



St Thomas Primary School

# Capability Procedure

Date adopted 25<sup>th</sup> Jan 2007  
Last Reviewed 12<sup>th</sup> July 2010  
Revision Ref  
Author/Owner Personnel Committee

Version November 2003  
Review Cycle Three Years



**DEVON COUNTY COUNCIL**

## **CAPABILITY PROCEDURE FOR SCHOOLS**

# **EMPLOYEE RELATIONS**

## **CAPABILITY PROCEDURE FOR SCHOOLS**

### **TABLE OF CONTENTS**

1. INTRODUCTION AND PURPOSE
  - 1.1. Responsibility for dealing with Capability
  - 1.2. Principles of this procedure
  - 1.3. Definition of lack of Capability
  - 1.4. Contractual provisions
  - 1.5. Coverage of this procedure
2. EQUAL OPPORTUNITIES
3. GENERAL PRINCIPLES
  - 3.1. The Right to be Accompanied
  - 3.2. Capability Action Against Trade Union Representatives
  - 3.3. Standard of Proof
  - 3.4. Principles of Natural Justice
  - 3.5. Human Resources Advice
  - 3.6. LEA Representative
  - 3.7. Costs
  - 3.8. Timing of Meetings
  - 3.9. Time limits
  - 3.10. Place and time of formal hearings
  - 3.11. Providing support to staff experiencing difficulties
  - 3.12. Ofsted ratings of teachers
  - 3.13. Threshold
4. ADVISORY/SUPPORT SERVICES
  - 4.1. Counselling Service
  - 4.2. Occupational Health Service (OHS)
  - 4.3. Devon County Council Equalities Officer
  - 4.4. Employment Service Disability Employment Advisors (DEAs)
  - 4.5. St Lyses Foundation Exeter
  - 4.6. Royal National Institute for the Blind (RNIB)
  - 4.7. Royal National Institute for the Deaf (RNID)
  - 4.8. Disability Living Foundation
  - 4.9. Other support
5. RECORD KEEPING STANDARDS
6. DEFINITION OF LACK OF CAPABILITY
7. STATUTORY REPORTING OBLIGATIONS
  - 7.1. Referral to the General Teaching Council (GTC)
  - 7.2. Referral to the Devon County Council Applicants Referral List
8. IMPACT ON THE APPLICATION OF OTHER PERSONNEL PROCEDURES
  - 8.1. Disciplinary procedure
  - 8.2. Grievance procedure
  - 8.3. Managing Sickness Absence procedure
  - 8.4. Performance Management procedure

- 9. EMPLOYEE RESPONSIBILITIES
  - 9.1. Responsibilities of Employees
  - 9.2. Obligation on employees to address capability issues
  
- 10. MANAGEMENT RESPONSIBILITIES
  - 10.1. Role of manager
  
- 11. SUSPENSION
  - 11.1. Formal Suspension
  - 11.2. Lifting of Suspension
  - 11.3. Special Leave - Employee asked not to attend work
  - 11.4. Temporary transfer to suitable alternative duties
  - 11.5. Sending Home
  
- 12. RESPONSIBILITY FOR APPLICATION
  - 12.1. Obligation to act
  - 12.2. Human Resources Adviser
  
- 13. APPLICATION OF THE CAPABILITY PROCEDURE
  - 13.1. Guidance on informal action
  - 13.2. Establishing the need for action under this procedure
  - 13.3. Capability Factors
  - 13.4. Deciding on appropriate course of action
  - 13.5. Responsibility at each stage
  
- 14. STAGE 1 INFORMAL ACTION
  - 14.1. Informal Action Flowchart
  - 14.2. Aims of Informal Action
  - 14.3. Meeting with Employee
  - 14.4. Failure to meet required standards
  - 14.5. Length of Review Period
  - 14.6. Written confirmation of the meeting
  - 14.7. End of Review Period
  - 14.8. Decision Making
  - 14.9. Confirmation in writing
  
- 15. STAGE 2: FORMAL ACTION
  - 15.1. Formal Action Flowchart
  - 15.2. Formal Interview
  - 15.3. Report for Formal Interview
  - 15.4. Decision Making at the Formal Interview
  - 15.5. Issuing a Formal Warning
  - 15.6. Written confirmation of outcome
  - 15.7. Appeal against warning
  - 15.8. Fast track assessment period
  - 15.9. Assessment Period
  - 15.10. Evaluation Meeting
  - 15.11. Exploration of Other Options

## 16. STAGE 3: STAFF DISMISSALS COMMITTEE HEARING

- 16.1. Decision to refer to Governors
- 16.2. Information to Staff Dismissal Committee
- 16.3. Co-ordination of the Hearing
- 16.4. Hearing Proceedings
- 16.5. Sickness and hearings
- 16.6. Disciplinary Hearing Flowchart
- 16.7. The Committee's Decision
- 16.8. Confirmation in writing
- 16.9. Issuing of Notice

## 17. STAGE 4: APPEAL HEARING PROCEEDINGS

- 17.1. Right of Appeal
- 17.2. Purpose of Appeal Hearing
- 17.3. Grounds on which an Employee can lodge an Appeal
- 17.4. Timing and co-ordination of Appeal Hearing
- 17.5. Staff Dismissals Appeals Committee
- 17.6. Appeal Hearing Procedure
- 17.7. Respondent to Staff Dismissal Appeals Committee
- 17.8. Record of Hearing
- 17.9. Decision Making
- 17.10. Announcement of Decision
- 17.11. Lifting of Suspension

## **1. INTRODUCTION AND PURPOSE**

### **1.1. Responsibility for dealing with Capability**

The Governing Body of the school, with the Headteacher, is required to take appropriate steps to ensure that employees achieve the standard of performance required of them. The Headteacher will take undertake their normal management responsibilities to support staff in the school prior to recourse to this procedure. Reasonable steps will be taken to agreed the start times of hearings.

### **1.2. Definition of lack of capability**

Lack of capability is defined as a situation in which an employee fails consistently to perform her/his duties to professionally acceptable standards.

### **1.3. Principles of this procedure**

This procedure is for addressing poor employee performance in a way that is fair, effective, consistent and in accordance with good employment practice. It takes account of recent DfES guidance on addressing teacher incapability and the ACAS Code of Practice and the views of recognised Professional Associations/trade unions. The aim of this procedure is to effect sustained improvement in the employee's performance.

### **1.4. Contractual provisions**

General standards of capability are implied within the employment contract.

### **1.5. Coverage of this procedure**

This procedure applies to both teaching and support staff for the purposes of consistency and ease of application and schools must make it available to every member of staff through the school's own internal systems.

## **2. EQUAL OPPORTUNITIES**

This procedure is based on best practice and is designed to promote a consistent and effective approach to conduct issues in the school. The Governing Body will ensure that the application of the procedure will not disproportionately or unfairly affect any staff in the school recognising the diversity of the community. Both managers and governors have a particular responsibility to ensure that they manage the processes set out below fairly, equitably, and objectively.

## **3. GENERAL PRINCIPLES**

### **3.1 The Right to be Accompanied**

At any stage in this procedure the member of staff may seek support and advice from a representative of his/her trade union or professional association and must be encouraged to do so.

The member of staff has the right to be accompanied at any meetings by a single companion who is either a work colleague or trade union/professional association representative.

### **3.2 Capability Action Against Trade Union Representatives**

No capability action will be brought against an officially designated representative of a trade union or staff association, including school representatives, until the circumstances of the case have been discussed with a designated senior representative or full time official of the Trade Union or

Association concerned. In this context, a trade union representative shall mean any officer of the local branch, member of its Committee, or workplace representative. Further guidance is available from the Human Resources Service (HR).

### **3.3 Standard of Proof (the 'balance of probability' test)**

- The employer must establish a reasonable belief on the 'balance of probabilities' in the employee's lack of capability.
- There must be reasonable grounds to sustain this belief
- There must have been as much investigation as was reasonable in the circumstances.

### **3.4 Principles of Natural Justice**

Essential to the fair and reasonable application of these procedures, is the underlying commitment to the principles of natural justice, namely:

- The employee must know, in full, the concerns about his/her capability at the earliest opportunity;
- The employee must have an opportunity to state his/her case before any decision is made;
- The determinations must be unbiased, fair and made in good faith;
- The employee must have the right to appeal;
- The employee has the right to be accompanied (See 3.1).

### **3.5 Human Resources Advice**

The Human Resources Service Provider may be consulted and can provide advice to any party at any stage of this procedure and will seek legal advice when/if appropriate.

### **3.6 LEA Representative**

The LEA through a representative (normally Devon County Council Human Resources Service) has an entitlement to attend for the purposes of giving advice at any hearing and/or appeal where dismissal is being considered. Therefore, DCC Human Resources Service should be notified whenever it is proposed to hold such a hearing or appeal. Under the provisions of the Education Act 2002, any advice given by the LEA representative must be considered by those concerned before a decision is made.

### **3.7. Costs**

Costs incurred by the LEA in respect of the dismissal or for the purpose of securing the resignation of a member of the school's staff may not be met from the school's delegated budget unless the LEA has good reason for deducting those costs. Having 'good reason' provides a safeguard for the LEA against ill-judged action by a governing body e.g. dismissals which lead to successful claims in an employment tribunal. This does not apply to the payment of any applicable notice to the school's employee, which would be paid from the school budget. Compromise agreements will also be paid from the school budget unless in exceptional circumstances and agreed in advance with the Director of education Arts and Libraries.

### **3.7 Timing of Meetings**

Whilst recognising that unnecessary delay is not in the interest of any party, management (including Governors' Hearing Panels) will ensure that proper arrangements are made to allow effective representation and consideration of issues as well as taking account of the balance between the employee's working life and other external factors. Management will hold meetings outside of term-time only in exceptional circumstances. The establishment of an agreed timetable at the beginning of the formal assessment stage is helpful although it may not always be possible.

### **3.8 Time limits**

The time limits mentioned in this procedure may be varied by mutual agreement in individual cases.

### **3.9. Place and Time of Formal Hearings**

Any hearing should be held in a confidential environment, free from interruptions. If the employee's chosen representative is not available on the date set by the school for the hearing, the *Employment Relations Act 1999* permits the employee to select another reasonable date within five working days of the original date. These arrangements may be varied by mutual agreement.

### **3.10. Providing support to staff experiencing difficulties**

Any member of staff should be able to call upon support from senior colleagues, whether this request comes from the member of staff him/herself or the need for support is identified elsewhere.

### **3.11. Ofsted ratings of teachers**

A rating attached to a teacher as a result of an Ofsted inspection cannot be used exclusively to initiate a capability procedure. Such documents may be used as corroborative evidence where there is already an ongoing communicated concern about a member of staff's performance.

### **3.12. Place and Time of Formal Hearings**

Any hearing should be held in a confidential environment, free from interruptions. If the employee's chosen representative is not available on the date set by the school for the hearing, the *Employment Relations Act 1999* permits the employee to select another reasonable date within five working days of the original date. These arrangements may be varied by mutual agreement.

### **3.13. Providing support to staff experiencing difficulties**

Any member of staff should be able to call upon support from senior colleagues, whether this request comes from the member of staff him/herself or the need for support is identified elsewhere.

### **3.14. Ofsted ratings of teachers**

A rating attached to a teacher as a result of an Ofsted inspection cannot be used exclusively to initiate a capability procedure. Such documents may be used as corroborative evidence where there is already an ongoing communicated concern about a member of staff's performance.

### **3.15. Threshold**

The fact that a teacher has gone through the threshold does not mean that any perceived weaknesses in performance will not be challenged

## **4. ADVISORY/SUPPORT SERVICES**

### **4.1. Counselling Service**

Counselling gives an opportunity to work in confidence with a trained counsellor to explore ways of dealing with situations that may be difficult to cope with. This confidential service is available to help with work or personal problems. Contact can be made by self-referral, organisational referral (e.g. line manager, human resources adviser, occupational health service), or trade union referral. For further details or referral telephone: 01392 383277 (office hours), 01392 382549 (answer phone out of office hours).

### **4.2. Occupational Health Service (OHS)**

The OHS provides advice and support to managers and employees on a range of issues affecting health in the workplace. This includes assessment by trained occupational health staff on necessary adjustments to the workplace to promote well-being, safe working practices and a safe environment at work, to enable staff to remain at work, and to help staff return to work after ill-health absences, together with advice on staff fitness to work. Referrals are made via DCC's HR Service.

### **4.3. Devon County Council Equality and Diversity Officer**

Employees are encouraged to seek support and advice on workplace issues relating to disability from the County's Equality and Diversity Officer on 01752 785890 or 01752 703652 (Admin Officer, afternoons only)

### **4.4. Employment Service Disability Employment Advisors (DEAs)**

DEAs are members of the Disability Service Team who work closely with employers, employees and disabled people looking for work. DEAs provide help and advice (including on practical and financial help available), for people who are, or who become disabled, his/her employers and others involved in promoting his/her job prospects. For further details or referral, contact the local job centre, where most DEAs are based.

### **4.5. St Lloyes Foundation Exeter**

Provides a range of services including assessment, advice on workplace adaptation, support and retraining services for employees who through ill health or disability appear unable to continue in his/her their present work. For further details telephone 01392 286205 or 0132 286282.

### **4.6. Royal National Institute for the Blind (RNIB)**

Provides information and advice for people with serious visual impairments. For further information telephone the helpline on 0845 766 9999, textphone 0800 51 51 52. Contact the Regional Employment Officer on 0117 953 7750.

### **4.7. Royal National Institute for the Deaf (RNID)**

Provides information and advice for people with serious hearing impairments. For further information telephone the helpline 0808 808 0123, textphone 0808 808 9000.

### **4.8. Disability Living Foundation**

Provides advice and information on equipment, new technologies and training, and is particularly focussed at enhancing the independence of people with disabilities. The Internet site has a comprehensive list of, and links with, other UK disability organisations, charities and equipment suppliers, who are able to

provide information and advice on a wide range of disability issues. For further information telephone the helpline 0845 130 9177, textphone 0870 603 9176.

#### **4.9 Other support**

Support may also be sought from the Teacher Support Line on 0800 562 561 and the County Council's Acceptable Behaviour Helpline on 01392 382828.

### **5. RECORD KEEPING STANDARDS**

- 5.1. A written record must be made of all interviews with the member of staff and any action taken. An employee will be provided with a copy of any records made as part of this process.
- 5.2. Records of the process will be destroyed after a period of 3 years has elapsed from the date of the record, provided that no further action with regard to a similar issue under the procedure has proved necessary.
- 5.3. If further action is initiated before the expiry of the relevant period, all previous records still in force, and which relate to previous capability action, shall be taken into account.
- 5.4. All records will be kept confidentially and securely.

### **6. DEFINITION OF LACK OF CAPABILITY**

Lack of capability is defined as a situation in which an employee fails consistently to perform her/his duties to professionally acceptable standards. The focus is on the fact that the employee cannot perform to a satisfactory standard, rather than will not, which may be viewed as a conduct issue.

Examples of this might be:

- a. consistently failing to meet reasonable deadlines for tasks, projects, reports, etc;
- b. regularly producing work which is sub-standard, inaccurate, badly presented, or poorly organised;
- c. failing to carry out effectively and consistently key areas of job responsibility;
- d. being unable to maintain institutional standards of discipline and contribute to the maintenance of good order throughout the school and specifically in the classroom (applicable to teachers only).

### **7. STATUTORY REPORTING OBLIGATIONS**

#### **7.1. Referral to the General Teaching Council (GTC)**

All cases where a teacher is dismissed for incompetence or resigns where s/he would have been dismissed or considered for dismissal on the grounds of capability will be referred to the General Teaching Council.

## **7.2. Referral to the Devon County Council Applicant Referral List : Non-Statutory Obligation**

In some specific circumstances, where a lack of capability gives rise to matters that may put children at risk (e.g. Complete lack of control in the classroom), an employee's name may be added to the list

- The Applicants Referral List is a confidential list of ex-employees and other individuals who would not be routinely re-employed or employed either directly or indirectly in posts or voluntary positions where they would have substantial, regular and unsupervised access to children, young and vulnerable people.
- An employee will be included on this list if s/he has been dismissed from their employment in circumstances that justify inclusion on the Applicants Referral List, or has resigned whilst the subject of a disciplinary investigation, and the circumstances which led to the disciplinary investigation warrant inclusion.

## **8. IMPACT ON THE APPLICATION OF OTHER PERSONNEL PROCEDURES**

The capability procedure may have an impact on the application of a number of other personnel procedures. In some cases, the capability procedure will need to be used in conjunction with these procedures.

Care should be taken to ensure that the correct procedure is used.

### **8.1. Disciplinary procedure**

Poor performance can arise out of intentional acts or omissions or wilful actions, which may constitute misconduct or negligence. When such misconduct occurs it must be dealt with as a disciplinary matter. For example, the employee may:

- be negligent, lazy, careless etc
- refuse to follow procedures or instructions;
- deliberately not pay enough attention to her/his job responsibilities;
- have poor timekeeping or unauthorised absenteeism

### **8.2. Grievance procedure**

8.2.1. In exceptional circumstances an employee may raise a grievance about the conduct of the Headteacher (or any other manager following the procedures) in the course of the capability process. Although this is a rare occurrence, depending on the circumstances it may be appropriate to suspend the procedure for a short period until the grievance can be considered. In such a scenario, consideration should be given to bringing in another manager or Governor in the school or a representative from the LEA and seeking advice from HR. Any records should be passed to the new manager and if appropriate the case should be continued within the same timetable.

8.2.2. Any disagreements or grievances about the interpretation of the procedure, or the application of related matters not covered in the

procedure must not delay the various elements of the capability procedure within the overall timetable as previously determined, as appropriate.

### **8.3. Managing Sickness Absence procedure**

8.3.1. Urgent action is required if sickness absence intervenes during the capability process. If sickness absence appears to have been triggered by the application of the capability procedure, the HR Adviser should be contacted and the case should be referred immediately to the Occupational Health Service to assess the employee's health and fitness for continued employment and to establish whether the sickness absence is short or long term. Schools must take a considerate and sympathetic approach, but in general the length of time they may wait for the employee's health to improve before considering whether to terminate employment on health grounds should be subject to sickness management procedures.

8.3.2. Similarly, absence which is triggered by capability action, and which the headteacher believes is likely to be long term (having taken advice from HR), should be referred immediately to the Occupational Health Service to assess whether the employee is fit for continued employment. Short absences should not delay any part of the formal stage of the procedure. Reasonable steps should be made to enable the employee to attend informal or formal evaluation meetings, but where the employee is unable to attend, the headteacher/manager may proceed in the employee's absence with HR advice. In such circumstances a full account of the evaluation should be provided in the letter confirming the decision taken.

### **8.4. Performance Management procedure**

8.4.1. This procedure should be regarded as a separate procedure from the performance management policy or any other performance-related initiative or procedure, such as teacher induction or INSET initiatives.

8.4.2. The review meeting and review statement of the Performance Management procedure do not form part of formal capability procedures. However, relevant information from review statements may be taken into account by those who have access to them in making decisions and advising those responsible for taking decisions or making recommendations about performance.

## **9. EMPLOYEE RESPONSIBILITIES**

### **9.1. Contractual responsibilities of Employees**

Employees have substantial rights under this procedure, which will be safeguarded. However, the ACAS Code of Practice states that members of staff have a contractual responsibility to perform to a satisfactory level.

### **9.2. Obligation on Employees to address capability issues**

Employees whose performance is being questioned also have responsibilities. In particular, an employee must:

- (a) accept the standards of work set by the responsible officer as long as they are reasonable within the terms of her/his job descriptions;

- (b) participate fully in any meetings arranged to discuss aspects of her/his performance that are deemed unsatisfactory;
- (c) demonstrate a commitment to improving her/his performance;
- (d) participate in any training and/or take advantage of any professional development opportunities arranged as part of management support;
- (e) recognise that the instigation of this procedure is being undertaken in the interests of the school and individual and that all information should be treated with discretion.

## **10. MANAGEMENT RESPONSIBILITIES**

### **10.1. Role of manager**

The role of the headteacher is to provide appropriate managerial direction and support to the employee throughout the assessment period and to ensure support is in place, normally by delegation.

Whilst employees have a duty to perform to agreed standards, managers also have obligations, both under the procedure and in terms of supporting staff generally. In particular, the responsible officer must:

- (a) consider external factors which may be affecting the employee, e.g. health issues, domestic difficulties, etc., if appropriate referring to the Managing Sickness Absence Policy;
- (b) set clear and consistent standards of performance and monitor these regularly;
- (c) take regular and consistent action to identify concerns and reinforce standards before it becomes necessary to resort to more formal procedures;
- (d) provide each member of staff with an accurate job description which clearly states the purpose and scope of the job and selection criteria which set out the qualities, attributes, knowledge and experience necessary to perform the duties to a satisfactory level;
- (e) deploy effective management, for example: regular monitoring, supervision and/or coaching;
- (f) discuss any shortcomings and perceived areas of concern at the earliest opportunity;
- (g) provide effective and relevant professional development, e.g. staff training;
- (h) manage the capability process effectively, fairly and reasonably;
- (i) to ensure that due regard is given to the desirability of staff at the school being able to achieve a satisfactory balance between the time required to discharge their professional duties and the time required to pursue their personal interests outside work i.e. a work/life balance.

## **11. SUSPENSION**

It is very unusual for suspension to be necessary while the capability procedure is being followed.

However, it may be necessary to suspend the employee if it is considered that her/his continued presence in the school would have a seriously detrimental effect. Suspension could occur at any stage within the procedure. However, such a decision will only be taken by the Headteacher after consultation with Human Resources.

### **11.1. Formal Suspension**

Suspension is not a disciplinary act; it is a precautionary measure, pending further investigation and possible formal proceedings. However, it is a sensitive area and suspension should not occur unless there is reasonable and proper cause to take such steps and other options should be properly considered first (see below).

It is imperative that the advice of the Human Resources Adviser should be sought in these cases.

It may be necessary to suspend the employee:

- (a) If it is considered that her/his continued presence in the school would have a seriously detrimental effect and/or
- (b) Where this would allow a more objective examination of the circumstances and/or
- (c) When the alleged lack of capability is sufficiently serious that the outcome may be dismissal and/or
- (d) Where there is a reasonable ground to believe that it would seriously affect the interests of the School and/or the individual if s/he were to remain at work and/or
- (e) Pending an appeal against a decision to dismiss.
- (f) Any combination of the above.

None of these reasons would lead to automatic suspension and each case should be decided on the facts.

11.1.1. Suspension is on pay without loss of emoluments.

11.1.2. Suspension could occur at any stage within this procedure. The Headteacher, a designated Governor or a Committee of the Governing Body may suspend a member of staff however, it is recommended that the Human Resources Adviser be consulted before any decision is made. The LEA and in the case of VA schools, the Diocese, must be immediately informed.

11.1.3. Where the employee concerned is the Head, the Chair of Governors will consult with the Human Resources Adviser before deciding whether to suspend.

11.1.4. The employee must be advised of any decision to suspend and any conditions attached to the suspension, ideally in person. This should be confirmed in writing to the employee with a copy to the appropriate

trade union or association if the employee wishes. The employee may give their views, in person or in writing as appropriate.

- 11.1.5. An agreed senior member of staff, not involved in the process, should be nominated to maintain contact with the employee on school matters, i.e. notes of school meetings, etc but must not discuss the circumstances of the suspension. Details of this contact will be agreed between the employee, his/her representative and the nominated contact officer. The name of a member of the Human Resources Service not associated with the school will also be provided to the employee if s/he wishes to seek advice on procedural matters. A suspended employee should also be encouraged to get in touch with his/her professional association and given the contact details for the Devon County Council Counselling Service.

## **11.2. Lifting of Suspension**

A suspension can only be lifted by the Governing Body. Governors may formally delegate this responsibility to a Committee. The Committee with delegated responsibility shall only be provided with sufficient information to enable them to reach a decision and due regard should be given to the need for confidentiality of individuals involved in the circumstances of the suspension.

## **11.3. Special Leave - Employee asked not to attend work**

In some circumstances, formal suspension may not be appropriate and it will be preferential to ask an employee not to attend work while an investigation takes place and/or pending the decision to suspend or not being looked into and made.

- 11.3.1. In these circumstances, the employee should be asked to take Special Leave (on full pay) and it should be confirmed in writing with a copy to his/her representative.
- 11.3.2. While the employee is on Special Leave, an agreed senior member of staff, not involved in the circumstances of the suspension, should be nominated to remain in contact with the employee on school matters but must not discuss the circumstances of any investigation. Details of this contact will be agreed between the employee, his/her representative and the nominated contact officer. The name of a member of the Human Resources Service, not associated with the school, will also be provided to the employee if s/he wishes to seek advice on procedural matters. The employee should also be encouraged to get in touch with his/her professional association and given the contact details for the Devon County Council Counselling Service.

## **11.4. Temporary transfer to suitable alternative duties**

- 11.4.1. The Headteacher should consider whether a temporary transfer to alternative duties might be an alternative to suspension or special leave. The viability of this option would depend on:
  - Whether any alternative duties existed
  - The impact on other employees' work
  - The bearing it may have on any investigation
  - The appropriateness of the duties in relation to the usual work undertaken by the employee

- 11.4.2. An employee subject to these procedures cannot unreasonably refuse to undertake such duties, if the work is considered to be a reasonable alternative.

### **11.5. Sending Home**

Depending on the circumstances, it may be appropriate for an employee to be sent home pending the decision to suspend or not being looked into and made. However, care should be taken to make certain that the employee is physically able to get home in a safe manner. If there is any doubt, e.g. the employee is in a state of shock, then arrangements should be made to ensure the individual does not drive and is taken home in a way that does not put other people or employees at risk, e.g. taxi.

## **12. RESPONSIBILITY FOR APPLICATION OF THIS PROCEDURE**

### **12.1. Obligation to act**

Where an employee might be underperforming, prompt and effective action, initially informally, must be taken. In the case of an employee other than the Headteacher, the appropriate senior manager in the school, e.g. Deputy Headteacher, Headteacher, manager (henceforth referred to as 'the responsible officer') should be responsible for carrying out both informal and formal stages of the procedure (see section 10). In the case of a Headteacher, the Chair of Governors should be responsible for applying this procedure supported by the HR Officer/School Improvement Officer/Link Phase Adviser (henceforth referred to as 'the responsible officer').

### **12.2. Human Resources Adviser**

At the request of the Headteacher/Manager/Governor, a Human Resources Adviser will be present in an advisory capacity at any stage of the process.

## **13. APPLICATION OF THE CAPABILITY PROCEDURE**

Where an employee might be underperforming, the responsible officer must take prompt and effective action, initially informally.

### **13.1 Guidance on informal action**

13.1.1 Informal measures should be taken with the aim of improving competency and therefore performance, prior to invoking the formal stages of the capability procedure.

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

13.1.3 Initial discussions between Manager and employee should take place in a friendly and constructive atmosphere. Discussions 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. Discussions should provide an opportunity:-

- (a) for the Manager clearly to identify and illustrate the perceived areas of concern;
- (b) for the employee to respond in an informal way;

- (c) to discuss any difficulties which may be preventing satisfactory performance;
  - (d) to discuss and agree the level of support which will be provided during the period of review (see paragraph 3);
  - (e) to agree a reasonable timescale for the informal monitoring and date for review.
- 13.1.4 Initial discussions and any resulting supportive action should be confined to the employee's own workplace, unless there is mutual agreement between the Manager and member of staff that enlisting external support or guidance would be advantageous.
- 13.1.5 Following the initial discussion, the Manager should write to the member of staff confirming:-
- (a) the specific issues which need to be addressed in order to achieve improvement in performance;
  - (b) details of any programme of support to be provided;
  - (c) the timescale over which an improvement in performance is to be achieved.
- Any particular points which the member of staff wishes to record at this stage should be appended.
- 13.1.6 At the end of the period of review the Manager should arrange to meet with the member of staff concerned in order to informally discuss the extent to which work performance has improved. If the Manager is satisfied that the required improvement has been achieved, the employee will be encouraged to maintain the improvement and no further action will be taken. A brief written record of this meeting should be kept.
- 13.1.7 Where initial discussions and any agreed action fail to achieve sufficient progress or improvement in performance, the Manager should discuss with the member of staff proposals for taking further supportive action to obtain and sustain the required standards. At this second stage it is recommended that advice is sought from the Human Resources service provider, and, in addition, the member of staff should be encouraged to seek advice from his Trade Union representative. When such help and advice is requested from HR, visits to the school will be arranged in consultation with the manager and member of staff, to assess performance and provide additional support. Visits will be followed by discussion between all parties involved and written reports will identify areas of concern and recommendations for overcoming them.
- 13.1.8 A review of this second stage of informal capability measures should be undertaken after a reasonable time. Specific advice is not given on time intervals between reviews, since the factors involved in each case can vary considerably, and in certain instances use of a standard timetable may be inadvisable. Timing is best determined by those persons involved at each review and should reflect the factors and circumstances particular to the individual case.
- 13.1.9 It is essential that the agreed timetable of mentoring, training, development and feedback is reasonable and, under normal circumstances, a minimum of six school weeks to a term may be considered a reasonable period to allow between reviews. The outcome of the review will be either:-
- (a) satisfactory progress; no further action required;
  - (b) some progress; further review needed after specified period;
  - (c) no marked improvement; move to the School's formal capability procedure.

- 13.1.10 In the event of the Headteacher being the subject, "Chair of Governors" should be substituted for "Manager" in the preceding paragraphs.
- 13.1.11 The provision of appropriate support for employees is an essential part of the process to improve work performance and is relevant to both informal and formal capability procedures. The following range of measures should be discussed with the member of staff concerned and agreement reached as to which are the most suitable to form part of the planned programme of support:-
- (a) appointment of an agreed mentor for the purposes of providing advice and guidance to the employee;
  - (b) observation of good practice amongst colleagues both at the employee's own school and at other schools or workplaces;
  - (c) involvement of an LEA representative, other than the person monitoring the employee's performance;
  - (d) provision of additional resources;
  - (e) modified workload or timetable for a specific period;
  - (f) additional training;
  - (g) temporary suspension of additional responsibilities without loss of remuneration.
- 13.1.12 It is important to remember that the monitoring and assessment processes within both formal and informal capability procedures are clearly distinct from the support process. Those selected to perform these quite separate roles should therefore fully understand this and also what is expected of them. The person monitoring performance should be someone with experience and responsibility, able to exercise an encouraging and constructive approach to improving performance and to prepare objective reports on the employee's progress.

### **13.2. Establishing the need for action under this procedure**

The Responsible officer should collect evidence before proceeding. The kind of evidence to be collected would usually include the following:

- Appraisal/performance management notes and documents (if available);
- the employee's job description, including the selection criteria;
- the employee's recent professional development record, including training courses;
- work which indicates that the employee is under performing;
- any written complaints/comments which indicate the level at which the employee might be performing;
- written feedback from a LEA or OFSTED inspection (if appropriate).

### **13.3. Capability Factors**

13.3.1. It is crucial that a range of factors are assessed with a view to arriving at a set of clear indicators of problems, strategies and targets for improvement. The responsible officer will therefore want to evaluate the following 'capability factors' and document his/her findings:

- Does the member of staff have personal/health problems that may be affecting his/her work? If appropriate refer to the Managing Sickness Absence Policy

- What are the specific indicators giving cause for concern and what facts, evidence or examples of sub-standard work bear this out?
- How does the employee's performance impact on the running of the school or the delivery of education?
- Does the employee have the resources or scope to perform her/his duties to an acceptable level?
- Is the employee's poor performance having an impact on the morale or the workload of his/her colleagues?
- Is the employee covering for another colleague, and therefore having to manage new, different, or unfamiliar responsibilities for which s/he may be ill equipped?
- Is the employee being asked to undertake duties outside of her/his remit, for which different or more advanced skills, experience, or aptitudes are required?
- Has the employee been set unclear tasks, standards, or goals, or are the employee's interpretation of these radically different from the headteacher/manager's?
- Are there any temporary problems that may be affecting the employee's work (for example, personal issues outside work)?
- If the employee has a disability, have all reasonable steps been taken to provide the appropriate adjustment and support and has time been allowed for the employee to adjust to the duties?
- Has the member of staff received ongoing training and appropriate support to enable her/him to develop professionally?
- Is the health and safety of the children at risk due to the actions of the member of staff?

#### **13.4. Deciding an appropriate course of action**

Following consideration of the "capability factors" in 13.2 the responsible officer will decide on the appropriate course of action, as follows:

- (a) Take no further action
- (b) Provide informal support, as set out in Stage 1
- (c) Immediately initiate formal action, as set out in Stage 2 if "capability factors" are of a serious nature or where a teacher's classroom control is so poor that no order can be established to enable teaching to take place, or where all the children under a teacher's control fail to progress in that teacher's lessons.

#### **13.5. Responsibilities at each stage**

Responsibility for undertaking the respective stages of the procedure will be delegated by the governing body as follows:

## **Employees other than Headteachers**

<b>Stage of process</b>		<b>Responsibility for Stage of Process</b>
Stage 1 – Informal Action	→	Responsible Officer
Stage 2 – Formal Action	→	Responsible Officer
Stage 2 – Conducting Formal Interview and issuing oral or written warnings	→	Staff Dismissal Committee
Stage 2 – Appeals to written warnings	→	Staff Dismissal Appeals Committee
Stage 2 – Evaluation meeting & Decision	→	Staff Dismissal Committee
Stage 3 – Formal Hearing	→	Staff Dismissal Committee
Stage 4 – Formal appeal hearing	→	Governors’ Staff Dismissals Appeals Committee

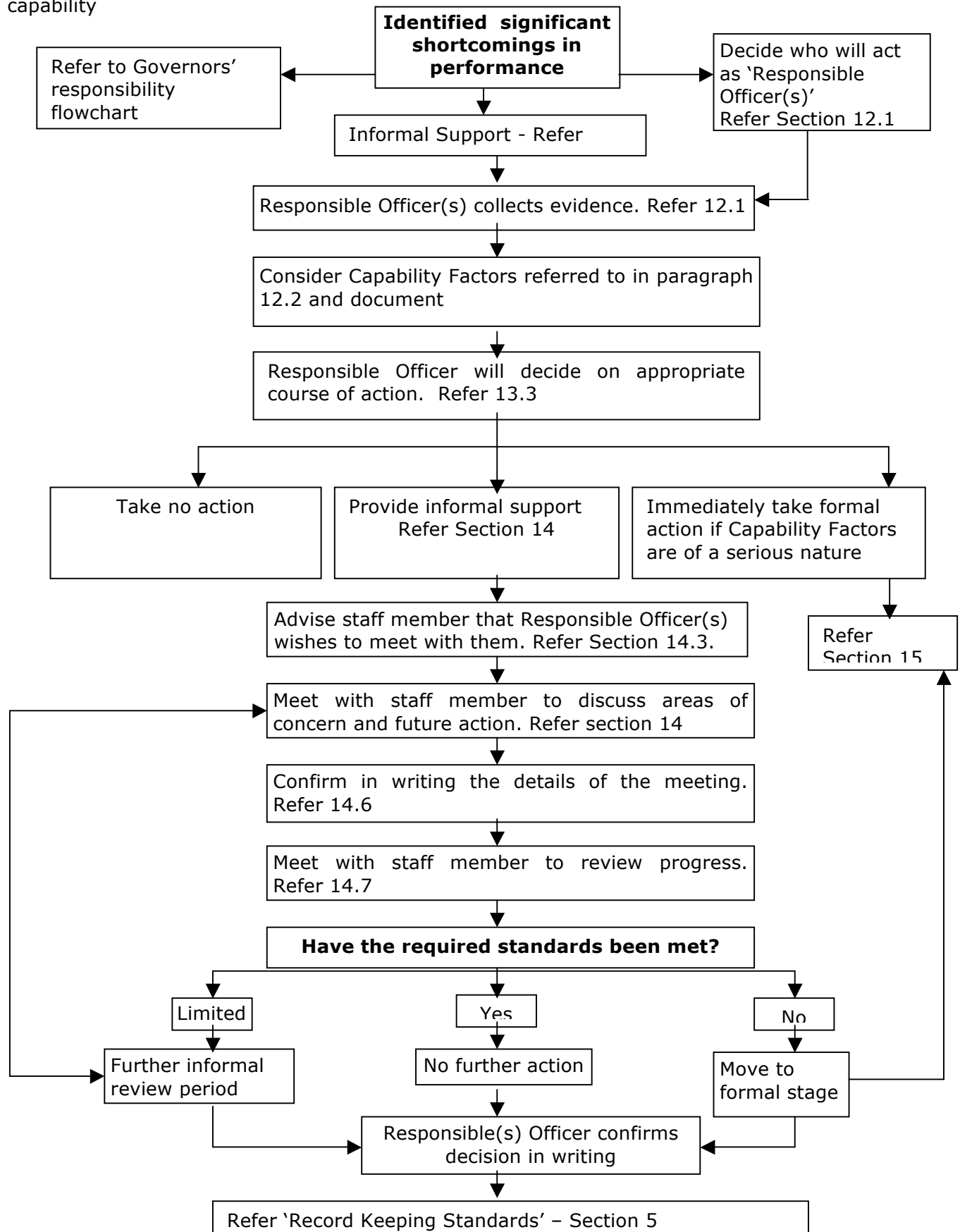
## **Headteachers**

<b>Stage of process</b>		<b>Responsibility for Stage of Process</b>
Stage 1 – Informal Action	→	Responsible Officer
Stage 2 – Formal Action	→	Responsible Officer
Stage 2 – Issuing oral or written warnings	→	Staff Dismissal Committee
Stage 2 – Appeals to written warnings	→	Governors’ Staff Dismissals Appeals Committee
Stage 2 – Evaluation Meeting & Decision	→	Staff Dismissal Committee
Stage 3 – Formal Hearing	→	Staff Dismissal Committee
Stage 4 – Formal appeal hearing	→	Governors’ Staff Dismissals Appeals Committee

## 14. STAGE 1 INFORMAL ACTION

### 14.1. Informal Action Flowchart

It is essential that this flowchart is used in conjunction with the detailed procedure on capability



## **14.2. Aims of Informal Action**

The aim is to encourage and help the employee to improve her/his performance and should be conducted discreetly. The member of staff should be given the opportunity to respond and explanations and difficulties should be considered carefully. Discussion must not harass the employee or turn into a formal interview. It is good practice to give the member of staff notice that the responsible officer wishes to meet with him/her to discuss concerns about his/her performance. The member of staff will be advised that they may bring a trade union/professional association representative or work colleague with him/her. A record of the discussion should be kept and copied to those in attendance.

## **14.3. Guidance on informal action to improve staff performance**

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

14.3.2. There may be many reasons for less than satisfactory performance, for example, lack of ability, poor training, inadequate instruction/supervision, low motivation, problems at work, difficulties outside work or matters relating to ill-health. The first step in attempting to improve performance is therefore to identify reasons for, or causes of, the problem and then to consider what positive support can be provided (training, counselling or occupational health advice for example).

14.3.3. Initial discussions and any resulting supportive action should be confined to the immediacy of the employee's own workplace, unless there is mutual agreement between the Manager and member of staff that enlisting external support or guidance would be advantageous.

## **14.4. Meeting with Employee**

At the meeting, the employee must be told the perceived areas of concern, what improvement is required and how performance will be reviewed, with clear and measurable targets being given. The review period will include teaching observation and assessment if the employee is a teacher,

The employee should be told what support will be provided. The provision of appropriate support for the employee is an essential part of the process to improve work performance. The following gives some areas for support which can be discussed with the member of staff:

- a. appointment of an agreed mentor who is not involved in monitoring the employee's work, for the purpose of providing advice and guidance to the employee
- b. observation of good practice amongst colleagues both at the employee's own school and at other schools or workplaces
- c. involvement of an LEA representative, e.g. the school's phase adviser, other than the person monitoring the employee's performance
- d. provision of additional resources
- e. modified workload or timetable for a specific period
- f. additional training

- g. temporary suspension of additional responsibilities without loss of remuneration.
- h. a schedule to allow feedback and support to be given during the review period.

#### **14.5. Failure to meet required standards**

The consequences of not meeting the required standards should also be made clear to the member of staff.

#### **14.6. Length of Review Period**

The employee should be told the length of the review period, which should be for a reasonable period of time. A minimum of six school weeks to a maximum of a term may be considered a reasonable period to allow, although the factors involved in the case should be taken into account by those involved in the process when determining the length of the review period. Feedback will be given during the review period at agreed intervals.

#### **14.7. Written confirmation of the meeting**

Following the meeting, the responsible officer should write to the member of staff providing a copy of the capability procedure and confirming:

- the specific issues which need to be addressed
- details of any programme of support to be provided
- details of DCC's Counselling Service
- the timescale over which an improvement in performance is to be achieved
- the date of the review meeting.

#### **14.8. End of Review Period**

At the end of the period of review, the responsible officer will meet with the member of staff to pull together all the information from the review period and to informally discuss the extent to which the performance has improved referring to relevant documents. A written record of the meeting should be kept.

#### **14.9. Decision Making**

Having considered the evidence available from the review period and the member of staff's comments, the responsible officer may decide to act as follows:

- (a) where there has been an improvement to meet the required standards, to take no further action. The responsible officer may, in conveying the decision, advise the employee that should similar concerns about the his/her performance arise within the next 12 months, that the procedure will be started again at the stage which has been reached.
- (b) where there has been limited improvement to meet the required standards, to have a further informal review period, as in Stage 1, with advice being sought from the school's phase adviser.
- (c) where there has been no improvement to move to the formal stage of the procedure, see Stage 2 below.

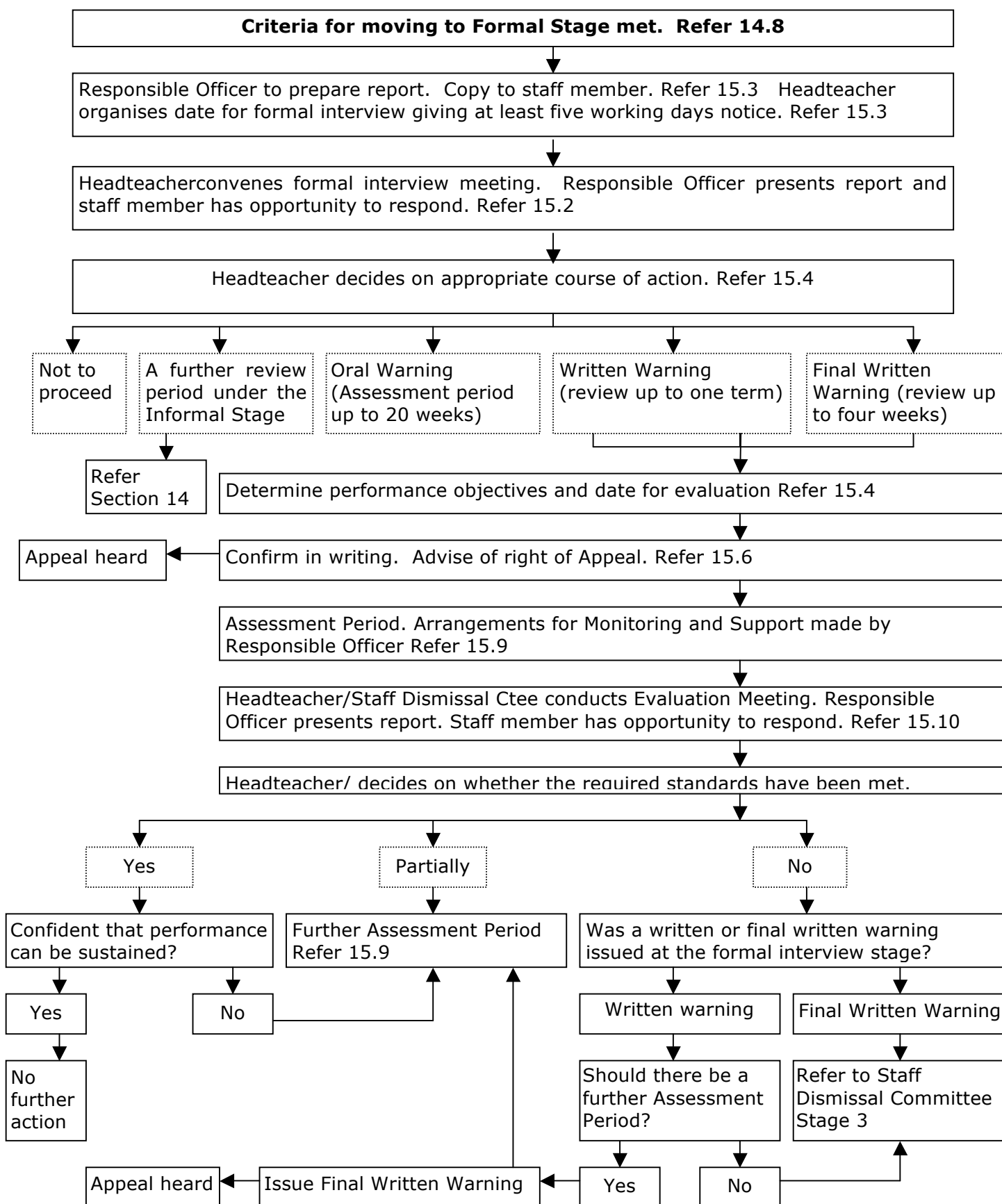
#### **14.10. Confirmation in writing**

The responsible officer's decision should be confirmed in writing to the member of staff.

## 15. STAGE 2: FORMAL ACTION

### 15.1. Formal Action Flowchart

It is essential that this flowchart is used in conjunction with the detailed procedure on capability



## **15.2. Formal Interview**

A formal interview will take place. The formal interview initiates the formal stage of the capability procedure. It provides an opportunity to deal with more serious or persistent capability issues in a structured way. A formal interview should only take place if the informal stage has been followed or the "capability factors" (para 12.2) are of such a serious nature that they jeopardise the education of the children.

## **15.3. Report for Formal Interview**

A report detailing identified shortcomings and supportive measures with notes of all meetings, monitoring reports and any other relevant documentation attached, will be produced by the responsible officer for the formal interview. A copy of this will be given to the member of staff at least seven consecutive days before the formal interview.

The formal interview will be conducted by the headteacher if s/he has not been involved in earlier stages or if s/he has been involved by the Vice-Chair of Governors. The headteacher/Vice-Chair is recommended to seek advice from the school's Human Resources Adviser if a formal interview is to take place. At least seven consecutive days notice must be given for the formal interview.

At the formal interview, the responsible officer will present the report giving the Headteacher/Vice-Chair a clear and objective explanation as to why the formal stage of the procedure has been invoked. The responsible officer should clearly state the employee's reviewed shortcomings and how s/he has arrived at this assessment. The formal interview gives the member of staff the opportunity to make a response to the points raised.

The interview may provide new information or put a different perspective on evidence collected. If it becomes clear that further investigation is needed, the headteacher/Vice-Chair should adjourn the formal interview for an appropriate length of time to allow this to happen.

## **15.4. Decision Making at the Formal Interview**

A decision should be made after all the facts and any representations from the employee have been considered. The headteacher/Vice-Chair should adjourn the meeting briefly to consider the appropriate option before delivering a decision to the employee.

There are five options open to the headteacher/Vice-Chair following the formal interview:

- a. not to proceed;**
- b. to have a further review period under the informal stage, Stage 1, (section 14) ;**  
NB: Options a) and b) will only be relevant where new information, a different perspective on the information collected, or further investigations suggest to the headteacher/Vice-Chair that the matter is not as serious as it first seemed.
- c. oral warning** – and continue to follow the formal stage with an assessment period of between a term and 20 working weeks in length
- d. written warning** - if performance is unsatisfactory a written warning will normally be the next step and will invoke a first assessment period of up to a term.

- e. **final written warning** - in cases of particularly serious concern about an employee's performance, or additionally, in the case of a teacher where the education of children is adjudged to be in jeopardy, it is possible to move directly to a final written warning at any point during Stages 1 and 2.

Options c), d) and e) are relevant to any case where continued concern about the standard of performance is justified. The decision on which level of warning to issue will depend on the seriousness of the problem.

### **15.5. Issuing a Formal Warning**

Where a formal warning is issued (c), d) or e) above) the headteacher/Vice-Chair should use the remainder of the meeting to :

- identify relevant capability issues;
- give clear guidance on the improved standard of performance needed to end the capability process, if necessary setting out clear and achievable targets;
- explain the support that will be available;
- explain how performance will be monitored over the following weeks;
- explain clearly that failure to achieve an acceptable standard and demonstrate the ability to maintain that standard may result in dismissal;
- depending on the level of warning issued (see below), identify the timetable for improvement and agree a date for the next/final evaluation meeting;
- make it clearly understood that failure to improve may lead to dismissal; and
- Inform the member of staff that s/he has the right to appeal against the decision.

### **15.6. Written confirmation of outcome**

A letter should be sent to the employee immediately after the formal interview confirming:

- the result of management investigations;
- the main points discussed at the meeting;
- the headteacher/Vice-Chair's decision;
- the outcome of the meeting, i.e. whether a warning has been issued.
- how long the first assessment period will be
- what support will be available during the assessment period
- who will undertake the monitoring during the assessment period (this will usually be the responsible officer who undertook the informal stage and presented the evidence to the formal interview) and a schedule to allow feedback and support to be given
- details of the DCC Counselling Service

- the right to appeal

The letter should give information about the handling of the formal stage; i.e. what monitoring, observations and evaluation will take place, and should include a copy of the capability procedure.

### **15.7. Appeal against warning**

Any appeal against a written or final written warning must be made within 14 consecutive days and notice of at least 7 consecutive days of the appeal being heard must be given. The appeal process must not interrupt the progress of the procedure, unless the appeal decision leads to the matter being reconsidered. Appeals should be heard by the Staff Dismissal Appeal Committee.

### **15.8. Fast track assessment period**

A case of 'serious concern' where a teacher's classroom control is so poor that no order can be established to enable teaching to take place, or where children fail to progress in that teacher's lessons, will invoke an assessment period not exceeding 4 weeks (known as the 'fast track' assessment period). However, before taking such a decision, the headteacher/Vice-Chair should have ensured that s/he has conducted a brief investigation, as prescribed in paragraph 13.1. In particular, the headteacher/Vice-Chair should ensure that s/he has a clear understanding of the teacher's serious weaknesses.

The 'fast track' assessment period, if exercised, should not be any more than four weeks.

### **15.9. Assessment Period**

The length of the assessment period will be determined by the warning given after the formal interview – see paragraph 15.4.

The purpose of the assessment period is to enable the employee to achieve the standards set by the headteacher/Vice-Chair at the formal interview and the responsible officer to assess the employee's progress over an extended but reasonable period of time.

Throughout this period, ideally on a weekly basis, there should be observation, monitoring and evaluation of performance, accompanied, where necessary, by effective and regular guidance, training, and support, which should all be documented. Both the monitoring and feedback arrangements should be structured and clearly understood by the employee.

### **15.10. Evaluation Meeting**

15.10.1. At the end of the assessment period, the headteacher/Vice-Chair (whoever conducted the formal interview) will hold an evaluation meeting to assess performance over the previous weeks.

15.10.2. At least seven consecutive days' notice must be given for the meeting.

15.10.3. The headteacher will be given a report that gives clear and structured feedback on the employee's performance during the assessment period, with reference to the appropriate documentation by the responsible officer. The employee may respond.

15.10.4. The headteacher/Vice-Chair will consider the evidence presented and decide that one of the following is appropriate.

**a. Required standards met**

If, in the headteacher/Vice-Chair's judgement, the level of performance has been satisfactory and the required standards met and there is confidence that it can be sustained, the capability procedure should end at this point with a letter from the headteacher/Vice-Chair confirming this decision. The responsible officer may, in conveying the decision, advise the employee that should similar concerns about the his/her performance arise within the next 12 months, that the procedure will be started again at the stage which had been reached, Stage 2.

**b. Required standards partially met**

If some of the employee's performance continues to be unsatisfactory and the required standards are only partially met, the headteacher/Vice-Chair may decide that there should be a further assessment period.

If a further assessment period is agreed, the procedure to be followed will be as for the first assessment period.

There should be no more than one additional assessment period before moving to a final written warning.

The decision should be confirmed in writing.

**c. Required standards not met**

If performance continues to be unsatisfactory and the required standards are not met, a final written warning may be issued and a four-week assessment period undertaken or the matter may be referred to the Staff Dismissal Committee.

Monitoring, evaluation, guidance and support should continue. Arrangements for this should be explained at the meeting.

The employee must be told clearly that failure to achieve an acceptable standard, and demonstrate the ability to maintain that standard, may result in dismissal.

The procedure detailed in paragraphs 15.7 should be followed.

The decision and right of appeal should be confirmed in writing.

### **15.11. Exploration of Other Options**

Throughout the formal stage, the responsible officer might wish to explore other options for resolving the problems presented by the employee's poor performance, particularly where there might be extenuating circumstances. The Headteacher/manager will take advice from Human Resources on which options might be available. If appropriate, reference will be made to the Managing Sickness Absence Policy. However, broadly speaking, it would be appropriate to consider the following options:

- (a) redeployment to a different job with responsibilities commensurate with the employee's capabilities (if at a lower grade, no protection of salary will be provided);
- (b) a further extension of the assessment period.

## **16. STAGE 3: STAFF DISMISSALS COMMITTEE HEARING**

### **16.1. Decision to refer to Governors**

In the event of a decision by the headteacher that the employee should be referred to the Governors on the grounds of incapability, the Staff Dismissals Committee should immediately be convened. In normal circumstances, the Hearing must be arranged within 14 consecutive days of the completion of the final assessment.

### **16.2. Information to Staff Dismissal Committee**

The Headteacher will produce a report detailing the process which has been followed, including all relevant documents and will contact the Chair of Governors to request that a meeting of the Staff Dismissal Committee be convened so that the matter may be considered at a formal hearing.

### **16.3. Co-ordination of the Hearing**

16.3.1. The Clerk to the Governors will be responsible for convening the hearing and will co-ordinate the documents and give formal notification to the employee concerned on behalf of the Chair of the Staff Dismissals Committee. At least ten consecutive days notice of the Hearing should be given. The formal notification will include:

- (a) the date, time, place of the Hearing;
- (b) the names of the governors on the Committee who will hear the case;
- (c) details of the employee's current duties;
- (d) the report giving precise details of the employee's alleged incapability, details of the stages of the capability procedure and how they were applied, copies of formal letters issued by the headteacher/manager to the employee during the capability process, the respective outcomes of the informal and formal stages of the procedure (including written records of meetings); any other written material or evidence which is relevant.
- (e) who will present the management case
- (f) who will be the HR Adviser to the panel
- (g) the fact that the Hearing constitutes the opportunity of making representations as provided for under Schedule 16 of the School Standards and Framework Act 1998 for community and VC schools and Schedule 17 for VA and Foundation schools;
- (h) the fact that the Hearing may result in the dismissal of the employee from the school and subsequently the termination of her/his employment;
- (i) names of any witnesses to be called, e.g. the responsible officer;
- (j) the employee's right to be represented by a recognised trade union or professional association representative or work colleague and to call witnesses;

- (k) the employee's right to submit any documentation within four consecutive days of the hearing;
- (l) a copy of the capability procedures
- (m) the fact that the hearing may take place in the employee's absence if s/he is unable to attend without a satisfactory explanation. If s/he is unable to attend through ill, s/he should arrange representation at the hearing and provide written submissions to the hearing

16.3.2. The Committee members will receive all the documentation and any written representations the employee may wish to make.

#### **16.4. Hearing Proceedings**

16.4.1. The purpose of the Hearing is to consider the employee's representations, and to consider the appropriate course of action.

16.4.2. At the Hearing, the employee and her/his representative or work colleague will be given the opportunity to ask questions or challenge the reports/evidence submitted by the headteacher.

16.4.3. The Hearing should be conducted in accordance with good employee relations practice and following advice or guidance from Human Resources. The Hearing will follow the good practice guidelines below:

(a) No conclusion should be reached until representations from all parties have been taken into account.

(b) Any information or documentation received outside of the capability process relating to the employee concerned must be discounted.

(c) Where a Diocesan representative is present his/her role should be clarified at the outset.

(d) Each committee member must report any attempts to influence them and declare before the Hearing any factor or issue that could be perceived as undermining her/his impartiality. If necessary, a governor with a conflict of interest must declare this and withdraw accordingly. This may result in a postponement of the hearing.

(e) The person presenting the case may be accompanied by an HR adviser.

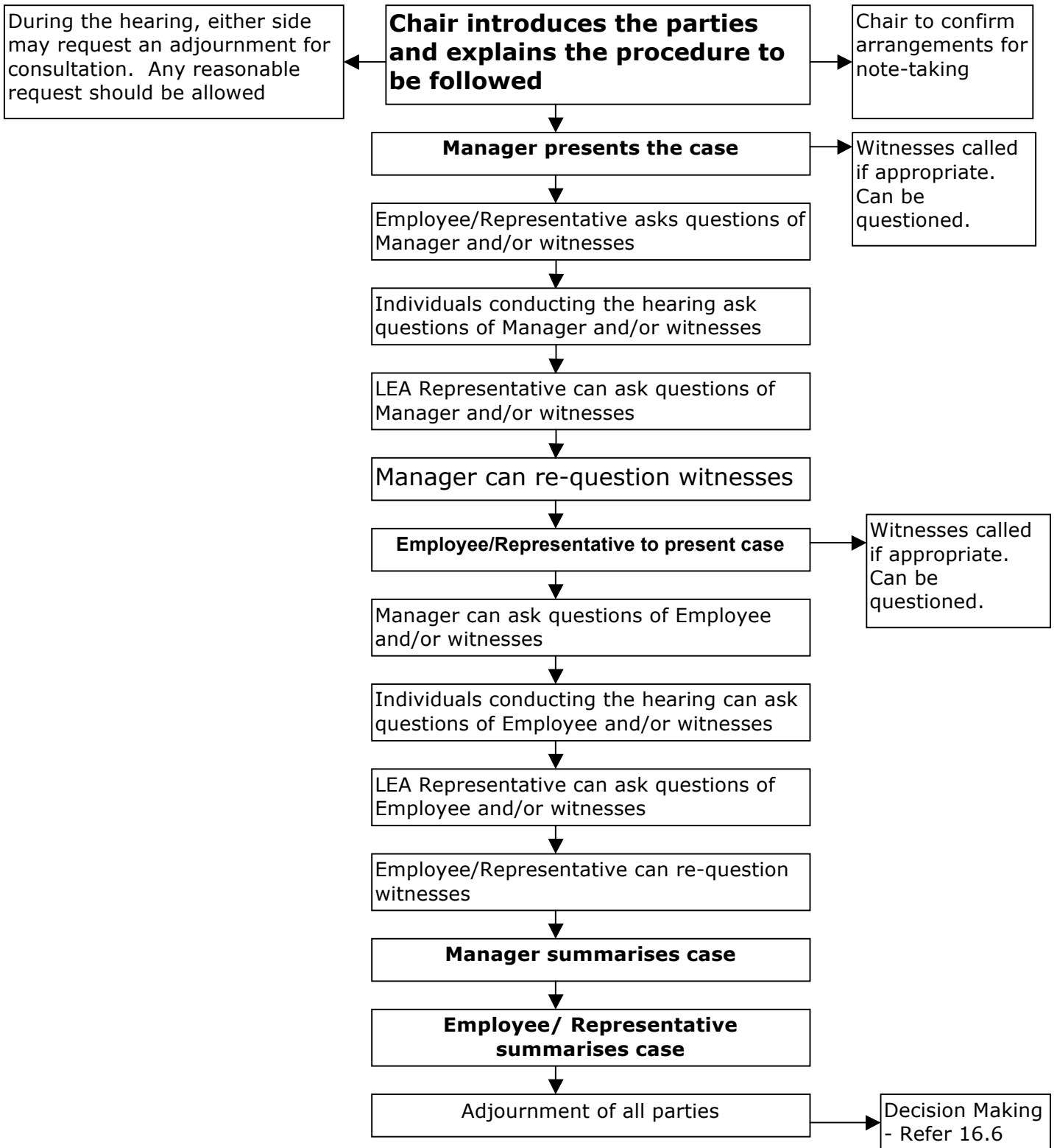
16.4.4. If a hearing may result in the dismissal of a member of staff, the Director of Education or a representative has a right to attend. Advice from the Director's representative during the hearing must be listened to and considered.

16.4.5. It is the responsibility of the Clerk to the Governors to ensure that an accurate account of the hearing is made either by notetaking or transcript of a tape recording.

## 16.5 Sickness and hearings

- 16.5.1 In the event of certified sickness at the date of a hearing, particularly with a short term illness, the initial response will normally be postponement of the hearing, following clarification with the employee (directly or through his/her representative), that s/he is not fit enough to attend.
- 16.5.2. If it remains uncertain about the prognosis and likely date of fitness to attend a hearing within a reasonable time scale, the hearing may proceed in the employee's absence subject to the following:
- The reasonableness of permitting the hearing to go on in the employee's absence. This will need to be judged by the length of his/her absence (as known/expected), at the time the hearing, against all other considerations e.g. impact on the school, previous postponements, nature of the absence.
  - The employee and/or his/her representative have been advised that the hearing will proceed in his/her absence and are aware of possible disciplinary outcomes.
  - The employee is given the opportunity of stating his/her case in writing.
  - The employee's representative is given full opportunity to present the employee's case.
  - A reasonable opportunity is given to questions witnesses giving evidence or to call evidence. It will therefore be reasonable to allow the employee's representative to questions witnesses and call evidence in the employee's absence.
  - If the employee's representative refuses to attend, the hearing may still go ahead as the opportunity to make representations has been provided.
  - If an employee's chosen representative is not available, s/he can suggest an alternative reasonable time within 5 working days of the original date and the employer must postpone the hearing until then.

## 16.6 STAFF DISMISSAL COMMITTEE - Procedure Flowchart



## **16.7 The Committee's Decision**

- 16.7.1 At the end of the Hearing, the Committee will adjourn to consider all the evidence presented. It is normal practice for the HR adviser who has advised the panel to be present during the decision making process.
- 16.7.2 Where it is shown that the employee has demonstrated poor performance over an extended period of time and the earlier stages of this process has been followed, the expected outcome of the Hearing would be dismissal.
- 16.7.3 If the Committee determines that the employee has failed to meet the required standards, the Committee shall determine the appropriate sanction, depending upon the seriousness of the failure.
- 16.7.4 If the Committee considers that it has been demonstrated that the level of incapability is so serious that it threatens the education of pupils, it will be obliged to recommend immediate dismissal (i.e. termination of employment).
- 16.7.5 Unless the incapability is so serious that it threatens the education of pupils, the committee has a number of options aside from dismissal. These options will be considered at the Committee's discretion. The following options may be considered:
- (a) redeployment to a different job in the school with responsibilities commensurate with the employee's capabilities;
  - (b) referral to the employee's headteacher/manager on the grounds that there needs to be a further extension of the assessment period;
  - (c) the withholding of an annual increment on the basis that the employee's service has been unsatisfactory (if allowable within the terms and conditions of employment applicable to the employee ).
- 16.7.6 In considering the appropriateness of these options, the Committee would also usually make a recommendation that a further assessment period be set.
- 16.7.7 It must be emphasised that the Committee would normally only exercise the options set out above in exceptional circumstances.
- 16.7.8 The Committee may also issue a final written warning, in which case the extended review period should be no more than four weeks.

## **16.8. Confirmation in writing**

The Clerk to the Governors will confirm the Committee's decision in writing. The decision letter must specify that the employee has the right to appeal in writing to the Clerk to the Governors, giving clear and specific reasons for the appeal, within seven consecutive days of the date of the hearing. Such written notice of appeal must include reference to any new facts the appellant intends to raise at the Appeal.

## **16.9. Issuing of Notice**

If dismissal is recommended, the Chair will notify the HR Service in writing with five days giving the reason for the determination. HR will issue notice to

dismiss on behalf of the LEA in Community and Voluntary Controlled Schools within fourteen days. In the case of Voluntary Aided and Foundation Schools, the Chair of Governors will issue notice of dismissal within fourteen days.

Dismissal will always be with notice, according to the provisions of the national conditions of service for schoolteachers in England and Wales (the 'Burgundy Book') for teaching staff or the relevant local or national provisions for support staff.

During the notice period, full pay pro rata to hours worked will be paid.

## **17 STAGE 4: APPEAL HEARING PROCEEDINGS**

### **17.1. Right of Appeal**

An employee can appeal against the decision given at a Disciplinary Hearing. If an appeal is made, the Clerk to the Governors will arrange for an Appeals Hearing to be convened.

### **17.2. Purpose of Appeal Hearing**

The purpose of the Appeal Hearing is to give the employee the opportunity to have the matter considered by a separate committee of governors, if the employee believes the Staff Dismissal Committee erred in judgement on one of the grounds detailed in 17.3.

### **17.3. Grounds on which an Employee can lodge an Appeal**

An employee has seven consecutive days from the date of the Disciplinary Hearing to lodge an appeal, which must be in writing addressed to the Clerk to Governors. The appeal letter must state the grounds on which the appeal is being made.

Appeals will only be considered on the following grounds:

- the procedure, i.e. did procedural irregularities prejudice the outcome?
- the decision, i.e. were the facts considered not relevant? Were the facts not substantiated? Were there new facts to be considered? i.e. the facts did not justify the outcome of the Hearing.

### **17.4. Timing and co-ordination of Appeal Hearing**

17.4.1. The Appeal Hearing will be convened at the earliest convenient date and seven consecutive days notice will be given.

17.4.2. The Clerk to the Governors will co-ordinate the process and send to the employee all documents and the notes of the original hearing. (See section 15.3)

### **17.5. Staff Dismissals Appeals Committee**

17.5.1. The Staff Dismissals Appeals Committee will hear the appeal. If dismissal is a possible outcome, the Director of Education or representative has the right to attend the Appeal and give advice, which must be considered.

17.5.2. The Staff Dismissals Appeals Committee will consist of Governors not involved in the previous hearing and/or the circumstances of the case.

### **17.6. Appeal Hearing Procedure**

In all other respects, the order of proceedings of the appeal will follow those for the initial hearing except that the appellant will present his/her case first. The Staff Dismissals Appeals Committee will ensure that the proceedings adhere to

good practice and will take appropriate personnel advice from the Human Resources provider.

### **17.7. Respondent to Staff Dismissal Appeals Committee**

The Chair or other member of the Staff dismissal's Committee will respond to the member of staff's appeal. S/he may be accompanied by a Human Resources Adviser.

### **17.8. Record of Hearing**

An accurate account of the hearing should be made, either by notetaking or tape recording.

### **17.9. Decision Making**

The Staff Dismissal Appeal Committee should satisfy itself that :

- (a) A fair and equitable process has taken place;
- (b) The member of staff was given a reasonable opportunity to make representation and that his/her response was given fair consideration;
- (c) Having regard to all the circumstances, the decision of the previous Hearing was reasonable.

At the conclusion of the Appeal hearing, the Committee may decide:

- (a) To adjourn pending reconsideration by the Staff Dismissal Committee, where a significant amount of fresh information or evidence is brought to light.
- (b) To uphold the appeal by determining that the Staff Dismissal Committee erred in judgement and the employee is not incapable.
- (c) To reject the appeal and the decision of the Staff Dismissal Committee stands.

### **17.10. Announcement of Decision**

17.10.1. Following an adjournment to allow the committee to consider the evidence and reach their decision. The Chair of the Committee will notify the appellant of the decision and the reasons for it. It is normal practice for the HR adviser who has advised the panel to be present during the decision making process.

17.10.2. Where there is a determination to uphold the appeal the Chair will notify the HR Service with seven consecutive days giving the reason for the determination. HR will rescind the notice for Community and Voluntary Controlled Schools. In the case of Voluntary Aided and Foundation Schools the Chair of Governors will rescind the notice.

### **17.11. Lifting of suspension**

If the employee is currently suspended from work, action must be taken to lift the suspension to enable the employee to return to his/her post at the school, if the determination is anything other than dismissal.