

# **WINTERBOURNE NURSERY & INFANT SCHOOL**



## **Capability procedures Teachers and Support staff**

**Agreed by governors:  
Next review:**

**15<sup>th</sup> September 2020  
May 2021**

# Capability procedures - Teachers

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**For procedure for support staff see page 10 onwards**

## 1. Introduction

1.1 The Governing Body of Winterbourne Nursery & Infant School adopted this policy on 19<sup>th</sup> April 2018

It will review it in *September 2019*

1.2 It is part of the normal day to day responsibilities of management to inform staff of concerns about standards of performance and where these are not speedily resolved they should be addressed via the appraisal process. The capability procedure applies to teachers or head teachers about whose performance there are serious concerns that the appraisal process has been unable to address. It applies after support has been offered as part of that process. In normal circumstances a meeting will have previously been held under the appraisal process when the teacher or headteacher is advised that progress in addressing concerns has not been sufficient and that performance will be managed under capability. Further details about the meeting may be found in the appraisal policy.

In exceptional circumstances concerns about the senior leadership of the school will be raised via alternative routes (eg LA monitoring of schools causing concern, Ofsted) that have not been addressed via day to day management or the appraisal process. In these circumstances, the issues will be highlighted to the senior leaders involved and addressed via the formal capability procedure.

1.3 A member of staff has a right to be accompanied by an accredited worker's companion (i.e. Trade Union representative) or a work colleague, at all formal stages of this procedure. They should be informed of this right, be given advance notice of such meetings and given reasonable time to contact a representative. If the employee's chosen companion is not available at the time fixed for the meeting, it should be rescheduled to accommodate the availability of the companion, as long as a reasonable alternative date is offered which is within 5 working days of the originally proposed date.

Employees may not be represented by a person who may prejudice the fairness of the capability process or who may have a conflict of interests.

1.4 Schools should seek support from their HR Provider when following this procedure.

1.5 Where the employee asserts that the capability proceedings being undertaken is unlawfully discriminatory or is motivated by reasons other than addressing poor performance, the employee can raise a complaint. If the employee raises this complaint in writing at any stage before the appeal stage of a dismissal, this can be dealt with as part of the capability procedure. If the employee raises the complaint only after the capability procedure has finished and it is on substantial new grounds, then it will be necessary for the employee grievance procedure to be completed in full.

The submission of a complaint by an employee during capability proceedings will not normally prevent the continuation of the capability process. Where appropriate, a complaint related to the capability proceedings should be dealt with as part of the capability process and not pursued through the employee grievance procedure.

1.6 Seven working days' notice will be given of all formal meetings in this process (formal capability meeting, para 2, formal review meeting, para 4, decision meeting, para 5 and appeals, para 8).

This notice will be in writing and the employee will be given:

- The time, date and venue for the meeting
- The reason for the meeting, including an outline of concerns about performance and possible consequences as well as a summary of any action taken to date
- Copies of any documentation to be relied on at the meeting
- Notification of the right to be represented by a work colleague or trade union representative
- The opportunity to submit any relevant documents that he/she intends to rely on (these must be provided 3 working days prior to the formal meeting)

If the employee's chosen companion is not available at the time fixed for the meeting, it should be rescheduled to accommodate the availability of the companion, as long as a reasonable alternative date is offered which is within 5 working days of the originally proposed date.

## **2. Formal capability meeting**

2.1 This meeting is intended to examine the facts. It will be conducted by the Chair of Governors or a designated governor acting on his/her behalf (for head teacher capability meetings) or head teacher (for other teachers). The meeting allows the teacher 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.

The person conducting the meeting could 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 not proceed
- A first written warning should be issued
- In exceptional circumstances a final written warning should be issued. This is likely to occur if:
  - the education or welfare of pupils is in jeopardy
  - there are serious leadership weaknesses
  - in circumstances where an individual's performance had been managed under the capability procedure in the previous 12 months and concerns about the standard of performance re emerge

**Only in exceptionally serious circumstances will a final warning be issued at the first meeting. Schools should seek the advice of their HR provider before embarking on this course of action.**

The person conducting the meeting may also adjourn the meeting, for example, if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.

2.2 During the meeting, or any other meeting which could lead to a formal written warning being issued, 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 teacher 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);
- discuss the most effective way of supporting the teacher to improve their performance taking into account the views of the teacher and where possible agree on the support that will be available;
- 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 straightforward cases could be up to ten weeks. It is for the school to determine the set period. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place. In cases where the education or welfare of pupils is in jeopardy or there are significant leadership weaknesses, the period for improvement will be up to four weeks.
- warn the teacher formally that failure to improve within the set period could lead to dismissal.

2.3 Notes will be taken of formal meetings and a copy sent to the member of staff.

2.4 Where a warning is issued, the teacher will be informed in writing within 7 working days of the matters covered in the bullet points above and given information about the timing and handling of the review stage. 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), may result in dismissal.

2.5 The teacher may appeal against a first or final written warning within 10 working days of receiving the warning by writing to the Chair of Governors. (Further details about the appeals process may be found in paragraph 8)

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

3.1 A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. At the end of the review period, there will be a formal meeting as follows:

3.2 Where the employee has been issued with a first written warning they will be invited to a formal review meeting. (see paragraph 4)

3.3 Where the employee has been issued with a final written warning they will be invited to a decision meeting (see paragraph 5)

#### **4. Formal review meeting**

4.1 The meeting will be conducted by the Chair of Governors or a designated governor acting on his/her behalf (for head teacher capability meetings) or head teacher (for other teachers).

4.2 If the person conducting the meeting is satisfied that the teacher has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start.

4.3 In other cases:

- If some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period;
- If no, or insufficient improvement has been made during the monitoring and review period, the teacher will receive a final written warning.

4.4 As before, notes will be taken of formal meetings and a copy sent to the member of staff.

4.5 Where a final warning is issued the member of staff will be informed within 7 working days of the meeting. The final warning will mirror any previous warnings that have been issued. The member of staff will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale), may result in dismissal and given information about the handling of the further monitoring and review period including the timescale for the review period which will be no longer than 4 weeks.

4.6 The teacher may appeal against a first or final written warning within 10 working days of receiving the warning by writing to the Chair of Governors

#### **5. Decision meeting**

5.1 A decision meeting will be held at the end of the monitoring and review period after a final written warning has been issued. It will be conducted by the appropriate panel/committee of the governing body.

5.2 If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end and the appraisal process will re-start. If, during the following 12 months, concerns about the standard of performance re emerge, then they will be dealt with under the final stage of this procedure.

5.3 If performance remains unsatisfactory, a decision, or recommendation to the Governing Body, will be made that the teacher should be dismissed or required to cease working at the school. The teacher will be entitled to his/her normal notice period.

5.4 Before the decision to dismiss is made, community and voluntary controlled schools must discuss the matter with the local authority. It is recommended that all schools receive support from their HR provider before any decision to dismiss is made.

5.5 The teacher will be informed in writing within 7 working days of the reasons for the dismissal and the date on which the employment contract will end

5.6 The teacher may appeal against the decision to dismiss within 10 working days of receiving the above letter by writing to the Chair of Governors (Further details about the appeals process may be found in paragraph 8)

5.7 In cases where the performance issues relate to leadership rather than to classroom teaching, consideration will be given to demotion. In these situations, salary safeguarding will not apply. The same process described in paras 5.1 – 5.6 should be followed at the decision meeting.

## **6. Decision to dismiss**

*Either:* The power to dismiss staff in this school rests with the Governing Body.  
(Foundation and Voluntary Aided Schools)

*Or:* The power to decide that members of staff should no longer work at this school rests with the relevant panel/committee of the Governing Body.  
(Community and Voluntary Controlled Schools)

## **7. Dismissal**

*Either:* Once the decision to dismiss has been taken, the Governing Body will dismiss the teacher with notice, (*Voluntary Aided and Foundation schools*).

*Or:* Once the Governing Body) 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 and Voluntary Controlled schools*).

## **8. Appeal**

A teacher may appeal against any formal warning or dismissal decision on the following grounds:

- a) the proper procedure was not followed in which case the appeal panel will consider whether this materially affected the decision
- b) the decision reached was unreasonable given the information provided
- c) new evidence, which as not reasonably available at the time, has become available

If a teacher wishes to appeal they should do so by writing to the Chair of Governors within ten working days of receiving the decision, setting out at the same time 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 teacher. If the employee's chosen companion is not available at the time fixed for the meeting, it should be rescheduled to accommodate the availability of the companion, as long as a reasonable alternative date is offered which is within 5 working days of the originally proposed date.

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

The teacher will be informed in writing of the results of the appeal hearing as soon as possible.

The arrangements for an appeal hearing at the earlier stages of this process will not delay meetings that are required to monitor and review performance and the timescales that have been set for improvement.

## **9. Centrally Employed Teachers**

The same process will be followed for Centrally Employed Teachers. The Service Manager will lead the formal capability meeting. A panel of two, including the service manager will hear the case at the formal review meeting, and a panel of two, including a Director will hear the case at the decision meeting.

## **General Principles Underlying This policy**

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

Part B of the policy will be implemented in accordance with the provisions of the ACAS Code of Practice.

### **Confidentiality**

The capability processes will be treated with confidentiality.

### **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 some cases, it may be appropriate for formal procedures to continue during a period of sickness absence.

### **Receipt of letters**

All letters advising of arrangements for meetings or the outcome of hearings will be sent by first class mail and it will be assumed that will normally be received within two days of posting. Additionally, letters may also be sent by email.

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# Capability procedures - Support staff

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## **1. Scope**

- 1.1 The procedure applies to support staff appointed by the school and also at Pupil Referral Units. This procedure will apply in full to employees on satisfactory completion of their probationary period.
- 1.2 This procedure has been separated out from advice on disciplinary procedures to emphasise the developmental aspects. In some cases, however, it may be difficult to distinguish between a performance problem caused by lack of capability, negligence or misconduct. If in doubt, please seek advice from your HR provider.
- 1.3 For the purpose of this procedure, lack of capability is defined as a situation in which an employee fails consistently to perform his or her duties to a professionally acceptable standard.
- 1.4 This procedure does not cover the normal day-to-day supervision where a headteacher/manager may have to counsel, train, appraise 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.
- 1.5 If an employee commences sick leave whilst subject to the capability procedure the capability procedure will continue unless medical advice 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.

## **2. Introduction**

- 2.1 Managing poor work performance is one of the most difficult tasks a manager or supervisor has to tackle, yet it is vital to the success of any school: efficiency and service delivery may be affected and safety could be placed at risk by an employee's incompetence or negligence. In addition, relations with the school's clients and members of the community may be affected, or even damaged, where standards are not being met.
- 2.2 Headteachers and managers have a responsibility to manage work performance and any problems that arise. These guidelines are designed to give a framework for tackling poor performance with good management practice and by following a defined procedure. The relevant employment legislation and case law have been taken into account in the development of this procedure.
- 2.3 Addressing poor performance of workers is necessary for the efficient operation of the business and the delivery of high quality, value for money services. The procedure:
  - allows headteachers/managers to address issues of unsatisfactory performance and seek improvements.
  - ensures that employees covered by the procedure are treated fairly and consistently
  - encourages all employees to achieve and maintain high standards of job performance.
  - supports the delivery of high quality services.
  - helps to safeguard the integrity and good reputation of the School and the Council.
- 2.4 If an employee has any difficulty at any stage of the procedure because of a disability, or wishes to

inform management of any medical condition they consider relevant, they should discuss the situation with their headteacher/manager as soon as possible.

### **3. Link With Performance Development and Competency Scheme (PDCS)**

- 3.1 The PDCS is Croydon Council's performance management scheme and applies to all permanent and fixed term staff except teachers. Schools can either adopt the Council's PDCS for their support staff or adopt an alternative objective and competency based appraisal scheme with performance ratings. Thereafter referred to as school's appraisal scheme.
- 3.2 Employee performance should be managed routinely through the PDCS process, or the school's adopted appraisal scheme, by objective setting, regular one-to-one meetings, a mid-year review and an annual performance discussion. Initial concerns about performance should be addressed as soon as possible as part of this process, with appropriate support being provided and reasonable timescales given for improvement.
- 3.3 If performance does not improve to a satisfactory level, the annual performance assessment due under the PDCS, will be brought forward and completed by the employee's manager. The employee will be rated against each objective and competency. Evidence of not meeting performance targets will need to be provided and the measures taken to support the employee in improving their performance will need to be demonstrated. The Capability Procedure may be invoked where the employee's overall rating is "unsatisfactory" or where there is other performance concerns not related to the PDCS objectives and competencies.
- 3.4 When concerns arise in relation to capability that are not related to performance objectives or competencies the procedure may be followed, with new objectives added to the employee's performance objectives in relation to the areas causing concern.
- 3.5 Where the Capability Procedure is invoked, the normal performance cycle under PDCS will be suspended.
- 3.6 Where the school has adopted an alternative appraisal scheme the school will need to ensure that it has a mechanism for dealing with informal performance concerns.

### **4. Link With Other Procedures**

- 4.1 Unsatisfactory performance due to sickness or health issues will be addressed under the Sickness procedure. Where poor performance is due to misconduct, the Disciplinary Procedure will apply.
- 4.2 Grievances raised during the capability process will normally be dealt with as part of this procedure. If the employee raises the complaint only after the capability proceedings have finished and it is on substantial new grounds then it will be necessary for the employee grievance procedure to be completed in full.

### **5. Accredited Trade Union Officials**

- 5.1 Normal performance standards apply to officials' conduct as employees but action under this procedure should not be taken without inviting the involvement of the appropriate

professional Trade Union Official, Corporate Staff Side Lead, or that official's nominated representative.

## **6. Representation**

- 6.1 Employees have the right to be accompanied by a certified Trade Union official or a work colleague at all formal meetings of this procedure. Employees are responsible for arranging their own representation. It is suggested that employees who are members of a recognised trade union contact their union representative if subject to action under this procedure.
- 6.2 Employees may not be represented by a person who may prejudice the fairness of the disciplinary process or who may have a conflict of interests.
- 6.3 Employee representatives can address formal meetings and assist employees in presenting their case. However, questions directed at employees should be answered by the employee concerned.

## **7. Timescales and Definition of a Working day**

- 7.1 For the purposes of the operation of this Support Staff Capability Procedure, timescales are expressed in working days. For term time only support staff a working day should be reckoned as a day that the school is open for pupils. Where capability issues arise just before a school holiday, arrangements to resolve the matter speedily should be discussed between the parties. An intervening school holiday should not of itself be a cause for an undue delay in resolving the matter. For all year round staff a working day is defined as Monday to Friday calendar days. The following timescales (in working days) should be adhered to:-

- Written notice of first formal review meeting – 7 working days
- Written notice of final formal meeting – 7 \* working days  
(\*NB this may require longer if the case is complex and involves a substantial volume of paperwork)
- Written notice of outcome of formal meetings and reviews – 10 working days
- Written notice of employee's intention to appeal – 10 working days following receipt of the decision
- Written notice of appeal hearing – 7 working days
- Written notice of outcome of appeal hearing – 10 working days

**NB** Warnings about work performance should be given individually. A general warning given to all employees is of limited weight and limited duration. Warning the employee that their job is at risk is a necessary part of this process. The employee must be left in no doubt that unless their work performance improves to the required standard they could be dismissed. The warning is issued by the headteacher/manager but it is **not** a disciplinary sanction and **cannot** be taken into account in any disciplinary matter.

**Advice should be sought from the school's HR provider on this and all other aspects of dealing with an employee's poor performance .**

## **8. Formal Reviews**

### **8.1 General**

8.1.1 At least 7 working days before a formal meeting, the employee will be given, in writing:

- the time date and venue for the meeting.
- the reason for the meeting, including an outline of the concerns and a summary of any action taken to date.
- copies of any documentation to be relied on at the meeting.
- notification of his/her right to be represented.
- the opportunity to submit any relevant documents that the employee intends to rely on. (This must be provided 3 working days prior to the formal meeting).

8.1.2 Management will seek a mutually agreeable date and time for formal meetings with the employee's representative where this is known. Where an employee's representative cannot attend at the time proposed for the hearing management will be obliged to postpone the hearing to an alternative time and date suggested by the employee provided that: (a) the alternative time is reasonable and (b) it falls within the five working days following the day originally proposed in the notice of the hearing. If the employee fails to attend a formal meeting the manager may proceed in the employee's absence.

8.1.3 Meetings under the formal stages of this procedure will usually be triggered through the PDCS process or the school's adopted appraisal scheme, and associated one-to-one meetings or where there are other performance concerns not related to these process. In exceptional circumstances, a formal meeting may also be triggered where a serious performance issue arises suddenly e.g. through a disciplinary or complaint investigation.

### **8.2 First Formal Review**

8.2.1 A first formal meeting will be held where an employee's performance has been rated unsatisfactory as mentioned in paragraph 3.3 or 3.4.

8.2.2 At the meeting, the headteacher/manager will:

- set out the standards of performance expected of the employee and explain how the employee's performance has fallen short and the impact that this is having on service delivery.
- confirm what action has been taken to date to seek an improvement in performance.
- invite the employee to explain their side of the situation.

8.2.3 Where a performance concern is confirmed the headteacher/manager will set a review period and an action plan in discussion, and if possible in agreement, with the employee which details:

- suitable targets and timescales for an improvement in the employee's performance. Timescales should not normally exceed 3 months or be shorter than 4 weeks;

- any appropriate measures to assist and support the employee in making the necessary improvement; and
- inform the employee that a meeting under the Final Formal Review will be arranged if, during or at the end of the review period, the required improvement has not been made.
- any other action to be taken.

8.2.4 After the meeting the headteacher/manager will confirm the outcome in writing. Where a performance concern is confirmed, the letter will include a written caution of the possible consequences if performance does not improve to the required level.

8.2.5 The headteacher/manager will meet with the employee during the review period to monitor progress, advise the employee accordingly and decide whether or not any further support or assistance should be applied.

8.2.6 If, at the end of the review period, there has been a satisfactory improvement in the employee's performance the employee will be advised of this in writing and reminded of the need to sustain the improvement.

### **8.3 Final Formal Review**

8.3.1 A final stage meeting will be arranged where:

- performance has not improved to the headteacher/manager's satisfaction following the first formal review, or
- an employee's performance, having improved satisfactorily after the first formal review, later becomes unsatisfactory within the same performance cycle.

8.3.2 Meetings at the Final Formal Review will be before a committee of the governing body. A representative from the school's HR provider should be invited to be present at meetings under the final review to give advice where questions of unsatisfactory performance are to be discussed. The Local Authority should also be offered the opportunity to attend Final Formal Review meetings where the possible outcome is dismissal.

8.3.3 To ensure fairness throughout the procedure, different governors/managers must participate at the formal panel and appeal panel meetings.

8.3.4 The committee of the governing body will:

- Invite the presenting manager (normally the headteacher/manager who undertook the review at the First Stage) to:
  - set out the standards of performance expected of the employee;
  - explain how the employee's performance has fallen short and the impact that this is having on service delivery;
  - explain what action has taken place to allow the employee the chance to improve their performance; and
  - give an assessment of the employee's performance following the review.

- b) consider any representations made by or on behalf of the employee and any statement of intent they may wish to make about their future performance.

- 8.3.5 Where the committee of the governing body consider that the employee's performance is unacceptable, that sufficient opportunity to improve has been given, that there is no reasonable likelihood of the required standard of performance being met within a reasonable time, and that adequate warning has been given of the possible consequences, the governing body may either redeploy the employee into another suitable job at the same or lower grade or give the employee notice of dismissal. Where the job is of a lower grade, this will be without a salary protection.
- 8.3.6 Where the committee of the governing body feel that the employee should be given a further opportunity to improve their performance, a final review period may be set. This will be accompanied by a final caution that employment is at risk unless a satisfactory improvement is made. The final review period should not normally last longer than 3 months or be shorter than 4 weeks. If the required improvement is not met, the governing body will reconvene a committee to consider dismissing the employee on the grounds of capability.
- 8.3.7 Community schools will need to notify the Local Authority of the decision of the governing body after:-
- the period for lodging an appeal has expired; or
  - the appeal has been heard by the appeals panel of the governing body and the appeal has not been upheld.

Where applicable the employee will remain suspended on full pay pending the outcome of an appeal and/or throughout the period of notice.

- 8.3.8 In the event of an Employment Tribunal hearing, where the employee is employed in a school, the governing body (regardless of whether it is the employer or not) will be the respondent and will therefore be required to show that the stages of the Capability procedure have been carried out in a fair and reasonable manner. Head teachers/managers who initiate action under the procedure must consider all the implications of any action.

## **9. Appeals**

- 9.1 Employees may appeal against a decision to:

- set targets or timescales for improvement;
- give a formal caution;
- terminate employment.

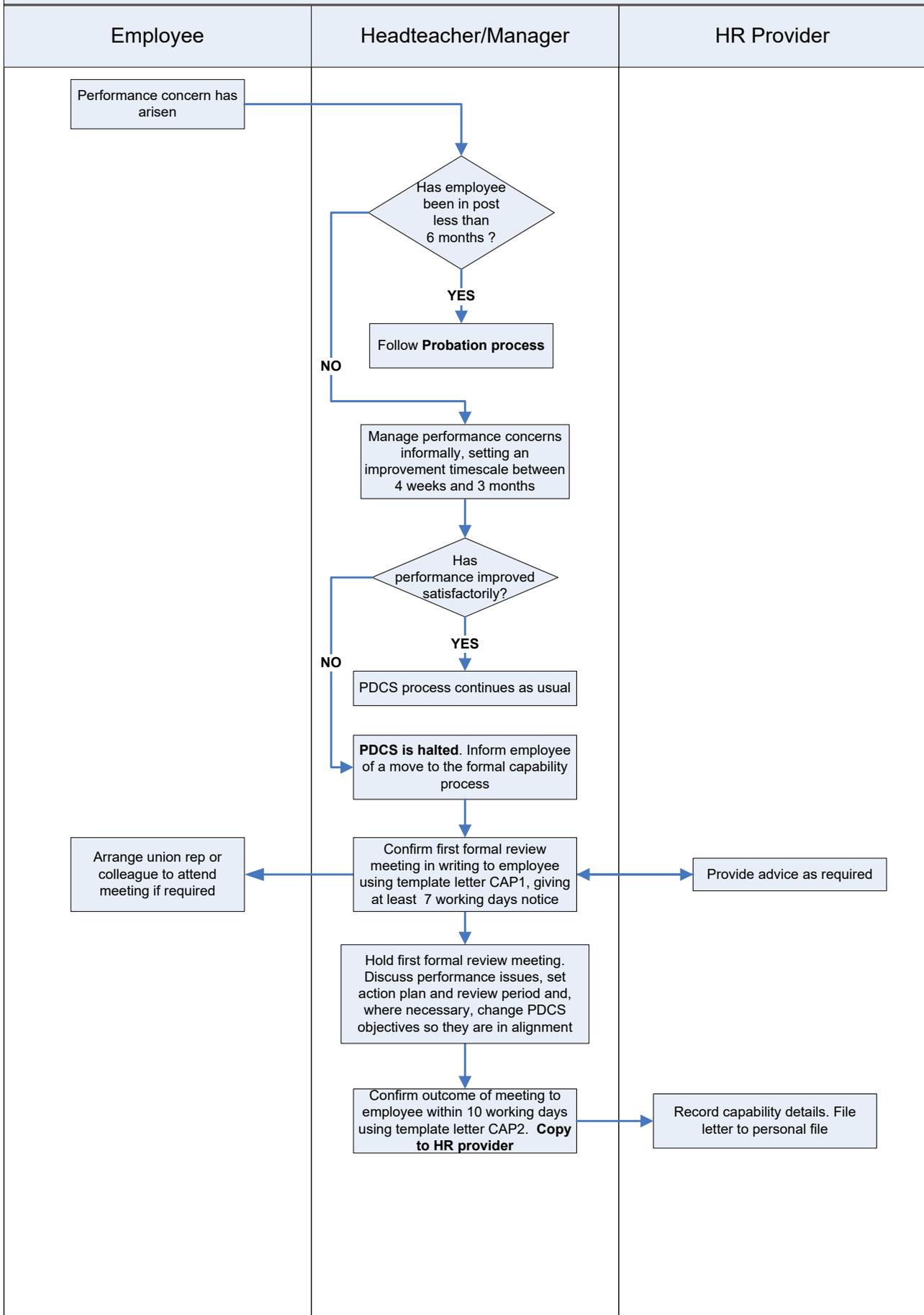
- 9.2 Appeals may only proceed on the following grounds:

- a) the proper procedure was not followed in which case the appeal panel will consider whether this materially affected the decision.
- b) the decision reached and/or the sanction given was unreasonable considering the information provided.
- c) new evidence, which was not reasonably available at the time, has become available.

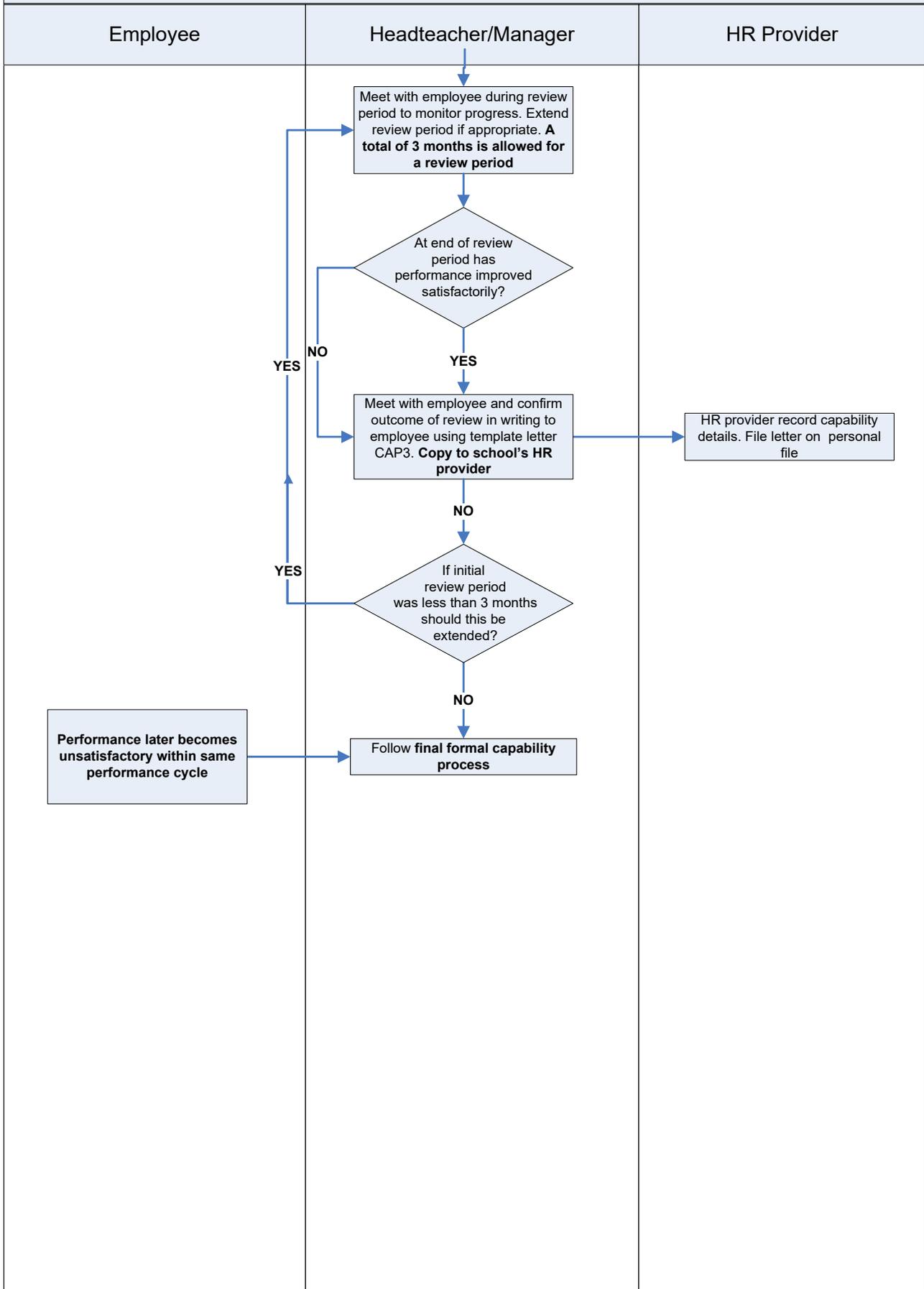
- 9.3 Appeals must be submitted in writing within 10 working days, from the date of receiving written confirmation of the outcome and must specify the grounds of appeal.
- 9.4 Appeals against dismissal or action short of dismissal will be heard by an appeal committee of the governing body, who has had no previous involvement in the case, and the school's HR provider. The appeal decision is final. The Local Authority should be offered the opportunity to attend appeals against dismissal.
- 9.5 Decisions made at the Final Stage are not stayed pending the outcome of an appeal. Employees who are dismissed will be removed from the payroll and reinstated, with no loss of continuity of pay, if their dismissal is over-turned on appeal.

**See flowchart below.**

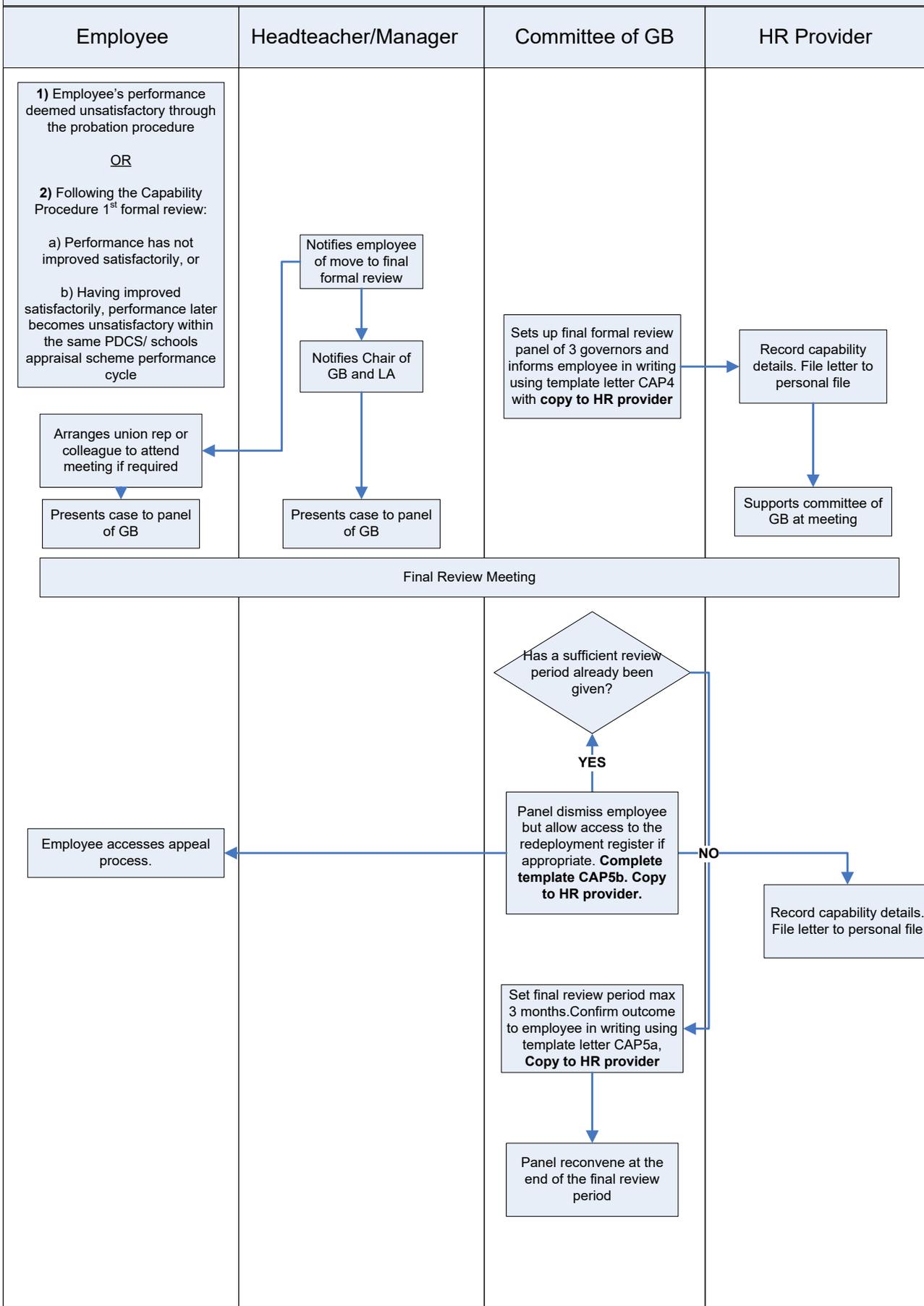
# Capability process – 1<sup>st</sup> formal



Capability process – 1<sup>st</sup> formal continued



# Capability process – Final formal



# Capability process – Final formal continued

