Garlinge and Parkside Schools and Nurseries Federation

Capability Policy and Procedure

School Names	**Garlinge Primary School and Nursery** **Parkside Community Foundation Primary School**
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Part A – Policy

1 Policy Statement

The School expects the highest standards of performance from all its Employees in order to provide the best possible educational outcomes for pupils. The School also recognises the demands and challenges that may arise whilst working in a school setting and will endeavour to provide reasonable support to Employees in their role.

There are, however, occasions when a significant gap may develop between the performance standards required and expected in a role and the individual Employee's performance which, if not appropriately addressed, may affect pupils' education and/or the overall performance of the School.

This Policy and Procedure explains the process that the School will follow to address concerns regarding an Employee's performance and assist them to carry out their required duties to an acceptable standard to meet their contractual obligations.

Performance will be monitored by the Executive Headteacher / Head of School / Line Manager on an ongoing basis. It is expected that many performance concerns can be addressed via informal line management support within the appraisal process.

This policy and procedure will be initiated where serious performance concerns have arisen which it has not been possible to resolve through these informal means.

At each stage of the procedure performance expectations will be made clear and objective targets / success criteria identified.

Employees will be given reasonable time, opportunity and support to achieve and sustain the required levels of performance. However, where performance does not meet the expectations of the School, a first or final written capability warning may be issued which may ultimately lead to dismissal.

This procedure explains:

- How the School will address performance concerns in a fair, consistent and structured manner
- What is expected from Managers and Employees with the management of such issues

2 Scope

This Policy and Procedure applies to all Teachers and Support Staff employed on either a permanent or temporary / fixed term basis.

It does not apply to Employees within their probationary period. Newly qualified teachers within their Induction period are subject to separate procedures – please refer to section 20.

In some circumstances performance may be unsatisfactory due to an Employee's own negligence, wilful misconduct or refusal to undertake the duties of the post. Such instances may be addressed via the School's Disciplinary Procedure.

The School may need to undertake appropriate investigation / fact finding to establish whether issues of unsatisfactory performance should be addressed via the capability or disciplinary procedures.
Capability concerns arising from ill health will be addressed in accordance with the School's absence and ill health management procedures.

Where Employees have transferred to a school under TUPE legislation they will continue to benefit from the terms applicable pre-transfer whilst they remain in their current post. The School may consult with staff to change these terms at a later date as long as the reason for making the change is not attributed to the transfer itself.

3 Adoption Arrangements and Date

This policy was adopted by the Governing Board of Garlinge Primary School and Nursery and Parkside Community Foundation Primary School on 13 October 2026 and supersedes any previous Capability Policy and Procedure.

This policy will be reviewed by the Governing Board annually or earlier if there is a need. This will involve consultation with the recognised unions where there have been material changes.

4 Responsibilities of the School

- To ensure Employees are aware of the standards of performance which are expected of them and to take appropriate action
- To provide reasonable support, guidance, training and constructive feedback to Employees whose performance is causing concern
- To give an Employee opportunity to meet the expected standard of performance and make them aware of the consequences should they fail to do so.

5 Responsibilities of the Employee

- To acknowledge that good job performance is a crucial part of any employment relationship and accept this as the norm
- To engage professionally and constructively with the Capability process and any appropriate action taken by the Executive Headteacher to support their performance improvement
- To make the Executive Headteacher aware of any factors that may be impacting on their performance so appropriate support can be considered at the earliest opportunity.

6 Delegated Responsibility

The management of capability issues may be delegated to staff other than the Executive Headteacher. References to the role of the Executive Headteacher in the policy and procedure may include their nominee.

Please refer to Appendix 1 for further details of the delegation arrangements which apply in the School.

7 Right to Representation

An Employee has the right to be accompanied by either a workplace colleague or trade union representative during meetings where a formal warning may be issued and to hearings / appeals held under the Formal Capability procedure. They may also accompany the Employee at review meetings held under this procedure.

Due and careful consideration will also be given to any request from an Employee to be accompanied by a workplace colleague or trade union representative at informal meetings held prior to commencing the formal

procedure. However, it should be noted that the presence of a representative does not make the meeting formal.

8 Timescales & Procedural Stages

Concerns regarding performance will be addressed at the earliest opportunity.

As a guide, an Employee will be allowed 4-8 working weeks between review meetings to achieve the required performance improvements.

The review period will depend on the concerns raised with the Employee, the improvements in performance which are expected and the nature of any support or training required.

A shorter period between review meetings may be appropriate where there is evidence of:

- Non-compliance with legal or statutory requirements
- The education, health & safety or wellbeing of pupils being at risk
- Or where the seniority and experience of the postholder would indicate that improvements should be made more rapidly.

The School reserves the right to adopt an accelerated process or bring forward the date of review meetings should there be further deterioration of performance.

In most instances it is expected that informal management action will have been put in place before the formal capability procedure is initiated. However, concerns may be addressed immediately under the capability procedure where:

- The concerns / impact on pupils are so serious as to warrant immediate formal action
- There is reason to believe that the use of informal discussions is unlikely to have the desired impact on performance and the Employee has been made aware of the concerns through previous discussions.

In very exceptional circumstances, where the failure to perform is sufficiently serious, the School reserves this right to move immediately to consider the termination of employment on the grounds of gross incompetence without recourse to the full procedure or previous warnings. In these circumstances a dismissal hearing may be convened immediately.

Where an Employee has been subject to the formal stages of the procedure within the preceding 6 months and/or within a 6-month period of a warning expiring is unable to sustain the expected levels of performance the School reserves the right to restart the capability procedure at the stage that it was suspended or any stage prior to this.

For the purpose of this procedure ‘working days’ will normally refer to the 195 school days. At the School’s discretion, working days may include school closure periods where an Employee works outside of term time. Appropriate timescales will be discussed with the Employee.

Part B – Procedure

Informal Management Action to address concerns

9 Informal Action Prior to Commencing the Capability Procedure

Performance will be monitored on an ongoing basis by the Executive Headteacher / Head of School / Line Manager via the School's appraisal process and through regular line management discussion.

All Employees should have a clear understanding of the performance expectations in their role.

This may be gained through:

- Feedback and dialogue with the Executive Headteacher / Head of School / Line Manager
- Familiarising themselves with their job description, standards of performance, relevant policies, procedures and practices, rules and regulations
- Expectations set and feedback shared through the appraisal process
- For Teachers - reference to the Teaching Standards and in the case of threshold teachers, the criteria for UPR progression set out in the STPCD
- For Headteachers – reference to the advisory National Standards of Excellence for Headteachers
- Proactively seeking clarification if there are aspects of their job role or performance expectations which they do not understand.

Employees will be made aware of any concerns at the earliest opportunity and given practical advice / support to improve their performance. It is anticipated that most performance concerns will be successfully addressed via informal management support, coaching, training, and observation with constructive feedback.

A reasonable informal period of support and monitoring will be implemented before the formal Capability process is initiated.

However, where:

- Underperformance against expected standards has continued for some time; or
- The underperformance is sufficiently serious or has persisted despite the provision of support

the Executive Headteacher / Head of School / Line Manager may determine that it is necessary to initiate the formal Capability process.

Formal Capability Procedure

10 Formal Capability Meeting

An Employee will be given 5 working days written notice of the requirement to attend a Formal Capability Meeting with the Executive Headteacher / Head of School / Line Manager.

The notification will explain:

- The specific areas of performance which are causing concern and the evidence for this
- The possible consequences including notification that a first or final capability warning may be issued
- The time and place of the meeting

- That this Employee may wish to be accompanied by a trade union representative or workplace colleague

The purpose of the meeting is to establish the facts relating to the specific areas of performance concern and the impact of these. The employee will be given sufficient opportunity to respond to the concerns and provide any relevant information relating to their performance.

The meeting may be adjourned by the Executive Headteacher / Head of School / Line Manager to consider any information presented or, if appropriate, undertake further investigation before determining the outcome.

The outcome of the meeting may be:

- That there are no grounds to pursue the formal capability procedure and concerns will continue to be addressed via informal management support and the appraisal process
- To issue the Employee with a first or, if the seriousness of the performance concerns warrant, a final written capability warning and advise them that a period of formal capability monitoring will commence.

A first written capability warning will remain live for 6 months and a final written capability warning will remain live for 12 months.

An Employee may appeal the decision to issue a first or final written warning.

Where a period of formal capability monitoring is to commence the meeting will continue and the following areas discussed:

- The expected standards of performance
- Clear targets for improvement, criteria for success and the expected timescales to achieve these
- Consideration of any support, advice, training which might support the Employee in meeting the targets and improving their performance
- Consideration of how the Employee's wellbeing might be supported during the process
- Arrangements for the monitoring / assessment of performance improvements
- Timescales and arrangements for reviewing performance at the end of the formal capability monitoring period – including a date for a review meeting
- That failure to make the required improvements within the identified period may result in a final capability warning or a case being made to consider dismissal on the grounds of capability.

Targets set at this stage should be proportionate in number and reasonable in expectation with clear success criteria and a focus on supporting development. Where significant improvement is required, an initial number of priority objectives may be set and any progress reviews may identify further objectives required to reach a satisfactory overall level of performance.

In the case of the Executive Headteacher and other positions with leadership / management accountabilities where school or department objectives are required, consideration will be given as to how to assess, monitor and evaluate the individual's contribution to meeting such objectives.

Formal monitoring, guidance and support will continue during this period.

Following the meeting, the employee will receive written confirmation within 5 working days, which will include details of:

- The level of warning issued, duration and the arrangements for appeal
- The performance expectations, targets and any agreed supports

- The duration of the formal monitoring period arrangements for any monitoring including the date of the review meeting

Employees will be given a reasonable opportunity to meet the targets and demonstrate improved performance. The monitoring period may vary depending on the circumstances but as a guide will usually be up to 4-8 working weeks.

Formal monitoring, guidance and support will continue during this period.

11 Formal Review Meeting

At the end of the monitoring period a formal review meeting will be convened to consider the Employee's progress.

The meeting will be led by the Executive Headteacher / Head of School / Line Manager and the Employee may wish to be accompanied by a trade union representative or workplace colleague.

During the meeting the Executive Headteacher / Head of School / Line Manager will review the evidence of progress against the specific targets which have been set.

The Employee will be given an opportunity to respond or provide any relevant information relating to their progress.

At the end of the meeting the Employee will be advised of one of the following outcomes:

- That an acceptable standard of performance has been achieved. Any action under the capability procedure will end and informal monitoring will continue via the appraisal process to ensure improvements are sustained. The Employee will be advised that should further concerns arise the School may resume the capability procedure (see paragraph 8).
- There has been some improvement in performance. In such cases, it may be appropriate to extend the monitoring and review period to fully embed and sustain the standards expected.
- Performance has not improved to an acceptable standard. The Employee will be issued with a final written capability warning and a further period of monitoring will take place.

A final written capability warning will remain live for 12 months.

An Employee may appeal the decision to issue a final written warning.

Where a further period of capability monitoring is to take place the meeting will continue and the following discussed:

- The expected standards of performance
- Clear targets for improvement, criteria for success and the expected timescales to achieve these
- Consideration of any support, advice, training which might support the Employee in meeting the targets and improving their performance
- Consideration of how the Employee's wellbeing might be supported during the process
- Arrangements for the monitoring / assessment of performance improvements
- Timescales and arrangements for reviewing performance at the end of the formal capability monitoring period – including a date for a review meeting.
- That failure to make the required improvements within the identified period may result in a case being made to consider dismissal on the grounds of capability.

Where targets set previously have only been partially met these may be extended during the monitoring period. Alternatively, where priority objectives which were identified initially have been achieved further objectives may be identified to reach a satisfactory overall level of performance.

Following the meeting the Employee will receive written confirmation within 5 working days of:

- The warning issued, duration and the arrangements for appeal
- The performance expectations, targets and any agreed supports
- The duration of the formal monitoring period arrangements for any monitoring and details of the Decision Meeting

A period of monitoring will follow the issuing of a formal capability warning. As a guide the monitoring period will usually be between 4-8 working weeks but may be less depending on the circumstances.

Formal monitoring, guidance and support will continue during this period.

12 Decision Meeting

At the end of the monitoring period a Decision Meeting will be convened to consider the Employee's progress.

The meeting will be led by the Executive Headteacher / Head of School / Line Manager and the Employee may be accompanied by a trade union representative or workplace colleague.

At the meeting the following will be considered:

- Evidence of the concerns regarding performance and progress against targets for improvement
- Any additional evidence or information presented by the Employee
- The extent to which the Employee has shown insight and engaged with the progress / support provided
- The impact of the Employee's performance upon the School, pupils and colleagues; and
- Any mitigating factors

The Employee will be given an opportunity to respond to concerns about their performance or make any relevant representations / provide additional evidence. They may provide new information or a different context to the information / evidence already collected.

It would be usual for this new evidence/information to be considered at this meeting however, it may in exceptional circumstances, be necessary to adjourn the meeting if the Executive Headteacher / Head of School / Line Manager feels further clarification is necessary.

The outcome of this meeting may be:

- That an acceptable standard of performance has been achieved, the formal capability procedure will end and informal monitoring will continue via the appraisal process to ensure improvements are sustained. The Employee will be advised that should further concerns arise the School may resume the capability procedure (see paragraph 8).
- That there is evidence of some progress towards targets and the formal monitoring stage is to be extended to allow the Employee to fully achieve or show sustained improvements in performance. The continuation of targets, monitoring and review arrangements will be discussed with the Employee.
- That performance remains unsatisfactory and the evidence is that the Employee is unlikely to achieve or sustain the standard expected within a reasonable timescale. The Employee will be advised that the School intends to convene a panel to consider the case for dismissal on the grounds of capability.

- For the Executive Headteacher to consider whether redeployment may be appropriate.

The outcome will be confirmed in writing within 5 working days of the Decision Meeting.

13 Capability Dismissal Hearing

The Employee will be given written notification of the date, time and venue of the hearing which will usually be not less than 10 working days' notice, however this may be varied by mutual agreement or should the circumstances dictate.

The notification should specify:

- The details of the case to be considered
- The time, date and venue of the hearing
- The names of any witnesses to be called
- The possible consequences should the case be upheld, including that dismissal be an outcome
- The procedure to be followed
- That the Employee may be accompanied by their workplace colleague or trade union representative
- The name of the Executive Headteacher / Head of School / panel hearing the case

The School will provide the Employee with all relevant documents which will be referred to during the hearing. These will be sent with the notification letter no later than 10 working days before the hearing.

The Employee has the right to be accompanied at this meeting by a workplace colleague or trade union representative and is required to provide no later than 5 working days before the hearing:

- The name of their trade union representative or workplace colleague
- The names of any witnesses they are calling
- Any relevant documents they wish to be considered at the hearing

If a late submission is received, the panel has discretion as to whether to accept this and make provision for an adjournment during the hearing to consider this. The panel reserves the right to disregard this information.

The case for dismissal will be heard by the Executive Headteacher (where not involved previously) / a panel of one or more members of the Governing Board.

During the hearing a representative of the School will present the case for dismissal and the Employee will be given the opportunity to present their case in response. Questions may be asked by all parties of either side and / or witnesses.

In reaching a decision the Executive Headteacher / panel may consider:

- Evidence of the concerns regarding performance and progress against targets for improvement
- Any additional evidence or information presented by the Employee
- The extent to which the Employee has shown insight and engaged with the progress / support provided
- The impact of the Employee's performance upon the School, pupils and colleagues; and
- Any mitigating factors presented by the Employee.

It may be necessary, in exceptional circumstances, to adjourn the meeting to consider any new information or representations made by the Employee.

The outcome of the hearing may be to:

- Dismiss the Employee on the grounds of capability
- To continue a further period of formal monitoring
- Stop the process all together

The Executive Headteacher / panel should provide the Employee with written confirmation of what was discussed and the outcome of the hearing within 5 working days of the decision. The Employee will be advised how they will be notified of the outcome. The outcome may be issued by letter and / or email. If by letter it will be deemed sufficient for the school to issue written confirmation of the outcome of the hearing to the Employee's last known address. Where the outcome is to be issued by email an appropriate email address will be sought and verified with the Employee.

The Employee may appeal in writing against a dismissal decision or any formal sanction within 5 working days of receipt of the notification of the outcome.

Where dismissal is an outcome the notification letter should:

- Specify the reason for the dismissal, termination date and the notice period; and
- Advise the Employee of their right of appeal against the dismissal

Where an Employee is not dismissed, appropriate next steps and a further review date should be confirmed in writing with the Employee.

14 Appeal

An Employee may appeal in writing against a formal sanction or dismissal decision if they believe the sanction to be wrong or unjust. Appeals should be made within 5 working days of receipt of the written outcome to the Clerk to the Governing Board or nominated person with clear reasons as to why the appeal should be considered.

Grounds for Appeal may include, but are not limited to:

- Unfairness of the decision
- That the sanction imposed was unreasonable
- That new evidence has come to light
- Procedural irregularities.

Failure to provide the detailed reason(s) for appeal may result in the appeal being delayed or in the case of continued failure to provide the grounds of appeal may result in the appeal being declined on the grounds that it has not been submitted in an appropriate and timely manner.

Any supporting information for the appeal hearing must be submitted by the Employee with the appeal letter and no later than the deadline for the receipt of an appeal. If a late submission is received the panel has discretion as to whether to accept this and make provision for an adjournment during the hearing to consider this. The panel reserves the right to disregard this information.

The School will provide the Employee with copies of any documents which will be referred to during the appeal in advance and usually no later than 5 working days before the appeal hearing.

Witnesses may be called by either party but only where they are strictly relevant to the grounds of appeal. The names of the witnesses should be provided by the Employee with their letter of appeal and by the School no later than 5 working days before the appeal hearing.

Appeals will be heard by a panel of one or more members of the Governing Board. The panel would not usually include Staff Governors. An appeal hearing will be convened at the earliest opportunity, usually within 20 working days of the Employee's full written appeal.

The Employee has the right to be accompanied at this meeting by a workplace colleague or trade union representative.

The purpose of the appeal is to review the original decision on the basis of the grounds for appeal presented by the Employee. The outcome may be:

- To uphold the original decision in full
- To uphold the original decision in part (this may include reducing the level of the sanction imposed and / or amend other elements of the decision)
- To uphold the Employee's appeal in full (this may include reducing the sanction, replacing the sanction with an alternative including possible redeployment or withdraw any sanction).

The panel may not impose a higher level of sanction than reached previously.

The Employee will be notified in writing of the outcome of the appeal and the reason for the decision, usually within 5 working days of the decision being made.

The Employee will be advised how they will be notified of the outcome. The outcome may be issued by letter or email. If by letter it will be deemed sufficient for the School to issue written confirmation of the outcome of the hearing to the Employee's last known address. Where the outcome is to be issued by email an appropriate email address will be sought and verified with the Employee.

The decision of the appeal panel is final and there is no further right of appeal at that stage.

Part C – Additional Considerations in the Management of Capability Issues

15 Suspension of the Appraisal Process

Should the capability procedure commence, the appraisal process will be suspended.

16 Ill health and sickness absence during the process

The School recognises that the capability process may be a challenging experience and will seek to ensure reasonable support is provided to Employees.

It may also be beneficial to identify a colleague not involved in the management of performance concerns to provide professional and pastoral support during the process.

The ill health of an Employee will not usually be grounds for ceasing a capability process.

Should an Employee be absent due to ill health whilst concerns are being addressed under the capability procedure, the matter will be managed in accordance with the School's Absence and Ill Health policy. The capability process will be resumed on the Employee's return to work.

The advice of an Occupational Health practitioner will be sought at the earliest opportunity and it is expected that the Employee will consent to a referral being made in such circumstances. Where consent is declined employment decisions will be made based on the information available to the School.

The School will also consider requests for reasonable adjustments which the Employee may make under the provisions of the Equality Act 2010.

The Occupational Health Advisor will make the Employee aware of their rights under the Access to Medical Reports Act 1988 which includes being able to view any written report and requesting corrections are made prior to this being shared with the School.

Following the receipt of Occupational Health advice consideration will also be given to any measures that can be put in place to further support the Employee during the capability process.

17 Provision of information in employment references

Should, within the preceding 2 years, an Employee be within the formal capability procedure details of this, including any formal capability warnings will be disclosed, upon request, in any reference provided to a prospective employer. A reference may contain factual details about the support and development an Employee has received, outside of the capability procedure.

In the case of teachers and Leadership teachers the School will provide references in accordance with the requirements of the School Staffing Regulations (2012). This requires that where a teacher / Leadership teacher in a maintained school applies for a teaching post in another maintained school or academy, the Governing Board must on request advise the prospective new school in writing whether, within the past 2 years, the Employee has been subject to capability procedures, the duration of proceedings and their outcome. *(Please note this requirement relates to performance capability concerns only and not ill health related capability)*

18 Conduct during the process / non-engagement

The School expects Employees to engage with action to support or improve performance in a positive and professional manner.

Where an Employee refuses to engage in the capability process or is persistently unwilling or unable to attend meetings held under this procedure without good reason – the Executive Headteacher may make a decision about the appropriate action based on the available information.

Refusal to engage may also be considered as a disciplinary matter.

19 Role of the professional advisor

Other members of the Leadership Team or suitably qualified Local Authority / educational advisors may be invited to advise the Executive Headteacher during the management capability concerns. This may include but is not limited to undertaking lesson observations, assisting with the review / assessment of progress against targets and attending meetings held under this procedure.

In the case of concerns relating to the Executive Headteacher, the Chair of Governors will be supported in the management of capability concerns by a suitably skilled and / or experienced external advisor who has been appointed specifically for that purpose.

A HR Advisor may also be in attendance at meetings held under this procedure.

However, it should be noted that such advisors do not have a decision making role in the process.

20 Early Career Stage Teachers

The performance of Newly Qualified Teachers undertaking statutory induction will be managed in accordance with the Statutory Guidance for Induction:

Induction for early career teachers (England) - GOV.UK (www.gov.uk)

In the first instance concerns will be addressed via the stages outlined in this guidance however, where there are serious capability failings and the required progress is not achieved / sustained the School may address these under the capability procedure.

The School may liaise with the Induction Provider in the management of performance concerns and a representative from the provider may also attend meetings held under this procedure.

21 Other concurrent processes

Employees should be advised that reasonable management action to address concerns relating to performance and capability should not automatically be perceived in itself as a reason to raise a grievance.

In the event that an Employee raises a grievance or complaint of harassment or bullying in the course of the capability process, both processes may continue concurrently.

However, each case will be considered on its own merits with regards to the circumstances of the case.

22 Non attendance at meetings and hearings

Where an Employee or their representative is unavailable to attend a meeting held under this procedure, they should inform the Executive Headteacher / panel at the earliest opportunity who will give due consideration to any request to postpone taking into account the individual circumstances and the reason for non-attendance.

A hearing / appeal may be deferred by up to 5 working days from the date of the original meeting where an Employee's representative is unavailable. Other than in exceptional circumstances only one postponement will be granted.

The Executive Headteacher / panel reserves the right to hold a meeting / hearing / appeal in the Employee's absence where all reasonable efforts to secure attendance have been unsuccessful. In this event, the Employee will be given the opportunity to make written representations to the meeting or for their representative or workplace colleague to make representations either in person or in writing on their behalf.

If no submissions are received the Executive Headteacher / panel may make a decision based on the available information.

It should be noted that the availability of representatives should not unduly delay meetings.

23 Minuting meetings and Record Keeping

Notes may be taken of all discussions held with an Employee. A record of the discussions will be recorded within the outcome / decision letters following meetings.

Full records should be kept of targets, expectations set and evidence of progress against these.

Minutes will be taken at dismissal and appeal meetings. Minutes may be taken by a clerk who is present at the meeting or transcribed from an audio recording. An audio recording will only be made with the prior consent of the Employee.

Minutes will be shared with the Employee at the earliest opportunity and, in the case of minutes from a hearing, before any appeal hearing takes place. The Employee will have the opportunity to check the accuracy of the minutes / notes taken of their evidence and submissions. It should be noted that this is a factual check only and not an opportunity for additional comments to be added which were not discussed at the hearing but which the Employee now wishes to add retrospectively. Where there are discrepancies between the Employer and Employee that cannot be resolved both versions of the minutes will be held on record. Where an audio recording is made this will be shared with the Employee if requested.

Covert recordings of meetings or hearings are expressly prohibited.

24 Confidentiality

All parties are required to respect the confidentiality of all information relating to the capability process.

The School recognises its obligations under the General Data Protection Regulation and associated legislation and the rights of Employees with regards to the personal data held on them.

All records relating to the management of capability will be gathered, processed, held and shared in accordance with the requirements of the General Data Protection Regulation and Data Protection Act.

Please refer to the School's Data Protection Policy and Privacy Notice for further details.
All records and information, including those relating to any sanction imposed, are a matter of confidence between the School, the Employee and relevant advisors. In certain limited circumstances this information may be shared by the School, for example in the provision of employment references to prospective Employers.

25 Advice and support to Employees during the process

Employees are advised to seek early support from their trade union or professional association.

Employees may address questions about this procedure to the Executive Headteacher or other delegated staff member.

Appendix 1: Delegated responsibility

Formal meetings and hearings to consider matters short of dismissal may be delegated to another Manager or the Executive Headteacher.

Where matters are heard by a Manager, appeals against any sanction imposed will be heard by the Executive Headteacher. Where the Executive Headteacher has considered the matter, appeals will be heard by a panel of one or more Governors.

Dismissal Decisions

In this School responsibility for dismissal decisions has been delegated to the Executive Headteacher, therefore formal hearings to consider dismissal may be heard solely by the Executive Headteacher.

A panel of one or more Governors may be convened to hear the matter in situations where it is not appropriate for the Executive Headteacher to perform this function.

Appeals will be heard by a panel of one or more Governors who have had no prior involvement in the matter under consideration.

Staff Governors should not usually be a member of a governor panel and where they are must ensure that they can deal with the matter impartially and objectively.

Matters Relating to the Executive Headteacher

Concerns relating to the capability of the Executive Headteacher will be managed by the Chair of Governors.

Should the Chair of Governors have concerns about the performance of a Executive Headteacher which cannot be addressed through the appraisal process these should be discussed in confidence with the School Improvement Advisor / Area Education Officer at the earliest opportunity and professional advice sought on whether the capability procedure should be initiated by the School.

It should be noted that it is the responsibility of the Chair of Governors and not the Local Authority to initiate the capability procedure.

Formal capability warnings may be issued by the Chair of Governors.

Should a case for dismissal on the grounds of capability be made this should be heard by a governor panel comprising one or more members of the Governing Board (including the Vice Chair where appropriate).

Appeals will be heard by a panel of one or more members of the Governing Board with no prior involvement in the management of the case.

Staff Governors should not usually be a member of a governor panel and where they are must ensure that they can deal with the matter impartially and objectively.

Additional Considerations for Community and Voluntary Controlled Schools

In accordance with the 2009 School Staffing Regulations where a decision is made by a Community or Voluntary controlled school to dismiss an Employee, the Local Authority (via HR Select must also be informed of the decision and reasons for this by the School. The Local Authority should then confirm the dismissal decision and any appropriate notice in writing to the Employee within 14 working days of the date the Individual was notified of the decision.

Appendix 2: Guidance for Hearings and Appeals

General

Hearings and Appeals should take place at a reasonable time and place usually during the Employee's normal working hours unless otherwise agreed with the Employee and, in the case of Employees who work term time only, during the school term. Hearings and Appeals should not be heard beyond 5pm to protect the welfare of all parties. These arrangements may be varied by mutual agreement.

Hearings and appeals may take place either in person or virtually or a combination of both.

Where a hearing takes place in person, consideration should be given to the venue for the hearing. There should be adequate rooms for the parties and arrangements to ensure that the hearing is conducted with discretion and that confidentiality is maintained. A venue away from the School site may be appropriate in certain circumstances.

The precise procedure to be followed will vary depending on the particular circumstances of each case, but in general the following will apply:

Role of the Executive Headteacher / Panel hearing the Case

It is the role of the Executive Headteacher / panel hearing a case to consider the evidence presented and decide whether on the balance of probabilities:

- The case against the Employee has been established; or
- Whether it is appropriate and reasonable to issue a formal warning or dismiss the Employee
- Whether it is appropriate to dismiss the proceedings

Should an Employee appeal the outcome of the hearing, it is the role of the Executive Headteacher / panel considering the appeal to review the original decision on the basis of the grounds for appeal presented by the Employee and to consider whether the original outcome was within a range of reasonable responses given the circumstances.

If the case is to be heard by a panel, a chair will be identified who will have responsibility for facilitating the hearing.

The Role of the Representative

The Employee has the right to be accompanied to a hearing or appeal meeting by either a workplace colleague or recognised trade union representative.

The representative may address the hearing to put forward and sum up the Employee's case, respond on behalf of the Employee at the hearing and confer with the Employee during the hearing. The representative does not have the right to answer questions on the Employee's behalf, address the hearing if the Employee does not wish it, prevent the Employer from explaining their case or disrupt the proceeding.

The Role of the HR Advisor

The School may request that a HR Advisor attends a hearing or appeal meeting to advise the Executive Headteacher / panel on the procedure and any points of employment law.

A further HR Advisor may also be in attendance to support the School in the presentation of their case.

The HR Advisor may be allowed to ask questions and clarify issues on behalf of the party they are supporting.

Witnesses

Witnesses may be called by either party.

Where the School intends to call witnesses to the hearing – their details should be communicated with the letter notifying the Employee of the details of the hearing. Where the Employee intends to call witnesses to the hearing – their details should be communicated in advance no later than 5 working days before the date of the hearing / appeal.

At Appeal witnesses may only be called or recalled where this is strictly relevant to the grounds of appeal.

The role of the witness is limited to giving evidence and responding to questions.

The Employee is responsible for ensuring that any witnesses they call can attend on the relevant date. In the event that a witness cannot attend they may make a written statement which should be provided to the School no later than 5 working days in advance of the hearing / appeal.

All witnesses should be aware of the confidential nature of hearings and should not discuss any aspect of the meeting or matters under consideration with anyone outside of the hearing.

Procedure for Hearings

- The Executive Headteacher hearing the case / chair of the panel will introduce those present and their roles, explain the case to be considered, the procedure to be followed and the format of the hearing
- The School's representative presents their case, referring to written submissions / evidence. The Employee and their representative and panel and their advisor may ask questions of the School's representative
- The Employee or their representative presents their case, referring to written submissions and presenting any mitigating circumstances. The School's representative, their advisor and panel along with their advisor may ask questions of the Employee and their representative
- Adjournments may be requested by both parties or by the Executive Headteacher/ panel during the hearing
- Both parties have the opportunity to sum up their cases, with the Employee or their representative having the final summing up opportunity.
- The hearing will then be adjourned whilst the Executive Headteacher / panel deliberates over the evidence. If further clarity is required both parties may be recalled and the hearing reconvened so that all parties may hear any additional evidence
- Where possible the hearing will be reconvened and the Employee advised verbally of the outcome following the conclusion of the process and the panel's deliberations. On occasion, it may not be possible to determine an outcome on the day of the hearing, in which case the panel will reconvene at the earliest possible opportunity to make a decision. The Employee and their representative are not expected to attend. Where the panel reconvenes, the outcome will be communicated in writing to the Employee
- In all circumstances the Employee will be advised in writing of the outcome of the hearing usually within 5 working days of the decision being made.

Procedure for Appeals

- The chair of the panel will introduce those present and their roles, explain the case to be considered, the procedure to be followed and the format of the meeting
- The Employee or their representative shall put the case in support of the grounds for appeal, including any mitigating circumstances. This may include referring to written submissions and evidence. The School's representative and their advisor and panel and their advisor may ask questions of the Employee and their representative

- The School's representative presents the case for upholding the previous committee's decision and refers to written documentation. The Employee and their representative and panel and their advisor may ask questions of the School's representative
- The panel will invite both parties to sum up their cases, with the Employee or their representative having the final opportunity to sum up. The hearing will then be adjourned whilst the panel deliberates over the evidence
- Adjournments may be requested by both parties or by the panel during the appeal hearing. If new evidence is presented the appeal may need to be adjourned while this is investigated
- The appeal hearing will then be adjourned whilst the panel deliberates over the evidence. If further clarity is required both parties may be recalled and the hearing reconvened so that all parties may hear any additional evidence
- Where possible the appeal hearing will be reconvened and the Employee advised verbally of the outcome following the conclusion of the process and the panel's deliberations. On occasion it may not be possible to determine an outcome on the day of the appeal hearing, in which case the panel will reconvene at the earliest possible opportunity to make a decision. The Employee and their representative are not expected to attend. Where the panel reconvenes, the outcome will be communicated in writing to the Employee
- In all circumstances the Employee will be advised in writing of the outcome of the hearing usually within 5 working days of the decision being made.