



## Capability Procedure

<b>Member of Staff Responsible</b>	HR Manager
<b>Relevant guidance/advice/legal reference</b>	Shropshire Council Local Authority
<b>Adopted by</b>	Trust Board
<b>Date of Policy</b>	September 2021
<b>Review Cycle</b>	3 years
<b>Date of Next Review</b>	September 2024
<b>Website</b>	Not required

This procedure has been agreed by the following professional associations/trade unions representing Employees, Headteachers and Support Staff:

- National Union of Employees
- National Association of Schoolmasters Union of Women Employees
- National Association of Headteachers
- Association of School and College Leaders
- UNISON
- GMB

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# Capability Procedure

## 1. Purpose

- 1.1. This procedure has been adopted for use in managing serious concerns over the performance of a member of staff, a Headteacher or the Chief Executive Officer (CEO), employed by the Trust. Its aim is to help the employee to improve their performance in order to achieve the professional standards expected of them and to ensure fairness and consistency in the treatment of staff who are subject to action considered as necessary to address unsatisfactory performance.
- 1.2. The procedure does not deal with misconduct, which may be defined as ‘an act or omission which is considered to be unacceptable professional behaviour’, or capability which is related to ill health.
- 1.3. The procedure has been drawn up to ensure compliance with the ACAS Code of Practice on Disciplinary and Grievance Procedures, the Employment Rights Act 1996, Section 98(3)(a) the School Staffing (England) Regulations 2009, relevant regulations relating to school governance and any guidance issued by the Department for Education (DfE).

## 2. Application of the procedure

- 2.1. The procedure covers all employees employed by the Trust other than those subject to the statutory induction period for newly qualified/early career employees, all employees within their probationary period and any person employed on a supply teaching basis or casual basis where no guarantee of further employment has been given.
- 2.2. Unless referenced otherwise, teaching staff and support staff will hereafter be referred to as “employee”. In the case of central trust employed staff reference to the “Headteacher” will be the Chief Executive Officer. In the case of capabilities relating to the Chief Executive Officer, reference to “Chair of Governors” will be Chair of Trustees.
- 2.3. This policy must be read in conjunction with the Trust’s Performance Management Policy.
- 2.4. The 3-18 Education Trust, Local Governing Bodies and the Board of Trustees are committed to ensuring that the capability procedure will be applied fairly and consistently and in a non-discriminatory way, i.e. regardless of:
  - Race
  - Gender
  - Sexual orientation
  - Gender reassignment,
  - Disability
  - Religion and belief
  - Age
  - Marital/partnership status
  - Pregnancy and maternity
  - Contract type
  - Trade union membership

### 3. Implementation of the procedure

- 3.1. The Trust's Performance Management Policy establishes the professional standards expected of all Trust employees and all job descriptions describe the main purpose and the duties and responsibilities expected of employees within that role. Teachers are also subject to a statutory assessment of performance against Teachers' Standards and the professional standards relevant to their role within the school, in order for there to be a progression in salary (where relevant).
- 3.2. Referring to section 4.1 of the Performance Management Policy, if a line manager has concerns over any aspect(s) of performance, a period of informal Intervention and Support (Stage1) will be triggered, with a time-line and metrics for improvement which will last for six working weeks. Line Managers will agree this with the relevant member of SLT.
- 3.3. Where such concern is sustained, either because of lack of progress in one standard, or where a number of standards continue to fall below the Expectations, or support staff are not fulfilling the duties of their role, to the standards expected, this will be referred to the headteacher. The headteacher will arrange a **Management Action** meeting with the employee in order to consider the evidence and the concerns about performance. The employee will be given five working days' written notice of this meeting. The employee has a right to be accompanied by a colleague or a professional association/trade union representative. The Headteacher will identify the concerns and will allow the employee opportunity to comment on the evidence and offer any explanation for why their performance may be unsatisfactory. Either the period of Intervention and Support (Stage 1) will be continued, as some progress has been made, with a further time-line (no more than 4 working weeks) and metrics for improvement, or the employee will enter into Stage 2a which is a period of **Management Action** for **six working weeks**.

Where the headteacher is of the view following the meeting that any concerns can continue to be addressed through the Trust's Performance Management Policy this will be confirmed in writing within 5 working days of the meeting. Where, however, the headteacher judges that there are serious concerns for which support to achieve improvement should be provided through implementation of this capability procedure, they will determine that the performance management process will be suspended and decisions relating to pay progression (for teachers) will be suspended and that the employee's performance will be managed under the "Management Action" section below.

During this time, support will be given and improvement is expected. If this period of time needs to be extended, or later in the same cycle, a separate 6 week Intervention and Support (Stage 1b) period is required, then the teacher **will not qualify for pay progression during that cycle**.

- 3.4. Where the concerns relate to the performance of the headteacher, it will be for the Chair of Governors to meet with the headteacher and their representative and make a decision on the requirement to implement action under the "Management Action" section below.
- 3.5. Prior to any action the headteacher (or Chair of Governors for headteacher cases) will take advice from the HR Manager who will also normally attend any meeting.

### 4. Management Action Stage: Monitoring and Support

- 4.1. Where the headteacher (or chair of governors) determines following the Management Action meeting that serious concerns over the employee's (or headteacher's)

performance will be addressed through the implementation of this stage of the capability procedure, they shall promptly confirm this in writing within 5 working days setting out (with use of Annex 1):

- (a) the specific nature of the concerns; and
- (b) relevant targets for action with clear success criteria;
- (c) the arrangements for providing advice and support; e.g. observation of colleagues, visits to other schools, coaching, training etc;
- (d) the arrangements for the monitoring of performance and feedback, including lesson observations, review of other evidence etc. Such monitoring will be reasonable and proportionate to the concerns being addressed;
- (e) the period over which performance will be monitored and reviewed;
- (f) that at the end of the review period the headteacher (or chair of governors) will consider the evidence to determine whether satisfactory improvement has been made or whether further action under this capability procedure will be necessary.

4.2. The review period set by the headteacher (or chair of governors) will be sufficient to allow reasonable time for improvement but will depend on the circumstances of the individual case. It will be reasonable and proportionate providing sufficient opportunity for improvement to take place. The timetable will be no less than 6 weeks.

4.3. Advice and support during the review period may be provided both from within and beyond the school and Trust.

4.4. At the end of the review period, the headteacher (or chair of governors) will meet with the employee (or headteacher). The evidence will be reviewed and discussed and the employee (or headteacher) will have the opportunity to submit any appropriate evidence for consideration. The headteacher (or chair of governors) will confirm their judgement at the end of the review meeting which will be one of the following:

1. That sufficient progress has been achieved and the management action stage under the capability procedure will cease and the employee's (or headteacher's) performance will resume being subject to normal assessment under the Trust's Performance Management Policy.
2. That some progress has been made and the management action stage will be extended for a further period not exceeding 4 weeks.
3. That insufficient progress has been made and the employee's (or headteacher's) performance will be considered at a formal capability meeting in accordance with section 5.

4.5. If during the review period set more serious concerns arise, or if the employee (or headteacher) fails to engage in the process, the headteacher (or chair of governors) may determine that a formal capability meeting will be held in accordance with the section below. The length of the process does not need to be completed for this determination to be made.

4.7. During such a period of support, decisions related to pay progression will be suspended.

## **5. Formal capability meeting**

- 5.1. The employee (or headteacher) will be given in writing at least five working days' notice of a formal capability meeting. The notification will contain:
  - a) sufficient information about the performance concerns to enable the employee to prepare to answer the case at a formal capability meeting;
  - b) the possible outcomes of the meeting i.e. a formal warning;
  - c) copies of any written evidence;
  - d) that any information the employee (or headteacher) wishes to be taken into consideration be submitted 3 working days prior to the meeting;
  - e) the details of the time and place of the meeting;
  - f) confirmation of the right to be accompanied by a professional association/ trade union representative or colleague.
- 5.2. The HR Manager will be present to provide procedural advice to the headteacher or chair of governors (where the headteacher's performance is under consideration).
- 5.3. This meeting is intended to establish the facts. It will be conducted by the headteacher or the chair of governors (for headteacher capability meetings). The meeting allows the employee (or headteacher) 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.
- 5.4. This meeting will be conducted as follows:
  - a) The headteacher (or chair of governors for headteacher capability) will confirm the status and purpose of the meeting and will set out the grounds for concern by reference to the evidence derived from an assessment of performance under the management action stage of the procedure.
  - b) The employee (or headteacher for headteacher capability) together with their representative may ask questions of the headteacher (or chair of governors).
  - c) The employee (or headteacher) or their representative may provide oral and/or written representations in response to the evidence under consideration.
  - d) The headteacher (or chair of governors) may ask questions of the employee (or headteacher) and their representative.
  - e) The headteacher (or chair of governors) will ask the parties present whether there are any final points they wish to be taken into consideration.
- 5.6. Where the responsibility for the monitoring of performance under the management action stage of this procedure was delegated to another individual (e.g. senior member of staff, appointed adviser), they will attend the meeting to make the presentation of evidence and in order to provide any needed clarification over the evidence under consideration. The process at paragraph 5.4(a) to (e) above will be expanded to allow for their presentation of evidence and questioning by the parties present.
- 5.7. The headteacher (or chair of governors) conducting the meeting may conclude that it would not be helpful to continue under the capability procedure and that it would be more appropriate to continue to address any remaining concerns through the performance management process. In such cases, the capability procedure will be brought to an end. This decision will be confirmed in writing within 5 working days of the meeting.
- 5.8. The headteacher (or chair of governors) 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. The meeting should be reconvened within 10 working days wherever possible.

- 5.9. Where at the conclusion of the formal capability meeting the headteacher (or chair of governors) considers that there are grounds for the employee's (or headteacher's) performance to be managed under the formal stage of the capability procedure, they will in writing within 5 working days:
- (a) issue the employee (or headteacher) a formal warning or, exceptionally in very serious cases, a final written warning; and
  - (b) identify the professional shortcomings, for example which of the standards expected of employees are not being met; and
  - (c) give clear guidance on the improved standard of performance needed to ensure that the employee can be removed from formal capability procedures (which guidance should be set out in an action plan - see Annex 1 - and must include the setting of new objectives focused on the specific weaknesses that need to be addressed, and 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); and
  - (d) explain the support that will be available to help the employee improve their performance;
  - (e) set out the timetable for improvement; and
  - (f) explain how performance will be monitored and reviewed (which could include the involvement of an External Adviser); and
  - (g) warn the employee formally that failure to improve within the set period could lead to dismissal.
- 5.10 The timetable for improvement will depend on the circumstances of the individual case. It will be reasonable and proportionate providing sufficient opportunity for improvement to take place. The timetable will be no less than 6 weeks and no more than 10 weeks.
- 5.11 An appropriate notetaker will be appointed to take notes of formal capability meetings and a copy promptly sent to the member of staff. The member of staff will have opportunity to comment on the notes for accuracy and any disagreements will be noted.
- 5.12 Where a warning is issued, the employee will be informed in writing of the matters covered in paragraph 5.9 and given information about the timing and handling of the review stage and the procedure and time limits for appealing against the warning.
- 5.13 During the period of formal capability, decisions related to pay progression will be suspended.

## **6. Monitoring and review period following a formal capability meeting**

- 6.1 A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period and will be reflected in the action plan (see Annex 1). At the end of the review period the member of staff 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 paragraph 8 below).

## **7. Formal review meeting**

- 7.1 As with formal capability meetings, at least five working days' notice of the review meeting will be given in writing 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 by a colleague or a **professional association/Trade Union representative**. Any information the employee (or headteacher) wishes to be taken into consideration must be submitted 3 working days prior to the meeting;
- 7.2. The HR Manager will be present to provide procedural advice to either the headteacher or chair of governors.
- 7.3. Any External Adviser who has been monitoring and evaluating performance will also be in attendance.
- 7.4. This meeting will be conducted in accordance with the procedure set out at Annex 2.
- 7.5. If the headteacher (or chair of governors) conducting the meeting is satisfied that:
  - a) The employee (or headteacher) has made sufficient improvement, the capability procedure will cease and the performance management process will re-start; or
  - b) if some - but not sufficient - improvement has been made the headteacher/Chair of Governors is confident that more is likely, the first monitoring and review period will be extended; or
  - c) if no, or insufficient improvement has been made during the first monitoring and review period, the employee (or headteacher) will receive a final written warning.

All of the above decisions will be confirmed in writing within 5 days of the end of the meeting.

- 7.6. An appropriate notetaker will be appointed to take notes of formal capability meetings and a copy promptly sent to the member of staff. The member of staff will have opportunity to comment on the notes for accuracy and any disagreements will be noted.
- 7.7. Any final written warning will mirror any previous warnings that have been issued, as set out in section 5.9 above.
- 7.8. Where a final warning is issued, the member of staff will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale), may result in dismissal and give information about the handling of the second monitoring and review period and the procedure and time limits for appealing against the final warning.
- 7.9. If a final warning was issued, at the end of the second monitoring and review period the employee will be invited to a decision meeting.
- 7.10. When a final written warning is issued, careful consideration will be given to the timetable set for improvement which will depend on the circumstances of the individual case. It should only be in exceptional circumstances that this final timescale for improvement be longer than 6 weeks.

## 8. Decision meeting

- 8.1. As with formal capability meetings and formal review meetings, at least five working days' notice will be given in writing 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. Any



information the employee (or headteacher) wishes to be taken into consideration must be submitted 3 working days prior to the meeting;

- 8.2. The HR Manager will be present to provide procedural advice to either the headteacher or chair of governors. Also, any External Adviser who has been monitoring and evaluating performance will attend the meeting.
- 8.3. The meeting will be conducted in accordance with Annex 2.
- 8.4. If an acceptable standard of performance has been achieved during the second monitoring and review period, the capability procedure will end and the performance management process will re-start. Only in very exceptional circumstances should the monitoring and review period be extended further at the decision meeting stage.
- 8.5. If performance remains unsatisfactory, the headteacher (or chair of governors) will suspend (in accordance with usual suspension protocols) the employee (or headteacher) and refer the matter for consideration by the Governors' Staff Dismissal Committee, with a recommendation that the employee (or headteacher) be dismissed on capability grounds.
- 8.6. The headteacher (or chair of governors) will confirm the decision to refer and the reasons in writing.

## 9. Decision to dismiss

- 9.1. As soon as practicable a meeting of the Trust's Staff Dismissal Committee will be convened, giving all parties at least ten working days notice, in writing. Any information the employee (or headteacher) wishes to be taken into consideration must be submitted 3 working days prior to the meeting;
- 9.2. An HR Advisor will be present to provide procedural advice to the Committee. An appropriate notetaker will be appointed to take notes of formal capability meetings and a copy promptly sent to the member of staff. The member of staff will have opportunity to comment on the notes for accuracy and any disagreements will be noted.
- 9.3. The meeting will be normally held within working hours.
- 9.4. The procedure to be followed will be in accordance with Annex 4. The member of staff may be accompanied by a **workplace colleague, professional association/trade union representative** at the meeting.
- 9.5. The Committee will decide whether:
  - a) the member of staff's performance is unsatisfactory; and
  - b) whether the capability procedure has to date been applied correctly.
- 9.6. The decision of the Staff Dismissal Committee will wherever possible be communicated verbally at the end of the meeting and must be confirmed in writing within 5 days of the end of the meeting.
- 9.7. Any decision of the Committee must be confirmed by the Chair in writing promptly sent to the member of staff and in the case of dismissal must state the reasons for the dismissal and right of appeal.

- 9.8 The employee (headteacher) will be given the appropriate contractual notice in accordance with the Burgundy Book, within fourteen days of the date of the notification.
- 9.9 If the Staff Dismissal Committee decide not to dismiss, the Chair of the Committee will write to the employee confirming that the Capability Procedure will end and that the Performance Management process will restart.

## **10. Appeals**

- 10.1 If an employee or headteacher feels that a decision to dismiss them, or other formal action taken against them under the capability procedure (not management action stage), is wrong or unjust, they may appeal in writing against the decision within ten working days of the decision, setting out at the same time the grounds for appeal. The letter must be addressed to the clerk to the governors.
- 10.2 Appeals will be heard without unreasonable delay (within 20 working days wherever possible) and, where possible, at an agreed time and place.
- 10.3 The same arrangements for notification and right to be accompanied will apply as with formal capability and review meetings. Any information the employee (or headteacher) wishes to be taken into consideration must be submitted 3 working days prior to the meeting;
- 10.4 As with other formal meetings, notes will be taken and a copy sent to the employee. An appropriate notetaker will be appointed to take notes of formal capability meetings and a copy promptly sent to the member of staff. The member of staff will have opportunity to comment on the notes for accuracy and any disagreements will be noted
- 10.5 The appeal will be dealt with by a committee of trustees with delegated responsibility (normally the Trust's Staff Discipline/Dismissal Appeals Committee) made up of trustees who have not been party to the decision against which the appeal has been made.
- 10.6 The procedure to be followed at the appeal hearing will be in accordance with Annex 3 attached where it is an appeal against action short of dismissal. The procedure to be followed for an appeal against dismissal will be in accordance with Annex 4 attached. The employee will be informed in writing of the results of the appeal hearing as soon as possible.

## **11. Other Considerations**

### **Role of the Trust Body during the Capability Procedure**

- 11.1 Members of the Trust Board have key roles in the operation of the capability procedures at the stages of appeals and dismissal hearings. Trustees should therefore at all times remain mindful of the need not to prejudice their position in such formal proceedings. To safeguard governors' impartiality, it is essential that any information provided by the headteacher to governors about members of staff under the capability procedure is strictly controlled and provided on a need to know basis only. Whilst in reporting to governors it may be judged necessary to specify the name of an individual member of staff detailed

information should not be given nor should discussion ensue on the matters of concern. Any such report by the headteacher should be recorded as a confidential item in the minutes.

- 11.2 On applying these procedures the headteacher will have made professional judgements, taking advice as appropriate, as the lead professional within the school. Trustees serving on the relevant committees must consider whether the action taken by the headteacher is reasonable and whether these procedures have been correctly applied.

## **Written Records and Removal of Warnings**

- 11.3 Written records relating to action under these procedures must be maintained and held confidentially on file. This includes records of meetings and decisions as well as documents relating to evidence presented. Such records remain 'live' whilst this procedure is in progress.
- 11.4 Where in the light of performance improving to a satisfactory level, and there being confidence that this can be maintained, a decision is taken by the headteacher or chair of governors (for headteacher capability) to bring capability procedures to a close, records will remain 'live' on a member of staff's personal file for a further specified period as follows:-
- (a) following the issue of a formal warning for a period equivalent to three school terms (1 year); but
  - (b) following the issue of a final warning for a period equivalent to up to six school terms (2 years).
- 11.5 Where at the end of the periods specified above the headteacher or chair of governors makes a decision that satisfactory performance has been sustained, the previous action or warning will be disregarded for the purpose of any further action which may subsequently arise under these procedures and that decision will be confirmed in writing to the employee and a copy of the letter will be held on the member of staff's personal file.
- 11.6 Where during the periods specified above further concerns about the employee's or headteacher's performance result in the need for a further capability meeting then an unexpired previous warning may be taken into consideration when determining any further warning and the timetable set for improvement under this procedure.
- 11.7 In accordance with its legal obligations, when asked to provide a reference for a employee the Headteacher (or Chair of Governors) will confirm whether or not the employee has been the subject of formal capability procedures within that period and, if so, the details of the concerns which gave rise to this, along with the duration of the proceedings and the outcome.

## **Staff Absent through Illness during the Procedure**

- 11.7 Cases of absence triggered by action under these procedures and which the headteacher believes may be long term, should after no less than 4 weeks absence be referred to an Occupational Health Adviser for assessment of whether the member of staff is fit for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures.

- 11.8 In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.
- 11.9 Advice should be sought from the HR Manager prior to any decision to proceed with a meeting required under these procedures in the absence of the member of staff concerned.
- 11.10 Where a member of staff is diagnosed as having a medical condition which is covered under the Equality Act, then consideration will be given, including at the point of any action under this procedure, to 'reasonable adjustments' which may enable him/her to achieve the satisfactory performance of his/her duties and responsibilities.

## **Grievances**

- 11.11 A member of staff may raise a grievance about the behaviour of the headteacher (or chair of governors) or other senior member of staff during the course of this procedure.
- 11.12 Where this relates to the management of the procedure or the exercise of a role within the operation of the procedure, and depending on the circumstances, it may be appropriate to suspend the procedure whilst the grievance is considered. Such a delay should only however be considered where there is clear evidence that the member of staff has grounds for a grievance. It should also be considered whether there is an option to continue the capability procedure through responsibility being transferred to another senior member of staff (or other Governor for headteachers)
- 11.13 If appropriate the capability and grievance case may be dealt with concurrently and the capability process may continue within the same timescale.

## **Confidentiality**

- 11.14 The capability process will be treated with confidentiality. However, the desire for confidentiality does not override the need for the head employee and governing body to quality-assure the operation and effectiveness of the capability system. Capability documentation should be regarded as a confidential document other than for the purpose of quality assurance.

## **12. Monitoring and Review**

The HR Manager, in conjunction with the Chief Executive Officer, will monitor the outcomes and impact of this policy/procedure on an annual basis.

This procedure will be reviewed no later than 3 years by the HR Manager, in consultation with Trade Unions.

## Action Plan - Management Action / Formal Capability Action Plan (delete as appropriate)

This is a supportive action plan and is informal/formal action (delete as appropriate) as a result of identified developmental areas in Teachers' Standards or professional standards expected within support staff roles alongside fulfilling the duties and responsibilities of the job description.

<b>Employee Name</b>				
<b>Monitoring Period</b>				
<b>Standards requiring improvement and areas of concern (list teachers' standards)</b>	<ul style="list-style-type: none"> <li>• XXXX</li> <li>• XXXX</li> <li>• XXXX</li> </ul>			
<b>Agreed Actions (Please number actions)</b>	<b>Measurement of Success Criteria</b>	<b>Means of Support (indicate persons/resources)</b>	<b>Timeframe for specific actions</b>	<b>Arrangements for Monitoring and Review throughout monitoring period (indicate persons)</b>

Reviewer's comments during the monitoring period:

Reviewee's comments during the monitoring period:

Next steps:

Name: \_\_\_\_\_ Signed: \_\_\_\_\_ (Employee) Date: \_\_\_\_\_

Name: \_\_\_\_\_ Signed: \_\_\_\_\_ (Line Manager) Date: \_\_\_\_\_

Name: \_\_\_\_\_ Signed: \_\_\_\_\_ (Headteacher) Date: \_\_\_\_\_

## Annex 2

### PROCEDURE AT FORMAL CAPABILITY REVIEW/DECISION MEETINGS

The procedure set out below will be followed where a formal capability review/decision meeting is called.

The HR Manager will normally attend the meeting to provide procedural advice.

The person responsible for the monitoring of the employee's (or headteacher's) performance during the review period will be present at the meeting.

Witnesses will not normally be called although documentary evidence presented at the meeting will give sufficient detail of information provided by other parties which is relevant to the proceedings.

- (a) The headteacher will introduce the parties present and confirm the status and purpose of the meeting.
- b) The headteacher will present the findings from the review period supported by the Adviser/person responsible for the monitoring of the employee's performance.
- c) The employee together with their representative may ask questions of the headteacher and the Adviser/person responsible for the monitoring undertaken.
- d) The employee or their representative may provide an oral and/or written statement in response to the evidence presented.
- e) The headteacher may ask questions of the employee and their representative.
- f) The headteacher will ask the parties present whether there are any final points they wish to be taken into consideration.

*Where within clause 5(a) to f) above it is the performance of the headteacher that is under consideration then reference to the "employee" will be the headteacher and reference to the "headteacher" will be the Chair of Governors.*

- A written record of the meeting will be made and circulated to the parties.
- Any party may call for an adjournment during the meeting will be made and circulated to the parties
- At the conclusion of the meeting the parties present, with the exception of the HR Advisor providing procedural advice, will withdraw whilst the headteacher (or chair of governors) deliberates.

## **APPEAL HEARING AGAINST FORMAL ACTION SHORT OF DISMISSAL: PROCEDURE**

Where the appeal is against action by the Headteacher or Chair of Governors (for headteacher capability) short of dismissal, the appeal will be heard by the Trustees' Committee with formally delegated responsibility to hear such an appeal.

Under this procedure the Committee has the power to confirm or vary any decision of the Headteacher or Chair of Governors, taking into account any advice from the HR Manager, at their meeting.

If changing the decision, the Committee will determine what action is to be taken under the provisions of the procedure.

Their decision is final.

At the appeal meeting:

1. The Chair will introduce those present, confirm the purpose of the meeting and process to be followed and confirm that either side may request an adjournment at any stage of the proceedings.
  2. The employee or their representative will be asked to present the grounds for the appeal (calling such witnesses as may be necessary).
  3. The Headteacher may ask questions of the witnesses (where called), and the employee.
  4. The employee or their representative may re-examine the witnesses (where called).
  5. The Headteacher will present the case (calling any witnesses as may be necessary).
  6. The employee or their representative may ask questions of the witnesses (where called) and the Headteacher.
  7. The Headteacher may re-examine the witnesses (where called).
  8. Members of the Committee may ask questions of the parties or witnesses at any stage but will seek to confine questioning until after questioning of witnesses by the parties is completed.
  9. The Headteacher will be invited to sum up the case.
  10. The employee or their representative will be invited to sum up the case.
  11. At the conclusion of the hearing the parties and any other persons present, with the exception of the HR Manager providing advice, shall withdraw whilst the Committee deliberates.
- A written record of the meeting will be made and circulated to the parties.
  - The Chair of the Committee may during the proceedings above recall witnesses or call for further evidence on specific points but if it becomes necessary to act in this way following the apparent conclusion of the hearing (i.e. at clause 5 (k) above then) both parties must be recalled.
  - Either party may present documentary evidence, copies of which shall be served upon the other party at least five working days in advance of the hearing date.
  - Witnesses (other than the employee) shall only be present whilst giving evidence unless the Chair of the Committee directs otherwise.



- Any party may call for an adjournment during proceedings.
- Whenever possible a room will be provided for the employee and his/her representative for use outside of the hearing.

*Where within clause 2 above the appeal has been made by the headteacher then reference to the "employee" will be the headteacher and reference to the "Headteacher" will be the Chair of Governors.*

## **Annex 4 REFER TO TRUSTEES SDC DOCUMENT**

### **TRUSTEES' STAFF DISMISSAL COMMITTEE TRUSTEES' STAFF DISMISSAL APPEAL COMMITTEE (This procedure applies to meetings of either Committee)**

The following procedure will be used where a recommendation for a member of staff's dismissal has been made following a decision meeting held under the capability procedure. It will also be used for any appeal against a decision to dismiss a member of staff following operation of the capability procedure. In either case an external HR Advisor will normally attend the meeting to provide procedural advice.

At the dismissal meeting:

1. The Chair will introduce those present, confirm the purpose of the meeting and process to be followed and confirm that either side may request an adjournment at any stage of the proceedings.
  2. The Headteacher will be invited to present the case (calling such witnesses as may be necessary).
  3. The employee, or their representative, may ask questions of the witnesses (where called) and of the Headteacher.
  4. The Headteacher may re-examine the witnesses (where called).
  5. The employee, or his/her representative, will be invited to present the case (calling such witnesses as may be necessary).
  6. The Headteacher may ask questions of the witnesses (where called), and the employee.
  7. The employee, or their representative, may re-examine the witnesses (where called).
  8. Members of the Committee may ask questions of the parties or witnesses at any stage but will seek to confine questioning until after questioning of witnesses is completed and prior to re-examination of the parties.
  9. The Headteacher will be invited to sum up the case.
  10. The employee, or their representative, will be invited to sum up the case.
  11. At the conclusion of the hearing the parties and any other persons present with the exception of the LA representative, shall withdraw whilst the Committee deliberates.
- A written record of the meeting will be made and circulated to the parties.
  - The Chair of the Committee may during the process above recall witnesses or call for further evidence on specific points but if it becomes necessary to act in this way following the apparent conclusion of the hearing (i.e. at B11. above) then both parties must be recalled.
  - Either party may present documentary evidence, copies of which shall be served upon the other party at least five working days in advance of the hearing date.
  - The employee (or Headteacher), in addition to his/her representative or friend who may present his/her case, may be accompanied by one other assistant who takes no active part in the proceedings.
  - The Headteacher (or Chair of Governors), in addition to making use of a clerical assistant, may receive advice from a representative or friend who will take no active part in the proceedings.

- Witnesses (other than the employee) shall only be present whilst giving evidence unless the Chair of the Committee directs otherwise.
- Any party may call for an adjournment during proceedings.
- Whenever possible a room will be provided for the employee and his/her representative for use outside of the hearing.

*Where within clause 2 is the dismissal of the headteacher that is under consideration then reference to the “employee” will be the headteacher and reference to the “Headteacher” will be the Chair of Governors.*

