

# CASTLEWOOD PRIMARY SCHOOL

## STAFF DISMISSAL AND STAFF DISMISSAL APPEAL COMMITTEE TERMS OF REFERENCE

### Membership

The committee shall consist of three or five members. The quorum for the committee is three. The Headteacher may not be a member. The Governing Body may nominate a pool of named governors from which three or five will serve as the committee for a particular exclusion.

### Administration

- Decisions about initial staff dismissal should normally be taken by the Headteacher.
- Where the Headteacher is not exercising delegated responsibility for dismissal, the decision should be delegated to a staff dismissal committee of at least three governors.
- In the event of an appeal the committee should comprise at least three governors who have not been involved in any previous action or decision connected with the dismissal. The appeal may be heard by two governors but there should be no fewer than the number that made the initial decision. A governor is ineligible to serve on a capability dismissal committee where he/she is related to the employee in question, or has made allegations, or has been a witness to an alleged incident or involved in a matter, which results in capability proceedings.

The committee should be properly clerked by the Clerk to the Governing Body. Minutes will be sent to the Governors who attend the meeting of the Committee, a copy kept for reference on the Confidential Minutes file. As matters dealt with by this committee are likely to be confidential, care must be taken that any documents are safeguarded accordingly.

### Remit of the Staff Dismissal Committee:

The Staff Dismissal Committee will:

- Take any initial decision that any person employed to work at the school should cease to work there.

### Remit of the Staff Dismissal Appeal Committee:

The Staff Dismissal Appeal Committee will:

- Hear and decide any appeal following the outcome of the staff dismissal committee.

These committees will follow advice given in the Capability Policy and guidance notes distributed by WSCC in September 2012.

[https://www.westsussex.gov.uk/learning/west\\_sussex\\_grid\\_for\\_learning/working\\_in\\_schools/human\\_resources/schools\\_hr\\_guide/section\\_6\\_-\\_managing\\_performance/doc.ashx?docid=19a83698-8b34-467a-9846-872b0b242695&version=-1](https://www.westsussex.gov.uk/learning/west_sussex_grid_for_learning/working_in_schools/human_resources/schools_hr_guide/section_6_-_managing_performance/doc.ashx?docid=19a83698-8b34-467a-9846-872b0b242695&version=-1)

### Appendix A

#### PROCEDURES FOR THE GOVERNING BODY

### **Rules of Conduct for a Dismissal Hearing and Appeal**

Each governing body should have a procedure to deal with the consideration of dismissals. It is suggested that the Rules of Conduct of Dismissal Hearings set out here should form the basis of this, subject to the following amendments:

- a). At **least** 5 clear working days' written notice shall be given to the employee of the date, time and place of the dismissal or the appeal hearing advising of his/her right to be represented. The notice calling the employee to the capability hearing shall include a statement of any allegation, complaint or adverse report concerning the employee's conduct or capacity which is to be considered;
- b). The concerns about the employee's capability will be presented by a person approved by the governing body/Headteacher (depending on whether or not the authority to dismiss has been delegated to the Headteacher), and this may be, for instance, the Headteacher or deputy Headteacher, or a member of the HR Management Advice team or Legal Services Unit;
- c). The Headteacher or panel of governors may be advised by a Legal representative or a representative from the HR Management Advice team as a representative of the Director of Learning. That person may retire with the panel for the purpose of giving advice (they do not, however, have any role in making the decision);
- d). Persons presenting evidence shall not retire with the panel of governors when it considers its decision, but the panel may recall anyone to clarify evidence previously given, provided that the two parties are also in attendance when that evidence is given;
- e). At the conclusion of the hearing, if it is considered that dismissal should take effect the employee will be informed orally if possible and in any event the decision will be confirmed in writing within 5 working days.
- f). In Community, Community Special, Voluntary Controlled and Maintained Nursery Schools, the Local Authority is required to give notice of contract termination within 14 days following receipt of confirmation from the school. Termination shall be in accordance with the notice required in the contract of employment. In voluntary aided schools the Governing Body shall issue notice of dismissal. The letter giving notice of dismissal will include the individual's right of appeal.
- g). In the case of an appeal, the employee shall set out in writing the grounds for the appeal, to be lodged with the clerk to the governing body, within 5 working days of receipt of written confirmation of the dismissal.
- h). The panel hearing the appeal may uphold the original capability decision, or modify it, by substituting a lower level of capability action or dismiss the concern(s) altogether. The panel may not make any award of compensation to the employee or vary unilaterally the employee's contract of employment. Once the decision has been reached, it should be given orally at the hearing if possible and confirmed in writing to the employee within 5 working days.

### **Conducting a Dismissal Meeting (Including Appeal Meetings)**

- a). Copies of this Procedure will be held in every school and be freely available to all employees.
- b). Those involved in capability proceedings need to be fair, impartial and reasonable throughout.

- c). The following rules of conduct shall apply to all formal dismissal meetings including appeal meetings under this Procedure.
- d). A governor is ineligible to serve on a capability dismissal committee where he/she is related to the employee in question, or has made allegations, or has been a witness to an alleged incident or involved in a matter, which results in capability proceedings.
- e). Where a panel of governors is required to determine an appeal against action short of dismissal or a determination relating to the dismissal of a member of staff or any appeal against such a determination, that committee or panel will include no fewer than three governors and no governor who has had prior involvement in the case shall consider an appeal against that decision. The membership of an appeal committee shall include no fewer members than the committee whose decision is the subject of appeal (where this is relevant).
- f). Meetings will be held at a time and place, which, as far as possible, are acceptable to all parties. A meeting should be adjourned to another date after 5 hours or at 6 p.m.; whichever is the earlier, unless both parties agree otherwise.
- g). Copies of all documentary evidence will be available to both parties as early as possible in advance of the meeting.
- h). Accommodation will be provided for the employee and his or her representative or work colleague to meet in private before, during and after the meeting.
- i). The Headteacher/senior officers, any governor(s) and the employee and his or her representative will attend throughout the meeting. Witnesses will be present only for their submission to the meeting (if appropriate to the case).
- j). During the meeting, the Headteacher/senior officer or the employee, may request one or more short adjournments. Such requests will not be unreasonably refused.
- k). Witnesses will be instructed not to discuss their evidence with other witnesses during the meeting.
- l). The Chair of the Panel/Headteacher should start the proceedings by introducing himself/herself and others present to the employee, explaining the role of each of those present. The employee should introduce any person who is accompanying him/her. The Chair of the Panel/Headteacher should then establish with both parties the names of any witnesses they intend to call to the meeting.
- m). The Headteacher/senior officer or presenting officer will first present the concerns(s) against the employee/Headteacher, as appropriate, providing such evidence, documentary or by oral statements of witnesses, as necessary.
- n). The employee or his/her representative will then be asked to give an explanation of the circumstances which led to the convening of the capability meeting, providing such evidence, documentary or by oral statements of witnesses, as appropriate.
- o). All witnesses may be questioned by the Headteacher/senior officer, the employee or his/her representative, any governor, and the representative of the Authority (if present) immediately following their submission to the meeting. The Headteacher/senior officer (in situations where the

Headteacher is presenting the case) or presenting officer and the employee may be similarly questioned. Following the completion of both parties' submissions, witnesses may be recalled - but only to clarify evidence previously given, not to introduce any new material.

p). The Headteacher/senior officers or presenting officer and the employee or his or her representative may sum up following the conclusion of statements by both parties. The employee will be given the opportunity to speak last. Neither summary may introduce any new material.

q). The Headteacher or chair of the meeting, having given the employee the opportunity to state his/her case, may adjourn the meeting for further investigations before a decision is made.

r). At the conclusion of the meeting, all those present except the panel and adviser should leave the room to allow them to deliberate in private. The Headteacher/chair, may recall the Headteacher/senior officer or presenting officer and the employee/representative, to clarify points of uncertainty on evidence already given. If recall is necessary, both parties must return even if only one is concerned with the point giving rise to doubt.

In coming to a conclusion on the facts of the case, the panel will need to decide based on the evidence presented whether the employee's employment should be terminated. Once a determination has been reached, both parties should be recalled to the meeting. The Headteacher/Chair should inform the employee of the determination and right of appeal. In exceptional circumstances, it may not be possible to reach a decision on the day of the meeting. In this case, both parties should be recalled to the meeting and so advised. The Headteacher/Chair should explain the reasons and inform the employee when the determination is likely to be reached. This must be no later than two working days after the meeting.

Written by: HR Policy and Practice Team (LRW/JT)

## **Capability Policy Guidance**

### **Introduction**

- This guidance document accompanies the Capability Policy and sets out in detail how the policy should be applied in practice and how the procedure should be operated.
- Where the matter relates to the performance of the Headteacher, meetings will be conducted/chaired by a member of the Governing Body and may be supported by a senior officer from the Learning Service representing the Director of Learning.
- Where the matter relates to the performance of a Centrally Employed Teacher the meetings will be conducted/chaired by the line manager or senior line manager instead of the Head teacher or Governing Body.
- Appeals against notices to improve must be submitted to their line manager and will be heard by a manager of equal or greater seniority within the directorate.
- Centrally Employed Teachers have the right of appeal against dismissal to the Staff Appeals Panel instead of the Governing Body and the timescales/arrangements applicable to that panel will apply instead of the provisions within this policy.

### **When to use the Capability Policy**

- It is expected that in all, except the most serious cases, the feedback part of the appraisal policy will have been completed before matters are referred to the formal capability policy.
- The Headteacher/Line Manager is responsible for making their expectations of employees clear and actively managing their performance through regular meetings with the employee and/or the Appraisal Process.

- Teachers' performance will be assessed against the Teachers' Standards that came into force on 1 September 2012 along with any other performance objectives set as part of the appraisal process. The Teachers' Standards cover teaching and also personal and professional conduct. The capability policy is concerned with issues of performance, whilst the disciplinary policy covers matters of personal or professional conduct.
- Employees are expected to raise with their Headteacher/Line Manager as soon as possible any issues that are impacting on their ability to perform at work.
- Employees are jointly responsible for their own development and for participating in development and training activities.

#### **Capability Policy Guidance.**

- The capability policy should be instigated when despite the help and supportive interventions provided through the Appraisal Policy/normal regular feedback meetings, the employee is unable to reach the required standard/behaviours.
- The Appraiser should meet with the employee and formally advise them that the Appraisal Policy/ normal regular feedback meetings no longer apply and that the matter is being referred to the Capability Policy.
- Please refer to the Appraisal Policy and guidance for more information about feedback and the steps to have to be completed before initiating the capability policy.

#### **Notice to Attend**

- The employee should always be given a minimum of 5 working days written notice to attend any meeting under the formal Capability Procedure.
- The dates of the Formal Review Meeting and Final Review and Decision Meeting should be set in advance, but the employee should be sent a reminder at least 5 working days before the meeting.
- The letter sent to the employee should contain enough information about the concerns, and the possible consequences so the employee can prepare their response.
- Any documentation to be considered at the meeting should be sent to the employee with the invitation to attend the meeting. This is likely to include evidence from the appraisal process, which has prompted the need for a formal capability meeting.
- In certain circumstances it may be necessary to call witnesses to the meeting. Where the Headteacher/Line Manager intends to call witnesses the names of any witness should be notified to the employee in the invitation to attend the formal meeting.
- The employee has the right to be accompanied to this meeting. In order to exercise their right to be accompanied, the employee should notify the name and position of their companion to the Headteacher/Line Manager and provide copies of any documentation that they wish to have considered at the meeting, no later than 3 working days before the meeting.
- The employee may request a change of the date or time of the meeting if they, or their companion, are unable to attend at the invited time. The employee must provide reasons for this request.

#### **Failure to attend**

All parties should make every effort to attend the Formal Meeting.

Capability Policy Guidance.

§ If the employee fails to attend the meeting for reasons outside of their control, the meeting may be postponed and re-arranged. Usually only one postponement and re-arrangement will be agreed.

§ If the employee refuses to attend, the meeting can be held without the employee present. The employee should be allowed to submit documents for consideration at the meeting.

§ If the employee insists on a companion being present who continues to be unavailable, and a suitable companion is available, then the Chair of the meeting may decide to proceed with the meeting.

Headteacher/Panel of Governing Body to take notes.

Notes of a meeting must always be taken. If a note taker is not present/available it is the responsibility of the Chair to make notes of the meeting.

### Meeting Attendees

Please refer to the table below to see who would be expected to attend the meeting.

| <b>Stage 1 - Formal Meeting</b>   | <b>Stage 2 – Formal Review Meeting</b>  | <b>Stage 3 – Final Review and Decision Meeting</b>  |
|---|---|---|
| <ul style="list-style-type: none"> <li>– Headteacher/Line Manager who will chair the meeting.</li> <li>– Employee.</li> <li>– Witnesses as required.</li> <li>– Employee’s companion – Trade Union representative or work colleague.</li> <li>– A note taker (if available).</li> </ul> | <ul style="list-style-type: none"> <li>– Headteacher/Line Manager who will chair the meeting.</li> <li>– Employee.</li> <li>– Witnesses as required.</li> <li>– Employee’s companion – Trade Union representative or work colleague.</li> <li>– A note taker (if available).</li> </ul> | <ul style="list-style-type: none"> <li>– Headteacher/Panel of no fewer than 3 Governors.</li> <li>– The Headteacher/Line Manager to explain their position and recommendations.</li> <li>– Witnesses as required.</li> <li>– Employee.</li> <li>– Employee’s companion – Trade Union representative or work colleague (may be a legal representative e.g. a Solicitor).</li> <li>– HR Management Advice Team representative to advise the Headteacher/ Panel of Governors.</li> <li>– Clerk to the Governing Body to take notes.</li> <li>– Notes of a meeting must always be taken. If a note taker is not present or available it is the responsibility of the Chair to make notes of the meeting.</li> </ul> |
| <p>Notes of a meeting must always be taken. If a note taker is not present/available it is the responsibility of the Chair to make notes of the meeting.</p>  |   |   |

### What happens at the meeting?

### **Stage 1 – Formal Meeting carried out by Head teacher/Line manager**

The purpose of this meeting is to formally discuss with the employee the Headteacher/Line Manager's concerns about the employee's performance and to make clear the standards required and to set objectives or explore any reasonable adjustments/support that need to be made to enable the employee to perform to an effective level. The employee should be given the opportunity to respond to the points made by the Headteacher/Line Manager and put forward their point of view. Having considered the information the Headteacher/Line Manager will decide whether:

- No formal action is required

OR

- To issue a written notice to improve.

Areas for discussion include:

- The standard of performance required in the post and why the employee's performance is a problem at the moment. It may be helpful to use the Performance Expectation Gap (PEG) Model to explain what the issues are with the employee's performance.
- The reasons for the employee's difficulties in reaching the standards. It is important to get the employee to understand that there is a problem and wherever possible propose their own solution to it;
- Any reasonable support that will assist the employee in making the required improvements. Again it is important to try to get the employee to try and propose their own solution to the problem;
- Setting performance objectives/targets (these may be additional to those already set in the appraisal process). It is important that the objectives are: SMART.

**Specific**

**Measurable**

**Achievable**

**Resourced.**

**Time bounded.**

- Setting a timescale for improvement.
- The date for the Stage 2 formal review meeting (if it is decided to issue a written notice to improve).

A model development plan providing a framework for the above is available from the HR Management Advice Team.

Useful information to consider at the meeting may include:

- Copies, where relevant, of meeting notes, the job description, national/professional standards (particularly the "Teachers' Standards") and any other standards specific to the job;
- Copies of any notes/follow up from meetings which document what measures have been put in place;
- Evidence of the work not being up to standard, for example, lesson observation records, pupil progress data and where applicable examples of the appropriate standard.
- Evidence from the appraisal process, which has prompted the need for a formal capability meeting.

This can be a difficult meeting to handle, as the employee may become emotional or defensive. The Headteacher/Line Manager can adjourn the meeting if time is needed for the employee to compose themselves or for the Headteacher/Line Manager to think about a point that an employee has raised.

## **Stage 2 – Formal Review Meeting carried out by Headteacher/Line manager**

The purpose of this meeting is for the Headteacher/Line Manager to review the progress that the employee has made against the objectives set in the written improvement notice, and to consider any other relevant information and decide whether the employee:

- Has achieved the appropriate standard and formal procedures can be discontinued; or
- Has made significant progress and would benefit from being given an extended monitoring period; or
- Has made insufficient progress towards achieving the targets set and should be issued with a final written notice to improve.

At the meeting, the Headteacher/Line Manager will need to explain/explore the progress against objectives set.

Useful information to consider includes:

- Copies of the documentation used in the first meeting;
- Copies of the objectives set for the employee at stage one of the process and of any other relevant evidence gathered during the first monitoring period including any development plan;
- Copies of any notes/follow up that documents what measures have been put in place to support the employee and their progress towards achievement of the targets. This will have been gathered through regular monitoring meetings;
- Whether the employee has been present during their monitoring period (are there any periods of leave or sickness absence which need to be taken into account?); and
- What level of performance the employee has to achieve going forward. This is particularly the case if the employee's performance has improved slightly or not improved at all.

If the employee's progress has not improved, the following will need to be discussed:

- The reasons for any shortfall, if performance has not improved;
- The need for any further support. (It is important to explore all reasonable options to enable the employee to achieve the required standard. This is because at the next stage of the process a decision will be made as to whether the employee's employment is terminated;
- Objectives and timescales for the next review period).
- The date for the final review meeting. It is important that the employee is made aware at this point that if their performance does not improve their employment could be terminated.

## **Stage 3 – Final Review and Decision Meeting carried out by Head teacher/Panel of Governors**

The purpose of this meeting is to decide whether the employee:

- Has made satisfactory progress against the set targets; or
- Should be dismissed from their employment.

In preparation for the Final Review and Decision meeting, the Headteacher/Line Manager should compile a report. The report should include all the documentary evidence that weighs up the school's needs and, where relevant, impact on pupil progress against the employee's current level of performance. It should also cover all the measures that have been put in place to support the employee. Advice should be sought from the HR Management Advice (HRMA) team.

In essence the report will need to cover:

- The employee's performance record;
- The nature of the poor performance;
- The employee's progress in the capability procedure;



- What measures, including support for the employee, have been put in place/explored to enable them to work at the desired level – why these failed or were disregarded;
- The impact of the employee’s performance on the school and, where relevant, pupil progress – how the work has been covered, additional costs, what has not been delivered as a consequence; and
- Why the employee’s employment needs to be terminated in the light of the above – if this is the recommendation.
- Details of witnesses attending, if any, should also be provided.

The meeting needs to be conducted in accordance with the procedure set out in Appendix A of this Guidance Document.

The Headteacher/Panel of Governors will consider:

- All the steps that have been taken to date and the supporting documentation;
- How long the employee’s performance has been an issue and what improvement has been made, if any;
- Whether reasonable actions have been taken to enable the employee to perform to the required standard;
- Whether a reasonable level of support has been made available to the employee;
- Any medical advice/prognosis (only if it is relevant to the case);
- Impact on the school and pupil progress;
- Whether reasonable adjustments have been made, and whether the Equality Act 2010 may apply, and how effective these have been in removing barriers; and
- The views of the employee.

Before a decision to dismiss is reached, it is expected that the Headteacher/Line Manager would have reasonably explored and documented all appropriate options to try an enable the employee to work at a satisfactory level.

### Outcomes

- The outcome of any meeting held under the Capability Policy, should be confirmed to the employee at the meeting (where possible) and in any case should be confirmed in writing within 5 working days of the meeting along with their right of appeal.
- The outcome of the meeting and information to be contained in the outcome letters are shown in the table overleaf.
- Model letters are available for all stages except dismissal.
- Redeployment is not usually an option under the Capability Policy, nor is there the scope to automatically ‘demote’ an employee. However in certain circumstances, under an extended review period, or as an alternative to dismissal, it may be possible to agree a mutual variation to contract to either to a lower graded or different post, this will be without pay protection.

| <b>Stage/Level of Performance attained</b> | <b>Target Achieved Or no evidence of poor performance</b>         | <b>No Improvement In Performance OR performance not satisfactory</b> | <b>Significant but not full Improvement in process.</b> |
|--|---|--|---|
| <b>Stage 1</b><br>Formal Meeting           | Headteacher/Line Manager’s reasons for, and decision are captured | <i>Written Notice to Improve</i><br>Confirmation of                  | N/A   |

|   |   |  |   |
|---|---|--|---|
|   | <b>Employee is advised that the capability policy no longer applies and they return to the appraisal policy/normal feedback arrangements</b>  | the notice to improve;<br>A support and development plan outlining the objectives the employee has to meet, the timescale for improvement and support to be given; and the date for the formal review meeting.                           |   |
| <b>Stage 2</b><br>Formal Review Meeting             | As stage 1 plus;<br>Employee is advised that the notice to improve remains active for 9 months or until the end of the academic year, whichever is the longer and should their performance lapse during this period, they will return to the procedure at the same stage. | <b>Final Written Notice to Improve</b><br>As above, except the date is for the Final Review and Decision Meeting Employee is advised that should they not meet the required standard in the specified timescale they could be dismissed. | <b>Extended Monitoring Period</b><br>Confirmation of extended notice period.<br>Confirmation of targets to be achieved and timescale.<br>Date for reconvened formal review meeting.       |
| <b>Stage 3</b><br>Final Review and Decision Meeting | As stage 1 plus;<br>Employee is advised that the notice to improve remains active for 12 months and should their performance lapse during this period they will return to the procedure at the same stage.  | <b>Dismissal with notice</b><br>Governing Body's reasons for, and decision are captured. Confirm right of appeal.<br>See dismissal below for Procedural differences between school types.  | <b>Dismissal with notice</b><br>Governing Body's reasons for, and decision are captured. Confirm right of Appeal.<br>See dismissal below for procedural differences between school types. |

### The monitoring period

During the monitoring period the Headteacher/Line Manager must continually monitor and discuss the employee's performance to check progress against the objectives and timescales outlined in the notice to improve. This should be done through regular meetings with the employee. If regular meetings are normally held with the employee it may be necessary to increase the frequency of these meeting during the monitoring period. Where regular meetings are not normally held progress check meetings will need to be convened. Employees do not have the right to be accompanied to these meeting by their Trade Unions Representative/ companion. The Headteacher/Line Manager should keep notes of items discussed at the meeting and of the employee's progress as these will be

relevant to Stage 2 and 3 meetings. By the time the next formal meeting is convened the employee should have a clear understanding of their current level of performance so they can reasonably prepare for the meeting. Where an extended review period has been given the relevant meeting will be reconvened (Stage 2) and then the Headteacher/Line Manager will make a decision either to discontinue proceedings or to issue a final written notice to improve. There is not usually at this stage, or at stage 3, an option for a further monitoring period.

### **Timescales for improvement**

The timescale for improvement will depend on the nature of the issue. The timescale for improvement should be reasonable and proportionate and should provide sufficient opportunity for an improvement to take place. As a guide it would be reasonable to allow in most cases, between 4 and 8 working weeks between the review meetings, with a view to completing the process within a term of commencement.

### **Serious Underperformance**

If the formal procedure is initiated at a later stage it is possible that a final review and decision meeting that leads to dismissal could be reached within 4 weeks of commencing the process. The meeting to consider the performance of the employee will be conducted along the same basis as the initial meeting, although the outcome could include the employee being issued with a final notice to improve.

### **Appeals against notice to improve**

If an employee wishes to appeal against the notice to improve given at Stage 1 or 2 of the procedure, they are asked to give written reasons for their appeal, in order that the Appeal Panel can focus on these reasons. The request for an Appeal should be lodged within 5 working days of receiving their written confirmation of the notice to improve. The letter requesting an appeal should be sent to the Clerk to the Governing Body. On advice from the HR Management Advice team, the Governing Body will within 10 working days of receipt of the appeal, arrange the meeting for the employee's appeal to be heard. This means the Governors should meet within 10 working days to hear the employees appeal.

### **Present at the appeal meeting**

The appeal will be attended by:

- A panel of no fewer than three Governors suitably independent to the case;
- The employee;
- Their Companion;
- Relevant witnesses;
- The Clerk to Governing Body or other person to act as note taker; and
- A representative from HR Management Advice team to advise the panel.

### Other procedural details

The companion may play a similar role to the one that they play in the formal meetings under the procedure.

The Chair will open the meeting, make introductions, check all present have the same documentation and invite the employee to give their reasons for Appeal. The employee will then explain their grounds for Appeal and, where applicable, refer to other documents used in the original review meetings. The meeting will focus on these "grounds" for appeal and will not be a rehearing of the formal meeting at which the notice to improve was issued. The Chair will ask questions of the employee. The Chair may call the employee's Headteacher/Line Manager to the

Appeal Meeting to explain the rationale for their decision. The Chair will sum up at the end of the meeting, and will then call for a brief adjournment to consider the matter and reach a decision.

### **Outcome from an Appeal.**

The Panel can decide the following:

- Not to uphold the appeal, in which circumstances, the notice to improve will remain unchanged;
- To partially uphold the appeal – whereby the Panel may find certain grounds to concur with the employee and adjust the objectives and timescales set out in the notice to improve;
- To partially uphold the appeal and allow the employee an extended review period under a notice to improve; or
- To uphold the employee’s appeal in full and revoke the notice to improve that was issued.

The Panel cannot increase the level of the notice to improve given to the employee.

The outcome of the meeting will be communicated in writing to the employee within 5 working days.

### **Dismissal**

In community, controlled and maintained special schools, the Governing Body will confirm their decision to dismiss the employee within 5 working days of the meeting, they must also include in this letter an explanation of the employee’s right of appeal. They are also required to notify the Local Authority who will issue notice of termination within 14 days following receipt of confirmation from the school. A separate notice of dismissal will therefore be issued to confirm the reasons for dismissal, and the last day of employment and contractual notice. In voluntary aided, foundation, foundation special schools and Academies the Governing body shall issue notice of dismissal and must confirm the reason for dismissal, the last day of employment and contractual notice. It too must include an explanation of the employee’s right of appeal.

### **Appeals against Dismissal**

The employee must write to the Clerk of the Governing Body within 5 working days of receiving written notification of the decision to dismiss. In their letter, the employee must cite their reasons for Appeal. The process to be followed will be the same as for an appeal against a notice to improve and heard by a panel of Governors suitably independent to the case, the format of the meeting will be a re-hearing of the case and held in accordance with the procedure set out in Appendix A. Witnesses may be called to attend. This is the final stage in the Capability Procedure.

### **Rights to be accompanied and the role of the companion.**

At any formal stage of the procedure the employee has the right to be represented at the meeting by a Trade Union representative or a work colleague. At the Final Review and Decision meeting (and Dismissal Appeal) or any meeting at which dismissal may be the outcome, the companion may also be a legal adviser such as a Solicitor. The employee needs to provide the name of their companion to the Headteacher/Line Manager chairing the meeting. This action fulfils the employee’s legal obligation to make a ‘written request’. This should be done no later than 3 working days prior to the meeting. The companion is allowed to address the meeting in order to:

- Present the employee’s case;
- Respond on the employee’s behalf to any views expressed at the meeting;
- Confer with the employee during the meeting; and
- Sum up the employee’s case.

The companion may not answer questions on the employee’s behalf, address the meeting if the employee does not wish it, or prevent the employee from explaining their case.

### **Record keeping**

Records should be kept of all formal performance matters. This means the notice to improve and supporting paperwork, the notes from the Review meetings (where taken), and copies of any letters sent to the employee, or received from them.

Records will be kept in accordance with the Data Protection Act, which requires the organisation to keep relevant, accurate data securely, and for no longer than is necessary.

During all formal review meetings, notes must be taken, either by the Chair of the meeting, or by a note taker. If a note taker is to be present at the meeting, the employee will be told in advance.

Short breaks during the meeting may need to be taken, to enable note taking to be made. There should always be a note taker present at Stage 3, Final Review and Decision on dismissal meetings and Appeals. Notes do not need to be a verbatim account of the meeting, but be detailed enough to adequately reflect the conversation, and the views expressed by all parties. The note taker should also record opportunities given to the employee to comment, even if the employee chose not to do so. During any adjournment, the note taker must remain in the room to record the rationale for any decision taken. Following the meeting, the notes will be agreed by the Chair. It is very important that the notes are reviewed carefully, because the notes may be used later (for example, in an appeal meeting), and the Chair may be called upon to explain their decisions at the Review meetings.

Copies of the notes will be given to the employee, for information only. The capability process will be treated with confidentiality. All records will be kept confidentially, in secure, locked filing cabinets. Notices to improve will be kept on the employee's file held by the school and by the HR Management Advice team.

### **Employees with Disabilities**

Under the Equality Act 2010 employers have a duty to make reasonable adjustments for an employee with a disability, where this is required.

Where a Headteacher/Line Manager is aware, or could reasonably be expected to know that the individual has a disability, it is important that reasonable adjustments are put in place to remove any barriers to that individual performing effectively in the role. This requirement includes the need to regularly review the effectiveness of the reasonable adjustment in removing the barrier (s) and finding alternatives as necessary. The reasonable adjustments agreement can be used to assist this process. The Capability procedure should only be used where all reasonable adjustments have been put in place. If it becomes necessary to manage an employee through the Capability Procedure Headteachers/ Line Managers should also consider whether the employee needs any reasonable adjustments to help them participate in the process. This may include making adjustments to the process (for example – adjusting the format of the meeting, or allowing a longer monitoring period).

The Headteacher/Line Manager can obtain advice on reasonable adjustments either from the WSGfL (See the Employers Forum on Disability Guides) or from the HR Management Advice team.