

Capability Toolkit

Owner	Employee Relations
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1.0 Letter to invite employee to First Capability Meeting

Type the date here

Strictly Private and Confidential

Name

Address line one

Address line two

Address line three

Postcode

First capability meeting

Dear

Following the conclusion of the informal support plan as part of the appraisal process, I am now asking you to attend a first capability meeting under the School's Capability Procedure.

A copy of the procedure is enclosed. You will see that the purpose of the first meeting is:

- (a) to define the aspects of your role which you have not met and the effect of this on pupils and the provision of education in school;
- (b) to invite you and/or your representative to comment and/or offer an explanation for the alleged shortfalls in your performance;
- (c) for me to decide, having regard to (a) and (b) above, whether the concern(s) remain; and if no concern remains, to confirm in writing that no further action will be taken.
- (d) if concerns remain, for me to inform you of them and decide on an appropriate employee support plan. This may include reasonable targets being set, a range of through, suitable support, being agreed. You will also be told how long the monitoring will last and how it shall be monitored and evaluated.
- (e) where (d) applies, to arrange for the employee support plan to be reviewed in a second capability meeting, to be held 7 [or 8] working weeks after the first meeting, and set the date and time for that meeting in discussion with you and your representative.

Also enclosed is a copy of your appraisal report and the evidence on which it was based and/or details of informal support provided.

The meeting will be held on [date] at [time] in [venue].

You have the right to be accompanied at this meeting by a workplace colleague or a trade union representative of your choice provided you request to do so beforehand. Please therefore let me have this request (orally or in writing) before the day of the meeting. An additional copy of this letter is enclosed for you to pass to your representative. If the date or time is not

convenient for your representative I should be grateful if you could ask them to contact me to discuss an alternative date or time.

I will be accompanied by [Name], who will take a note of the meeting. **[A member of the Employee Relations team will also be present-this is optional but may be useful in contentious/complex cases]**

I would like to make you aware that you can access the Employee Assistance Programme through **[insert employee assistance programme contact details]**.

Yours sincerely

Headteacher/Principal

Encs: Capability procedure, appraisal report and evidence

2.0 Letter to confirm outcome of First Capability Meeting

Type the date here

Strictly Private and Confidential

Name

Address line one

Address line two

Address line three

Postcode

Outcome of first capability meeting

Dear

Following our meeting on [date] I attach the notes of that meeting, which include details of all the action to be taken.

[Either]For teachers: I confirm that you now meet the required standards, so the School's Capability Procedure is terminated, and your future performance will continue to be assessed during the appraisal process. I am arranging for the appraisal process to re-start for you.

For support staff: I confirm that you are now performing your role to the required standards, so the School's Capability Procedure is terminated, and your future performance will continue to be assessed during the appraisal process. I am arranging for the appraisal process to re-start for you.

[or]For teachers: Add extra information on action taken since the meeting – for example, I undertook at that meeting to arrange for you to observe other teachers and have now spoken to A and/or B, who will discuss the arrangements for observation with you.] I agreed with you and your representative to hold the second capability meeting, when we will review your progress, on [date] at [time] in [venue].

For support staff: [Add extra information on action taken since the meeting – for example, I undertook at that meeting to arrange for you to have a mentor and/or to attend some training on X] I agreed with you and your representative to hold the second capability meeting, when we will review your progress, on [date] at [time] in [venue].

I would like to make you aware that you can access the Employee Assistance Programme through [insert employee assistance programme contact details].

Yours sincerely

Headteacher/Principal

3.0 Letter to Invite employee to Second Capability meeting

Type the date here

Strictly Private and Confidential

Name

Address line one

Address line two

Address line three

Postcode

Second capability meeting

Dear

As agreed at our meeting on **[date of first capability meeting]** the second capability meeting to be held with you in accordance with the School's Capability Procedure will take place on **[date]** at **[time]** in **[venue]**.

I enclose the evidence which has been collected for discussion at the second capability meeting.

As on the previous occasion you have the right to be accompanied at this meeting by a workplace colleague or a trade union representative of your choice.

Please could you confirm with me that your representative is still available to attend the meeting.

I will be accompanied by **[Name]**, who will take a note of the meeting. **[A member of the Employee relations team will also be present-this is optional but may be useful in contentious/complex cases]**

I would like to make you aware that you can access the Employee Assistance Programme through **[insert employee assistance programme contact details]**.

Yours sincerely

Headteacher/ Principal

Encs: supporting evidence

4.0 Letter to confirm outcome of Second Capability Meeting

Type the date here

Strictly Private and Confidential

Name

Address line one

Address line two

Address line three

Postcode

Outcome of second capability meeting

Dear

Following our meeting on **[date]** I attach the notes of that meeting, which include details of all the action to be taken.

[either]For teachers:

I confirm that you now meet the required standards, so the School's Capability Procedure is terminated, and your future performance will be assessed during the appraisal process. I am arranging for the appraisal process to re-start for you.

For support staff:

I confirm that you are now performing your role to the required standards, so the School's Capability Procedure is terminated, and your future performance will be assessed during the appraisal process. I am arranging for the appraisal process to re-start for you.

[or]For teachers: [Add extra information on action taken since the meeting – for example, I undertook at that meeting to arrange for you to observe other teachers and have now spoken to A and/or B, who will discuss the arrangements for observation with you.] I confirm that we agreed with you and your representative to hold the third capability meeting, when we will again review your progress, on **[date]** at **[time]** in **[venue]**.

For support staff: [Add extra information on action taken since the meeting – for example, I undertook at that meeting to arrange for you to have a mentor and/or to attend training on X] I confirm that we agreed with you and your representative to hold the third capability meeting, when we will again review your progress, on **[date]** at **[time]** in **[venue]**.

I would like to make you aware that you can access the Employee Assistance Programme through **[insert employee assistance programme contact details]**.

Yours sincerely

Headteacher/Principal

Encs – Employee Support Plan and Supporting evidence

5.0 Invite to Third Capability Meeting

Type the date here

Strictly Private and Confidential

Name

Address line one

Address line two

Address line three

Postcode

Third capability meeting

Dear

As agreed at our meeting on **[date of second capability meeting]** the third capability meeting to be held with you in accordance with the School's Capability Procedure will take place on **[date]** at **[time]** in **[venue]**.

I enclose the evidence which has been collected for discussion at the third capability meeting.

For teachers: You will recall that I explained at the second capability meeting that if you did not meet the required standards by the third capability meeting I would either extend the programme of support if that is a reasonable course of action or arrangements would be made for a hearing to consider terminating your employment at the school.

For support staff: You will recall that I explained at the second capability meeting that if you did not perform your role to the required standards by the third capability meeting I would either extend the programme of support if that is a reasonable course of action or arrangements would be made for a hearing to consider terminating your employment at the school.

As on the previous occasions you have the right to be accompanied at this meeting by a work place colleague or a trade union representative of your choice.

Please could you confirm with me that your representative is still available to attend the meeting.

I will be accompanied by **[Name]**, who will take a note of the meeting. **[A member of the Employee relations team will also be present-this is optional but may be useful in contentious/complex cases]**

I would like to make you aware that you can access the Employee Assistance Programme through **[insert employee assistance programme contact details]**.

Yours sincerely

Headteacher/Principal

Encs – Employee Support Plan and supporting evidence

6.0 Letter for outcome of Third Capability Meeting

Type the date here

Strictly Private and Confidential

Name

Address line one

Address line two

Address line three

Postcode

Outcome of third capability meeting

Dear

Following our meeting on **[date]** I attach the notes of that meeting, which include details of all the action to be taken.

[either] For teachers: I confirm that you now meet the required standards, so the School's Capability Procedure is terminated, and your future performance will be assessed during the appraisal process. I am arranging for the appraisal process to re-start for you.

For support staff: You are now performing your role to the required standards, so the School's Capability Procedure is terminated, and your future performance will be assessed during the appraisal process. I am arranging for the appraisal process to re-start for you.

OR: As there is a reasonable prospect that you will meet the required standards within a reasonable period I have agreed, exceptionally, to extend the period given for improvement for a further **[insert number]** working weeks. Details of the targets and support for this period are set out in the notes of the meeting. I confirm that I will meet with you and your representative on **[date]** at **[time]** in **[venue]** to determine whether you have met the required standards. I confirm that if you do not meet the required standards by that date, arrangements will be made for a hearing to consider terminating your employment at the school.

OR: Despite the support given to you during the School's Capability Procedure you do not meet the required standards and therefore a hearing will be arranged to consider terminating your employment at the school. You will be invited to this hearing shortly.

I would like to make you aware that you can access the Employee Assistance Programme through **[insert employee assistance programme contact details]**.

Yours sincerely

Headteacher/Principal

Encs – Employee Support Plan and supporting evidence

7.0 Letter to invite employee to Hearing

Type the date here

Strictly Private and Confidential

Name

Address line one

Address line two

Address line three

Postcode

Capability Hearing Invite

Dear <Name>

For support staff: I am writing to confirm that you are required to attend a hearing in accordance with paragraph 9 of the School's Capability Procedure for Support Staff.

For teachers: I am writing to confirm that you are required to attend a hearing in accordance with section 5 of the School's Capability Procedure for Teachers.

The hearing will be held on [date] at [time] in [venue] and will be before [the hearing officer or the Committee of the Governing Body responsible for capability hearings]. The hearing will be chaired by (name) and other members of the committee will be [name] and [name]. A representative of the local authority as technical advisor will be in attendance.

For teachers: The purpose of the hearing will be to consider your performance against the required standards and give you the opportunity to comment on a recommendation by [name of person who conducted the third capability meeting] that you do not meet those standards and that therefore your employment at this school should be terminated on grounds of lack of capability.

For support staff: The purpose of the hearing will be to consider your performance in your role of [add role] and to give you the opportunity to comment on a recommendation by [name of person who conducted the third capability meeting] that you are not fulfilling the role to the required standards. With this in mind, the governing body will need to consider whether your employment should be terminated on the grounds of lack of capability.

[Name and job title] will be presenting the management case and intends to call [names] as witnesses. (delete where appropriate).

I enclose a copy of the hearing documentation that will be referred to at the hearing.

You will need to send me copies of any relevant documentation which you wish to use at least 5 working days before the hearing. You will also need to notify me, at least 5 working days before the hearing, of the names of any relevant witness(es) whom you have asked, or intend to ask, to appear on your behalf.

You have the right to request that you be accompanied by a representative of your choice who is either a trade union official or workplace colleague. Please let me have this request at least 5 working days before the hearing. An additional copy of this letter and the documentation is enclosed for your representative's use.

Please confirm that you will attend at the time and date stated and whether or not you wish to be accompanied by a representative by **[date- 5 days before the hearing]**. If there are any exceptional circumstances in which you are unable to attend the hearing, you may suggest an alternative time and date as long as it is reasonable and is not more than 5 working days after the original date.

However please note the committee may reject your suggestion to an alternative date but will do so only if it is unreasonable. In that case the committee may proceed to hear the case in your absence or the absence of your representative.

I would like to make you aware that you can access the Employee Assistance Programme through **[insert employee assistance programme contact details]**.

Yours Sincerely,

Clerk to Governing Body

8.0 Letter to confirm no further action or reasonable period

Type the date here

Name

Address line one

Address line two

Address line three

Postcode

Outcome of Capability Hearing

Dear [Name]

I write to advise the outcome of the Capability Hearing held at [Venue] on [Date] which was convened in accordance with the School's Capability Procedure.

Your right to representation was explained to you, but you confirmed you wished to proceed in the absence of a Trade Union representative/ workplace colleague OR and you were accompanied by [Name of Rep] (delete as appropriate).

The Capability Hearing was chaired by [committee names] and [Name] was present as Technical Adviser. [Name] presented the case and called [Name(s)] as witness(es) in support. You called [Name(s)] as witness(es) in support of your case. (delete as appropriate)

The purpose of the hearing was to consider your performance in your role of [add role] and to give you the opportunity to comment on the fact that you are not fulfilling the role to the required standards. In particular:

[summarise key areas of concern with employee's performance]

Having carefully considered the circumstances and the available evidence, [the hearing officer/Committee of Governors/ - delete as appropriate] determined that

EITHER: You now [meet the required standards for teachers] or [meet the requirements for your role as insert role], so the School's Capability Procedure is terminated and that your future performance will be assessed during the appraisal process.

OR: As there is a reasonable prospect that you will now [meet the required standards for teachers] or [meet the requirements for your role as insert role] within a reasonable period and/or significant areas of improvement have been witnessed demonstrated, you are given [insert number] working weeks of additional management support to meet the required standards/requirements for your role. Details of the targets and support for this period will be notified to you by [name]. If you do not meet the required standards/requirements of your role at the end of that period, arrangements will be made to reconvene this hearing to consider terminating your employment at the school on the grounds of capability.

I would like to make you aware that you can access the Employee Assistance Programme through [insert employee assistance programme contact details].

You may appeal against this decision by notifying myself in writing at **[address]** writing within 10 working days of receipt of this letter. You should state all the grounds upon which the appeal is based.

Yours sincerely,

Clerk to Governing Body

9.0 Letter to confirm Cease to Work with Notice

Type the date here

Name

Address line one

Address line two

Address line three

Birmingham

Postcode

Capability Outcome – Cease to Work

Dear <Name>

I write to advise the outcome of the Capability Hearing held at [Venue] on [Date] which was convened in accordance with the School's Capability Procedure.

Your right to representation was explained to you, but you confirmed you wished to proceed in the absence of a Trade Union representative/ workplace colleague OR and you were accompanied by [Name of Rep] (delete as appropriate).

The Capability Hearing was chaired by [committee names] and [Name] was present as Technical Adviser. [Name] presented the case and called [Name(s)] as witness(es) in support. You called [Name(s)] as witness(es) in support of your case. (delete as appropriate)

The purpose of the hearing was to consider your performance in your role of [add role] and to give you the opportunity to comment on the fact that you are not fulfilling the role to the required standards. In particular:

[summarise key areas of concern with employee's performance]

Having carefully considered the circumstances and the available evidence, [the hearing officer/Committee of Governors/ - delete as appropriate] determined that

Therefore, the committee determined that you should cease to work at the school. The local authority will be informed of this determination and will confirm the termination of your contract with due notice.

Support Staff only – delete where appropriate

May I remind you of the contractual clause relating to return of the School/Birmingham City Council property and refer you to the attached form. Please liaise with your manager or an agreed School representative to return these items. You should also make arrangement to collect any personal belongings as required.

Teachers only – delete where appropriate

You are instructed to return any belongings you have of School/Birmingham City Council, i.e. ID badge, keys, laptop, mobile phone, uniform etc. and are required to return these to [Name of identified officer]. This would also apply to you collecting any personal belongings.

I would like to make you aware that you can access the Employee Assistance Programme through **[insert employee assistance programme contact details]**.

You may appeal against this decision by notifying myself in writing at **[address]** writing within 10 working days of receipt of this letter. You should state all the grounds upon which the appeal is based.

Yours sincerely,

Clerk to Governing Body

10.0 Appeal Hearing

Type the date here

Strictly Private and Confidential

Name

Address line one

Address line two

Address line three

Postcode

Appeal Hearing

Dear *[Name]*

I am writing to confirm the invitation to an appeal hearing in accordance with paragraph 10 of the School's Capability Procedure (see copy attached).

The hearing will take place at **[time]** on **[date]** in **[location]** and will be heard by the appeals committee of the governing body. The hearing will be chaired by **[name]** and other members of the committee will be **[name]** and **[name]**.

The purpose of the hearing will be to consider your appeal against the decision that you do not **[meet the required standards for teachers]** or **[meet the requirements for your role as insert role]** and that therefore **EITHER** the period for improvement should be extended by **[insert number]** working weeks **OR** your employment at this school should be terminated on the grounds of lack of capability.

I enclose a copy of the documentation to be presented by management in response to your appeal. **[Name of person responding to appeal]** will be responding to your appeal on behalf of management and will be calling **[Names/roles]** as witnesses **OR** will not be calling any witnesses. **(delete as appropriate)**

A representative of the Local Authority will be in attendance as Technical Advisor and **[Name]** will be present as note-taker.

You have the right to request that you be accompanied by a representative of your choice who is either a Trade Union official or an employee of your employer. You and/or your representative will be given the opportunity to state your case and to question the response provided by management and/or relevant witnesses.

You are required to submit any relevant written documentation to support the stated grounds of your appeal to me no later than **[date]**. Failure to meet this deadline may mean that the chair of the hearing could refuse to consider your relevant written documentation at the hearing.

You will also need to notify me of the names of any relevant witnesses you wish to be present on your behalf by **[date]**.

Please contact me on **[number]** by **[date]** to advise me of whether or not you can attend on the time and date given and whether or not you wish to be accompanied by a representative. You may suggest an alternative time and date as long as it is reasonable and is not more than five working days after the original date suggested above. The school may reject your suggestion if it is unreasonable.

If you are unable to attend the hearing in person, you can arrange for a recognised trade union representative to attend and act on your behalf and/or you could submit any documentation in your absence that you wish the **[head teacherCommittee of Governors]** to consider. However, if you or a representative cannot attend on the date above or your alternative suggested date is regarded as unreasonable, the hearing may proceed in your absence.

Yours sincerely

Clerk to the Governing Body

CC – Employee Relations, Employee’s Representative

Encs – Management case and supporting documents (including Capability Procedure)

11.0 Outcome of Appeal

Type the date here

Strictly Private and Confidential

Name

Address line one

Address line two

Address line three

Postcode

Outcome of Appeal Hearing

Dear [Name]

I am writing to inform you of the outcome of the appeal hearing held on **[date]** in accordance with paragraph 10 of the School's Capability Procedure.

The purpose of the hearing was to enable you to appeal against the decision made by the **[head teacher/principal/committee of governors]** **(delete as appropriate)** at the hearing on **[date]**, namely that **[summarise decision taken at hearing]**.

You were accompanied by **[Name/role]**. OR You chose not to attend the hearing or to send a representative in your place. **(delete as appropriate)**

You presented your appeal and called **[Names]** as witnesses in support of your case. OR You chose not to call any witnesses in support of your case. **(delete as appropriate)**

The management response was presented by **[Name]**. **[Names/roles]** were called as witnesses in support of the management response. OR No witnesses were called in support of the management response. **(delete as appropriate)**

Having carefully considered the circumstances and the available evidence, the appeals committee determined that:

EITHER

Your appeal against the decision on **[date]** that you should **[cease to work at the school]** **[be dismissed]** on the grounds of capability is upheld. You are therefore re-instated without a break in service.

OR

Your appeal against the decision on **[date]** that your employment at the school should be terminated on the grounds of lack of capability is not upheld and the letter of dismissal stands. Your last day of employment will remain **[date]**.

OR

Your appeal against the decision to give you a further defined period for improvement is upheld and no further period is needed, so the School's Capability Procedure is now terminated.

OR

Your appeal against the decision to give you a further defined period for improvement is rejected and you will be given **[insert number]** working weeks to meet the required standards. If you do not meet the required standards at the end of that period arrangements will be made to reconvene this hearing to consider terminating your employment at the school.

I would like to make you aware that you can access the Employee Assistance Programme through **[insert employee assistance programme contact details]**.

The decision of the Appeal Committee is final.

Yours sincerely

Clerk to the Governing Body
CC – Headteacher

12.0 Letter to inform local authority confirming that the appeal has been upheld and requesting withdrawal of notice of dismissal

Type the date here

Strictly Private and Confidential

Name

Address line one

Address line two

Address line three

Postcode

Request to withdraw notice of dismissal

Dear [Name]

I am writing to confirm that an appeal hearing took place at **[Name of school/]** on **[date]** to consider **[Name of employee's]** appeal against a decision that they should cease to work at the school on the grounds of capability.

The appeal committee determined that **[Name of employee]** appeal should be upheld.

Please therefore ensure that their notice of termination is withdrawn with effect from **[date of appeal hearing]** and reinstate them with immediate effect.

Yours sincerely

Clerk to the Governing Body

Cc- HR Officer