

# Hospital and Home Education Learning Centre

## Capability Procedure

**November 2014**

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## **1. Introduction**

- 1.1 This sets out the School's formal Capability Procedure and reflects the ACAS Code of Practice on Disciplinary and Grievance procedures.

## **2. Scope**

- 2.1 This procedure applies to all staff employed at the school, including the head teacher, about whose performance there are serious concerns which informal action/additional or more focused support (outside of this formal procedure) has been unable to address.
- 2.2 This procedure will not apply to employees who remain in their probationary period.
- 2.3 This procedure will not apply to teachers who are in their statutory induction period unless there are serious capability concerns, which require formal action outside of the process provided for in the regulations relating to teachers undergoing induction.
- 2.4 This procedure will not apply where the matter is related to conduct, as in these circumstances the separate Disciplinary Procedure should be used.
- 2.5 Where there are issues relating to ill health, the School's Sickness Absence Management Procedure and Guidance should be consulted to ensure that the most appropriate action/support is implemented.

## **3. Roles & Responsibilities**

- 3.1 The head teacher or another senior member of staff in the school nominated by the head teacher will take the lead at each stage. Where the member of staff subject to this procedure is the head teacher, the Chair of the management committee or a member of the committee nominated to act on the Chair's behalf will lead at each stage and all references in this procedure referring to head teacher/senior manager will be taken to mean the Chair of the management committee or an alternative member nominated to act on the Chair's behalf.
- 3.2 Other members of staff in the school or advisers external to the school may be requested to participate in providing support to the member of staff or participate in monitoring arrangements. The roles and responsibilities of all those involved will be made clear to the employee.
- 3.3 At any meeting under this procedure, the head teacher/senior manager/ committee members may be accompanied/advised by a representative from Human Resources or the Local Authority.

## **4. Timescales**

- 4.1 For teaching staff all timescales stated in this procedure will be working days and weeks (meaning Monday to Friday during term time and excluding school holidays, regardless of an individual's actual working pattern). For leadership group staff there may be exceptions to this according to contractual terms.
- 4.2 For non-teaching staff who work term-time only, all timescales stated in this procedure will be working days and weeks (meaning Monday to Friday during term time and excluding school holidays, regardless of an individual's actual working pattern).
- 4.3 For non-teaching staff who work 52 weeks per year, all timescales stated in this procedure will be working days and weeks (meaning Monday to Friday including school holidays, regardless of an individual's actual working pattern). For those people who are required to work only some time in the school holidays, only these periods will be counted as working days and weeks.
- 4.4 All timescales stated can be varied with mutual agreement between parties (see guidance on timescales and representation). Agreed changes to timescales should be confirmed in writing.

## **5. Trade Union Representatives**

- 5.1 The term 'trade union representative' throughout this document means either a lay trade union official (i.e. a steward/representative or full time official) or a full-time official employed by a trade union.
- 5.2 Action under this procedure must not be taken against an accredited trade union representative until a full-time officer of the trade union concerned has been informed.

## **6. Representation**

- 6.1 An employee who is the subject of this capability procedure may, if he/she so wishes, be advised and/or represented by a trade union representative or accompanied by a colleague who is an employee of the school at every stage of the formal procedure.
- 6.2 While there is no statutory right to be accompanied at informal meetings (eg informal review meetings) by a Trade Union representative or a colleague employed at the school, this will not be unreasonably refused if the employee requests it.
- 6.3 In cases where the employee has a statutory right of accompaniment, and his/her chosen companion cannot attend on the date proposed for a meeting, the employee can offer an alternative time and date. Any alternative time and date must be reasonable and fall within five

working days, beginning with the first working day after the date originally proposed by management (see guidance on timescales and representation).

## **7. Informal Support**

7.1 Where concerns about an employee's performance are identified, in the first instance it will be appropriate to deal with these issues informally, as part of normal day to day management/supervision arrangements or in accordance with normal ongoing performance management/appraisal processes if these are applicable. Application of the formal capability procedure would then only be necessary if informal focused support (under appraisal arrangements) to address the concerns were not successful.

7.2 However, if the concerns about performance are more serious it may be appropriate to implement the formal procedure without having addressed the issues informally, depending on the circumstances.

## **8. Application of Formal Procedure**

8.1 Where it is appropriate to apply the formal capability procedure the procedure will normally be applied sequentially through stages 1, 2 and 3. However, in very serious cases it may be appropriate to move immediately to either Stage 2 or 3 without having applied the earlier stages, depending on the circumstances. Such occasions are likely to be rare, occurring in only exceptional circumstances. Advice should be sought before considering such action.

8.2 At all stages of the capability procedure prior to a possible outcome of dismissal, the overarching aim will be to seek to secure required improvements in performance through constructive feedback and support.

8.3 At any stage of the formal procedure, as an alternative to appealing against a formal warning, an employee may request to have a statement placed on their personal file, indicating their views and comments regarding the formal action taken.

## **9. Formal Procedure – Stage 1 Capability Interview**

9.1 Where a head teacher/senior manager determines that the formal capability procedure should be implemented, a Stage 1 Capability Interview will be convened.

9.2 At least five working days' notice in writing will be given of the formal Capability Interview. The notification will contain sufficient information about the concerns about performance and their possible consequences, to enable the employee to prepare to respond at the formal interview.

- 9.3 The written notification should also contain copies of any written evidence and the details of the date, time and place of the meeting. It will also advise the employee of their right to be accompanied by a companion, who may be a colleague employed at the school or a Trade Union representative.
- 9.4 This meeting is intended to examine the evidence. It will be conducted by the head teacher/senior manager. At the meeting the employee will be able to respond to the concerns about their performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected.
- 9.5 The head teacher/senior manager conducting the meeting may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process or other informal means. In such cases, the capability procedure will come to an end and this should be confirmed in writing.
- 9.6 The meeting may also be adjourned before the head teacher/senior manager reaches a conclusion, for example, if further investigation or consideration of evidence is needed, or that more time is needed in which to consider any additional relevant information.
- 9.7 Where the head teacher/senior manager concludes that formal action under the capability procedure is appropriate, the meeting will continue and the head teacher/senior manager will:
- identify the shortcomings in the employee's performance and where appropriate, refer to any relevant frameworks or documented expectations, for example job description, or which of the standards expected of teachers are not being met;
  - give clear guidance on the improved standard of performance required to ensure that the employee can be removed from formal capability procedures (this may include the setting of new objectives focused on the specific weaknesses that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made);
  - explain and discuss any support that will be available to help the employee improve their performance; (eg coaching, mentoring, training, structured observations)
  - set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case. It is for the school to determine the length of the period set however it should be reasonable and proportionate in the circumstances, a minimum of four weeks but not excessively long (usually no more than ten weeks), and should provide sufficient opportunity for an

improvement to take place. Relevant factors to consider include the impact of the unsatisfactory performance on the school, the support being put in place and the seriousness of the shortcomings;

- Where possible, the plan for support, monitoring and review should be agreed with the employee, however where agreement is not possible, the head teacher/senior manager will determine the plan to be implemented. Sufficient time should be allowed to enable the employee to reflect and respond to feedback (eg for teaching staff sufficient time between lesson observations).
- 9.8 The head teacher/senior manager must inform the employee that they are being issued with a formal Written Warning and that failure to improve within the set period could lead to dismissal.
- 9.9 Notes will be taken during this interview and a copy sent to the employee. Where a warning is issued, the employee will be informed in writing of the matters covered in the bullet points above and given information about the timing and handling of the review stage and the procedure. The employee should be informed they have the right to appeal against the issuing of a Written Warning and the process for doing this (detailed in paragraph 12 of this procedure).
- 9.10 A performance monitoring and review period will follow the formal capability interview. Formal monitoring, evaluation, guidance and support will continue during this period.
- 9.11 During the review period, informal monitoring meetings will take place at agreed intervals to review progress against the identified objectives/improvements required and monitor the implementation of support plan. Feedback should be given promptly to the employee so they are aware of how well they are progressing and what (if any) concerns remain.
- 9.12 If, at any time the head teacher/senior manager considers that performance has improved to a satisfactory level and that this is likely to be sustained, then they can choose to cease the application of the formal capability procedure without a further formal meeting and normal appraisal processes/informal management arrangements will recommence. This should be confirmed in writing, with details of the standards of performance to be maintained and the implications if further concerns about performance arise in the future. The employee should be informed that the warning will remain on their file for 12 months and will be disregarded for capability purposes after that time, unless the employee's performance lapses below the required standard before the end of this period. In these instances, the procedure may be re-entered at the stage previously applied.
- 9.13 Unless paragraph 9.12 is applicable at the end of the formal review period, the employee will be invited to a Stage 2 Capability Interview.

## **10. Formal Procedure – Stage 2 Capability Interview**

- 10.1 As with the Stage 1 Capability Interview, at least five working days' notice will be given of this meeting in writing and the notification will give details of the date, time and place of the meeting. It will advise the employee of their right to be accompanied by a colleague employed at the school or a Trade Union representative and that this meeting could result in a Final Written Warning.
- 10.2 At this meeting the head teacher/senior manager will review the action taken to date, the outcome of any support and monitoring period put in place and outline the continuing concerns about performance. The employee will be able to respond to the concerns presented by the head teacher/senior manager.
- 10.3 If the head teacher/senior manager conducting the meeting is satisfied with the explanation of the employee and/or that the employee has made sufficient improvement, the capability procedure will cease and normal appraisal processes/informal management arrangements will re-commence. This should be confirmed in writing, with details of the standards of performance to be maintained and the implications if further concerns about performance arise in the future. The employee should be informed that the warning will remain on their file for 12 months and will be disregarded for capability purposes after that time, unless the employee's performance lapses below the required standard before the end of this period. In these instances, the procedure may be re-entered at the stage previously applied.
- 10.4 If some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period under Stage 1 without issuing a Final Written Warning. A further Stage 2 Capability Interview will be convened at the end of the extended period. In these circumstances a further plan for support monitoring and review should be implemented.
- 10.5 If no, or insufficient improvement has been made during the monitoring and review period, the head teacher/senior manager will issue a Final Written Warning. The employee should be informed they have the right to appeal against the issuing of a Final Written Warning and the process for doing this (detailed in paragraph 12 of this procedure).
- 10.6 Notes will be taken of the Capability Interview and a copy sent to the member of staff.
- 10.7 Where a Final Written Warning is issued, the employee will be informed in writing that failure to achieve an acceptable standard of performance within the set timescale, may result in dismissal and they should be given information about the handling of the further monitoring and review period.



- 10.8 During the review period, informal monitoring meetings will take place at agreed intervals to review progress against the identified objectives/improvements required and monitor the implementation of support plan. Feedback should be given to the employee so they are aware of how they are progressing and what concerns remain.
- 10.9 If, at any time, the head teacher/senior manager considers that performance has improved to a satisfactory level and that this will be sustained, then they can choose to cease the application of the formal capability procedure without a further formal meeting and normal appraisal processes/informal management arrangements will recommence. This should be confirmed in writing with details of the standards of performance to be maintained and the implications if further concerns about performance arise in the future. The employee should be informed that the warning will remain on their file for 12 months and will be disregarded for capability purposes after that time, unless the employee's performance lapses below the required standard before the end of this period. In these instances, the procedure may be re-entered at the stage previously applied.
- 10.10 At the end of the monitoring and review period, a review meeting must be held to consider whether sufficient progress has been made and what further action may be appropriate.
- 10.11 If some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period.
- 10.12 If no, or insufficient improvement has been made during the monitoring and review period, the head teacher/senior manager will advise the employee that a Stage 3 Capability Hearing will be convened where the employee's dismissal on the grounds of capability will be considered.

## **11. Formal Procedure – Stage 3 Capability Hearing**

- 11.1 As with the formal capability interviews at Stages 1 and 2, at least five working days' notice will be given in writing and the notification will provide details of the date, time and place of the meeting and will advise the employee of their right to be accompanied by a colleague employed at the school or a Trade Union representative.
- 11.2 If the management committee has delegated the authority to dismiss to the head teacher, the Capability Hearing will be conducted by the head teacher. Alternatively, a properly constituted panel of management committee members (who have been delegated the authority to dismiss) will conduct the hearing and consider the recommendations of the head teacher. Any management committee member who has been involved in any support or monitoring should not be a member of the panel.

- 11.3 The recommended format for the formal Capability Hearing is set out in Appendix 2.
- 11.4 The options available to the head teacher/panel of management committee members at this hearing are:
- To determine that the employee should cease to work in his/her present post at the school;
  - To determine that the employee should cease to work in his/her present post at the school but offer employment in another post at the school;
  - To determine that the monitoring and support programme should be continued for a defined timescale;
  - To determine that the employee should continue to work at the school and that no further formal action under these procedures is required.
- 11.5 The employee will normally be informed of the decision orally at the conclusion of the hearing which will then be confirmed in writing within five working days.

## **12. Appeal**

- 12.1 An employee may appeal in writing against a decision to issue any formal Written Warning or a decision to dismiss, within five working days of receiving the decision in writing, setting out at the same time the grounds for appeal. (As an alternative to appealing the employee may request a statement is placed on their personal file as described in paragraph 8.3.) Appeals will be heard without unreasonable delay and the employee will be given at least five days notice of the appeal hearing taking place and the arrangements for this.
- 12.2 Appeals against a Written or Final Written Warning will be heard by the head teacher unless the head teacher issued the warning, in which case an Appeal Panel of the governing body will hear the appeal.
- 12.3 Appeals against dismissal will be heard by an Appeal Panel of the management committee.
- 12.4 No committee members hearing an appeal shall have been involved in the decision to which the appeal relates.
- 12.5 The format for an appeal hearing is set out in Appendix 3.
- 12.6 The options open to the head teacher/Appeal Panel in considering an appeal will be to either:

- Uphold the appeal and substitute an alternative decision as provided for under the relevant part of this procedure depending under which stage of the procedure the original decision was made; or
- Reject the appeal and reconfirm the decision that is being appealed.

12.7 The outcome to the appeal will normally be given orally at the conclusion of the hearing and then confirmed in writing, within five working days.

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## **Appendix 1 - General Principles Underlying this Procedure**

### **ACAS Code of Practice on Disciplinary and Grievance Procedures**

This procedure will be implemented in accordance with the provisions of the ACAS Code of Practice.

#### **Confidentiality**

Capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the head teacher and management committee to quality-assure the operation and effectiveness of the procedure.

#### **Consistency of Treatment and Fairness**

The management committee is committed to ensuring consistency of treatment and fairness and will abide by all relevant equality legislation.

#### **Delegation**

Normal rules apply in respect of the delegation of functions by management committees, head teachers and local authorities.

#### **Grievances**

Where a member of staff raises a grievance during the capability procedure the capability procedure may be temporarily suspended, in order to deal with the grievance depending on the circumstances. However, where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently or wholly within the Capability Procedure.

#### **Sickness**

If long term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case may be dealt with in accordance with the school's Sick Absence Management procedure (e.g. referred immediately to the occupational health service to assess the member of staff's health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures). In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

#### **Monitoring and Evaluation**

The management committee and head teacher will monitor the operation and effectiveness of the school's capability arrangements.

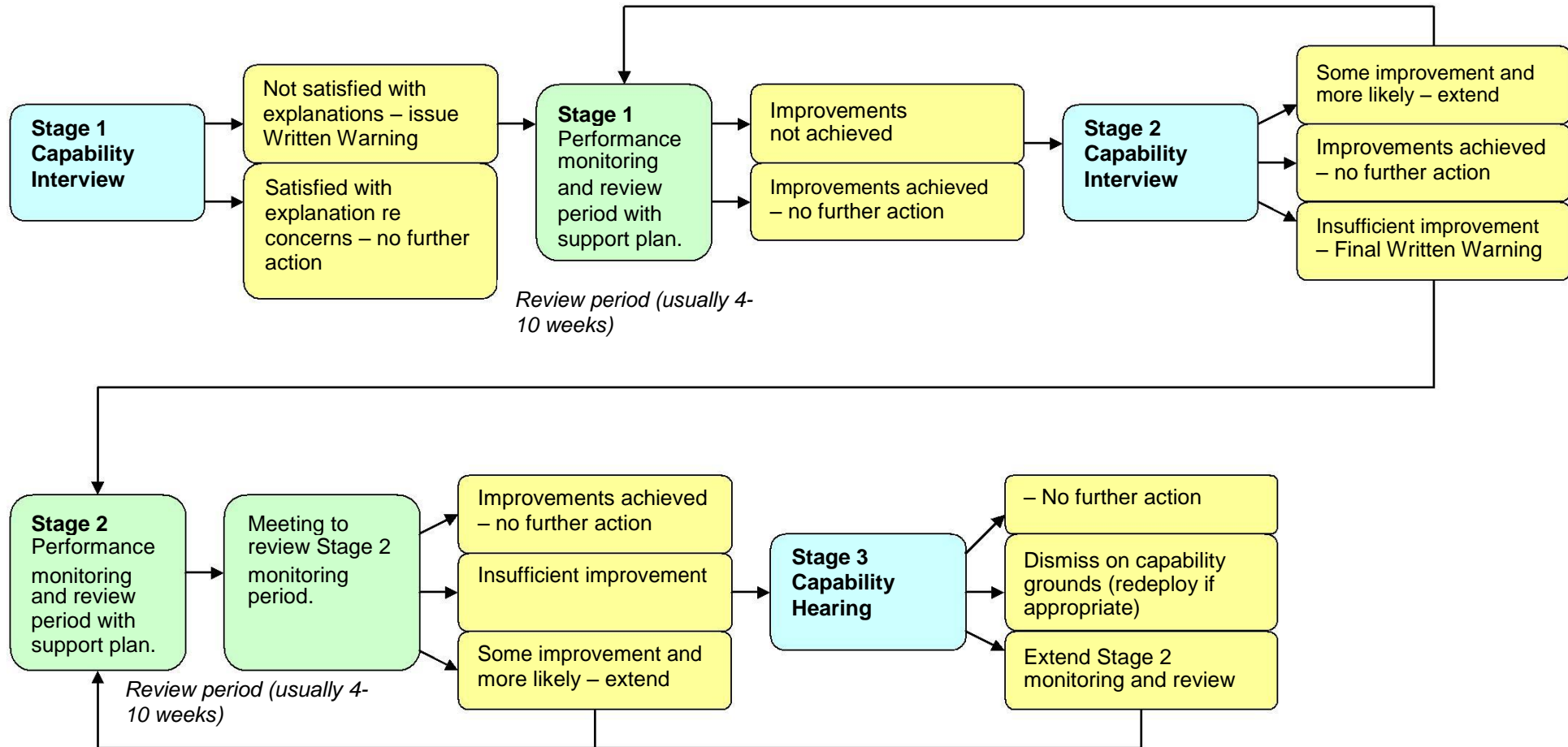
## Appendix 2 – Format for Stage 3 Capability Hearing

1. References in this appendix to Hearing Chair could mean either the head teacher or the Chair of a panel of management committee members depending on the circumstances.
2. References in this appendix to presenting manager could mean the head teacher or other senior manager of the school nominated by the head teacher depending on the circumstances.
3. Where a panel of management committee members is hearing the case, the panel will first elect one member to be the Hearing Chair.
4. The Hearing Chair will explain the purpose of the hearing and ensure introductions are made and outline the format of the hearing.
5. The presenting manager to present the case in the presence of the employee and his/her representative including, as appropriate:-
  - a) referring to the written statements and other written evidence;
  - b) the calling of witnesses.
6. The employee (or his/her representative) to have the opportunity to ask questions on the evidence given by the presenting manager and any witnesses called, as they are called.
7. The Hearing Chair/panel members to have the opportunity to ask questions on the evidence given by the presenting manager and witnesses, as they are called.
8. The employee (or his/her representative) to put his/her case in the presence of the presenting manager including as appropriate:-
  - a) referring to the written statements and other written evidence;
  - b) the calling of witnesses.
9. The presenting manager to have the opportunity to ask questions on the evidence given by the employee and any witnesses called, as they are called.
10. The Hearing Chair/panel members to have the opportunity to ask questions on the evidence given by the employee and any witnesses called, as they are called.
11. The presenting manager and then the employee (or his/her representative) to have the opportunity to sum up their cases if they so wish.
12. The presenting manager and the employee (and his/her representative) and any witnesses to withdraw.
13. The person(s) hearing the case (with any adviser(s)) to deliberate in private and come to a decision, only recalling the presenting manager and the employee to clear points of uncertainty on evidence already given. If recall is necessary, both parties are to return, notwithstanding only one is concerned with the point giving rise to doubt.
14. The decision will be notified to the employee and his/her representative at the meeting and confirmed in writing within five working days of the meeting.

### **Appendix 3 – Format for a Capability Appeal Hearing**

1. References in this appendix to Hearing Chair could mean either the head teacher or the Chair of a panel of management committee members depending on the circumstances.
2. References in this appendix to presenting manager could mean the head teacher or other senior manager of the school nominated by the head teacher depending on the circumstances.
3. Where a panel of management committee members is hearing the case, the panel will first elect one member to be the Hearing Chair.
4. The Hearing Chair will explain the purpose of the hearing and ensure introductions are made and outline the format of the hearing.
5. The employee (or his/her representative) to put his/her case for appeal in the presence of the presenting manager including as appropriate:-
  - a) referring to the written statements and other written evidence;
  - b) the calling of witnesses.
6. The presenting manager to have the opportunity to ask questions on the evidence given by the employee and any witnesses called, as they are called.
7. The Hearing Chair/panel members to have the opportunity to ask questions on the evidence given by the employee and any witnesses called, as they are called.
8. The presenting manager to present the case in response to the appeal in the presence of the employee and his/her representative including, as appropriate:-
  - a) referring to the written statements and other written evidence;
  - b) the calling of witnesses.
9. The employee (or his/her representative) to have the opportunity to ask questions on the evidence given by the presenting manager and any witnesses called, as they are called.
10. The Hearing Chair/panel members to have the opportunity to ask questions on the evidence given by the presenting manager and witnesses, as they are called.
11. The presenting manager and then the employee (or his/her representative) to have the opportunity to sum up their cases if they so wish.
12. The presenting manager and the employee (and his/her representative) and any witnesses to withdraw.
13. The person(s) hearing the appeal (with any adviser(s)) to deliberate in private and come to a decision, only recalling the presenting manager and the employee to clear points of uncertainty on evidence already given. If recall is necessary, both parties are to return, notwithstanding only one is concerned with the point giving rise to doubt.
14. The decision will be notified to the employee and his/her representative at the meeting and confirmed in writing within five working days of the meeting.

## Appendix 4 –School Capability Procedure Flowchart



### Notes:

- Timescales are suggested for guideline purposes only. It is for the school to determine the appropriate length of review period depending on the circumstance.
- The outcomes of Written Warning, Final Written Warning and dismissal are subject to a right of appeal.
- Stage 1 Interview, Stage 2 Interview and Stage 3 Hearing require at least 5 working days notice in writing.
- Before commencing this formal procedure schools will normally be expected to raise concerns about performance informally and provide additional focused support and monitoring to seek to resolve these concerns without recourse to this formal procedure.