

**HRS 2b  
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# **Schools' Model Capability Policy Guidance for Non-Teaching Staff**

This Policy has been formally adopted by the Governing Body of  
.....on.....(date).

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## 1.0 Introduction

- 1.1 This document sets out a framework for implementing the Schools' Model Capability Policy for Non-Teaching staff and must be applied in conjunction with the Policy as it provides information and practical guidance around the Local Authority's approach to handling capability matters.

### **Why have a Capability Policy for Non-Teaching staff?**

- 1.2 The primary objective of this Policy is to effect an improvement in work performance through the provision of guidance, advice, training and support. It is recognised that work performance can vary from time to time, and would normally form part of supervision and 'one to one' discussions, where feedback can be provided to assist employees in understanding the requirements of their role. Therefore, poor performance of a sporadic or minor nature can normally be resolved by giving informal guidance and support to the member of staff involved. However, where work performance consistently falls below expected standards, attempts must be made to provide structured support, guidance and training in order to encourage improvement and bring performance back to an acceptable level.
- 1.3 The Designated Person is the Headteacher; however certain responsibilities will be delegated to the appropriate Line Manager/Senior Manager within the School to deal with capability issues at the Informal Stage and Formal Stage 1.
- 1.4 Performance issues should always be discussed with employees as they arise and should not necessarily be delayed until any planned supervision discussion.

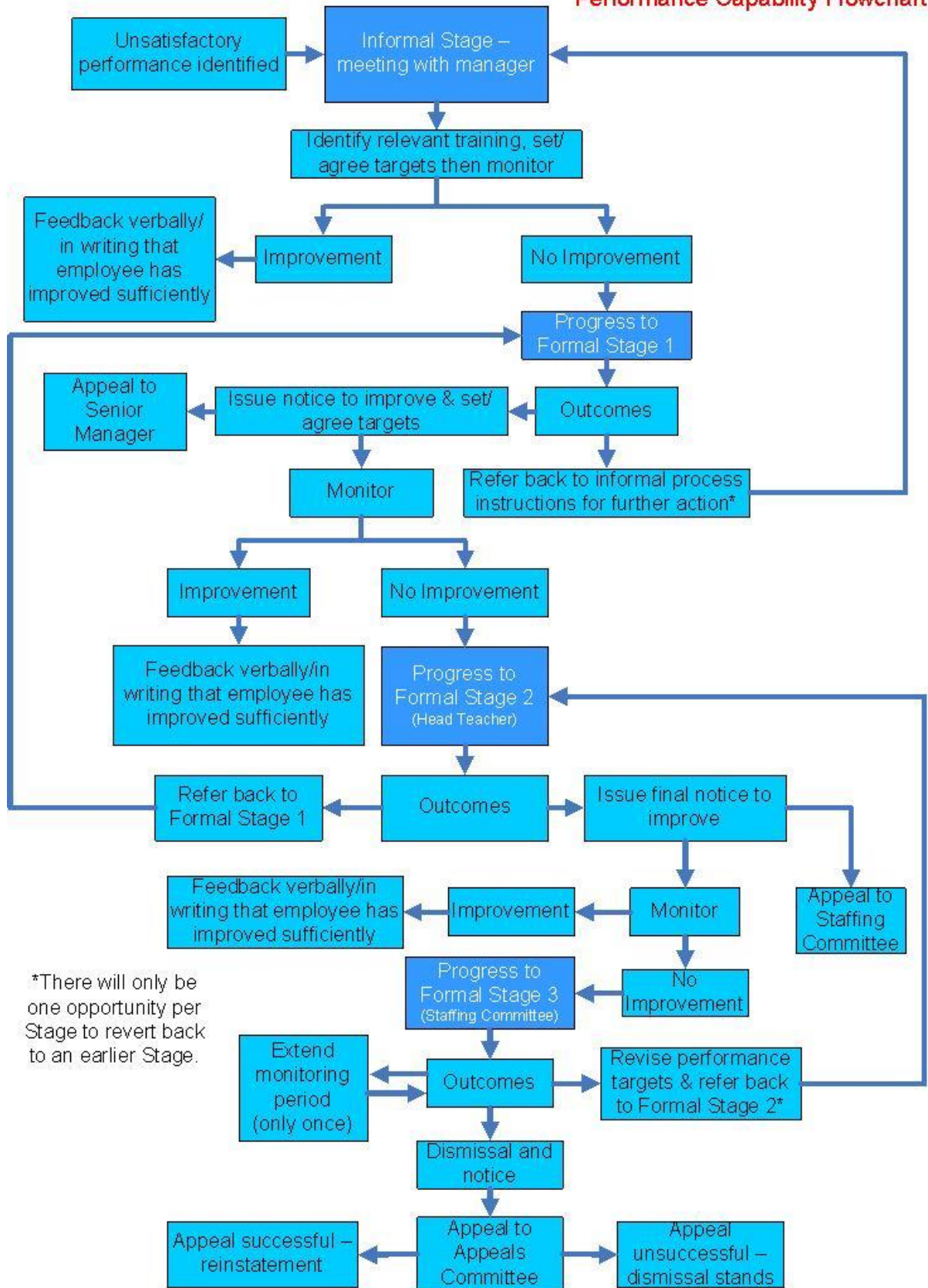
### **Managers need to ensure that the employees and/or the teams they manage:**

- know and understand what is expected of them i.e. identify and communicate the required standards of performance
- have the skills and ability to deliver on these expectations
- are supported by the School in developing their capability to meet these expectations
- are given feedback on their performance
- have the opportunity to discuss and contribute to individual and team aims and objectives

### **Employees need to ensure that they:**

- are open and honest in discussions with managers
- are receptive to suggestions to improve their performance
- identify barriers to their performance
- work with managers to identify skills gaps and training needs
- agree targets with managers and work to achieve the targets within the timescales

## Performance Capability Flowchart



## 2.0 Exceptions and Exclusions

- 2.1 The Schools' Model Capability Policy for Non-Teaching Staff should **not** be used for:
- 2.1.1 concerns relating to an employee's incapability due to ill health; in these circumstances the Schools' Model Management of Absence Policy should be referred to.
  - 2.1.2 concerns due to an employee's refusal to perform to acceptable standards i.e. where they are capable but unwilling; in these circumstances the Schools' Model Disciplinary Policy should be referred to.
  - 2.1.3 workers e.g. people engaged through Templink.
  - 2.1.4 employees whose performance is subject to a probationary period.
  - 2.1.5 employees engaged on fixed-term contracts who will not have their contracts extended solely for the purpose of completing proceedings relating to this Policy.
  - 2.1.6 where an individual who is subject to this Policy is a trade union representative, no action will be taken until the circumstances of the case have been notified to a full-time officer of the trade union concerned.

## 3.0 General Points

### 3.1 An Employee's Right to Representation

- 3.1.1 At all Formal Stages the employee must be informed of their right to be accompanied by a work colleague or a trade union representative. However it is not appropriate for the representative to be someone who might have a conflict of interest or who may be called as a witness.
- 3.1.2 Representatives do have the right to put forward representations on behalf of the employee and/or sum up the case, should the employee wish them to do so. However, the representative cannot answer questions put to the employee. The employee must answer any questions that are directed at them.
- 3.1.3 Representatives can play an important role in bringing additional and/or mitigating circumstances to the attention of the Designated Person or in encouraging and supporting the employee to do this.

### 3.2 Suggestions for having successful capability management conversations

- prepare key points you want to get across
- practice what you want to say and how to say it
- give clear specific detail on what is not being done currently and what needs to be different with clear timeframes and review meetings to track change
- give positive feedback on what is being done well by the employee
- help the employee to see the skills and qualities they have already achieved
- seek to assess the situation from the employee's perspective
- provide specific examples rather than generalisations to help the employee understand the concerns
- do not delay conversations: bring any issues to the employee's attention at the earliest opportunity so they are fresh in their mind and help them think about how they can approach things differently
- listen and offer support to help the employee to address their performance e.g. mentoring, coaching, training etc.

### 3.3 Identifying capability concerns

- 3.3.1 Unsatisfactory performance can be challenging to define because circumstances and individuals differ. There may be a number of factors to consider when assessing work performance.
- 3.3.2 It is for the Designated Person (or as delegated to the appropriate Line Manager/Senior Manager) to decide what is considered unsatisfactory performance within the work undertaken in a School environment. There are several common performance and capability issues which could be considered if employees are failing to:
- perform their role and responsibilities
  - provide the level of service expected
  - meet individual and/or team targets
  - meet levels of competency expected for the role

3.3.3 The Designated Person's first task is to decide whether there are capability concerns and, if so, how these have been raised. This information may come from a range of sources:

- complaints/criticisms of the employee's work from colleagues, customers or members of the public
- factual grounds indicating unsatisfactory performance such as poor results or work objectives not being achieved
- the employee needing constant support/help in undertaking day-to-day activities
- general observation of the employee indicating an issue or problem.

3.3.4 It is essential that unsatisfactory performance is evidenced and the Designated Person is able to refer to specific examples. Once a problem has been identified the relevant manager should hold an informal discussion with the employee.

3.3.5 Further evidence concerning an employee's capability may be raised in the following ways:

- low work output: where an employee is capable of producing work at the required standard, but is working more slowly and/or failing to meet and maintain relative targets/other output requirements
- inability to cope with a reasonable volume of work to a satisfactory level or standard
- poor standards of work e.g. frequent mistakes, not following a job through, unable to cope with instructions given, demonstrating a lack of commitment and drive
- failing to meet the expected competencies for the role
- displaying a lack of apparent skill in tasks/method of work required

### 3.4 Factors which can affect capability

3.4.1 If it is accepted there are circumstances where the employee does not have the necessary knowledge/skills and experience to perform the role and/or where there has been a significant amount of workplace change; then the relevant manager should consider an appropriate course of action e.g. targeted training, coaching, mentoring or other support as required.

3.4.2 If an employee has a disability as defined in the Equality Act 2010 it will be necessary to make all appropriate 'reasonable adjustments' and further advice and guidance must be sought from the School's HR provider before considering any action.

3.4.3 Where an employee reports sick during any monitoring process consideration should be given to making a referral to the Occupational Health Unit for support and/or advice. In the above circumstances and having taken medical advice, the relevant manager may also need to consider extending monitoring timescales to facilitate employees being afforded sufficient opportunity to improve to the required standard.

### 3.5 Support

- 3.5.1 It should also be noted that factors outside of the workplace can impact on an employee's capability so it is important to identify all factors which may be contributing to or causing this and also considering any support which may be needed in response.
- 3.5.2 Managers should be in a position to recognise any unexplained changes in behaviour which are out of character that may be attributable to non-work related factors. For example, relationship breakdowns, domestic responsibilities, illness in the family/friends or financial difficulties.
- 3.5.3 Where such issues occur they should be explored sensitively and support should be provided to allow the employee reasonable time and assistance to deal with these issues in their life.

### 3.6 Performance Management Report

3.6.1 The person dealing with the unsatisfactory performance will present the management case and this will take the form of a performance management report.

3.6.2 This report will need to explain to all those present at the meeting/hearing why formal action should be taken against the employee. The report should set out:

- the performance standards expected of the employee
- the reasons why those standards are expected
- shortfalls in employee performance
- details of what performance management action have been taken to date (if any)
- the effects of the performance management action
- the consequences of continued unsatisfactory performance on the service

3.6.3 Appendices to the report may include:

- copy of the employee's job description and personnel specification
- induction procedure (if applicable)
- probation forms (if applicable)
- records of other informal procedures
- monitoring outcomes from previous reviews
- evidence of benchmarks (if applicable)
- witness statements (if applicable)
- records of training
- supervision documents (if applicable)

### 3.7 Review Meetings

3.7.1 During a monitoring period, review meetings should be held between the manager and the employee in order to discuss progress and evaluate any changes in performance.

3.7.2 If the performance has improved and is now considered to be satisfactory, no further action is required other than for the manager to:



- acknowledge the improvement and provide positive feedback to the employee; and
- send a letter to the employee to advise them that the desired improvement has been achieved, and encourage them to maintain this improvement.

3.7.3 If there has been an improvement, but the employee's performance has still not reached the required level:

- it should be made clear what further improvement is expected
- the period for improvement should be extended with a new review date set
- it is important for the manager to continue to show encouragement and provide the necessary support to help enable the employee to attain the required standard

3.7.4 If no adequate improvement has been made despite the steps set out in 3.7.3 above, managers may progress to the next Stage of the Policy.

### 3.8 Appeals

3.8.1 An employee may appeal against decisions taken at any Formal Stage of the Policy. The appeal must be made in writing within 10 working days of the decision, giving full reasons for the appeal.

3.8.2 The appeal must be heard without unreasonable delay but for the purposes of clarity an appeal against:

- the decision of a Senior Manager (Formal Stage 1) will be dealt with impartially by another Senior Manager who has had no previous involvement in the case.
- the decision of the Headteacher (Formal Stage 2) will be heard by the Staffing Committee.
- dismissal (Formal Stage 3) or any other decision made by the Staffing Committee will be considered by the Appeals Committee of the Governing Body.

3.8.3 The Chair of the previous hearing will present the management case at the appeal, explaining the reasons why they felt performance management improvement actions needed to be taken.

3.8.4 The Designated Person who presented the case to the original hearing is likely to be called as a witness.

3.8.5 The format for the appeal hearing will follow the same process used in the Formal Stage meeting/hearing as set out in **Appendix 1**.

3.8.6 The results of the appeal should be communicated by the Chair in writing within 5 working days of the hearing and a copy of the letter shall be retained on the employee's personal file.

## **4.0 Decision Makers**

- 4.1 For all intents and purposes the key decision maker will be the Headteacher. However, certain responsibilities will be delegated to the appropriate Line Manager within the School to deal with performance management issues at the Informal Stage and Formal Stage 1. This is explicit within the Schools' Model Capability Policy for Non-Teaching Staff as the Line Manager is usually in the best position to deal with the matter without delay.
- 4.2 Should the employee's performance not have improved sufficiently following the Informal Stage, then a meeting will be convened at Formal Stage 1 and will chaired by a Senior Manager who has had no previous direct involvement in the case.
- 4.3 Following the meeting at Formal Stage 1 should the employee's performance not have improved sufficiently and/or targets have not been achieved, then a meeting will be convened at Formal Stage 2 and this will chaired by the Headteacher who has had no previous direct involvement in the case.
- 4.4 If a final notice to improve has been issued but the employee's performance targets have not been met and/or their performance remains unacceptable, then a formal hearing will be convened at Stage 3 of the Policy and this will be heard by the Staffing Committee.
- 4.5 An appeal against dismissal (Formal Stage 3) or any other decision made by the Staffing Committee will be considered by the Appeals Committee of the Governing Body. The decision of the Appeals Committee is final and exhausts the internal process.

## 5.0 The Informal Stage

5.1 This should be a two-way discussion focusing on the employee's performance and ascertaining whether the employee accepts that there is an issue or problem based on the information available. The discussion should be constructive and provide an opportunity for the employee to put forward suggestions/views on how their performance may be improved.

### 5.2 The Meeting at Informal Stage

5.2.1 A meeting should be held with the line manager and the employee shall receive written notice of not less than 5 working days' notice before the date of the meeting. The main purpose of the meeting is to explain this is the first stage of the process, to enable the manager to raise their concerns and for the employee to respond with explanations or any contributory factors and to identify possible solutions.

5.2.2 In having this discussion, managers should

- conduct the discussion in private, free from interruption
- encourage the employee to describe the issues and any problems
- probe the employee with open-ended questions and listen carefully to any explanation/s offered
- be alert to factors possibly contributing to the problem(s) e.g. relationships with colleagues, insufficient supervision or training, domestic problems
- seek to shape the discussions so that the real issues or problems are identified
- with the employee's input explore the factors contributing to unsatisfactory performance
- identify, make suggestions and discuss solutions to help the employee overcome the issues or problems.

### 5.3 Following the meeting at Informal Stage

5.3.1 If there are performance concerns and non-work related factors are raised as contributory factors then the manager should ensure the following:

- standards/objectives are set
- monitoring and review period is established
- notes of this meeting including any support/training provided and a record is kept to ensure that both manager and employee are aware and can refer to the standards/objectives that have been set when the review takes place.

5.3.2 The manager should with the employee review the outcomes. Where the employee has achieved the required improvement, the employee should be informed that no further action will be taken subject to continued satisfactory performance.

5.3.3 Where a performance problem still exists, consideration should be given to moving to the Formal Stage.

## **6.0 The Formal Stages 1/2/3 - Points to Note**

6.1 The School's Model Capability Policy for Non-Teaching staff encourages performance issues to be discussed at the earliest opportunity.

6.2 The Designated Person/appointed Chair must have had no previous, direct involvement in the case.

6.3 The Designated Person/Chair of the meeting at the previous Formal Stage will present the management case in the form of a 'performance management report' and explain the reasons for their decision.

6.4 The employee will be given at least 5 working days' notice of the meeting. If the employee is unable, for good reason, to attend the meeting on the date proposed, the Designated Person/Chair may reschedule the meeting. A meeting can normally only be rescheduled once and a new date must be agreed within 5 working days of the original date. The actual meeting date need not be within those 5 days but should be as soon as possible subject to the availability of those involved in this process particularly Governors at Formal Stage 3.

6.5 Formal meetings/hearings at Stages 1, 2 and 3 are held in circumstances where an employee has not met the required performance standards or made improvements following the review meetings.

### **6.6 Purpose of the meeting/hearing**

6.6.1 As set out in the performance management report, the purpose of the meeting/hearing is to:

- formally confirm the concerns in unsatisfactory performance which have been highlighted in the previous review meetings (e.g. by reference to their job description, objectives/goals, supervision notes etc.)
- raise awareness of the concerns about performance and how it is not meeting the required standards
- consider the causes of the difficulties
- allow the employee to put forward their points of view and provide any mitigation or disclose any external factors relevant to their unsatisfactory performance
- enable the employee to express any concerns they have about the issues raised and any issues they may have about training, guidance, support or equipment provided
- establish targets and an action plan for improvement (which will include any additional training required and arrangements for a performance review)
- set out any steps required by the manager in order to support and assist the employee to achieve the improvements

### **6.7 At the end of the meeting/hearing**

6.7.1 There should be a clear common understanding of the:

- shortfalls in performance
- improvements required and
- timescales for those improvements to be demonstrated

6.7.2 When fixing the timescales for monitoring and review, managers should take into account the length of time needed to train the employee to correctly undertake the duties which are causing concern, and the time required to demonstrate the improvement. It is generally considered that 8 weeks after the appropriate training has been undertaken is sufficient.

6.7.3 The Designated Person/Chair should write to the employee and, where appropriate, issue a notice to improve, outlining the discussions and setting out an action plan.

6.7.4 Alternatively, the Designated Person/Chair has the option to refer the matter back to the previous Stage for further action to be undertaken. However, there will only be one opportunity to refer back to the previous Stage before moving to the next Stage.

6.7.5 It should be noted subject to there being no significant changes to their role, if the employee's performance deteriorates again and they fail to meet the targets set within 12 months of written agreement that their performance is at the required level under this process, the manager may resume the process at the stage reached previously.

## Formal Stage 1 (Senior Manager)

- 6.8 Where an employee's performance has not improved sufficiently following the Informal Stage, then a formal meeting will be convened at Stage 1 of the Policy.
- 6.9 This meeting will be chaired by a Senior Manager who has had no previous direct involvement in the case and the process to be followed is as set out in **Appendix 1**.
- 6.10 The Chair will confirm their decision in writing and the options are to:
- a) refer it back to the informal process with instructions for further action; **or**
  - b) issue a 'notice to improve' with an action plan and targets; and
  - c) set a monitoring period of up to 8 weeks after the appropriate training has been undertaken.
- 6.11 The Senior Manager will inform the employee in writing of the outcome and any recommendations made within 5 working days. The letter should also inform the employee of their right to appeal the decision in writing within 10 working days of the decision, giving full reasons for the appeal. The appeal will be dealt with impartially by another Senior Manager who has had no previous direct involvement in the case.

## Formal Stage 2 (Headteacher)

- 6.12 If the targets set at Formal Stage 1 have not been achieved and/or performance remains unacceptable, then a formal meeting will be convened at Stage 2 of the Policy.
- 6.13 This meeting will be chaired by the Headteacher who will have had no previous direct involvement in the case and the process to be followed is as set out in **Appendix 1**.
- 6.14 The Chair will confirm their decision in writing and the options are to:
- a) refer it back to Formal Stage 1; **or**
  - b) issue a 'final notice to improve' with an action plan and targets; and
  - c) set a monitoring period of up to a further period of 8 weeks.
- 6.15 The Headteacher will inform the employee in writing of the outcome and any recommendations made within 5 working days. The letter should also inform the employee of their right to appeal the decision in writing within 10 working days of the decision, giving full reasons for the appeal. The appeal will be dealt with impartially by the Staffing Committee.

## Formal Stage 3 (Staffing Committee)

- 6.16 If a final notice to improve has been issued but the employee's performance targets have not been met and/or their performance remains unacceptable, then a formal hearing will be convened at Stage 3 of the Policy.
- 6.17 This hearing will take place before the Staffing Committee of the Governing Body and the process to be followed is as set out in **Appendix 1**.
- 6.18 The Local Authority, through a representative of the Director of Children's Services, has an entitlement to attend for the purposes of giving advice where dismissal may be a possibility.
- 6.19 The Chair's options are to:
- a) dismiss the employee in line with their Statement of Written Particulars and the notice shall be effective from the date upon which the decision is communicated to him/her by the Director of Children's Services. The Committee may decide that a payment in lieu of notice be paid to the employee; **or**
  - b) extend the monitoring period for up to a further 4 weeks and delay making a final decision about the employee's continued employment until after this extended period has elapsed; **or**
  - c) refer it back to Stage 2 and provide revised performance targets.
- 6.20 The Chair of the Committee will inform the employee in writing of the outcome and any recommendations made within 5 working days of the hearing. The letter should also inform the employee of their right to appeal the decision in writing within 10 working days of the decision, giving full reasons for the appeal. The appeal will be dealt with by the Appeals Committee.



## Appeals Committee

- 6.21 Upon written notification that an employee wishes to exercise his/her right to appeal against the decision taken by the Staffing Committee, the Appeals Committee shall acknowledge receipt of this notification. The appeal shall be heard as soon as practically possible after the written notification of the appeal.
- 6.22 The employee and his/her representative shall be given not less than five working days' notice of the date, time and place of the hearing of the Appeals Committee.
- 6.23 The appeal will be dealt with impartially by Governors who have not previously been involved in the case. The appeal will not normally be a full re-hearing, but will focus on the grounds of appeal set out in the letter from the employee. A representative of the Director of Children's Services shall be present at appeals against a dismissal decision.
- 6.24 The process for the Appeals Committee to hear the appeal is detailed in **Appendix 2**.
- 6.25 The Chair's options are to:
- a) uphold any dismissal decision; **or**
  - b) refer it back to Stage 2 and provide revised performance targets.
- 6.26 The results of the appeal should be communicated by the Chair in writing within 5 working days of the hearing and a copy of the letter shall be retained on the employee's personal file. The final appeal hearing exhausts the internal process.

## 7.0 Additional General Points

### 7.1 Grievance against the Designated Person

7.1.1 If an employee lodges a grievance against the Designated Person at any Stage of the Policy, then this will be dealt with through the appeals process within the Schools' Model Capability Policy for Non-Teaching Staff.

7.1.2 If an employee has a grievance about an unrelated matter, this may be progressed concurrently.

### 7.2 Serious or Gross Incapability

7.2.1 In the case of serious or gross incapability and depending on the seriousness of the capability issue, earlier Stages of the Policy may be bypassed. In these circumstances, the Designated Person **must** have obtained further advice and guidance from the School's HR provider before taking action and given full consideration to any mitigating factors raised by the employee.

7.2.2 Examples (although not an exhaustive list) of serious or gross incapability are where the employee's act or omission due to a lack of skill or ability could have serious consequences for the health and safety of others, raise safeguarding concerns or have a financial impact on the School/Council.

## **8.0 Records**

- 8.1 In order that comprehensive records are maintained, copies of all minutes and correspondence arising out of the operation of this procedure shall be retained on the employee's personal file.

## **9.0 Confidentiality**

- 9.1 All meetings and any subsequent appeal hearings will be dealt with in the strictest of confidence. The employee and any other individuals involved in this process (including witnesses) must adhere to this.
- 9.2 Any documents relating to formal proceedings must be kept secure at all times.
- 9.3 All matters will remain confidential in accordance with the Data Protection Act 1998 at any stage except in circumstances where there is a legal obligation to disclose such information.

## Appendix 1 - Procedure for the Formal Meeting/Hearing

Action	Person
<ul style="list-style-type: none"> <li>• Introductions and explanation of the process to be followed</li> <li>• That an adjournment may be requested at any time during the hearing</li> </ul>	The Chair/Committee*
<ul style="list-style-type: none"> <li>• Outline of reasons for the meeting/hearing</li> </ul>	Presenting Manager
Presentation of management case, including the calling of their witness/witnesses	Presenting Manager
Questions to Presenting Manager (and their witness/es)	Employee or trade union representative/work colleague
Questions to Presenting Manager (and their witness/es)	The Chair/Committee* and advisor/s (as appropriate)
Presentation of employee's case (including the calling of their witness/es if applicable)	Employee or trade union representative/work colleague
Questions to the employee (and their witness/es if applicable)	Presenting Manager
Questions to the employee (and their witnesses)	The Chair/Committee* and advisor/s (as appropriate)
Summing up of the management case (no new evidence can be introduced at this stage)	Presenting Manager
Summing up of the employee's case (no new evidence can be introduced at this stage)	Employee or trade union representative/work colleague
Withdraw from the meeting/hearing whilst the case is being considered	Presenting Manager, employee, trade union representative/work colleague
If the Chair requires further clarification on a point of fact, both parties will be asked to return even if the question is to be put to one side only, so that the other side can hear what is being said	The Chair/Committee*
The Chair/Committee makes the decision	The Chair/Committee* and advisor/s (as appropriate)
Hearing reconvened all parties return and employee informed of the decision and right of appeal	The Chair/Committee*
Formal letter confirming decision and right of appeal issued within 5 working days	The Chair/Committee*

**NB \*Stage 1 – Senior Manager**

**\*Stage 2 – Headteacher**

**\*Stage 3 – Chair of Staffing Committee**

## Appendix 2 - Procedure for the Appeals Committee

Action	Person
<ul style="list-style-type: none"> <li>• Introductions and explanation of the process to be followed</li> <li>• That an adjournment may be requested at any time during the hearing</li> </ul>	The Appeals Chair
Presentation of employee's case, including the calling of their witness/es	Employee or trade union representative/work colleague
Questions to the employee (and their witness/es)	Headteacher*
Questions to the employee (and their witnesses)	The Appeals Chair/Committee, and HR Consultant/ Legal Advisor/ representative of the Director of Children's Service (as appropriate)
Presentation of management case, including calling of their witness/es	Headteacher*
Questions to the Headteacher* (and their witness/es)	Employee or trade union representative/work colleague
Questions to the Headteacher* (and their witness/es)	The Appeals Chair/Committee, and HR Consultant/ Legal Advisor/ representative of the Director of Children's Service (as appropriate)
Summing up of the employee's case (no new evidence can be introduced at this stage)	Employee or trade union representative/work colleague
Summing up of the management case (no new evidence can be introduced at this stage)	Headteacher*
Withdraw from the hearing whilst the case is being considered	Headteacher*, employee, trade union representative/work colleague
If the Appeals Chair/Committee requires further clarification on a point of fact, both parties will be asked to return even if the question is to be put to one side only, so that the other side can hear what is being said	The Appeals Chair/Committee
The Appeals Chair/Committee makes the decision	The Appeals Chair/Committee, and HR Consultant/ Legal Advisor/ representative of the Director of Children's Service (as appropriate)
Hearing reconvened all parties return and employee informed of the decision	The Appeals Chair
Formal letter confirming decision issued within 5 working days	The Appeals Chair

**NB** (\*or Chair of Staffing Committee, if applicable)

## Annex 1 – Schedule of Designated Persons (Schools)

### General Principles

- If the employee’s performance has not improved sufficiently then the escalation process is as set out below.

<b>Informal Stage</b>	<b>Formal Stage 1</b>	<b>Formal Stage 2</b>	<b>Formal Stage 3</b>
Line Manager	Senior Manager	Headteacher	The appropriate Committee of the Governing Body usually Staffing Committee