

Academy Capability Policy

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1. Policy Statement

The Employer are committed to adopting policies and policys to encourage a positive working environment and health and safety culture to improve and maintain performance of all Teaching and Support staff working our schools. The policy aims to ensure that any capability issue is dealt with in a fair, prompt and supportive manner.

2. Scope

This policy applies to all teaching and non-teaching staff employed by the academy.

This policy is for Heads of School, Heads and Executive Heads to deal with when dealing with capability issues.

3. Principles

Headteachers, Heads of School and Executive Headteachers or his /her nominee will apply the policy. Throughout this policy if the policy is to be applied to the Executive Headteacher, the role is to be undertaken by a nominated Governor / director of the board (normally the Chair of Governors) or equivalent, acting with professional HR advice from the Employer or Appointed HR provider. In the event of the Executive Headteacher's absence, a nominated Governor / director or equivalent will apply the policy.

In respect of a trade union or professional association representative no action will be taken under the formal review stage until the circumstances of the case have been discussed with a senior representative or paid official of the trade union or professional association.

Governors / Trustees should be aware that their involvement in the early stags of these policys is likely to prevent them subsequent involvement should a dismissal and appeals meeting be required.

4. Introduction

- 4.1** The success of any school is dependent upon the performance and wellbeing of its employees therefore schools should be committed to making the best use of their potential by improving and maintaining their development and capability.
- 4.2** It is important to recognize that many potential problems and difficulties that may arise can be and should be resolved by provision of additional support identified through an extended appraisal process. This policy is intended to operate in respect of formal action only. Good management should lead to the ability to give advice, support and encouragement as part of the day to day management function and shall not form any part of an employee's record. Before embarking on a formal capability policy, the Chair of Governors or equivalent (in the case of Executive Headteacher) or Headteacher (in case of other employees) must be able to evidence that every aspect of support as outlined in the manager's guidance have been fully exhausted and have failed to achieve the required improvements.
- 4.3** The formal policys should only be used in those situations where an employee fails consistently to perform his or her duties to a professionally

acceptable standard and which remain unresolved after various methods of support have failed to achieve a satisfactory outcome.

- 4.4 In addition, in order to identify the causes of a decline in performance or failure to meet required standards of a member of staff, schools should investigate whether the situation has been generated by personal circumstances such as bereavement, emotional upheaval or illness, or whether the issues are work related, in the light of such circumstances being established, reasonable time and support should be given in order that the difficulties can be resolved. If long term sickness absence appears to have been triggered by the commencement of monitoring of a formal capability policy, the case will be dealt with in accordance with the school's absence policy.
- 4.5 Moreover, schools should ensure, before proceeding to a Capability, that they are not in breach of their duty of vulnerable group under Equalities duties and legislation.
- 4.6 This policy has been developed to comply with legal requirements and in accordance with ACAS guidance and best practice principles. It applies only to employee's or head teachers about whose performance there are serious concerns that the appraisal process and the range of informal processes has been unable to address. Where there is evidence that an employee is experiencing professional difficulties, it would normally be expected that this would have been raised during the appraisal process as well as part of the day to day management of the advice, support and encouragement. The Capability Policy cannot be triggered by an individual circumstance or piece of evidence. Manager's must refer to the manager's guide for various sources of examples.
- 4.7 At any point in this policy nothing shall prevent the employee seeking alternative employment.
- 4.8 In accepting this policy, the Governing Body or equivalent must decide who has the power to dismiss at the school. It is essential that the school selects which of the given option will be adopted in respect of the power to dismiss (refer to section 7.1)
- 4.9 A flow chart of the capability policy is attached at Appendix A

5. Capability

5.1 Capability vs Disciplinary

A distinction **must** be drawn between the policy of capability and the policy for disciplinary issues. Capability applies to those situations where an employee's performance is unacceptable because they are unable to perform their duties to the required level (due to lack of ability, skill, experience or inadequate training). Disciplinary issues apply to those situations where the employee is capable but willfully refuses to perform to the required standard. Such neglect of duty usually involves an element of culpability where may have arisen from lack of motivation or inattention to detail. These latter issues are a matter of conduct and should be dealt with in accordance with disciplinary policies for employee's, not capability policies. HR advice should be sought prior to proceeding and throughout either policy.

5.2 Preparation for Preliminary Capability Meeting

- 5.2.1 Where the capability policy is being considered for either the Executive Headteacher or other employees, the Chair of Governors or equivalent (in respect of the Executive Headteacher) or Headteacher/Headteacher (in respect of other employees) will convene a meeting. This preliminary meeting is to provide an opportunity for the information collated to be discussed. It is intended to establish the facts and may provide additional information. At least five working days' notice will be given. The notification will contain sufficient information about the concerns about performance and their possible consequences to enable the employee to prepare a response. It will also contain copies of any written evidence; the details of the time and place of the meeting; and will advise the employee of their right to be accompanied by a work colleague or a trade union official, or a trade union representative who has been certified by their union as being competent. Employees who are unable to attend the preliminary capability meeting because their trade union representative or work colleague cannot attend may offer a reasonable alternative date within five school working days of the original date. In instances where the employee becomes sick or has a stress-related illness the matter should be dealt with under the Management of Attendance policy.
- 5.2.2 The person 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. In such cases, the capability policy will come to an end. The person conducting the meeting may also adjourn the meeting if, for example, they decided that further investigation is needed, that more time is needed in which to consider any additional information, or to decide to proceed to a Formal Capability meeting.
- 5.2.3 Once a decision has been made to proceed with a formal Capability Policy a meeting should be held to formally suspend the appraisal process prior to moving forward, details of which should be provided to the employee in writing.

6. Formal capability meeting

- 6.1 At least five working day's notice will be given. The notification will contain copy of the policy, copies of any written evidence, the details of the time and place of the meeting and will advise the employee of their right to be accompanied by a work colleague or a trade union official, or a trade union representative who has been certified by their union as being competent. The notification will contain sufficient information about the concerns about performance. Employees who are unable to attend the preliminary capability meeting because their trade union representative or work colleague cannot attend may offer a reasonable alternative date within five school working days of the original date. In instances where the employee becomes sick or has a stress-related illness the matter should be dealt with under the management of the Attendance policy.
- 6.2 During the meeting, the person conducting the meeting will
- Identify the professional shortcomings, for example, which of the standards expected of employees are not being met;
 - Give clear guidance on the improved standards of performance needed to ensure that the employees can be removed from formal capability policy (this should include the precise descriptions of improvements that are required, focus 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);

- Detail any support that will be available to help the employee improve their performance, for example coaching, training, in-class support, mentoring, peer mentoring, structured observations, visits to other classes or schools or discussion with advisory staff (this is not exhaustive list):
- 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 should be realistic, reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place.
- Warn the employee that failure to improve within the set period could lead to dismissal.

6.3 Notes will be taken of formal meetings and a copy sent to the member of staff. The employee will be informed in writing of the matters covered in the bullet points above and given information about the timing, handling of the review stage.

7. Monitoring and Review Period Following a Formal Capability Meeting

7.1 The agreed performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. The member of staff will be invited to a formal review meeting.

8. Formal review meeting

8.1 At least five working days' notice will be given. The notification will provide details of the time and place of the meeting and will advise the employee of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent. Employees who are unable to attend the preliminary capability meeting because their trade union representative or work colleague cannot attend may offer a reasonable alternative date within five school working days of the original date. In instances where the employee becomes sick or has a stress related illness the matter should be dealt with under the Management of Attendance policy. Employees who are unable to attend the preliminary capability meeting because their trade union representative or work colleague cannot attend may offer a reasonable alternative date within five school working days of the original date. In instances where the employee becomes sick or has a stress related illness the matter should be dealt with under the Management of Attendance policy.

8.2.1 If the person conducting the meeting is satisfied that the employee has made sufficient improvement, the capability policy will cease and the appraisal process will re-start. However, the employee is to be made aware that in achieving this, they are expected to continue to maintain the required standards. Should an employee's satisfactory improvement prove only to be of a temporary nature (less than 12 months) and the performance concerns are related, they should be made aware of the option (once the evidence has been assessed) to return immediately to this point in the policy.

8.2.2 In other cases:

- 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, for a reasonable amount of time e.g. minimum of 4 weeks and maximum of 6 weeks. In order to do that an extension to the support and training plan has to be put into place.
- If no or insufficient improvement has been made during the monitoring and review period, the employee will receive a final written warning.

8.3 Notes will be taken of formal meetings and copy sent to the member of staff. The final written warning will include any previous warnings that have been issued. Where a final warning is issued, the member of staff will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale) may result in dismissal. They will also be given information about the handling of the further monitoring and review period, the policy and time limits for appealing against the final warning. The employee will be invited to a decision meeting.

9 Decision Meeting

9.1 At least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the employee of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent. The notification will include a performance report, setting out the assessments, support and evaluation undertaken during the monitoring period. Employees who are unable to attend the appeal meeting because their trade union representative or work colleague cannot attend may offer a reasonable alternative date within five school working days of the original date. In instances where the employee becomes sick or has a stress related illness the matter should be dealt with under the Management of Attendance policy. Employees who are unable to attend the preliminary capability meeting because their trade union representative or work colleague cannot attend may offer a reasonable alternative date within five school working days of the original date. In instances where the employee becomes sick or has a stress related illness the matter should be dealt with under the Management of Attendance policy.

9.2 If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability policy will end and the appraisal process will be reinstated. However, the employee is to be made aware that in achieving this, they are expected to continue to maintain the required standards. Should an employee's satisfactory improvement prove only to be of a temporary nature (less than 12 months) and the performance concerns are related, they are to be made aware of the option once their evidence has been assessed to return immediately to this point in the policy.

9.3 If performance remains unsatisfactory, a recommendation is made to the agreed dismissal committee (option chosen in line with the adopted policy) for a decision that the employee should be dismissed or required to cease

working at the school. Consideration may be given to other outcomes such as an employee relinquishing management responsibilities.

- 9.4 Before the recommendation to dismiss is made, all schools are advised to contact their HR provider or equivalent. (N.B this is not a legal requirement but schools may find it helpful).

10 Recommendation Dismiss

10.1 Schools are asked to give serious consideration to the following recommendation

While it is recognized that the DFE's policy offers the choice for delegating dismissal powers as in paragraphs 7.2.1 and 7.2.2 below, it is recommended that the power to dismiss be delegated to a staff dismissal committee of the Governing Body. This committee should comprise no fewer than three governors or equivalent who have had no previous involvement in the case that is being heard. In the case of an employee's potential dismissal, it is further recommended that the Headteacher is not a member of the Dismissal Committee. In the case of the Executive Headteacher's potential dismissal, the Trustees with delegated power should be able to demonstrate there is no prejudice in any decision they might reach.

- 10.2 The power of dismissing staff rest with the local governing body of each school and in the case of the Executive Headteacher with the board of Trustees.

- 10.3 The employee will be informed as soon as possible of the reasons for the dismissal and confirmed in writing within 5 working days.

11 Dismissal

11.1 the decision to dismiss will be undertaken in line with Appendix B.

11.2 Once the local governing body has decided that the employee should no longer work at the school, it will notify the Board of Trustees of their discussion and the reasons for it.

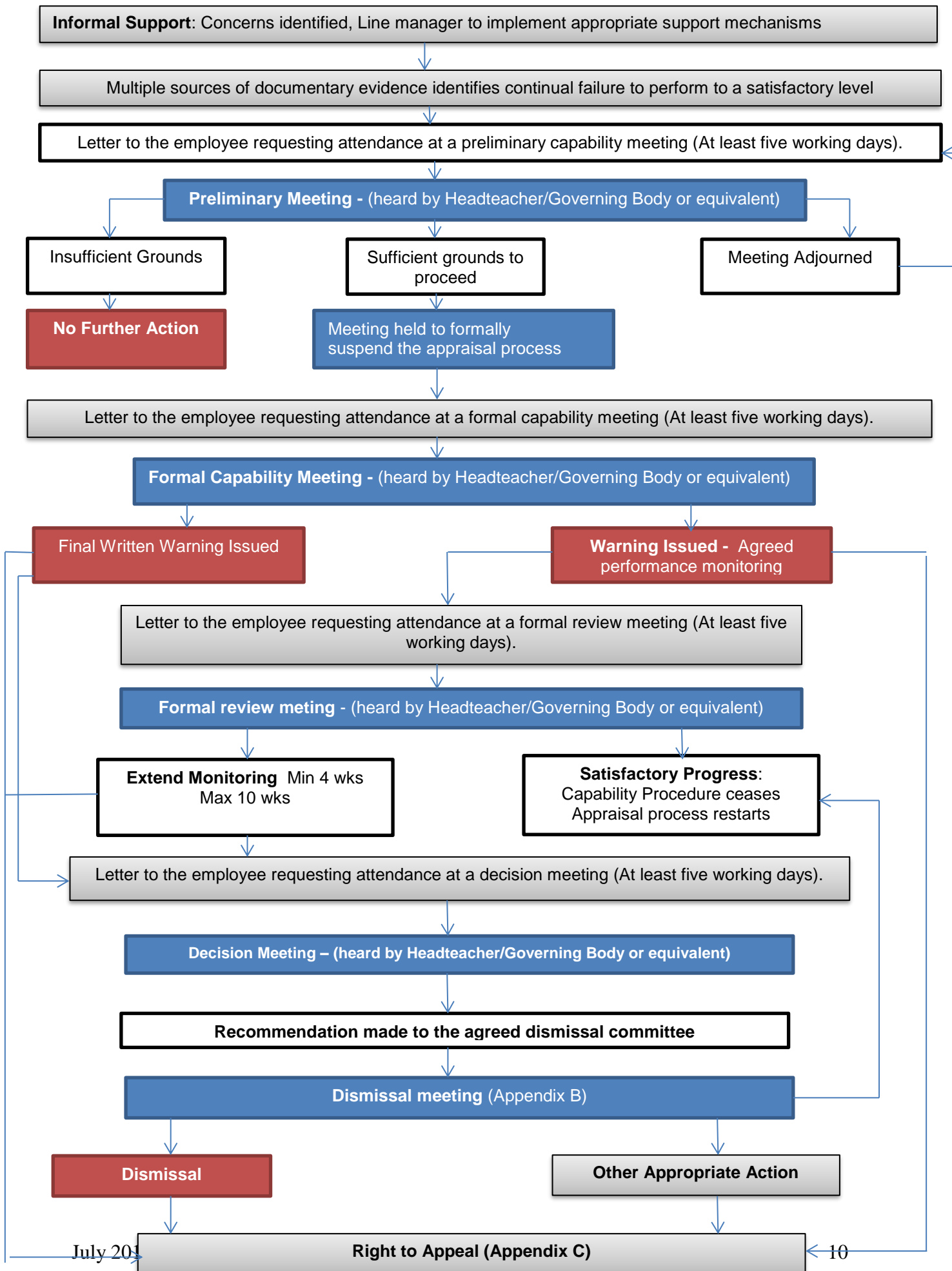
12 Appeal

12.1 If an employee feels that a decision to dismiss them, or other action taken against them, is wrong or unjust, they may appeal in writing against the decision within five working days of the decision; setting out the same time the grounds for appeal. Appeals will be heard in accordance with Appendix C without unreasonable delay and, where possible, at an agreed time and place. The same arrangement for notification and right to be accompanied will apply as with formal capability and review meetings and, as with other formal meetings, notes will be taken and a copy sent to the employee. Employees who are unable to attend the appeal meeting because their trade union representative or work colleague cannot attend may offer a reasonable alternative date within five school working days of the original date. In instances where the employee becomes sick or has a stress related illness the matter should be dealt with under the management of the Attendance policy. Employees who are unable to attend the preliminary capability meeting because their trade union representative or work colleague cannot attend may offer a reasonable alternative date within five school working days

of the original date. In instances where the employee becomes sick or has a stress-related illness the matter should be dealt with under the Management of Attendance policy.

12.2 The appeal will be dealt with impartially and must, wherever possible, be heard by managers, governors, or Trustees who have not previously been involved in the case.

12.3 The employee will be informed in writing of the outcome of the appeal hearing as soon as possible.



1. Preliminary Meeting

- 1.1. Any member of the Dismissal Committee who has been involved in the particular action taken, or who is to be called as a witness, or who is in any material way interested party, shall not participate in the proceedings.
- 1.2. The meeting shall take place in private session and parties shall be reminded that proceedings are confidential.
- 1.3. The subject and presenter shall have the right to call witnesses and the subject shall have the right to be accompanied / represented by a work colleague or a trade union official, or a trade union representative who has been certified by their union as being competent.
- 1.4. It should be establish whether the service s of an interpreter are required.

2. Outline of Policy to be followed.

- 2.1. It shall be confirmed that the preliminary matters in paragraph 1 above have been carried out.
- 2.2. The witnesses shall be instructed not to discuss the matter outside the hearing and advised at which point they may no longer be required. Witnesses will only be present in the hearing when giving evidence or being questioned.
- 2.3. At the commencement of the meeting a policy shall be agreed which it is suggested should follow the format set out below.

3. Opening Remarks by Chair

- 3.1. Introducing those present at the hearing.
- 3.2. Advising that an adjournment may be requested at any time during the hearing.
- 3.3. Outlining the policy to be followed.
- 3.4. Outline the reason(s) for calling the Dismissal Meeting.

4. The Policy

- 4.1. The Case Against the employee or Executive Headteacher
 - 4.1.1. Opening remarks by the Presenter including any evidence he/she may wish to offer.
 - 4.1.2. The subject or his/her representative may question the Presenter of the case on any evidence which he/she has given.
 - 4.1.3. The Presenter may then call and question the first witness.

4.1.4. The subject of the action and/or his/her representative may then question the witness. The witness then withdraws.

4.1.5. Subsequent witnesses may then be called and treated in the same manner. In the light of evidence presented further questions may be asked of the Presenter.

4.1.6. In exceptional circumstances, witnesses may be recalled.

4.2 The case of the Employee or Headteacher

4.2.1 Opening remarks by the subject or his/her representative including any evidence he/she may wish to offer.

4.2.2 The presenter may question the subject of the case or his/her representative on any evidence which he/she has given.

4.2.3 The subject may then call and question the first witness.

4.2.4 The Presenter may then question the witness. The witness then withdraws.

4.2.5 Subsequent witnesses may then be called and treated in the same manner. In the light of evidence presented further questions may be asked of the subject.

4.2.6 In exceptional circumstances witnesses may be recalled.

4.2.7 A closing statement which shall not include new material may be made by the subject or his/her representative.

4.4 The Decision

4.4.1 The subject and his / her representative will withdraw. The Dismissal Committee will consider the evidence presented to determine the facts of the case. He/she may seek the advice of any attending officer on questions of law and policy only.

4.4.2 The Dismissal Committee shall reach a decision and inform the subject

4.4.3 This decision will be confirmed in writing.

1. Preliminary Matter

- 1.5 *Any Member of the Appeals Committee who has been involved in the particular action taken, or who is to be called as a witness, or who is in any material way an interested party, shall not participate in the proceedings.*
- 1.6 *The meeting shall take place in private session and all parties shall be reminded that proceedings are confidential.*
- 1.7 *The subject and Presenter shall have the right to call witnesses and all parties shall have the right to be accompanied/represented by a work colleague or trade union official, or a trade union representative who has been certified by their union as being competent.*
- 1.8 *It should be establish whether the service s of an interpreter are required.*
- 1.9 *Facilities shall be provided for each side to meet separately*

2. Outline of Policy to be followed.

- 2.5 *The Clerk to the Committee shall confirm that the Committee is correctly constituted and that the preliminary matters in paragraph 1 above, have been carried out.*
- 2.6 *The Committee shall, at the commencement of the meeting, agree a policy which it is suggest should be followed set out below.*
- 2.7 *The witnesses shall be instructed not to discuss the matter outside the hearing and advised at which point they may no longer be required. Witnesses will only be present in the hearing when giving evidence or being questioned.*
- 2.8 *The parties to the matter, with their representatives, if any, should invited into the meeting.*

3. Opening Remarks by Chair

- 3.5 *Introducing those present at the appeal.*

3.6 *Advising that an adjournment may be requested at any time during the appeal.*

3.7 *Outline the reason(s) for calling the hearing.*

4. The Policy

4.5.1 Opening remarks by the Presenter including any evidence he/she may wish to offer.

4.5.2 The subject or his/her representative and member of the Committee may question the Presenter of the case on any evidence which he/she has given.

4.5.3 The Presenter may then call and question the first witness.

4.5.4 The subject of the action and/or his/her representative may then question the witness. The witness then withdraws.

4.5.5 Subsequent witnesses may then be called and treated in the same manner. In the light of evidence presented further questions may be asked of the Presenter.

4.5.6 In exceptional circumstances, witnesses may be recalled.

4.2 The case of the Employee or Headteacher

4.2.1 Opening remarks by the subject or his/her representative including any evidence he/she may wish to offer.

4.2.2 The presenter and members of the Committee may question the subject of the case or his/her representative on any evidence which he/she has given.

4.2.3 The subject may then call and question the first witness.

4.2.8 The Presenter may then question the witness. The witness then withdraws.

4.2.3 The subject may call and question the first witness.

4.2.4 The presenter of the action and any member of the Committee may also ask questions of the witness on the evidence presented. The witness then withdraws.

4.2.5 Subsequent witnesses may then be called and treated in the same manner. In light of evidence presented further questions may be asked of the subject.

4.2.6 In exceptional circumstances witnesses may be recalled.

4.2.7 A closing statement which shall not include new material will be made:

- The Presenter
- The subject or his/her representative

4.4 The Decision

4.4.1 All parties will then withdraw. The Committee will consider the matter to determine the facts of the case. They may seek the advice of any attending officer on questions of law and policies only. If the Committee decided to recall either side to clarify any points, then both parties will be invited to return for that clarification.

4.4.2 The Committee shall reach a decision and inform all parties. This decision is final and there will be no recourse to any other policies

4.4.3 The decision will be confirmed in writing to all parties by the Clerk to the Committee