

Guidance for Schools

Managing Unsatisfactory Performance Support Staff in Schools

Document Number: 38(a)
Approved: Christina Hall (Headteacher)
Alan Smith (Chair)

Date: July 2015
Approved 07.02.2018

Contact: Human Resources – 01905 766188

CONTENTS

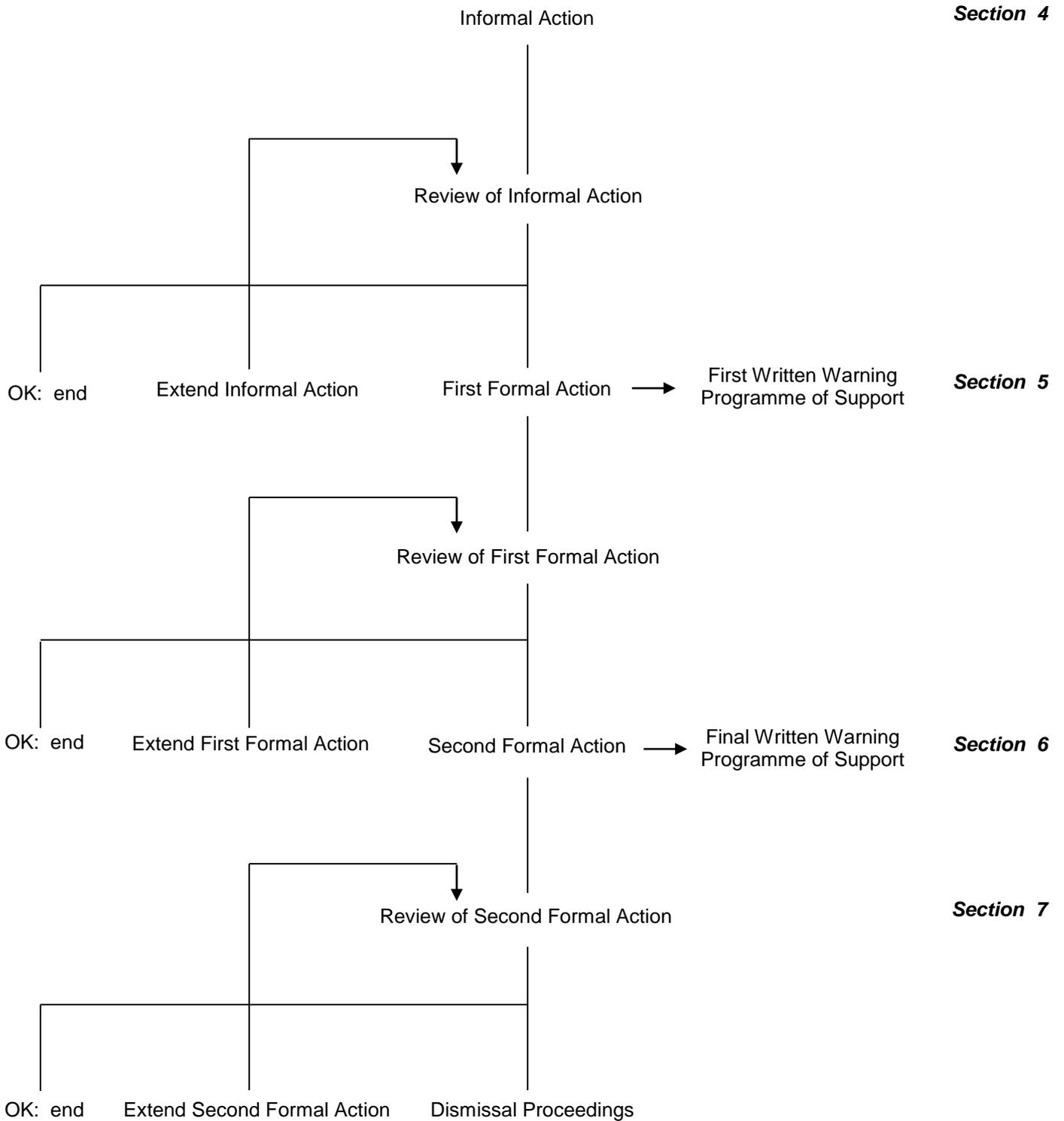
Page No.

FLOWCHART CHECKLIST	1
MANAGING UNSATISFACTORY PERFORMANCE SUPPORT STAFF IN SCHOOLS	2
1. Introduction	2
2. Interpretation	2
3. Principles	3
4. Informal Action	4
5. Review of Informal Action / First Formal Action.....	5
6. Review of First Formal Action / Second Formal Action	5
7. Review of Second Formal Action	7
8. Dismissal Proceedings	7
9. Appeals Procedure	8

APPENDICES

APPENDIX 1 - Delegation of Authority for Dismissal.....	10
APPENDIX 2 - Recommended Procedure for a Dismissal Hearing	11
APPENDIX 3 - Recommended Procedure for Hearing of Appeals	13

MANAGING UNSATISFACTORY PERFORMANCE SUPPORT STAFF IN SCHOOLS



MANAGING UNSATISFACTORY PERFORMANCE SUPPORT STAFF IN SCHOOLS

(CAPABILITY PROCEDURE)

1. Introduction

- 1.1 There may be occasions when the performance of an employee appears to be unsatisfactory. This procedure is intended to provide a way in which such a problem can be resolved in a fair and reasonable manner. In cases where an employee is not meeting the required standards of performance due to a perceived lack of ability, skill, experience, knowledge or aptitude and there is no evidence of deliberate or wilful misconduct, it is most appropriate to use this procedure. However, there may be instances of deliberate contravention of expectations or negligence which could be seen as an act of misconduct, where the Disciplinary Procedure should be used. Poor performance due to medical conditions would normally be dealt with through the Managing Sickness Absence procedure.
- 1.2 These procedures will apply to all support staff in schools, except those still within their probationary period (see separate document: Probation - Policy and Procedure). Concerns regarding the performance of a teacher should be dealt with under the Procedure for the Support of Teachers in Relation to Professional Performance.
- 1.3 It should be noted that Voluntary Aided Church schools may have their own separate arrangements recommended by the diocesan authorities.

2. Interpretation

- 2.1 References to the Line Manager will refer to the Headteacher or any senior member of staff at the school who has responsibility for the day-to-day management of the employee in question.
- 2.2 The employee has the right to be represented by a colleague or trade union representative at all formal stages of the procedure, including any appeal hearing.
- 2.3 If the manager is contemplating taking action under this procedure against an employee who is a trade union representative, he/she should seek the advice of HR Consultancy for Schools beforehand. An early discussion should take place with a regional official of the union and the employee will have the right to be accompanied at any formal meetings by his/her regional official. However, the same standards of performance should apply to trade union representatives as all other staff.
- 2.4 The employee has the right to appeal against any warning issued by the Line Manager. He/she also has the right of appeal against a decision taken by the Headteacher and/or Governors that he/she should cease to work at the school. The procedure for appeals is given at Appendix 3.

- 2.5 At any stage within the procedure, the employee may ask for consideration to be given to an alternative post within the school, which may be more suitable to his/her capabilities.
- 2.6 If the employee is not receiving the maximum salary for the grade of the post, the Headteacher may consider withholding the next salary increment where performance does not justify progression. This is subject to appeal under the provisions of the school's Pay Policy. Any increment withheld may be paid subsequently if performance becomes satisfactory.
- 2.7 Periods of time and deadlines in this document may be varied by the mutual agreement of the parties concerned.
- 2.8 For the purposes of this procedure, for those staff who are employed to work on a term-time only basis, 'working days' shall mean days when pupils are in school and Teacher Education Days (if contractual). Where the employee is employed on a part-time basis, meetings should be arranged to take place on his/her normal working day, unless this is impossible or an alternative day is mutually agreed.
- 2.9 If justified by the circumstances, consideration could be given to the omission of stages in this procedure if warranted by the seriousness or impact of the unsatisfactory performance. Please seek advice from HR Consultancy for Schools if you think that this may be applicable.

3. Principles

- 3.1 As part of their normal management role, line managers in schools will, from time to time, discuss aspects of an employee's performance with him/her, including appraisal meetings. Such discussions will take place on an informal basis and should not be constrained by, or come within the scope of this procedure.
- 3.2 Problems should be raised and discussed at the earliest possible opportunity and resolved where possible without recourse to formal procedures. However, the failure of the normal arrangements for maintaining or improving the performance of an employee will be grounds for invoking the formal procedure.
- 3.3 If a grievance is received in response to action under this procedure, advice should be sought from HR Consultancy for Schools. The Grievance Procedure should not be used in order to delay proceedings as in most cases it will be appropriate to deal with any grievance as matters to be considered within the existing meetings under this procedure, or as a reason for appeal against a warning. However, the actual reason for the grievance and its relationship with the proceedings should be considered carefully and a decision taken whether it is appropriate to postpone action and deal with the matter separately.
- 3.4 If the employee is absent from work due to illness for a significant time within the review period, consideration may need to be given to extending the period of review. Advice from Occupational Health should be sought with regard to the absence and fitness for work.

4. Informal Action

- 4.1 As part of normal day-to-day management, the Line Manager may observe aspects of poor performance and should endeavour to identify where any problems lie and propose measures / support to improve the situation. At an informal meeting, the employee should be encouraged to say whether he/she agrees with the manager's assessment of their performance and, if so, whether there are any underlying reasons, e.g. sickness, disability or personal problems. If so, advice should be sought from HR Consultancy for Schools so that such issues can be addressed sympathetically but decisively. In the case of disability, consideration must be given to any reasonable adjustments that could be made in accordance with the Equality Act 2010.
- 4.2 Consideration may need to be given to whether performance is hampered by external factors, e.g. tools, systems or other staff. If so, the Line Manager should investigate those external factors and seek a resolution.
- 4.3 Where the reason for the poor performance is a lack of required skills, the employee, where practicable, should be assisted through training and support and be given reasonable time to reach the required standards of performance.
- 4.4 Training and support could include the following:
- clarification of job role, procedures, expectations, etc.
 - relevant training provision
 - observation of, and discussion with, a colleague mentor – possibly in another school
 - joint working on projects
 - regular meetings with the Line Manager
 - other support measures suggested by the employee.
- Support should be designed to meet the needs of the individual and the circumstances. This list gives examples and is neither exhaustive, nor is it meant to act as a checklist which has to be applied rigidly by the parties concerned.
- 4.5 The concerns, expectations and support measures must be explained to the employee and a date to review performance set. Arrangements must be confirmed in writing and the employee must be made aware that failure to improve may lead to formal action being taken. The period of review will need to be sufficient to allow improvement and for monitoring to take place, without being unnecessarily protracted. *See Model Letter A.*
- 4.6 Before the review date is reached, the Line Manager will need to consider whether he/she believes that performance has reached an acceptable level.
- 4.7 If the Line Manager decides that performance is at an acceptable level (or that sufficient progress has been made) the employee will be informed of this at a brief informal meeting and agreement will be reached on whether any continuing support is required. *See Model Letter B.*
- 4.8 If the informal action does not bring about an improvement, or if warranted by the seriousness or impact of the unsatisfactory performance, then the employee must be advised that formal action will be taken and the letter under 5.1 issued.

5. Review of Informal Action / First Formal Action

- 5.1 If the Line Manager considers that there has been insufficient or no improvement in performance of the areas discussed following informal action, or where circumstances justify that formal action commences, he/she will invite the employee to a formal meeting. The employee will be given at least 10 working days' notice of that meeting and will be entitled to be accompanied by a colleague or trade union representative. The employee must be given a copy of this procedure and any relevant documentation regarding the performance issue(s). *See Model Letter C.*
- 5.2 The purpose of the meeting is to detail and review the support already provided; to define the aspects of performance which are still unsatisfactory; to allow the employee and/or his/her colleague or union representative to express their views and/or to offer an explanation and, if necessary, to consider further training and support.
- 5.3 A first written warning will be given detailing the precise nature of the poor performance and the level of improvement required. This will be confirmed in writing within 5 working days of the meeting and the employee will be informed of his/her right to appeal against the warning. First written warnings have a time limit of 6 months. The Line Manager will need to determine, with the employee, an appropriate review period within the duration of this warning; during which time support and advice will continue and progress will be monitored. *See Model Letter D.*
- 5.4 The first written warning should clearly set out:
- (i) the date of the Review Meeting
 - (ii) details of the unsatisfactory performance
 - (iii) details of the support and monitoring measures to be made available over the review period
 - (iv) the proposed date of the review of performance
 - (v) a warning that further unsatisfactory performance may lead to further and more serious action under this procedure
 - (vi) the date when the warning will lapse (i.e. 6 months from date of meeting)
 - (vii) the right to lodge an appeal within 10 working days of receipt of the letter and the right to representation at any appeal (see Appendix 3)
 - (viii) where no appeal is made the employee may submit a statement of mitigation to be held on file with the warning.
- 5.5 A written warning should be extended pro rata to any period(s) of absence of, or aggregating to, 20 or more working days. Consideration may also be given to extending the review date.

6. Review of First Formal Action / Second Formal Action

- 6.1 Although the review date is set, the employee will be reminded of it at least 5 working days' before the meeting and will be entitled to be accompanied by a colleague or trade union representative. The Line Manager will need to consider whether performance has reached an acceptable level and should give an indication of this view in writing to the employee before any meeting to consider further action takes place. The employee must be given any relevant documentation regarding the performance issue(s). *See Model Letter E.*

- 6.2 The purpose of the meeting is to detail and review the support already provided; to consider whether performance has reached an acceptable level; if appropriate, to define the aspects of performance which are still unsatisfactory; to allow the employee and/or his/her colleague or union representative to express their views and/or to offer an explanation and, if necessary, to consider further training and support.
- 6.3 If the Line Manager decides that performance is at an acceptable level (or that sufficient progress has been made) the employee will be informed of this at the Review Meeting and agreement will be reached on whether any continuing support is required. However, the warning will remain in force until the date determined (i.e. 6 months from the date of the imposition of the warning) and, should the improvement in performance not be maintained for the life of the warning, then the Line Manager may decide to re-invoke the procedure at this stage. *See Model Letter F.*
- 6.4 Where the Line Manager considers that there has been some progress, although performance is still not at an acceptable level, he/she will have the alternative option of extending the life of the first written warning by a period of 3 to 6 months. In this case, a further review date will be set and the process outlined under Section 6 would be followed again. *See Model Letter G.*
- 6.5 If the Line Manager considers that there has been insufficient or no improvement in performance of the areas concerned, a final written warning will be given detailing the precise nature of the poor performance and the level of improvement required. This will be confirmed in writing within 5 working days of the meeting. Final written warnings will have a time limit of 18 months. The Line Manager will need to determine, with the employee, an appropriate review period within the duration of this warning. *See Model Letter D.*
- 6.6 The final written warning should clearly set out:
- (i) the date of the Review Meeting
 - (ii) details of the unsatisfactory performance
 - (iii) details of the support and monitoring measures to be made available over the review period
 - (iv) the proposed date of the review of performance
 - (v) a warning that further unsatisfactory performance may lead to further and more serious action under this procedure
 - (vi) the date when the warning will lapse (i.e. 18 months from date of meeting)
 - (vii) the right to lodge an appeal within 10 working days of receipt of the letter and the right to representation at any appeal (see Appendix 3)
 - (viii) where no appeal is made the employee may submit a statement of mitigation to be held on file with the warning.
- 6.7 A written warning should be extended pro rata to any period(s) of absence of, or aggregating to, 20 or more working days. Consideration may also be given to extending the review date.

7. Review of Second Formal Action

- 7.1 Although the review date is set, the employee will be reminded of it at least 5 working days' before the meeting and will be entitled to be accompanied by a colleague or trade union representative. The Line Manager will need to consider whether performance has reached an acceptable level and should give an indication of this view in writing to the employee before any meeting to consider further action takes place. The employee must be given any relevant documentation regarding the performance issue(s). *See Model Letter E or H.*
- 7.2 The purpose of the meeting is to detail and review the support already provided; to consider whether performance has reached an acceptable level; if appropriate, to define the aspects of performance which are still unsatisfactory; to allow the employee and/or his/her colleague or union representative to express their views and/or to offer an explanation and, if necessary, to consider further training and support.
- 7.3 If the Line Manager decides that performance is at an acceptable level (or that sufficient progress has been made) the employee will be informed of this at the Review Meeting and agreement will be reached on whether there will need to be any continuing support. However, the final written warning will remain in force until the date determined (i.e. 18 months from the date of the imposition of the warning) and, should the improvement in performance not be maintained for the life of the final written warning, then the Line manager may decide to re-invoke the procedure at this stage. *See Model Letter F.*
- 7.4 Where the Line Manager considers that there has been some good progress, although performance is still not at an acceptable level, he/she will have the option of extending the life of the final written warning by a period of 3 to 6 months. In this case, a further review date will be set and the process outlined under Section 7 would be followed again. *See Model Letter G.*
- 7.5 If the Line Manager considers that there has been insufficient or no improvement in performance of the areas concerned then he/she may decide to recommend to the Headteacher and/or Governors of the school that the employee cease to work at the school and will call a hearing. *See Model Letter H.*

8. Dismissal Proceedings

- 8.1 The employee must be given written notice of the hearing setting out:
- (a) the date, time and location of the hearing
 - (b) the right of the employee to be accompanied by a colleague or trade union representative and to call witnesses
 - (c) details of the unsatisfactory performance, together with copies of any documentary information which it is proposed to present to the 'Decision Makers'
 - (d) that the result of the hearing could be a recommendation for dismissal and that it is very important for him/her to attend. *See Model Letter I.*
- 8.2 Notice of the hearing must be sent to the employee at least 10 working days before the date of the hearing in order to allow reasonable time for him/her to arrange representation.

- 8.3 A copy of these procedures must be sent with the notice of the hearing.
- 8.4 The 'Decision Makers' must ensure that the hearing is conducted in a fair and reasonable manner and in accordance with the principles of natural justice.
- 8.5 The procedure to be followed at the hearing is laid out in Appendix 2 to these procedures.
- 8.6 At this hearing, the 'Decision Makers' may exercise their discretion to recommend dismissal, no action or an alternative course of action. This action may involve an extension of the period of final warning with further support and monitoring; transfer to an alternative, possibly differently graded post, together with any training thought necessary; other action thought appropriate in the circumstances.
- 8.7 If, having regard to all the circumstances, the decision of the 'Decision Makers' is that the employee should cease to be employed at the school, this will be confirmed by letter to the employee concerned within 5 working days. The letter should set out:
- (a) the date of the hearing
 - (b) details of the unsatisfactory performance, including reference to any previous warnings under this procedure
 - (c) a statement that the Governing Body (through delegated responsibility) has determined that the employee should cease to be employed at the school
 - (d) the effective date of the cessation bearing in mind the required period of contractual or statutory notice (whichever is greater)
 - (e) the right to lodge an appeal within 10 working days and the right to representation in an appeal. *See Model Letter J.*
- 8.8 The Governing Body must notify the Local Authority of the determination that the employee should cease to work at the school and the reasons for it. For schools other than Aided / Foundation / Trust schools, the LA must give the employee notice of the termination of his/her contract, within 14 days.

9. Appeals procedure

- 9.1 The Appeals Procedure is intended to afford an employee a full and fair opportunity to present an appeal against any decision of the Headteacher / Line Manager or Governors in respect of a first or final warning, dismissal or action as an alternative to dismissal. The purpose of appeals hearing is to consider whether procedures in previous hearings have been properly conducted and whether a reasonable conclusion was reached. They are not intended to re-hear the case although the Appeals Panel will require sufficient detail to reach a fair outcome.
- 9.2 The appeal must be lodged in writing and must set out the grounds of the appeal. It should be addressed to the Clerk to Governors who will ensure that it is referred to the Headteacher and Governors. The appeal must be lodged within 10 working days of the notification of the warning or determination that an employee should cease to work at the school.

- 9.3 The hearing of any appeal in respect of a decision that a person should cease to work at the school shall be delegated to a committee, known as the Dismissal Appeal Panel. The Dismissal Appeal Panel should have three Governors (other than in exceptional circumstances) and must exclude any Governors involved in the hearing leading to the appeal. In the case of sanctions short of dismissal, the appeal may be heard by the Headteacher (where the warning has been issued by the Line Manager) or by one or more Governors, as determined by the Governing Body.
- 9.4 The appeal may be presented by the employee or his/her representative. An HR Adviser will attend to give advice and should not be the same person who advised at the hearing stage.
- 9.5 The employee will be given at least 10 working days' notice of the date, time and location of the hearing and must be advised of the right to representation and the procedural conduct of the hearing as described in Appendix 3.
- 9.6 At the end of the hearing a decision shall normally be announced but exceptionally it may be appropriate to reserve a decision so that fuller consideration can be given to all matters raised at the appeal.
- 9.7 The Dismissal Appeal Panel or Appeals Panel may decide to:
- (a) allow the appeal wholly or in part, in which case any subsequent action should be considered and specified in the decision
 - (b) dismiss the appeal.
- If an appeal against dismissal is upheld, notification of dismissal would be rescinded and continuity of employment would not be broken.
- 9.8 The decision will be communicated in writing to the employee and his/her colleague or trade union representative within 5 working days of the decision.

There is no further appeal to the Governing Body.

DELEGATION OF AUTHORITY FOR DISMISSAL

Dismissal of Staff other than Headteacher

Under the School Staffing (England) Regulations 2009 the Governing Body may delegate its power to determine that any person employed or engaged by the LA to work at the school should cease to work there (Community, Voluntary Controlled, Community Special and Maintained Nursery) or to dismiss its staff (Foundation, Voluntary Aided, Trust, Foundation Special) to:

- (a) one or more Governors and the Headteacher which may be called a Staff Dismissal Committee
- (b) one or more Governors
- (c) the Headteacher.

For the purposes of Appeal rights the Governing Body must appoint a Dismissal Appeal Panel. This should be a panel of three Governors, other than in exceptional circumstances. No Governor to whom the power to dismiss was delegated may sit on the Dismissal Appeal Panel. The Headteacher may not sit on the Dismissal Appeal Panel.

For ease of understanding, those who have the delegated authority to dismiss will be referred to in these proceedings as 'Decision Makers'.

Rights of Attendance / Advisory Rights

1. Where the Governing Body has delegated dismissal powers of staff other than the Headteacher to one or more Governors, the Headteacher has a right under the 2009 Regulations to attend at and give advice to all relevant meetings / hearings held by those Governors and they must consider that advice in coming to their decisions. That advice shall be given by the Headteacher in the course of the presentation of the case against the employee.
2. For Community, Voluntary Controlled, Community Special and Maintained Nursery schools, the Local Authority has a statutory entitlement to send a representative and offer advice to all proceedings relating to dismissal and those to whom the function has been delegated must consider that advice in coming to their decision. This advice may be provided by an HR Adviser.

Note: Reserves will only be used in emergencies and following consultation with HR Consultancy for Schools and the recognised unions. In the event of the Clerk to the Committee being unavailable, notes may be taken by another person requested by the Committee.

RECOMMENDED PROCEDURE FOR A DISMISSAL HEARING

1. Pre-meeting of 'Decision Maker(s)', HR Adviser(s) to clarify any procedural matters.
2. Hearing: In addition to those attending the pre-meeting

Employee and representative
Headteacher / Line Manager and Adviser (if appropriate) ('Management')
Clerk

(Any witnesses will be called as required and will be present only during the time in which they give their evidence and answer questions.)

The meeting will be chaired by the 'Decision Maker', where he/she is sitting alone, or, where there is a Staff Dismissal Committee, then the committee should select a Chair from within their number.

Order of Business:

- (a) Chair to introduce those present and to outline the order of business.
- (b) Chair to remind those present of the confidential nature of the proceedings.
- (c) Chair to clarify that it is not intended to make available notes of the meeting. The Clerk will record as necessary for the purposes of the Governors, and no unreasonable restriction will be placed on the employee or representative if they wish to make notes for their own use. The use of tape recorders, cameras, etc. for this purpose is not allowed.
- (d) 'Management' will state the case against the employee and may call witnesses.
- (e) The employee and/or his/her representative may ask questions of 'Management' and witnesses.
- (f) The 'Decision Maker(s)' may ask questions of the witnesses and 'Management' as appropriate.
- (g) Witnesses may be re-examined by 'Management'.
- (h) The employee or representative will state the case and may call witnesses.
- (i) 'Management' may ask questions of the employee and/or witnesses.
- (j) The 'Decision Maker(s)' may ask questions of the employee and/or witnesses as appropriate.
- (k) The employee and/or his/her representative may re-examine the witnesses.

- (l) 'Management' will conclude with a concise summary of the case but will introduce no new factors.
- (m) The employee or representative will conclude with a concise summary of the case but will introduce no new factors.
- (n) 'Management', employee and representative withdraw while the 'Decision Maker(s)' consider the case.
- (o) 'Decision Maker(s)' to consider the action open to them and to reach a decision.
- (p) 'Management', employee and their representative to be recalled and informed of the decision by the Chair.
- (q) The employee to be informed by HR Adviser of any implications of the decision and any appeal rights.
- (r) A formal minute will be made of the outcome of the hearing.
- (s) The decision will be confirmed to the employee in writing within 5 working days of the hearing.

Note: The HR Adviser to the 'Decision Maker(s)' may attend any such hearing, ask questions at any point and advise the 'Decision Maker(s)' as appropriate, including during their period of consideration.

RECOMMENDED PROCEDURE FOR HEARING OF APPEALS

1. Pre-meeting of the Dismissal Appeal Panel / Appeals Panel and HR Adviser to clarify any procedural matters.
2. Hearing: In addition to those attending the pre-meeting.

Employee and representative as Appellant
Headteacher / Line Manager / Adviser ('Management') as Respondent
Clerk

(Any witnesses will be called as required and will be present only during the time in which they give their evidence and answer questions.)

The Appeal Panel should select a Chair from within their number to chair the meeting.

Order of Business:

- (a) Chair to introduce those present and to outline the order of business.
- (b) Chair to remind those present of the confidential nature of the proceedings.
- (c) Chair to clarify that it is not intended to make available notes of the meeting. The Clerk will record as necessary for the purposes of the Governors, and no unreasonable restriction will be placed on the employee or representative if they wish to make notes for their own use. The use of tape recorders, cameras, etc. for this purpose is not allowed.
- (d) The Chair will either read or circulate to all those present a copy of the warning or decision to dismiss against which the appeal is being made.
- (e) The Appellant will state his/her case and may call witnesses.
- (f) The Respondent may ask questions of the Appellant or witnesses.
- (g) The Governors and the HR Adviser may ask questions of the Appellant and witnesses as appropriate.
- (h) Witnesses may be re-examined by the Appellant.
- (i) The Respondent will state his/her case and may call witnesses.
- (j) The Appellant may ask questions of the Respondent and witnesses.
- (k) The Headteacher / Governor(s) and the HR Adviser may ask questions of the Respondent and witnesses as appropriate.

- (l) The Respondent may re-examine the witnesses.
- (m) The Appellant will conclude with a concise summary of the case but will introduce no new factors.
- (n) The Respondent will conclude with a concise summary of the case but will introduce no new factors.
- (o) The Appellant and Respondent (and their representatives) will withdraw while the Appeal Panel consider the case.
- (p) The Appeal Panel will consider the case and the actions open to them and reach a decision.
- (q) Appellant and Respondent will be recalled and informed of the decision by the Chair.
- (r) A formal minute will be made of the outcome of the hearing.
- (s) The decision will be confirmed to the employee in writing within 5 working days of the hearing.
- (t) If the decision is to rescind a determination that the employee should cease to work at the school, the Local Authority must be informed without delay.

Note: The HR Adviser to the Appeal Panel may attend any such hearing, ask questions at any point and advise the Appeal Panel as appropriate, including during their period of consideration.