KALEIDOSCOPE
Multi Academy Trust

CAPABILITY POLICY

Approved by: Kaleidoscope Trust Board	**Date:** September 2026
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CAPABILITY POLICY

The Trust Board of Kaleidoscope Multi-Academy Trust (KMAT) adopted this policy on 9th September 2026.

Consultation has taken place with staff and/or recognised trade unions, including ASCL, the NEU, the NAHT, the NASUWT and the support staff trade unions.

1. PURPOSE

1.1 This policy sets out the arrangements that will apply in serious cases where there have been failures to meet job expectations, resulting in negative consequences on pupils and the organisation. This procedure applies only to employees where there is a capability issue that the appraisal process, including any informal support arrangements, have been unable to address.

1.2 KMAT seeks to ensure the effective performance of all its staff in order to deliver the aims and vision of the School/Trust. This policy is designed to support and encourage all employees who are experiencing serious, on-going difficulties in achieving and maintaining satisfactory levels of performance through ensuring that performance expectations and standards are defined, performance is monitored and employees are given appropriate feedback, training and support to meet these standards. KMAT will ensure that all employees are treated fairly and consistently when addressing cases of underperformance. The general principles underpinning the capability procedure are set out within Appendix B1.

2. INTRODUCTION

2.1 As part of the normal management and appraisal process Headteachers/Executive Headteachers and other relevant school managers (or, in the case of Headteachers/CEOs, Local Partners/Trust members), may from time to time discuss aspects of performance with a member of staff were there are concerns that an employee may not be performing to an acceptable standard. Such discussions will take place informally and do not come within the scope of the Capability Procedure. The status of these 'informal' discussions shall be made known to the employee. It is envisaged that most areas for concern can generally be dealt with through informal discussion and coaching.

2.2 Should there be clear evidence of sustained underperformance despite the employee being supported through the normal management and appraisal process including the period of informal support under the Appraisal Policy, the matter should be dealt with under this formal Capability Procedure.

2.3 If it is the Headteacher/Executive Headteacher who is subject to the Capability Procedure, the CEO will conduct formal capability meetings the a sub-group of Local Partners responsible for the appraisal of the Headteacher/Executive Headteacher (the Appraisal Review Committee) should conduct the Formal Capability Meetings and the Capability Review Meeting. In the case of the CEO, this will be led by the Trustees involved in the CEOs Appraisal process. If it is another teacher or a member of the

support staff the Headteacher/Executive Headteacher or the relevant manager should conduct the Formal Capability Meetings and the Capability Review Meeting.

3. SCOPE AND LINK TO OTHER POLICIES

3.1 This policy/procedure applies to Headteachers/Executive Headteachers/Heads of School, teaching and support staff and is intended to be used when there are capability concerns that the appraisal process has been unable to address or in the most serious cases of failure to meet job expectations and relevant standards. The Capability Policy will apply where it is identified that an employee has insufficient skill or aptitude to carry out their duties to an acceptable standard and/or where an employee does not possess required qualifications to do the job because he/she has failed to obtain them.

3.2 It is recognised that staff who may be new to a role and lack the necessary experience may need additional support to develop their skillset under the Appraisal Policy before moving to the Capability Procedure and that staff may be struggling with workload capacity issues and, if so, should be supported through workload reduction strategies under the Appraisal Policy before any decision is taken to move them to the Capability Procedure.

3.3 The Capability Policy does not apply in the following circumstances:

- Where the underperformance of an employee relates to negligence or an attitudinal problem on the part of the employee (the School's Disciplinary Policy will apply). Any concerns will be investigated as necessary under the Disciplinary Policy.

- Where the underperformance of an employee relates to an underlying medical issue or a disability (the Schools Attendance Management Policy will apply).

- Where the underperformance of an employee is identified during the employee's Probationary period (the Schools' Probationary Procedure will apply) (support staff only).

- Where no employment relationship exists, for example agency workers, casual/supply workers, volunteers, work experience placements.

3.4 Early Career Teachers: in the event of 'serious capability problems' during the induction period of an Early Career Teacher (ECT) the Capability Procedure can be applied to the Early Career Teacher. If the capability procedure is applied to the ECT, 'for as long as the teacher remains at the [school] the induction process must continue in parallel the capability procedure'. For further information for ECTs who started their induction prior to 1 September 2021, please see the Department for Education's (DfE's) 'Statutory Guidance on Induction for Newly Qualified Teachers (England)' (2018) (specifically paragraph 4.4). For further information for ECTs who started their induction on or after 1 September 2021, please see the Department for Education's (DfE's) 'Statutory Guidance on Induction for Early Career Teachers (England)' (2021) (specifically paragraph 4.7).

4. PROCEDURE

4.1 Notification of a formal capability meeting should never come as a surprise to the employee concerned. Informal support and a Performance Improvement Plan should mean that the employee is fully aware of the concerns being raised and they should have had every opportunity to improve in a supportive environment.

4.2 Specifically, before instigating the formal capability procedure any cause for concern about the performance of an employee should have already been the subject of discussions as part of the normal management and appraisal process and, except in the most serious cases of failure to meet job expectations and relevant standards, the employee should have been given an opportunity to improve under the Appraisal Policy. Please see paragraph 11 in the Appraisal Policy. As part of these discussions the appraiser(s) will have reviewed with the employee expected standards of performance to ensure that these are appropriate and reasonable. They will also have drawn the attention of the employee to the ways in which performance is deficient, provided the employee with an opportunity to make representations, and except in the most serious cases, to improve with informal support under the Appraisal Policy. They will also, should the outcome of the review meeting at the end of the informal support period be that there is no or insufficient improvement in their performance having been given the opportunity with informal support to improve under the Appraisal Policy, have notified the employee that the Appraisal Policy will no longer apply, that their performance will be managed under the Capability Procedure, and that they will be invited to a Formal Capability Meeting.

4.3 The most serious cases of failure to meet job expectations and relevant standards are those where there are substantial negative consequences for the pupils or the School.

Please see paragraph 10 'Arrangements for Formal Meetings' for the pre-meeting arrangements ahead of the Formal Capability Meeting.

5. FORMAL CAPABILITY MEETING

5.1 The aim of the discussion at this meeting is to jointly identify with the employee the facts that have contributed to the performance concerns and to decide the action required. The meeting will be conducted by the appraiser(s) of the employee (that is, by the CEO and appraisal sub-group of Local Partnership Committee/members of the Trust Board (in the case of the Headteacher/Executive Headteacher), The Trustees involved in the CEOs appraisal in the case of the CEO or the Headteacher/Executive Headteacher/other suitable senior member of staff (in the case of other employees)). At the meeting, the required standards of performance which have not been met by the employee should be set out. The employee is entitled to be accompanied by a trade union representative, official employed by a trade union or work colleague at this meeting.

5.2 The meeting allows the employee to respond to concerns about their performance and to make any relevant representations. At this meeting the employee should be reminded of the previous informal discussions held regarding their performance and told of the continued shortcomings of their performance. The employee should be given an opportunity to give their interpretation on the concerns being raised.

5.3 During the meeting, evidence shall be presented and witnesses shall be called where appropriate and necessary. The employee shall be allowed to ask questions, present their own evidence and rely on their own witnesses where appropriate and necessary, and will be permitted to respond to the evidence and ask questions.

5.3 This meeting may provide new information or a different context to the information/evidence already collected. The person conducting the meeting may adjourn the meeting for example if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.

5.4 Where, following discussion with the employee, the person conducting the meeting concludes that there are no or insufficient grounds for pursuing the capability issue formally through the Capability Procedure and that it would be more appropriate to continue to address the remaining concerns through the appraisal process, the employee will be notified in writing that the Capability Procedure will not be pursued and the normal appraisal process will resume.

5.5 Where the conclusion is that the employee is not meeting the required standards in performance the person conducting the meeting will:

- Confirm for the employee their performance shortcomings
- Give clear guidance on the improved standard of performance needed to ensure that the employee can be removed from formal capability procedures (this may include the setting of new objectives focused on the specific weaknesses that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made*)* (please note these new specific objectives may be part of existing objectives, the normal expectation is that the pre-existing appraisal objectives would not be re-set, though they may need to be modified or priority given to the specific objectives for the duration of the Capability Procedure)*;*
- Explain any support that will be available to help the employee improve their performance;
- Give the employee the opportunity to discuss any support/action/improvement plan with their trade union representative before they agree to it (the meeting may be adjourned and then reconvened to allow this discussion to take place);
- Set out the timetable for improvement taking into account the employee's personal circumstances (this may include any medical conditions, working pattern, well-being support needs or disabilities protected by the Equality Act 2010). The time period will depend on the circumstances of the individual case and should be reasonable and proportionate and should provide sufficient opportunity for an improvement to take place. This period will normally be for a minimum of six weeks (the length of the period required will depend on the concerns raised with the employee and the nature of any support and training needed);
- Explain how performance will be monitored and reviewed;
- Warn the employee through issuing a First Written Warning that failure to improve within the set period could lead to a Final Written Warning and ultimately their dismissal.

Notes:

- A Final Written Warning may be issued at this Formal Capability Meeting in the most serious cases.
- An employee has the right of appeal against a written warning.
- If agreement on the support/action plan is not possible, the manager will, in the last resort, determine the content of the support/action/improvement plan but the employee will be given the opportunity to record the details of their disagreement with it and the manager must record the reasons why they did not agree to the employee's proposed changes to the plan. The employee may appeal against the written warning on the grounds that they are not in agreement with the support/action/improvement plan. Every effort should be made by both parties to reach an agreement on the support/action/improvement plan.

5.6 Notes will be taken of the formal capability meeting and a copy sent to the employee. Where a warning is issued, the employee will be informed in writing of the matters covered in the bullet points above and given information about the timing and handling of the review stage and the procedure and time limits for appealing against the warning.

5.7 A performance monitoring and review period will follow all Formal Capability Meetings. Formal monitoring, evaluation, guidance and support/feedback will continue during this period. Where considered appropriate, a mid-review period meeting will be held with the employee to discuss progress and support put in place and whether there are any adjustments needed to the support arrangements***.*** The employee is entitled to be accompanied by a trade union representative, official employed by a trade union or work colleague at this meeting. At the end of the review period the employee will be invited to a Formal Capability Review Meeting, unless they were issued with a final written warning, in which case they will be invited to the Decision Meeting/Capability Hearing (see Paragraph 7 below).

Please see paragraph 10 'Arrangements for Formal Meetings' for the pre-meeting arrangements ahead of the Formal Capability Review Meeting.

6. FORMAL CAPABILITY REVIEW MEETING

6.1 The meeting will be conducted by the appraiser(s) of the employee (that is, by the appraisal sub-group of Local Partnership Board/members of the Trust Board (in the case of the Headteacher/Executive Headteacher/CEO) or the Headteacher/other suitable senior member of staff (in the case of other employees)). The employee is entitled to be accompanied by a trade union representative, official employed by a trade union or work colleague at this meeting.

6.2 If the person conducting the meeting is satisfied that the employee has made sufficient improvement, the Capability Procedure will cease and the appraisal process will resume.

6.3 If, following discussion with the employee, the assessment is that the employee has made some progress and there is confidence that, given a further reasonable period, they will achieve the standards of performance required, it may be appropriate to extend the monitoring and review period, normally for four weeks and to re-convene the Formal Capability Meeting at the end of this extended period.

6.4 If, however, the assessment is that no, or insufficient improvement has been made during the monitoring and review period, the employee will receive a Final Written Warning which will set out the areas where performance standards have not been met, targets for improvement, any measures (training and supervision) which will be taken to improve performance, a period for the review and the consequences of not meeting the expected performance standards. The review period should not normally exceed four weeks, however there may be circumstances, where some improvement is being demonstrated, in which, due to a need to allow sufficient time to the employee demonstrate sustained improvement or to allow new practices to become embedded, that the period allowed is longer. Where considered appropriate, a mid-review period meeting will be held with the employee. An employee has the right of appeal against a written warning.

6.5 Notes will be taken of the Formal Review Meeting and a copy sent to the member of staff. Where a final warning is issued, the employee will be informed in writing that failure to achieve an acceptable standard of performance within the set timescale may result in dismissal and given information about the handling of the further monitoring and review period and the procedure and time limits for appealing against the final warning.

6.6 At the end of the further monitoring and review period the employee will be invited to a Decision Meeting or a Capability Hearing to review their progress against the standards of performance required.

7. DECISION MEETING/CAPABILITY HEARING

7.1 The Decision Meeting will be conducted by the appraiser(s) of the employee (that is, by the appraisal sub-group of Local Partnership Board/members of the Trust Board (in the case of the Headteacher/Executive Headteacher/CEO) or the Headteacher/Executive Headteacher other suitable senior member of staff (in the case of other employees)).

7.2 Where the Headteacher/Appraisal Sub-Group of Local Partnership Board has previously been involved in issuing formal warnings as part of the process, serious consideration should be given to whether any decision whether to dismiss should be referred to a Hearing conducted by a separate Panel.

7.3 Where the Hearing/Governors' Panel is convened, three Governors, (or two if there are not enough Governors who have not been involved in any action or decision connected with the dismissal), must hear the representations and recommendations brought by the appraiser(s) (the Headteacher/senior member of staff/Chair of the Appraisal Sub-Group of Governors/Trustees), and any representations that the employee may wish to make. Options to identify a third governor to sit on the panel should be fully explored.

7.4 The Decision Meeting/Capability Hearing will be conducted in accordance with the Protocol for the Decision Meeting/Capability Hearing (see Appendices B4) to consider whether a) the capability procedure should end; b) the final warning should be extended or c) the employee should be dismissed or required to cease working at the School. The employee is entitled to be accompanied by a trade union representative, official employed by a trade union or work colleague at this meeting/hearing.

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7.5 On request by the School/Trust, a member of the HR Advisory Service will attend the meeting/hearing to advise the CEO and Headteacher/Executive Headteacher Appraisal Sub-Group of Local Partners/Local Partners/Trustee Panel on procedural matters.

7.6 The Headteacher/Executive Headteacher or relevant manager/Appraisal Sub-group of Local Partners/Trustees (where it is the Headteacher/Executive Headteacher/CEO that is subject to the Procedure) will provide the employee with the following at least 10 working days prior to the date of the Meeting/Hearing:

- A copy of the relevant performance standards and personal objectives against which the employee's performance is being assessed;
- Copies of the record of any formal meetings held with the employee to discuss their under performance, including relevant appraisal records;
- Copies of any formal warning issued in respect of the employee's under performance;
- Evidence of any support arrangements put in place to date to assist the employee in achieving the standards of performance required and
- Evidence of the employee's performance during the further review and monitoring period, including evidence of any continuing shortfalls in performance.

7.7 If a Hearing Panel is being convened, the Headteacher/Exeucutive Headteacher/CEO Appraisal Sub-group of Local Partners/Trustees should prepare a written statement of case for consideration by the Local Partner/Trustee Panel. In that event, the written statement of case should be provided to the Local Partner/Trustee Panel and the employee at least 10 working days before the date of the Capability Hearing.

7.8 The employee can decide whether to send a written response for consideration by the Headteacher/Executive Headteacher or relevant manager/Appraisal Sub-group of Local Partners/Trustees (if a Decision Meeting is being held) or the Local Partner/Trustee Panel (if a Capability Hearing is being held) and/or attend the Decision Meeting/Capability Hearing in person. Any written documentation the employee wishes the Headteacher/Executive Headteacher or relevant manager/Appraisal Sub-group of Local Partners/Trustees/Local Partner/Trustee Panel to consider must be provided at least 5 working days before the date of the Decision Meeting/Capability Hearing, (and copied to the Headteacher/Executive Headteacher/CEO Appraisal Sub-group of Local Partners/Trustees if a Capability Hearing Panel is being convened).

7.9 The names of any witnesses to be called to the Decision Meeting/Capability Hearing by either the Headteacher/Executive Headteacher/CEO or relevant manager/Appraisal Sub-group of Local Partners/Trustees or the employee must be disclosed to all relevant parties within the same timescales.

7.10 The Headteacher/Executive Headteacher/CEO or relevant manager/Appraisal Sub-group of Local Partners/Trustees (if a Decision Meeting is being held) or the Local Partner/Trustee Panel (if a Capability Hearing is being held) will review all the information

submitted, both orally at the hearing and in writing, and will decide on one of the following outcomes:

- That the employee's performance has improved to an acceptable standard and can be maintained and that on this basis the Capability Procedure should end and the appraisal process be resumed.
- To review the employee's performance again after a specified period of time at a re-convened Decision Meeting/Capability Hearing. This may be to allow for alternative support arrangements to be put in place.
- To dismiss the employee/require the employee to cease working at the School on the grounds of capability.

  Where a decision to dismiss the employee/require the employee to cease to work at the School is reached the School will seek to find suitable alternative employment for the employee within the School where this is practicable during the employee's notice period. Where this is a position at a lower grade pay protection will not apply. In return, the employee has a responsibility to positively engage with the process of seeking to find them alternative role.

7.11 Before the decision to dismiss is made, the School will discuss the matter with the Trust.

7.12 The outcome of the Decision Meeting/Capability Hearing will, where possible, be relayed verbally at the end of the hearing and will be confirmed in writing to the employee as soon as possible and within 5 working days. Where a decision to dismiss/require the employee to cease working is taken the employee will be informed of the reasons for the dismissal/decision, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.

7.13 Notes will be taken of the Decision Meeting/Capability Hearing and a copy sent to the employee.

8. DECISION TO DISMISS

The power to dismiss staff in KMAT schools has been delegated to the Headteacher/Executive Headteacher to one or more Local Partners/to one or more Local Partners acting with the Headteacher/Executive Headteacher. This action will not be taken until the case has been discussed with the CEO – HR advice will need to have been taken at each step.

Where the decision to dismiss has been taken, the Local Partnership Board/Trust Board will dismiss the employee with relevant notice.

9. APPEAL

9.1 If an employee considers that a decision to dismiss them, or other action taken against them (written warning or final written warning), is wrong or unjust, they may appeal, setting out the grounds of their appeal in writing to the Headteacher/Executive Headteacher or relevant manager/sub-group of Local Partners/Trustees(where it is the Headteacher/Executive Headteacher/CEO that is subject to the Procedure) the decision

within 10 working days of the date of the issue of the formal warning or the letter confirming the decision to dismiss, setting out at the same time the grounds for appeal.

9.2 If the appeal relates to the outcome of the Decision Meeting/Capability Hearing, including a decision to dismiss the employee, the appeal will be conducted in the manner set out within the Protocol for the Appeal Hearing.

For further information regarding Appeals, please see Paragraph 14 below.

CAPABILITY POLICY – SUPPLEMENTARY PARAGRAPHS

10. ARRANGEMENTS FOR FORMAL MEETINGS AND THE CAPABILITY HEARING

10.1 At least ten working days' notice will be given of the Formal Capability Meeting, Capability Review Meeting and the Decision Meeting/Capability Hearing. The notification will contain sufficient information about the concerns about performance and their possible consequences to enable the employee to prepare to respond to the performance concerns. It will also contain copies of any written evidence; the details of the time and place of the meeting; and will advise the teacher of their right to be accompanied by a trade union representative, official employed by a trade union or work colleague. It is recommended that employees are given at least ten working days' notice of any mid review period meeting. They are entitled to be accompanied to these meetings by a trade union representative, official employed by a trade union or work colleague. The purpose of the meeting is to confirm which areas of performance remain a concern with clear evidence to support this conclusion. The employee is not entitled to be accompanied or represented by a solicitor or other legal adviser. The employee should inform whoever is conducting the meeting (the Headteacher/Executive Headteacher/manager or the Chair of the Panel) if they are being accompanied to the hearing and the status of that representative.

11. ATTENDANCE AT MEETINGS AND RECORDING OF MEETINGS

11.1 Employees will be expected to make a reasonable effort to attend meetings convened under the Capability Procedure. When it is not reasonable or practicable for an employee or their trade union representative or work colleague to attend a meeting for a reason which was not foreseeable when the meeting was arranged, one further meeting will be arranged to a time proposed or agreed by the employee provided that the alternative time is reasonable. Should the employee not attend the re-arranged meeting, where all reasonable attempts have been made to facilitate the employee's attendance, the meeting may proceed in their absence. Employees will be offered the opportunity to be represented in their absence or make a written submission.

11.2 If the employee is unable to attend the meeting due to long term sickness, the meeting should normally be postponed and the Managing Attendance Policy should then be followed for the duration of the Absence. Please see the 'Sickness' paragraph in Appendix 1.

11.3 Employees and/or their representatives are not permitted to record electronically any meeting held informally or formally under this Policy. This is to encourage openness and full participation by all parties during meetings. Any breach of this provision may lead to disciplinary action against the employee concerned. Consideration will be given to making a recording of a meeting if an employee makes a request for the meeting to be recorded as a reasonable adjustment in connection with a protected characteristic and the request may be agreed if all parties to consent to a recording being made.

11.4 Where exceptional circumstances apply and following consultation and agreement from all the parties, meetings may be conducted remotely using information technology and consideration should be given to doing so. The hearing and appeal hearing may be recorded electronically by the note-taker to provide a back-up for minute taking provided all parties present at the hearing give their agreement to this at the start of the meeting. The electronic recording must be deleted by the note-taker promptly following the meeting once the minutes have been finalised. Confirmation that the deletion of the electronic recording of the minutes has taken place must be provided in writing by the note-taker to the Chair of the Panel. Face-to-face meetings should be conducted in line with any safe working practices in place in the School Trust.

12. CURRENCY OF FORMAL WARNINGS

12.1 First written warnings will remain on the employee's personal file for 6 months from the date of issue and final written warnings will remain on the employee's personal file for 12 months from the date of issue. The exception to this will be in the event that further action is necessary under the Capability Policy within the 12 month currency period which is related to performance and has led to a final written warning being issued. In these circumstances all relevant documentation will be retained on the employee's personal file until such time that the employee has no active capability warnings on record for a period of 12 months.

12.2 Should the employee be absent from work for more than a working week during the currency of the warning, the currency of the warning will be extended for a period that equates to the period of absence. This would also apply for example in cases of maternity/paternity/adoption leave. Employees who are unwell and absent from work during the capability procedure will be offered support when they return to work, and the period of absence will be excluded from the monitoring, and review period.

13. VERY SERIOUS CASES OF UNDERPERFORMANCE

13.1 In the most serious cases, a final written warning may be issued without a first written warning having previously being issued. Where a final written warning is issued the employee should be warned that failure to improve their performance could lead to further action under the Capability Procedure, including their dismissal. A Final Written Warning will start a monitoring and review period not normally exceeding four weeks). However, there may be circumstances, where some improvement is being demonstrated, in which, due to a need to allow sufficient time to the employee demonstrate sustained improvement or to allow new practices to become embedded, that the period allowed is longer.

14. APPEALS

14.1 Employees have the right to appeal against any written warning they receive under the Capability Procedure. Appeals against written warnings following the formal capability meetings will be normally heard by an individual manager or an individual governor (where it is the Headteacher who is subject to the Procedure an appeal will always be heard by a governor). Appeals against the outcome of the Decision Meeting/Capability Hearing will be heard by a panel of Local Partners/Trustees none of whom have had any involvement in the case previously.

14.2 An appeal must not interrupt the progress of the procedure, although the appeal decision could lead to the matter being reconsidered and a lower-level warning being issued or the Capability process being concluded. Where an appeal is upheld the matter should be referred back to the Headteacher/Executive Headteacher/manager (or the sub-group of Local Partners/Trustees (the Appraisal Review Committee))where it is the Headteacher /Executive Headteacher/CEO that is subject to the Procedure) for further appropriate action with recommendations where appropriate.

14.3 Appeal Hearings are restricted to considering the reasonableness of the decision made at the former Hearing. It can consider any relevant new evidence, or representations about any perceived procedural irregularities.

14.4 Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a trade union representative, official employed by a trade union or work colleague 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 as soon as possible.

14.5 Appeals will be dealt with impartially by individuals who have not previously been involved in the case.

14.6 The employee will normally be informed verbally at the hearing of the outcome. They will be informed of the outcome in writing as soon as possible and within five working days.

15. REQUESTING A CHANGE IN ROLE

15.1 Where applicable and possible under statutory or collectively agreed terms and conditions applicable to the employee, and where mutual agreement is possible in individual cases, consideration may be given to a request from an employee to voluntarily change their role, for example to step down from some of their higher level responsibilities or to move to a different vacant post within the School/Trust. The implications of changing the role will always be shared, discussed and explored with the employee. No role will be changed without the explicit written agreement of the employee.

15.2 The Headteacher/Executive Headteacher/CEO/manager will need to give consideration to whether they can reasonably accommodate this request within the needs of the school. They are under no obligation to agree any requests. Where the request is to be

redeployed to a different post, this should only be considered if they believe the individual is able to demonstrate that they meet the essential criteria of the new role.

15.3 Pay protection does not apply under these arrangements and any current warnings will transfer with the individual to the new post.

16. MONITORING AND REVIEW PERIODS

16.1 The monitoring and review period can be varied by mutual agreement.

16.2 If during the review period the circumstances of an individual case suggest a more serious performance issue than was initially assessed or the performance of an employee deteriorates significantly, a decision may be taken to progress to the next stage within the procedure before the end of the monitoring and review period. If the reasons for the altered level of the performance shortfall is different to those previously highlighted this will be properly explored with the employee and any appropriate additional support will be put in place before progressing further through the stages of this procedure.

17. RECORDS

17.1 Records will be kept detailing:

- The nature of any poor performance
- The employee's defence or mitigation
- The action taken and the reasons for it,
- Records of meetings and hearings and their outcomes
- Whether an appeal was lodged, its outcome and any subsequent developments.

17.2 These records will be stored in a secure place and kept confidential, used and retained in accordance with the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 and the School's/Trust's Retention and Disposal Policy. Once the currency of a written warning has expired these records will be removed from the employee's personal file and will be confidentially destroyed.

17.3 Capability warnings will remain active on an employee's personal file for the period outlined in the written confirmation of the warning.

All our policies and guidance can be found at www.supportservicesforeducation.co.uk

CAPABILITY APPENDICES

APPENDIX 1 - GENERAL PRINCIPLES UNDERLYING THE CAPABILITY POLICY

Support

The emphasis within the Capability Procedure is on supporting an employee to achieve the standards of performance required from them. The School will seek to establish appropriate support arrangements through discussion with an employee and such arrangements may include developing more specific guidance in the area(s) within which the employee is under performing, in service training, observation by the employee of recognized good practice, within the same school or at another school, a temporary change in role and responsibilities, support, counseling, “in-class” or on the job support.

Training courses or assistance from colleagues should be arranged as soon as possible but should not interrupt the timing of the procedure.

Confidentiality

The capability procedure will be treated with confidentiality.

Legal Context, Equality, Consistency of Treatment and Fairness

Capability is one of the five potentially fair reasons for dismissal under the Employment Rights Act (1996).

Employment Tribunals expect employers to act fairly and reasonably in managing performance and, where applicable, dismissing an employee. In order to ensure consistency and fair treatment of employees and to protect the school in the event of a claim proceeding to an Employment Tribunal, it is essential for the school to be able to justify the steps it takes / any dismissal and to follow a procedure compliant with the statutory requirements. The qualifying service for claiming unfair dismissal is six months for anyone appointed on or after 1 July 2026. There is no qualifying service for discrimination claims. The qualifying period for the right to request written reasons for dismissal is also six months for any employee appointed on or after 1 July 2026 (except where the dismissal takes place during pregnancy, maternity leave or adoption leave, when employees have a right to request written reasons from day one of employment).

In implementing the Capability Policy the Local Partnership Committee/Trust Board will abide by all relevant equality legislation including the duty to make reasonable adjustments for disabled employees or employees with other protected characteristics, that there is consistency of treatment and fairness and that the needs of employees are given careful consideration. The School/Trust will, if necessary, apply an equality impact assessment to the policy in the interests of ensuring the avoidance of any unintentional disadvantage to those with a protected characteristic.

References

“If a teacher has been subject to formal capability procedures in the previous two years”, as stated in The School Staffing (England) (Amendment) Regulations 2012 and the Staffing and

employment advice for schools, “this must be disclosed to new potential school employers when requested”. Staffing and employment advice for schools (publishing.service.gov.uk)

Delegation

Normal rules apply in respect of the delegation of functions by Local Partnership Committees/Trust Boards, CEO/Headteachers/Executive Headteachers.

Grievances

An employee may raise a grievance during the capability procedure. Depending on the circumstances, it may be appropriate to temporarily suspend the procedure until the grievance can be considered. Consideration should be given to enabling another manager to deal with the capability case. In cases where the grievance relates to the manager dealing with the capability case, another manager will deal with the case wherever possible. Any records should be passed to the new manager and if appropriate, the case should be continued within the same timetable. Where the grievance and capability cases are related, it may be appropriate to deal with both issues concurrently.

Any disagreements about the interpretation of this procedure or the application of any related matters not covered in this procedure, should not delay the various elements of the capability procedure or the overall timetable determined to be appropriate for handling any particular case. The appeals process exists to raise any concerns about procedure or the level of sanction imposed.

Sickness

If long term sickness absence appears to have been triggered by the commencement of the formal capability procedure, the case will be dealt with in accordance with the school’s Attendance Management Policy. This may involve an immediate referral of the employee to the School’s/Trust’s Occupational Health provider to assess the employee’s health and fitness for continued employment.

Short term absences will not normally delay the progress of the Capability Procedure (see Paragraph 12.2).

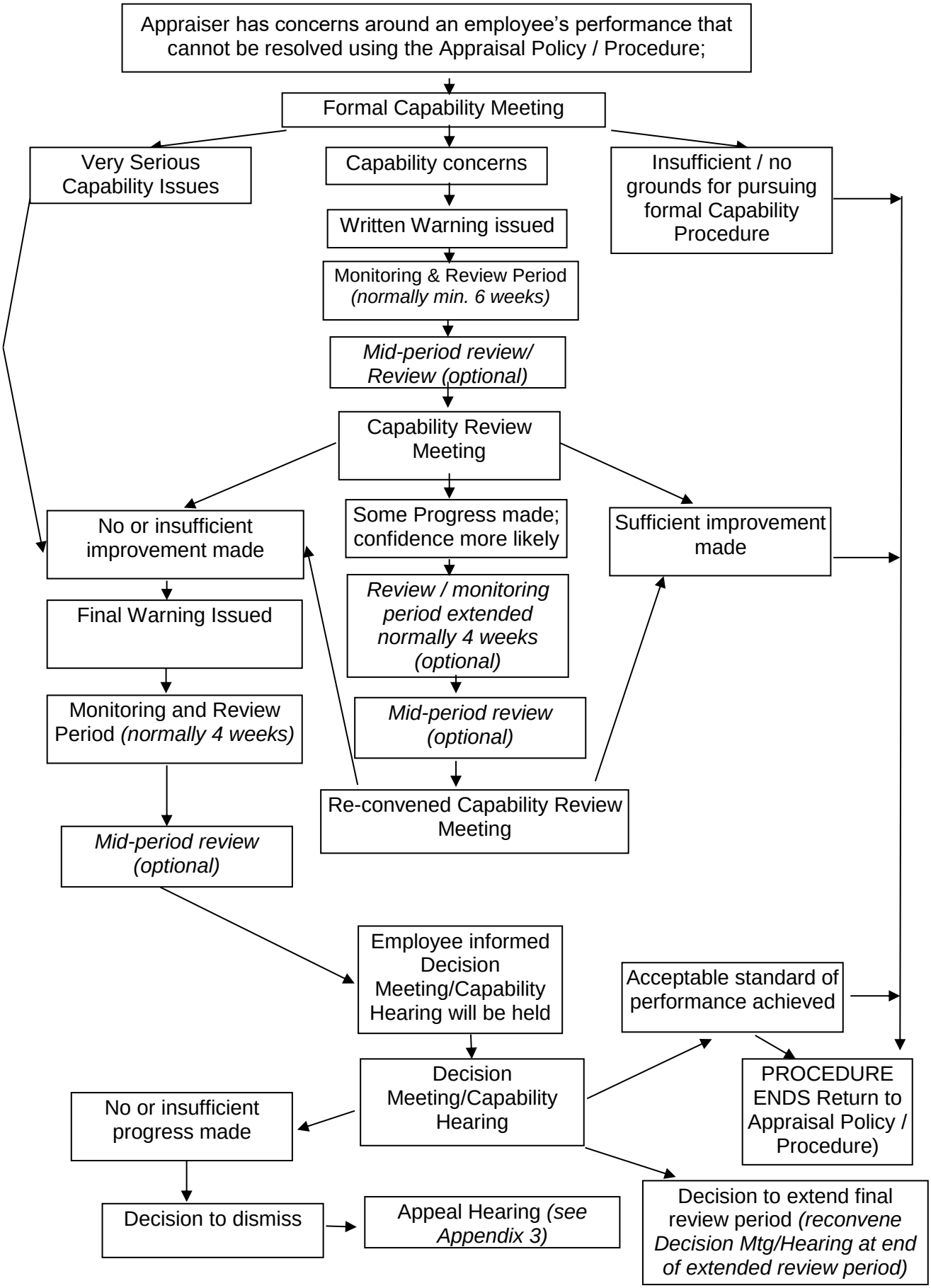
Monitoring and Evaluation

The Trust Board will monitor the operation and effectiveness of theTrust’s capability procedure. This will include ensuring that the arrangements minimise workload for all parties involved.

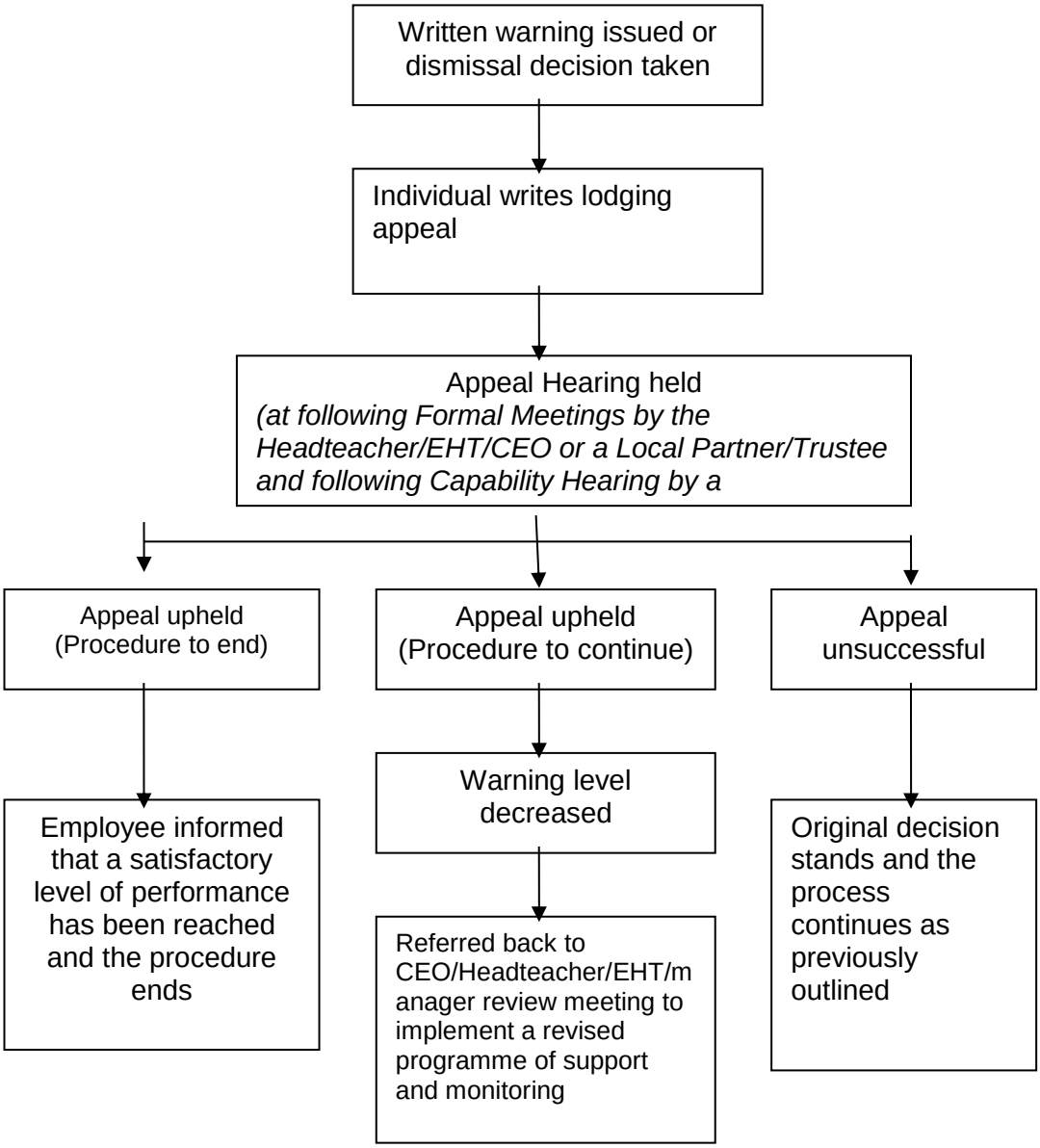
Retention

The Local Partnership Committee/Trust Board/CEO/Headteacher/Executive Headteacher will ensure that all written appraisal records are retained and stored in line with the Trust’s Retention and Disposal Policy.

APPENDIX 2 - CAPABILITY PROCEDURE FLOW DIAGRAM



APPENDIX 3 – APPEALS FLOW DIAGRAM



PLEASE NOTE: An appeal does not interrupt the process or timings of the procedure, unless the appeal decision leads to the matter being reconsidered.

APPENDIX 4 - CONDUCTING A DECISION MEETING

The Decision Meeting will be conducted by the appraiser(s) of the employee (that is, by the appraisal sub-group of Local Partners/members of the Trust Board (in the case of the Headteacher/Executive Headteacher/CEO) or the Headteacher/Executive Headteacher/other suitable senior member of staff (in the case of other employees)).

The employee is entitled to be accompanied by a trade union representative, official employed by a trade union or work colleague at the decision meeting. A HR Adviser may attend to advise the Headteacher / sub-group of Local Partners/members of the Trust Board.

The Headteacher / CEO / Executive Headteacher Chair of the Appraisal Sub-group of Local Partners/Trustees – will state that the Decision Meeting is being conducted under the Capability Procedure.

They will explain that the purpose of the meeting is to consider whether a) the capability procedure should end; b) the final warning should be extended or c) the employee should be dismissed or required to cease working at the School and confirm a written record of the meeting is being made. The Headteacher / Chair will remind all parties present they are not permitted to record the meeting electronically and any breach of this provision may lead to disciplinary action against the employee. Consideration will be given to making a recording of a meeting if an employee makes a request for the meeting to be recorded as a reasonable adjustment in connection with a protected characteristic and the request may be agreed if all parties to consent to a recording being made.

They will then ask the parties present at the meeting to introduce themselves and confirm their respective roles in the meeting.

Meeting

The Headteacher / Executive Headteacher/CEO/ Chair will set out the continuing concerns relating to the performance of the employee, with reference to the evidence and supporting documentation shared in advance of the meeting.

The Headteacher / Executive Headteacher/ CEO/ Chair will then invite the employee to respond. The employee may do this personally, or the employee's representative (if they have elected to be represented) may do this on their behalf.

The Headteacher /Executive Headteacher/CEO / members of the Local Partnership Committee/Trustee sub-group, during the meeting, will be able to refer any written evidence that has been shared in advance of the meeting.

Witnesses can be called, provided the appropriate advance notice of them being called has been given, by the Headteacher / Executive Headteacher/ CEO / Chair or the employee.

The Headteacher / Executive Headteacher / CEO members of the Local Partners/Trustee sub-group may ask the employee (and any witnesses) questions. The Headteacher / members of the Local Partners/Trustee sub-group has/have the right to ask the employee to personally

answer any questions, although the employee may on request, confer with their representative at any time during the meeting.

The employee / their representative may ask the Headteacher / Executive Headteacher/ CEO Chair (and any witnesses) questions.

Concluding the Meeting

Once all the evidence has been heard, the Headteacher / Executive Headteacher/ CEO Chair will then inform the employee a decision will be made on whether a) the capability procedure should end; b) the final warning should be extended or c) the employee should be dismissed or required to cease working at the School.

The Headteacher / Executive Headteacher / Chair will thank the parties for attending and adjourn the meeting.

When a decision has been reached, the Headteacher / Chair will draw up a statement setting out the decision. The Decision Meeting will be reconvened and the employee informed of the decision. Details of the appeals procedure will also be outlined.

The outcome of the meeting will be confirmed in a letter to the employee within five working days of the meeting. The letter will state clearly:

- The Headteacher / Executive Headteacher / Chair's conclusions in relation to the evidence presented.

- The nature and seriousness of any shortfall in performance.

- The decision of the Headteacher / Executive Headteacher Sub-group of Local Partners and where relevant any time limits involved

- ***** The standard of performance expected in future and the likely consequences for the employee if this is not met. [*** *Include only if relevant]***

- ***** Any support to be provided by the school to assist the employee. [*** *Include only if relevant]***

- ***** The way in which the employee may exercise his/her right of appeal against any capability sanctions that has been issued. [*** *Include only if relevant****]***

APPENDIX 5 - PROTOCOL FOR CAPABILITY HEARING

Introduction

The Chairperson will:

- Introduce those people present
- Explain briefly the reasons the hearing has been convened (i.e. the perceived on-going unsatisfactory performance of the employee)
- Explain the way in which the hearing will be conducted

Presentation of Management's Evidence

The Headteacher/Executive Headteacher/ relevant manager/Chair of the Local Partners/Trustee sub-group will present the management case including relevant evidence in support of it. Any witnesses called by the Headteacher/relevant manager/Chair of the Local Partners/Trustee sub-group will be:

- Questioned by the Headteacher/relevant manager/Chair of the Local Partners/Trustee sub-group
- Questioned by the employee and his/her representative
- Questioned by the Capability Panel
- Questioned by the Headteacher/relevant manager/ Chair of the Local Partners/Trustee sub-group to clarify any particular points but not to introduce new evidence.

At the conclusion of the Headteacher/relevant manager's/Chair of the Local Partners/Trustee sub-group's submission he/she may be questioned by the employee and his/her representative and by the Capability Panel.

Employee's Response

The employee and or representative may respond to the management case and may introduce evidence in their defence. Any witnesses called by the employee and/or representative will be:

- Questioned by the employee and his/her representative
- Questioned by the Headteacher/relevant manager/Chair of the Local Partner/Trustee sub-group
- Questioned by the Capability Panel
- Questioned by the employee and/or representative to clarify any particular points but not to introduce new evidence.

At the conclusion of the employee's/representative's submission he/she may be questioned by the Headteacher/relevant manager/Chair of the Local Partner/Trustee sub-group and by the Capability Panel.

Summing-Up

The Headteacher/relevant manager/ Chair of the Local Partner/Trustee sub-group will be asked to sum up his/her case but not to introduce new evidence.

The employee and/or representative will be asked to sum up his/her response but not to introduce new evidence.

Decision

The Capability Panel will adjourn in order to consider the case before giving a decision. The Panel must consider all the facts and decide what action to take, bearing in mind all the relevant factors which will include the following:

- the seriousness of the concerns/shortfall regarding performance
- whether the employee is subject to any current capability warnings/sanctions
- the employee's general record.
- the School's Capability Policy in relation to the likely outcome given the circumstances of the case
- the consequences to the school of the shortfall in performance
- the outcome in similar cases in the past (the individual circumstances of the case should be the primary consideration however)

Conclusion of Capability Hearing

When a decision has been reached, the Chairperson will draw up a statement setting out the Panel's finding and decision. The Capability Hearing will be reconvened and the employee and Headteacher/Executive Headteacher/CEO/ relevant manager/ Chair of the Local Partner/Trustee sub-group informed of the Panel's decision. Details of the appeals procedure will also be outlined.

The outcome of the Hearing will be confirmed in a letter to the employee within 5 working days of the Capability Hearing. The letter will state clearly:-

- The panel's conclusions in relation to the evidence presented.
- The nature and seriousness of any shortfall in performance.
- The decision of the Panel [and where relevant any time limits involved].
- ***** The standard of performance expected in future and the likely consequences for the employee if this is not met. [*** *Include only if relevant]***
- ***** Any support to be provided by the school to assist the employee. [*** *Include only if relevant]***
- ***** The way in which the employee may exercise his/her right of appeal against any capability sanctions that has been issued. [*** *Include only if relevant]***

Guidance Notes

Confidentiality

Hearings should not be conducted in public. Care must be taken over any announcement of the conclusion: any statement that is strictly necessary (including to the full Governing Body) should be confined to the outcome only, all participants in the hearing should exercise great caution over discussing the case in order to avoid prejudice.

Persons sitting on a Panel should have no personal connection with the employee, the presenter of the management case or witnesses since this might prejudice a fair hearing.

Requests for Adjournment

The Panel may be asked by either side for an adjournment. They will need to assess the reasons for such a request and decide accordingly. Any reasonable request of this nature should not be refused.

Witnesses

In hearings, witnesses must withdraw as soon as questions to them are concluded. It may be necessary to recall them, otherwise they may be released.

APPENDIX 6 - NOTE ON THE PROTOCOL FOR THE APPEAL HEARING

In the case of appeals the employee's side will normally make the initial presentation and this will set out the grounds for appeal.

The response will then be made by the Headteacher/manager

An appeal is not a re-run of the first hearing but is an opportunity for the employee to set out reasons why, in their view, the initial decision was inappropriate.

It will, of course, be necessary for the Local Partnership Committee/Trustee appeal panel to have access to all documentation from the first hearing and in some circumstances it may be appropriate for a representative of the first Local Partnership panel to make an introductory presentation in order to summarise previous events and decisions taken.