

**Policy 10b – Cornwall Council Model Capability Policy  
(last reviewed: Sept 2018)**

**Capability Policy**

- 1<sup>st</sup> Formal Capability meeting
- Monitoring and Review period
- Formal review meeting
- 2<sup>nd</sup> Formal Capability meeting
- Monitoring and Review period
- Governor's Decision meeting
- Decision to Dismiss
- Dismissal
- Appeal

**General principles underlying the policy**

**Appendices**

- Formal interview App 1
- Formal written warning App 2
- Evaluation Meeting App 3
- Final written warning App 4
- Dismissal hearing App 5
- Dismissal App 6
- Procedure for Appeal hearings App 7
- Example Capability Action Plan App 8
- SEC Capability Procedures Outline Protocol App 9

This policy applies to members of staff (including the head teacher and teaching staff who are members of the school leadership team) at Treviglas Community College where there are serious concerns regarding their performance that the performance management process has been unable to address.

Where performance is unsatisfactory and has not improved through the normal performance management process (including a period of intense support under the Performance Management process), the employee will be informed in writing at the final Performance Management Review meeting that their performance is unsatisfactory and that the Formal Capability Procedure will be invoked to address the concerns relating to their performance. A formal capability meeting will be convened to review the identified ongoing performance concerns and determine what action should be taken. The employee will be informed of the possible outcomes of this meeting, which may include the issuing of a formal warning in respect of the employee's future capability.

The Interim Executive Board of Treviglas community College adopted these policies on \_\_\_\_\_

It will review it in a maximum of 3 years.

## **Purpose**

This Procedure provides a framework for supportive and consistent management of unsatisfactory performance of all members of staff, including the Headteacher and members of the school leadership team. This Procedure applies where concerns for the standard of performance continue after the Performance Management process has been fully exhausted with the employee. This Procedure ensures that appropriate support continues to be provided to the employee in their achievement of satisfactory standards at work in the context of the School's plan for improving educational provision and performance, and the standards expected of all staff. It sets out the arrangements that will apply to staff that fall below the levels of competence that are expected of them.

## **Application of the policy**

This Capability Procedure should only be invoked once the supportive measures provided through the School's established performance management process have been fully exhausted. The Capability Procedure must be applied to the Headteacher and to all teachers employed by the school, except those on contracts of less than one term. The Procedure may be applied to all other staff employed at the school and in such circumstances the Procedure represents a "Whole School Capability Procedure". Governing Bodies/an Interim Executive Board have the option of adopting this document on a 'whole school' basis or otherwise. Where this Procedure is only applied to teaching staff, Governing Bodies/Interim Executive Boards should ensure alternative arrangements are in place for other staff groups.

## **Stage One – First Formal Capability meeting**

At least five working days' notice will be given of the formal capability meeting (see draft template letter App1). The notification will contain sufficient information regarding the concerns about performance and the possible consequences or outcomes of the meeting. This will ensure the employee is able to prepare their response to 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 member of staff of their right to be accompanied by a companion who may be a workplace colleague or a trade union official. It is recommended that the Head/manager arranges for an HR officer to accompany them at the meeting. Arrangements should also be made for a note taker to attend to record the meeting.

### **Formal capability meeting**

This meeting is intended to establish the facts and determine what action needs to be taken. It will be conducted by the Chair of Governors (Chair of Interim Executive Board), or nominee, (for head teacher capability meetings) or the head teacher (for other teachers) or the appropriate senior teacher/line manager for department based teachers and support staff. The meeting allows the employee to attend the meeting accompanied by a work companion or TU representative if they wish. At the meeting, the employee will be given the opportunity to respond to the concerns held about their performance and to make any relevant representations. This may provide new information or a different context to the information/evidence of unsatisfactory performance, as may be relevant to their case.

Having carefully considered all the information presented at the meeting, the person conducting the meeting may determine one of the following conclusions:-

- that there are insufficient grounds to substantiate unsatisfactory performance;
- that there are sufficient grounds to substantiate the concerns of unsatisfactory performance.

Where it is concluded that there are insufficient grounds for pursuing the capability issue, it may be determined that it would be more appropriate to continue to address the remaining concerns through the performance management process. In such cases, the capability procedure will come to an end.

Where there is insufficient evidence to form a conclusion, the person conducting the meeting may adjourn the meeting if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.

In other cases, the person conducting the meeting will:

- Identify the professional shortcomings, for example which of the standards expected of teachers are not being met;
- Give clear guidance on the improved standard of performance needed to ensure that the member of staff can be removed from formal capability procedures (this may include the setting of new objectives focused on the specific weaknesses that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made);
- Explain any support that will be available to help the person improve their performance; examples of support include the appointment of a mentor, observing best practice in school or at an alternative school, additional training courses etc. Support should be tailored to meet the needs of the individual;
- If appropriate, set out what lesson observations will be undertaken and by whom, for instance whether a 3<sup>rd</sup> party such as CSIT will be called upon to provide an external advisor's view of the person. The number, purpose and timings of the observations should also be discussed;
- 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 but in most cases should be **between four and ten weeks**. It is for the school to determine the set period. It should be reasonable and proportionate to the degree of the unsatisfactory performance, but not excessively long whilst providing sufficient opportunity for an improvement to take place (an example template for a capability action plan is provided in Appendix 8). Guidance is also provided in the CSIT Capability Procedures Outline Protocol (Appendix 9); and
- Warn the person that failure to improve within the set period could lead to dismissal. A **formal Written warning** may be issued detailing the issues, support measures, actions to be arranged (e.g. lesson observations) and timescales. In very serious cases, this warning could be a final written warning. (See draft template letters App 2 & 4).

Notes will be taken of formal meetings and a copy sent to the member of staff. Where a warning is issued, the person will be informed in writing of the matters covered in the bullet points above, information on the timing and handling of the review stage, confirmation of the employee's right of appeal against the warning and the procedure and time limits for appealing. It is recommended that a review date be agreed at this stage in order to ensure that all parties are aware of the proposed timescales.

In exceptional cases where the Headteacher has identified a clear link between the individual's performance and serious detrimental effects upon students' performance, the Headteacher may issue a **Final Written Warning** and move immediately to a final review period.

## Ofsted Subsidiary Guidance

Lesson observations made by Ofsted inspectors **must not** be used by the school to make judgements about performance of an individual teacher. Performance should be judged fairly over a period of time, whilst a single Ofsted observation is a snapshot in time and therefore it is not realistic to base judgements on such limited assessments, without taking into account the employee's performance in general over a reasonable period.

## **Monitoring and review period following a formal capability meeting**

A performance monitoring and review period of up to ten weeks will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. All monitoring, evaluation, guidance and support should be agreed and recorded in the Capability Action Plan. At the end of the review period, in most cases the member of staff will be required to attend a formal review meeting (the date of which may have been agreed at the 1<sup>st</sup> Formal Capability meeting). However, in exceptional cases where the employee received a final written warning at Stage One, they will be required to attend a decision meeting (see below).

Prior to the formal review meeting, the manager conducting the meeting will need to consider the employee's progress during the course of the review period. If there is a concern for continued unsatisfactory progress, this should be made clear to the employee in advance of the meeting, including the likelihood of any further sanction that may be issued.

### **Formal Capability Review meeting**

As with the first formal capability meeting, at least five working days' notice in writing will be given. The written notification will give details of the time and place of the meeting and will advise the person of their right to be accompanied at the meeting by a companion who may be a workplace colleague, or a trade union representative (See Appendix 1). Additionally, the letter will inform the employee of the possible outcome in respect of any further sanction that may be issued.

As with the first formal capability meeting, it is recommended that the Head/manager arranges for an HR Officer to accompany them at the meeting. Arrangements should also be made for a note taker to attend to record the meeting.

At the meeting, the employee will have the opportunity to respond to the ongoing 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, as may be relevant to their case.

Having carefully considered all the information presented at the meeting, the person conducting the meeting may determine one of the following conclusions:-

- That there are insufficient grounds to substantiate unsatisfactory improvement or continued unsatisfactory performance;
- That there are sufficient grounds to substantiate the concerns that there has been unsatisfactory improvement and the performance continues to be of a concern.

If the person conducting the meeting is satisfied that the member of staff has made sufficient improvement, the Capability Procedure will cease and the appraisal process will re-start.

If some progress has been made and the person conducting the hearing is satisfied that there is capacity to continue to improve, it may be appropriate to extend the monitoring and review period at Stage One.

If it is concluded that there has been insufficient or no improvement and the employee's performance continues to be a concern, the employee may be issued with a final written warning and Stage 2 of the Capability Procedure will be invoked (see draft template letter App 4).

As before, a copy of the notes of the formal review meeting will be provided to the member of staff.

## **Stage Two**

Stage 2 of the Procedure is invoked where there has been insufficient improvement following the completion of the Capability Action Plan and review period undertaken at Stage 1 of the Procedure.

In such circumstances, the employee would have been issued with a final written warning at the formal capability review meeting at the conclusion of Stage 1. Where a final warning is issued, the member of staff will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale, **normally between four & ten weeks**), may result in dismissal. The final written warning will acknowledge any previous warnings that have been issued and will also confirm the areas of insufficient improvement in respect of the Action Plan agreed at Stage 1. The letter will also confirm arrangements for the further monitoring and review period, the employee's right of appeal and the procedure and time limits for appealing against the final warning.

As before, an updated action plan should be put in place including a support package, continued monitoring and assessment arrangements including any lesson observations if appropriate and a review date should be scheduled.

## **Monitoring and Review**

The employee's performance against the agreed standards and objectives as set out in the Stage 2 updated Capability Action Plan should be monitored during the review period and then formally reviewed on the date previously agreed. This review meeting should be minuted.

The review meeting can, as previously, reach a number of conclusions. If it is determined that sufficient progress has been made, it may be appropriate to agree to end the capability process. If it is determined that some, but insufficient, progress has been made, it may be appropriate to extend the review period. However if no or insufficient progress has been made, the matter should be referred to the Governors to consider the question of the employee's continued employment at a Governors' Decision Meeting.

## **Governors' (Interim Executive Board) Decision meeting**

The Governors' (Interim Executive Board) Decision meeting will consider the case of the continued unsatisfactory performance where there is insufficient or no progress in improvement and serious concerns for the employee's capacity to improve in the future.

**At least ten working days' written notice** will be given of the meeting. The written notification of the meeting will give details of the time and place of the meeting and will advise the employee of their right to be accompanied by a companion who may be a workplace colleague or trade union rep (see App1). The letter will include all documents to be referred to in respect of the case and a copy of the Capability Procedure. Additionally, the letter will inform the employee of the possible outcome, which may include dismissal.

The Governing Body (Interim Executive Board) will convene a Panel of three Governors/ Interim Executive Board members to chair the Governors' (Interim Executive Board) Decision Meeting. The Headteacher/Chair of Governors/Senior Manager (as appropriate) will be required to attend the meeting to present the background to the case, including all the relevant information relating to the management of the capability process. The meeting should be formally minuted by the Clerk to Governors.

As with the previous formal meetings convened under this Procedure, it is recommended that the Head/manager arranges for an HR Officer to accompany them at the meeting, and also arranges for the Panel of Governors to be advised by an HR Officer who has no prior involvement in the case.

At the meeting, the employee will have the opportunity to respond to the ongoing concerns about their performance. This may provide new information or a different context to the information/evidence already collected, as may be relevant to their case. The employee will have the right to question the information and make representations as to why they should not be dismissed, including any mitigating circumstances. The member of staff has the right to be accompanied by either a workplace colleague or a trade union official.

Both parties will then be given an opportunity to sum up their case. No new information can be introduced during the summing up stage.

Governors (Interim Executive Board) will then adjourn to reach a decision. The Governors (Interim Executive Board) may wish to take advice from the Local Authority before the decision to dismiss is made. Where an HR Officer from the Local Authority's Schools' HR Team is present as advisor to the Panel, he/she will take on the role of representative of the Local Authority to advise in this respect (*N.B. this is not a legal requirement but schools may find it helpful*).

Wherever possible the Panel of Governors (Interim Executive Board) will reconvene the meeting to announce the decision to all parties after the adjournment. If the Panel's deliberations are likely to take a considerable period of time, as an alternative it maybe sensible for the parties to be allowed to leave and the decision confirmed in writing. The decision will be confirmed in writing within 5 working days.

(In Academies, Foundation Schools, Voluntary Aided Schools and Foundation Special Schools, the governing body is the employer but the power to dismiss can be delegated to the head teacher, to one or more governors, or to one or more governors acting with the head teacher. In Community, Voluntary Controlled, Community Special, and Maintained Nursery schools, the power to determine that

the member of staff should no longer work at the school can be delegated in the same way as above but it is the local authority (as the employer) that actually dismisses staff (or – for those who work in more than one school – requires them to cease to work at the school).

## Decision to dismiss

*Either:* The power to dismiss staff in this school rests with the Governing Body (Interim Executive Board) .

*Or:* The power to dismiss staff in this school has been delegated *to the head teacher/to one or more governors/to one or more governors acting with the head teacher (delete as appropriate).*

*(NB: the two options above are available only to Foundation Schools, Voluntary Aided Schools and Foundation Special Schools).*

*Or:* The power to decide that members of staff should no longer work at this school rests with the Governing Body (Interim Executive Board).

*Or:* The power to decide that members of staff should no longer work at this school has been delegated *to the head teacher/to one or more governors/to one or more governors acting with the head teacher. (delete as appropriate).*

*(NB: these two options are available only to Community, Voluntary Controlled, Community Special, and Maintained Nursery schools.)*

## Dismissal

*Either:* Once the decision to dismiss has been taken, the Governing Body(Interim Executive Board) /head teacher will dismiss the person with notice, *(Academies, Voluntary Aided, Foundation and Foundation Special schools only).*

***Or: Once the Governing Body/Interim Executive Board/head teacher has decided that the teacher should no longer work at the school, it will notify the Local Authority of its decision and the reasons for it.*** Where teachers work solely at this school, the Local Authority must dismiss them within fourteen days of the date of the notification. Where they work in more than one school, the local authority must require them to cease to work at this school *(Community, Voluntary Controlled, Community Special and Maintained Nursery Schools only).*

The teacher will be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.

In cases of dismissal for capability, the dismissal will be with notice. Where the dismissed employee is a teacher, the notice issued will be in accordance with the notice terms of the Burgundy Book. Where the dismissed employee is not a teacher, the notice issued will be in accordance with the notice terms of their contract of employment.

## Appeal

If the member of staff feels that a decision to dismiss them, or other action taken against them, is wrong or unjust, they may appeal in writing against the decision within ten days of receipt of the decision in writing. The written appeal letter should also confirm the grounds for appeal. Appeals will be heard without

unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a companion will apply as with formal capability and review meetings and, as with other formal meetings, notes will be taken and a copy sent to the member of staff.

*Suggestion: All appeals will be heard by a Panel of Governors from the Appeals' Committee of Governors or a member of the Interim Executive Board*

The appeal will be dealt with impartially and, wherever possible, by governors who have not previously been involved in the case.

The member of staff will be informed in writing of the outcome of the appeal hearing as soon as possible. The decision of the appeals' panel is final.

# **General Principles underlying these policies**

## **ACAS Code of Practice on Disciplinary and Grievance Procedures**

The Capability policy will be implemented in accordance with the provisions of the ACAS Code of Practice.

### **Confidentiality**

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

### **Consistency of Treatment and Fairness**

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

### **Definitions**

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

### **Delegation**

Normal rules apply in respect of the delegation of functions by governing bodies, head teachers and local authorities.

### **Grievances**

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

### **Sickness**

If long term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case will be dealt with in accordance with the school's absence policy. In accordance with the Whole School Attendance policy, in such cases the employee will be referred to the Occupational Health Service to assess the member of staff's health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures. In some cases and after seeking advice from OH, it may be appropriate for formal procedures to continue during a period of sickness absence however performance monitoring can only be undertaken when the employee is fit to return to work.

## **Monitoring and Evaluation**

The governing body and head teacher will monitor the operation and effectiveness of the school's appraisal arrangements.

## **Retention**

The governing body and head teacher will ensure that all written performance management records are retained in a secure place for six years and then destroyed.

**FORMAL INTERVIEW**

Mr A Anybody  
Any Street  
Any Town

**Your ref:**  
**My ref:**  
**Ext:**  
**Date:**

**STRICTLY PERSONAL AND CONFIDENTIAL**

Dear Mr Anybody

**Formal Interview**

I write to request your attendance at a formal interview to be held on (insert date) at (insert time) at (insert venue).

The purpose of the meeting is to consider the following performance issues:-

(insert details)

During the interview the attached statements from (insert names of people who provided statements [if relevant]) will be referred to. In addition, (insert names of persons who may be providing supporting evidence) will be called to present supporting evidence.

You have the right to be accompanied at the interview by a workplace colleague or your trade union representative. You and/or your representative have the right to make a written submission prior to the interview and/or to make statements at the interview. You also have the right to nominate persons to provide your own supporting evidence and to question other parties called by management. Could you please let me have the names of any persons you propose to call in order that arrangements can be made for them to be released from their duties.

***Please be advised that this letter constitutes notification that the school's/academies Capability Procedure is being formally invoked.***

A copy of the procedure to be followed at the interview is enclosed.

Yours sincerely

Headteacher/Principal (Deputy)

Enc

## Appendix F2

### **FORMAL WRITTEN WARNING**

Mr A Anybody  
Any Street  
Any Town

**Your ref:**  
**My ref:**  
**Ext:**  
**Date:**

### **STRICTLY PERSONAL AND CONFIDENTIAL**

Dear Mr Anybody

#### **Formal Written Warning**

I refer to the formal interview which took place on (insert date of capability interview) in accordance with (insert name of school) Capability Procedure. At that interview (insert names of people in attendance) were in attendance.

At the interview it was established that (Insert details - including professional shortcomings of employee and the targets/performance standards that will need to be met to end the capability procedure).

The following support programme has been arranged for you (insert details)

The assessment period will be (insert details – including timescales (4-10 weeks) and identify monitoring arrangements)

An interim review meeting will be held on (date) .

I confirm that you were issued with a formal written warning as to your future performance. This formal written warning will remain 'active' for a period of twelve months from the date of the meeting after which it will be disregarded. Failure to improve may lead to further capability action, which may in turn lead to your dismissal.

I enclose a copy of (insert name of school/academy) school/academies' Capability Procedure, and draw your attention to your right of appeal. If you wish to appeal against this formal written warning you must do so, in writing to (insert name of Headteacher (Deputy) or nominee, as appropriate), within 10 working days of receipt of this letter.

Yours sincerely

Headteacher/Principal

**Copy to:** CSF HR & workplace colleague/Trade Union Representative (if applicable)

Please complete the tear off slip below and return to me (name of Headteacher/Principal).

.....

I acknowledge receipt of a formal written warning letter dated (insert date) from (insert name of Headteacher/Principal).

Signed.....

Date.....

**EVALUATION MEETING**

Mr A Anybody  
Any Street  
Any Town

**Your ref:**  
**My ref:**  
**Ext:**  
**Date:**

**STRICTLY PERSONAL AND CONFIDENTIAL**

Dear Mr Anybody

**Evaluation Meeting/Final Evaluation Meeting** (please delete as appropriate)

I write to request your attendance at an evaluation meeting to be held on (insert date) at (insert time) at (insert venue) (At least 5 working days or 7 consecutive days out of term time must be given). This marks the end of the First/Second Assessment Stage of the Schools/Academy's Capability Procedure.

The purpose of the meeting is to consider whether you have met the performance targets identified in the letter of (date). For your convenience these are reproduced below.

(insert details)

During the meeting the attached statements from (insert names of people who provided statements [if relevant]) will be referred to. In addition, (insert names of persons who may be providing supporting evidence) will be called to present supporting evidence.

You have the right to be accompanied at the interview by a workplace colleague or your trade union representative. You and/or your representative have the right to make a written submission prior to the interview and/or to make statements at the interview. You also have the right to nominate persons to provide your own supporting evidence and to question other parties called by management. Could you please let me have the names of any persons you propose to call in order that arrangements can be made for them to be released from their duties.

A copy of the procedure to be followed at the interview is enclosed.

Yours sincerely

Headteacher/Principal (Deputy)

Enc

**FINAL WRITTEN WARNING**

Mr A Anybody  
Any Street  
Any Town

**Your ref:**  
**My ref:**  
**Ext:**  
**Date:**

**STRICTLY PERSONAL AND CONFIDENTIAL**

Dear Mr Anybody

**Final Written Warning**

I refer to the formal interview/evaluation meeting (delete as appropriate) which took place on (insert date of capability interview) in accordance with (insert name of school/Academy) Capability Procedure. At that interview (insert names of people in attendance) were in attendance.

At the interview it was established that (Insert details - including professional shortcomings of employee and the targets/performance standards that will need to be met to end the capability procedure).

The following support programme has been arranged for you (insert details)

The assessment period will be (insert details – including timescales (no longer than 4 weeks) and identify monitoring arrangements)

A review meeting will be held on (date) .

This letter constitutes a final written warning as to your future performance. This final written warning will remain 'active' for a period of twelve months from the date of the meeting after which it will be disregarded. Failure to improve may lead to your dismissal.

I enclose a copy of the (insert name of school) school/academies' Capability Procedure, and draw your attention to your right of appeal. If you wish to appeal against this final written warning you must do so, in writing, within 10 working days of receipt of this letter.

Yours sincerely

Headteacher/Principal

**Copy to:** CSF HR & workplace colleague/trade union representative

Please complete the tear off slip below and return to me. (name of Headteacher/Principal).

.....

I acknowledge receipt of a final written warning letter dated (insert date) from (insert name of Headteacher/Principal).

Signed.....

Date.....

**STAFF DISCIPLINARY COMMITTEE MEETING - POTENTIAL DISMISSAL**

**RECORDED DELIVERY**

Mr A Anybody  
Any Street  
Any Town

**Your ref:**  
**My ref:**  
**Ext:**  
**Date:**

**STRICTLY PERSONAL AND CONFIDENTIAL**

Dear Mr Anybody

I write to call you to a meeting with Staff Disciplinary Committee of the Governing Body, to be held on (insert date) at (insert time) at (insert venue).

This meeting has been arranged following the Final Evaluation meeting on (date) when it was identified that your performance is unsatisfactory in relation to the following performance targets; (insert details).

During the meeting the attached statements from (insert name of people who provided statements [if relevant]) will be referred to. In addition, (insert names of persons providing supporting evidence) will be called to provide supporting evidence.

You have the right to be accompanied at the meeting by a workplace colleague or your trade union representative. You or your representative have the right to make a written submission prior to the meeting and/or to make statements at the meeting. You also have the right to nominate persons to provide your own supporting evidence and to question persons providing supporting evidence and called by management. Could you please let me have the names of any nominees you propose to call in order that arrangements can be made for them to be released from their duties.

**At this stage, I am also writing to inform you that your future employment is at risk and you may be dismissed as a result of this meeting.**

A copy of the procedure to be followed at the meeting is enclosed.

Yours sincerely

Headteacher/Principal  
Title

Enc

**DISMISSAL**

**RECORDED DELIVERY**

Mr A Anybody  
Any Street  
Any Town

**Your ref:**  
**My ref:**  
**Ext:**  
**Date:**

**STRICTLY PERSONAL AND CONFIDENTIAL**

Dear Mr Anybody

I refer to the meeting which took place on (insert date of interview) in accordance with the (insert name of school/Academy) school/academies' Capability Procedure. At that meeting (insert names of people in attendance) were in attendance.

At the meeting it was established that (insert details).

On behalf of the Staff Disciplinary Committee, I have to inform you that having given careful consideration to this matter, they have taken the decision that you be dismissed, subject to appeal, from the service of the Cornwall Council/(name) Academy for (insert reason).

I enclose a copy of the Capability Procedure and draw your attention to your right of appeal against dismissal to the Staff Disciplinary Appeals Committee.

If you wish to appeal against this dismissal you must do so, in writing, within 10 school days of receipt of this letter.

Yours sincerely

Headteacher/Principal or Chair of School's Staff Disciplinary Committee

**Copy to:** Trade Union Representative

Please complete the tear off slip below and return to me (name of Headteacher or Chair of School's Staff Disciplinary Committee).

.....

I acknowledge receipt of a letter of dismissal dated (insert date) from (insert name of Headteacher/Principal or Chair of School/Acaddemis' Staff Disciplinary Committee).

Signed .....

Date.....

**Procedure for Appeal Hearing Against Written Warnings and Dismissal**

1. The Headteacher/Principal (Deputy)/Chair of Staff Disciplinary Committee will outline details of the case in the presence of the appellant and his/her representative and may call appropriate persons to provide supporting evidence.
2. The appellant (or his/her representative) will be given the opportunity to ask questions of the Headteacher/Principal (Deputy)/Chair of Staff Disciplinary Committee and the persons called by the Headteacher/Principal (Deputy)/Chair of Staff Disciplinary Committee to provide supporting evidence.
3. The Appeal Committee of Governors may ask questions of the Headteacher/Principal (Deputy)/Chair of Staff Disciplinary Committee and the persons called by him/her to provide supporting evidence.
4. The appellant (or hi/her representative) will put forward their case in the presence of the Headteacher/Principal (Deputy)/Chair of Staff Disciplinary Committee and my call appropriate persons to provide supporting evidence.
5. The Headteacher/Principal (Deputy)/Chair of Staff Disciplinary Committee will have the opportunity to ask questions of the appellant (or his/her representative) on the evidence given by him/her and any persons called by the appellant to provide supporting evidence.
6. The Appeals Committee of Governors may ask questions of the appellant (or his/her representative) on the evidence given by him/her and any persons called by the appellant to provide supporting evidence.
7. The Headteacher/Principal (Deputy)/Chair of Staff Disciplinary Committee will be given the opportunity to sum up the case, if desired. No new evidence may be introduced at this stage.
8. The appellant (or his/her representative) will be given the opportunity to sum up the case, if desired. No new evidence may be introduced at this stage.

**The Headteacher/Principal (Deputy)/Chair of Staff Disciplinary Committee and the appellant and his/her representative will now withdraw**

9. The Appeal Committee of Governors will deliberate in private, only recalling the Headteacher/Principal (Deputy)/Chair of Staff Disciplinary Committee and the appellant to clear points of uncertainty on evidence already given. If recall is necessary both parties are to return, notwithstanding that only one is concerned with the point giving rise to doubt.
10. The Appeal Committee of Governors will announce the decision to the parties.

**Performance Management/ Capability Support Plan – [insert employee's name]**

**Area for development – teaching requiring improvement to ensure that pupils make at least expected progress**

<b>Underpinning areas for Development</b>	<b>Specific Actions for improvement</b>	<b>Support</b>	<b>Review Timescale</b>
<b>Precision of teaching</b>	<p>To derive appropriate learning intentions based on assessment of prior learning.</p> <p>To improve quality of questioning e.g. using probing and prompting questions</p> <p>To differentiate questioning to match the learning needs of pupils.</p> <p>Through marking and feedback to pupils to identify next steps in learning.</p> <p>Through regular focussed teaching of groups to be responsive to pupils' learning needs at the point of learning.</p> <p>To direct the Teaching Assistant to be responsive to learning in regular focussed teaching groups.</p> <p>To ensure chosen tasks meet the different learning needs of pupils.</p> <p>To ensure adequate opportunities for pupils to develop their skills independently and confidently.</p> <p>To ensure teaching language is simplified and based on learning need.</p> <p>To enable all pupils to make progress within each lesson.</p> <p>To enable pupils collectively to make overall, expected progress in core subjects.</p>	<p>Weekly supported planning session with Assistant Head</p> <p>Weekly supported observation of own or colleagues teaching</p> <p>Weekly discussion of observed teaching with Assistant Head</p> <p>Weekly release time (in addition to PPA) to reflect on observations and own practise and feed development into own lessons.</p>	<p>Mid term review Week 29 22<sup>nd</sup> – 26<sup>th</sup> May</p>
<b>Timing of lessons V Pace of learning</b>	<p>Through marking and assessing whilst teaching to know what comes next and whether pupils are ready to move on in their learning.</p> <p>To maintain a balance of teacher direction and application of learning by pupils enabling them to be autonomous and confident</p> <p>To maintain the excitement and tension of the lesson.</p> <p>To ensure adequate opportunities for pupil talk to enhance speed of learning.</p> <p>To allow adequate time for plenary enabling use of assessment so that teacher can identify next steps for learning.</p>	<p>Weekly release time to complete lesson planning</p>	
<b>Differentiation</b>	<p>To know the expectations for learning for Year X pupils.</p> <p>To provide appropriate learning opportunities to take pupils' learning forward in each lesson.</p> <p>To provide appropriately matched learning opportunities through a variety of approaches e.g. by resource, support, outcome, content etc.</p> <p>To provide focussed group teaching to all ability groups within each week.</p> <p>To provide guidance for the Teaching Assistant to support group teaching.</p>	<p>Mentoring from a chosen colleague</p>	<p>End of period review Week 34 26<sup>th</sup> – 30<sup>th</sup> June</p>

The objective is that in all **lessons observed pupils make at least expected progress** if the three areas for development are put in place.

**Monitoring** will be by the head teacher and appropriately qualified person (e.g. colleague Headteacher/ LA school effectiveness officer) from now until week of xxxxx to show improvement. It will include lesson observations by prior arrangement, discussions, work and marking scrutiny.

**Support**

- Support sessions will be provided by an Assistant headteacher who will work with xxxxxx on a weekly basis. This will include lesson observations and feedback, demonstration lessons and discussion, paired observations and discussion, advice on identifying areas to incorporate into own teaching and supported planning.
- xxxxxx should also choose a mentor so that he has an opportunity to discuss issues, concerns etc. with someone who is outside of the process.
- xxxxxxxxxx will also receive additional release time during the week to evaluate his teaching and identify areas for development and additional time to complete planning.

Weeks	School named week	Release time available	Supported observations with Assistant Headteacher	Thursday observations by Headteacher	Observations by appropriately qualified person (external)
1	24	Tuesday – 3 lessons Wednesday – 2 lessons	Literacy xxxxxx to deliver		
2	25	Tuesday – 3 lessons Wednesday – 2 lessons	Numeracy xxxxxxx to deliver	Monitoring observation (Literacy) 24.04.08	
3	26	Tuesday – 3 lessons Wednesday – 2 lessons	Numeracy xxxxxxx to deliver		
4	27	Tuesday – 3 lessons Wednesday – 2 lessons	Numeracy another teacher to deliver	Monitoring observation (Numeracy) 08.05.08	
5	28	Tuesday – 3 lessons Wednesday – 2 lessons	Literacy xxxxxxxx to deliver		
6	29	Tuesday – 3 lessons Wednesday – 2 lessons	Literacy another teacher to deliver		Monitoring observation (Literacy) 19.05.17 at 11.15 a.m.
HALF TERM					
7	30	Tuesday – 3 lessons	Numeracy xxxxxxxx to deliver	Monitoring observation by HT	

		Wednesday – 2 lessons		(Numeracy) 05.06.08	
8	31	Tuesday – 3 lessons Wednesday – 2 lessons	Numeracy xxxxxxxx to deliver		
9	32	Tuesday – 3 lessons Wednesday – 2 lessons	Literacy another teacher to deliver	Monitoring observation by HT (Literacy) 19.06.08	
10	33	Tuesday – 3 lessons Wednesday – 2 lessons	Literacy xxxxxxxx to deliver		
11	34	Tuesday – 3 lessons Wednesday – 2 lessons	Literacy xxxxxxxx to deliver		Monitoring observation (Numeracy) 03.07.17 at 10.30 a.m.

SEC Capability Procedures Outline Protocol  
Tim Osborne, Head of School Effectiveness  
School Effectiveness Cornwall (SEC) Team  
September 2016

### Introduction

- This protocol should be read in tandem with “Categorisation of Cornish Primary Schools”
- The protocol outlines the approach used by SEC in support of schools when capability procedures have been deemed necessary

### Aims

- To provide advice and support to schools and individual staff involved in capability with the intention of securing sustained improvement in the quality of provision where a school has identified areas of concern
- To ensure that the capability process is open, fair and transparent and that it follows, at all times, due process as defined within the School’s recognised Performance Management and Capability Procedures.
- To ensure that individuals concerned are given the required support to make improvements, via an action plan which has been agreed at the start of the process
- To validate the accuracy of the judgements of schools when an individual is placed on capability

### Procedures

- Responsibility for SEC involvement has been delegated to an individual Senior Manager, School Improvement (SMSI). Other SEC officers may be asked to become involved in monitoring of teaching dependent upon circumstance
- Advice and support is given to a school when requested to ensure that due process is followed, particularly in the drafting of an action plan which must clearly outline:-
  - **Timescales** (e.g. When an individual will be given support; the frequency of monitoring; how long an action plan will last)
  - **Measurable success criteria** (i.e. what individuals are being asked to make improvements in and how they will be measured)
  - **Roles and responsibilities** (e.g. – Who will monitor; who will act as a mentor)

- **Support, further training and guidance** (i.e. clearly defining what support an individual will receive to enable them to make the necessary improvements)
- **Action Plans** are drafted on the basis of a notional “3:2:1” ratio – whereby, over an agreed period of time, an individual can expect a balance of :-
  - 3 inputs of support or training provided by the school, or commissioned by the school from an outside provider, together with on-going mentoring provide by the school, or, where that is not possible, by a professional association
  - 2 sessions of monitoring carried out by the school
  - 1 monitoring visit by an appropriately qualified external person (e.g. colleague Headteacher/ LA school effectiveness officer) toward the end of the action plan period. This monitoring has a dual purpose:-
    - Firstly to ensure that the individual concerned has had the support and guidance as agreed within the action plan.
    - Secondly to ensure that the judgements made by the school are accurate, have followed the agreed procedures and provide a fair measure of the progress (or otherwise) of the individual concerned
- The action plan must be agreed by all parties at the commencement of the process
- Monitoring should follow a set format in four distinct stages:-
  - **A full lesson observation**, or an agreed period of time which may cover two part lessons, which concentrates on the extent to which key areas for improvement as outlined in the action plan have been met. Planning and children’s work will also be scrutinised during this process.
  - **A full, verbal feedback** to the individual concerned in the presence of the headteacher or acting headteacher. Sometimes, with the agreement of all parties, the appointed mentor and/or a representative from a professional association will also be present at this stage. This arrangement is designed to ensure that all parties hear the key points of the feedback which will note strengths, improvements and action that is required, so that further support can be provided as appropriate
  - **A written report** which summarises the key points of the discussion held with the individual concerned will be sent within 10 working days. A copy of the written report is also provided for the headteacher.
- **Scrutiny of the evidence**, collated by the school, of the work that it has carried out to deliver the action plan, particularly the support and monitoring, to ensure that the individual concerned has been treated fairly and equitably will also take place.

- Whenever necessary, dialogue is maintained with professional associations.

**Examples of the pro forma used are attached for information**

- The first example is used to record salient features of the lesson observation. This is used to aid the process of verbal feedback to the individual concerned and is also used to record any relevant points that might emerge from the verbal feedback.
- The second example is a copy of the final written feedback which is sent to the individual concerned and the headteacher.

**Example One – Note taking pro forma**

**SEC lesson observation**

Date xxxxxxxx

Name xxxxxxxxxx

Year 4/5

12 Boys and 13 Girls

17 Year 4

8 Year 5

Context –

**Inadequate - lack of progress**

*T at IWB*  
*TA with group*  
*Pupils at tables*  
*Detailed planning*  
*I can turn an information text into instructions*

11.07	Highlight 4 things you need to make a mummy
11.11	Egypt 2 minutes (11. 12)
11.13	What did you do?
	Picks up on inattentive behaviour
	Change from text to instructions Asks to put it back <b>doing not learning</b> Goes over L.O. and S.C. and modus operandi again 20 minutes – but-just plan
11.25	Pulls back – write instructions - put brain part first
11.27	By 25 to-finished plan. Stop Chatting – unless you are stuck
11.34	What you are trying to do What it looks like doesn't matter – just get it down
11.39	Still going
11.41	30 seconds to finish
11.42	When ready (but they do not) Then 30 seconds to tidy
11.44	How will you know if you have been successful Time connectives
11.51	Editing and improving

**Standards**

Work pitched in level 3 but only just  
 Text -readability above 10

<b>Strengths</b>	<b>Weaknesses</b>
<p><i>Reference throughout to success criteria</i>  <i>Preparation</i>  <i>Sets in context of next Step</i></p>	<p><i>Lack of differentiation and detail in plan not followed</i>  <i>Stops too often</i>  <i>Puts them on the spot</i>  <i>Not paying attention</i>  <i>Response level very low</i>  <i>Pace of learning</i>  <i>Pitch</i>  <i>Modelling</i>  <i>Most interaction at a whole class level is “on task” talk not “learning” talk</i>  <i>Timing</i>  <i>Activity does not lend itself to address the learning Intention</i>  <i>Limited reference to learning wall</i>  <i>No real plenary</i>  <i>Missed opportunity to play with the connectives</i>  <i>Gender in plenary</i>  <i>Most target questions go to boys</i></p>

## Example 2 – Written Report

**Observation of: Year 4/Year 5 Literacy**  
**12 boys and 13 girls**  
**(17 Year 4 pupils and 8 Year 5 pupils)**  
**Classteacher: xxxxxxxxxxxxxx**

***This was an inadequate lesson because the majority of pupils did not make progress***

- **Context:** *The observation begins at 11.07. The classteacher is at the interactive whiteboard. Pupils are seated at their tables. A teaching assistant is seated with a group of children. Detailed planning is available. The focus for the lesson is instructional writing – “I can turn an information text into instructions”*

### **Positive comments:**

- Preparation is satisfactory
- The classteacher makes reference throughout the lesson to the success criteria
- The lesson is set in the context of the next step for development which enables the children to understand the purpose of what they have been doing.

### **Areas for improvement:-**

- As we discussed, the majority of pupils in the class did not make progress. There was a significant number of weaknesses in the quality of teaching. The points below are the main areas for development
  - Differentiation required improvement so that work was pitched at the correct level for individuals and groups so that they were appropriately challenged and could make progress with their learning;
  - The pace of learning was too slow and the majority of pupils, particularly the higher attainers, did not make progress;
  - Timing required improvement to allow the classteacher enough time to model what was expected and to give enough time to carry out an effective plenary;
  - The learning activity did not allow pupils to achieve the learning intention;
  - Limited reference was made to the learning wall which contained key information which would have enabled pupils to focus upon their learning and how they would be successful;
  - The plenary did not make the learning explicit and contained a number of missed opportunities to develop pupils’ understanding of what they had learned, for example time could have been profitably spent developing the use of time connectives;
  - There was a low level of response to questions asked by the classteacher and most “targeted” questions were aimed at boys;
  - Interaction with pupils at a whole-class teaching level was mainly “on task” talk rather than “learning talk”;
  - A number of children did not pay attention to others, including the classteacher, when they were speaking.