.1 the Headteacher;
- 12.7.2 the member of staff with his/her representative;
- 12.7.3 HR Adviser;
- 12.7.4 Nominated member of SMT who may have been allocated responsibility to manage the process;
- 12.7.5 Mentor (if appropriate);
- 12.7.6 Adviser/outside agent (if appropriate to present and answer questions on any observations undertaken).

- 12.8 The purpose of this meeting will be to review the targets in the action plan and assess whether the criteria for success has been achieved. All parties in the meeting will be given the opportunity to comment on the progress to date to allow the Headteacher to make a determination on the way forward. Possible outcomes from the meeting will be:-
- 12.8.1 performance has improved and the required standard achieved, therefore no further action will be necessary. The Headteacher must inform the member of staff of the satisfactory outcome of the review in writing and send a copy of this letter to their HR representative so that it can be placed on the employee's personal file; or
 - 12.8.2 there is evidence of improvement however it is not sufficient to suspend the process – the Headteacher may decide to extend stage one for a further 6 week period; or
 - 12.8.3 in cases where performance has not sufficiently improved the Headteacher will progress to stage two of the procedure. The Headteacher is required to confirm this decision in writing and invite the member of staff to attend a meeting in relation to stage two of the capability procedure.

13. Stage Two

- 13.1 This letter will be sent at least 10 working days in advance of the meeting and will include:
- 13.1.1 The reason for the meeting;
 - 13.1.2 The officers who will be present in the meeting;
 - 13.1.3 The member of staff's right to be represented by a trade union representative or work colleague who may speak on their behalf; and
 - 13.1.4 Copies of any documentation to be used at the meeting.
- 13.2 The meeting will be attended by the Headteacher, HR Adviser, member of staff and his/her trade union/work colleague representative if requested. Other parties may also be invited to attend in order to give advice and guidance. At this meeting the Headteacher will:
- 13.2.1 Remind all parties of the standard of work performance expected from the member of staff and the area(s) under consideration;
 - 13.2.2 Explain how the performance of the member of staff has fallen short of what is required and the impact this has on service delivery;
 - 13.2.3 Confirm all informal and formal measures taken to date and how these have failed to improve performance to the level required;
 - 13.2.4 Provide the member of staff with an opportunity to explain and/or give reasons why the Headteacher should not consider that performance has been unsatisfactory;
 - 13.2.5 Discuss the way forward and ensure suitable targets and action plans are drawn up that specify the review period, additional training or supervision, changes in working arrangements or practices, provision

- of equipment or facilities, referral to other agency or any other measures being taken to support the employee to improve their performance;
- 13.2.6 Set a review date (maximum equivalent of 1 academic term from date of meeting) which allows for regularly updating the member of staff on progress being made and gives a reasonable period of time during which the required improvements must be made; and to
- 13.2.7 Caution the member of staff that if they fail to reach the required standard during the course of this final review period the case will be referred to the Governors' Staff Dismissal Committee for a formal hearing. The member of staff should be clearly advised that consideration will be given at this stage whether to terminate the contract of employment with the appropriate period of notice.**
- 13.3 The Headteacher must confirm in writing within 10 working days the outcome of the meeting. This letter will include a copy of the action plan (please see appendix one) for stage two of the process which will state:
- 13.3.1 The area(s) where improvement is required;
- 13.3.2 The level of improvement required and/or required standard to be achieved;
- 13.3.3 The evidence that will be used to judge progress;
- 13.3.4 The support that will be made available to ensure that the member of staff can reach this level, (for example, training or supervision);
- 13.3.5 Any other action that will be taken by the Headteacher or member of staff to help resolve the situation; and
- 13.3.6 The consequences if performance does not reach a satisfactory level within the stated review period;
- 13.4 The Headteacher should ensure that any further training or assistance offered is made available and the progress is closely monitored by conducting regular one to one meetings throughout the review period. The employee must be kept informed of his/her progress at regular one to one meetings. At these meetings the member of staff's action plan should be reviewed and performance against each objective should be discussed.
- 13.5 At the end of the agreed timescale a formal meeting will be held which will be attended by:-
- 13.5.1 the Headteacher;
- 13.5.2 the member of staff with his/her representative;
- 13.5.3 HR Adviser;
- 13.5.4 Nominated member of SMT who may have been allocated responsibility to manage the process;
- 13.5.5 Mentor (if appropriate);
- 13.5.6 Adviser/outside agent (if appropriate to present and answer questions on any observations undertaken).

- 13.6 The purpose of this meeting will be to review the targets in the action plan and assess whether the criteria for success has been achieved. All parties in the meeting will be given the opportunity to comment on the progress to date to allow the Headteacher to make a decision. Possible outcomes from the meeting will be:-
- 13.6.1 performance has improved and the required standard achieved therefore no further action will be necessary. The Headteacher must inform the member of staff of the satisfactory outcome of the review in writing, and send a copy of this letter to their HR representative so that it can be placed on the employee's personal file. It should be noted here that it is the responsibility of the staff member to maintain this level of performance without the need for close supervision or personal action plans beyond this process; or
- 13.6.2 If some improvement has been made, the Headteacher may decide to extend the review period and may further develop the individual's action plan to address the performance issue. The member of staff should be left in no doubt at this stage that failure to reach a satisfactory level by the end of the review period could result in further action being taken i.e. referral to the Governors Staff Dismissal Committee for consideration in relation to his/her continued employment; or
- 13.6.3 in cases where performance has not improved, or there is some improvement but the required standard has not been achieved, or sustained the Headteacher will advise the member of staff that the case is to be referred to the Governors' Staff Dismissal Committee for formal hearing, which may result in the termination of their contract on grounds of capability with the required period of notice.

14. Appeals

- 14.1 Where a member of staff wishes to appeal the decision to progress their case to the next stage of the procedure the Headteacher must be notified in writing within five working days of the date of the formal notice. The written notice must outline the grounds of their appeal.
- 14.2 An appeal should be heard promptly and will be heard by the Chairperson of the Governing Body or nominated Governor.
- 14.3 The member of staff will be given 5 working days notice of the date, time and place of the appeal hearing.
- 14.4 The appeal hearing will not be a complete re-hearing but a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light. A member of Human Resources will also be present. The member of staff will be afforded the right of representation at this appeal hearing in accordance with point 10 above.

14.5 Following the appeal hearing the Chair of Governors will:

14.5.1 confirm the original decision and proceed to the next stage;

14.5.2 revoke the original decision with the intention of extending the period of review on the current stage; or

14.5.3 substitute a different decision.

14.6 The member of staff will be informed in writing of the decision as soon as possible, usually within one week of the appeal hearing. There will be no further right of appeal.

15. Inability/refusal to accept a capability issue exists

15.1 In some cases, the member of staff may not accept that a performance problem exists. Where this is the case, the Headteacher should still:

15.1.1 Caution the member of staff of the consequence of failing to reach required standards of performance

15.1.2 Determine the period within which improvement is expected

15.1.3 Set out the support the member of staff will be given to help them improve their performance

15.2 If the member of staff refuses to accept and respond to offers of help, and performance does not improve to the level required, it may be necessary to consider referring the case to the Governors' Staff Dismissal Committee before the end of the review period.

16. Referral to the Staff Dismissal Committee of the Governing Body

16.1 In instances where the required improvement has not been reached and the continued employment of the member of staff is in question, this should be referred to the Staff Dismissal Committee of the Governing Body and a formal hearing should be instigated. The hearing may also be attended by a HR Adviser (to provide advice on procedure) and/or a representative for the Director for Education and Lifelong Learning. The Staff Dismissal Committee must be provided with the following details:

16.1.1 The area(s) where the employee has failed to meet the required performance standard;

16.1.2 The consequences for the service area of the member of staff's under performance;

16.1.3 The action taken to assist the member of staff to meet the required level of performance.

16.2 The Headteacher will arrange a hearing and the member of staff will be informed in writing, with not less than 5 working days notice of:

16.2.1 The date and time of the hearing;

- 16.2.2 The purpose of the hearing;
- 16.2.3 The right to be represented by a trade union representative or work colleague; and
- 16.2.4 That a possible outcome of the hearing, if the member of staff is held to be unable to perform their duties to the required standard is dismissal.
- 16.3 Both the Headteacher and member of staff should attend the hearing and may produce documentary evidence and call witnesses.
- 16.4 All documentation should wherever possible be exchanged at least 5 working days prior to the hearing.
- 16.5 The procedure to be followed at the Capability Hearing is attached at Appendix 2.

17. Capability Appeal Hearing

- 17.1 Where the outcome of the hearing results in a decision to dismiss, the member of staff must be advised that they have the right of appeal against this decision and, should they wish to exercise this right, they should write to the Chair of Governors within 10 working days of receipt of the letter confirming the decision.

18. Provision of a reference

- 18.1 It is the professional responsibility of the Headteacher / Chair of Governors to comment in any professional reference provided to another educational institution if a member of staff has been subject to the capability procedure within the last 12 months.

19. The right to revisit the procedure

- 19.1 If at any stage during the procedure the member of staff consistently achieves the required standard and there is evidence to suggest that this improvement is sustainable these procedures will conclude. The Headteacher will inform the member of staff of this both verbally and in writing. The member of staff must also be encouraged to sustain their performance in the future.
- 19.2 If, however, following this successful conclusion the member of staff fails to sustain the required standard of performance the Headteacher will re – commence the procedure as follows: -
 - 19.2.1 at the Stage where the previous process concluded; if concerns regarding under- performance re-occur within 12 months of that conclusion e.g. if it concluded at Stage 2 the procedure will recommence at Stage 2; or

19.2.2 if under-performance is judged to have re-occurred after a 12 month period after the conclusion of the process the formal support process will commence at Stage 1.

20. General Teaching Council

20.1 Cases where the employer has ceased to use the services of teachers registered with the General Teaching Council for Wales on grounds of capability or might have ceased to use those services had the teacher not ceased to provide them, should be referred by the Authority directly to the GTCW. There is a statutory obligation to make the referral in these cases.

20.2 In the event that a teaching member of staff ceases to be employed by a Governing Body during stage 2 of the capability procedure a formal meeting should be convened in order that consideration be given whether the evidence available would warrant a referral to the GTCW. This meeting should be convened by the HR Adviser and be attended by the Headteacher, Chair of Governors, Chair of the Dismissals Committee, Director of Education and Lifelong Learning (or his representative) and School Improvement Manager.

APPENDIX ONE

<u>Area for Improvement</u>	<u>Target</u>	<u>Support to be provided</u>	<u>Criteria for Success</u>	<u>How improvement will be measured</u>	<u>Timescale for target</u>

Appendix Two

The Capability Hearing Procedure

1 Introduction

- 1.1 The Chair of the Committee should introduce all parties and explain the purpose of the hearing. The names of any witnesses being asked to attend should be recorded and all documentary evidence being presented should be verified.
- 1.2 Appropriate arrangements should be made by the Committee to ensure that a comprehensive written record is made of proceedings during the hearing this will include a summary of how governors arrived at their decision.

2 The Headteacher's presentation

- 2.1 The Headteacher will present his or her case, beginning with an opening statement outlining the reasons for bringing the case. Questions may be asked of the Headteacher on the opening statement, in the following order:
 - 2.1.1 Member of staff and/or their representative;
 - 2.1.2 Governors;
 - 2.1.3 The Headteacher may then call his or her witnesses and ask questions of them. The witness(es) can then be questioned by the other parties in the order outlined above.

3 The member of staff's presentation

- 3.1 The employee or representative will present the response to the headteacher's presentation.
- 3.2 Questions may be asked of the member of staff in the following order:
 - 3.2.1 The Headteacher;
 - 3.2.2 Governors;
 - 3.2.3 The member of staff or representative will then call their witness(es) and ask questions of them. The witness(es) will then be questioned by the other parties in the order outlined above.
- 3.3 Once each party has completed their questioning, the witness(es) should not ordinarily be recalled unless subsequent evidence reveals an issue which the Committee determines that the witness may be able to assist with clarification. Where this happens, all parties should be recalled to the hearing.

4 Summing up stage

- 4.1 Each party will have the opportunity to sum up, with the Headteacher going first. No new arguments or evidence may be introduced at this stage.
- 4.2 The Chair of the Committee will then ask both parties to withdraw. The members of the Committee will then be required to come to a decision based on the evidence presented.
- 4.3 Once a decision has been made, both parties should be recalled and informed of the outcome. The decision should be confirmed in writing within 5 working days.
- 4.4 The letter should give the reason for the decision and inform the member of staff of any appeal rights they may have, including the time limits within which they have to register their appeal. In the event of a dismissal the letter should also confirm the Governing Body and Local Authority's reporting responsibilities to refer the case to the General Teaching Council for Wales. A copy of the outcome letter should be placed on the member of staff's personal file.

Appendix Three

Capability Appeal Hearing Procedure

- 1 The Chair of the Staff Dismissal Appeals Committee conducting the hearing should introduce all parties and explain the purpose of the hearing. The names of any witnesses being asked to attend should be recorded and all documentary evidence being presented should be verified.
- 1.2 Appropriate arrangements should be made by the Committee to ensure that a comprehensive written record is made of proceedings during the hearing this will include a summary of how governors arrived at their decision.

2 The member of staff's presentation

- 2.1 The member of staff (or representative) will present his or her grounds of appeal and outline the reason(s) why he or she believes that the decision was unfair. The grounds for appeal will be one or more of the following:
 - 2.1.1 the process used to come to the decision;
 - 2.1.2 the action proposed;
 - 2.1.3 the findings of the capability hearing; and/or
 - 2.1.4 new evidence having come to light
- 2.2 Questions may be asked of the member of staff in the following order:
 - 2.2.1 the Headteacher
 - 2.2.2 Appeals Committee
- 2.2 The member of staff may then call his/her witness(es) and ask questions of them. The witness(es) can then be questioned by the other parties in the order outlined above.

3 The Chairperson of the Dismissals Committee's presentation

- 3.1 The Chairperson of the Dismissals Committee will present the response to the member of staff's presentation.
- 3.2 Questions may be asked of the Chairperson of the Dismissals Committee in the following order:
 - 3.2.1 member of staff/representative
 - 3.2.2 Appeals Committee
- 3.3 The Chairperson of the Dismissals Committee may then call witness(es) which may include the Headteacher and ask question of

them. The witness(es) will then be questioned by the other parties in the order outlined above.

- 3.4 Once each party has completed their questioning, the witness(es) should not be recalled. The Committee however retains the right to recall any witness should further clarification of any issue be required. Where this happens, all parties should be recalled to the hearing.

4 Summing Up Stage

- 4.1 Each party will then have the opportunity to sum up, with the member of staff/representative going first. No new arguments or evidence may be introduced at this stage. The Chair of the Appeals Committee conducting the hearing will then ask both parties to withdraw and will come to a decision based on the evidence presented.
- 4.2 Once a decision has been made, both parties should be recalled and informed of the outcome. The decision should be confirmed in writing within 5 working days. In event that a decision to dismiss is upheld by the Appeals Committee the letter should also confirm the statutory duty on the Governing Body and Local Authority to report the case to the General Teaching Council for Wales.
- 4.3 A copy of the outcome letter should be placed on the member of staff's personal file.