Teacher Capability Policy

This policy has been formulated in consultation with Professional Associations NUT, NASUWT, ATL, ASCL, NAHT and GMB and it has been agreed by all Trade Unions.

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1.0 Purpose of Policy

This policy sets out the framework for managing in a clear and consistent manner the arrangements that will apply when a teacher falls below the levels of competence that are expected of them.

2.0 Scope of Policy

This policy applies to staff employed on Teacher's terms and conditions of employment namely all teachers, including the Headteacher.

This policy should not be used for:

Concerns relating to conduct: in these circumstances the relevant Schools Disciplinary Policy should be referred to.

Concerns relating to incapability due to ill health: in these circumstances the Schools Absence Policy should be referred to.

Concerns relating to complaints: in the first instance the Schools Complaints Policy should be referred to.

Concerns relating to grievances: in the first instance the Schools Grievance Policy should be referred to.

Concerns relating to child protection/safeguarding allegations: in the first instance guidance or relevant policy on Management of Allegations should be referred to.

3.0 Principles / Aims

The principles/aims of this policy are:

- To ensure that the School/Academy complies with its legal obligations;
- To provide a robust framework when teacher performance falls below the levels of competence / standards required;
- To be implemented in accordance with the provisions of the ACAS Code of Practice in relation to any employment related issues;
- The capability process will be treated confidentially, however, the desire for confidentiality does not override the need for the Headteacher and Governing Body to quality assure the operation and effectiveness of the capability system;
- The School/Academy will not discriminate against any person covered by the protected characteristics of the Equality Act 2010.

3.1 Record Keeping

Formal notes must be taken at all stages of the capability process. It is the responsibility of the School/Academy to provide a note taker in

order to keep a factual record of any meetings during the formal capability process. Notes of meetings are not normally verbatim but should accurately reflect the content of the meeting and will be provided for both parties' information. All notes should be provided to the employee who should be asked to sign as to their accuracy.

Audio recordings are not permitted in any meetings or hearings unless by agreement of all parties.

3.2 Representation

Employees have a statutory right to be accompanied by a companion, further known as "representative" where the capability meeting could result in:

- A formal warning being issued; or
- The taking of some other formal action; or
- The confirmation of a warning or some other action (appeal hearings).

The chosen representative may be a fellow worker, a trade union official, or a current recognised trade union representative who has been certified by their union as being competent.

Reasonable adjustments may be needed for an employee or their representative with a disability.

It would not normally be reasonable for employees to insist on being accompanied by a representative whose presence would prejudice the meeting/hearing.

At all stages within the formal procedure, employees must be advised of their right to representation. It is the employee's responsibility to arrange to be represented

The employee's representative can address a meeting/hearing and confer with and advise the employee. However, the representative must not answer questions on the employee's behalf, address the meeting/hearing if the employee does not wish it or prevent the employer from presenting their case.

4.0 Legal Context

The Governing Body recognises the requirement to comply with legislative requirements and aims to follow good practice wherever possible. The Governing Body will comply with the School Staffing (England) Regulations 2009 along with subsequent updates and the School Teachers Pay and Conditions Document, within which, it is detailed that all teachers should have a professional responsibility to be engaged in effective, sustained and relevant professional development throughout their careers and all teachers

should have a contractual entitlement to effective, sustained and relevant professional development throughout their careers.

4.1 Appraisal Arrangements

Revised appraisal arrangements come into force with effect from 1 September 2012. They are set out in the Education (School Teachers' Appraisal) (England) Regulations 2012 (the Appraisal Regulations) which repeal the Education (School Teacher Performance Management) (England) Regulations 2006 (the 2006 Regulations). The Appraisal Policy is intrinsically linked with this policy.

4.2 Capability Arrangements

This policy sets out the formal capability procedure and reflects the ACAS Code of Practice on disciplinary and grievance procedures. On 1 September 2012, it replaces the statutory guidance "Capability Procedures for Teachers" that was issued in July 2000.

Capability procedures apply only to teachers and Headteachers about whose performance there are serious concerns that the appraisal process has been unable to address. If, at the point of implementation, a teacher is already in capability proceedings these will continue under the old policy.

4.3 Employment Law

Throughout the application of this procedure the School/Academy will stay within the legal framework of relevant employment legislation that affects all employees and includes;

- Equality Act 2010;
- Data Protection Act 1998;
- Employment Rights Act 1996;
- School Teachers Pay and Conditions Document;
- Any other relevant employment legislation.

4.4 Model Policies

This policy should be read in conjunction with the:

- Schools Appraisal Policy;
- Schools Pay Policy;
- Schools Policy on Providing References.

This list is not exhaustive.

5.0 Application of the Policy

This policy applies only to those teachers, including the Headteacher about whose performance there are serious concerns that the appraisal process has been unable to address.

5.1 Transition from Appraisal to Capability

The appraisal policy is a supportive process which will be used to inform continuing professional development. The School/Academy wishes to encourage a culture in which all teachers take responsibility for improving their teaching through appropriate professional development.

Professional development will be linked to school improvement priorities and to the ongoing professional development needs and priorities of individual teachers.

If the appraiser is not satisfied with progress and they have fully exhausted the appraisal process, the teacher will be notified in writing by their appraiser that they will be recommending to the Headteacher that the appraisal policy should no longer apply and that their performance should be managed under the capability policy.

Following this the teacher will be invited, with at least five working days' notice, to a formal capability meeting by the Headteacher. The remainder of this policy will then apply.

6.0 Capability

This procedure applies only to teachers, including Headteachers about whose performance there are serious concerns that the appraisal process has been unable to address.

For the purposes of this policy capability is assessed with reference to skill, aptitude, attitude, behaviours, competence, knowledge and ability to do the job, it is where the employee fails consistently to perform his or her duties to a professionally acceptable standard where there is no willful misconduct.

A flowchart of the process is detailed in appendix 1.

6.1 Entry into Capability

At least 5 working days' notice will be given of the formal capability meeting. The notification will contain sufficient information about the concerns regarding the teacher's performance and their consequences to enable the teacher 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 teacher of their right to be accompanied.

6.2 Formal Capability Meeting

This meeting is intended to establish the facts. It will be conducted by the Chair of Governors for Headteacher capability meetings, or the Headteacher for all other teachers, who may be supported by YourHR. Also present at the meeting will be the appraiser in order to provide clarification and a note taker.

The meeting allows the teacher, accompanied by a representative if they wish, 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.

The person conducting the meeting may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases, the capability procedure will come to an end. The person conducting the meeting may also adjourn the meeting for example 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 meeting will continue, this commences the start of capability. During the meeting, or any other meeting which could lead to a formal warning being issued, the person conducting the meeting will:

- Identify the professional shortcomings including which of the standards expected of teachers are not being met;

- Give clear guidance on the improved standard of performance required that if successful will ensure that the teacher can be removed from formal capability procedures. This may include the setting of new objectives focused on the specific areas for development 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 teacher improve their performance;

- 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 will be a minimum of 4 weeks, with a maximum of 10 weeks.

It is for the Headteacher / Chair of Governors to determine the set period, dependant on the circumstances. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place; and

- The teacher will be told that their capability is in question and that a first written warning is being issued. In very serious cases, this warning could be a final written warning. A first written warning will remain active for 12 months / a final written warning will remain active for 24 months, after this period it will be disregarded for capability purposes.

- Warn the teacher formally that failure to improve within the set period could ultimately lead to dismissal.

Where a warning is issued, the teacher will be informed of this in writing, normally within 5 working days. The written warning should contain matters covered in the bullet points above and give information about the timing and handling of the review stage and the procedure and time limits for appealing against the warning.

6.3 Monitoring and Review Period Following a Formal Capability Meeting

A performance monitoring and review period of 4-10 weeks (as determined in the capability meeting) will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. The teacher 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).

6.4 Formal Review Meeting

At least five working days' notice will be given inviting the teacher to the formal review meeting, the notification will give details of the time and place of the meeting and will advise the teacher of their right to be accompanied.

The meeting will be conducted by the Chair of Governors for Headteacher capability meetings, or the Headteacher for all other teachers, who may be supported by YourHR. Also present at the meeting will be a note taker. Persons identified to provide support at previous stages, including the appraiser may be invited to the meeting to provide detail / an update of progress being made or to provide clarification if required.

If the person conducting the meeting is satisfied that the teacher has made sufficient improvement, the capability procedure will cease and

the appraisal process will re-start. This decision should be confirmed in writing.

If no, or insufficient improvement has been made during the monitoring and review period, the teacher will receive a final written warning. A final written warning will remain active for 24 months, after this period it will be disregarded for capability purposes.

A further review period will take place, the timetable will depend on the circumstances of the individual case but will be a minimum of 4 weeks, with a maximum of 10 weeks. It is for the School/Academy to determine the set period, dependant on the circumstances. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place.

Where a warning is issued, the teacher will be informed of this in writing, normally within 5 working days, this letter should include that failure to achieve an acceptable standard of performance (within the set timescale), may result in dismissal. The final written warning will mirror any previous warnings that have been issued and give information about the procedure and time limits for appealing against the warning.

At the end of the further period of monitoring the teacher will be invited to a decision meeting.

6.5 Decision Meeting

At least five working days' notice will be given inviting the teacher to the decision meeting, the notification will give details of the time and place of the meeting and will advise the teacher of their right to be accompanied.

The meeting will be conducted by the Chair of Governors for Headteacher capability meetings, or the Headteacher for all other teachers, who may be supported by YourHR. Also present at the meeting will be a note taker. Persons identified to provide support may be invited to the meeting to provide detail / an update of progress being made or to provide clarification if required.

If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end and the appraisal process will re-start. This decision should be confirmed in writing.

If performance remains unsatisfactory a recommendation to the Governing Body, will be made that the teacher should be dismissed on the grounds of capability and to arrange a dismissal hearing.

7.0 Dismissal Procedures

7.1 Delegation

The Governing Body has the statutory authority to decide to dismiss staff. For the purposes of this policy the dismissal can only be undertaken by the Staff Dismissal Committee as the Headteacher will have managed the capability process. The constitution of appropriate panels is detailed in appendix 4.

The staff dismissal committee will be the panel for the capability hearing and decide the outcome of the hearing, including a decision to dismiss.

7.2 Dismissal Process

The teacher will be invited by the Headteacher to a hearing where the capability case will be heard. The Staff Dismissal Committee will be supported by:

For Community and Voluntary Controlled Schools, the panel must be supported by;

- Dudley MBC Legal Services representative;
- Dudley MBC HR representative.

The panel should be supported by a note taker / Clerk to the Governing Body.

The letter to the teacher inviting them to this hearing must state:

- The date, time and location of the hearing;
- Any witnesses that will be called;
- Details of how their performance has fallen short of requirements; and
- State clearly that one outcome of the meeting could be termination of their employment;
- A reminder that they have a right to be accompanied.

To allow the teacher sufficient time to prepare for the hearing and consider a response, the employee will be given 10 working days notice of the hearing and will be sent at the same time two copies of the paper-work that will be presented to the Panel.

The teacher will provide to the Clerk to the Governors all written evidence and notification of any witnesses at least 3 working days prior to the hearing. If the employee is submitting a substantial amount of

information, it would be beneficial to submit the evidence as early as possible to allow the panel enough time to review the information.

If evidence is presented from either party after the given timeframes, it will be at the discretion of the panel as to whether or not the new evidence will be considered as part of the hearing.

The dismissal proceedings are detailed in appendix 2 and the order of proceedings is detailed in appendix 3.

7.3 Decision to Dismiss

If the panel makes the decision to dismiss, the Panel will inform the employee in writing stating;

- The reason for the dismissal; which will be capability;
- The date upon which the contract of employment will terminate;
- The appropriate notice period;
- Their right of appeal against the decision.

These areas must be made clear to avoid misunderstandings.

The decision letter will be sent to the employee within 5 working days of the hearing decision. A copy of the decision letter will also be forwarded to the nominated HR Officer advising on the case at the same time as notifying the employee.

The School recognise that the Local Authority is then required to ratify the dismissal within 14 days as set out in the School Staffing (England) Regulations 2009. If notification is not received by the Local Authority in time to allow 14 days for the ratification of the dismissal, then the School accept that any liability for extended employment costs will pass to the school. Where the teacher works in more than one school, the letter from the Local Authority will explain that they are required to cease work at the school from which they have been dismissed.

8.0 Appeals

Any teacher who is issued with a formal warning during this process or is dismissed on the grounds of capability has the right to appeal to the Staff Appeals Committee. The appeal should be submitted in writing and should clearly state the specific grounds for appeal. This needs to be submitted to the nominated officer within school by the employee within 10 working days of receipt of the warning or dismissal letter.

Appeals will be heard without unreasonable delay.

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

When an appeal hearing is convened two copies of all relevant papers and documentation to be relied upon at the hearing must be sent to the employee, at least 10 working days before the hearing. It is also recommended that members of the appeal hearing panel are each sent copies, at the same time.

Should the employee wish to refer to any evidence or call witnesses during the hearing, the evidence and/or names of witnesses must be submitted to the named contact in the appeal hearing calling letter, at least three working days prior to the hearing, so these can be distributed appropriately to the panel members. If the employee is submitting a substantial amount of information, it would be beneficial to submit the evidence as early as possible to allow the panel enough time to review the information.

If evidence is presented from either party after the given timeframes, it will be at the discretion of the panel as to whether or not the new evidence will be considered as part of the hearing.

The order of proceedings is detailed in appendix 3.

8.1 Grounds for Appeal

Grounds for appeal should be due to one or more of the following:

- The finding or penalty is unfair, stating reasons
- New evidence has come to light, stating the evidence
- The capability policy was not used correctly, stating how

The appeal will not be a re-hearing, but will be concerned with the grounds of appeal which should be set out in the letter from the employee.

8.2 The Appeals Process

The appeal will be heard by the Staff Appeals Committee, the Panel who will be supported by:

For **Community and Voluntary Controlled Schools**, the panel must be supported by;

- Dudley MBC Legal Services representative
- Dudley MBC HR representative

The panel should be supported by a note taker / Clerk to the Governing Body.

The format for the appeal meeting is set out in appendix 3.

8.3 The Appeals Decision

The decision of the appeals committee may include the following;

- Appeal not upheld - confirm the original outcome;
- Reduce the penalty given;
- Appeal upheld.

The Appeals Committee decision is final. There will be no further appeal allowed under this procedure.

The decision letter will be sent to the employee within 5 working days of the hearing decision. A copy of the decision letter will also be forwarded to the nominated HR Officer advising on the case at the same time as notifying the employee.

Where a decision cannot be reached on the day of the hearing, the employee will be informed of the decision in writing within 5 working days of the hearing.

9.0 General Provisions

9.1 Re-Entry into Capability

There will be some circumstances following entry into capability and a warning being issued, where the teacher's performance improves to a sufficient level to end the capability proceedings and re-enter them into the appraisal process.

Where this occurs and the improvement is not sustained then the teacher will re-enter the capability policy at the point they left during the active period of the warnings.

- A first written warning will remain active for 12 months;
- A final written warning will remain active for 24 months.

After this period the warnings will be disregarded for capability purposes.

9.2 Grievances

Where a member of staff raises a grievance during the capability procedure then the schools grievance procedure should be followed. In exceptional circumstances the capability procedure may be temporarily

suspended in order to deal with the grievance, however, in the majority of cases it will be appropriate to deal with both issues concurrently.

9.3 Sickness

If sickness absence appears to have been triggered by the commencement of monitoring within the appraisal process or the formal capability procedure, the case will be dealt with in accordance with the school's absence policy. Urgent consideration will be given to a referral 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, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

Where a teacher is absent due to long term absence such as sickness, maternity / additional paternity / adoption leave unrelated to the commencement of monitoring within the appraisal process or the formal capability procedure this should be taken into account when setting the review periods to ensure they are reasonable.

9.3.1 Employees with Disabilities

In some cases an individual may be unable to undertake the full duties of their post due to health-related reasons which may be considered to be a disability under the terms of the Equality Act 2010. The Equality Act 2010 defines that a person has a disability if they have a physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal day to day activities.

If an employee declares a disability or if the Headteacher is aware of a disability, the School/Academy will ensure that all reasonable adjustments to the job, training and support have been provided before considering formal entry into capability. Any adjustment to the working conditions must be reasonable; Headteachers are not expected to make unlimited provision for reasonable adjustments. YourHR should be consulted before any decision to enter the formal capability procedure.

9.4 Non Attendance

9.4.1 When the Employee Fails to Attend

All parties and their representatives should make every effort to attend any meeting/hearing during this process. If the employee does not attend but has a genuine reason the meeting/hearing

may be adjourned and rearranged for a later date. Unless there are exceptional circumstances only one adjournment will be allowed.

If there is an indication in advance of the meeting/hearing that the employee cannot attend for medical reasons, then a referral to Occupational Health may be undertaken to ascertain if they are fit to attend. Alternatively, a representative may attend on their behalf, in these cases the employee must put this in writing.

Where the employee does not attend and no explanation is provided, or the explanation if deemed by the Chair to be unacceptable, the meeting/hearing may be held in the absence of the employee.

In the case of the hearing, if in attendance, the employee's representative can present the case on their behalf. In the case such a decision to proceed will be taken by the Chair of the Panel following advice from the other panel members and any advisors to the panel.

9.4.2 When the Employee Representative Cannot Attend

In the event that the employee representative is unable to attend the meeting/hearing, the representative can request that the meeting/hearing is delayed and suggest an alternative time and date so long as it is reasonable and falls within 5 working days of the original date. In such cases the meeting/hearing will be postponed to accommodate the representative. Such requests will only be granted once. The alternative date must have due regard to the availability of the other parties involved in the hearing and may be extended by mutual agreement.

9.5 Child Protection / Safeguarding

If during the capability process child protection concerns are highlighted or raised against an employee, the Headteacher is responsible for immediately contacting the Designated Officer. This should be done without delay and appropriate advice will be provided about the next steps.

9.6 Referral to Appropriate Agencies

Where a teacher is dismissed on the grounds of capability or the teacher resigns once they have entered into the capability process a referral to an appropriate agency may need to be undertaken. Advice from YourHR should be sought.

10.0 Monitoring and Review

The Governing Body and Headteacher will review the operation and effectiveness of the school's appraisal and capability arrangements every 2 years or as legislation or national policy dictates.

Appendices

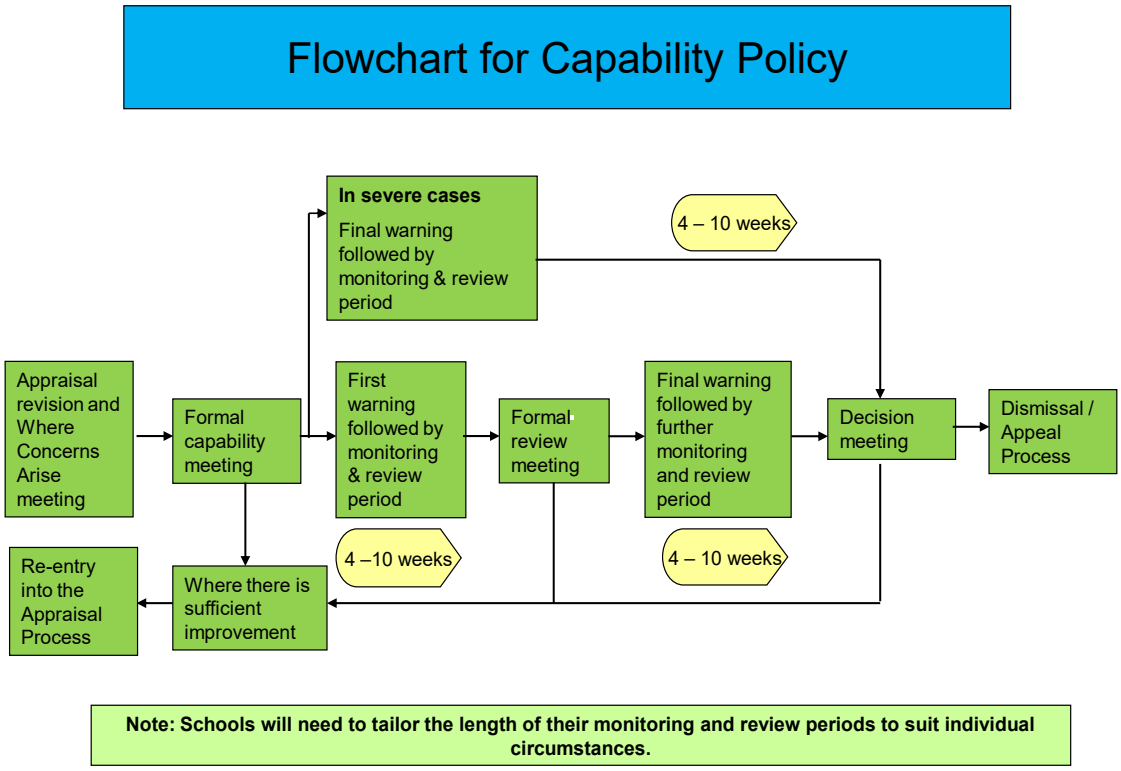
1.0 Flowchart for Capability of Teachers

2.0 Capability Dismissal Procedure

3.0 Order of Proceedings for Capability Dismissal Hearings and Appeals

4.0 Constitution of Appropriate Committees

APPENDIX 1 – FLOWCHART FOR CAPABILITY OF TEACHERS



APPENDIX 2 - CAPABILITY DISMISSAL PROCEDURE

At all times it should be borne in mind that it is likely to be a distressing and emotional time for any employee who is facing the prospect of a dismissal. All those involved in the process are required to be mindful of this and treat the situation with sensitivity.

The Committee of the Governing Body that is required to consider such cases is the Staff Dismissal Committee, appropriately constituted. For the purposes of this procedure the Staff Dismissal Committee will be referred to as 'The Committee'.

In preparation for the proceedings, the Headteacher will have prepared a full report on the employee's circumstances, including documents including evidence from the appraisal process, evidence from the capability process, training / support plans, meeting notes and any other documents relevant to the employee's performance. Information should be factual and represent all alternatives explored, such as training and support, concluding with a recommendation to dismiss.

It should be established whether the services of an interpreter or any other reasonable adjustment are required and provided as appropriate.

When it is determined that a dismissal hearing will be held, the employee will be given no less than 10 working days notice of the hearing. Before a dismissal hearing is held, 2 copies of the "report" including relevant documents will be issued at the same time as the notice of the hearing, 1 copy is for the employee and 1 for the representative.

A copy of the "report" must also be distributed to all of the Committee members in good time for them to have read through it thoroughly, prior to the hearing. It is recommended that the Committee members are sent copies of the papers and documentation at the same time as the employee and the representative with clear instructions regarding confidentiality.

Should the employee wish to refer to any evidence or call witnesses during the hearing, the evidence and/or names of witnesses must be submitted to the Clerk to the Committee no less than 3 working days prior to the hearing. The Clerk to the Committee will then distribute the relevant correspondence to the 'Presenting Officer' and Committee members. If the employee is submitting a substantial amount of information, it would be beneficial to submit the evidence as early as possible to allow the Committee members enough time to review the information.

The employee shall have the right to be accompanied by a representative who may be a fellow worker, a trade union official, or a current recognised trade union representative who has been certified by their union as being competent.

The Strategic Director of the People Directorate and/or his/her Representatives/YourHR have the right to attend for the purpose of giving advice, on all proceedings of the Committee relating to any determination concerning dismissal. The Committee shall consider any such advice before making any decision.

APPENDIX 3 - ORDER OF PROCEEDINGS FOR CAPABILITY DISMISSAL HEARINGS AND APPEALS

1.0 PRELIMINARY MATTERS

The Chair of the Committee shall be taken by the Chair or Vice Chair of Governors, unless he/she is not a member of the Committee, or he/she is absent when the meeting begins, in which case those present shall elect from amongst their number, a person to take the Chair at the meeting during such absence. The Chair or Vice Chair cannot be an employee of the school.

It is recommended that staff Governors do not form part of either The Staff Dismissal Committee or the Staff Dismissal (Appeals) Committee. All other Governors should register a potential conflict of interest at the stage in which the Committee is convened. This is to demonstrate that any decision made is fair, independent and non-prejudiced. Any Governor who has been involved in the particular action taken, or who is in any material way an interested party shall not participate as a Governor in the proceedings.

The hearing shall take place in private session and all parties shall be reminded that proceedings are confidential.

The employee shall have the right to be accompanied by a companion who may be a fellow worker, a trade union official, or a current recognised trade union representative who has been certified by their union as being competent. It is the employee's responsibility to arrange to be accompanied. The employee's representative can address the Committee and confer with and advise the employee, however, the representative must not answer questions on the employee's behalf.

The Presenting Officer will have the right to be accompanied by a representative from YourHR who can address the Committee and confer with and advise the Presenting Officer.

The Committee will be supported at the meeting by advisors, as determined within the policy who can provide advice, confer with the Committee and ask questions.

For all schools with the exception of Academies, the Strategic Director of the People Directorate and/or his/her representatives have the right to attend and advise the Committee in terms of employment law, procedure and regulation, under reference of the School Staffing (England) Regulations 2009.

It should be established whether any adjustments are required to the usual facilities arrangements.

Facilities shall be provided for each side to meet separately. A private waiting room will be provided for the employee and his/her representatives and their witnesses.

The Headteacher will normally present the case to Governors, however, in exceptional circumstances he/she may delegate the presentation of the case to another officer within the school.

There may be occasions where either party request an observer to be in attendance. In these circumstances, the employee, their representative and the presenting officer

should agree to the observer's presence. The formal request will be made to the Chair of the Committee to approve the request prior to the hearing commencing.

The Clerk to the Governors shall confirm that the body is correctly constituted and that the preliminary matters, as above, have been carried out.

The Chair shall, at the commencement of the meeting, set out the procedure as set out below.

2.0 OPENING REMARKS BY CHAIR OF THE APPROPRIATE COMMITTEE

The parties to the matter, with their Representatives, should be invited into the Hearing.

- Introduce those present, or ask each individual to introduce themselves;
- Advise that an adjournment may be requested at any time during the Hearing;
- Outline the procedure to be followed;
- Outline the reason(s) for calling the hearing, Staff Dismissal or the Staff Dismissal (Appeals) Committee.

3.0 ORDER OF PROCEEDINGS

3.1 DISMISSAL HEARING

3.1.1 The presenting officer/YourHR will present the report of the individual's circumstances to the Committee calling such witnesses as necessary.

3.1.2 The employee and/or representative may ask questions of the presenting officer and/or witness(s).

3.1.3 The presenting officer/YourHR may re-examine the witness(s)

3.1.4 The employee and/or representative will respond to the report presenting any information related to the contents and/or recommendations calling such witnesses as necessary.

3.1.5 The presenting officer/YourHR may ask questions of either the employee or their representative and/or witness(s).

3.1.6 The employee and/or representative may re-examine the witness(s).

3.1.7 Members of the Committee may ask questions at any time.

3.1.8 The presenting officer will summarise the circumstances of the case.

3.1.9 The employee or representative will summarise.

3.1.10 The Chair of the Panel may recall witnesses or call for further evidence on specific points but if it becomes necessary to act in this way both parties must be recalled.

3.1.11 Witnesses shall only be present whilst giving evidence.

At the conclusion of the meeting the parties and any other persons present, with the exception of the Clerk, the Advisors to the Committee and the Strategic Director of the People Directorate or his/her representatives shall withdraw whilst the Committee deliberates.

In cases where a decision is able to be reached, all parties will be called back into the Hearing. The Chair of the Committee will supply details of the outcome of the hearing. The employee will be given the Right of Appeal and should he/she wish to do so, must exercise their right by stating the grounds for Appeal, in writing. The Chair should indicate who the Appeal must be addressed to and that any Appeal should be lodged within 10 working days.

This statement will form the substance of the decision letter which must be sent to the employee within 5 working days of the hearing decision by the Chair of the Committee.

For community and voluntary controlled schools a copy of the decision letter must be forwarded to the nominated HR Officer supporting the case at the same time as notifying the employee. The Local Authority is then required to ratify the recommendation of the Committee and will issue notification of termination of the employment contract within 14 days of the dismissal decision. This statutory requirement is set out in the School Staffing (England) Regulations 2009, Sections 35(8) and 36 (8) of The Education Act 2002.

If notification is not received by the Local Authority in time to allow for the ratification of the dismissal within 14 days of the initial dismissal decision, then any liability for extended employment costs would pass to the school.

4.0 APPEAL HEARINGS

Procedures to be followed at a Governing Body Appeals Committee.

4.1 Where the Appeal is either against action taken by the Headteacher or against a decision to dismiss made by the Committee, the Appeal will be heard by the Staff Dismissal (Appeals) Committee referred to for the purpose of this procedure as the 'Appeals Committee'. This Committee has the power to confirm or vary any such previous decision, taking into account advice from the Strategic Director of the People Directorate Representatives at their meeting. Their decision is final.

4.2 It is recommended that staff Governors do not form part of either The Staff Dismissal Committee or the Staff Dismissal (Appeals) Committee. All other Governors should register a potential conflict of interest at the stage in which the Committee is convened. This is to demonstrate that any decision made is fair, independent and non-prejudiced. Any Governor who has been involved in the particular action taken, or who is in any material way an interested party shall not participate as a Governor in the proceedings.

4.3 The Appeals Committee will usually consider the Appeal based on the original case presented.

5.0 ORDER OF PROCEEDINGS

5.1 APPEAL HEARING

5.1.1 The employee (Appellant) and/or representative will present the grounds for the Appeal and will call such witnesses as may be necessary.

5.1.2 The presenting officer/YourHR may ask questions of the employee and of any witness called.

5.1.3 The appellant and/or representative may re-examine the witnesses.

5.1.4 The presenting officer/YourHR will present his/her response to the appellant calling witnesses as necessary.

5.1.5 The appellant and/or representative may ask questions of the presenting officer and of any witness called.

5.1.6 The presenting officer/YourHR may re-examine the witnesses.

5.1.7 Members of the Committee may ask questions of the parties or witnesses at any stage but will seek to confine questioning until immediately prior to their re-examination.

5.1.8 The Appellant or representative will sum up the case.

5.1.9 The presenting officer/YourHR will sum up the case.

5.1.10 The Chair of the Committee may recall witnesses or call for further evidence on specific points but if it becomes necessary to act in this way both parties must be recalled.

5.1.11 Witnesses shall only be present whilst giving evidence.

At the conclusion of the Hearing the parties and any other person present with the exception of the Clerk, advisors to the Committee and the Strategic Director of the People Directorate or his/her representatives shall withdraw whilst the Committee deliberates. In cases where a decision is able to be reached, the Chair of the Committee will deliver the decision and will advise the employee of the outcome of their appeal. There is no further right of appeal.

The decision will be confirmed in writing which must be sent to the employee within 5 working days of the Hearing decision by the Chair of the Committee.

APPENDIX 4 - CONSTITUTION OF APPROPRIATE COMMITTEES

1.0 ESTABLISHMENT OF STAFF DISMISSAL AND STAFF DISMISSAL (APPEALS) COMMITTEES.

1.1 It is recommended that Committee members are established at the first full Governing Body Meeting of the Academic Year. When selecting membership for Committees the principles of natural justice must be seen to be applied.

1.2 Governors should establish a Staff Dismissal Committee and a Staff Dismissal (Appeals) Committee.

1.3 A Committee shall normally include not less than three members of the Governing Body. Where a Committee is established to take a decision regarding the termination of employment of School staff, no member of that Committee shall take part in the proceedings of the Committee established to consider any Appeal against that decision. The membership of the Appeal Committee shall include no fewer members of the Governing Body than that of the Staff Dismissal Committee.

1.4 It is recommended that staff Governors do not form part of either The Staff Dismissal Committee or the Staff Dismissal (Appeals) Committee. All other Governors should register a potential conflict of interest at the stage in which the Committee is convened. This is to demonstrate that any decision made is fair, independent and non-prejudiced. Any Governor who has been involved in the particular action taken, or who is in any material way an interested party shall not participate as a Governor in the proceedings.

2.0 DELEGATING POWERS OF DISMISSAL TO A HEADTEACHER.

2.1 The introduction of the School Staffing (England) Regulations 2003, which came into effect on 1 September 2003, gave significant additional delegated powers to Headteachers for dealing with staffing issues. One of these key features was the provision to provide a Headteacher with delegated responsibility for initial dismissal decisions, following which there will be an opportunity to appeal to a panel of Governors “The Staff Dismissal Appeals Committee”.

2.2 For the purposes of this policy the dismissal can only be undertaken by the Staff Dismissal Committee as the Headteacher will have managed the capability process.