Phoenix
FEDERATION

Capability Procedure

Chair of Governors: Mr. Ade Onagoruwa
Executive Headteacher: Mr. Dean Gordon NPQEL
Date: 16th April 26
Date to ~~be reviewed~~: April 2027

SECTION 1 GENERAL PRINCIPLES

1. The Capability Procedure is an integral part of the Council's approach to managing performance and absence – ensuring high standards of individual and team performance in the provision of services. All Lewisham schools aim to ensure a service delivery of the best possible quality for pupils, parents and the wider community. To achieve this it is necessary to create a flexible organisation that enables maximum performance and contribution from properly skilled people.

2. The model Capability Procedure applies to all school based employees except:

- school based staff employed at voluntary aided schools who may be subject to separate procedures produced by the relevant Diocesan Boards
- where the employee has not completed the probation period

TEACHERS ONLY - Revised appraisal arrangements for teachers came into force 1 September 2012. They are set out in the Education (School Teachers' Appraisal) (England) Regulations 2012 (the Appraisal Regulations); these replace the 2006 Regulations. Under the new regulations schools and local authorities must have an appraisal policy for teachers and a policy, covering all staff, which deals with lack of capability. A separate Teacher Appraisal Policy has been drawn up based on the DFE model policy for schools; this sets out the framework for a clear and consistent assessment of the overall performance of teachers, including the headteacher, and for supporting their development within the context of the school's plan for improving educational provision and performance, and the standards expected of the teacher. **Where there are serious concerns about a teacher's performance (including the headteacher) that the appraisal process has been unable to address, Stage 2 of of the Capability Procedure will be initiated**. Where the concerns relate to a teacher's attendance/ill health capability, these will be dealt with in the normal way under the Capability Procedure. Where there are concerns about performance and attendance/ill health, advice on how to proceed should be sought from the Children and Young People Services Directorate HR section (Schools' Team Personnel).

3. Most staff are competent, effective and able to develop but where someone is failing in a significant or persistent way to carry out their duties, the School will take reasonable steps to help the individual achieve and then maintain the required standard of performance/attendance. In some circumstances capability may include elements of both performance and attendance.

4. Where the required standard of performance/attendance is not achieved or

maintained then the employee will be subject to formal action.

5. The procedure for dealing with capability is distinct from the disciplinary procedure, which is designed to deal with cases of alleged employee misconduct, that is willful, including unauthorised absence and failure to follow the School's absence procedures. If it is alleged misconduct, then this should be processed via the School's Disciplinary Code.

6. Reference throughout the procedure to the role of the Headteacher includes his/her nominated representative except in the role as Capability Hearing Officer which generally should be undertaken by the Headteacher, except in those circumstances where the Headteacher has been directly involved in the case, see Para 13 below. Generally, the Governing Body should delegate hearing capability cases, including dismissals, to the Headteacher. In the case of dismissals however, where special circumstances exist, the Governing Body can choose to delegate to a panel of one or more governors or a panel of one or more governors and the Headteacher together, but they must not allow any outside body or persons to make decisions for them. The Children and Young People Services Directorate HR section (Schools' Team Personnel) will be able to provide further advice as necessary.

7. Where there are concerns about the performance of the Headteacher these will be referred to the Chair of Governors who will determine, in consultation with the Executive Director for Children and Young People Services, what if any action needs to be taken in accordance with the procedure. The Chair of Governors will be responsible for notifying the Headteacher of any action to be taken in respect of his/her capability. Alternatively, the Chair of Governors may request the Executive Director for Children and Young People Services to nominate a senior LA officer, or recommend an appropriately qualified external person, to assist him/her with the agreed actions to be taken under this procedure. In all cases concerning the capability of a Headteacher, the Executive Director for Children and Young People Services may attend or be represented at any formal meeting or hearing held in accordance with this procedure.

8. At all stages employees will be entitled to state their case before decisions are reached. Employees have the right to be represented by a trade union representative or another employee at every stage of the capability procedure, apart from day to day management action (e.g. back to work interviews and initial capability meetings). However, if all parties are agreed, a trade union representative may accompany the employee as an observer to the initial capability meeting. The employee must make his/her own arrangements for representation. If the employee requests to be accompanied by a work colleague then the colleague should be given reasonable time off for this purpose.

9. Employees should normally be given 5 days' notice of meetings/hearings to be held under the Capability Procedure in order to consider their position and take advice.

10. If an employee fails to attend a meeting/hearing through circumstances outside their control and unforeseeable at the time the meeting/hearing was arranged (e.g. illness) then another date may be arranged. If the employee fails to attend the re-arranged meeting/hearing then the Hearing Officer/Sub-Committee will have the discretion to proceed in the employee's absence. When exercising this discretion the Hearing Officer/Sub-Committee should take into account all relevant circumstances for example medical evidence, the number of postponements previously made etc. Letters requiring the employee to attend a hearing should make it clear that the hearing may proceed in their absence.

11. Where an employee has reasonably requested to be accompanied at a meeting/hearing and his/her representative is unable to attend on the notified date, he/she has the right to request a postponement for a period of up to 5 working days following the day after the date which had previously been set. In this event a new date should be set as quickly as possible. The request for a postponement should be made as soon as possible after notification of the meeting/hearing date.

12. Headteachers are advised to consult with Schools' Team Personnel before instigating formal action. No formal action should be taken against a trade union official until the circumstances of the case have been discussed with Schools' Team Personnel and raised with the district official of the union concerned.

13. Capability Hearings should generally be heard by the Headteacher and Appeal Hearings should be heard by a Sub-Committee of the School's Governing Body. However, where the Headteacher has already been involved in the informal/formal stages of the procedure, the Capability Hearing should be heard by a Sub-Committee of the Governing Body and the Appeal Hearing should be heard by a separate Appeals Sub-Committee of the Governing Body.

14. An HR adviser from Schools' Team Personnel may be invited to attend as an adviser to the Headteacher/Sub-Committee.

15. Employees have the right to appeal against any sanction imposed following a formal capability hearing (Stage 3). There is no right of appeal against any action taken by management at the informal (Stage 1) or formal (Stage 2) stages of the procedure.

16. Whilst there is an entitlement to an appeal, there will not be an Appeal Hearing unless the employee clearly sets out the grounds of appeal and outlines the reasons why he/she believes that the decision taken was unfair.

17. If sufficient details are not provided then the HR adviser from Schools' Team Personnel will ask the employee for further clarification. The information should be provided by no later than 3 weeks from the date of the registration of the appeal. If the information is not provided within the required timescale then the appeal will not normally be heard.

18. Appeals against dismissal will normally be heard by the Appeals Sub-Committee of the Governing Body within 20 days of receiving the appeal. Appeals are normally by way of review rather than rehearing i.e. the Appeals Sub-Committee of the Governing Body should come to a decision as to whether or not the Headteacher/Sub-Committee made a reasonable decision on the basis of the evidence put before him/her at the time.

19. Ill-health should not be associated with disability, as most disabled employees have attendance records similar to those of their non-disabled colleagues. There may be occasions, however, where the nature of an illness or performance concerns, whether or not accompanied by periods of absence, mean that the employee is covered by the Disability Discrimination Act 1995/Equality Act 2010. This reinforces the need to consider whether an employee's performance and/or attendance would be improved by the provision of a "reasonable adjustment", e.g. reasonable adjustments may include, but are not limited to, equipment or a change to working conditions.

20. Further advice can be obtained from Schools' Team Personnel.

SECTION 2 THE CAPABILITY PROCEDURE

1. Introduction

1.1 The following procedure may be engaged at either the informal stage or the formal stage where the employee's capability is of serious concern, including instances where an employee may not accept that a performance problem exists. However, except in the most serious cases, informal action should be taken first. For teachers' performance, informal action will have been taken under the separate Teacher Appraisal Policy; where there are serious concerns about a teacher's performance (including the headteacher) that the appraisal process has been unable to address, Stage 2 of the Capability Procedure will be initiated. The school's HR adviser in Schools' Team Personnel will be able to provide advice as necessary.

1.2 The procedure is presented in four parts:

- Informal action – Stage 1
- Formal action – Stage 2
  - Formal Capability Meeting
  - Potential outcomes
  - Informing the employee of the outcome
- Capability Hearing – Stage 3
  - The decision
  - Possible outcomes
  - Notifying the employee of the outcome
- Capability Appeals – Stage 4
  - The Process
  - Potential outcomes
  - Effect of reinstatement

2. Informal action – Stage 1

2.1 Headteachers should try as far as possible to resolve any issues informally through discussions with the employee as part of their day to day management responsibilities.

2.2. In many cases, dealing with performance and absence issues early – the right actions at the right time – will often provide a more satisfactory result for both the Headteacher and employee and may well prevent the need for more formal action in the future.

2.3 The kind of matters that may be raised in informal discussions include:

* Informing the employee of where and how work performance/attendance is below standard

* Giving the employee an opportunity to explain and to explore the issues jointly.

* Identifying, with the help of the employee, possible reasons for their poor performance/attendance.

* Agreeing a clear plan of action for improvement together with any appropriate training or support to be given and a period for review.

2.4 The employee should be told what standards are expected; how this will be reviewed and over what time period. The employee should also be made aware that if he/she fails to improve consideration will be given to taking further action. It is good practice to make a note of any such meeting for future reference and to provide a copy of the note to the employee. If the employee wishes to respond to the note then this should be attached to the note for completeness

2.5 If capability is related to sickness or where there is a medical factor affecting performance, then the Headteacher should refer the employee to the Council's Occupational Health Service for advice. Schools' Team Personnel will be able to provide advice on complex cases as appropriate.

2.6 If the employee subsequently achieves the required improvements then he/she should be informed accordingly and of the need to maintain that improvement. A copy should be placed on his/her personal file. If the employee wishes to respond to the letter then this should also be placed on the personal file.

2.7 Where improvement in performance and/or attendance is not achieved or maintained for a period of at least six months then the Headteacher should arrange a meeting with the employee under the Capability Procedure, at which he/she has the right to representation from either a trade union representative or work colleague. The meeting should agree a clear plan of action for improvement together with a period of review. The employee should be given a caution that if there is no improvement then formal action may be taken.

2.8 At the end of the review period the Headteacher should consider the following options:

Performance/attendance is now satisfactory: - Meet with the employee and trade union representative /work colleague as appropriate. Tell the employee that improvement has been achieved and must be maintained. Confirm in writing and place a copy on the employee's personal file. Continue to monitor performance as part of day to day management action, appraisal/performance management interviews etc. If improvement is not maintained for a period of six months then consider taking further action.

Performance/attendance is still below standard but the Headteacher believes that further improvement may be achieved: - Meet with the employee and trade union representative/work colleague as appropriate.

Discuss areas of concern. Agree action plan with training and support as appropriate. Fix further review period and warn employee that if no improvement is achieved then formal action will be taken. At the end of the review period if improvement has not been achieved then take formal action under Stage 2 of the procedure.

Headteacher believes that there is a serious lack of capability and that there is unlikely to be any improvement in the employee's performance/attendance: Take formal action under Stage 2 of the procedure. Consult your HR adviser in Schools' Team Personnel for advice as necessary. Inform the employee that improvement has not been achieved and formal action will now be taken. This can be undertaken by letter or a further meeting as appropriate. Invite employee to attend a formal capability meeting under Stage 2 of the procedure, at which s/he will be entitled to representation.

3. Formal action – Stage 2

3.1 The object of the formal procedure is to provide a framework to deal with employees whose unsatisfactory standard of work performance and/or attendance continues to fall short of that required by the School. This stage will be initiated for those teachers (including the headteacher) where there are serious concerns about the teacher's performance that the appraisal process has been unable to address.

3.2 Where the Headteacher has serious concerns about an employee's attendance capability or where an employee's persistent poor performance and/or has not improved, then a formal meeting should be arranged with the employee at which s/he will be entitled to representation.

3.3 In exceptional cases of potential gross incompetence it may not be appropriate for the employee to remain at work, for example where there is reason to believe that the employee's actions are so serious that there is no longer trust and confidence in him/her and there is concern that to continue to allow the employee to remain at work would involve serious risks to the service users and/or service delivery. In these circumstances the Headteacher may consider, if appropriate, temporarily transferring the employee to another work area or allowing the employee to work from home. Suspending the employee should only be considered in exceptional circumstances. The potential detrimental effect of suspension on both the employee and the school should be considered before taking a decision to suspend the employee.

3.4 Advice from Schools' Team Personnel should be sought before taking any action to suspend an employee.

4. Conducting the formal capability meeting

4.1 The employee may be represented at this meeting by a trade union

representative or another employee. An HR Adviser from Schools' Team Personnel may attend the meeting to provide advice and support to the Headteacher as necessary.

4.2 The Headteacher should send a letter setting out the arrangements for the meeting. The letter should be sent to the employee no later than 5 working days before the meeting.

4.3 The letter should include:
The reason for the meeting
Details of where/how performance/attendance is still below standard.
The name of the Headteacher or his/her representative who will conduct the meeting
The employee's right to be represented by a trade union representative or another employee
Copies of any documentation to be used at the meeting
A copy of the Capability Procedure.

4.4. Where an employee has reasonably requested to be accompanied at the formal meeting and his/her representative is unable to attend on the notified date he/she has the right to request a postponement of the meeting for a period of up to 5 working days following the day after the date which had previously been set. In this event a new date should be arranged as quickly as possible. A request for postponement should be made as soon as possible after notification of the meeting date.

4.5 At the meeting agree action plan (including support) and fix a period for review. The timetable will depend on the circumstances of the individual case but in straightforward cases could be between four and ten weeks. It is for the school to determine the set period. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place. The employee should also be warned that failure to achieve satisfactory performance could lead to referral to a Capability Hearing which could ultimately result in the employee's dismissal. Confirm in writing and place copy on personal file. If employee wishes to respond then this should be attached for completeness.

5. Potential outcomes

5.1 At the end of the review period, the Headteacher should meet with the employee and trade union representative/work colleague.

5.2 The Headteacher, having taking into account all the relevant factors of the case may decide:

a) Performance/attendance now satisfactory.

b) Fix a further review period

c) Refer the case to a Capability Hearing

5.3 If the Headteacher considers that there is reasonable further action that could be taken to improve the employee's performance/absence then a suitable action plan should be drawn up

5.4 The employee should be informed:
The period of the review.
The areas where improvement is still required
Any measures that will be made available to support the employee to reach the expected standards
The consequences if performance and/or attendance does not reach a satisfactory level.

5.5 The employee should be given a final caution and advised that failure to reach a satisfactory level of performance/attendance could result in further action being taken including referral to a Capability Hearing to consider terminating their contract of employment on the grounds of capability.

5.6 If the manager considers that there is no reasonable further action that could be taken to improve the employee's performance/attendance then the matter should be referred to a Capability Hearing.

5.7 Before taking any such decisions advice should be sought from Schools' Team Personnel.

6. Informing the employee of the outcome

6.1 Following the meeting the Headteacher should confirm in writing the action to be taken within five working days.

7. Capability Hearing – Stage 3

(to be heard by the Headteacher or a Sub-Committee of the Governing Body as appropriate – all references below to the Hearing Officer covers either)

7.1 Schools' Team Personnel may be asked to make the necessary arrangements for the Capability Hearing. The HR adviser/school will write to the employee setting out the arrangements with details of any witnesses and copies of any documentation. The letter should be sent to the employee no later than 5 working days before the hearing. Longer notice should be given where possible. This is particularly important if the documentation is lengthy or complex. In such cases the Hearing Officer will have the discretion to postpone the case if he/she considers that the serving of the documents does not allow sufficient time for the employee to prepare their case.

7.2 The procedure to be followed at the hearing is attached as Appendix 1.

7.3 The employee should be advised that if the he/she is held to be incapable

of performing their duties then a possible outcome could be dismissal from the School/Council's service.

7.4 The employee is entitled to be represented at the hearing by a trade union representative or another employee.

7.5 Where an employee has reasonably requested to be accompanied at a hearing and his/her representative is unable to attend on the notified date, he/she has the right to request a postponement of the hearing for a period of up to 5 working days following the day after the date which had previously been set. In this event a new date should be arranged as quickly as possible. A request for a postponement should be made as soon as possible after notification of the hearing date.

7.6 If an employee fails to attend a hearing through circumstances outside their control and unforeseeable at the time the hearing was arranged (e.g., illness) then another date may be arranged. If the employee fails to attend the re-arranged hearing then the Hearing Officer, having consulted with the HR adviser and sought the views of the union representative (where present at the hearing), has the discretion to proceed in the employees' absence. When exercising this discretion the Hearing Officer should take into account all the relevant facts including, the employee's personal circumstances, medical evidence and the number of postponements previously made.

7.7 The employee must provide details of any witnesses together with any documents they intend to rely on as early as possible but no later than 2 full working days before the hearing. This is particularly important if the documentation to be submitted is lengthy or complex. In such cases the Hearing Officer will have the discretion to postpone the case if he/she considers that the serving of the documents does not allow sufficient time for the manager to prepare their case.

7.8 It is important that the Hearing Officer is impartial and has not had any involvement in the case previously. Therefore, where the Headteacher has had previous involvement at the informal/formal stages, the case should be heard by a Sub-Committee of the Governing Body.

7.9 An HR adviser from Schools' Team Personnel may also attend the Capability Hearing as adviser to the Hearing Officer.

7.10 There shall be a notetaker to the Hearing Officer. The notetaker's role is confined to taking notes of the proceedings. The Hearing Officer or Schools' Team Personnel should arrange for attendance of the notetaker.

7.11 The Hearing Officer should ensure that all the relevant facts have been presented by both parties and may decide that further information/witnesses are required. The Hearing Officer will make the final decision on any matters raised at the hearing.

8. The decision

8.1 In reaching a decision the Hearing Officer must take into account the following:

- □ The action taken to improve the employee's performance/attendance
- □ The impact and consequences of the poor performance/attendance
- □ If absence related, up to date medical evidence and (if relevant) any reasonable adjustments
- □ The employee's length of service
- □ The results of the review period(s)
- □ Any mitigating circumstances

9. Possible outcomes

9.1 The possible outcomes may be:

A further and final period of review - to determine whether the employee can meet the standards of performance and/or absence set by management. Where this occurs the employee should be informed that failure to reach a satisfactory level of performance/absence will lead to a further hearing, the outcome of which could be dismissal.

Consideration of alternative employment: If this possibility has not already been considered, the Hearing Officer may decide to adjourn the Capability Hearing whilst possible options are explored.

This could include:

Transfer to another job; A transfer may be considered where it would not be appropriate for the employee to return to their former work area. Alternative work/redeployment will need to be considered with due regard to the fact that schools have the responsibility to appoint staff under LMS. Schools' Team Personnel will be able to provide advice and support on this. Consideration should be given to previous attempts to redeploy the employee and should only be considered where the employee is prepared to co-operate with the redeployment process. Payment would be made at the grade of pay rate applicable to the new job and not the rate applicable to the employee's former job.

Relegation; in cases of poor work performance relegation (downgrading) may be considered as an alternative to dismissal. The relegation may be to a different work area/job and payment will be commensurate with the grade of the new post.

The Hearing will be re-convened. The Hearing Officer will consider whether to offer the employee a new appointment as an alternative to dismissal, or to dismiss the employee from the School's employment. If the employee does not accept the offer of new employment then the dismissal will stand.

Dismissal from the School's/Council's employment on the grounds of capability.

For community schools where the decision of the Hearing Officer is to recommend to the Executive Director for Children and Young People that the employee be dismissed from the Council's employment on the grounds of capability, dismissal will be with the appropriate period of notice, for which payment may be made in lieu of notice. For voluntary aided schools the Hearing Officer is not required to recommend the dismissal to the Exective Director for Children and Young People; this can be actioned by the school.

10. Notifying the employee of the outcome

10.1 The Hearing Officer may inform the employee of the decision verbally following an adjournment of the hearing or later in writing. In any event the decision should be confirmed in writing within five working days from the date of the hearing.

Capability Appeals – Stage 4

11. The Process

11.1. An employee has 10 working days from receipt of the decision to appeal against the Hearing Officer/Sub Committee's decision.

11.2 Appeals are normally by way of review rather than rehearing i.e. the Appeal Sub-Committee of the Governing Body (the Appeals Panel) should come to a decision as to whether or not the Hearing Officer/Sub-Committee made a reasonable decision on the basis of the evidence put before him/her at the time. The letter of appeal should be sent to the Hearing Officer/Chair of the Sub-Committee with full details of the grounds for appeal. Whilst there is an entitlement to an appeal, there will not be an appeal hearing unless the employee clearly sets out the grounds of appeal and outlines the reasons why he/she believes that the decision taken was unfair.

11.3 If sufficient details are not provided then the HR section will ask the employee for further clarification. The information should be provided by no later than 3 weeks from the date of the registration of the appeal. If the information is not provided within the required timescale then the appeal will not normally be heard.

11.4 Schools' Team Personnel will make the necessary arrangements for the appeal to be heard by the Appeals Sub-Committee of the Governing Body as soon as possible but normally within 20 working days of receiving the appeal.

11.5 The Appeals Sub-Committee will normally hear appeals with advice given by a different HR adviser who did not attend the previous Hearing. It is

important that the Appeals Sub-Committee is impartial and has not been involved in the case previously.

11.6 The procedure to be followed at the hearing is attached as Appendix 2.

11.7 The employee will have the right to representation by a trade union official or other employee at the Appeal Hearing.

11.8 Where an employee has reasonably requested to be accompanied at an appeal hearing and his/her representative is unable to attend on the notified date, he/she has the right to request a postponement of the hearing for a period of up to 5 working days following the day after the date which had previously been set. In this event a new date should be arranged as quickly as possible. A request for a postponement should be made as soon as possible after notification of the appeal hearing date.

11.9 If an employee fails to attend the appeal hearing through circumstances outside their control and unforeseeable at the time that the hearing was arranged (e.g., illness) then another date may be arranged. If the employee fails to attend the re-arranged appeal hearing then the Appeals Sub-Committee, having consulted the HR adviser from Schools' Team Personnel and sought the views of the union representative (where present at the appeal hearing), has the discretion to proceed in the employees' absence. When exercising this discretion the Appeals Sub-Committee should take into account all the relevant facts including, the employee's personal circumstances, medical evidence and the number of postponements previously made.

11.10 The employee will be given not less than 5 working days notice of the appeal hearing and will be provided with a copy of all the documentary evidence. New evidence or additional witnesses will not be allowed save in exceptional circumstances, at the discretion of the Appeals Sub-Committee.

11.11 An HR adviser may also attend the appeal hearing as adviser to the Appeals Sub-Committee.

11.12 The Hearing Officer at the original Capability Hearing will normally present management's case to the Appeals Sub-Committee. Alternatively, where the original case was heard by a Sub-Committee of the Governing Body, the Headteacher will present management's case and call the Chair of the previous Hearing to give evidence as a witness.

11.13 The Appeals Sub-Committee will not normally rehear the case but only consider whether the decision reached by the original Hearing Officer was reasonable in all the circumstances of the case.

12. Potential outcomes

12.1 The Appeals Sub-Committee having considered the grounds of appeal may confirm, amend or reject the decision reached by the original Capability

Hearing Officer/Sub-Committee.

12.2 If the original sanction is confirmed then the employee should be advised of the decision within 5 working days.

12.3 If the decision of the Appeals Sub-Committee is to amend the original decision then the possible alternative outcomes should be considered. In the case of dismissal if the employee does not accept an offer of alternative employment then the dismissal will stand.

12.4 Should the Appeals Sub-Committee decide that the employee should be transferred or relegated then the employee will be re-instated to their original post, for pay purposes, with effect from the date of dismissal until the date of the decision of the Appeals Sub-Committee. The terms and conditions applicable to the post arising from the transfer or relegation will apply from the date of the decision of the Appeals Sub-Committee.

13 Notifying the employee of the outcome

13.1 The Appeals Sub-Committee may inform the employee of the decision verbally following an adjournment of the hearing or later in writing. In any event the decision should be confirmed in writing within five working days from the date of the hearing.

14 Effect of reinstatement

14.1 Where an employee is re-instated it means that they were never in fact dismissed and their contract of employment continued to exist from the date of the first decision to dismiss and the decision of the Appeals Sub-Committee which resulted in re-instatement. This means that:

continuity of service shall be preserved
he/she will be entitled to back pay (if any) including pension
he/she shall be entitled to accrue annual leave entitlement for the period for which they were 'dismissed'

14.2 If the employee was in receipt of state benefits then he/she will be expected to notify the appropriate Agency of their reinstatement and to repay any benefits received.

14.3 Schools' Team Personnel will be able to advise on the content of the outcome letter.

14.4 The decision of the Appeals Sub-Committee is final.

Appendix 1 - The Procedure to be followed at Capability Hearings

The Hearing Officer or Chair of the Governors Sub-Committee as appropriate will introduce all parties present and explain the purpose of the hearing. Both parties should be asked if they intend to bring witnesses, although failure to name witnesses at this stage does not mean that they cannot be called later within the hearing.

Management presentation with witnesses

The management representative will present the case.
The other parties may ask questions on the presentation in the following order:
Employee and/or trade union representative
Hearing Officer/Governors Sub-Committee
HR Adviser.

The manager presenting the case will then call witnesses.

The other parties may ask questions of the witnesses in the following order:
Employee and/or trade union representative
Hearing Officer/Governors Sub-Committee
HR Adviser.

It is open to the Hearing Officer/Chair of the Governors Sub-Committee to disallow irrelevant or repetitive questioning.

Employee's presentation with witnesses

Following completion of the management case, the presentation is then reversed, with the employee and/or trade union representative having the chance to put their case. Questions may be asked on this presentation by the presenting manager, the Hearing officer/Governors Sub-Committee and the HR Adviser in that order.

The employee/trade union representative will then call witnesses. The Hearing Officer/Chair of Governors Sub-Committee will introduce all parties and will explain the procedure to be followed.

The employee/trade union representative will ask questions of the witness.

The other parties may ask questions of the witnesses in the following order:
Manager presenting the case
Hearing Officer/Governors Sub-Committee
HR Adviser.

It is open to the Hearing Officer/Chair of Governors Sub-Committee to disallow irrelevant or repetitive questioning.

Following questioning by the other party, witnesses may be re-examined at the discretion of the Hearing Officer/Governors Sub-Committee, to clarify any points raised during the cross-examination.

Once each party has completed their questioning, witnesses should not, normally, be recalled. However, the Hearing Officer/Governors Sub-Committee has the right to recall witnesses or seek further information if this is required. If this does happen, both sides should be recalled into the hearing. In addition, the Hearing Officer/Governors Sub-Committee may require that other witnesses/evidence should be called/produced in order to ensure that all the necessary facts can be considered before making a decision on the case. The Hearing Officer/Governors Sub-Committee may decide to adjourn the hearing to allow for this if necessary.

Summing – up stage

Both parties will then have an opportunity to sum up, with management summing up first, followed by the employee/representative. This summing up may take into account statements made during the proceedings, but may not introduce new evidence.

Deliberation

The Hearing Officer/Chair of Governors Sub-Committee will then ask both parties to withdraw apart from the HR Adviser and notetaker. The Hearing Officer/Chair of Governors Sub-Committee should indicate to the parties whether they should wait to be recalled for the decision. The Hearing Officer/Governors Sub-Committee should then reach a decision on the basis of the evidence presented in the course of the hearing with advice from the HR Adviser as necessary.

The Decision

The Hearing Officer/Governors Sub-Committee may give the decision verbally at the end of the Hearing or in writing later. In any event the decision must be confirmed in writing, within 5 working days of the Hearing, to the employee and copied to their representative and to the manager presenting the case. The HR Adviser will provide advice on the content of the outcome letter

Step by Step Guide to the Capability Hearing procedure

STEP 1

The Hearing Officer/Governors Sub-Committee should ensure that there is a management notetaker.
The Hearing Officer/Chair of Governors Sub-Committee:

- **Introduces all parties**
- **Explains the procedure to be followed**
- **Clarifies position with regard to witnesses on both sides**

Management presentation

STEP 2

The presenting manager presents the facts of the case on behalf of management.

STEP 3

Employee/representative asks questions of the presenting manager

STEP 4

The Hearing Officer/Governors Sub-Committee asks questions of the presenting manager

STEP 5

The HR Adviser may ask questions of the presenting manager

Management witnesses called one at a time. It is open to the Hearing Officer/Chair of Governors Sub-Committee to disallow irrelevant or repetitive questioning
Hearing Officer/Chair of Governors Sub-Committee introduces all parties to each witness and explains procedure
Step 6 – Step 10 followed for each witness in turn.

STEP 6

Presenting manager presents witness evidence by asking questions of the witness

STEP 7

Employee/representative asks questions of the witness

STEP 8

Hearing Officer/Governors Sub-Committee asks questions of the witness

STEP 9

HR Adviser may ask questions of the witness

STEP 10

Witnesses may be re-examined at the discretion of the Hearing Officer/Governors Sub-Committee in the above order to clarify any further points raised during presentation of evidence. It is open to the Hearing Officer/Chair of Governors Sub-Committee to disallow irrelevant or repetitive questioning

Employee presentation

STEP 11	**Employee/representative presents employee's side of the case**
STEP 12	**Presenting manager asks questions on the presentation**
STEP 13	**Hearing Officer/Governors Sub-Committee asks questions on the presentation**
STEP 14	**HR Adviser may ask questions on the presentation**

Employee's witnesses called one at a time. It is open to the Hearing Officer/Chair of Governors Sub-Committee to disallow irrelevant or repetitive questioning
Hearing Officer/Chair of Governors Sub-Committee introduces all parties to each witness and explains procedure.
Step 15 – Step 19 followed for each witness in turn.

STEP 15	**Employee/representative presents witness evidence by asking questions of the witness**
STEP 16	**Presenting manager asks questions of the witness**
STEP 17	**Hearing Officer/Governors Sub-Committee asks questions of the witness**
STEP 18	**HR Adviser may ask questions of the witness**
STEP 19	**Witnesses may be re-examined at the discretion of the Hearing Officer/Governors Sub-Committee in the above order to clarify any further points raised during presentation of evidence**
STEP 20	**SUMMING UP STAGE** **Presenting manager sums up first** **Employee or representative sums up next** **No new evidence can be presented at this stage**
STEP 21	**All parties withdraw apart from the Hearing Officer/Governors Sub-Committee, HR adviser and notetaker. The Hearing Officer/Chair of Governors Sub-Committee will advise the parties whether they need to wait to be recalled for the decision.**

STEP 22

DELIBERATION

Hearing Officer/Governors Sub-Committee reaches a decision on the basis of the evidence presented. HR adviser will provide advice as necessary. The Hearing Officer/Governors Sub-Committee should make a note of the reasoning behind his/her decision and keep this carefully filed for future reference if need be.

STEP 23

DECISION

The Hearing Officer/Governors Sub-Committee may give the decision verbally at the end of the Hearing or in writing later. In any event the decision must be confirmed in writing together with the appeal rights, within 5 days of the Hearing.

Appendix 2 - The Procedure to be followed at Capability Appeal Hearings

The Appeals Sub-Committee should ensure that there is a management notetaker. The Chair of the Appeals Sub-Committee will introduce all parties present and explain the purpose of the hearing. Both parties should be asked if they intend to bring witnesses, although failure to name witnesses at this stage does not mean that they cannot be called later within the hearing.

Presentation by the appellant

The appellant or representative presents the grounds for the appeal

The presenting manager/Appeals Sub-Committee/HR Adviser/ may ask questions of the appellant/representative on the grounds for appeal in that order.

The appellant/representative to call any witnesses

The presenting manager/Appeals Sub-Committee/HR Adviser may ask questions of witnesses in that order.

It is open to the Chair of the Appeals Sub-Committee to disallow irrelevant or repetitive questioning.

Response to the Appeal by Management

The presenting manager will respond to the appeal in the presence of the appellant.

The appellant (or representative)/Appeals Sub-Committee/HR adviser may ask questions of the presenting manager.

The presenting manager to call any witnesses

The appellant (or representative)/Appeals Sub-Committee/HR Adviser may ask questions of any witnesses

It is open to the Chair of the Appeals Sub-Committee to disallow irrelevant or repetitive questioning.

If required the Appeals Sub-Committee may recall witnesses or seek further evidence to ensure that it is aware of all the facts of the case. The Appeal Hearing may be adjourned to allow for this to happen. If recall is necessary to clear points of uncertainty, both parties will return, notwithstanding the fact that only one may be concerned with the point giving rise to doubt.

Summing Up Stage

The presenting manager, followed by the appellant (or representative) will have the opportunity to sum up their case. This summing up may take into account statements made during the proceedings, but may not introduce new evidence.

Deliberation by the Appeals Sub-Committee

Both parties will withdraw, leaving the Appeals Sub-Committee to deliberate accompanied by the HR Adviser and notetaker. The Chair of the Appeals Sub-Committee will indicate to the parties whether they should wait to be recalled for the decision. The HR Adviser will provide advice as necessary. The Appeals Sub Committee should make a note of the reasoning behind its decision and keep this carefully filed for future reference if need be.

The Decision

The decision is made by the Appeals Sub-Committee and may be given to the parties verbally at the end of the meeting or later in writing. In any event the decision must be confirmed in writing by the Appeals Sub-Committee within 5 working days. The HR Adviser will provide advice on the content of the outcome letter.

Step by Step Guide to the Capability Appeal Hearing procedure

STEP 1

The Appeals Sub-Committee should ensure that there is a management notetaker.
The Chair of the Appeals Sub-Committee:

- Introduces all parties
- Explains the procedure to be followed
- Clarifies position with regard to witnesses on both sides

Presentation by the Appellant

STEP 2 The appellant or representative presents the grounds of the appeal

STEP 3 The presenting manager may ask questions of the appellant/representative on the grounds of the appeal.

STEP 4 The Appeals Sub-Committee may ask questions of the appellant/representative on the grounds of the appeal

STEP 5 The HR Adviser may ask questions of the appellant/representative on the grounds of the appeal.

The appellant's witnesses called one at a time.
The Appeals Sub-Committee introduces all parties to each witness and explains procedure.
Step 6 – Step 10 followed for each witness in turn.
It is open to the Chair of the Appeals Sub-Committee to disallow irrelevant or repetitive questioning

STEP 6 The appellant/representative presents witness evidence by asking questions of the witness

STEP 7 The presenting manager asks questions of the witness

STEP 8 The Appeals Sub-Committee asks questions of the witness

STEP 9 The HR Adviser may ask questions of the witness

STEP 10 Witnesses may be re-examined at the discretion of the Appeals Sub-Committee in the above order to clarify any further points raised during presentation of evidence

STEP 22

DELIBERATION

The Appeals Sub-Committee reaches a decision on the basis of the evidence presented. The HR adviser will provide advice as necessary. The Appeals Sub-Committee should make a note of the reasoning behind its decision and keep this carefully filed for future reference if need be.

STEP 23

DECISION

The Appeals Sub-Committee may give the decision verbally at the end of the Hearing or in writing later. In any event the decision must be confirmed in writing, within 5 days of the Appeal Hearing.

SECTION 3 GUIDELINES FOR HEADTEACHERS

Capability relating to performance

- Dealing with capability relating to performance – informal and formal action including flow chart (NB for teachers performance, informal action will be taken under the Teacher Appraisal Policy)
- Suspending an employee in exceptional circumstances of potential gross incompetence.

Capability relating to sickness or ill-health

- Return to work interview
- Process for dealing with short-term absence including flow chart
- Process for dealing with long-term sickness absence including flow chart

Preparing for a Capability Hearing

- Helpful Hints

Presenting a case at the Capability Hearing

- Some presentation 'tips'

The Role of the Hearing Officer at the Capability Hearing

- Conducting the Hearing
- Potential outcomes
- Notifying the employee of the outcome

The Role of the Appeals Sub-Committee

- Potential outcomes
- Effect of Reinstatement

Role of Schools Team Personnel

Sample Letters

- Appendix 3 – setting standards for improvement (attendance)
- Appendix 4 – outcome letter for final review period (attendance)
- Appendix 5 – long term absence (formal action)
- Appendix 6 – dismissal (ill-health)
- Appendix 7 – offer of alternative employment
- Appendix 8 – setting standards for improvement (work performance)
- Appendix 9 – formal action/final review period (work performance)

Capability relating to performance

The Headteacher should try as far as possible to resolve any issues informally through discussions with the employee as part of their day to day management responsibilities. For **teachers** this should be carried out under the school's separate Teacher Appraisal Policy as per the Education (School Teachers' Appraisal) (England) Regulations 2012 (the Appraisal Regulations). Where action under the Teacher Appraisal Policy has not resulted in the required improvement, formal action should be taken under Stage 2 of the Capability Procedure.

In many cases, dealing with performance and attendance issues early – the right actions at the right time – will often provide a more satisfactory result for both the Headteacher and employee and may well prevent the need for more formal action in the future.

The kind of matters that may be raised in informal discussions include:

- Informing the employee of where and how work performance is below standard.
- Giving the employee an opportunity to explain and to explore the issues jointly.
- Identifying, with the help of the employee, possible reasons for their poor performance.
- Agreeing a clear plan of action for improvement together with any appropriate training or support to be given and a period for review.

The employee should be told what standards are expected; how this will be reviewed and over what time period. The employee should also be made aware that if he/she fails to improve consideration will be given to taking further action. It is good practice to make a note of any such meeting for future reference and to provide a copy of the note to the employee. If the employee wishes to respond to the note then this should be attached to the note for completeness

If the employee subsequently achieves the required improvements then he/she should be informed accordingly and of the need to maintain that improvement. A copy should be placed on his/her personal file. If the employee wishes to respond to the letter then this should also be placed on the employee's personal file.

The Headteacher should continue to monitor performance in accordance with the action plan. Where the improvements in performance are not achieved or maintained for a period of at least six months then the Headteacher may either impose a further review period with a further informal oral warning of what the consequences will be if he/she fails to improve or take formal action.

Schools' Team Personnel will provide advice and support if necessary

Any informal action may be taken into account in any formal action