

# **NATIONAL JOINT COUNCIL FOR STAFF IN SIXTH FORM COLLEGES**

## **CAPABILITY**

### **1. Introduction**

- 1.2 The purpose of this procedure is to seek to ensure that employees are assisted to achieve standards of performance. The procedure is endorsed by the National Joint Council for Staff in Sixth Form Colleges for colleges' consideration in order to ensure that their own procedures meet the minimum standards of good practice set out in this procedure. Sixth Form Colleges are committed to the avoidance of formal capability procedures wherever possible by addressing concerns as soon as they arise. At all stages of this procedure, expectations with regard to improvement in performance should be clearly set out and communicated to the employee concerned, together with an agreed timetable of meetings for further review of the employee's performance.
- 1.3 Sixth Form Colleges recognise that the majority of employees meet or exceed the demands of their roles. In circumstances where performance is identified as not meeting the required standard, this procedure provides guidance on how to deal with capability in a consistent, fair and supportive way.

Capability refers to an employee's ability to carry out their role to the required standard. There is a requirement for the employee to achieve professional objectives as set out to them in their job description and normal management targets. A lack of ability to do this may include,

- Inability to cope with reasonable workload
- Inability to work to identified and agreed targets

### **2. Statutory Guidance**

- 2.1 Guidance from the ACAS Code of Practice, (Disciplinary & Grievance) has been taken into consideration in drafting this procedure.

### **3. Exclusions**

- 3.1 Separate procedures will apply to staff serving a probationary period. If an employee begins a period of long-term sickness absence whilst being considered under the capability procedure, the employee will also be considered under the relevant sickness absence procedure. Sickness absence will not preclude any stages under the capability procedure, but consideration should be given to temporarily suspend the procedure during the period of sickness absence.
- 3.2 Matters relating to conduct should be dealt with under a separate disciplinary procedure.

#### **4. Management Responsibilities**

4.1 An employee's manager has a responsibility to;

- Communicate objectives clearly and to the expected standard required.
- Address issues of unsatisfactory performance as soon as they arise
- Provide feedback on a regular basis, both formal and informal.
- Provide guidance, encouragement and support
- Apply this procedure with discretion, consistency and equality of opportunity.

#### **5. Employees Responsibility**

5.1 An employee has a responsibility to;

- Perform their contractual duties to the required standard.
- Alert their line manager to any work related problems and changes of personal circumstances which may affect their work performance.

#### **6. Informal Procedure**

6.1 It is the responsibility in the first instance of the immediate line manager to offer suitable help and advice to employees where alleged incompetence such as a lack of skill, aptitude and/or ability or unsatisfactory performance is identified. The nature of the alleged shortcoming will determine the nature of the support to be provided. The support will include agreed action and one or more of the following:

- (i) counselling;
- (ii) a review of commitments and responsibilities,
- (ii) availability of suitable materials and resources
- (iv) availability of training;
- (v) opportunities to see good practice within the college or other appropriate establishments.

6.2 The informal procedure can be dealt with in a regular review or keeping in touch meeting, where it may be normal practice to take notes of the meeting. The manager will inform the employee that support is being offered to enable performance to be raised to the required standard. Support should be arranged by mutual agreement with the employee fully contributing to the discussion. The manager should also make clear to the employee that initial support is being offered to improve performance and to avoid being considered on the formal capability procedure. The manager will agree with the employee, a suitable period of time for an agreed action plan with clear targets to be met. A meeting will be arranged by the manager to review the action plan and set targets.

#### **7. Stage One, First Formal Meeting - Capability**

7.1 If after help and support under the informal stage, the employee's performance is still deemed to be unsatisfactory; the immediate manager

in liaison with HR and /or a member of the senior leadership team, will notify the employee in writing that performance is still unsatisfactory. The employee will be given 5 working days' notice that they will be required to attend a meeting under the formal stage one of the capability procedure. The employee will be entitled to bring to the meeting, a work colleague, or trade union representative.

7.2 The meeting will be chaired by a manager (expected to be from the senior leadership team). The employee will be reminded of the earlier informal discussions and the steps taken to support an improvement in their performance. They will be told as precisely as possible, the reasons for the manager's continued concerns about their performance. An opportunity will be provided at the meeting to explore the causes of unsatisfactory performance. The employee will have the opportunity to explain their unsatisfactory performance and to make any representation, which may include;

- new information,
- provide a different context to the information/ evidence already made available.

7.3 If, after careful consideration of the employee's explanation, concerns still exist, a first written warning will be issued to the employee for unsatisfactory performance. This will be issued to the employee in writing within 7 calendar days after the meeting. The letter will remain on the employees file for a period of 12 months and provide details of the unsatisfactory performance and expected improvements.

7.4 Further consideration should be given to any additional training or support that could reasonably be provided to the member of staff to enable them to reach the required standard of performance. The employee will be informed of the specific support that will be available to help them improve their performance. Support will include a timetable for improvement. It will also be made clear to the employee how performance will continue to be monitored and reviewed. The timetable should be reasonable and proportionate and set in order to achieve resolution of the issue(s). It should provide sufficient opportunity for an improvement to take place but not be excessively long. The length of the review period will depend on the circumstances of the individual case but, in cases where professional support is being provided, there should be no less than four weeks and up to thirteen weeks before the further review meeting.

7.5 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.

7.6 If, after the reasonable time period agreed at the formal stage one meeting, performance has improved and set targets are met, the employee will be informed that they are no longer being considered under the formal capability policy.

## **8 Stage Two - Formal Review Meeting**

8.1 If there has been insufficient improvement in performance within the timescale following the first written warning, a further formal review

meeting will be held with the employee.

- 8.2 The employee will be given 5 working days' notice that they will be required to attend a meeting under stage two of the capability procedure. The employee will be entitled to bring a work colleague or trade union representative.
- 8.3 At this meeting, previously set targets will be reviewed, the appropriate manager (senior leadership team) will review the history of the case, including the steps that have been taken to support the individual to achieve the required level of performance. If, having heard the explanation offered by the employee, concerns still exist, a final written warning will be issued for unsatisfactory performance. This will be confirmed in writing within 7 calendar days after the meeting. The warning will remain on the employees file for a period of 18 months and provide details of the unsatisfactory performance and expected improvements. The procedure in 7.4 above will again be followed. A review period will be set within which improvement is expected and a further meeting arranged at the end of this time to review the situation.
- 8.4 The member of staff will be informed that their job will be at risk if satisfactory performance levels cannot be achieved and subsequently maintained.

## **9 Stage Three – Decision Hearing (Capability)**

- 9.1 If there has been insufficient improvement in performance within the timescale following the final written warning, the employee will be invited to a meeting to inform them of the next stage of the capability procedure. The purpose of this meeting is to verbally clarify the next stage of the procedure with the employee and to allow them the opportunity to ask any questions about the next stage. The employee will be entitled to bring to the meeting a work colleague or trade union representative to the meeting. At the meeting, the employee will be informed that they will be required to attend a decision hearing. 14 calendar days' written notice will be given prior to the hearing taking place. The employee will be informed that the purpose of the hearing is to consider their on-going unsatisfactory performance and to consider whether a sanction should be applied under stage three of the capability procedure.
- 9.2 Sanctions applied as a result of failing to meet satisfactory standards under the capability procedure can include; redeployment, downgrading or dismissal.
- 9.3 A decision hearing will be held where there has not been (or it is clear that there will not be) any evidence of improvement. The Principal or designated alternative, (to whom the authority to apply a sanction under capability proceedings has been delegated by the Principal) will chair the hearing.
- 9.4 A decision will then be taken at the hearing to either apply a sanction on the grounds of capability or to provide the employee with a period of

extension to allow further time for improvement and maintenance of any improvement. The order to follow at the hearing is set out in Appendix 1.

- 9.5 The option of allowing further time for improvement may only be considered if there is persuasive evidence presented that further time is likely to lead to the required improvement in performance.
- 9.6 The decision at the hearing will be confirmed in writing to the employee as soon as possible but no later than seven calendar days.
- 9.7 If the decision has been made to dismiss the employee, the dismissal letter will confirm the reason for dismissal and the date at which the employment terminates.

## 10. **Appeals and grievances**

- 10.1 Employees are entitled to appeal against any formal sanction taken under the capability procedure by using the order of hearing below (Appendix 1).
- 10.2 Where an employee raises a grievance during the capability procedure relating to the capability procedure, consideration may be given to suspend the procedure in order to expedite the concerns raised. The capability procedure will however, continue or resume if the employee seeks unreasonably to delay the consideration of the grievance. Where the grievance and capability cases are unrelated, it may be appropriate to deal with both issues concurrently. The appeal hearing cannot be a re-run of the original formal meetings or consider any new evidence but may address points which the member of staff considers were not properly considered at the original meetings

## APPENDIX 1 DECISION HEARING - CAPABILITY

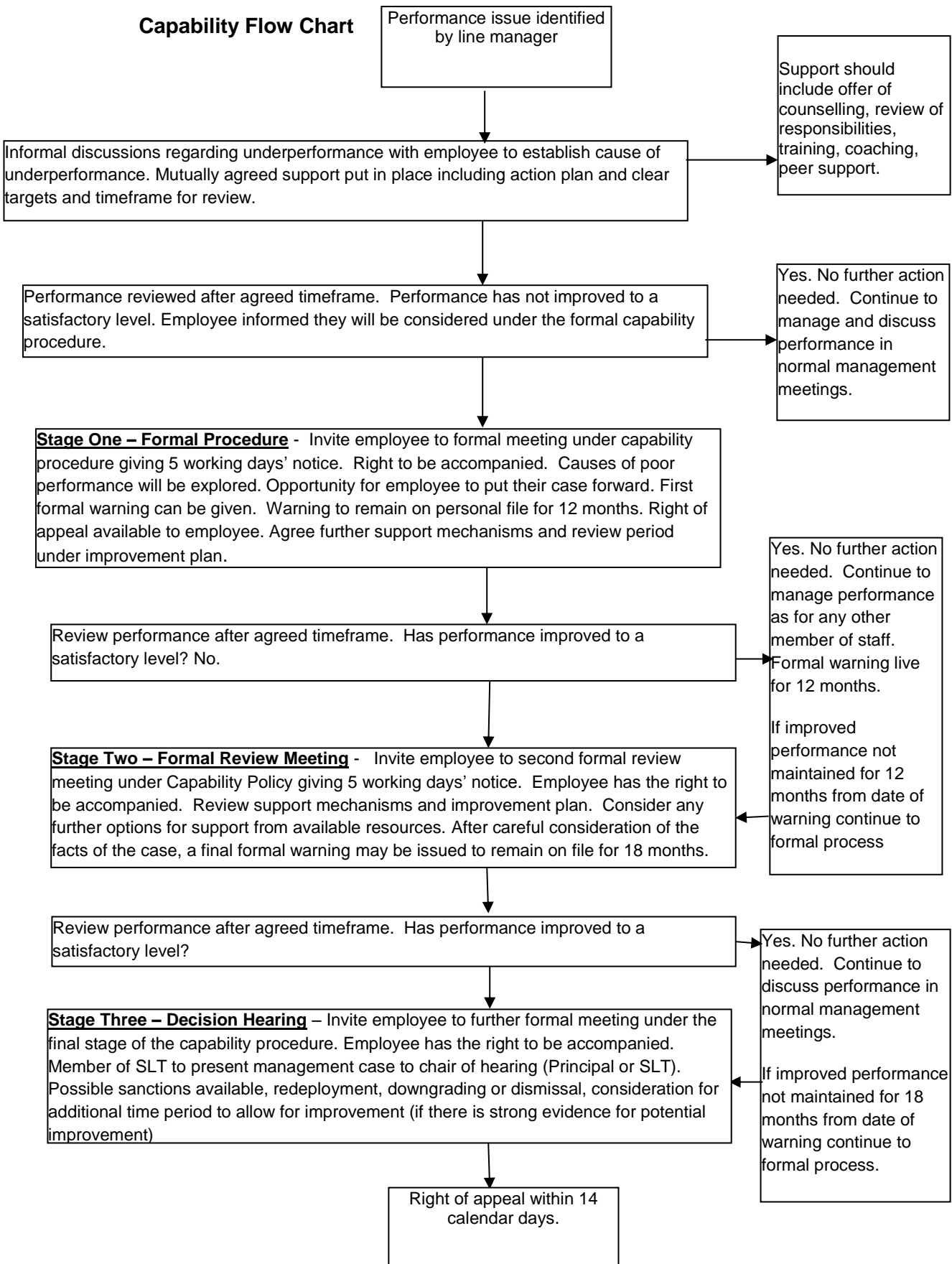
### Order of Decision Hearing - Capability

- 1 The chair/ panel of the hearing can have an appropriate hr / note taker /other advisor present at the hearing.
- 2 The chair will introduce all parties present and confirm the order of hearing.
- 3 The management case will be put forward by an appropriate manager (expected to be from the from senior leadership team, designated alternative by the Principal) who will outline the management case
- 4 The manager will call any witnesses (if appropriate)
- 5 The employee has the opportunity to ask questions of the manager and any witnesses.
- 6 The chair /panel to ask questions of the manager and witnesses.
- 7 The managers' witnesses to withdraw from proceedings, (*if applicable*)
- 8 Employee to state their case (a statement may also be read by the employee's representative)
- 9 The employee will call any witnesses (if appropriate)
- 10 The manager can ask questions of the employees' witness (s)
- 11 The Chair / panel can ask questions of the employees' witness (*All witnesses should leave the hearing at this stage*).
- 12 The manager will summarise the case
- 13 The employee or their representative will summarise their case
- 14 The chair /committee may ask for an adjournment for deliberation.
- 15 If after a short period of deliberation, the chair/ panel are in agreement that a decision cannot be reached within a reasonable period of time immediately after the hearing, the employee will be informed and the decision will then be communicated in writing within a 7 day calendar period.

An adjournment may be called at any time by the chair/panel for the purposes of enabling further information/clarification to be obtained. The adjournment will be for a stated period.

\*If the employees chosen companion is unable to attend the date of any formal meeting, the meeting can be rescheduled once.

## Capability Flow Chart





## **National Joint Council for Staff in Sixth Form Colleges**

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**Sixth Form Colleges' Association  
National Union of Teachers  
National Association of Schoolmasters  
Union of Women Teachers  
Association of Teachers and Lecturers  
UNISON**