



North Tyneside Council

CAPABILITY POLICY & PROCEDURE

(COMMUNITY SCHOOLS)

Contents

	Section One – Capability Policy	
1.0	Introduction	3
2.0	Principles	3
3.0	Application	4
	3.1 Employees	4
	3.2 Capability Action against Trade Union/Professional Association Officials	5
	3.3 Head Teacher	6
4.0	Confidentiality	6
5.0	Support for Employees	6
6.0	Meetings, Hearings & Appeals	6
	Section Two – Capability Procedure	
7.0	Purpose & Scope	7
8.0	Informal Measures	7
9.0	Formal Measures	9
10.0	Step 1 – The Cause for Concern Meeting	9
11.0	Step 2 – The Review Meeting	10
12.0	Step 3 – Hearing	11
	12.1 Roles & Responsibilities	11
	12.1.1 Clerk to the Hearing Panel	11
	12.1.2 Hearing Panel	13
13.0	Step 4 – Appeal Hearing	14
	13.1.1 Clerk to the Appeal Hearing Panel	15
	13.1.2 Appeal Panel	17
14.0	Additional Information	19
	14.1 Monitoring and Assessment	19
	14.2 Timescale	19
	14.3 Sickness absence during the procedure	20
	14.4 Timing and/or Rescheduling	20
	14.4 Accompaniment/Representation	21
	14.5 Referral to Appropriate Body	21
	Appendix	
	A Possible Disciplinary Outcomes	23
	B Informal Measures – Capability Procedure and Formal Measures – Capability Procedure	24
	C Review Meeting Outcome	26
	D Disciplinary Hearing/Appeal Hearing – Suggested Format	28
	E Sample Action Plan	29
	F Recommended Good Practice – time line	30

Section One - Capability Policy

1. Introduction

101 This policy sets out the approach of the Governing Body to matters of capability for employees of the School who, in accordance with the Employment Rights Act 1996 and the Employment Act 2002, work under a contract of employment with North Tyneside Council.

102 The Governing Body is committed to high standards and value for money services and recognises the contribution that each individual can make to achieve the School's aims. Employees are contractually obliged to perform to a satisfactory level of performance for the job. The Governing Body recognise that to minimize the risk of poor performance it will undertake careful recruitment, provide job descriptions that convey the main purpose and scope of the job and duties, have in place an induction programme and provide ongoing training and supervision.

103 Most employees are competent, effective and are able to develop through the range of opportunities offered by the School. There are, however, occasions when a significant gap may develop between the requirements of a job and an employee's performance and, if left unchecked, the situation may impede the success of the School.

104 Where an employee is failing in a significant or persistent way to carry out their responsibilities or duties in a satisfactory manner this will be investigated and where it is found that the problems exist due to a lack of ability, inadequate training, lack of experience or lack of application, this policy and procedure provides a fair, consistent and objective method for dealing with such matters.

2. Principles

201 The Governing Body recognises the importance of helping and encouraging all employees within School to achieve and maintain an acceptable standard of performance. The necessity of early intervention to address any concerns is acknowledged. The required standard should be appropriate to the level of the job and the skills and experience reasonably expected of an individual in that position. The Headteacher of the School will ensure that each member of staff has the ability, knowledge, guidance and support to perform their job to an acceptable standard.

202 To assist in this respect, a set of principles has been incorporated into this policy that should be followed when concerns relating to an employees ability to perform their tasks arise.

- Where a concern in performance first occurs, it should be the normal practice for the Headteacher or line manager¹ to deal with the matter prior to invoking the Capability Policy/Procedure. This could be through coaching, advice, guidance, training and work shadowing as part of the day to day running of the School.

¹ Line Manager – the person who undertakes this role may vary from school to school and is dependent upon the structure and performance management arrangements in place within school. It is important that each School are clear on who within their school they require to undertake this role.

- ❑ It is not intended that the Capability Policy should replace this normal interchange between immediate line manager and member of staff in the day to day running of the School or Department.
- ❑ Members of staff experiencing difficulties should be able to call upon support from their line manager or more experienced colleagues, any information shared or help given should be wholly supportive.
- ❑ The Capability Policy and Procedure will only be invoked where normal day to day line management intervention as part of the Schools normal performance management arrangements have failed to remedy the identified shortcomings in performance.
- ❑ The principal objective of the Procedure is to assist employees whose performance gives cause for concern to achieve the necessary improvement to eliminate that concern.
- ❑ All parties entering into the Capability Policy and Procedure are entrusted to act in good faith and in accordance with the Policy.
- ❑ Where through the application of this policy resolution is not achieved using the informal measures, issues will be dealt with in a timely manner using the formal measures of the Policy and Procedure.
- ❑ If the application of this Policy and Procedure is terminated at any stage due to an improvement and then during a 12-month period performance falls below the agreed standard, the Policy and Procedure can be reinstated at the point where they were previously halted.
- ❑ The individual subject to the application of this Capability Policy and Procedure will be given the opportunity at each stage of the Procedure to fully discuss the matter. Meetings must be conducted in a manner that enables both parties to explain their points of view.
- ❑ The individual will have the right at every step of the formal measures stage of this Policy and Procedure to be accompanied by a work colleague or trade union/professional association representative. In addition, the employee will have a right to be represented by a work colleague or their trade union/professional association representative at any subsequent Hearing or Appeal.
- ❑ The Policy and Procedure aims to deal with matters of Capability at an appropriate level and within a reasonable timescale.
- ❑ An appeal should not be used as an opportunity to punish the employee for appealing the original decision. To ensure this the options for any Appeals Panel will not include an increase in the penalty as this may deter individuals from appealing.
- ❑ The Capability Policy and Procedure affords the persons managing the Capability matter to be able to access appropriate advice/guidance.
- ❑ This Policy & Procedure will be applied fairly and consistently regardless of a person's gender or gender identity, marital status, employment status, sexual orientation, race, language, ethnic or national origins, faith or religion, disability age, trade union/professional association membership or activity together with

any political view or affiliation.

3. Application of this Policy

3.1 Employees

301 This Policy applies to all employees of the Council working at the School under the delegation arrangements contained within the Local Management of Schools Scheme under a contract of service or apprenticeship whether full time, part time, permanent or temporary. This policy does not apply to individuals based at the School under a contract for service/third party arrangements or individuals employed by the Council whose employment relationship is not directly managed by the School.

Where an individual is on a secondment/temporary assignment to another school, Local Authority or organisation, that organisation's Policies & Procedures will govern the employee's employment relationship.

302 Separate procedures may be referred to in cases where the employee is subject to a probationary period, has NQT status or is a trainee, advice should be sought from the Schools link HR Advisor before proceeding in such cases.

303 The Governing Body have arrangements in place in accordance with the 2006 School Teachers Performance Management Regulations.

A management decision will need to be reached in all cases as to whether informal measures have already been exhausted via the School Teachers Performance Management process. If this is the determination reached then the matter will be referred to the formal measures stage of the Capability Procedure.

It is noted that where serious weaknesses are identified around a Teachers or Headteacher's Capability, Performance Management should cease. In these circumstances at the initial stage of the Capability Policy and Procedure the documentation from the Performance Management process, which has contributed to the Capability Policy and Procedure being implemented, should be included in the discussion between manager and employee.

304 Where either a Teaching or APTC member of staff's performance has been unsatisfactory then in the context of formal Capability Policy and Procedures the Pay Committee may exercise its discretion and withhold an experience/incremental point. The point will be restored at the conclusion of the Capability Procedure where satisfactory performance has been achieved. Advice should be sought from the School link HR advisor in such cases.

3.2 Capability Action against Trade Union/Professional Association Officials

305 Although the same Capability standards will apply to trade union/professional association representatives as are applied to all other employees, no Disciplinary action² should be taken until a senior trade union/professional association representative (or

² This relates to a formal Hearing and Appeal being arranged and does not relate to any informal action.

permanent official) has been informed of the circumstances of the case.

306 In such cases where Disciplinary action is proposed the School Link HR Advisor will be contacted by the Headteacher and advised of the case. The School Link HR Advisor will contact the relevant senior trade union/professional association representative (or permanent official) to outline the nature of the case and the next stages as outlined within this Policy & Procedure.

3.3 Headteacher

307 Where the Headteacher is the subject of the Capability action then the Capability Policy and Procedure is the responsibility of the Chair of the Governing Body (or their designate), taking the role which otherwise would be performed by the Headteacher. The Manager of the Directorates Human Resources Unit (or their designate) will provide advice as appropriate.

4. Confidentiality

401 Any employee who is subject to this Procedure or those taking part in the proceedings will, in accordance with this Policy & Procedure, maintain confidentiality at all times during the process. Details of subsequent Procedures and records of any Disciplinary matter will be kept as confidential as possible, following advice from the School Link HR Advisor.

5. Support for Employees

501 In cases of Capability it is important that consideration be given to appropriate support for the employee, for example the use of a mentor to support the employee in their efforts to improve. The mentor's role must be distinct and not be part of the monitoring progress. In addition employees may wish to access support outside of that available from the school such as their trade union/professional association.

502 It is important to remember that the monitoring and assessment process within both formal and informal measures of the Capability Procedure are clearly distinct from the support process. Those selected to perform these quite separate roles should fully understand what is expected of them.

6. Meetings, Hearings & Appeals

601 Such persons or panel members as designated by the Governing Body's Standing Orders at the School will carry out their official duties at all Hearings and Appeals under this procedure and in accordance with 'A Guide to the Law for School Governors', Statutory requirements and other appropriate DCFS Guidance. Where necessary the Manager of CYPL Governor Services may be contacted for advice on this.

Section Two - Capability Procedure

7. Purpose and Scope

701 The key purpose of Capability Policy and Procedure is to encourage sustained improvement in an individual's performance. The principal objective of the Procedure is to assist employees whose performance gives cause for concern to achieve the necessary improvement to eliminate that concern. Where sustained improvement is not achieved it may be necessary to enter into formal measures.

702 It is important that professional performance problems are clearly identified and given appropriate consideration and support at the earliest possible stage. The nature of the problem, its level of seriousness and causes must be investigated and identified by structured information gathering and systematic recording. Support and guidance could include coaching, training, examination of ways of working and areas of responsibility.

703 Early involvement of the Schools Link HR Advisor is recommended when considering using this Policy and Procedure.

704 This Policy and Procedure does not deal with lack of capability due to health grounds or with acts of misconduct considered as unacceptable professional behaviour. These matters would be dealt with through Schools Sickness Absence Management, Disciplinary and Dismissal Policies and Procedures as appropriate.

705 A rating attached to an individual member of staff as a result of an OFSTED report cannot be used exclusively to initiate Capability Procedures, such documentation can only be used as evidence where there is already an ongoing concern.

8. Informal Measures

801 Inherent in the role of all managers is the responsibility to monitor the performance of staff and to regularly discuss with them their standard of work. It is particularly important that any failure to achieve a required standard is discussed with the member of staff at the earliest opportunity.

802 There may be many reasons for less than satisfactory performance, for example, lack of ability, poor training, inadequate instruction/supervision, low motivation or difficulties at work. The first steps in attempting to improve performance under the policy is to identify the reasons or causes of the problem and consider any positive support that can be provided. Where applicable information relating to the problem identified may be obtained from the school performance management arrangements.

803 Informal measures of providing additional management support can be beneficial in addressing concerns about an employee's performance; therefore this option should be explored before moving to Formal Measures of the

Capability Policy and Procedure.

804 Additional management support could include the facility to observe good practice, advice from an experienced colleague or line manager, having a mentor or access to appropriate training or resources. The employee may be able to suggest other methods of support they feel would assist them. This list should not be seen as exhaustive or a requirement but gives an indication of the types of support a manager may consider providing.

805 Discussions between manager and employee should take place in an open and constructive atmosphere and should be regarded as part of the normal working routine with the specific aim of identifying ways in which the member of staff can be encouraged and helped to improve performance. The employee should be provided with a copy of this Policy/Procedure document.

Discussions should provide an opportunity for:

- the manager to clearly identify and illustrate the areas of concern;
- the employee to respond to the concerns outlined;
- the employee to acknowledge their own responsibility to fully engage with the procedure and improve their own performance;
- discussion around any difficulties which may be preventing satisfactory performance;
- discussion and agreement as to the level of support which will be provided during the period of review;
- agreement to a reasonable timescale for monitoring and date for review.

806 Support or guidance external to the School may be enlisted if deemed appropriate by the manager.

807 The manager should confirm in writing to the member of staff the programme of support to be provided and the timescale over which an improvement is to be achieved, recording any points brought by the employee. The detail should also be collated into the form of an action plan. (An example is at Appendix E)

808 Regular monitoring and feedback should take place during the period given for improvement, with the manager meeting with the employee at least fortnightly. At the end of the agreed review period the manager should meet with the member of staff concerned to discuss the extent to which the performance has improved, the need to sustain the performance and any outstanding areas of concern. A brief record of this meeting should be kept.

809 It is likely that the vast majority of cases will be resolved with this Informal Stage and it will only be necessary to proceed to the Formal Stage in those cases where advice and additional management support have not achieved the required improvement.

810 Where it has not been possible to eliminate concerns about an employee's performance by informal means or improvement has not been sustained

Formal Measures will be taken.

811 The decision to move on from informal measures lies with the appropriate manager³. It is recommended that advice be sought from the School Link HR Advisor before moving to the formal stage. It may also be appropriate to consult with a School Improvement Partner dependent on the nature of the concerns.

9. Formal Measures

901 In order to ensure fairness to all, it is important that the cause(s) for concern and improvements required are properly established. The length of time necessary to attempt to eliminate the cause(s) for concern will depend on the circumstances of the particular situation.

10. Step 1 The Cause for Concern Meeting

1001 The appropriate Manager will meet formally with the member of staff to discuss the concerns about performance. This date will constitute the date of entry into the Formal Procedure. The meeting will involve the manager, the employee concerned and, where appropriate the School Link HR Advisor. The employee should always be advised of the meeting in writing. The employee has the right to be accompanied at the meeting by a work colleague or their trade union/professional association representative. At least 5 standard working days notice should be given along with written details of the causes for concern.

1002 At the meeting the following should be covered:

- cause(s) for concern;
- background of the additional management support/informal measures where appropriate;
- improvements in the standards of performance required, the timescales and measurements for the achievement of those improvements;
- advice, support and guidance arrangements, roles of those involved;
- responsibilities of individual parties within the procedure;
- the monitoring period arrangements, roles of those involved, how long the review period will be, how often meetings will be held and what is expected from the employee at these meetings.

1003 The employee should be given written confirmation of the outcome from this meeting within 2 standard working days, this will usually include a detailed report/action plan of the targets, timescales and roles; this should include the date of the formal review meeting. The time between the Cause for Concern meeting and the review meeting will be deemed as the monitoring period.

³ Manager – the person who undertakes this role may vary from school to school and is dependent upon the structure in place within school. It is important that each School are clear on who within their School they require to undertake this role.

During the monitoring period, it is recommended that regular verbal and written feedback is given to the employee. Where the situation deteriorates within the monitoring period, the date for the review meeting may be brought forward. If this is the case the employee should be given at least 5 standard working days notice of the new date.

11. Step 2 The Review Meeting

- 1101 The Review meeting will involve the manager, the employee concerned and, where appropriate, the School Link HR Advisor. Where other individuals have been involved in the monitoring period, identified through the action plan, their attendance may also be required. The employee should already have been informed of the date of the meeting but should be advised in writing with at least 5 standard working days notice.
- 1102 The employee should be informed of their right to be accompanied by a work colleague or their trade union/professional association representative at the meeting if they wish.
- 1103 During the monitoring period the manager will have considered the degree of progress made. At the Review meeting both parties must have the opportunity to discuss progress made. It is then the responsibility of the manager to determine the outcome from the options below:
- The cause(s) for concern has been eliminated and, provided that there is no deterioration, no further action is required. The written outcome provided to the employee will include reference to sustaining the required performance as failure to do this may result in further formal action through this procedure.
 - There has been a degree of progress, however a number of actions remain outstanding and it is considered appropriate to extend the monitoring period to enable the causes for concern to be eliminated, if this is the case then a further Review meeting must be scheduled.
 - There has been either no progress or inadequate progress, therefore, a recommendation will be made to Governors that the matter is referred to a Disciplinary Hearing.
- 1104 The employee shall be informed of the outcome in writing, within 2 standard working days of the meeting.
- 1105 Where the outcome is to refer to a disciplinary hearing the manager, at the same time as they advise the employee, will verbally notify the Clerk to Governors⁴ of the need for a Hearing Panel. They will also send a copy of the letter sent to the employee (as indicated above) to the Clerk to Governors.
- At this time the manager will submit their report, which supports their recommendation that there is justification for Disciplinary action on the

⁴ This is reference to the Clerk to the Governing Body or Clerk appointed to a sub committee of that body (for example this may be a member of the school admin team). It is the responsibility of the Governing Body to arrange for appropriate clerking for its committees.

Grounds of Capability to the Clerk to Governors. All of the information from the informal/formal process conducted to date should be gathered and will be contained within the report.

1107

The manager and their supporting HR advisor, will be required to attend the formal Disciplinary Hearing with the Hearing Panel to present the findings and answer questions relating to the management report.

The Clerk to Governors will be required to commence the convening of a Hearing Panel including the attendance of an HR Advisor to support the Hearing Panel – please see below for details regarding the roles and responsibilities of the Clerk to Governors.

12. Step 3 Hearing

1201

If after the conclusion of the review meeting it is decided that there has been no significant improvement in performance or that performance has not been sustained arrangements will be made to refer the matter to a Formal Hearing with the Governing Body. Once in receipt of the letter from the manager confirming the need to progress to a formal Disciplinary Hearing, the Clerk of the Governing Body will undertake the actions noted below:

12.1 Roles & Responsibilities

12.1.1 Clerk to Governors

1202

The role of the Clerk to the Governors is to organise, coordinate and minute the Disciplinary Hearing.

1203

The letter from the manager conducting the capability procedure confirming to the employee of the need to progress to a formal Disciplinary Hearing will be copied to the Clerk to Governors and deemed as the formal request for the Hearing to be convened.

1204

Once this formal request has been received the Clerk to Governors will consult the Schools Standing Orders and arrange a Hearing Panel as appropriate. Where necessary advice may be sought from the Governor Services Manager on panel membership.

1205

The Clerk to Governing Body, after seeking advice from the School Link HR Advisor will write to the employee (including a copy for their work colleague or trade union/professional association representative), in addition a copy of this letter and information will also be sent to the:

- Relevant manager at School and supporting School Link HR Advisor,
- Hearing Panel and supporting HR Advisor,
- Note taker – if this is not the Clerk to Governors.
- This letter is deemed as formal notice of the Disciplinary Hearing.

1206

This letter to confirm the Hearing will be sent to the employee (and copied to

the various parties as noted above) within 2 standard working days following written receipt of the formal request to hold a Disciplinary Hearing. The Disciplinary Hearing will be held within 10 standard working days⁵ following this notice being issued to the employee.

1207 This formal notice letter will include:

- ❑ date, time and place of the meeting with the Hearing Panel,
- ❑ the elements of the employees performance that remain a concern,
- ❑ the full management case report from the manager relating to these concerns⁶,
- ❑ any names, job titles, locations of witnesses to be called by the manager⁷,
- ❑ the right of the employee to be represented by a work colleague or a trade union/professional association representative,
- ❑ copy of the School Policy & Procedure relating to staff capability (inclusive of format for conducting the Hearing).

1208 In addition the formal notice letter will include a request for the employee, supported by their work colleague or trade union/professional association representative (where applicable) to:

- ❑ confirm whether or not they will attend the Hearing and if they are to be accompanied and by whom,
- ❑ submit in writing to the Clerk to Governors their response to the managers report, at least 5 standard working days prior to the Hearing
- ❑ any names, job titles, locations of witnesses to be called⁸.

1209 Once in receipt of the documentation from the employee the Clerk to Governors will copy and forward this documentation, together with a covering letter identifying the names of any witnesses to be called by the employee, to the parties noted below no later than 4 standard working days prior to the commencement of the Hearing:

- ❑ the manager and supporting School Link HR Advisor,
- ❑ the members of the Hearing Panel and supporting HR Advisor,
- ❑ Note taker – if this is not the Clerk to Governors.

1210 The Clerk to Governing Body is responsible for organising separate rooms/facilities/refreshments for the:

- ❑ Hearing Panel/HR Advisor,

⁵ There may be circumstances where this timeframe is not achievable for the parties concerned. Where this is the case the school link HR Advisor will liaise with the parties to arrange a suitable alternative date.

⁶ Please note: any additional documentation received or presented after this point in the process will only be considered with the consent of the Chair of the Hearing Panel after discussion with the supporting HR Advisor.

⁷ Where witnesses are to be in attendance at a Disciplinary Hearing it is the responsibility of the parties calling them to ensure that they are able and willing to attend the Hearing.

- the manager/Schools Link HR Advisor,
- the employee/their work colleague or trade, union/professional association representative (where applicable)
- any witnesses – it may be where both parties intend to call witness that two separate waiting areas may be required.

1211 Once the Clerk to Governing Body has undertaken the actions detailed above it is the responsibility of the Chair of the Hearing Panel with the support of the HR Advisor supporting the panel to manage the next stage in the process.

12.1.2 Hearing Panel

1212 The role of the Hearing Panel is to determine whether there is reasonable grounds for believing that the level of performance is unacceptable, considering the support and assistance provided to secure the required improvement and determine any appropriate outcome to be taken – including the drawing up of an action plan, where appropriate.

1213 The Hearing Panel will have had no prior involvement or detailed knowledge of the case, excluding the information provided to him or her in preparation for the Hearing.

1214 It shall be the responsibility of the Chair of the Hearing Panel to ensure that the Hearing is conducted appropriately – guidance is noted at *Appendix D*. All members of the Hearing Panel are required to:

- familiarise themselves with the documentation provided prior to the Hearing.
- meet prior to the Hearing with the HR Advisor to ensure that they fully understand the process/their roles and to undertake any preparation required – including the drafting of questions/points of clarity required.
- ensure that they conduct themselves within the Hearing in accordance with the principles of the Capability Policy.

1215 Once the Panel have received the information presented to them by all parties within the Hearing, asked any appropriate questions and are satisfied that they have sufficient information to reach a decision as to the outcome of the Hearing they will adjourn the Hearing to reach a decision.

1216 The Hearing can adjourn at any time at the request of either of the parties and the Chair of the Hearing Panel will need to consider such requests.

1217 The Hearing Panel is required to consider all of the information made available to them and/or presented at the Hearing prior to them reaching their outcome.

1218 Options for the Hearing Panel to consider as an outcome arising from this Disciplinary Hearing are:

- take no further action – improvements have been sufficient without the

award of a disciplinary sanction

- ❑ continue formal additional support – additional/further support/actions identified as the means to encourage and help improve performance of the employee in respect of the concerns identified, this will be notified to the Headteacher (or their designate) for implementation/action.
- ❑ impose a sanction, up to and including dismissal with or without notice as appropriate, also any further support and review plan. (see *Appendix A* for options relating to possible sanctions).

1219 Once the Hearing Panel has reached a decision, they will be required to notify all parties of the decision. Where possible it is recommended that this is undertaken on the same day as the Hearing and in person. It is acknowledged that after an adjournment to reach a decision it may not be appropriate to ask the parties to wait. Where this occurs alternative arrangements will need to be agreed, with advice from the supporting HR Advisor regarding the most appropriate way forward.

1220 Following the outcome of the Hearing, the Chair of the Hearing Panel will be required to draft (in conjunction with the HR Advisor) a letter to convey to the employee the decision made by the Panel.

1221 This letter will be sent by the Clerk to Governors, on behalf of the Chair of the Hearing Panel, within 2 standard working days following the Hearing Panel's decision being verbally advised to the employee and will note the:

- ❑ the elements of the employees performance that remain a concern;
- ❑ any improvement that have been made and need to sustain;
- ❑ decision reached including any sanctions, any action plan further review
- ❑ if appropriate;
- ❑ reasons for reaching this decision;
- ❑ right to appeal.

13. Step 4 -Appeal Hearing

1301 Should an Appeal be lodged then the Appeal process will run parallel with the continuation of the period for improvement. However where dismissal is the outcome of the Disciplinary Hearing, lodging an Appeal against the decision will not stop a dismissal from proceeding. The effective date of dismissal will be the date of the Hearing Panel's decision being verbally advised to the employee.

The relevant Panel of the Governing Body will hear any Appeals against Disciplinary Sanctions.

1302 An employee wishing to appeal must do so in writing to the Clerk to Governors within 5 standard working days of receiving the letter confirming the outcome of the Disciplinary Hearing. This must include the reasons for the appeal. The employee should take care to outline in detail the grounds for their Appeal to

ensure there is no undue delay in organising an Appeal Hearing. Where insufficient information is provided regarding the nature of the Appeal, the Chair of the Appeal Panel reserves the right to seek further clarification, prior to arranging the Appeal Hearing. It is the responsibility of the Chair of the Appeal Panel working with their supporting HR Advisor to communicate (via the Clerk to Governors) in writing with the employee, where further information is required.

1304 Once the Chair of the Appeal Panel has undertaken the actions detailed above it will be their responsibility to ensure that any Appeal Hearing can progress in a timely manner.

1305 Following the agreement to progress to an Appeal Hearing it is the responsibility of the Clerk to Governors to undertake the actions noted below:

13.1 Roles & Responsibilities

13.1.1 Clerk to Governors

1306 The role of the Clerk to the Governors is to organise and coordinate the Appeal, once the Chair of the Appeal Panel has confirmed that there is sufficient information to proceed.

1307 The Clerk to Governing Body, after seeking advice from the supporting HR Advisor will write to the employee (including a copy for their work colleague or trade union/professional association representative), in addition a copy of this letter and information will also be sent at the same time to the:

- Chair of the Hearing Panel and supporting HR Advisor,
- Appeal Panel and supporting HR Advisor,
- Note taker -if this is not the Clerk to Governors
- This letter is deemed as formal notice of the Disciplinary Appeal Hearing.

1308 This letter is deemed as formal notice of the Disciplinary Appeal Hearing and . will be issued within 2 standard working days on the basis that the employee has provided sufficient information for the Appeal Hearing to be progressed. The Appeal hearing will take place within 10 standard working days⁸ following this formal notice being issued to the employee.

1309 This formal notice letter will include:

- date, time and place of the meeting with the Appeal Panel,
- the reasons for the Appeal against the outcome reached by the Hearing Panel,

⁸ There may be circumstances where this timeframe is not achievable for the parties concerned. Where this is the case the school link HR Advisor will liaise with the parties to arrange a suitable alternative date.

- ❑ all documentation to be presented by the Chair of the Hearing Panel (or their designate) including that presented at the Hearing stage together with minutes taken⁹,
- ❑ any names, job titles, locations of witnesses to be called by the Chair of the Hearing Panel¹⁰,
- ❑ the right to be represented by a work colleague or a trade union/professional association representative,
- ❑ copy of the School Policy & Procedure relating to staff capability (inclusive of format for conducting the Appeal).

1310 In addition the formal notice letter will include a request for the employee, supported by their work colleague or trade union/professional association representative (where applicable) to:

- ❑ confirm whether or not they will attend the Appeal and if they are to be accompanied and by whom,
- ❑ submit in writing to the Clerk to Governors all documentation to be presented at the Appeal at least 5 standard working days prior to the Appeal¹¹.
- ❑ any names, job titles, locations of witnesses to be called¹⁰.

1311

Once in receipt of the documentation from the employee the Clerk to Governors will copy and forward this documentation, together with a covering letter identifying the names of any witnesses to be called by the employee, to the parties noted below no later than 4 standard working days prior to the commencement of the Appeal:

- ❑ the Chair of the Hearing Panel and supporting School Link HR Advisor,
- ❑ the members of the Appeal Panel and supporting HR Advisor,
- ❑ Note taker – if this is not the Clerk to Governors

1312

The Clerk to Governors is responsible for organising separate rooms/facilities/refreshments for the Appeal Panel/HR Advisor, the Chair of the Hearing Panel/HR Advisor, the employee/their work colleague or trade union/professional association representative (where applicable) and any witnesses.

⁹ Please note: this may include additional documentation at this stage however after this point in the process such information can only be presented with the consent of the Chair of the Appeal Panel after discussion with the supporting HR Advisor.

¹⁰ Where witnesses are to be in attendance at a Disciplinary Hearing it is the responsibility of the parties calling them to ensure that they are able and willing to attend the Hearing.

¹¹ Please note: this may include additional documentation at this stage however after this point in the process such information can only be presented with the consent of the Chair of the Appeal Panel after discussion with the supporting HR Advisor.

1313 It is the responsibility of the Chair of the Appeal Panel in conjunction with the supporting HR Advisor to manage the next stage in the process.

1314 13.1.2 Appeal Panel

The role of the relevant Panel of the Governing Body is to determine whether the grounds for appeal are upheld. To consider the action taken to date, the support provided and any further appropriate remedies. If considered appropriate the Panel may chose to alter the outcome and action plan delivered by the hearing panel.

1315 The role of the Appeal Panel is to evaluate the information presented to them and to determine the appropriate outcome – including the drawing up of an action plan, where appropriate.

1316 The Appeal Panel will have had no prior involvement or detailed knowledge of the case, excluding the information provided to them in preparation for the Appeal.

1317 It shall be the responsibility of the Chair of the Appeal Panel to ensure that the Appeal is conducted appropriately – guidance is noted at *Appendix D*. All members of the Appeal Panel are required to:

- familiarise themselves with the documentation provided prior to the Appeal Hearing.
- meet prior to the Appeal Hearing with the HR Advisor to ensure that they fully understand the process/their roles and to undertake any preparation required – including the drafting of questions/points of clarity required.
- ensure that they conduct themselves within the Appeal hearing in accordance with the principles of the Capability Policy.

1318 Once the Panel have received the information presented to them by all parties within the Appeal Hearing, asked any appropriate questions and are satisfied that they have sufficient information to reach a decision as to the outcome of the Appeal Hearing they will adjourn the Appeal Hearing to reach a decision.

1319 The Appeal can adjourn at any time at the request of either of the parties and the Chair of the Appeal Panel will need to consider such requests.

1320 The Appeal Panel is required to consider all of the information made available to them and/or presented at the Appeal prior to them reaching their outcome¹².

1321 Options for the Appeal Panel to consider as an outcome arising from this Appeal Hearing are:

- Appeal is unfounded - no further action is required, original outcome

¹² Please note: any additional documentation received or presented after this point in the process will only be considered with the consent the Chair of the Hearing Panel after discussion with the supporting HR Advisor.

from disciplinary hearing stands

- that after thoroughly exploring the issues raised at the Appeal Hearing the Panel believe it is appropriate to change the previous decision issued by the Hearing Panel¹³, perhaps on grounds of evidence not available earlier, the level of sanction given was not appropriate or inconsistency.

1322

Once the Appeal Panel has reached a decision, they will be required to notify all parties of the decision. Where possible it is recommended that this is undertaken on the same day as the Appeal Hearing and in person. It is acknowledged that after an adjournment to reach a decision it may not be appropriate to ask the parties to wait. Where this occurs alternative arrangements will need to be agreed, with advice from the supporting HR Advisor regarding the most appropriate way forward.

1323

Following the outcome of the Appeal Hearing, the Chair of the Appeal Panel will be required to draft (in conjunction with the HR Advisor) a letter to convey to the employee the decision made by the Panel. This written confirmation must be issued to the employee and copied to the Chair of the Hearing Panel and the HR Advisor, within 2 standard working days following the decision of the Appeal Panel being communicated to the employee in person.

1324

This letter will be sent by the Clerk to Governors on behalf of the Chair of the Appeal Panel, and will note the:

- reasons/concerns brought to the appeal considered,
- decision reached including any sanctions, if appropriate,
- reasons for reaching this decision,
- that there is no further right of Appeal.

1325

This letter will be sent to the employee (including a copy for their work colleague or trade union/professional association representative), and copied to Chair of the Hearing Panel, supporting HR Advisor, Appeal Panel and supporting HR Advisor.

1326

The Chair of the Appeal Panel and the supporting HR Advisor will be required to update/advise the Headteacher of the agreed outcome/way forward immediately after informing the employee.

1327

Where an action plan is required as one of the outcome options, the Chair of the Appeal Panel and supporting HR Advisor will liaise with the Headteacher (or their designate) regarding the action plan. The responsibility for the delivery of the support/action plan will lie with the Headteacher (or their designate) as appropriate.

¹³ In accordance with the principles of this policy the Appeal Panel do not have the authority to increase the sanction set at the original hearing.

1328 The Clerk to Governors and the Chair of the Appeal Panel are responsible
where dismissal is an outcome to work with the supporting HR Advisor to
ensure that the Schools statutory obligations are fulfilled.

1329 The decision of the Appeal Panel is final.

14. Additional Information

14.1 Monitoring and Assessment

1401 In most cases an appropriate member of the School Leadership Team will
perform this function. The person designated with this role should be someone
with experience and responsibility, able to exercise an encouraging and
constructive approach to improving the employees performance and to prepare
objective reports on the employees progress. It is the responsibility of this
person to ensure that the employee is fully aware of the process.

14.2 Timescale

1402 The recommended timings that follow are upper limits, which may be
shortened where deemed appropriate.

1403 The timescale adopted in each case will be in accordance with the nature of
the job role and the seriousness of the lack of capability of the employee. With
consideration given as to whether the problem is a specific or broader
professional difficulty.

1404 In most cases the period for improvement and elimination of the concern
through

- informal measures within this procedure will be a maximum of 12 weeks
from date of entry
- formal measures within this procedure will be a maximum of 26 weeks
from date of entry.

1405 It is recognised that in some cases it may be necessary to move immediately
into the formal measures stage, as informal measures may not be appropriate.

1406 Timing is best determined by those persons involved at each review and
should reflect the factors and circumstances particular to the individual case.
6-8 weeks may be considered a reasonable period to allow between formal
review meetings. In addition to the formal review meeting it is recommended
that regular monitoring take place with feedback communicated to the
employee throughout the period set for improvement.

1407 Where the situation deteriorates within the monitoring period, the date for the
review meeting may be brought forward. If this is the case the employee
should be given at least 5 standard working days notice of the meeting.

1408

Particularly serious/extreme cases may be handled in a considerably shorter time period, but no less than four weeks. For example, where it becomes clear that an acceptable level of improvement is beyond the ability of the person assessed, or where there is a lack of co-operation with reasonable measures to achieve improvement.

1409

Examples of this might be:-

- where the education of children is in jeopardy, for example a teacher's classroom control is so poor that no order can be established to enable teaching to take place
- where all the children under a teacher's care fail to progress in that teacher's lessons,
- where there is a risk to the organisation
- where there is failure to cooperate with the procedure
- where all outcomes have been explored and all reasonable steps taken by the employer

14.3 Sickness absence during the procedure

1410

If sickness absence appears to have been triggered by the commencement of capability procedures the case should be referred via the School link HR Advisor to the Occupational Health Unit. In a case of long term absence it may be necessary to run the sickness absence management procedure in parallel with the capability procedure.

1411

Absences should not cause unreasonable delay to any part of the procedure. Steps should be taken to enable the employee to attend meetings, hearings and appeals. However, where the employee is unable to attend, these meetings or hearings may proceed in the employee's absence. In these circumstances a full account, including the information considered and conclusions reached, should be confirmed in writing to the employee.

14.3. Timing and/or Rescheduling

1412

The timings and location of any meeting, or subsequent hearings and appeals under this procedure will be reasonable and each step in the procedure will be taken without unreasonable delay.

1413

The employee must take all reasonable steps to attend any meetings, or subsequent hearing and appeal arranged. The employee must take all reasonable steps to attend any meeting(s), or subsequent Hearing and Appeal arranged under this Policy & Procedure. Where an employee is persistently unable or unwilling to attend a disciplinary meeting without good cause the employer should make a decision on the evidence available.

1414

Should the employee have chosen a work colleague or trade union/professional association representative to support them within this Policy & Procedure and their chosen work colleague or trade union/professional

association representative is not available on the dates suggested, the following will be considered:

- for a meeting with the manager – consideration may be given by the manager and supporting HR Advisor to the postponement of the planned meeting where this can be held within five standard working days of the proposed date
- the scheduled Hearing or Appeal - the employee must offer an alternative date¹⁴, which is reasonable and which falls on or before the end of the fifth standard working day, after the original Hearing or Appeal date proposed

14.4 Accompaniment/Representation

1415

Any employee will have the right at every stage of the formal process to be accompanied by a work colleague or trade union/professional association representative. In addition, they will have the right to be represented by a work colleague or trade union/professional association representative at any subsequent Hearing or Appeal.

The manager leading the capability will have the right at every stage of the formal process to be supported, for example, by a link school HR Advisor or another management colleague.

1416

Informal discussions or counselling sessions do not afford the right unless they could result in a formal warning or other action.

1417

It is the employee's responsibility to ensure that their chosen person is willing and able to attend any meeting, hearing or appeal.

1418

An employee should have regard to the appropriateness of their chosen person when selecting accompaniment. For example if it can be considered there may be a conflict of interest or the individuals presence would be prejudicial the choice will not be deemed as reasonable.

1419

The accompanier has no right to answer questions on the employees behalf or to prevent the employer from explaining their view of the matter.

1420

At a hearing or appeal the accompanier should be allowed to confer with the employee, put the employees view of the matter to the panel, sum up for the employee and respond on the employees behalf to any view expressed at the hearing should the employee wish it.

14.5 Referral to Appropriate Body

1421

Where through the formal stages of this procedure an employee is dismissed for reasons of capability or resigns in circumstances that may have led to them

¹⁴ In accordance with Section 10 of the Employment Rights Act 2002 - the employee must propose a date which is reasonable and which falls on or before the end of the fifth standard working day, after the original Hearing or Appeal date proposed.

being considered for dismissal the Headteacher in conjunction with the School Link HR Advisor will refer the case to the GTC or other appropriate professional body¹⁵. The Headteacher in conjunction the School Link HR Advisor, following either a decision to dismiss or following receipt of a resignation will advise the employee of this referral in writing.

1422

The GTC has a key role in promoting and upholding the standards of the teaching profession. This includes determining whether action should be taken against those who have been found to perform below those standards - whether through serious misconduct or poor performance.

14.6 Contacts

- - A current list of trade union/professional association representatives from the School Link HR Advisor

Alternatively, information relating to contact details can also be obtained by accessing the Intranet.

¹⁵ Examples being General Teaching Council (GTC), ISA (Autumn 09) POCA, National Bursars Association – please note that this list is not exhaustive, but provides a flavour of the various professional bodies who monitor/advise on the professional conduct/behaviours of individuals employed to work in various professions.

Appendix A

Possible Disciplinary Outcomes

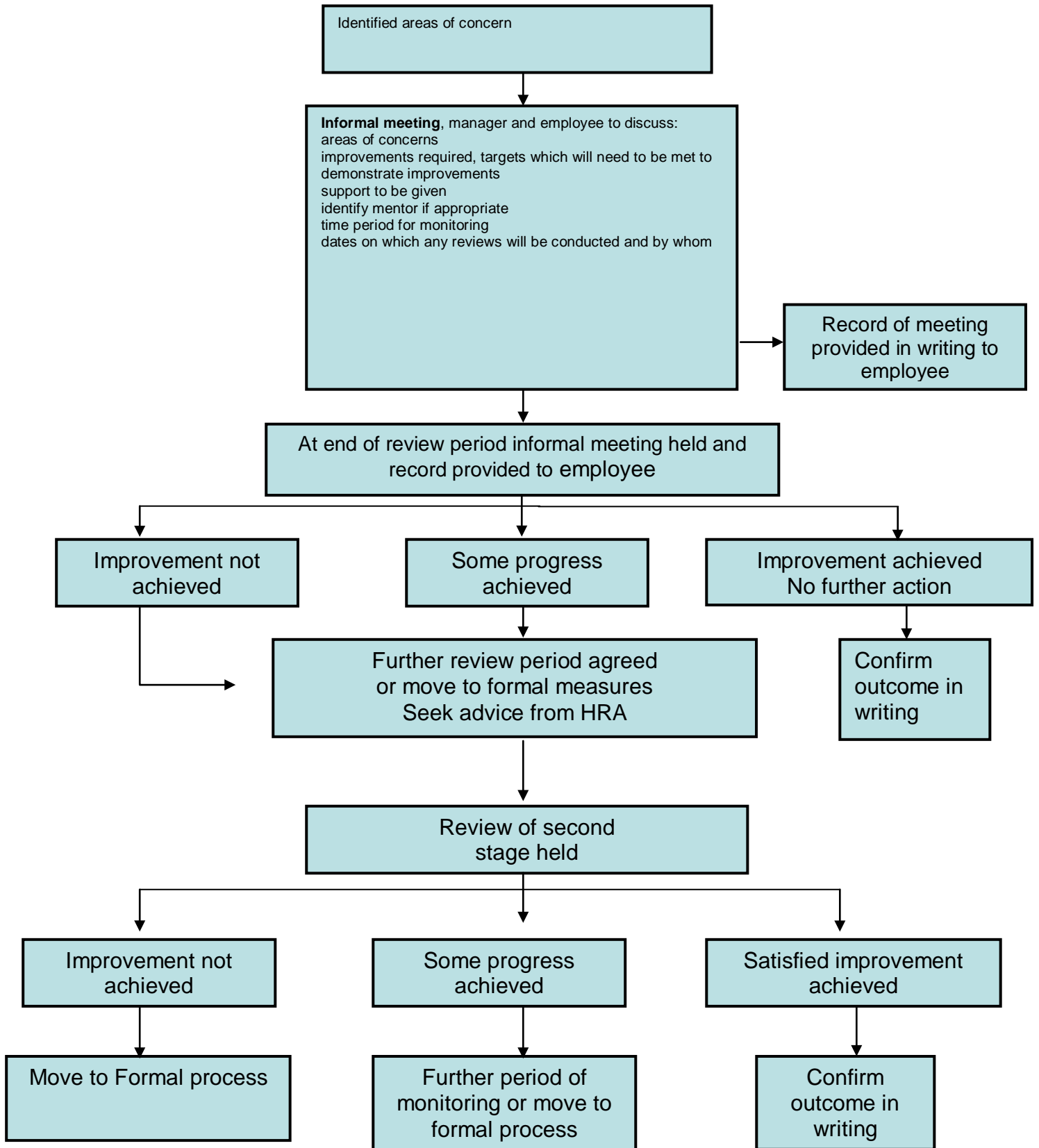
- ❑ A decision to take no action. Improvements made have been sufficient without award of disciplinary measure.
- ❑ Further review period for improvement.
- ❑ A verbal warning, this will be valid for 6 months and will be time expired after this period. The employee should be informed in writing of the improvements required and over what timescale and also any support to be put in place to secure an acceptable standard of performance and eliminate any outstanding cause for concern. This will be provided to the employee from the panel compiled via guidance from the appropriate Manager at the School. Failure to improve may result in further disciplinary action within the Capability Policy and Procedure.
- ❑ A written warning, this will be valid for 12 months and will be time expired after this period. The employee should be informed in writing of the improvements required and over what timescale and also any support to be put in place to secure an acceptable standard of performance and eliminate any outstanding cause for concern. This will be provided to the employee from the panel compiled via guidance from the appropriate Manager at the School. Failure to improve may result in further disciplinary action within the Capability Policy and Procedure.
- ❑ A final written warning, this will be valid for 18 months and will be time expired after this period. The employee should be informed in writing of the improvements required and over what timescale and also any support to be put in place to secure an acceptable standard of performance and eliminate any outstanding cause for concern. This will be provided to the employee from the panel compiled via guidance from the appropriate Manager at the School. In addition this warning will state that failure to improve may result in dismissal and that continuation in their current post may be at risk.
- ❑ Dismissal with notice or demotion with loss of pay to a lesser role as an alternative to dismissal. Unless in extreme circumstances an employee should not normally be dismissed because of unsatisfactory performance unless a disciplinary sanction and a chance to improve have been given. Examples of such extreme circumstances through not exhaustive are: jeopardy of pupil education, risk to organisation, failure to cooperate with the procedure, where all outcomes have been explored and all reasonable steps taken by the employer.
- ❑ The date of dismissal will be deemed as the date of the Hearing regardless of any Appeals procedures.

The period for the achievement of improvement given as part of any disciplinary outcome will normally be no more than 1 term. However, in extreme cases, the period for the achievement of improvement will be no more than 4 weeks.

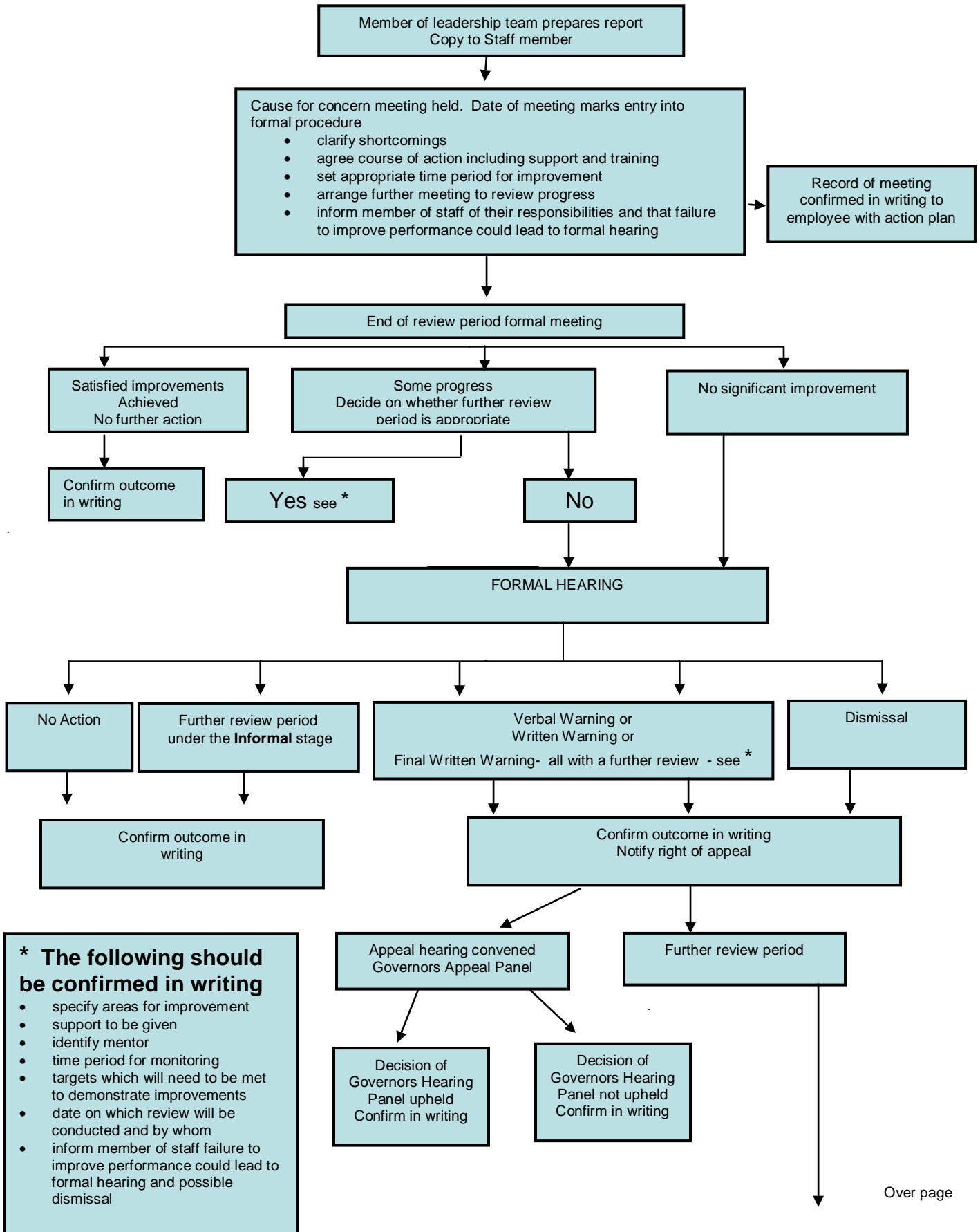
The appropriate Manager from the School shall at the end of the specified period hold a Review Meeting with the employee and consider if the outcomes set by the Panel have been achieved. Where the outcomes have not been satisfactorily met referral to a further Disciplinary Hearing will be made. In most cases the Panel will consist of the same membership allowing consistency to all parties.

Appendix B

Informal Measures Capability Procedure

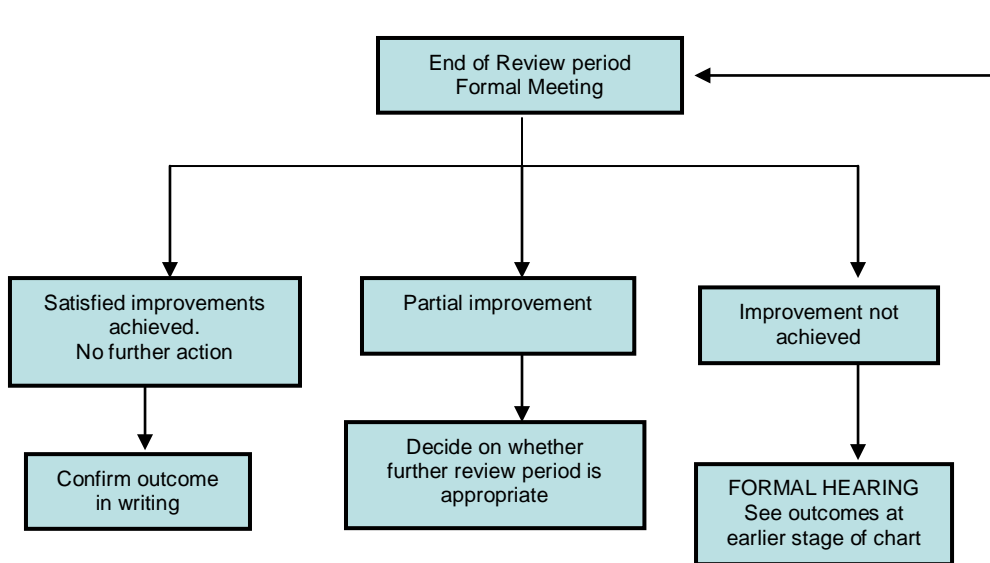


Formal Stage Capability Procedure



*** The following should be confirmed in writing**

- specify areas for improvement
- support to be given
- identify mentor
- time period for monitoring
- targets which will need to be met to demonstrate improvements
- date on which review will be conducted and by whom
- inform member of staff failure to improve performance could lead to formal hearing and possible dismissal



Appendix C

Review Meeting Outcome

Name:

Position held:

Department/Location:

Assessment of the Postholder's Ability to Carry Out Duties

(including any action taken, any issues raised by the individual, any additional support and training agreed)
continue overleaf if required

Targets/timescale/measurement(continue overleaf if required)

The above has been discussed with the postholder, they have been made aware of the required standard and informed of areas where improvement is sought.

Signed

Position held

Name

Signature of postholder

(to confirm discussion took place) I agree/disagree with the comments above

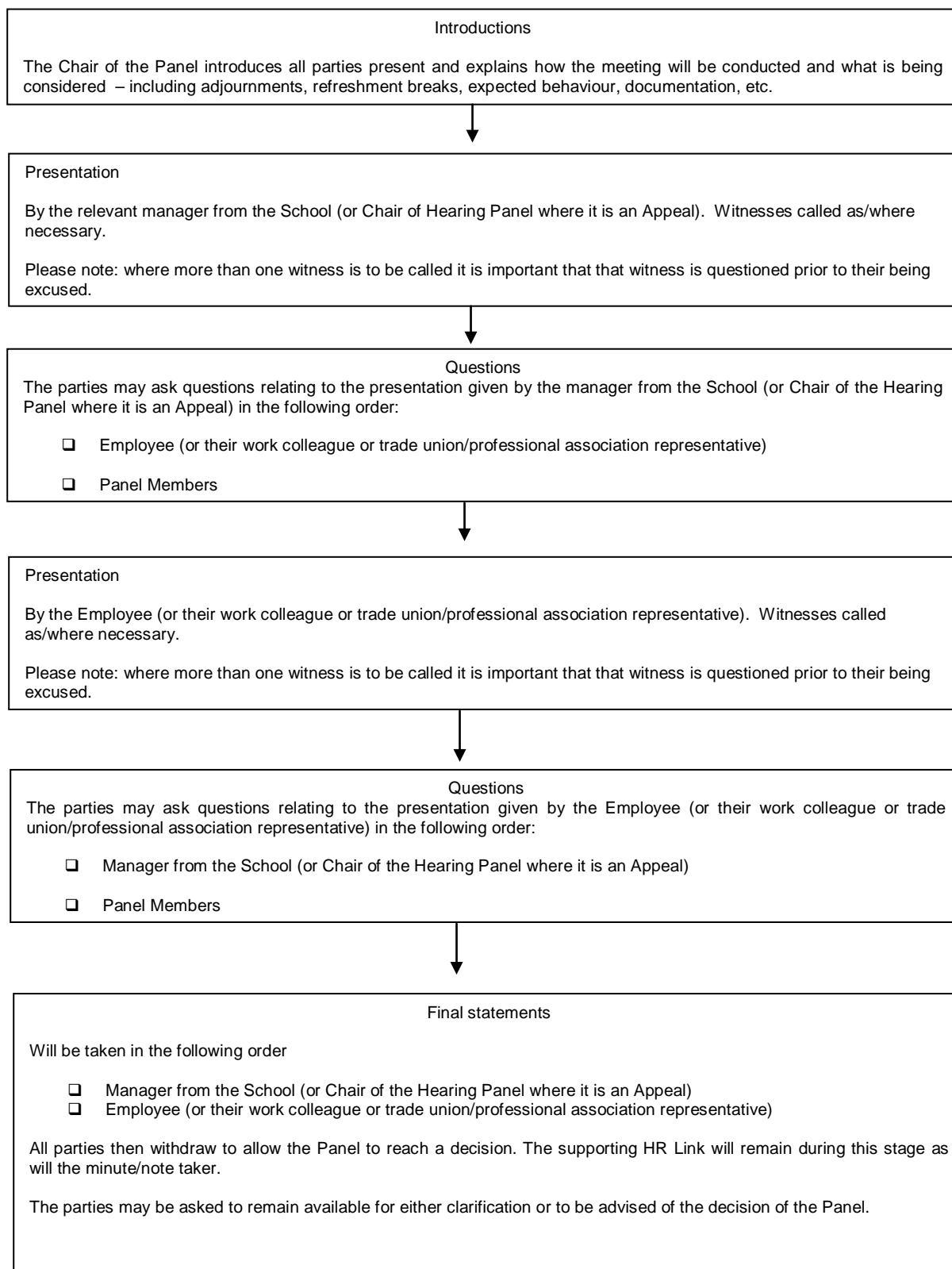
Name

Position held

Comments/Reasons

Appendix D

Disciplinary Hearing/Appeal Hearing – Suggested Format



Appendix E

Sample Action Plan

Causes for concern	Improvements required and target dates for improvement	Advice, support, to be provided roles/responsibilities	Improvements met Y/N/Partial	Measurements/Evidence	Time-scale for review of progress

Appendix F

Recommended good practice time line for dealing with an employee capability in accordance with the Steps within the Formal Capability Policy and Procedure with a maximum of 26 weeks from date of entry.

Stage in the Procedure	Notes	Work Week Number
Cause for concern meeting	At least 5 standard working days notice should be given of the date along with written details of the cause of concern. Employee may be accompanied at the meeting. Purpose is to discuss the cause(s) for concern and outline an action plan.	One
Monitoring period	During this period the manager will undertake to meet regularly with the employee to discuss and monitor the work being undertaken as per the action plan.. Employee may be accompanied at the meeting.	Two -Eleven
Review Meeting	At least 5 standard working days notice should be given of the date. Employee may be accompanied at the meeting. At the meeting the manager will discuss the progress made and consider the next step applicable in the circumstances.	Twelve
Outcome of Review reached either		
a) Concerns eliminated	With this outcome the Formal procedure concludes and the employee is advised in writing including the need to sustain the improvements reached.	Twelve
b) Further monitoring period	This outcome provides a further period for improvement and subsequent review meeting. The manager will undertake to meet regularly with the employee to discuss and monitor the work being undertaken as per the formal action plan.	Thirteen-Twenty six
c) Referral to Governors	Where this outcome is reached the Clerk to Governors will be advised at the same time as the employee and a Disciplinary Hearing will be arranged.	Twenty Six