



(Adopted **Community Policy** ; Choice Model Policy)

**September 2019**

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# Capability Procedure

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## 1. Introduction

Every job carries standards of performance that employees are expected to achieve, but occasionally an employee's performance may fall short of the standards expected.

This school seeks to provide each employee with the direction, development and support necessary to assure a productive and rewarding career. This procedure ensures that the school has a fair and consistent framework for dealing with capability matters effectively, consistently and in a timely matter to ensure that no individual is discriminated against.

This policy sets out the procedure that must apply in cases of capability. Its emphasis is one of support and it is important that the right procedure is used according to the situation under review.

The Capability Procedure is designed to:

- Encourage staff to meet agreed standards of behaviour, conduct and job performance
- Deal fairly and consistently with staff who do not improve to meet those standards and identify ways to help them improve
- Be applied in a consistent, fair prompt and supportive way.

For a variety of reasons, the performance of an employee may give rise to concern because the evidence suggests that s/he is unable to carry out the duties and responsibilities of his/her post to a professionally acceptable standard, through lack of capability, aptitude, skill or ability and not through any lack of willingness or effort on his/her part. Where the employee concerned fails to carry out his/her duties and responsibilities to a reasonable and acceptable standard for reasons of his/her capability, the procedure set out in this document should be used. One important factor will be the impact of the employee's performance on pupils' achievement, progress and wellbeing.

Another reason for concerns about performance may be genuine but unacceptable absence due to ill-health. This may affect the long-term ability for employees to continue to carry out the requirements of the role and may have a detrimental effect upon service delivery. In such circumstances, the issues should be addressed in accordance with the absence management procedures.

This policy has been subject to full and meaningful consultation with the recognised Trades Unions. The policy will be reviewed as may be required by legislative or organisational change.

The policy takes account of the Ofsted inspection framework, with its focus on:

- the achievement of pupils at the school
- the quality of teaching in the school
- the quality of leadership in and management of the school
- the behaviour and safety of pupils at the school.

For specific advice and guidance, managers should refer to their named HR Caseworker. There are template letters and additional guidance on the Schools' Choice [website](#).

## 2. Scope

This procedure applies to all teaching and support staff in maintained schools (including those seconded to other schools or organisations) in which the Management Committee has adopted them for use.

Where the concerns relate to the Executive Headteacher, the Chair of Management Committee will manage the procedure and, where concerns persist, will convene a Special Committee of the Management Committee (which should not include any managers from the Appeals Committee) to determine what action should be taken. The Committee will proceed in all other stages of this procedure. The committee will carry out those functions normally undertaken by the Executive Headteacher/line manager. An Executive Headteacher who is the subject of this procedure will have all the rights accorded to other employees at the various stages.

An employee working within a school but employed on another organisation's terms and conditions of employment should be managed under their appropriate policy/procedure.

## 3. Exclusions

Disciplinary procedures exist to deal with misconduct, wilfully deficient performance, refusal to follow instructions, negligence and other similar situations, and should be used where such considerations form a significant part of any complaints.

The assessment and treatment of employees undergoing an induction or probationary period (including Newly Qualified Teachers), or similar, will be dealt with according to the terms of their probationary period, unless the employee's performance falls so far below professionally acceptable standards as to require immediate action.

Separate guidance also exists for dealing with problems arising from alcohol dependence. However, this procedure may be applied where this or substance abuse has a significant effect on the employee's performance.

## 4. Purpose

While it is important to deal with capability issues fairly and effectively, it is just as important to look at ways of preventing problems escalating in the first place, for example, through:

- Careful recruitment, selection and training
- Clear standards, expectations and effective communication
- Regular supervision and performance development reviews.
- Identification and, where appropriate, assistance in resolving underlying problems

Many factors can contribute to poor performance, including those which are not directly related to the workplace. Assistance with resolving underlying issues could include reference to:

- The Wellbeing Service / Saxon Wellbeing
- The SCC stress toolkit
- Referral to Occupational Health (where appropriate)

Good performance management is an all-year process, with regular supervision and feedback. Concerns about performance should be addressed promptly and not left until formal review meetings.

In many cases, the right word, at the right time and in the right way may be all that is needed to address poor performance. Managers must, in the first instance, seek improvement through normal performance management. This should include two-way discussion, with the objective of encouraging and helping the employee to improve and for the improvement to be sustained. Although there is no right for the employee to be accompanied at this stage, it may be helpful for the employee's Trades Union representative to be involved at an early stage. Additional training, coaching or advice may be agreed.

The purpose of the capability procedure is to:

- 1) Positively and constructively support employees to improve their performance through advice, guidance and support, when it is identified they are not performing to the required standard
- 2) Ensure that all employees are treated in a fair, consistent, understanding and timely manner and in accordance with all relevant legal requirements
- 3) Contribute towards the improvement of the performance and effectiveness of the school
- 4) Support managers in carrying out their responsibilities for the maintenance of high standards of work performance by all employees
- 5) Ensure the employee is aware of each stage of the procedure and the possible outcomes
- 6) Ensure all customers receive services of the highest standard

## **5. Application of the procedure**

### **5.1 Normal Performance Management Arrangements**

Informal feedback on performance does not form part of this procedure as this should be given through 'normal performance management arrangements' i.e. performance review meetings, one to one meetings, etc.

Feedback through normal performance management arrangements must include positive, proactive feedback on performance and constructive feedback when performance is not at the required standard – this must include:

- confirmation of the required standard,
- the standard the employee is currently performing at,
- an agreement of how the required standard will be achieved and
- the consequences if standards are not achieved.

Every effort should be made to resolve performance issues on an informal basis.

Where concerns continue, discussions should include clear advice about the improvements needed, support available and how and when the employee's performance will be reviewed. This should be confirmed in writing and, where appropriate, may be linked to the Performance Development Review process and pupil progress evaluation processes. Use of SMART principles may assist in objective setting, i.e.:

- **Specific** – they are well defined
- **Measurable** – both quantitatively and qualitatively
- **Achievable** – they are not set too high to make it impossible to achieve them
- **Resourced** – the resources necessary are readily available
- **Timed** – the timescales set are reasonable

## **5.2 Timescales**

Capability issues should normally be resolved within ten to twelve weeks, however, it is acknowledged that there may be circumstances when the process will take longer to complete. These may include annual leave, working patterns or ill-health where reasonable adjustments need to be made under the Equality Act 2010. Where this is anticipated, advice must be obtained from the Schools' HR Team.

The period of monitoring under a first or final written warning will not normally exceed six weeks, (excluding school closure periods where appropriate), according to the needs of the individual and the school. Whilst every effort should be made to agree the appropriate length of this period of monitoring, where agreement cannot be reached, it will set by the Head of School / Executive Head.

## **5.3 Progressing to the next stage of the procedure**

Before action under the formal stages of this procedure is considered, the employee should be informed in writing that this will be considered if there is no improvement within the agreed review period and invited to a meeting to discuss the evidence in more detail.

In many circumstances, significant evidence will have already have been gathered as part of pupil progress monitoring, normal performance management and the additional support provided, which the school will simply collate and summarise as evidence.

The collated evidence will clearly indicate the support and advice offered to date and make a recommendation for one of the following:

- No further action,
- Further support as part of normal performance management
- Formal action under this procedure

In all cases, the outcome will be confirmed in writing to the employee.

Where the decision is made to take formal action under this procedure because the employee has made insufficient improvement despite the support and monitoring, the employee will be invited to a formal meeting under Formal Stage 1 of the procedure.

All employees should progress through each stage of the procedure, and in accordance with agreed timescales.

Exceptions can apply in the following circumstances and consequently, line managers can decide to progress them to the next stage of the procedure earlier than agreed:

- 1) Deterioration in performance

2) Not meeting the targets in the agreed Development Plan.

## **6 Formal stage 1 – Meeting (written Warning)**

### **6.1 Purpose**

The purpose of Formal Stage 1 is to support the employee in improving their performance to meet the required standard against an agreed Development Plan (a template Development Plan is enclosed).

### **6.2 Procedure**

At least five working days' notice will be given of the formal capability meeting. The notification will contain sufficient information about the performance concerns and their possible consequences to enable the employee to prepare to answer 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 employee of their right to be accompanied by their accredited Trades Union Representative, or a work colleague.

This meeting is intended to establish the facts. It will be conducted by the Chair of Management Committee (for Executive Head teacher and Head of School capability meetings) or the Head of school and / or Executive Head (and / or other senior school leader/the employee's line manager) for other employees. The meeting allows the employee to respond to concerns about their performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected.

This is the start of the performance monitoring and review period. Formal monitoring, evaluation, guidance and support will continue during this period. The employee will be invited to a formal review meeting, unless they were issued with a final written warning, in which case they will be invited to a decision meeting (see below).

#### **At the meeting the manager will:**

- a) Confirm that the employee has the right to representation;
- b) Confirm that the meeting is being held under the school's capability procedure and explain the process that will be followed and the possible outcomes;
- c) Confirm the expected standard of performance and the standard at which the employee is currently performing, i.e. identify the professional shortcomings, e.g. for teachers, which of the standards expected of teachers or pupil progress targets are not being met;
- d) Ensure the employee has the opportunity to respond to and explain any factors affecting their current performance and consider this when determining the appropriate course of action (it is not anticipated that any information that was not shared during normal performance management arrangements will be disclosed);
- e) Confirm the risks to the school and pupils of the underperformance;
- f) Confirm the options available to support the employee in improving their performance (i.e. support, development, training, etc.);
- g) Ensure the employee is aware of what support is available to them e.g. the Employee Assistance Programme (EAP), Trades Union support, etc.;
- h) Confirm that Formal Stage 1 constitutes a 'written warning' which if no further action is taken, will remain active for 6 months from the end of Formal Stage 1.

On occasion, the manager may decide to adjourn the meeting if they decide that further investigation is needed, or that more time is need in which to consider any additional information.

**At the meeting the manager and employee will discuss and agree:**

- a. The employee's current and expected levels of performance;
- b. The objectives for the Development Plan, how they will be achieved, the timescales for achieving them and when progress against each objective will be reviewed;
- c. The reasons the employee is not meeting the expected standards (which may be as a consequence of personal issues);
- d. When review meetings will be held;
- e. Warn the employee formally that failure to improve within the set period could lead to dismissal. (In very serious cases, this warning could be a final written warning);
- f. Write, agree and sign the Development Plan;
- g. Any agreed reasonable adjustments to be made under the Equality Act 2010.

**At the end of the meeting the manager will:**

- a. Summarise the meeting;
- b. Ensure the employee understands what is expected of them, the process that will be followed and the possible next stages of the procedure, including the right of appeal against the warning (any appeal must be lodged, in writing, within 14 days of the date of the letter issuing the warning. The grounds of the appeal must also be detailed at this stage);
- c. Agree what support, development and reasonable adjustments (if appropriate) will be put in place

**After the meeting the manager will:**

- a. Confirm the outcome of the meeting in writing, including that a written warning has been issued;
- b. Ensure that the employee receives the support agreed in the Development Plan;
- c. Ensure that the agreed review meetings and any further review meetings deemed necessary take place;
- d. Continue to monitor the employee's progress against the Development Plan and progress the employee through the procedure as appropriate and in line with this procedure;
- e. Ensure that any agreed support, development or reasonable adjustments are put in place in a timely manner.

**After the meeting the employee will:**

- a. Make every effort to meet the objectives agreed in the Development Plan;
- b. Attend the agreed review meetings and any further review meetings deemed necessary;
- c. Give honest feedback on their current performance and progress against the Development Plan and pupil progress targets.



### **6.3 Formal Review Meeting**

The letter confirming the outcome of the first formal meeting and a copy of the Development Plan will be sent to the employee and will invite the employee to a formal review meeting at the end of the agreed review period (***this can be brought forward if necessary (see section 5.3)***). The employee has the right to be accompanied at the formal review meeting by their accredited Trades Union Representative, or a work colleague.

At the formal review meeting, the manager and employee will review the employee's progress against the Development Plan and the manager will confirm one of the outcomes stated below.

### **6.4 Possible Outcomes of Formal Stage 1**

The manager will confirm one of the following outcomes:

#### **1) The required standard of performance has been met**

The employee's performance will be managed under normal performance management arrangements and the written warning will remain active for 6 months from the date of the Formal Review Meeting.

#### **2) The required standard of performance has not been met or significant progress has not been made towards meeting the required standards**

The employee will be progressed to Formal Stage 2 of the procedure (see section 7) and a 'final written warning' will be given. Until the hearing takes place, the employee will continue to be supported to meet the requirements of the Development Plan.

The outcome of the formal review meeting will be confirmed to the employee in writing. If the employee has been progressed to Formal Stage 2 of the procedure, the letter will include an invitation to a hearing (see section 7) and confirmation that a final written warning has been issued, which if no further action is required, will remain active for 12 months from the end of Formal Stage 2, and warning the employee that failure to achieve an acceptable standard of performance (within the set timescale) may result in dismissal. The letter will also give information about the handling of the further monitoring and review period and the procedure and time limits for appealing against the final warning.

## **7 Formal stage 2 – Decision Meeting**

As with the formal capability meetings and formal review meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting, and will advise the employee of their right to be accompanied.

### **7.1 Purpose**

The purpose of Formal Stage 2 is to determine:

- a. If the school has exhausted all options in supporting the employee to improve their performance;
- b. What the outcome of the procedure should be.

## 7.2 Procedure

The procedure for the hearing will follow the procedure set out in Schedule 2 Procedure for a Hearing, within the LMS Model Disciplinary Procedure.

The outcome of the hearing will be one of the following:

### **1) The required standard of performance has been met**

The employee is performing to the required standard and will be managed under normal performance management arrangements.

### **2) The required standard of performance has not been met but it has been determined that the required standard can be met within a short period**

A further review period (it is recommended this is no more than two working weeks from receipt of the Development Plan) and Development Plan will be implemented (under Formal Stage 2 of this procedure).

In these circumstances:

- a) The additional support to be given to the employee and the duration of the extended review period will be explained to the employee verbally at the meeting and a development plan detailing this will be forwarded to them with the letter confirming the outcome of the meeting
- b) A review meeting will take place at the end of the extended review period and one of the three outcomes set out within Section 7.2 will be determined.

### **3) The required standard of performance has not been met and the panel has determined:**

#### **a) The required standard cannot be met within a short period**

**OR**

#### **b) The employee is capable of performing at the required standard but does not due either to negligence or carelessness or idleness, or a combination of some or all of these.**

If performance remains unsatisfactory, a decision, or recommendation to the Management Committee will be made that the employee should be dismissed or required to cease working at the school. <sup>1</sup> The employee is dismissed with notice (unless their performance has been so negligent so as to amount to gross misconduct, in which case they may be dismissed without notice). However, it may be agreed that the employee will not return to work at the school in a capacity which directly affects the education of pupils, or they may be granted paid leave for the duration of their notice period.

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<sup>1</sup> In Foundation Schools, Voluntary Aided Schools and Foundation Special Schools, the governing body is the employer but the power to dismiss can be delegated to the head teacher, to one or more governors, or to one or more governors acting with the head teacher. In Community, Voluntary Controlled, Community Special, and Maintained Nursery schools, the power to determine that the member of staff should no longer work at the school can be delegated in the same way as above but it is the local authority (as the employer) that actually dismisses staff (or – for those who work in more than one school – requires them to cease to work at the school).

The outcome of the hearing will be confirmed to the employee in writing as soon as possible, and will include information about the employee's right of appeal. If a further review period has been granted (see outcome 2 above), the letter will include an invitation to the review further hearing.

## **8 Returning to earlier warnings**

If there is evidence within six months of the procedure ceasing (for a first written warning or within twelve months for a final written warning) that the employee has not sustained the level of performance required, the procedure may be resumed at any stage up to and including that stage previously reached.

## **9 Exceptional circumstances**

In exceptional cases where the level of performance could have serious consequences successive warnings may not be appropriate. For example:

- where the employee's performance falls so far short of an acceptable standard, that improvement to an acceptable level may reasonably be deemed impossible; or
- where a lack of competence has a seriously detrimental effect on the education of pupils and students; or
- where the employee's lack of competence could have other serious consequences, e.g. safety considerations

In such circumstances, the school may proceed directly to consideration of a final written warning or dismissal, as appropriate. Schools should seek advice from their Human Resources Advisor before taking such a decision.

## **10 Appeals**

Employees have the right to appeal against the first written warning, final written warning and any outcome of the Formal Stage 2 decision meeting. The procedure for any appeal will follow that set out in Appendix 2, "Procedure for a Hearing", except that the running order will be reversed.

If an employee feels that a decision to dismiss them, or other actions taken against them, is wrong or unjust, they may appeal in writing against the decisions within 14 days of the decision, setting out at the same time, the grounds for appeal.

## **11 Executive Headteacher**

In the event that there are concerns about the capability of the Executive Headteacher, it would clearly be inappropriate for him/her to carry out the roles normally assigned to the Executive Headteacher in this procedure. This section sets out how these roles may be appropriately reassigned, within the spirit and intent of this procedure.

Concerns about the performance of an Executive Headteacher may emerge from either the management committee itself or from external sources such as Ofsted inspection or the Local Authority (LA) in its monitoring role.

The Management Committee may discuss concerns about the Executive Headteacher performance as part of the normal dialogue between the Executive Headteacher and Chair of Management Committee. Such discussions will precede the informal stages detailed in this procedure.

The Chair of Management Committee may consult the LA or their Human Resources Advisor and arrange for help and support to be provided. Consultation with the Executive Headteacher's trade union may also assist the process. However, if the matter is, or becomes, sufficiently serious, the Executive Headteacher should be advised that if the identified deficiency persists, it may be necessary to convene a committee of the Management Committee to consider the matter under the formal stages of this procedure. This possibility should be set out in writing.

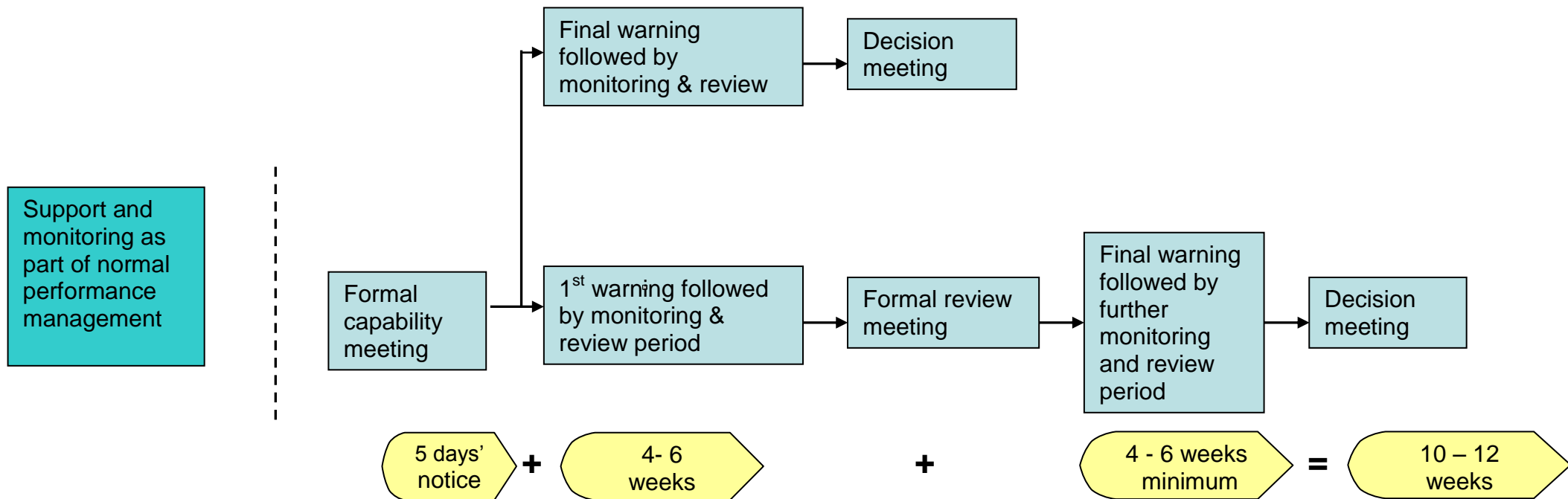
An Executive Headteacher who is the subject of this procedure will have all the rights accorded to other employees at the various stages.

# Capability Procedure Timeline

# Appendix 1

It is anticipated that most cases of capability will be resolved within ten to twelve working weeks (including informal feedback as part of normal performance management arrangements). However, it is acknowledged that there may be circumstances when the process takes longer to complete. Where this is anticipated, advice must be obtained from HR.

## Illustrative capability procedure timeline



**Note: The timings given above are illustrative only. Schools will tailor the length of their monitoring and review periods to suit individual circumstances.**

### Procedure for a hearing

Hearings will be held in as informal a manner as possible and the employee will be afforded every reasonable assistance to put his/her case. The conduct of the hearing is at the discretion of the Executive Headteacher, Chair of the committee or manager hearing the case, but s/he will allow the parties every reasonable opportunity to present their case.

In the case of an appeal the order of presentation set out below would normally be reversed, with the employee as appellant presenting his/her case first. However, by prior agreement or where the appeal constitutes a re-hearing of the full case, the case against the employee may be presented first as at the initial hearing. Chairs of appeal committees or managers hearing appeals should ensure that all parties have a common understanding and agreement on the order of presentation.

#### Introduction

The Executive Headteacher, Chair of the appropriate committee or manager hearing the case will ensure that those present are introduced to each other and that they are aware of the procedure to be followed.

#### Presentation of the Case

The person presenting the case against the employee may make an opening statement outlining the case. The person or committee hearing the case and the employee responding to it may ask questions.

S/he will then call any witnesses and ask them to give their evidence. The employee or his/her representative may then ask questions of each witness. The person or committee hearing the case may also ask questions of any witness. The person presenting the case may then re-examine the witness.

Where evidence is presented in the form of documents, the person presenting the case or an appropriate witness will explain the nature and significance of the documents.

#### The Employee's Case

The employee or his/her representative may make an opening statement. The person or committee hearing the case and the person presenting the case against the employee may ask questions.

S/he may call any further witnesses and invite them to give their evidence. The person presenting the case against the employee may ask questions of each witness after s/he has given his/her evidence. The person or committee hearing the case may then ask questions. The employee or his/her representative may re-examine the witness.

Where there is any documentary evidence, the employee or any witness on his/her behalf will explain its significance.

#### Re-examination

Both parties will be asked if they wish to re-examine any evidence. The person or committee hearing the case may also do so at its discretion.

### **Final Statements**

The person presenting the case against the employee may make a final statement. The employee or his/her representative may then also make a final statement.

### **Adjournment**

Either party may ask for an adjournment at any stage. The decision to adjourn is at the discretion of the Chair, who will consider a request in the light of the reason given for it.

### **Consideration of the Case**

All parties will withdraw. The Executive Headteacher, or the committee will deliberate. The Director of Children and Young People's Services and/or the Head of Legal Services may be present at these deliberations to advise on legal and procedural matters. In any case where dismissal is proposed, the representative of the Director of Children and Young People's Services will advise the committee as to whether s/he concurs with the committee's decision.

If it is necessary to recall either party or any witnesses, to resolve a point of uncertainty, both parties will be invited to be present, whether or not the point of doubt concerns one party or both.

### **Decision**

If possible the decision will be communicated orally to the employee after the hearing. The decision will be confirmed in writing to the parties involved as soon as possible after the hearing.

## **General principles underlying this policy**

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

This procedure 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 head teacher and governing body to quality-assure the operation and effectiveness of the appraisal system. Schools to say here how they might achieve this, for example, the head teacher or appropriate colleague might review all teachers' objectives and written appraisal records personally, in order to check consistency of approach and expectation between different appraisers. The head teacher might also wish to be aware of any pay recommendations that have been made.

#### **Consistency of Treatment and Fairness**

The governing body / Management Committee is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments for disabled teachers. The governing body is aware of the guidance on the Equality Act issued by the Department for Education. <https://www.gov.uk/government/publications/equality-act-2010-advice-for-schools>

#### **Definitions**

Unless indicated otherwise, all references to "teacher" include the Head of School and Executive Head Teacher.

#### **Delegation**

Normal rules apply in respect of the delegation of functions by governing bodies, head teachers and local authorities.

#### **Grievances**

Where a member of staff raises a grievance during the capability procedure the capability procedure may be temporarily suspended in order to deal with the grievance. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.

#### **Sickness**

If long term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case will be dealt with in accordance with the school's absence policy and will be *(e.g. referred immediately to the occupational health service to assess the member of staff's health and potential fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures)*. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.



## **Monitoring and Evaluation**

The Management Committee, and executive head teacher will monitor the operation and effectiveness of the school's appraisal arrangements.

## **Retention**

The management committee and executive head teacher will ensure that all written appraisal records are retained in a secure place for six years and then destroyed.

## Summary of changes to the policy

<b>Document control</b>			
<b>Date</b>	<b>Section(s)</b>	<b>Update(s)</b>	<b>Notes</b>
28/11/16	Section 1 Introduction	Removed reference to Schoolsurf; replaced with link to Schools' Choice website	
28/11/16	Section 6.2 page 7	Timescale for employee to appeal amended to 14 days, to align with timescales in Section 10, Appeals	
28/11/16	NEW Appendix 2	Procedure for a hearing	
28/11/16	Table of contents	Re-numbered to reflect change	
14/02/19	Section 6.2	Change to start of formal stage to remove the informal meeting  Included references to key supporting letter templates	
30/07/19	Section 11 Headteachers	Removal of three paragraphs about requesting the local authority to investigate and subsequent actions	
30/07/19	General Principles	Amended to reflect updated wording in DfE's document Teacher appraisal and capability A model policy for schools, March 2019  Added link to DfE guidance on the Equality Act 2010	