

# **Thorner's Church of England VA Primary School**

## **Appraisal and Capability Policy**

To be read in conjunction with the Appraisal and Capability Procedure for Teachers and Guidance documents.

### **1. Introduction**

1.1 Revised appraisal arrangements were introduced in 2012 in the Education (School Teachers' Appraisal) Regulations 2011.

1.2 From September 2014 pay progression for teachers has been based on their performance and achievement of objectives as reflected in their appraisal. The School's annual Pay Policy for teachers will set out what will be taken into consideration in determining pay progression. The text in bold in this policy covers information required by the Appraisal Regulations or School Staffing Regulations

1.3 Appraisal is central to both school improvement and teachers' personal development, as an on-going supportive process.

1.4 The school values good standards of performance and expects all employees to adhere to all school's standards, including Teachers Standards\*. Teachers' performance is assessed against the relevant standards and also against their objectives.

1.5 Performance management runs through from appraisal to capability, hence their combination in the format of this policy, which also reflects the approach in the DfE model Appraisal and Capability Policy.

1.6 Capability refers to the fitness and ability of an employee to carry out satisfactorily, the job they are employed to do. Capability is assessed by reference to skills, aptitude, health or any other physical or mental quality.

1.7 A lack of capability can be defined as 'a situation in which an employee fails consistently to perform their duties to an acceptable standard' (ACAS). There is a need to differentiate between the issues causing the consistent failing to perform their duties – it may be incapability due to a lack of skills and need for development or incapability due to an underlying medical issue (medical incapability), which is dealt with separately in accordance with the Attendance Management Policy.

1.8 This Capability policy specifically deals with incapability due to a lack of skills or aptitude; it will be applied when a teacher's performance has seriously fallen below required standards. The aim is to improve the achievement of staff and students and to raise standards across the school.

1.9 This policy is based upon the ACAS Code of Practice, incorporates relevant legislation and should be read in conjunction with the Appraisal and Capability Procedure for Teachers and Guidance documents. It has been agreed following consultation with recognised trade unions and has been adopted by the Governing Body.

### **\*Teachers' Standards**

*The Teachers' Standards set a clear baseline of expectations for the professional practice and conduct of teachers and define the minimum levels of practice expected. The appraisal will include an assessment of the teacher's performance against the relevant standards.*

## **2 Scope**

2.1 The policy applies to all teachers, including the Headteacher employed by the school except teachers on contracts of less than one term and those undergoing induction (ie NQTs).

2.2 The Appraisal regulations do not apply whilst a teacher is the subject of the formal capability procedure

2.3 Where identified performance issues are in respect of the Headteacher, references to the Headteacher should be replaced by Chair of Governors.

2.4 Reference to Teachers' standards applies to all teaching staff where those standards apply.

## **3 Purpose**

3.1 This policy sets out the framework for a clear and consistent assessment of the overall appraisal of teachers, including the headteacher, and for supporting their development within the context of the school's improvement plan and the standards expected of teachers. It is not, however, intended to replace or restrict the normal day to day management and supervision of employees.

3.2 An effective appraisal process should:

- Identify, celebrate and disseminate good practice
- Identify areas for staff to improve their professional skills
- Identify performance that is below the standard expected and provide a supportive system to improve performance
- Include a recommendation on pay progression for the teacher
- Be an integral part of a school's self-evaluation process.

3.3 The aim of the Capability policy is to assist schools and employees in situations where the capability of a teacher is unsatisfactory; it provides a consistent and fair approach for dealing with capability issues where standards fall seriously short of requirements aiming to improve performance and raise standards.

## **4 Key principles**

4.1 Confidentiality

- The whole appraisal and capability processes and the statements generated under them, in particular, will be treated with strict confidentiality at all times.
- Only the Headteacher and the employee's line manager or, where s/he has more than one, each of her/his line managers will be provided with access to the employee's plan recorded in her/his statement, upon request, where this is necessary to enable the line manager to discharge her/his line management responsibilities. Employees will be told who has requested and has been granted access.

4.2 Conflict of interest

In any circumstances where an individual believes that their part of the appraisal or capability process may constitute a 'conflict of interest' they should declare this and/or absent themselves from any part of the process where such a conflict would prevail.

### 4.3 Consistency of treatment and fairness

The Governing Body is committed to ensuring consistency of treatment and fairness in the operation of appraisal, pay progression and capability processes.

To ensure this in relation to appraisals the following provisions are made regarding moderation, quality assurance and objective setting.

#### Quality assurance

The Headteacher has determined that s/he will be the reviewer for all teachers.

### 4.3 Support and facilitate improvement

4.3.1 The Headteacher and their Governing Body are committed to helping their employees achieve high quality performance standards and to ensure that employees are supported in achieving those standards.

4.3.2 The school will seek to ensure that all employees are provided with appropriate induction and supervision. All employees will receive regular appraisal as set out below. Performance targets will be agreed, established and regularly reviewed.

4.3.3 Employees experiencing difficulties will be provided with appropriate support to facilitate their improvement.

### 4.4 Monitoring and Evaluation

- The governing body will monitor the operation and outcomes of appraisal arrangements.
- The headteacher will provide the governing body with a written report on the operation of the school's appraisal policy annually. The report will not contain any information which would enable any individual to be identified. The report will include:
  - the operation of the Appraisal and Capability policy;
  - the effectiveness of the school's Appraisal Procedures;
  - Teachers' training and development needs.
- The Headteacher will also report on whether there have been any appeals or representations on an individual or collective basis on the grounds of alleged discrimination under any of the categories above.

### 4.5 Addressing Concerns

4.5.1 Any concerns will be addressed promptly, fairly and consistently.

4.5.2 Initial concerns regarding the standard of work performance of the teacher should generally be discussed with the employee by the Headteacher (or delegated Manager or Deputy) as appropriate, via the normal supervisory process or via the Appraisal cycle. The Capability Procedure applies only to teachers or Headteachers about whose performance there are serious concerns and provides a means whereby more serious issues may be dealt with.

### 4.6 Appraisal/Capability and ill-health

If implementing the Appraisal/Capability policy triggers an episode of sickness absence a prompt referral to Occupational health will be arranged to assess the employee's health and fitness for employment. The Appraisal/Capability Policy will be on hold during any period of sickness absence and phased return to work.

## 5 APPRAISAL

### 5.1 The Appraisal Cycle

- The appraisal cycle will run on an annual basis. The appraisal period will normally run from September to July.
- Appraisal planning, reviews and pay recommendations must be completed for all teachers by 31 October and for headteachers by 31 December.
- The appraisal cycle will begin with a planning meeting and end with a review meeting. Mid-year review meetings may also be held if agreed and considered necessary.
- Teachers, who are employed on a fixed term contract of less than one year, will have their appraisal managed in accordance with the principles underpinning the provisions of this policy. The length of the cycle will be determined by the duration of their contract.
- Where a teacher starts their employment at the school part-way through a cycle, the headteacher or, in the case where the teacher is the head teacher, the governing body shall determine the length of the first cycle for that teacher, with a view to bringing their cycle into line with the cycle for other teachers at the school as soon as possible.
- Where a teacher transfers to a new post within the school part-way through a cycle, the headteacher or, in the case where the teacher is the head teacher, the governing body shall determine whether the cycle shall begin again and whether to change the reviewer.
- Where an appraisal cycle is impacted by sickness absence, reviews should be rearranged as soon as practicable upon the employee's full return to work and there will be no detrimental effect on the employee. The employee's performance will be evaluated on their work up to the point of their absence and account taken of the timescale of the cycle.

### 5.2 Appraisers

#### 5.2.1 Appraisers for the Headteacher

- The headteacher will be appraised by the Governing Body, supported by an external adviser.

#### 5.2.2 Appraisers for Teachers

- All reviewers must be appropriately trained to review appraisal effectively and ensure equal treatment.
- In the case where the Headteacher is not the teacher's line manager, the Headteacher may delegate the duties imposed upon the reviewer, in their entirety, to the teacher's line manager. In this school the head teacher has decided that:

The Headteacher will be the reviewer for all teachers in this school.

### 5.3 Objectives

- The objectives agreed with each appraisee will contribute to the school's plans for school improvement, improving pupil progress and the professional development of the teacher. See *guidance on 'Setting Objectives' Toolkit Appendix 4*.
- The objectives set will be rigorous, challenging, achievable, time-bound, fair and equitable in relation to teachers with similar roles/responsibilities, and experience and hours. They should

reflect the need for a satisfactory work-life balance. For part-time staff they will be proportionate to hours worked.

- They shall also take account of the teacher's professional aspirations and any relevant pay progression criteria, including preparation for threshold application.
- The reviewer and appraisee will seek to agree the objectives but where a joint determination cannot be made the reviewer will make the determination. The objectives must be reasonable within the timescale allowed.
- The objectives should be fair when judged with employees in similar roles but will normally be more challenging as a teacher progresses.
- Appraisees who have responsibilities outside the classroom should normally expect to have objectives related to those responsibilities included, e.g. leadership of a subject.

In this school:

- All teachers, including the headteacher, will have no more than 3 objectives. However, in certain circumstances (e.g. for part-time staff) fewer than 3 would may be appropriate (e.g. for part-time staff, where workload should be proportionate); in exceptional circumstances it may be acceptable to set more than 3 objectives but the workload attached to these must be proportionate to the workload involved in 3 objectives.
- Teachers, including the headteacher, will not necessarily all have the same number of objectives.
- Though appraisal is an assessment of the overall appraisal of teachers and the headteacher, objectives cannot cover the full range of a teacher's roles or responsibilities. Objectives will, therefore, focus on the priorities for an individual for the cycle.
- At the review stage it will be assumed that those aspects of a teacher's roles or responsibilities not covered by the objectives or any amendment to the statement which may have been necessary in accordance with the provisions of the regulations and professional standards have been carried out satisfactorily.

## 5.4 Review

### 5.4.1 Observation

- The number and type of classroom observations will depend on the individual circumstances of the appraisee and the overall needs of the school. Normally no more than three visits will be made unless additional visits are required to address significant concerns have been identified and these have been documented with appropriate evidence.
- In any observation of a teacher's practice, clear criteria about how that practice will be judged should be established and shared with the teacher before any observation has taken place.
- Toolkit Appendix 2 is a model observation policy and it is strongly recommended that schools adopt this policy.
- This school will not grade observations for the purpose of appraisal.
- In addition to formal observation, headteachers or other leaders may "drop in" in order to evaluate the standards of teaching and learning and to check that high standards of professional performance are established and maintained. This will be part of the school's self-evaluation and is not part of the appraisal process.

#### 5.4.2 Development and Support

Appraisal is a supportive process which will be used to inform continuing professional development – see 5.5 below.

#### 5.4.3 Feedback

Appraisees will receive feedback on their performance throughout the year and as soon as practicable after any observation and normally within 5 working days.

#### 5.4.4 Formal Assessment

- At the end of the cycle, each appraisee's performance will be formally assessed.
- This assessment is the end point to the formal process but performance and development priorities will be considered and addressed on a continuous basis throughout the year in a series of informal meetings which will take place (e.g. once a term). This process should not lead to additional objectives being set but there could be modification to existing objectives.
- There should be no 'surprises' at the end of the review period. If the reviewer has any concerns about performance, these should be discussed with the appraisee as soon as possible so that s/he has an opportunity to address these issues.
- The appraisee will receive – and have the opportunity to comment on - a written appraisal report. The appraisal report will include:
  - details of the appraisee's objectives
  - an assessment of the appraisee's performance against their objectives for the relevant period and the relevant standards expected of teachers, having regard to their job description/role in the school;
  - a determination of the teacher's training and development needs and the actions that will be taken to address them;
  - a recommendation on pay progression

#### 5.5 Training and Support

- The school wishes to encourage a culture in which all teachers expect to undertake a programme of continuing professional development that is linked to school improvement priorities and to their own individual ongoing professional development priorities and needs.
- The school's CPD programme will be informed by the training and development needs identified in the training annex of the appraisees' planning and review statements.
- The Governing Body will ensure in the budget planning that, as far as possible, appropriate resources are made available in the school budget for any training and support agreed for appraisees.
- An account of the training and development needs of teachers in general, including the instances where it did not prove possible to provide any agreed CPD, will form a part of the headteacher's annual report to the governing body about the operation of the appraisal in the school.

#### 5.6 Appeals

- At specified points in the appraisal process teachers and head teachers have a right of appeal against any of the entries in their planning and review statements.

- Where an appraisee wishes to appeal on the basis of more than one entry this would constitute one appeal hearing.
- Appeals will be heard by the Headteacher (unless the Headteacher is the reviewer, where the appeal will be heard by a nominated governor). If this does not resolve the appeal, a panel of three governors will review the appeal.

## **6 Pay progression linked to performance**

6.1 Performance-related pay progression enables schools to recognise and reward a teacher's performance through an increase in pay. The appraisal (and pay) process should allow teachers to demonstrate their overall performance and act as an incentive for continuous improvement; the quality of the appraisal system is critical to the effectiveness of this (refer to DfE 'Implementing your school's approach to Pay').

6.2 The Governing Body will review teachers' salary annually within the relevant pay ranges and will set out clearly in the school's Pay Policy how pay progression will be determined.

6.3 Where teachers are eligible for pay progression the recommendation will be based on an assessment of performance against agreed performance objectives; teachers will need to have made good progress towards achieving their objectives and have demonstrated that they are competent in all elements of the Teachers' standards.

6.4 All pay recommendations should be clearly attributable to the performance of an employee.

6.5 A pay recommendation will be made in writing as part of a teacher's annual appraisal report

## **7 Teachers experiencing difficulties**

7.1 When dealing with a teacher experiencing difficulties, the objective is to provide support and guidance through the appraisal process in such a way that the teacher's performance improves and the problem is therefore resolved.

7.2 Where it is apparent that a teacher's personal circumstances are leading to difficulties at school, support will be offered as soon as possible, without waiting for the formal annual assessment.

7.3 The appraiser, the Headteacher, or a member of the leadership team, will, as part of the appraisal process meet the teacher (for details refer to procedure).

7.4 Where issues are identified outside of that process, then exceptionally the informal process outlined at Procedure Appendix 1, which mirrors the above Appraisal process should be followed initially, except in cases of gross incompetence.

7.5 The timescale for monitoring an employee being supported by an action plan will typically be between 4-10 weeks but will depend upon the circumstances of the case, in serious cases a shorter period is more likely to be appropriate.

7.6 The teacher will receive regular feedback and support will be modified if necessary throughout the monitoring period. A review meeting will be held at the end of the monitoring period to confirm whether there has been sufficient progress or not.

7.7 If sufficient progress is made such that the teacher is performing at a level that indicates there is no longer a possibility of the Capability procedure being invoked the teacher should be informed of this at a review meeting and the appraisal process will continue as normal.

## **8 Transition to Capability**

8.1 If no, or insufficient, improvement has been made over this period, the teacher will be invited to a transition meeting (instead of a 'Review meeting') with the appraiser or Headteacher to determine whether formal capability proceedings need to be commenced or the appraisal process remains in place. They will have the right to be accompanied by a trade union representative or work colleague. This is not part of the formal capability procedure.

8.2 Action under the Capability Policy and Procedure is designed primarily to achieve improvement through consistent, appropriate and reasonable support mechanisms rather than to exact a penalty. When dealing with issues of capability, the approach taken will be supportive, fair and objective at all times. The emphasis will be on facilitating improvement as far as possible.

8.3 The Formal Capability Procedure should only be invoked after support and guidance has been provided to the teacher under the Appraisal Process (or the Informal Procedure outlined at Procedure Appendix 1). If no, or insufficient progress is made during this time then the Formal Capability Process can be invoked.

8.4 Dismissal may arise following the exhaustion of reasonable avenues provided by the Capability Procedure.

8.5 The employee will be encouraged to contact their trade union representative at the commencement of the procedure and the employee will have the right to be represented at all stages of the formal procedure.

8.6 The Headteacher may seek advice from Learning and Inclusion advisers regarding appropriate educational targets and standards within action plans.

8.7 The Capability procedure must be followed fully and properly within an adequate timeframe, with adequate support to facilitate improvement, as not to do so may render any action taken unfair.

8.8 Employees will be made aware that whilst they are subject to the capability procedure normal appraisal arrangements will be suspended.

In accordance with the Equality Duty we seek to ensure that all pupils achieve their best, according to their capabilities and regardless of their special needs, disability, gender, race, culture, social, economic, ethnic, religious background and denominational diversity.

Thorner's CE VA Primary School recognises that the welfare of the child is paramount and takes seriously its responsibility to safeguard and promote the welfare of the children and young people in its care.

Date agreed by Staffing & Curriculum Committee: September 2017

Date adopted by Governing Body: February 2018

Date to be reviewed: February 2021



## **Annex 1: Legal context and reference documents**

Revised appraisal arrangements come into force on 1st September 2012. They are set out in the Education (School Teachers' Appraisal) Regulations 2011 which replace The Education (School Teacher Performance Management) (England) Regulations 2006.

Further reference documents

- Appraisal and Capability Policy and toolkit for Teachers
  - This provides detailed policy guidance in regards to Appraisals and Capability. There is further guidance on conducting hearings and appeal hearings as well as presenting cases at hearings. Also provided in the toolkit are model letters for use at specific stages of the procedure.
- Management of Attendance Policy and Toolkit for School Based Employees
  - This provides detailed policy guidance with regards to Management of Attendance. It would be appropriate to refer to this policy when dealing with cases of medical incapability.
- Disciplinary Policy and Toolkit for School Based Employees
  - This provides detailed policy guidance with regards to conduct. It would be appropriate to refer to this policy to distinguish between capability and conduct.
- Guidelines for referrals to Occupational Health
  - These guidelines should be referred to when referring cases of medical incapability to Occupational Health.
- Stress Management Policy for School Based Employees
  - This policy should be referred to when dealing with cases of stress.
- Equal Opportunities in Employment
  - This policy can be referred to in order to ensure adherence to Equal Opportunities throughout the capability procedure.

### **Legal Context**

The Employment Rights Act 1996 states that a dismissal is fair if it:

'relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employment to do' S.98(2)

'Capability' in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality S.98(3)(a)

'Qualifications', in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held. S.98(3)(b)

The determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) - S.98(4)

a) Depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and

b) Shall be determined in accordance with equity and the substantial merits of the case.

The ACAS, Code of Practice - 'Discipline at Work' sets out some key points regarding under performance:

- Careful recruitment, selection and training will minimise the risk of poor performance.
- When employment begins, the standards of work required, the consequences of failure to meet them and conditions attaching to any probationary period should be fully explained.
- Where warnings are in operation, an employee should be given both time to improve and, where appropriate, training.
- The availability of suitable alternative work should be considered before dismissal action is taken.

Other legal considerations

The Education Act 2002

School Staffing (England) Regulations

Teachers' Standards 2012

Should further guidance be required, please contact your Human Resources Adviser.

## Annex 2: Appraisal and Capability Procedure for Teachers

This should be read in conjunction with Guidance documents in the Toolkit. Also model letters and templates are available in the Toolkit.

Advice can be sought from HR at any stage but will usually be sought prior to any formal action being taken.

A flow chart outlining the main steps is at Appendix 2.

### Appraisal Process

#### 1 Planning

##### 1.1 Setting Objectives

- Setting and agreeing objectives is critical for the effective operation of a performance management system where individual performance is linked to pay progression.
- Objectives should be set for the appraisal period based on CSMART principles (Challenging, Specific, Measurable, Achievable, Relevant and Timed) and in accordance with the principles outlined in the Appraisal and Capability Policy.
- Individual objectives should be aligned with the school's priorities. Reference documents may include the job description, school improvement/business plan and Ofsted report. Normally staff will have no more than three (cross reference with figure in policy document) objectives and workload will be proportionate for part-time staff. Guidance is available – see *Toolkit Appendix 4*.
- A meeting should be held with the employee to discuss and agree objectives, clarify the standards against which their performance will be assessed and any identify any development needs/ support available, as soon as practicable after the start of each appraisal period. The employee should be given reasonable notice of the meeting to ensure they can prepare appropriately.
- Where an appraisal cycle/meeting is interrupted by sickness absence, meetings should be re-arranged as soon as practicable upon the employee's full return to work and account taken of the timescale of the remaining cycle.
- As stated in the policy, every effort should be made to reach agreement regarding objectives where a joint determination cannot be made about the objectives, the reviewer will make the determination. Objectives may need to be adjusted throughout the appraisal period to ensure their relevance to priorities and will depend on any emerging issues.
- All objectives should be completed in the autumn term; by **31 October** for teachers and **31 December** for Head teachers.

##### 1.2 Applying Teachers' Standards

- In accordance with the Appraisal regulations 2013, the performance of all teachers should be assessed against teachers' standards\*, which effectively set out a code of good teaching practice and professional conduct. They define the minimum standards expected. Teachers are accountable for achieving the highest possible standards and will need to demonstrate their practice meets the standards defined in part one (teaching) and part two (personal and professional conduct) as a minimum.
- Teachers should be evaluated against all elements set out in the teachers' standards and the school will put appropriate arrangements in place to ensure a fair process of evaluation.
- Teachers' standards also apply to Head teachers and leadership posts. However, account will be taken of whether/the proportion of time spent teaching in a scheduled week. The External Adviser can provide useful support in relation to this.

\*Teachers standards document and any other standards published by the Secretary of State (see link)

## 2 Monitoring

Performance will be monitored as set out in the Appraisal policy (e.g. through observation and on-going professional dialogue between appraiser and appraisee) throughout the autumn, spring and summer terms.

### Gathering Evidence

- Judgements related to performance should be supported by evidence
- Evidence required by the appraiser should be clear to make substantiated and evidence based recommendations to the decision-maker
- Evidence should demonstrate a contribution towards:
  - o Positive impact on pupil progress
  - o Positive impact on wider outcomes for pupils
  - o Improvement in specific elements of practice e.g. Planning
  - o Work at the school
- Evidence will depend on the nature and scope of the objectives but may include:
  - o Class and task observations
  - o Reviews of assessment results
  - o Internal tracking
  - o Moderation within and across schools
  - o Pupil/parent voice
  - o Head teacher walkabouts
- In accordance with a Head teacher's duty to evaluate standards of teaching and learning, it may be necessary for them to collect additional evidence which may include walkabouts, task observation, reviews of assessment results and lesson planning records. It may not be practicable to provide advance notice of these additional monitoring activities.

### Observation

- Any class or task observation will be carried out in accordance with the school's observation protocol (see model in Toolkit Appendix 2). Arrangements for observations will be stated in the appraisal planning statement and will include the amount of observation, its primary purpose/particular focus on performance to be assessed, likely duration and when it will take place and who will undertake the observation
- There is no fixed limit now on the length of observations, it is for the appraiser to determine how much observation is necessary to accurately assess performance
- Observations will be carried out by qualified teachers who will be objective, fair and professional evaluations
- Additional observations can be arranged where there is evidence of concern regarding the appraisee's performance
- At least 5 working days' notice will be provided

### Feedback

- Verbal feedback will be provided by the end of the following school day where possible, in an appropriate, private environment
- Written feedback will be provided as soon as practicable and normally within 5 working days. The appraisee has the right to append written comments on the feedback document

### Ofsted

- Gathering evidence is important for Ofsted purposes also. Ofsted wishes to see evidence of appraisal being used effectively and enabling school improvement as part of the inspection framework; if this evidence is not available it is likely to impact negatively on leadership and management.

### **3 Review\***

*\*Guidance on preparing for and conducting Appraisal Reviews is at Toolkit Appendix 3*

#### **Mid-year**

- A mid-year review meeting may usually be held. *The model Appraisal Form at Toolkit Appendix 12 for use at End of Year Review can be used to record progress to date (optional).*

#### **End of year**

- A review meeting must take place at the end of the appraisal year
- Reasonable notice should be provided for the meeting to enable appropriate preparation by both parties. *See Appraisal Preparation Form at Toolkit Appendix 13.*
- Where an appraisal cycle/review meeting is interrupted by sickness absence, meetings/reviews should be re-arranged as soon as practicable upon the employee's full return to work. There must be no detrimental effect on the employee; the employee's performance will be evaluated on their work up to the point of their absence and account taken of the timescale of the cycle.
- At the meeting, performance will be assessed, any professional development needs will be identified and a recommendation relating to pay made – see 4 – Link to pay progression below.
- Assessment of performance will be on the basis agreed at the start of the cycle and consistent with the evaluation/rating arrangements stated in the Appraisal policy. The overall weight of objectives should be proportionately the same at the conclusion of any objective discussions.
- A written appraisal report must be provided at the conclusion of the process i.e. by **31 October for teachers and 31 December** for Head teachers; the report must record the overall performance assessment and pay recommendation in accordance with the Policy. *See model Appraisal Form at Toolkit Appendix 12.*
- If agreement cannot be reached, especially regarding outcomes of an appraisal meeting the teacher may appeal to the Head teacher (if the Head is the appraiser, the appeal should be to the Chair of Governors) or the Head, to the Chair of Governors
- The overall assessment/performance rating will be subject to a process of moderation
- The final version of the appraisal documentation will be placed on the employee's file, in accordance with data protection principles.

### **4 Link to pay progression**

- The Governing body must set out clearly in the school's Pay policy how pay progression will be determined
- Governors must consider annually whether to increase the salary of teachers and if so what salary to pay within the relevant pay ranges and in accordance with the school's Pay policy
- Where teachers are eligible for pay progression, the recommendation must be made in writing as part of a teacher's annual appraisal report
- Where there has been continued good performance, as defined in the school's Pay policy, a teacher should expect progression to the top of their pay range
- A decision not to award pay progression may be made whether or not the teacher is subject to formal capability procedures
- Again evidence of schools managing the budget and differentiating appropriately between high and low performers will be important for Ofsted; inspectors will seek evidence that poor performance is being rigorously managed and good performance appropriately recognized through the appraisal and pay processes and of a correlation between the pattern of pay progression and improvements to teaching and learning
- Applications to be paid on Upper pay range can be made by any qualified teacher and such applications should include appraisal results

### **5 Addressing Concerns**

- When a teacher is experiencing difficulties support and guidance will be provided through the appraisal process
- Employees are able to seek advice and support from their trade union representatives at any point and should be encouraged to do so at an early stage

- If it is clear that the teacher's personal circumstances are leading/contributing to the difficulties at work support should be offered as soon as possible
- Where the difficulties are attributable to health reasons, there should be a prompt referral to Occupational Health and any potential medical incapability will be addressed separately, in accordance with the Attendance Management Procedure.
- If an appraiser identifies through the appraisal process that the teacher's difficulties are such that, if not rectified could lead to capability procedures the appraiser/line manager/Head teacher/member of the leadership team will as part of the appraisal process meet the teacher to:
  - give clear written feedback to the teacher about the nature and seriousness of the concerns;
  - give the teacher the opportunity to comment on and discuss the concerns;
  - give the teacher at least five working days' notice that a meeting will be held to discuss targets for improvement alongside a programme of support;
  - in consultation with the teacher at the above meeting, an action plan with support will be established (for example coaching, training, in-class support, mentoring, structured observations, visits to other classes or schools or discussions with advisory teachers, review any barriers or reasons for under-performance), that will help address those specific concerns;
  - make clear how progress will be monitored and when it will be reviewed;
  - Explain the implications and process if no – or insufficient – improvement is made.
- If it has been identified through other sources of information e.g. parental complaint (that is investigated in accordance with any school complaints policy and upheld), that a teacher's difficulties are such that, if not rectified could lead to capability procedures the appraiser/line manager/head teacher/member of the leadership team can exceptionally meet with the teacher outside of the appraisal process, informally to cover the above (mirrors meeting/s of appraisal process detailed above – see Procedure Appendix 1)
- The teacher's progress will continue to be monitored as part of the appraisal process and a reasonable time given for the teacher's performance to improve. This will depend upon the circumstances, but will be for a period of ..... weeks (normally 8), with appropriate support as agreed in the Action Plan, in order that the aim of recovering and improving performance can be achieved.
- If the commencement of monitoring triggers a period of long-term sickness absence, this will be managed in accordance with the school's Attendance Management Policy and a prompt referral will be arranged to Occupational Health. The Appraisal/Capability Procedure will be on hold during any period of sickness absence and phased return to work.
- During the monitoring period the teacher will be given regular feedback on progress and arrangements will be made to modify the support programme if appropriate. A review meeting (or transition meeting – see below) will be held at the end of the monitoring period to confirm whether there has been sufficient progress or not.
- If sufficient progress is made such that the teacher is performing at a level that indicates there is no longer a possibility of capability procedures being invoked the teacher should be informed of this at a review meeting and the appraisal process will continue as normal.

## **6 Transition to Capability**

- If no, or insufficient, improvement has been made over this period, the teacher will be invited to a Transition meeting (instead of a 'Review meeting') with the appraiser or Head teacher to determine whether formal capability proceedings need to be commenced or the appraisal process remains in place.
- The teacher may be assisted by a trade union representative or work colleague and will have at least 5 working days' notice of the meeting. *See guidance on Transition/Formal Capability Meetings at Toolkit Appendix 9*

## **7 Formal Capability Procedure**

- If there has not been sufficient and sustained improvement, despite support provided as set out in the Appraisal Policy or the Informal Capability Procedure, the Formal Capability Procedure should be invoked using a Formal Capability Meeting.

### **Formal Capability Meeting**

- A Formal Capability meeting shall take place to invoke the Formal Capability Procedure and to explain what this entails. The meeting should be between the Head teacher and the employee. The employee can be accompanied by a trade union representative or colleague, but not in the capacity of a practising lawyer and will have at least 5 working days' notice of the meeting. The Head teacher may invite an HR Adviser and L&I Adviser to attend.

At the meeting, the person conducting the meeting will:

- Identify the professional shortcomings;
- Give clear guidance on the improved standard of performance;
- Explain support available to help performance improvement;
- Set out timetable for improvement and how performance will be monitored;
- Be advised that whilst they are subject to the capability procedure, normal appraisal arrangements will be suspended
- Issue formal warning that failure to respond could lead to dismissal. (In serious cases, this could be a final written warning)
- Advise of right of appeal - the employee has a right of appeal against the formal warning. They should make their appeal in writing to the Chair of Governors within 10 working days of receipt of confirmation of the warning.

### **NB: INVESTIGATORY STAGE**

It may be necessary to gather facts prior to the Formal Capability Meeting and in cases of gross incompetence, to conduct an investigation for the Hearing.

#### **Outcomes:**

- Set out action plan, support and timetable for improvement. Issue written warning
- Recommend medical referral (if appropriate) and adjourn the meeting (pending consideration of medical advice)
- Adjourn to gather further information or to allow time to consider any additional information
- Suspend the employee if appropriate. This will normally apply only in cases of gross incompetence, e.g. if the health and safety of pupils and or colleagues is at risk. Advice will be sought from HR prior to any decision to suspend usually (*see guidance on suspension in the Toolkit Appendix 6*).
- Confirm the outcome of the Formal Capability Meeting in writing
- Following the Formal Capability meeting, the decision taken and action agreed should be confirmed to the employee, in writing, within 5 working days of the meeting.
- If further support is agreed, a formal review meeting should be scheduled, within a reasonable timeframe to consider progress, and confirmed to the employee in writing.

### **Formal Review Meeting (1)**

- A Formal Review Meeting shall take place to review progress. The meeting should be between the Head teacher and the employee. The employee can be accompanied by a trade union representative or colleague, but not in the capacity of a practising lawyer and will have at least 5 working days' notice of the meeting. The Head teacher may invite an HR Adviser and L&I Adviser to attend.
- Progress shall be reviewed and one of the following outcomes agreed –
  - If performance has improved to the required standard – no further action under Capability Procedure. Re-start normal appraisal / supervision arrangements.
  - Some progress has been made and there is confidence that more is likely, consider extending the monitoring and review period and re-arrange meeting.

- If no, or insufficient, improvement made during monitoring and review period, the teacher may be given a Final Written Warning and advised of their right of appeal. They should make their appeal in writing to the Chair of Governors within 10 working days of receipt of confirmation of the Final Written warning.

#### Confirm outcome of Formal Review Meeting (1)

- A letter must be issued within 5 working days setting out the outcome of the formal review meeting. Where a Final Written Warning is issued, the member of staff to be advised, in writing, that failure to achieve acceptable standard of performance (within the set timescale) may result in dismissal. Advise timescale and standard of improvement. Where further time allowed for improvement, advise of timescale (which should be reasonable) and standard required. The employee should be advised of their right of appeal in writing.

#### **Formal Review Meeting (2)**

- This meeting will take place to review the progress of a teacher who has been given a Final Written Warning. The meeting will take place at the end of the timescale set at the Formal Review Meeting.
- The meeting shall be between the Head teacher and the employee. The employee can be accompanied by a trade union representative or colleague, but not a practising lawyer and will have at least 5 working days' notice of the meeting. The Head teacher may invite an HR Adviser and L&I Adviser to attend.

Progress shall be reviewed and one of the following outcomes agreed:

- If performance has improved to required standards – no further action under the Capability Procedure. Re-start normal appraisal / supervision arrangements.
- Some progress has been made and where there is confidence that more is likely, consider extending the monitoring and review period and re-arrange meeting.
- If no, or insufficient, improvement has been made a Formal Capability Hearing should be arranged and the teacher advised that this hearing will decide whether or not they will be dismissed.

#### Confirm outcome of Formal Review Meeting (2)

- A letter must be issued within 5 working days setting out the outcome of the meeting. Where a decision is made to proceed to a formal capability hearing the employee will be advised of this and told that a formal letter will be issued setting out the specific allegations to be considered at the hearing and the date, time and place of the hearing, giving at least 10 working days' notice, and of their right of representation.

#### **Formal Capability Hearing**

- The Head teacher (or their delegated representative) shall advise the employee in writing of specific allegations to be considered at the hearing and list the possible outcomes, giving at least 10 working days written notice of the date, time and place of the hearing. (*See model letter in the Toolkit Appendix 25.*)
- The employee should also be advised that:
  - The case will be heard by a panel of 3 Governors\*, chaired by the nominated school Governor, advised by an HR Adviser.
  - The employee can be accompanied by a trade union representative or colleague but not a practising lawyer.
  - The Head teacher (or their delegated representative) will be asked to present their case, call witnesses (where required) and give evidence.
  - The employee (or their representative) will be asked to present their case, call witnesses (where required) and give evidence.

\*Usually a panel of three governors but for each school to determine

- Both parties shall provide any papers / evidence they may refer to at the Formal Capability Hearing, at least 5 working days before the hearing is due to take place, for circulation to the Panel.

#### Decision of the Formal Capability Hearing

- The outcome / decision may be any of the following:



- Recommend a medical referral (if appropriate) and adjourn the hearing (pending consideration of the medical advice) (see guidance on medical incapability).
  - Recommend additional training or support and / or set targets for improvement with timescales and adjourn the hearing.
  - Issue a further final written warning.
  - Offer alternative employment if appropriate / viable as an agreed outcome or as an alternative to dismissal, subject to a trial period
  - Dismiss (NB: An employee SHALL NOT be dismissed prior to being issued a final written warning, except in cases of gross incompetence)
- (Insert for Foundation and Voluntary Aided Schools and Academies) this letter shall be issued by the Governing Body, within 10 working days of the decision being taken. (Insert for Community and Voluntary Controlled schools) This letter shall be issued by the Local Authority within 10 working days of the decision being taken.
- Dismissal will be with notice.
  - The employee will have a right of appeal against the outcome of the hearing.
  - The outcome will normally be announced at the end of the hearing (or, if not possible, by the end of the next working day) and communicated in writing to the employee no more than 5 working days after the date of the hearing. (See model letters in the Toolkit Appendix 26 a/b/c) The employee shall be advised of their right of appeal.

### **Appeal Hearing**

- The employee has a right of appeal against the decision of a Formal Capability Hearing. They should make their appeal in writing to the Chair of Governors within 10 working days of receipt of confirmation of the outcome of the hearing.
- Where the employee appeals on the grounds that there was a procedural error or omission during any stage of the Capability procedure, normally the appeal panel will determine, as a preliminary question whether a full new hearing should take place on a date to be arranged.
- The Chair of Governors shall convene and advise the employee in writing of the arrangements for an appeal hearing, giving 10 working days written notice of the date, time and place of the hearing and their right of representation.
- The Appellant will submit an outline statement of their case, in writing, 5 working days before the date of the hearing for circulation to all parties. The employee, Chair of the original hearing and Head teacher will (and HR Adviser may) be in attendance at the Appeal Hearing. The employee will have the right to be accompanied by a Trade Union representative / work colleague.
- At the Appeal Hearing, a panel chaired by a nominated school governor will consider the decision of the Panel that originally heard the case, against the employee's appeal. The Appeal Panel should comprise governors who have no prior knowledge of the case. The Appeal Panel may be advised by an HR Adviser
- The Panel may allow the appeal, dismiss the appeal or impose an alternative remedy.
- Employee and/or his/her representative shall present their case for appeal. The procedure to be followed shall be the same as a Capability Hearing, however the employee will present their appeal case first. The Chair of the original Capability hearing will respond and outline a summary of the reason for their decision. All parties will have the right to ask questions. Both parties will summarise their case, ending with the employee's summary, and all parties will then withdraw leaving the Panel to consider the matter in consultation with the HR Adviser, if present. The employee will be notified of the outcome of the appeal. *See guidance at Toolkit Appendix 11.*
- The outcome of the appeal will be communicated in writing to the employee no more than 5 working days after the date of the hearing. *See model letter at Toolkit Appendix 28.*

## **Appendix 1 CAPABILITY PROCEDURE – Informal Stage\***

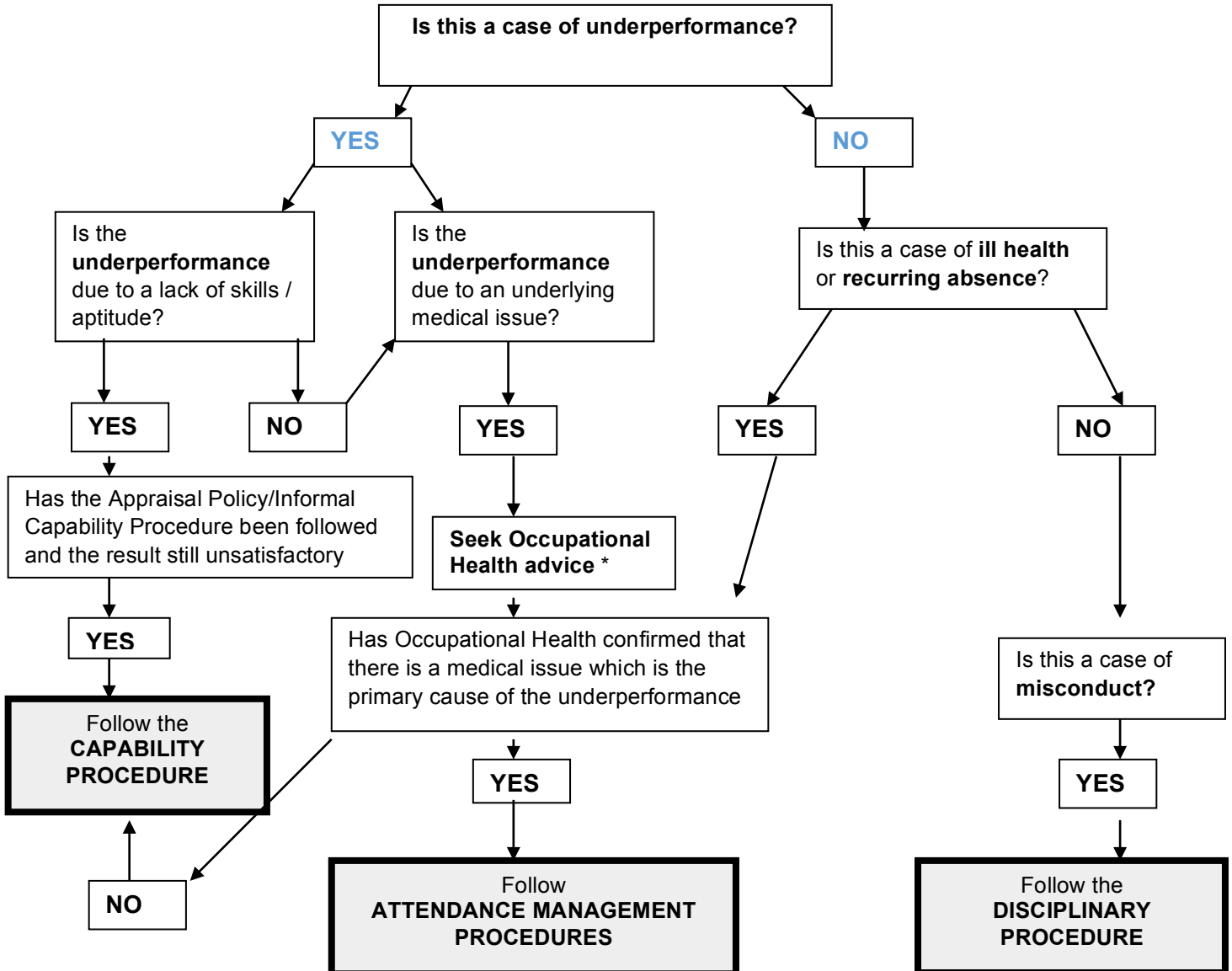
### **\*For use in exceptional circumstances where issues cannot be picked up through the Appraisal process**

1. Where Head teachers or managers have identified that there are performance issues with a member of staff it is important that efforts are made to resolve such issues informally first, without recourse to the formal procedure.
2. The Capability Procedure is designed to achieve an improvement rather than to exact a penalty and the informal stage is an important stage in helping an employee to achieve that improvement by means of a structured process.
3. If issues have been raised via the appraisal process, then the Appraisal Procedure states that a period of support must be provided to that employee before starting the formal stage of the Capability Procedure.
4. If performance issues have been identified by another route then the informal stage must be followed before commencing the formal stage of the Capability Procedure.
5. It is the responsibility of the school to ensure that the informal stage has been completed, either through the appraisal process or through the informal process set out here, prior to the commencement of the formal stage, except in cases of gross incompetence where the formal stage should be commenced immediately.
6. Where Head teachers or managers identify concerns about a teacher's performance, it may be sufficient to bring these to the teacher's attention so that the teacher can take corrective action to improve performance. However, where under-performance continues, an informal discussion should be held with the employee. The Head teacher or manager should explore possible causes of the underperformance and provide training and support where needed.
7. If the employee identifies other issues that are impacting on performance such as medical or personal issues then these should be explored sympathetically and taken into account when agreeing the next steps. A referral to Occupational Health may need to be considered, for example.
8. Support to the employee can include the following depending on the areas which are causing concern:
  - Training/support on particular areas of the curriculum
  - Assistance with assessment and its use to inform planning
  - Lesson observations and feedback (note that excessive lesson observations can be counterproductive so should be used appropriately)
  - Assistance with lesson planning
  - Regular meetings with manager/Head teacher
  - Team teaching
  - Advice on behaviour management
  - Peer observations(This list is not exhaustive.)
9. Following the meeting, there should be a clear action plan on how the teacher will be supported to improve their performance with timescales. Employees should be advised that advice and support is available from their Trade Union.

## Appendix 2

### Application of the Capability Procedure

This procedure is specifically used to deal with cases of employee underperformance (previously referred to as competence). This procedure should be applied when there is a need to deal formally, with an issue of underperformance. The flow chart below clarifies the appropriate procedures to follow when managing certain employment relations issues.



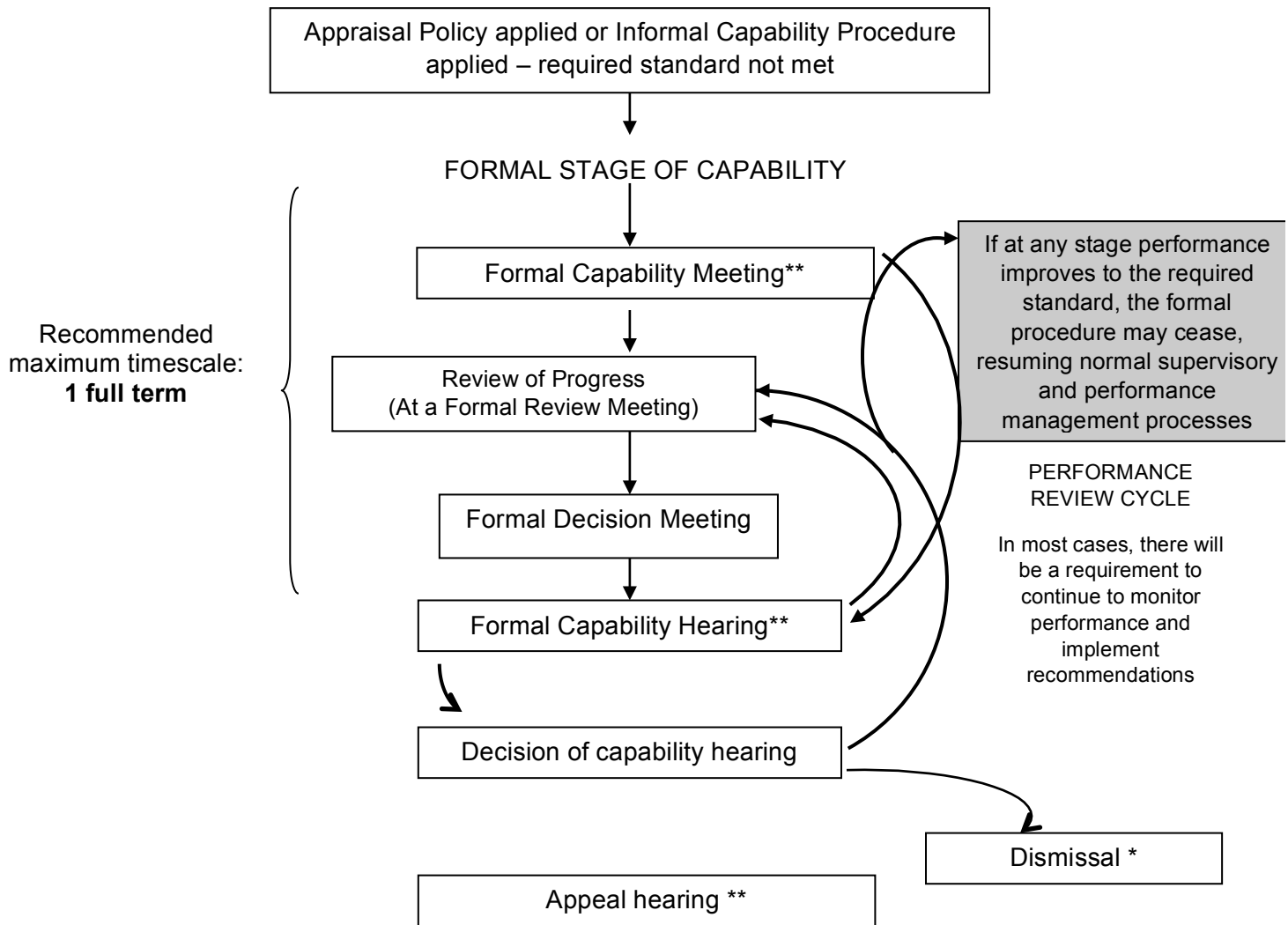
\*In cases of stress, it may be deemed more appropriate to refer to the school's **Stress Management Procedure**.

#### **NB: Urgent action is required if sickness absence intervenes during the capability procedure.**

If **long term absence** appears to have been triggered by the commencement the capability procedure, the case should be referred to Occupational Health to assess the employee's health and fitness for continuation with the procedure and/or employment. Occupational Health should be asked for guidance on the condition, likely prognosis and timescale for a return to work. The case shall then proceed in accordance with the resultant advice and the appropriate procedure followed thereafter.

**Short term absences** should not normally delay any part of the formal stage of the capability procedure. **In all cases, please seek advice from your HR Officer.**

**Summary Flowchart of Capability Procedure and timescales**



\* Dismissal may arise following the exhaustion of reasonable avenues provided by the capability procedure.

\*\* The employee has a right of appeal against the decision(s) made during the formal capability procedure which result in formal warnings or dismissal. If the employee wishes to exercise this right then arrangements shall be made accordingly.

**NB:** The timescales provided for in this procedure are upper limits, which may be shortened if appropriate e.g. where it is clear that an acceptable level of improvement is beyond the ability of the employee, or where there is a lack of co-operation by the employee. In exceptional cases where the education of the children is in jeopardy e.g. a teacher’s classroom control is so poor that no order can be established to enable teaching to take place, an accelerated, short procedure may be appropriate.