



# THE FULHAM BOYS SCHOOL

<b><i>Policy Title</i></b>	<b>Performance and Capability Policy</b>
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## **Revisions Table**

<b><i>Version</i></b>	<b><i>Date</i></b>	<b><i>Edited by</i></b>	<b><i>Description of Change</i></b>

The master copy of this document can be found on the FBS Google Drive, under the “Policies” folder. This is one of a number of policies that are reviewed by the Governing Body, the full list can be found on the FBS Google Drive in the Policies Folder. Minor revisions that just adjust factual items (eg contact details / names) can be made by the author without formal review, and must be recorded in the Revisions table above. Revisions table front sheet was added to all policies Summer 2018.



## PERFORMANCE AND CAPABILITY POLICY AND PROCEDURES

Date of Next Review: Summer 2020

### CONTENTS:

DEFINITIONS.....	3
1. Policy .....	10
2. Procedures .....	12
4. Initial Appraisal and Management .....	15
5. Formal Appraisal .....	17
6. The Formal Capability Procedure .....	18
7. Appeal against a Committee decision.....	25
8. Role of Headteacher .....	27

## DEFINITIONS

For the purposes of this Policy and all other School policies relating to employment the following definitions shall apply (not all defined terms will be material to this Policy or the procedures authorised by the governing body under it)

Appeal Committee	A Committee appointed to determine an appeal against the decision of another Committee. It must not include any prejudiced person but must include the same number of governors as were members of the Committee which made the previous decision against which the employee wishes to appeal.
Capability	An employee is capable who at all reasonable times demonstrates that s/he is fit, qualified and able to discharge all the demands made in the course of the work described in her/ his contract of employment. If, in some essential part of that work, a person, for whatever reason, evidently lacks professional or other relevant skills or competences or her/his performance is otherwise unsatisfactory that person is incapable in that respect. Lack of capability is not to be confused with misconduct or other disciplinary issues.
Capacity	This term has the same meaning as “capability”.
Chair of governing body	The person who is the chair of the governing body from time to time or, as the case may be, the governor nominated by the governing body to deputise for her/him.
Clear working day	A weekday other than a Saturday or a Sunday or a public holiday. A period of a stated number of clear working days is calculated from midnight on the day on which the triggering action or event takes place to midnight on the day before the event or action before which the period is expressed to expire e.g. a period of

five clear working days after receipt of a notice will be calculated from midnight of the day on which the notice was received to midnight on the last day of the period.

**Clerk** The person appointed by the governing body as its clerk who shall also act as the clerk to a Committee or her/his substitute authorised from time to time by the Chair of the governing body for that purpose.

**Committee** A committee to whom power is delegated by the governing body to act as a committee for the purposes of these procedures and such a committee shall comprise not less than one nor more than three untainted governors and such other independent persons selected by the Chair of the governing body.

**Companion** A person who accompanies the employee and who may be another employee of the School or a full time official employed by a trade union or lay trade union official as long as they have been certified in writing by their union as having experience of or received training in acting as a worker's companion at hearings or, in a case where a meeting or hearing concerns dismissal, a legal representative. Certification may take the form of an identifying card or letter. The person selected must be unprejudiced and her/his presence must not prejudice a fair hearing.

**Competence** The qualifications, skills and personal qualities contractually or otherwise reasonably required to fulfil the demands of the particular task in issue.

**Complaint** An allegation made in writing that a named employee has behaved in an unacceptable way, which might justify disciplinary action

being taken against her/him.

Counselling

For the purposes of these procedures this means any confidential one-to-one discussion for the support and assistance of an employee or other person.

Delegated powers

Powers to make any specified decision including to decide whether to hold a meeting or hearing or to make substantive or procedural decisions in the course of meetings or hearings expressly delegated to a Committee or its chair or the Headteacher or any other named or designated individual(s) by the governing body either under its constitution or by a decision of the governing body which has been minuted.

Employee

Any employee of the School.

Exceptional case (relating to capability)

Very unsatisfactory performance that places the education of one or more pupils in jeopardy.

Governing body

The body of duly appointed directors and/or trustees and/or governors of the School.

Grievance

Any concern or problem that an employee as such raises in writing with her/his line manager or the Headteacher or the governing body on any matter relating to the administration or management of the School including a complaint by an employee against a management decision whether made by a line manager, the Headteacher or the governing body.

Gross misconduct

Misconduct so deliberate and serious that it could justify dismissal without previous warnings and without notice.

Headteacher	The teacher appointed or temporarily acting as headteacher of the School. Where the Headteacher is her or himself the object of the relevant procedure the term shall include the chair of the governing body or her/his deputy who will act as substitute for all necessary purposes.
Independent investigator	An independent person appointed by the chair of the governing body to carry out the initial investigation where the Headteacher and/or identified governors are either the subject of complaint, or have been involved in previous discussions relating to it or for some other appropriate reason.
Independent medical examination	A medical examination by a medical practitioner appointed and provided by the School with all relevant information who has not previously examined the employee whether or not also attended by a medical practitioner appointed by the employee at her/his expense . Such an examination will only take place in order to assess the capability of the employee including the likely date of a full return to work if at all and the desirability of any change to any duties or responsibilities and/or any reasonable adjustments to facilitate a full return to work and the probability of future absence and/or the underlying causes of past absence(s) and any need for referral or review of the outcome of the examination.
Investigator	The line manager or Headteacher or chair of the governing body or such other person (being either a governor or an independent person) appointed by the chair of the governing body as is appropriate in all the circumstances to investigate and establish the relevant facts.

Line manager	An employee of the School who has delegated responsibility from the governing body under the control of the Headteacher for the day to day management of an identified employee or group of employees. This will normally be a member of the senior leadership team.
Misconduct	An act or omission which is considered by the School to be either improper or otherwise unacceptable in contravention of School policies or rules and/or of professional standards and will be dealt with under the School's disciplinary policy and procedures.
Must	Indicates something which is required by law or formal policy or procedure adopted by decision of the governing body as to which there is no discretion under these procedures.
On duty	A member of staff is on duty when carrying out their contractual obligations or the express instructions of the Headteacher on or off school premises.
On file	A record is on file if put and kept in an employee's personal file. Employees have access to their file through the Headteacher. Employees do not have access to confidential matters relating to other people or to confidential references which may be on their own file.
Prejudiced	To be potentially biased having previously read about, listened to or taken part in discussion of a relevant matter relating to a named employee or by being a personal friend or close relative of that employee. An unprejudiced person has no apparent bias arising from any such earlier involvement with the complaint or personal association with the employee.

Premature retirement	A valid application through the governing body by an employee who is a teacher aged 55 years or over and has completed the normal qualifying period for early retirement under the Teachers Pension Services or any other pension scheme in accordance with the scheme rules if any.
Procedures	The procedures authorised by the governing body and to be followed under the relevant School policy.
Pupils	Boys on the current School register.
Records	Documents or other physical records including electronic data and documents setting out facts and other relevant matters.
Redundancy situation	The removal or reduction of a post which may result in dismissal of the employee currently in post where the governing body has ceased or intends to cease operating the School either in the place where the employee is employed or at all or where the requirements of the School for employees to carry out work of any particular kind have or are expected to cease or diminish for those or similar reasons.
School	The Fulham Boys School.
School day	A day when the relevant employee is contractually required to be present including any day when pupils may not be present.
Should	Indicates something which is generally accepted as good practice and recommended but is not required by law or formal regulation adopted by decision of the governing body.

Unions	Includes both recognised trade unions and professional associations of which the relevant employee(s) is a member at the material time.
Untainted governor	A governor who is unprejudiced in relation to the matter and whose ability to act and decide fairly in it is not impaired by previous direct involvement in that matter or by prior consideration of it by the governing body as such.
Voluntary redundancy/severance	Acceptance by an employee of termination of employment by dismissal in a redundancy situation either on the employee's application or on the invitation of the governing body.

## **1. Policy**

- 1.1 This document sets out the School's policy and procedures for managing unsatisfactory performance and handling issues relating to any lack of capability on the part of employees
- 1.2 The aim of the School is to provide an outstanding education in every respect to the boys and, so far as reasonably possible, to provide appropriate pastoral support, working conditions and resources to its employees to enable each of them to fulfil their own potential in achieving that outcome
- 1.3 The governing body of the School will be responsible for ensuring that fair, consistent and objective procedures exist for managing unsatisfactory performance on the part of employees which includes both the incidence of unsatisfactory work and/or the lack of professional or other relevant skills. The Headteacher will be responsible and accountable to the governing body for the organisation, management and control of employees' work and their performance of that work.
- 1.4 This policy and the procedures implementing it are not concerned with issues such as lengthy or frequent short-term sickness absences or alcohol or drug-related problems or a combination of these which are dealt with by the School's specific policies and procedures for managing such matters
- 1.5 This policy and the procedures implementing it are not applicable to interns for whom separate procedures apply under the School's specific policy and procedures for managing matters relating to them.
- 1.6 The policy of the School in relation to monitoring, appraisal and management of employee performance and to dealing with any capability issues which may arise is that the procedures followed should in the first instance be aimed at assisting and encouraging all employees to achieve and maintain a high standard of performance and conduct
- 1.7 The procedures adopted under this policy are therefore intended to be workable, transparent, consistent, objective and fair so that they merit the confidence of all teaching and non-teaching employees and other stakeholders whilst bearing in mind the overriding objective of protecting the boys and providing to them a safe and outstanding education at all times in accordance with the founding principles of the School
- 1.8 The School will take all reasonable steps to ensure that targets set for employees' performance will be specific, measurable, attainable, reasonable and

time-limited i.e. SMART. The School will, so far as reasonably possible, provide to all employees timely support including where appropriate mentoring in resolving any problems relating to performance or capability before initiating formal capability procedures

1.9 In formulating its policy and establishing and operating its procedures for the management of unsatisfactory performance and capability issues the School has and will at all times observe the principles of natural justice.

1.10 The School will in the formulation and implementation of its policy and procedures also observe the guidelines set out in the current ACAS Code of Practice (11 March 2015) and any subsequently amended version or replacement of the Code and the provisions of the Equality Act 2010 and the law generally

1.11 Current legislation relating to performance appraisal and the requirements of relevant employment law including those relating to equal opportunities have been considered and will be taken into account by the School in formulating its policy and establishing and implementing the following procedures.

1.12 The School will keep its policies for appraisal of employee performance and formal capability and the operation of its procedures for the management of unsatisfactory performance and capability under review and will consult the London Diocesan Board of Schools and independent legal and other professional advisers whenever reasonable to do so in relation to the formulation of its policy and the implementation of its procedures. The School will in implementing the following procedures have regard to relevant Guidelines published from time to time by the London Diocesan Board of Schools

1.13 The School will closely adhere to its policy and procedures and the Headteacher, senior leadership team and governors involved in implementing the procedures will undertake appropriate training

1.14 The School will ensure that the procedures as approved and amended by the governing body from time to time will be adopted as part of each employee's contract and that all employees understand the standards of work and conduct that are expected of them and have easy access to a copy of the current policies and procedures in the Staff Handbook.

1.15 The School will take all reasonable steps to ensure so far as possible that the rights to privacy of employees and other persons who may be affected are protected in the course of any proceedings and that such proceedings are carried

on in a proper manner and governors and other persons who may be involved as committee members or otherwise in making formal decisions are not tainted

- 1.16 The currently approved procedures under this policy are set out below and will be subject to review and amendment from time to time by the governing body.

## **2. Procedures**

### **Committees (which includes Appeal Committees)**

- 2.1 The membership of a Committee shall include not more than three nor less than one untainted governor appointed from time to time as necessary by the chair of the governing body acting impartially from the group of governors nominated for the purpose of appointment to Committees by a minuted annual decision of the governing body.
- 2.2 The chair of the governing body may appoint as additional members of any Committee such other independent person or persons as shall appear to be reasonably necessary for the purposes of that Committee but such additional members must be appointed at the time of constitution of the Committee.
- 2.3 The chair of the governing body must provide clear written terms of reference for a Committee upon constitution of the Committee including:
- (a) a statement of delegated powers of decision in relevant matters relating to formal hearings under employment procedures
  - (b) strict confidentiality of the relevant matters to the members of the committee.
  - (c) a requirement that the chair of the committee should provide a short written report to the next meeting of the governing body following conclusion of any inquiry, hearing or appeal as the case may be. This report should summarise briefly the nature of the concerns and the outcome of the procedure whilst respecting the employee's privacy
- 2.4 The chair of a Committee shall be appointed by the chair of the governing body from the members appointed to that Committee when it is constituted and must be a member of the governing body.
- 2.5 Any employee governor is entitled to be appointed to a Committee provided that they are not potentially biased by any possibility of direct or indirect personal gain from the Committee's proceedings whether by way of salary increase or promotion or otherwise.

- 2.6 The proceedings of a Committee including any hearing shall be attended by the Clerk and may be attended on the invitation of the Committee by other identified unprejudiced persons including such independent professional advisers as the chair of the Committee shall think fit but only members of the Committee have decision-making powers.
- 2.7 The role of any Committee is to implement the relevant School policy and procedures in accordance with the law and the principles of natural justice and in performing that role the Committee must allow reasonable periods of time to enable an employee to prepare their case and for all parties to consider alternative approaches.
- 2.8 A Committee must take all reasonable steps to ensure that decisions are made and the correct procedures are followed at all times in compliance with material statutory and other legal obligations and the principles of natural justice.
- 2.9 The Clerk must carry out her/his role under these Procedures carefully and honestly and in doing so must ensure that a full and accurate contemporaneous note of the proceedings in or connected with any Committee meeting or hearing including discussions and decisions and the reasons for any decisions are recorded in writing and that copies of such records and of all related correspondence and other material documents including written representations and evidence produced to the Committee by or on behalf the School or any employee are put and kept on the Committee's files for so long as is legally necessary in each case dealt with by the Committee under these Procedures.

### **3. General Provisions**

- 3.1 In order to comply with the principles of natural justice the following should be observed:
- (a) Any person is entitled to an unbiased hearing
  - (b) No one person can be both the bringer of a complaint and an arbiter of the complaint
  - (c) There must be adequate time for the employee to prepare and to consult with their companion
  - (d) The case must be thoroughly documented, clearly written and be supported by evidence. Care must be taken not to allow assumptions, prejudices or stereotypes to influence decisions.
  - (e) The employee has the right to be accompanied by a companion at any hearing.
  - (f) The employer or representative has the right to be accompanied by a companion at any hearing.
  - (g) Both sides have the right of reply.

(h) Both sides may call witnesses and produce written evidence. There will normally be no restriction on witnesses, but the committee reserves the right not to hear witnesses whose evidence it decides is not relevant. There must be a right of examination by both sides.

(i) There is a right of appeal.

(j) No one who has been involved in the development of the case can be on a Committee including an Appeal committee.

3.2 At any stage of a formal capability procedure, an employee has the right to be accompanied or represented by a companion.

3.3 Meetings or hearings held under these Procedures, whether with or by the Headteacher or a Committee are private and are strictly confidential to those attending. Reports to the governing body of any matters relating to capability or the commencement of a capability proceeding should not contain the names of individuals and be general and brief. Following disposal of capability proceedings the chair of the Committee may provide a short written report to the next meeting of the governing body summarizing the nature and outcome.

3.4 Meetings or hearings should be held during the employee's working hours so far as practical and appropriate.

3.5 Periods of notice of any meeting or required action defined in the procedures may, in exceptional circumstances and on written request of a party, be extended or reduced by agreement of the parties and the chair of the Committee

3.6 The date appointed for a meeting may be postponed on written request of a party by agreement of the chair of the Committee but in no case shall there be a further postponement save where there is evidence that an employee's companion is unavailable to attend (in which case there is a statutory right to a postponement) or there are exceptional circumstances. A record of the request and of the circumstances giving rise to any such postponement together with relevant documents shall be kept on file.

3.7 The Headteacher may, in an appropriate case and with the consent of the chair of the governing body, delegate any step which s/he might otherwise take in operation of the Procedures, to the line manager of the employee or to a member of the senior leadership team.

3.8 Where the Headteacher is the subject of any capability issue, the chair of the governing body, or other designated governor, will initiate any action which has to be taken where in any other case the Headteacher or her/his delegate would do so.

3.9 All forms of publicity, both internal and external, should be avoided while a

capability issue is being considered in order to avoid tainting the final decision.

- 3.10 Notes of any meeting or hearing and any other documents made available to the Committee, are the property of the governing body but governors who are not members of the Committee should not have access to them however the notes and other documents must be made available if ordered by a court or tribunal.
- 3.11 At the end of any meeting or hearing all copies of papers and notes made by any member of the Committee should be given to the Clerk who must arrange for the retention of a single set of all the papers and all notes for such period as shall be necessary being not less than six months from the close of the proceedings for future reference by the Clerk and must securely dispose of the remainder.
- 3.12 No one who has been involved in the initial stages of a capability procedure can be on the Committee. Similarly, no one who has been in any way involved with the case, or taken part in discussions relating to it, may hear an appeal. If an employee is the subject of more than one procedure, governors who served on a previous Committee concerning that employee may not serve on any subsequent Committee, dealing with fresh allegations against the same employee, save where no alternatives are possible.
- 3.13 Where performance subject to an appraisal procedure is deemed to be satisfactory and the procedure has been stopped, all material records should be removed from the employee's file not later than six months after the relevant decision.

#### **4. Initial Appraisal and Management**

##### **4.1 Early Investigation**

- 4.1.1 If there is a concern about an employee's capability an early appraisal of that employee's performance by the Headteacher or, in her/his discretion, by the line manager should be undertaken before any decision is made to start formal capability proceedings. In the event that a serious capability issue as to an employee's performance or conduct is raised then the appraisal process must be suspended whilst formal capability proceedings are commenced and disposed of.
- 4.1.2 At the beginning of an appraisal as much support as possible should be provided to the employee so as to improve performance by reference to SMART targets over a specific timescale.
- 4.1.3 At each stage in the appraisal reasonable steps should be taken to reach agreement on the additional support to be provided, the targets to be

reached, the nature of the monitoring and the review date which shall be determined by the Headteacher in default of agreement within a reasonable time.

- 4.1.4 In an exceptional case, where the employee's performance is placing the quality of the education provided by the School at serious risk, the Headteacher may ask the chair of governors for permission to suspend the employee pending a formal capability hearing.
- 4.1.5 All stages in the appraisal and management of unsatisfactory performance of an employee and any formal capability procedure should follow in sequence but where speed is necessary for the purposes of protecting the safety of children or the quality of the education provided by the School the Headteacher or the chair of the Committee as the case may be may omit one or more of the procedural stages having taken such independent professional or other advice as may be reasonable in all the circumstances.

#### 4.2 Initial Assessment

- 4.2.1 Perceived lapses from acceptable standards of work performance should initially be dealt with by an employee's line manager. The nature and causes of any problem should be thoroughly investigated and identified by the line manager with relevant factual information collated and recorded on file.
- 4.2.2 In order to make accurate judgments about an employee's work performance, it may be desirable and appropriate for the line manager to ask a senior leadership team member and/or external adviser to directly observe the employee's performance with relevant factual information collated and recorded on file.
- 4.2.3 The action to be taken to improve performance must be determined by the line manager where appropriate in consultation with the senior leadership team and/or the Headteacher in the light of the relevant facts and other circumstances which may include the cause(s) of the apparent problem. Consideration should be given to the existence of one or more of the following possible causes:
  - (a) the knowledge and technical skills required for the job have changed or are changing but the employee has not acquired the necessary new skills and knowledge
  - (b) circumstances outside the School are affecting the employee's work performance
  - (c) circumstances within the School environment are affecting the employee's work performance

- (d) the difficulties have been long standing but have only now been recognised
  - (e) the employee has inappropriate inter-personal skills for working in a school
- 4.2.4 The Headteacher, following receipt of a report from the line manager that there is an apparent problem, should consider and determine whether it should more appropriately be dealt with under another set of School procedures such as those in relation to sickness or misconduct
- 4.2.5 After preliminary investigations have taken place as detailed above, the line manager must make one of the following decisions:
- (a) to stop the process having found that there is no significant problem, or
  - (b) to resolve the issue by agreement following informal discussion on the grounds that that the problem is not important or is a “one off” and to stop the process once any agreed action has been satisfactorily implemented or agreed outcome achieved, or
  - (c) to request the Headteacher to initiate a formal appraisal

## **5. Formal Appraisal**

### **5.1.1 Preliminary Action**

- 5.1.2 Where the Headteacher has considered a request from the line manager and has decided that a formal appraisal would be appropriate s/he should arrange an informal meeting with the employee to discuss the problem and identify positive and realistic strategies which will assist the employee to improve his/her performance to the required standard. These strategies may include additional training, mentoring, observation of others and other practical measures designed to help the employee develop the skills, competences and confidence necessary to attain satisfactory levels of performance.
- 5.1.3 Prior to the meeting the Headteacher should provide a written agenda covering proposals to:
- (a) to consider whether there are any underlying reasons for the difficulties e.g. health, other personal reasons, workload, the work environment and to identify and agree action to resolve or ameliorate these where appropriate, and
  - (b) to agree strategies for improving and monitoring the employee’s performance, and

(c) to record progress, and

(d) if performance does not improve to a satisfactory level, to initiate formal appraisal.

5.1.4 At the meeting the employee must be informed of and if possible agree to the steps to be taken to improve performance, what form monitoring and review will take and over what period and that formal capability procedures will be commenced if there is no improvement. A date must be agreed for a further meeting at which the employee's progress will be reviewed.

5.1.5 The Headteacher must make and keep on file a written record of the discussion and outcome of the meeting including any agreements and provide a copy to the employee stating that it may be referred to in any subsequent formal action.

5.1.6 The Headteacher must give not less than five clear working days' written notice of the date of the review meeting informing the employee that the purpose of the meeting is to establish:

(a) whether or not her/his competence and/or performance continues deficient, and

(b) ways in which s/he may be further helped

5.1.7 Following the review meeting the following decisions are possible:

(a) if the Headteacher is satisfied that the employee has attained a satisfactory standard, that there shall be no further action, or

(b) if the Headteacher is not satisfied that the employee has attained a satisfactory standard s/he must determine what action under the formal capability procedure is necessary in order to help the employee reach appropriate standards

## **6. The Formal Capability Procedure**

### **6.1 Stage 1: Formal capability meeting**

6.1.1 Where following the review meeting in the formal appraisal process the Headteacher is not satisfied that the required standards have been achieved, a formal meeting should be held between the Headteacher and the employee for the purpose of agreeing an improvement plan which sets

specific targets to be achieved within an agreed period of not more than 4 weeks.

6.1.2 The Headteacher has power to determine both targets and timescales for the improvement plan in default of agreement. The targets agreed or determined must be SMART.

6.1.3 The first formal capability meeting must be recorded in writing including the targets and timescales for the improvement plan agreed or, in default of agreement, determined by the Headteacher.

6.1.4 The Headteacher must orally warn the employee at the first formal capability meeting that if s/he fails to comply with the improvement plan further formal action may be taken.

6.1.5 The formal oral warning must be confirmed to the employee in writing within five clear working days after the first formal capability meeting. It must set out:

(a) over what period and in what manner the employee's performance will be assessed, and

(b) what aspects of the employee's performance will be assessed and by whom, and

(c) that failure to meet the required standards may lead to a final warning, and

(d) what further help and support will be given to the employee.

6.1.6 The warning letter must also state that, if the employee's performance becomes satisfactory before or by the end of the stated assessment period, the warning will be disregarded and removed from the employee's file after 12 months.

6.1.7 **The warning letter must enclose two copies of each of:**

(a) the written record of the meeting (including the record of the formal warning having been given at that meeting), and

(b) the improvement plan confirming the targets and the date for a formal review meeting.

6.1.8 The employee should acknowledge and confirm receipt by signing and returning to the Headteacher one copy of the warning letter and enclosures

including the written record of the meeting and improvement plan by signing and returning to the Headteacher. In signing and returning the said set of copy documents the employee is taken only to have acknowledged receipt and the warning is not invalidated by failure to do so.

6.1.9 The Headteacher must ensure that the School meets all the undertakings that it has given in relation to the improvement plan.

#### 6.2 Stage 2: Formal review meeting

6.2.1 On the review date stated in the improvement plan previously agreed or determined, a meeting shall be held between the Headteacher and the employee in order to review progress made by the employee. The Headteacher must give not less than five clear working days' prior notice in writing of the date and time of the formal review meeting.

6.2.2 At the formal review meeting the Headteacher and the employee shall:

- (a) consider the employee's performance and record progress against the targets and timescales set out in the improvement plan
- (b) if performance has become and is satisfactory agree that no further action need be taken and that the formal warning shall be removed from the file within 12 months
- (c) consider and attempt to agree any underlying reasons for any observed non-performance or unsatisfactory progress including health, other personal reasons, workload, the work environment and, if so, what further action is appropriate to take account of such reasons (in default of agreement the Headteacher may determine the targets and the timescales)
- (d) if observed performance has not improved to a satisfactory level agree a date for achievement of the targets in the original or revised improvement plan (as the case may be) and a date for a further formal review meeting immediately thereafter being not less than 4 working weeks after a final written warning has been given to the employee (in default of agreement the Headteacher may determine the targets and the timescales)

6.3.3 The Headteacher shall make a written record of the formal review meeting including any revised targets or timescales agreed or in default of agreement determined and the oral warning

#### 6.4 Stage 3: Final written warning

6.4.1 On the date agreed or determined at the first formal review meeting, a further meeting shall be held between the Headteacher and the employee to review

the employee's progress.

- 6.4.2 If the Headteacher is not satisfied following consideration of the progress of the employee at the further formal review meeting s/he shall orally inform the employee at that meeting that a final written warning will be issued and that, unless the originally agreed or determined targets have been achieved by the new date stated in the final written warning being a date not less than 4 weeks after receipt of the letter setting out the warning, a Committee will meet to consider what further action to take, including the possibility of dismissal and that:
- (a) a written record of the current and all previous review meetings will be prepared and sent to the Clerk within five clear working days, together with the Headteacher's request that the Committee meets to consider the Headteacher's report and decide on what action to take, and
  - (b) within 15 clear working days of the date of the current meeting, a meeting of the Committee will be held, and
  - (c) the employee may make written and/or oral representations to the Committee be accompanied at the meeting of the Committee by a companion, and
  - (d) any written representations, evidence or documents the employee may wish to present to the Committee, must be provided to the Clerk within seven clear working days of the date of the current review meeting, and
  - (e) details of the procedure to be followed at the Committee meeting, together with copies of the Headteacher's written report and any other written representations or evidence given by the Headteacher to the Committee, will be sent to the employee by the Clerk not less than seven clear working days before the date of the Committee meeting, and
  - (f) all the above points will be confirmed in writing to the employee within five clear working days of the date of the current meeting.
- 6.4.3 The Headteacher must make a written record of the further formal review meeting including any original or revised targets and timescales agreed or determined and the date by which it has been agreed or determined that they should be achieved and the warning and information relating to the Committee meeting provided orally to the employee.
- 6.4.4 The Headteacher shall then, within five clear working days after the further formal review meeting, send to the employee a final written warning which must state that the employee is required to meet the targets set out in the enclosed written record

of the formal review meeting by the date specified in the letter being a date not less than 20 clear working days or four weeks (whichever is the shorter) after receipt of the letter containing the final warning and that, unless those targets are achieved by the date specified, a Committee will meet to consider what action to take, including the possibility of dismissal.

## 6.5 Stage 4: Hearing by Capability Committee

### 6.5.1 Written notice of the hearing

6.5.1.1 After consulting with the chair of the governing body, the Clerk must convene a meeting of the Committee.

6.5.1.2 The Committee meeting must be held within 15 clear working days of the date of the last formal review meeting held between the Headteacher and the employee in the current procedure.

6.5.1.3 The Clerk must send written notice of the Committee meeting to all parties within ten clear working days of the last formal review meeting held between the Headteacher and the employee in the current procedure. The notice shall include:

- (a) the date, time and place of the meeting;
- (b) the purpose of the meeting;
- (c) the name of any person who might give evidence;
- (d) a list of all written representations, evidence or other relevant documents received by the Clerk from either party (copies must also be supplied with the notice of meeting) and details of the procedure to be followed during the meeting

6.5.1.4 The notice of hearing should also include the following:

- (a) a request that the employee provide to the Clerk any written representations or evidence or other documents intended to be relied upon not less than five clear working days before the hearing
- (b) a statement of the employee's right to attend with a companion including, if there is a real prospect of a decision to dismiss, her/his right to legal representation
- (c) by way of enclosure all material evidence and documentation intended to be presented by the Headteacher at the hearing.

### 6.5.2 Persons entitled to attend the hearing

6.5.2.1 The notice of hearing should identify the persons who are entitled to and will be attending the hearing being:

- (a) the members of the Committee and any professional and independent advisers to the Committee
- (b) the Headteacher who will present the case for dismissal by reason of incapacity and any companion
- (c) the employee and any companion

### 6.5.3 Hearing Bundle of Documents

6.5.3.1 Before the date of the hearing the Clerk shall send to all persons attending the hearing copies of all material documents including:

- (a) the School's written representations and evidence
- (b) the employee's written representations and evidence
- (c) the agenda for the hearing

### 6.5.4 Conduct of the hearing

6.5.4.1 The chair of the Committee is in control of the hearing and shall make such decisions as s/he thinks fit as to the conduct of the hearing in the exercise of her/his reasonable discretion and in accordance with the principles of natural justice.

6.5.4.2 The chair of the Committee in conducting the hearing should:

- (a) welcome and introduce those present
- (b) state that the hearing is private and all information and representations are confidential to those present
- (c) outline and if reasonably possible obtain agreement to the procedure to be followed
- (d) ask the parties to remain available for an agreed period after the Committee withdraws at the end of the hearing in case further information or clarification is required on any material point stating that in that case the hearing will resume with all parties present for that purpose
- (e) explain the process for notifying the parties of the Committee's final decision

6.5.4.3 The chair of the Committee may adjourn the hearing for any good reason including the presentation of new evidence or the making of further representations which requires further time for consideration or investigation by any party in which case the chair shall give directions for the adjourned hearing including further written notice and the making of further written representations and provision of material documents.

6.5.4.4 Following the hearing the Committee must make one of the following decisions:

(a) to refer the matter back to the Headteacher for further action together with any specific recommendation the Committee may wish to make; or,

(b) to dismiss the employee on a date which should, save in an exceptional case, be upon expiry of the standard contractual period of notice.

#### 6.5.5 Notification of the Committee's decision

6.5.5.1 The chair of the Committee either notifies the parties of the Committee's decision orally at the end of the hearing or that they will be notified later in writing.

6.5.5.2 Written confirmation of a decision notified orally at the hearing or written notification of the Committee's decision shall be given by the Clerk to the employee as soon as reasonably possible after the hearing and shall include a statement of the Committee's reasons and, in case of a decision to dismiss, of the employee's right to appeal specifying the last date for making such an appeal.

6.5.5.3 In giving written confirmation or notice of the Committee's decision the Clerk must take account of the requirement to protect the employee from prejudice.

## **7. Appeal against a Committee decision**

### **7.1 Notice of appeal**

7.1.1 If the employee wishes to exercise her/his right to appeal against a decision of the Committee that s/he should be dismissed then s/he must give written notice of the appeal including the grounds for it to the Clerk within 10 working days of the date of receipt of the written confirmation or notice of the Committee's decision that the employee should be dismissed.

7.1.2 The chair of the governing body shall then appoint an Appeal Committee.

7.1.3 The Clerk must give to the parties not less than 10 clear working days' written notice of the date of the appeal hearing which must be fixed for a date not less than 10 nor more than 15 days after the date of receipt by the Clerk of the employee's notice of appeal. The letter of notification of the date of the hearing must state:

- (a) the date of the hearing
- (b) the fact that the appeal will be by rehearing by the Appeal Committee of the evidence put before the Committee and any additional evidence
- (c) the requirement that any written representations or additional evidence including documents intended to be relied upon by the employee or the Headteacher should be provided to the Clerk not less than 7 clear working days prior to the date of the hearing
- (d) the employee's right to have a companion or legal representative attend the hearing

### **7.2 Persons entitled to attend the appeal hearing**

7.2.1 The notice of hearing should also identify the persons who are entitled to and will be attending the hearing being:

- (a) the members of the Appeal Committee and any professional and independent advisers to the Appeal Committee
- (b) the Headteacher who will present the case for dismissal by reason of incapacity and any companion
- (c) the employee and any companion or legal representative

### **7.3 Hearing Bundle of Documents**

7.3.1 Before the date of the hearing the Clerk shall send to all persons attending the appeal hearing copies of all material documents including:

- (a) the School's written representations and evidence
- (b) the employee's written representations and evidence
- (c) the agenda for the hearing

#### 7.4 Conduct of the appeal hearing

7.4.1 The chair of the Appeal Committee in conducting the hearing should:

- (a) welcome and introduce those present
- (b) state that the hearing is private and all information and representations are confidential to those present
- (c) outline and if reasonably possible obtain agreement to the procedure to be followed
- (d) ask the parties to remain available for an agreed period after the Appeal Committee withdraws at the end of the hearing in case further information or clarification is required on any material point stating that in that case the hearing will resume with all parties present for that purpose
- (e) explain the process for notifying the parties of the Appeal Committee's final decision
- (f) The chair of the Appeal Committee may adjourn the hearing for any good reason including the presentation of new evidence or the making of further representations which requires further time for consideration or investigation by any party in which case the chair shall give directions for the adjourned hearing including further written notice and the making of further written representations and provision of material documents

#### 7.5 Following the hearing the Appeal Committee must make one of the following decisions:

- (a) if the Appeal Committee decides following the hearing that the case against the employee is not proved it must allow the appeal and refer the matter back to the Headteacher for any further action, together with any specific recommendation as to appropriate action the committee may decide to make

(b) if the Appeal Committee decides following the hearing that the case against the employee was proved it must decide on one of the following courses of action:

- (i) that the matter be referred back to the Headteacher for further action, together with any specific recommendation as to appropriate action the committee may decide to make, or
- (ii) that the employee be dismissed on a date which shall, save in exceptional circumstances, be no earlier than that permitted by the employee's contract

and the decision of the Appeal Committee is final.

7.5.1 The employee may at any time withdraw an appeal by writing to the clerk of the governing body in which case the Committee decision appealed against stands

#### 7.6 Notification of the Appeal Committee's decision

7.6.1 The chair of the Appeal Committee either notifies the parties of the Appeal Committee's decision orally at the end of the hearing or that they will be notified later in writing

7.6.2 Written confirmation of a decision notified orally at the hearing or written notification of the Appeal Committee's decision shall be given by the Clerk to the employee and the Headteacher as soon as reasonably possible after the hearing but in any event within five clear working days of the date of the appeal hearing and shall include a written statement of the Appeal Committee's reasons for its decision

### **8. Role of Headteacher**

8.1 Where the Headteacher is the subject of or it would otherwise be inappropriate for the Headteacher to be involved in any step in these Procedures the chair of the governing body or other designated governor shall initiate any action or exercise any discretion or decision-making power or present any case which would otherwise be taken or exercised or presented by the Headteacher