

Launceston College

A Multi Academy Trust

Capability Policy

Adopted on	5 July 2021
Reviewed by	HR Manager
Status	Ratified
Review period	Annually
Review date	July 2022

Introduction

For anyone reading this document with whom a capabilities procedure is about to start, it is recommended that they are to contact their professional association representative if they are a member of an association such as a trade union.

This document is for teaching and support staff and draws together previous Capability Policies from two local authorities, Devon and Cornwall without an intention to be detrimental to previous terms and conditions.

Capability Process

- 1st Formal Capability meeting
- Monitoring and Review period
- Formal review meeting
- 2nd Formal Capability meeting
- Monitoring and Review period
- Trust Board's Decision meeting
- Decision to Dismiss
- Dismissal
- Appeal

General principles underlying the policy

This policy applies to members of staff (including the CEO/Principals) where there are serious concerns regarding their performance that the performance management process has been unable to address.

Where performance is unsatisfactory and has not improved through the informal process the individual will be informed in writing that their performance is unsatisfactory and will be managed under the Formal Capability process. A formal capability meeting will be convened to review the identified ongoing performance concerns and determine what action should be taken. The employee will be informed of the possible outcomes of this meeting, which may include the issuing of a formal warning in respect of the employee's future capability.

Purpose

This policy sets out the framework for a clear and consistent capability performance of all members of staff, including the CEO/Principals, and for supporting their development within the context of the Trust's plan for improving educational provision and performance, and the standards expected of all staff. It sets out the arrangements that will apply to staff that fall below the levels of competence that are expected of them.

1. Application of the policy

The Capability Policy must be applied to the CEO, Principals and to all staff employed by the Trust.

2. Stage One – First Formal Capability meeting

At least five working days' notice will be given of the formal capability meeting. The notification will contain sufficient information regarding the concerns about performance and the possible consequences or outcomes of the meeting. This will ensure the employee is able to prepare their response to the case at a formal capability meeting. It will also contain copies of any written evidence; the details of the time and place of the meeting; and will advise the member of staff of their right to be accompanied by a companion who may be a workplace colleague or a trade union official. The Principal or other senior colleagues may arrange for an HR officer to accompany them at the meeting. Arrangements may also be made for a note taker to attend to record the meeting.

3. Formal capability meeting

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

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

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

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

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

In other cases, the person conducting the meeting will:

- identify the professional shortcomings of the member of staff, (for example which of the standards expected of teachers are not being met or where support staff performance falls below that expected);

- give clear guidance on the improved standard of performance needed to ensure that the member of staff can be removed from formal capability procedures (this may include the setting of new objectives focused on the specific weaknesses that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made);
- explain any support that will be available to help the person improve their performance; examples of support include the appointment of a mentor, observing best practice in school or at an alternative school, additional training courses etc. Support should be tailored to meet the needs of the individual.
- If appropriate, set out what monitoring will take place, e.g. if, for a teacher, lesson observations will be undertaken and by whom, and if, for instance, a 3rd party will be called upon to provide an external advisor's view of the person. The number, purpose and timings of the observations should also be discussed.
- set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case but in most cases should be **between four and ten weeks**. It is for the Trust to determine the set period. It should be reasonable and proportionate to the degree of the unsatisfactory performance, but not excessively long whilst providing sufficient opportunity for an improvement to take place; and
- warn the person that failure to improve within the set period could lead to dismissal. A **formal written warning** may be issued detailing the issues, support measures, actions to be arranged and timescales. In very serious cases, this warning could be a final written warning.

A Capability Action Plan should be agreed and forwarded to the member of staff who is subject to this procedure.

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

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

4. Ofsted Subsidiary Guidance for teaching members of staff.

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

5. Monitoring and review period following a formal capability meeting

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

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

6. Formal Capability Review meeting

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

As with the first formal capability meeting, the Principal/Manager may arrange for an HR Advisor to accompany them at the meeting. Arrangements may also be made for a note taker to attend to record the meeting.

At the meeting, the employee will have the opportunity to respond to the ongoing concerns about their performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected, as may be relevant to their case.

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

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

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

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

If it is concluded that there has been insufficient or no improvement and the employee's performance continues to be a concern, the employee may be issued with a final written warning and Stage 2 of the Capability Procedure will be invoked. As before, a copy of the notes of the formal review meeting will be provided to the member of staff.

7. Stage Two

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

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

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

8. Monitoring and Review

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

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

9. Trust Board's Decision meeting

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

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

The Trust Board will convene a panel of two directors and will be chaired by the CEO, (or the Chair of the Trust Board if the CEO is the subject of the meeting), as the Directors' Decision Meeting. The Principal/Line Manager (as appropriate) will be required to attend the meeting to present the background to the case, including all the relevant information relating to the management of the capability process. The meeting should be formally minuted by the Clerk to the Trust Board.

As with the previous formal meetings convened under this Procedure, the Principal/Manager may arrange for an HR Officer to accompany them at the meeting, and may also arrange for the Panel of Directors to be advised by an HR Officer who has no prior involvement in the case.

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

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

The Trust Board will then adjourn to reach a decision. The Board may wish to take appropriate legal or HR advice before the decision to dismiss is made.

Wherever possible the Panel of Directors will re-convene the meeting to announce the decision to all parties after the adjournment. If the Panel's deliberations are likely to take a considerable period of time, as an alternative it may be sensible for the parties to be allowed to leave and the decision confirmed in writing. The decision will be confirmed in writing within 5 working days.

10. Decision to dismiss

The power to dismiss staff in this Trust rests with members of the Trust Board.

11. Dismissal

If the decision to dismiss has been taken, the CEO/Trust Board/ will dismiss the person with notice. Where the dismissed employee is a teacher, the notice issued will be in accordance with the notice terms of the School Teachers' Pay and Conditions Document. Where the dismissed employee is not a teacher, the notice issued will be in accordance with the notice terms of their contract of employment.

12. Appeal

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

The same arrangements for notification and right to be accompanied by a companion will apply as with formal capability and review meetings and, as with other formal meetings, notes will be taken and a copy sent to the member of staff.

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

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

General Principles underlying these policies

ACAS Code of Practice on Disciplinary and Grievance Procedures

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

Confidentiality

The appraisal and capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the CEO, Principal and Trust Board to quality-assure the operation and effectiveness of the appraisal system.

Consistency of Treatment and Fairness

The Trust Board 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 Principal or CEO.

Delegation

Normal rules apply in respect of the delegation of functions by Trust Boards, CEO and Principals.

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. However 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 and will be referred immediately to the occupational health service to assess the member of staff’s health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures. In some cases, and after seeking advice from OH, it may be appropriate for formal procedures to continue during a period of sickness absence, however performance monitoring can only be undertaken when the employee is fit to return to work.

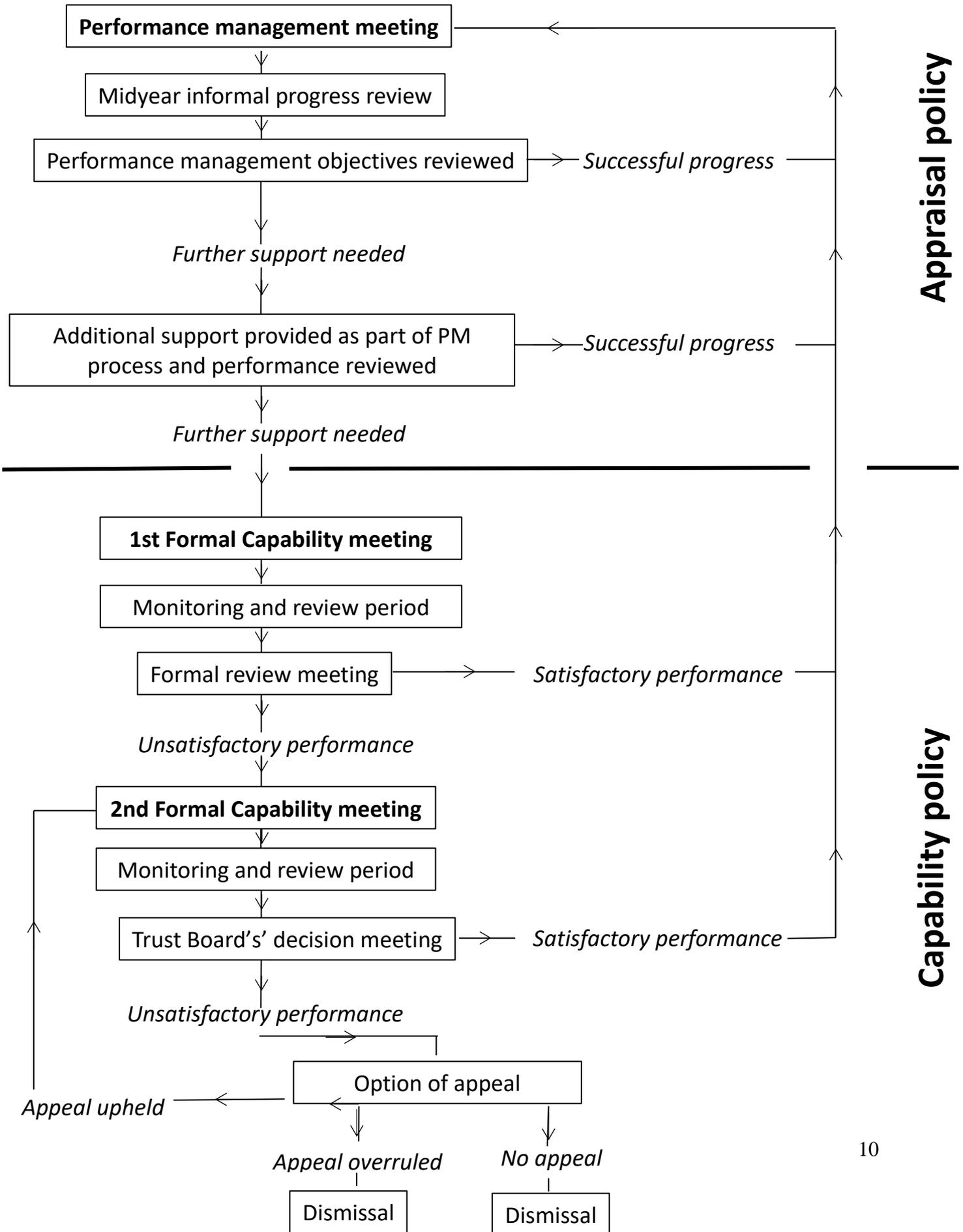
Monitoring and Evaluation

The Trust Board and CEO will monitor the operation and effectiveness of the school’s appraisal and capability arrangements.

Retention

The Trust Board and CEO will ensure that all written performance management records are retained in a secure place for six years and then destroyed.

Flow chart for Appraisal and Capability Policies



Appendices

- Formal interview App 1
- Formal written warning App 2
- Evaluation Meeting App 3
- Final written warning App 4
- Dismissal hearing App 5
- Dismissal App 6
- Procedure for Appeal hearings App 7

FORMAL INTERVIEW

Mr A Anybody
Any Street
Any Town

Your ref:
My ref:
Ext:
Date:

STRICTLY PERSONAL AND CONFIDENTIAL

Dear Mr Anybody

Formal Interview

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

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

(insert details)

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

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

Please be advised that this letter constitutes notification that the Trust's Capability Procedure is being formally invoked.

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

Yours sincerely

Principal

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FORMAL WRITTEN WARNING

Mr A Anybody
Any Street
Any Town

Your ref:
My ref:
Ext:
Date:

STRICTLY PERSONAL AND CONFIDENTIAL

Dear Mr Anybody

Formal Written Warning

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

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

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

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

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

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

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

Yours sincerely

Principal

Copy to: Trade Union Representative (if applicable)

EVALUATION MEETING

Mr A Anybody
Any Street
Any Town

Your ref:
My ref:
Ext:
Date:

STRICTLY PERSONAL AND CONFIDENTIAL

Dear Mr Anybody

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

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

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

(insert details)

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

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

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

Yours sincerely

Principal

Enc

Copy to: Trade Union Representative

FINAL WRITTEN WARNING

Mr A Anybody
Any Street
Any Town

Your ref:
My ref:
Ext:
Date:

STRICTLY PERSONAL AND CONFIDENTIAL

Dear Mr Anybody

Final Written Warning

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

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

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

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

A review meeting will be held on (date) .

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

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

Yours sincerely

Principal

Copy to: Trade Union Representative

TRUST BOARD DECISION MEETING - POTENTIAL DISMISSAL

RECORDED DELIVERY

Mr A Anybody
Any Street
Any Town

Your ref:
My ref:
Ext:
Date:

STRICTLY PERSONAL AND CONFIDENTIAL

Dear Mr Anybody

I write to call you to a meeting with the Trust Board, to be held on (insert date) at (insert time) at (insert venue).

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

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

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

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

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

Yours sincerely

Principal

Copy to: Trade Union Representative

DISMISSAL

RECORDED DELIVERY

Mr A Anybody
Any Street
Any Town

Your ref:
My ref:
Ext:
Date:

STRICTLY PERSONAL AND CONFIDENTIAL

Dear Mr Anybody

I refer to the Trust Board Decision meeting which took place on (insert date of interview) in accordance with the Trust's Capability Procedure. At that meeting (insert names of people in attendance) were in attendance.

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

On behalf of the Board, I have to inform you that having given careful consideration to this matter, they have taken the decision that you be dismissed, subject to appeal, from the service of the Trust for (insert reason).

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

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

Yours sincerely

CEO or Chair of Trust Board Decision Meeting

Copy to: Trade Union Representative

Procedure for Appeal Hearing Against Written Warnings and Dismissal

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

The CEO/Principal/Chair and the appellant and his/her representative will now withdraw

9. The Appeal Committee will deliberate in private, only recalling the CEO/Principal/Chair and the appellant to clear points of uncertainty on evidence already given. If recall is necessary both parties are to return.
10. The Appeal Committee will announce the decision to the parties and this decision is final.