



**MALDEN OAKS**

**CAPABILITY PROCEDURE POLICY**

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## 1. INTRODUCTION

### 1.1 Purpose

This document sets out the procedure which is recommended for adoption by the PRU Management Committee. The aim of this procedure is to provide a framework for dealing with capability problems in a fair and consistent way. The purpose of action under this procedure is to help and encourage employees to improve their effectiveness and to achieve and maintain the standards of performance required.

### 1.2 Scope

This recommended model procedure has been agreed between the LA and the recognised professional associations and trade unions representing all employees in schools. The procedure takes account of current employment legislation, ACAS advice, the Articles of Government of the Borough's schools, the respective provisions of national conditions of service for teaching and non-teaching employees, and the LA's Equal Opportunities Policy.

The procedure will apply to all employees of the PRU except those who are on probationary service or temporary or fixed term contracts of less than six months duration. For probationary or short-term employees any performance difficulties will be dealt with outside this formal procedure.

### 1.3 Authority

The Authority for action under this procedure is set out in section 2 of this procedure.

The Headteacher may delegate certain responsibilities of the procedure to other members of the PRU's management team.

Under this procedure the Management Committee has certain responsibilities to hear any appeals that may arise from a capability hearing. In the event of an appeal a panel of at least three members may hear an appeal; where there are not enough members of the Management Committee available the appeal may be heard by two members, but there should be no fewer than the number that made the initial decision. In order to enact these responsibilities it is recommended that ***The Management Committee must consider carefully the role of the Chair of the Management Committee and their membership on such Panels, especially in light of their responsibilities where action under this procedure is taken against the Headteacher.***



It is essential to ensure that members of any Personnel or Appeals Panel do not have prior detailed knowledge of, or involvement in, the case concerned.

It is also important to note that the Panel which hears the appeal must have no fewer members than the Panel which took the decision against which the appeal has been made.

**For Community, voluntary controlled, community special and maintained nursery schools the Director of Learning and Children’s Services (the Director) has a statutory right to attend meetings at which the dismissal of an employee may be considered. It is strongly recommended that the Director is also invited to attend meetings at which final cautions might be issued.**

The Director will normally nominate a representative, who has no prior detailed knowledge or involvement with the case, to offer advice, which then must be considered by the Panel members.

Where the Headteacher is the subject of capability proceedings, all reference in the procedure to the actions taken by the Headteacher should be substituted by “Chair of the Management Committee in liaison with the Director of Learning and Children’s Services or his/her nominated representative.”

#### **1.4 Responsibility for capability**

The Management Committee is responsible for setting the overall standards of performance/attendance expected by employees within the PRU. The Headteacher and senior managers of the PRU have a responsibility to ensure that the standards of performance/attendance are clearly defined, that employees are aware of the standards required, and that standards are met.

#### **1.5 Representation**

Employees may be represented at all stages of the formal procedure by a professional association or trade union representative, work colleague or other person of their choice. This person is referred to in this document as the, “employee’s representative”. The employee should be advised of such right of representation when formal hearings are arranged.



**2 DELEGATION OF AUTHORITY FOR ACTION UNDER THE PRU’S CAPABILITY PROCEDURE**

Under “Authority” state the title of the designated person/s delegated to take the appropriate action in accordance with this procedure.

<u>Action</u>	<u>Authority</u>
Authority to take formal capability action which can include dismissal.	Headteacher, unless in the circumstances of the case this is inappropriate when it will be a member of the Management Committee
Authority to suspend an employee.	Headteacher, unless in the circumstances of the case this is inappropriate when it will be a member of the Management Committee
Authority to suspend the Headteacher.	Management Committee
Authority to withhold pay during suspension.	Headteacher unless in the circumstances of the case this is inappropriate when it will be a member of the Management Committee
Authority to withhold pay during the suspension of the Headteacher.	Chair of the Management Committee, unless in the circumstances of the case this is inappropriate when it will be another member of the Management Committee



Authority to lift suspension.

Management Committee

Authority to determine appeals against capability  
action including dismissal.

One or more members of the  
Management Committee



### **3. CAPABILITY PROCEDURE**

The aim of this procedure is to provide a framework for dealing with problems, which arise as a result of an employee's capability to do their job. The general principles are that any shortcomings in the performance/attendance of an employee are discussed with them at the earliest stage possible, and that the appropriate help and support is provided in order for them to achieve and maintain the standard required.

Problems arising from ill-health have different complexities, in particular the sensitivity of the issue and the need to often take medical advice. The Management Committee will adopt the local Authority's Sickness, Absence and Ill Health Referral Procedures for addressing problems relating to an employee's ill health. Advice on dealing with ill health issues can be found at **Appendix A**.

### **4. RULES ABOUT CAPABILITY**

#### **4.1 Poor performance**

The Management Committee and the management of the PRU have a responsibility to make clear to employees the standards of performance required of them. Employees have a responsibility to achieve and maintain these standards.

Where an employee's performance falls below the standard required, the Headteacher, or other appropriate manager has a responsibility to discuss the problem with the employee, explore any reasons for the poor performance, and to assist them to improve.

If, however action to support the employee does not result in the improvement of performance required, ultimately it may become necessary to consider the dismissal of the employee on the grounds of capability.

#### **4.2 Serious cases**

In exceptional cases where the actual or potential consequence of the employee's actions is very serious, and the implementation of a programme of professional support or training would be inappropriate, the immediate implementation of the formal action stage of the PRU's capability procedure may be appropriate. In extreme cases this may include consideration of dismissal.



Again in extreme cases where it is considered that the education of the students is jeopardised, the period given for improvement after the date of an initial formal caution will be no more than **four weeks**.

#### **4.3 Links with disciplinary procedures**

Where poor performance arises out of carelessness or negligence rather than as a result of the lack of necessary skills and/or aptitude, the issue would be considered more appropriately under the PRU's disciplinary procedure.

#### **4.4 Newly Qualified Teachers (NQT's) and Licensed Teachers**

Arrangements, which apply, to capability problems with NQT's are set out in the booklet "Induction of Newly Qualified Teachers".

#### **4.5 Registered Teachers Programme and Graduate Teachers Programme**

The Registered Teachers Programme and Graduate Teachers Programme are individual programmes of training for individuals while working in a school/PRU.

If there are capability issues relating to an employee on the Registered Teachers Programme whose placement is for under two years or Graduate Teachers Programme whose programme is for less than a year the Headteachers will be required to deal with the matter in a manner reflecting the key principles of the disciplinary or capability procedure.

#### **4.6 Non-teaching staff - probationary service**

Arrangements which apply to capability problems with non-teaching staff during their probationary period are set out in the booklet "Probationary Periods/Induction Appraisal for Non-Teaching Staff in Schools".\*

***\*Copies of documents referred to above are available for inspection from the Headteacher.***

#### **5. INFORMAL ACTION**

In the course of normal day to day management it is good practice for the Headteacher or appropriate school manager to discuss with the employee, on an informal basis, concerns they may have about their performance and capability to carry out the job required.



In talking to the employee the Headteacher or appropriate manager will explain the standard of performance expected and the ways in which the employee's performance is not meeting the required standard. The employee will have the opportunity to respond.

The purpose of such discussion will be to focus attention on the problems and possible causes. Where necessary, the outcome of the meeting should be an agreed programme of support with specified targets for the employee to achieve, a timescale in which any improvement is to be effected, and review periods for monitoring performance. Where the performance of a member of the teaching staff is subject to question, the Headteacher may consider it appropriate to liaise with the LA's Inspectorate.

A note of the outcome of the meeting together with a written and agreed programme of support will be kept and copied to the employee. The agreed measures of support will be monitored closely.

At the end of the agreed support programme a determination will be made as to whether the required improvement has been achieved, if it has not, formal action under the PRU's Capability Procedure may be considered appropriate.

Where an employee's performance reaches the standard required the employee will be informed accordingly and performance monitored as part of the normal management process.

## **6. FORMAL ACTION**

Formal action may be considered appropriate where at the end of any agreed review period the Headteacher or appropriate manager considers that insufficient improvement in the employee's performance has been made.

Formal action provides for formal hearings, the outcome of which may result in the employee receiving a formal caution, or dismissal.

### **6.1 Responsibility for conducting formal hearings**

Those normally responsible are:-

- (i) **The Headteacher** - where the poor performance may warrant dismissal.



- (ii) **Personnel Panel of the Management Committee** - where the poor performance may warrant dismissal, and where the Headteacher has been very involved in managing the employee's performance.

The representative of the Director of Learning and Children's Services may attend formal hearings if the Headteacher considers this appropriate.

Where the outcome of the hearing may result in the issue of a final caution or dismissal, it is strongly recommended that the representative of the Director of Learning and Children's Services is invited to attend.

## **6.2 Arrangements for hearings**

When a formal hearing is necessary the employee must receive written notification of the arrangements at least **10 days** in advance. The employee must be informed of the requirement to attend and the nature of the issues to be considered. The employee must be advised of their right to be accompanied by a professional association/trade union representative, or other person of their choice and to support their case with written representations. The employee must be advised of the procedure for the conduct of the hearing.

The letter of notification must be sent by the Headteacher if they are to hear the case, or by the Clerk to the Management Committee if the Personnel Panel of the Management Committee is to hear the case.

Where the Personnel Panel of the Management Committee is to hear the case, the Headteacher must produce a written report, which must be sent to the Clerk to the Management Committee. The report will detail the problems with the employee's performance, the support provided, the outcomes and the action taken. A copy of this report must be sent to the employee with the letter notifying them of the arrangements for the hearing at least **10 days** in advance of the formal hearing.

It is recognised that employees who are not contracted to attend the PRU during normal periods of PRU closure would not generally be required to attend capability hearings during such periods. However, in order to progress the hearing, where there is a mutual agreement with the employee and as appropriate the employee's representative, such hearings can take place.



### **6.3 Procedure for conducting hearings**

The procedure for the conduct of the formal hearing will be based on the principle that the employee will have the opportunity to hear the Headteacher's concerns in a formal setting and have the fullest opportunity to present their case with the assistance of their representative. The recommended procedure for the conduct of formal hearings by the Headteacher is at **Appendix B**. The recommended procedure for the conduct of formal hearings by the Personnel Panel of the Management Committee is at **Appendix C**.

### **6.4 Action arising from formal hearings**

### **6.5 Formal cautions**

If, having considered the employee's representation, the view is that formal action should be taken, the employee will be formally cautioned that their capability to do their job is in question and failure to improve may ultimately lead to the consideration of their dismissal. The employee will be advised of their right of appeal.

The Headteacher or appropriate manager should inform the employee that a support programme will be agreed with review periods and this will most usually be done at a separate meeting.

At the end of any review period a decision will be taken as to whether the required improvement in performance has occurred. This decision will be based upon evidence from the monitoring and review of performance against targets set as part of the support programme.

Normally cautions for capability problems are approached on a progressive basis i.e., first caution, second caution, final caution before consideration of dismissal. However an important underlying principle of this procedure is that the number of cautions will depend on the circumstances of the case and how the employee responds to the programme of support provided.

If an employee's performance is in question it would normally be expected that any required improvement would be achieved in no more than **2 terms** after the date of entry into the formal procedure as defined below.



### **First caution**

This may be issued following informal action where there has been no, or insufficient improvement in an employee's performance.

Where a formal caution is issued the notification of formal action will constitute the "date of entry into the formal procedure". The process of monitoring, support and review will continue. This will include an agreed programme of support for the employee with built-in review dates.

The extent of the programme of support and the timescale for review will vary depending upon, the nature of the employee's job, the nature of the poor performance, and the period over which it is reasonable to expect the required improvement to take place.

In providing support to teachers, the Headteacher or appropriate manager may seek the advice and assistance of the LA's Inspectorate. The support programme may include classroom observation; specified targets to achieve together with review dates; attendance at relevant courses; observing other teachers working in class; the appointment of a mentor in the PRU. The intention at this stage is to provide the appropriate level of support to the teacher to enable them to improve their performance to the level required.

Where a support programme and periods of review are agreed the details will be noted and copied to the teacher.

The Inspectorate's role can include providing advice to the Headteacher or appropriate manager on the range and level of support appropriate to the individual, and where necessary, assist in developing the employee support programme.

Where the LA's Inspectorate actively assist in providing advice and guidance, the Inspector will discuss the issues with the Headteacher or appropriate manager and with the teacher concerned. Following their input, the Inspector will provide feedback to the teacher and the Headteacher or appropriate manager. A written report of the outcomes from their input to the support programme will be made, e.g. findings from classroom observations. This report will be copied to the Headteacher or appropriate manager and the teacher concerned.

At the review meeting agreed as part of the support programme a determination will be made as to whether the required improvement has been achieved. If it has not, further formal action under the PRU's Capability Procedure may be considered appropriate and a further formal hearing will therefore be necessary.



### **Second caution**

Where there is no, or insufficient improvement in an employee's performance following the issue of first caution, a second formal caution may be issued, the process of support, monitoring and review will continue, as described above.

At the review period during the agreed programme of support a determination will again be made as to whether the employee has achieved the required improvement, if not, further formal action under the PRU's Capability Procedure may be considered appropriate.

### **Final caution**

Where there is no, or insufficient improvement in an employee's performance following the issue of a second caution a final caution may be issued. There may be cases where it could be appropriate to issue a final caution as a first or second caution.

## **7. WHERE PERFORMANCE REQUIREMENTS ARE MET**

Throughout the stages of the formal procedure where an employee's performance reaches the standard required the employee will be informed accordingly and performance, monitored as part of the normal management process.

## **8. DISMISSAL - power of Personnel Panel**

Dismissal may be appropriate for serious cases (**refer paragraph 4.2**), or where an employee fails to respond to formal cautions and the measures to improve their performance.

In circumstances where the outcome of a formal hearing may result in the consideration of dismissal, the Director must be notified of the hearing as soon as possible and it is strongly advised that the representative of the Director of Learning and Children's Services is available to advise as necessary.

The Personnel Panel of the Management Committee/ Headteacher is required to reach a determination as to whether or not the employee should cease to work at the PRU. If the Management Committee / Headteacher determines that any person employed or engaged by the Authority to work at the PRU should cease to work there, it must notify the Authority in writing of its determination and the reasons for it.



**8.1 Other action short of dismissal**

If after considering the information presented, the Personnel Panel of the Management Committee / Headteacher believes that there is a case for formal action which falls short of dismissal, they may consider alternative action. For example, depending on the conditions of service of the employee this may include withholding annual salary increments, where appropriate, and possible transfer or demotion within the PRU.

Such measures may be given in addition to a formal caution at any level.

**9. CONFIRMATION OF FORMAL ACTION**

Normally the employee will be informed of any capability action taken against them at the end of the hearing. All formal cautions will be confirmed in writing to the employee within **10 days** of the decision being made. The letter will state details of the issues considered, the fact that a formal caution has been given, any other action that has been or will be taken, and the reasons for such action. Any specific requirements of future performance and the consequences of inability to meet the required standard of performance will also be stated. The letter will also confirm the employee's right of appeal to the Appeals Panel of the Management Committee.

**10. CONFIRMATION OF DISMISSAL**

Where the Management Committee determines that any person employed or engaged by the LA to work at the PRU should cease to work there, notification of the decision and the reasons for it must be sent to the LA. If the member of staff is employed by the LA, it must within a period of 14 days, to either issue notice terminating the employment contract, or terminate the contract without notice if they are entitled to do so by reason of the person's conduct.

If a subsequent appeal reverses the decision the withdrawal or termination notice may be rescinded. In cases where the contract is terminated without notice because of the conduct of the member of staff in question, the termination may be rescinded if an appeal is upheld.

**Foundation, Voluntary Aided and foundation special schools**



In the case of staff employed by the Management Committee, notice terminating the employment contract should be issued following the dismissal decision, and may be rescinded if a subsequent appeal is upheld. In the case of staff employed by the LA the arrangements set out above in point 10 above should apply.

**11. EXPIRY OF CAUTIONS**

For the purpose of the PRU's Capability Procedure cautions expire only after **24 months** satisfactory performance. Any further caution after the first will continue the life of the earlier caution. Accordingly no caution will expire until the most recent caution is spent.

If at any stage in the procedure an employee's performance improves to the satisfaction of the Headteacher or appropriate manager the employee will be notified accordingly and a note to that effect made on their personal file. The manager will continue to monitor the employee's performance, the live caution will be taken into account when considering further formal action.

**12 NOTICE**

An employee who is dismissed will normally be entitled to contractual notice or pay in lieu of notice. However there are exceptional circumstances where employees may be liable to be dismissed without notice and without pay in lieu of notice. Such exceptional circumstances would be:-

- (i) Where it is established after investigation, including hearing the employee's explanation, that an act or omission amounting to gross incompetence has been committed. Account will be taken of mitigating factors and the employees personal and employment circumstances.
- (ii) Where the employee has failed to attend formal meetings/hearings/dismissal hearings without adequate explanation or reason.
- (iii) Where the employee has failed to comply with the PRU's sickness certification procedures, or cancelled, or failed to attend meetings with the Council's Occupational Health Medical Advisor without adequate explanation or good reason.



### **13. SUSPENSION FROM WORK**

Authority to suspend an employee from work is in accordance with delegations under Section 2. It is recommended that the Directors nominated representative is consulted where suspension is under consideration.

Suspension of an employee would normally be considered:-

- Where there are serious doubts about an employee's capability (refer to paragraph 4.2).
- Where dismissal is a potential outcome.
- Where an employee presents themselves as fit for work but the Headteacher or other appropriate manager considers that operational problems may arise and that an opinion from the Councils Occupational Health Medical Advisor would be appropriate.

If the Headteacher suspends an employee they must report their action to the Chair of the Management Committee. The Headteacher should not discuss the circumstances of the case in any detail as to do so may exclude the Chair from involvement on any Personnel or Appeals Panel (refer to paragraph 1.3). The suspension must be confirmed in writing to the employee by the Headteacher or the Clerk to the Management Committee as appropriate. The letter must set out the conditions of the suspension and be sent as soon as possible. Similarly, the Director must also be notified of the suspension as soon as possible.

Only the Management Committee can end the suspension of an employee. Upon ending the suspension, the Management Committee must immediately notify the Director and the Headteacher.

#### **13.1 Pay during period of suspension**

Normal pay will be received by the employee during the period of suspension, unless they have postponed or failed to attend hearings and meetings without good reason.

Authority to withhold pay is in accordance with delegations detailed under **Section 2**.



## 14 APPEALS

Appeals will be heard by the Appeals Panel of three members of the Management Committee who have not been involved in any previous action or decision connected with the dismissal. Where there are not enough such members available the appeal may be heard by two members, but there should be no fewer than the number that made the initial decision.

Employees must lodge an appeal in writing to the Clerk of the Management Committee normally within **10 days** of receiving written confirmation of the formal caution or dismissal, setting out the reasons for their appeal. Notification of the arrangements for the appeal will be similar to those outlined in **paragraph 6.2 - Arrangements for Hearings** and the procedure for the conduct of the appeal is at **APPENDIX D**.

It is recognised that employees who are not contracted to attend PRU during normal periods of PRU closure would not generally be required to attend appeals during such periods. However, in order to progress the appeal process, where there is mutual agreement with the employee, and, as appropriate, the employee's representative, such appeals can take place.

The Appeals Panel of the Management Committee hearing the appeal have the authority to uphold or dismiss the appeal or to give a lesser caution, including commuting dismissal to a final caution. They cannot however give a higher caution than that which the employee has appealed against. Where a formal caution has been given the Appeals Panel has the authority to uphold the decision to give the caution but can reduce its life-span from **24 months to 12 months**. This may be appropriate where there were grounds for the formal caution but there are circumstances which make it appropriate to lessen the severity of the penalty.

Where the appeal is against a decision made by the Personnel Panel of the Management Committee it is recommended that the members of the panel sign an agreed statement of case and elect a spokesperson to present the case at the appeal.

Appeals may take two forms:-



(i) **Review**

In a review the Headteacher or the Management Committee's elected spokesperson presents the reasons for reaching their decision, including a response to the employee's grounds for appeal, and the employee and their representative set out their reasons why they believe the decision is wrong. Under these arrangements no side calls witnesses and the decision is based upon the information presented.

(ii) **Rehearing**

Where the appeal takes the form of a full rehearing, either side can call witnesses and the Appeal Panel hear all the evidence anew. Circumstances where a rehearing would be appropriate are where there has been a procedural flaw in the original hearing and this requires correcting or where new evidence has come to light.

Where the appeal is against the dismissal of an employee in a Community School or VA school which has accorded the LEA advisory rights, the Director's nominated representative has the right to attend the appeal and to advise the panel. Therefore they must be invited to attend, and the advice given considered.

**15. CAPABILITY ACTION AGAINST TRADE UNION/PROFESSIONAL ASSOCIATION REPRESENTATIVES**

Capability action against a trade union or professional association representative can lead to a serious dispute if it is seen as an attack on the organisation's functions. No capability action will be taken against such representatives until the circumstances of the case have been discussed with a full-time official of the organisation concerned.

In cases where immediate action i.e. suspension, is considered necessary the matter must be discussed with the full-time official of the organisation as soon as possible and before any formal capability proceedings take place.



## APPENDIX A

### ATTENDANCE PROBLEMS ARISING FROM ILL HEALTH

The Management Committee and the management of the PRU need to rely on employees to attend regularly for work.

Repeated short-term absences and/or long periods of ill health, may lead to an employee being unable to be relied upon, or able, to attend work to do the job he/she is employed to do.

The point at which it is considered that the level of an employee's absence is unacceptable will depend upon the operational difficulties that the absence causes to the PRU, e.g., serious problems in the organisation and running of the PRU, arranging appropriate staff cover, or other difficulties.

As referred to in **Section 3** of the Capability Procedure it is recommended that the Management Committee adopts the Local Authority's Sickness Absence and Ill Health Referral Procedures, for dealing with problems relating to employees ill health. This procedure is available in the PRU and advice on its application and on individual cases is available from Schools Human Resources.

Longer term ill health problems are normally referred to Schools Human Resources Department. Advice will be sought from the Council's Occupational Health Medical Advisor on probable dates for return to work; probable future absence rates; advisability of ill health retirement or redeployment to more medically suitable work.

Where in the opinion of the Headteacher or other appropriate manager the level of an employee's absence has reached the point where it is causing unacceptable operational difficulties, there is scope to consider the situation with the employee at a review. The position can be looked at in light of the circumstances and any medical advice available.

An outcome of the review may be that it is not possible to resolve matters through the Occupational Health referral procedures and it may be necessary to consider formal action outside those procedures. In such circumstances the procedural steps set out in the Capability Procedure will be followed.



Where an employee with an unacceptable record of short-term absence has failed to improve, or in the case of long-term absence, where there is no prospect of an early return to work or ill health pension, formal action, may result in the issue of cautions and ultimately may lead to the dismissal of the employee on the grounds of some other substantial reason.

Normally cautions are approached on a progressive basis, i.e., first caution, second caution, and final caution before the consideration of dismissal. However, an important underlying principle of managing short-term and long-term absence problems is that the number of cautions may depend upon the individual circumstances of the case.

In exceptional cases involving problems arising from long term ill health, formal action may be abbreviated if it is clear from medical advice that there is no possibility of a return to work in a reasonable time period and retirement or redeployment is not a possibility. In such cases dismissal might need to be considered at an early stage in the procedure whether or not formal cautions have been given to the employee.



**APPENDIX B**

**RECOMMENDED PROCEDURE**  
**FOR THE CONDUCT OF CAPABILITY HEARINGS**  
**BY THE HEADTEACHER**

**1. GENERAL**

Arrangements will need to be made for a full and proper record of the proceedings to be taken.

**2. OPEN THE HEARING**

The Headteacher to make introductions and state purpose of the hearing (refer to capability issue/s in letter to employee).

**3. HEADTEACHER TO PRESENT CASE**

- (i) Headteacher to present perceptions of problems and concerns.
- (ii) Headteacher to present any other persons to give supporting information, as appropriate.
- (iii) Employee and/or his/her representative to question the Headteacher and any others who have been called upon to support the Headteacher's concerns.

Persons providing supporting information should be called into the hearing in turn and should withdraw after giving it and after questioning.



**4. EMPLOYEE'S RESPONSE**

- (i) Employee and/or his/her representative to present their response.
- (ii) Employee to present any other persons to give supporting information, as appropriate.
- (iii) Headteacher to question the employee and/or his/her representative any others who have been called upon to support the employee in his/her response.

Persons providing supporting information should be called into the hearing in turn and should withdraw after giving it and after questioning.

**5. HEADTEACHERS CONCLUDING REMARKS**

Headteacher to sum up and make concluding remarks.

**6. EMPLOYEE'S CONCLUDING REMARKS**

Employee and/or his/her representative to sum up and make any concluding remarks.

**7. EMPLOYEE AND HIS/HER REPRESENTATIVE TO WITHDRAW**

Employee and his/her representative to withdraw while the Headteacher considers the response presented, with advice from the Director of Learning and Children's Services representative if present.

**8. HEADTEACHER'S DECISION**

Employee and his/her representative to be invited to rejoin the hearing for the decision of the Headteacher. The decision will normally be given orally. However, in exceptional cases, the decision may be given in writing following the hearing.

**9. WRITTEN CONFIRMATION**

Headteacher to confirm his/her decision to the employee, with a copy of his/her representative, in writing, within **10 days** and to advise the employee of his/her right and method of appeal.



## APPENDIX C

### RECOMMENDED PROCEDURE

#### FOR THE CONDUCT OF CAPABILITY HEARINGS

#### BY THE PERSONNEL PANEL OF THE MANAGEMENT COMMITTEE

##### 1. GENERAL

Arrangements will need to be made for the Clerk of the Management Committee to make a full and proper record of the proceedings. It may be necessary for the Personnel Panel of the Management Committee to hear a capability case if the Headteacher has been actively involved in the monitoring progression of a case.

##### 2. APPOINTMENT OF CHAIR

A Chair for the Panel must be appointed.

##### 3. OPEN THE HEARING

The Chair of Personnel Panel of the Management Committee to make introductions and state purpose of the hearing (refer to capability issue/s in letter to employee).

##### 4. HEADTEACHER TO PRESENT CASE

(i) Headteacher to present the case for the dismissal of the employee including, as appropriate the calling of any other persons to give supporting information.

##### 5. QUESTIONS TO HEADTEACHER

(i) Employee and/or his/her representative to question the Headteacher and any others who have been called to provide supporting information.

(ii) Personnel Panel to question each person providing supporting information and the Headteacher as appropriate.



Persons providing supporting information should be called into the hearing in turn and should withdraw after giving the information and after questioning.

**6. EMPLOYEE'S RESPONSE**

- (i) Employee and/or his/her representative to present their response including the calling of any persons to give additional information.
- (ii) Headteacher to question the employee and/or his/he representative and any others called to provide supporting information.
- (iii) Personnel Panel to question each person providing supporting information and the Headteacher, as appropriate.

Persons providing supporting information should be called into the hearing in turn and should withdraw after giving the information and after questioning.

**7. HEADTEACHER'S CONCLUDING REMARKS**

Headteacher to sum up and make concluding remarks.

**8. EMPLOYEE'S CONCLUDING REMARKS**

Employee and/or his/her representative to sum up and make concluding remarks.

**9. PANEL'S FINAL QUESTIONS**

Panel to put any final questions arising from both sides summing up and concluding remarks.

**10. HEADTEACHER, EMPLOYEE AND HIS/HER REPRESENTATIVE TO WITHDRAW**

Withdrawal of all parties while the Personnel Panel of the Management Committee considers the cases presented, with the advice from the Director of Learning and Children's Services nominated representative.



NB If exceptionally it is necessary to recall anyone for further questioning or clarification all parties who have withdrawn must be recalled together since questions to the Headteacher or the employee and/or his/her representative must be put in the presence of the other party.

**11. PANEL'S DECISION**

The employee and his/her representative and the Headteacher will be invited to rejoin the hearing for the decision of the Personnel Panel which will normally be given orally but in exceptional cases may be given in writing following the hearing.

**12. WRITTEN CONFIRMATION**

The Clerk to the Management Committee will confirm the decision of the Personnel Panel to the employee in **writing** with a copy of his/her representative, within **10 days** and advise of the right and method of appeal.



**APPENDIX D**

**RECOMMENDED PROCEDURE FOR**  
**APPEAL HEARINGS AGAINST CAPABILITY ACTION OR DISMISSAL**  
**TO BE CONDUCTED BY THE APPEAL PANEL OF GOVERNORS**

**1. GENERAL**

- (i) When an appeal is lodged there is a need for a decision as to whether the appeal takes the form of a review or a rehearing (see Section 14 of the procedure).
- (ii) Where the appeal takes the form of a rehearing the procedure as outlined in **Appendix C** will be followed, the exception being that the case will be heard by the Appeals Panel of the Management Committee and not the Personnel Panel of the Management Committee.
- (iii) The Clerk to the Management Committee will make a full and proper record of the proceedings.

**2. APPOINTMENT OF CHAIR**

A Chair for the Appeals Panel must be appointed.

**3. OPEN THE APPEAL HEARING**

The Chair to make introductions and confirm the appeal hearing is convened in accordance with the PRU's approved Capability Procedure and is to consider the appeal against a formal caution, dismissal, or other formal action decided upon by the Headteacher or Personnel Panel of the Management Committee. The Chair also to confirm that the appeal will take the form of a review or a rehearing (**refer to 1(i) and (ii) above**), as appropriate.

**4. PRESENTATION OF CASE**

The Headteacher or spokesperson for the Personnel Panel to present the case for the formal action taken against the employee.



**NB** The case must be presented by the person who has decided upon, or representing those who have decided upon the formal action against which the appeal has been lodged.

**5. QUESTIONS TO HEADTEACHER/SPOKESPERSON OF THE PERSONNEL PANEL**

- (i) The employee and/or his/her representative to question the case presenter.
- (ii) The Appeals Panel to question the case presenter.

**6. THE EMPLOYEE'S APPEAL**

The employee and/or his/her representative to present their appeal.

**7. QUESTIONS TO THE EMPLOYEE**

- (i) The Headteacher or spokesperson for the Personnel Panel to question the employee and/or his/her representative.
- (ii) The Appeal Panel to question the employee and/or his/her representative.

**8. HEADTEACHER/SPOKESPERSON OF THE PERSONNEL PANEL CONCLUDING REMARKS**

Headteacher/spokesperson of the Personnel Panel to sum up and make any concluding remarks.

**9. EMPLOYEE'S CONCLUDING REMARKS**

Employee and/or his/her representative to sum up and make any concluding remarks.

**10. PANEL'S FINAL QUESTIONS**

Panel to put final questions arising from both sides summing up and concluding remarks.

**11. HEADTEACHER/SPOKESPERSON OF THE PERSONNEL PANEL, EMPLOYEE AND HIS/HER REPRESENTATIVE TO WITHDRAW**

Withdrawal of all parties while the Appeals Panel of the Management Committee consider the cases presented, with advice from the Director of Learning and Children's Services nominated representative, if present.

**NB** If exceptionally, it is necessary to recall anyone for further questioning or clarification all parties who have withdrawn must be recalled together since questions to the Headteacher



or the spokesperson for the Personnel Panel or to the employee must be put in the presence of the other party.

**12. APPEAL PANEL'S DECISION**

The employee and his/her representative and Headteacher/spokesperson for the Personnel Panel to be invited to rejoin the appeal hearing for the decision of the Panel which will normally be given orally but in exceptional cases may be given in writing following the hearing.

**13. WRITTEN CONFIRMATION**

The Clerk to the Management Committee to confirm the decision of the Appeal Panel to the employee, with a copy of his/her representative within **10 days** and as appropriate advise the employee of the right and method of appeal to the LA Appeals (Teachers) Sub-Committee where this right exists.

Date agreed by Finance/Personnel Committee: September 2014

2 Yearly review schedule - Agreed date for Next Review: September 2017