



Mayfield Primary School

6. Capability of Teachers & Support Staff

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Our Vision. Our intention. Always start with why!



Valuing

# Every Achievement

**Social - Academic - Moral - Personal**

We know that intention can be easy words that look and sound effective. Our true intention is one that is enabled and implemented by the actions we take to show that we mean what we say. Mayfield is committed to building a school that is viewed from the children's eyes. We ask ourselves: How will they approach this? What do they already know? What skills will they bring? Which groups require input? How do we need to teach this? What will engage them? How long do they need? What do they need us to teach them now?

So....

**we know our children must be the busiest people in any room.** Children must have 'active purpose' and we must erase 'learned helplessness'. Our children's starting points are a vital consideration. We must keep teaching groups as small and precise as possible. Their independence and resilience is imperative. Their strong attendance and punctuality is paramount. We want **everyone** to embrace mistakes and never be afraid to learn from them. We will draft, repeat, refine and polish to achieve lasting progress. Learning is not a rapid, one stop shop. We will talk, listen, perform and present to foster confidence. We must rapidly build vocabulary. Marking **must** have a clear purpose, a response and be as 'live' as possible. We are constantly developing a curriculum that meets our children's needs and it must utilise and embrace our unique location. Classroom layout and design is essential. A unique environment must be generated. We must provide a flexible and responsive timetable and lesson structure. Our teachers must adopt and explore many teaching styles. Social times are a chance for new ideas and to be viewed as a new opportunity and we must be insistent and consistent to foster positive behaviours. We are not afraid to change. We will dare to do and learn. We will challenge established thinking.

We will use common sense. We accept the fallibility of being human. We are not perfect.

**We are proud to accept and respect everyone.**

Enabling

# Every Achievement

Genuine. Honest. Passionate. Take our hand. Change the landscape.

*\*\* Mayfield Primary School is committed to valuing diversity and to equality of opportunity. We aim to create and promote an environment in which pupils, parents/carers and staff are treated fairly and with respect, and feel able to contribute to the best of their abilities. We recognise that it is unlawful to take into account anyone's gender, marital status, colour, race, nationality, ethnic or national origin, disability, religious beliefs, age or sexual orientation. \*\**

# **CAPABILITY POLICY: PART A) TEACHERS**

**AUGUST 2022**

## **MAYFIELD PRIMARY SCHOOL HAS ADOPTED THE LATEST LCC POLICY**

The Governing Board of Mayfield Primary School adopted this policy in September 2022. It will review it on an annual basis.

This Policy has been developed in consultation with the Teacher Trade Unions.

### **PURPOSE**

This policy sets out the arrangements that will apply when teachers, including headteachers, fall below the level of performance that is expected of them.

### **APPLICATION**

This policy applies to the headteacher and to all teachers employed by the school, about whose performance there are serious concerns that the appraisal process has been unable to address.

2.2 The School has a separate policy in place for teacher appraisal.

Sections 8-16 of this policy outline the procedure that should be followed to manage matters of capability for teacher/headteachers in Schools. A flowchart outlining this procedure is at Appendix I of this policy.

A separate Capability Policy exists for school support staff.

Separate procedures exist for handling matters of misconduct or complaints made by parents or other persons outside the School.

The Headteacher\*/Chair of Governors may wish to contact the appropriate representative of the Schools' HR Team for advice on the implementation and application of this policy.

Section 14 provides information about who in this school has the power to dismiss staff or decide that a member of staff should no longer work at the School. To preserve the integrity of the Capability Policy, in schools where the power to dismiss staff has been delegated to the headteacher, it would be appropriate for another member of the School Senior Leadership Team to take responsibility for the earlier stages of this procedure. This will then leave the headteacher available to consider the case for possible dismissal, without prior involvement in the case.

This procedure should be applied consistently and fairly so as not to discriminate against any particular group on the grounds of a protected characteristic under the Equality Act e.g. age, disability, gender reassignment, marriage/civil partnership, pregnancy and maternity, race, religion and belief, sex and sexual orientation.

The right to representation by a representative of a recognised trade union or work colleague applies at the formal stages of this policy (section 9 to 16).

## **GLOSSARY OF TERMS**

Teacher	Any reference to teacher within this policy refers to the person being monitored under this policy, which may also include the headteacher
Companion	The person who accompanies the teacher/headteacher to any meeting under the formal stage of this policy, who could be a work colleague or representative of a recognised trade union. The Companion has the right to make statements, provide advice and ask questions on behalf of the teacher/ headteacher, but not to answer questions on the teacher/ headteacher's behalf
Headteacher*	Where there is an asterisk next to any reference to the Headteacher, it relates to cases where initial dismissal decisions have been delegated to the headteacher by the Governing Board (see Section 11). In such cases, the usual role of the Headteacher should be delegated to another member of the School Senior Leadership Team
School day	One of the 195 days of the published school year when a teacher is required to be available for work under the School Teachers' Pay and Conditions Document.

## **KEY PRINCIPLES**

In most cases, issues relating to professional capability can be dealt with informally through the appraisal process without recourse to the formal Capability Policy.

Teachers/headteachers, as professionals, are constantly striving to improve their skills and expertise in order to develop their effectiveness. In this regard, they may draw upon support available within the school and from the network of professional services provided by the Authority, Diocesan authorities and from their own professional associations.

At school level, teachers may look to the advice, support and encouragement available from colleagues, particularly those with professional leadership roles such as senior members of staff, Deputy Headteachers and the Headteacher.

All teachers/headteachers should have clear job descriptions and be aware of the appropriate teacher standards, to ensure they fully understand their role as a teacher.

New teachers and experienced teachers taking up new posts may require induction support, particularly where there are changes to the role or additional responsibilities. Developments in the curriculum may require appropriate INSET and support programmes for the staff involved.

Early Career Teachers should also benefit from the structured statutory induction programme.

These everyday processes of support, training and advice are fundamental to professional effectiveness and wherever possible any difficulties should be resolved informally in a spirit of partnership. Only where these processes do not succeed in overcoming the difficulties should consideration be given to entering the formal stage of the Capability Policy.

## **DEFINITIONS**

'Incompetence/lack of capability' refers to situations where, due to a lack of capability and/or application, a teacher/headteacher fails to perform their duties to a professionally acceptable standard. Such situations should be dealt with through the appraisal process initially, and this policy if there is insufficient improvement under the appraisal process.

'Misconduct' is an act or omission by a teacher/headteacher which is considered to be unacceptable professional behaviour. It can range in seriousness from minor to gross misconduct. Such matters should be dealt with under the School Disciplinary Procedure.

Where complaints are made against teacher/headteachers from parents or other persons outside the school, the procedure for handling complaints in schools should be used to investigate such complaints. At the conclusion of the investigation, the Headteacher\*/Chair of Governors should inform the teacher/ headteacher in writing of the outcome and of any subsequent action that may be taken, including action under this procedure, where relevant.

## **CONFIDENTIALITY STATEMENT**

All documentation and discussions at meetings within this procedure are confidential. The School processes personal data collected during the informal and formal stages of the Capability Procedure in accordance with its data protection policy. Data collected under this procedure is held securely and accessed by, and disclosed to, individuals only for the purposes of conducting the capability procedure. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the school's data protection policy. It may also constitute a disciplinary offence, which will be dealt with under the disciplinary procedure.

6.2 Any correspondence or record of action taken will be retained in the teacher/ headteacher's personal file and will not be recorded in any place where there is a risk of information being disclosed to any person who does not have a genuine reason for access to the information.

6.3 Documentation arising from the procedures involved in this policy will only be shared with individuals who have genuine reason for accessing this information, including those involved in monitoring performance in School, or those involved in any capability proceedings that may follow. The teacher should be informed if documentation relating to their appraisal is shared.

6.4 To preserve the integrity of members of the Governing Board, specific information about any teacher/headteacher being dealt with under these procedures should not be shared at meetings of the school's Governing Board. This will ensure that governors are not tainted in the event that a dismissal and/or appeal committee needed to be convened. Any attempt by a member of the Governing Board to elicit information about a specific case would be inappropriate and could be prejudicial to the case. Any governor that is provided with detailed information on a specific case would be disqualified from being a member of any committee convened to consider that case, with the exception of the information that is circulated to committee members in advance of such a committee hearing taking place.

## **HEALTH & ATTENDANCE ISSUES**

In the event that a teacher/headteacher commences a period of sickness absence during action under this policy, action under this policy should temporarily be postponed. Monitoring and assessment under this policy should be based on evidence of performance at work, which normally requires the teacher/headteacher to be present in School.

Where a teacher/headteacher commences a period of sickness absence whilst being monitored under this policy, the Headteacher\*/Chair of Governors should consider a referral to the

Occupational Health Unit (OHU). The teacher/ headteacher should also be reminded of the support that may be available to them from their trade union/professional association.

Cases of sickness absence during the operation of the Capability Policy should be dealt with under the School's policy on the management of sickness absence.

In cases where the employee attributes the concerns about their performance to a disability or other ill health, the Headteacher\*/Chair of Governors should consider making a referral to the OHU. The Headteacher\*/Chair of Governors should then consider any advice provided by OHU, including any provided about making reasonable adjustments for the employee.

## **INFORMAL PROCEDURE**

8.1 Where concerns arise about any aspects of the teacher/headteacher's performance, which cannot be resolved through the appraisal process, the Headteacher\* or other member of the Senior Leadership Team/Governing Board (for Headteachers) will meet the teacher/headteacher to:

- give clear feedback to the teacher/headteacher about the nature of the concerns;
- give the teacher/headteacher the opportunity to comment and discuss the concerns, including any extenuating circumstances that have led to the concerns being raised;
- agree any support (eg coaching, mentoring, structured observations), that will be provided to help address those specific concerns;
- make clear how, and by when, the appraiser and/or member of the Senior Leadership Team/senior manager will review progress. It may be appropriate to revise any objectives/targets, and it will be necessary to allow sufficient time for improvement. Objectives should be SMART (Specific, Measurable, Achievable, Realistic, Timebound);
- explain the implications and process if no or insufficient improvement is made. This may include reference to the formal stages of the Capability Policy, and if so, a copy of this policy should be provided;
- indicate a meaningful timeframe during which the improvement should be demonstrated.

8.2 A model letter, which may be used to invite the teacher/headteacher to this meeting is provided at Appendix 2. A record of such a meeting should be taken and shared with the teacher/headteacher.

8.3 In cases involving a teacher other than the Headteacher, the appraiser (if not the Headteacher), should advise the Headteacher\* that this meeting is taking place and then discuss the content and outcomes of the meeting with the Headteacher\*.

8.4 Whilst there is no right to representation by a work colleague/trade union representative at this meeting, the Headteacher\*/Chair of Governors may decide to offer that right. At the very least, the teacher/headteacher should be advised to consult their trade union representative.

8.5 When progress is reviewed following this meeting, if the appraiser is satisfied that the teacher/headteacher has made, or is making, sufficient improvement, the appraisal process will continue as normal, with any remaining issues continuing to be addressed through that process.

8.6 When progress is reviewed following this meeting, if the appraiser is not satisfied that the teacher/headteacher has made, or is making, sufficient improvement, the teacher/headteacher should be advised to seek the support of their trade union, and the Headteacher\*/Chair of Governors should consider whether to convene a Formal Capability Meeting.

## **FORMAL PROCEDURE - FORMAL CAPABILITY MEETING**

Where the informal capability process has failed to resolve concerns about a teacher/headteacher's performance, the Headteacher\*/Chair of Governors will invite the teacher/headteacher to a Formal Capability Meeting. At least 7 school days' written notice will be provided of such a meeting.

During the meeting, the Headteacher\*/Chair of Governors may be accompanied by the School Advisor and a representative of the Schools' HR Team. A note-taker may also attend to clerk the meeting.

The notification of the meeting will outline the concerns about performance and the possible consequences, along with any written evidence, in order to give the teacher/headteacher the ability to adequately prepare to answer the case at the formal capability meeting. The notification will also provide the date, time and location of the meeting and will advise the teacher/headteacher of their right to be accompanied by a companion who may be a work colleague or a representative of a recognised trade union. The teacher/headteacher should also be provided with a copy of this policy.

If the teacher/headteacher's trade union representative is not available at the time allocated for the meeting, the meeting should be postponed and reconvened within 5 school days of the original date. The Headteacher\*/Chair of Governors may liaise with the trade union representative to identify a mutually convenient date for the meeting.

The meeting is intended to establish the facts. It will be conducted by the Chair of Governors (for Headteacher capability meetings) or Headteacher\* (for other teachers). The meeting allows the teacher/headteacher to respond to concerns about their performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected.

During the meeting, or any other meeting which could lead to a formal warning being issued, the person conducting the meeting will:

identify the areas of concern. For example, which of the standards expected of the teacher/headteacher are not being met;

give clear guidance on the improved standard of performance expected, identifying any success criteria that might be appropriate and that may assess whether or not the necessary improvement has been made;

invite the teacher/headteacher to provide an explanation/response to the concerns raised

At the end of the meeting, the person conducting the Formal Capability Meeting may conclude one of the following outcomes:

that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process;

that there are insufficient grounds for pursuing the capability issue and that the concerns should be addressed through the appraisal process, but that the teacher/headteacher should be provided with informal counselling/advice and/or written guidance or instruction;

that the concerns are not those of capability, but misconduct and as such, the person conducting the meeting may consider referring the matters through the school disciplinary procedure;

In i.-iii. above, action under the Capability Policy would cease;

In cases where the person conducting the meeting believes that the formal capability procedure should continue, the person conducting the meeting will:

- remind the teacher/headteacher of the improved standard of performance expected, identifying any success criteria that might be appropriate and that may assess whether or not the necessary improvement will be made;
- explain any support that will be available to help the teacher/headteacher improve their performance and consider any requests from the teacher/headteacher for such support;
- set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the nature and seriousness of the concerns within the individual case, and should be between four and ten weeks. It is for the school to determine the set period in each case. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place; and
- warn the teacher/headteacher formally that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning.

A suggested template for an action plan covering iv. (a)-(c) above, is contained at Appendix 3.

The person conducting the meeting may adjourn the meeting at any time in order to seek advice, arrange for further investigations, or because more time is needed in which to consider any additional information.

A request for an adjournment by any party should not be unreasonably refused.

Notes will be taken of the Formal Capability Meeting and a copy provided to the member of staff.

A written outcome of the Formal Capability Meeting will be provided to the teacher/headteacher within 5 school days. The written outcome will include the matters covered in (a)-(d) above and give information about the timing of the review stage. The outcome will contain the procedure and time limits for appealing against the warning. If a final written warning has been issued, the teacher/headteacher will also be informed that failure to achieve an acceptable standard of performance within the set timescale may result in referral to the Dismissals Committee of the Governing Board, with dismissal a possible outcome.

## **MONITORING AND REVIEW PERIOD**

A performance monitoring and review period will be set during the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period.

If the teacher/headteacher was issued with a warning other than a final written warning, they will be invited to a Formal Review Meeting at the conclusion of the monitoring and review period.

If the teacher/headteacher was issued with a final written warning, they will be invited to a Decision Meeting at the conclusion of the monitoring and review period.

## **FORMAL REVIEW MEETING**

The Formal Review Meeting will be conducted by the Chair of Governors (for headteacher capability meetings) or Headteacher\* (for other teachers).



At least 5 school days' written notice of a Formal Review Meeting will be provided and the notification will contain details of the time, date and place of the meeting and will advise the teacher/headteacher of their right to be accompanied by a companion who may be a work colleague or trade union representative.

During the meeting, the Headteacher\*/Chair of Governors may be accompanied by the School Advisor and a representative of the Schools' HR Team. A note-taker may also attend to clerk the meeting.

If the person conducting the meeting is satisfied that the teacher/headteacher has made sufficient improvement, action under the Capability Policy will cease and the appraisal process will re-start.

In cases where the person conducting the meeting believes that there has been some progress/improvement and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period for a further 4-10 weeks. In such cases, a further Formal Review Meeting will take place at the conclusion of the monitoring and review period.

If the person conducting the meeting believes that there has been no or insufficient progress/improvement during the monitoring and review period, the teacher/headteacher will be issued with a final written warning and the monitoring and review period extended for a further 4-10 weeks.

Notes will be taken of formal review meetings and a copy will be provided to the member of staff. The final written warning will mirror any previous warnings that have been issued.

The teacher/headteacher should be provided with a written outcome of the meeting within 5 school days, which should provide details of any further monitoring and review period and the procedure and time limits for appealing against the final written warning. The outcome should also inform the teacher/headteacher that they will be invited to a Decision Meeting at the conclusion of the further monitoring period, or earlier if additional performance concerns arise during the further monitoring period. Where a final written warning has been issued, the teacher/headteacher will be informed in writing that failure to achieve an acceptable standard of performance within the set timescale may result in a referral to the Dismissals Committee of the Governing Board/Headteacher Hearing\*, with dismissal a possible outcome.

## **FINAL REVIEW & DECISION MEETING**

The Decision Meeting will be conducted by the Chair of Governors (for Headteacher capability meetings) or Headteacher\* (for other teachers).

At least 5 school days' written notice of a Decision Meeting will be provided and the notification will contain details of the time, date and place of the meeting and will advise the teacher/headteacher of their right to be accompanied by a companion who may be a work colleague or trade union representative.

During the meeting, the Headteacher\*/Chair of Governors may be accompanied by the School Advisor and a representative of the Schools' HR Team. A note-taker may also attend to clerk the meeting.

If an acceptable standard of progress/improvement has been achieved during the further monitoring and review period, action under the Capability Policy will end and the appraisal process will re-start.

If the teacher/headteacher's performance continues to be a cause for concern, a decision will be made to refer the matter to the Dismissals Committee of the Governing Board or a Headteacher

Hearing, with a recommendation to the Committee/Headteacher\* that the teacher/headteacher should be dismissed from their role in the school.

### **DISMISSALS COMMITTEE/HEADTEACHER HEARING\***

At least 7 school days' written notice of the Hearing will be provided. The notification will contain details of the time, date and place of the meeting and will advise the teacher/headteacher of their right to be accompanied by a companion who may be a work colleague or trade union representative. The teacher/headteacher will also be provided with a copy of the report that is to be presented by the Headteacher\*/Chair of Governors (or other member of the Senior Leadership Team in cases of Headteacher Hearings) at the same time as the notification.

The teacher/headteacher has the right to present documentation to the Committee and this should normally be provided in advance of the meeting. Requests to present additional documentation during the hearing will be considered by the Committee or headteacher (in the case of a Headteacher Hearing).

Prior to a dismissal decision being taken, the Governing Board or Headteacher (in the case of a Headteacher Hearing) will consult with an appropriate member of the local authority (e.g. School Adviser and Schools' HR Team). In cases involving voluntary aided schools, the person conducting the meeting may also consult with the relevant Diocesan/Church Authority advisor.

The procedure to follow at the Hearing is contained at Appendix 4.

### **DECISION TO DISMISS**

The School Staffing (England) Regulations 2003 and 2009 allow the Governing Board of any school to delegate the authority to make initial dismissal decisions to the Headteacher. As a result, the Headteacher becomes responsible for all action under the Capability Policy up to and including dismissal.

The Governing Board will need to take a decision as to whether they wish to delegate this responsibility to the Headteacher.

**NB** - To preserve the integrity of the Capability Policy, in schools where the power to dismiss staff has been delegated to the Headteacher, it would be appropriate for another member of the School Senior Leadership Team to take responsibility for the earlier stages of this procedure. This will then leave the Headteacher available to consider the case for possible dismissal, without prior involvement in the case.

#### Community Voluntary Controlled, Community Special, and Maintained Nursery schools only

In this school, the power to decide that a member of staff should no longer work at this school has been delegated to the Headteacher.

## **DISMISSAL**

In the event that a decision to dismiss or decide that a member of staff should no longer work at this school is taken, the teacher/headteacher will receive due notice.

For the dismissal of a teacher/headteacher in a Community, Voluntary Controlled, Community Special or Maintained Nursery School, once the Governing Board has decided that the teacher/headteacher should no longer work at the school, it will notify the Local Authority of its decision and the reasons for it. Where the teacher/headteacher works solely at this school, the Local Authority will dismiss them within 14 days of the date of the notification. Where they work in more than one school, the Local Authority must require them to cease to work at this school. This notification does not apply for the dismissal of a teacher/headteacher in a Voluntary Aided School. However, such schools will need to carry out the necessary administration in relation to the dismissal of any teacher/headteacher under this policy, which may involve the Local Authority's Payroll Service.

The notice period will commence from the date that the decision to dismiss or determination that the teacher/headteacher should no longer work at the school is taken.

## **RIGHT OF APPEAL**

If a teacher/headteacher wishes to appeal against any action taken by the Headteacher\*/Chair of Governors under this policy (e.g. a warning, final written warning) or against a dismissal decision taken by a Dismissal Committee/ Headteacher hearing, they should submit a written appeal within 5 school days of receipt of the written outcome, outlining the grounds for appeal.

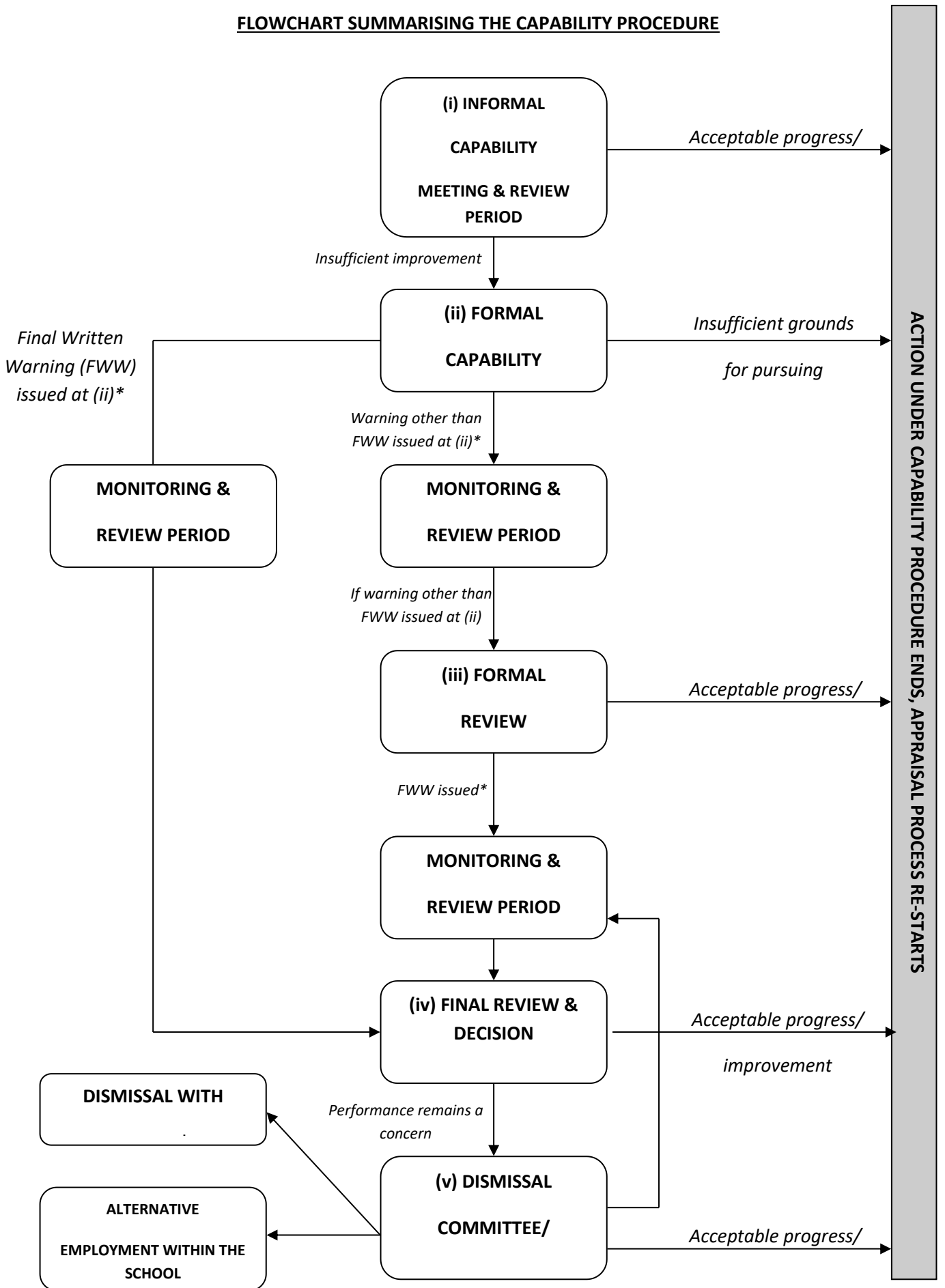
The formal Capability Procedure will continue during the course of any appeal.

All appeals will be heard by the Appeals Committee of the Governing Board and will be heard without unreasonable delay. The same arrangements for notification (i.e. with 7 school days) and right to be accompanied by a companion will apply as with other meetings held under this policy.

Notes of the appeal hearing will be taken and a copy provided to the teacher/headteacher.

The teacher/headteacher will be informed in writing of the outcome of the appeal hearing as soon as possible, and no later than within 5 school days of the hearing.

**FLOWCHART SUMMARISING THE CAPABILITY PROCEDURE**



Key:

\* = right of appeal applies

## **APPENDIX 2**

Dear

### **INFORMAL CAPABILITY MEETING**

You will be aware that we have discussed concerns that I have about your performance that I have attempted to resolve through the Appraisal process. Unfortunately my attempts to resolve these concerns have so far not resulted in the level of improvement that I expected and so regrettably, I now need to refer these through the informal stage of the Capability Policy.

I am therefore writing to invite you to an informal capability meeting. The meeting will take place on **(give at least 5 working days' notice)** in my office. The meeting will be held under the School's Capability Policy. A copy of this policy is enclosed.

The purpose of the meeting is to:

- clearly outline the nature of the concerns;
- provide you with the opportunity to comment and discuss the concerns, including any extenuating circumstances that have led to the concerns being raised;
- agree what support will be provided to help address those specific concerns (e.g. coaching, mentoring, structured observations);
- clarify how, and by when your progress will be monitored and reviewed;
- explain the implications and process if no or insufficient improvement is made, this may include reference to the formal stages of the Capability Policy;
- indicate a meaningful timeframe during which the improvement should be demonstrated.

Whilst there is no right to representation at this stage, you may wish to consult your trade union/professional association representative.

Finally, as your performance is now a cause for concern I must inform you that, in accordance with Section 14 of the Appraisal Policy, the appraisal process will no longer apply and your performance will now be managed under the Capability Policy.

Please confirm your attendance at this meeting.

Yours sincerely

**APPENDIX 3****MODEL CAPABILITY POLICY FOR TEACHERS - ACTION PLAN**

PROBLEM AREA	CURRENT PERFORMANCE	EXPECTATIONS	HOW TO ACHIEVE	HOW/WHO MONITORS
<i>Define the problem area.</i>	<i>Define the problem in greater detail - how does the problem present itself?</i>	<i>Set out what you would like to see in place. This should be in clear, measurable and achievable terms.</i>	<i>Indicate how you see the teacher/headteacher reaching your expectations. Make arrangements for support clear.</i>	<i>Who will monitor progress and give feedback. Headteacher/Deputy are key figures in process as is the School's Adviser</i>

## **APPENDIX 4**

### **MODEL CAPABILITY POLICY**

#### **DISMISSALS COMMITTEE HEARING/HEADTEACHER HEARING - PROCEDURE FOR THE CONSIDERATION OF A CAPABILITY CASE**

The Executive Director Education and Children's Services or their nominee will be entitled to attend for the purpose of giving advice. In the case of Aided schools where advisory rights have been accorded, this will apply to the Executive Director Education and Children's Services and the Diocesan/Church Authority Officer or their nominees.

During Headteacher hearings (where the power to make initial dismissal decisions has been delegated by the Governing Board to the Headteacher), the role of Headteacher throughout this procedure will be adopted by an alternative member of the School Senior Leadership Team, and the Headteacher will adopt the role of the Committee.

The Headteacher/Chair of Governors or other appropriate person (the presenter of the report) will present a report to the Dismissals Committee and will be entitled to call witnesses as necessary.

The teacher/headteacher and/or their representative will be entitled to question the presenter of the report and any witnesses called.

The teacher/headteacher and/or their representative will present their response to the presenter's report, presenting any relevant documents to the Dismissals Committee and calling witnesses as necessary.

The presenter of the report will be entitled to question the teacher/headteacher and any witnesses who have been called.

The presenter of the report and thereafter the teacher/headteacher or their representative (in that order) will be entitled to make a closing statement to the Dismissals Committee.

At any stage during the hearing the members of the Dismissals Committee will be entitled to question any person who has made a statement or given evidence at the hearing.

At the conclusion of the meeting, both parties will withdraw and the Dismissals Committee/Headteacher will reach a decision in private. Advice given by the Director Children's Services and the Diocesan/Church Authority Officer or their representatives must be considered by the Dismissals Committee/Headteacher.

The options available to the Dismissals Committee/Headteacher\* are as follows:

- to discontinue the formal Capability Policy;
- to extend the final written warning and to set a further period of monitoring and review;
- to consider any options for alternative employment within the school;
- to dismiss the teacher/headteacher (VA, Foundation & Foundation Special Schools only)
- to decide that the teacher/headteacher should cease working at the school (Community, Controlled, Community Special and Maintained Nursery Schools only)

The teacher/headteacher will be offered the opportunity to receive the outcome of the meeting verbally if sufficient time is available on the day of the Hearing. If the teacher/headteacher wishes to receive the outcome verbally, both parties will return to the meeting to hear the outcome.

The teacher/headteacher will be provided with the outcome of the meeting in writing within 5 school days of the hearing. The written notification will include the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and the right of appeal.

## **APPEALS COMMITTEE HEARING PROCEDURE**

Appeals will be dealt with by way of a re-hearing and therefore the procedure to be followed at an Appeals Committee Hearing will be the same as that outlined above, regardless of whether the appeal is against a warning issued or a decision to dismiss.

Following appeals against warnings issued under the Capability Policy, the Appeals Committee may decide to:

- discontinue the formal Capability Policy
- reject the appeal and confirm the warning issued
- partially uphold the appeal and substitute the warning for a lesser warning
- fully uphold the appeal and rescind the warning

Following appeals against decisions to dismiss under the Capability Policy, the Appeals Committee may decide to:

- fully uphold the appeal and discontinue the formal Capability Policy
- reject the appeal and confirm the dismissal decision
- partially uphold the appeal and substitute the dismissal for a lesser warning.



# **CAPABILITY POLICY: PART B) SCHOOL SUPPORT STAFF**

**MAY 2022**

***MAYFIELD PRIMARY SCHOOL HAS ADOPTED THE LATEST LCC POLICY***

This procedure is published as part of the staffing policies for the Governing Board of Mayfield Primary School.

**In this school, the decision to dismiss an employee under the Disciplinary and Dismissal Procedure has been delegated to the Headteacher.**

## **INTRODUCTION & PURPOSE**

The Capability Procedure is intended to encourage employees to achieve and maintain a satisfactory standard of performance.

The Capability Procedure provides a process for dealing with ongoing unacceptable performance standards where informal forms of management support and intervention have not produced the desired results.

This procedure is not intended to be used where an employee's poor performance at work is the result of wilful neglect of duty, failure to carry out reasonable instructions or any other act(s) of misconduct which will be considered under the School's Disciplinary Procedure.

No formal action under this procedure will be taken against any Trade Union representative/shop steward until the circumstances of the case have been discussed with a full time official of the Union concerned (unless the individual concerned does not agree with this course of action).

A sudden deterioration in the standard of work may be due to a number of factors some of which may be temporary in nature. Efforts should be made to resolve such problems through discussion and support. Such discussions may lead to a decision to refer the employee to the Occupational Health Unit.

This procedure has been written on the understanding that capability concerns are managed by the Headteacher, and dismissal decisions are taken by the Disciplinary and Dismissal Committee of the Governing Board. In accordance with the provisions of the Education Act 2002 and the School Staffing (England) Regulations 2003, the Governing Board may elect to delegate the power to make initial dismissal decisions to the Headteacher. If this is the case, the initial dismissal decision will be taken by the Headteacher, and the appeal referred to the Appeals Committee of the Governing Board. For further details, see Annex 2.

In these circumstances, to preserve the integrity of the process, the Headteacher should delegate the responsibility for the management of the capability concern to another member of the School Management Team, thereby leaving the Headteacher available to consider what action should be taken at the end of the formal procedure, including dismissal.

In such cases, any reference to the role of the Headteacher within this procedure should be taken to mean the person responsible for managing the capability process, and any reference to the Disciplinary and Dismissal Committee should be taken to mean Headteacher.

The Executive Director Education & Children's Services or their nominee will be entitled to attend any Meeting/Hearing/Appeal for the purpose of giving advice.

## **CONFIDENTIALITY**

2.1 All documentation and discussions at meetings within this procedure are confidential. The School processes personal data collected during the informal and formal stages of this procedure in accordance with its data protection

policy. In particular, personal data collected under this procedure is held securely and accessed by, and disclosed to, individuals only for the purposes of conducting the procedure or seeking professional advice. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the school's data protection policy. It may also constitute a disciplinary offence, which will be dealt with under the disciplinary procedure.

## **PROCEDURE**

### **Stage 1 – Formal Performance Interview**

Where normal management, supervision and appraisal processes, including the provision of necessary support mechanisms have failed to produce necessary improvements within an agreed timescale, the manager will convene a Formal Performance Interview.

The manager will give the employee at least 5 days' notice of the interview. The invite letter will outline how the employee's performance falls short of expected standards, including the areas of concern and the consequences of the employee's performance. The invite will also describe actions already taken and support given to help achieve an improvement in performance.

The employee has the right to be accompanied by a Trade Union representative or work colleague during the Interview. Where the employee's Trade Union representative is not available on the specified date, the interview must be postponed for up to five working days if the employee can provide a reasonable alternative time within this five day period.

The purpose of the interview is for the manager to explain to the employee:

- the standards of performance required;
- how the employee falls short of achieving these standards of performance;
- the consequences of their poor standard of performance;
- the improvement necessary and how the employee can be helped to achieve it;
- how improvements will be monitored or assessed and over what period;
- that if their performance does not improve to the required standard and is not maintained, this could lead to dismissal under this Procedure

For the employee to:

- achieve a clear understanding of expectations;
- give any explanation or comment in relation to their standard of performance;
- comment on how they can be further supported to improve.

The outcome of the formal Performance Interview will be formally recorded in writing and a copy provided to the employee. This letter will provide details of the targets to be achieved, details of any agreed support/training, how performance will be monitored, the timescales of the review period including the date of the review meeting and cautionary advice that failure to improve to the standard of performance required could lead to dismissal.

If, at the end of the monitoring period, it is determined that the required improvement has been achieved, this will be confirmed and followed up in writing. The employee will be informed that if at any time within a 12 month period of this confirmation, performance again falls below an acceptable standard, the formal procedure will recommence at Stage 2.

If, at the end of the monitoring period, it is determined that the employee's performance has not improved to the required standard, the manager will convene a Stage 2 Second Performance Interview.

## **Stage 2 - Second Performance Interview**

The employee will be advised of this meeting in writing, and given at least 5 working days notice of the meeting. The employee has the right to be accompanied by their trade union representative or work colleague.

At this interview, the manager will:

- Review overall performance over the monitoring period;
- Identify continued areas of underperformance or any further issues which will be considered;
- Review support mechanisms previously identified

The employee will be given the opportunity to respond to any points raised in the meeting and comment on any issues affecting performance.

If the manager considers that the employee has failed to, or has not continued to, meet the standards and objectives as set out in the written outcome of the interview and no adequate mitigating circumstances have been identified, the manager may determine that a further formal review period is necessary. If the required improvement is achieved, this will be confirmed in writing. The employee will be informed that if, at any time within a 12 month period of this confirmation, performance falls below an acceptable standard, the formal procedure will recommence at Stage 3. If the required improvement is not achieved, the manager will refer the matter to Stage 3. The employee will be informed in writing of this decision.

The Headteacher or other appropriate person, may determine that the matter should be referred to the Disciplinary and Dismissal Committee for a capability hearing, which will give consideration to the employee's suitability for future employment. The Disciplinary and Dismissal Committee will normally comprise no fewer than three governors.

Prior to referral to the Disciplinary and Dismissal Committee, the Headteacher should consider the possibility of a mutually agreed reassignment to an alternative vacant post within the School or a mutually agreed variation to the employee's existing contract of employment, for a trial period of three months. If the trial is successful, the arrangements will be confirmed as permanent. Alternatively the manager may determine with the agreement of the employee that the trial period be extended by a maximum of three further months. Any search for a different post to which to reassign the employee should be completed within one month. If no acceptable post is available or the trial period fails, the matter will be referred to the Disciplinary & Dismissal Committee.

Where a reassignment or variation to contract involves a reduction in pay, the rate of pay for the assigned post/duties will be effected three months from the date the employee's reassignment/contractual variation is agreed. The three month period referred to in this paragraph includes the period of any trial.

## **Stage 3 - Capability Hearing**

The Clerk to the Governors, the Headteacher or other appropriate person will notify the employee in writing of the date, time and place of the Capability Hearing. The employee will be given at least 10 working days' notice of the hearing. The notification letter will contain details of the capability concerns which are to be considered and will inform the employee of their right to be accompanied by a trade union representative or work colleague. The letter will advise the employee that they may be dismissed at the end of the Hearing and will include copies of any relevant documentation to be considered at the hearing.

If the employee wishes to present documentary evidence to the hearing or to call witnesses, details of these should be provided to the Clerk to the Governors, Headteacher or other appropriate person at least two working days in advance of the hearing.

The Disciplinary and Dismissal Committee will be advised by a member of the Schools HR Team. The Clerk to the Governors or other appropriate person will produce a summary note of the Hearing.

The procedure to be followed at the Capability Hearing (or Appeals Committee) is set out in Annex I.

The options available to the Disciplinary and Dismissal Committee are as follows:-

- to take no further action
- to direct that a further period of appropriate training, formal monitoring and review should be undertaken.
- where it is concluded that the employee is not capable of undertaking the duties of their post, the Committee may dismiss the employee from the service of the School.

The decision of the Disciplinary and Dismissal Committee will be confirmed in writing within five working days of the Hearing, including any right of appeal against the decision.

Where a decision is taken to dismiss the employee, the full contractual period of notice will be given. In the event of an appeal being submitted, the period of notice will continue to run. If the appeal hearing is after the date of dismissal and the appeal is successful, the employee will be reinstated retrospectively to the date of dismissal.

### **Right of Appeal**

An appeal must be submitted in writing to the Clerk to Governors within five working days of receipt of the official notification of the Disciplinary and Dismissal Committee/Headteacher's decision.

An appeal will be considered by an Appeals Committee of the Governing Board comprising no fewer than three Governors. The appeal will be heard as quickly as possible and wherever practicable no later than 20 working days from the date of the receipt of notification of appeal.

The appeal date will provide a minimum of five working days notice of the date, time and place of the hearing. The documentation considered by the Disciplinary and Dismissal Committee/Headteacher together with the written decision will be placed before the Appeals Committee, advised by a member of the Schools HR Team.

The appeal hearing will follow the same format as that used in the Disciplinary and Dismissal Committee or the Headteacher Hearing outlined at Annex 1.

The following decisions are open to the Appeals Committee:

Disallow the appeal and uphold the original decision of the Disciplinary and Dismissal Committee/Headteacher  
Allow the appeal and reinstate the employee to their former position  
Reinstate the employee to their former position with a recommendation for a further period of target setting, monitoring and review

## ANNEX I

### **CAPABILITY HEARING/APPEALS PROCEDURE**

The following procedure is appropriate for any level of hearing including appeal.

#### PROCEDURE AT THE HEARING

The case against the employee will be presented by the Headteacher or other appropriate person (the presenter of the report) who will be entitled to call witnesses and present documentation to support the case.

Witnesses will only be present for the period during which they are required to give evidence directly to the Hearing.

The employee and/or their representative and the person/Committee hearing the case will question the presenter of the report and any witnesses called.

The employee and/or their representative will present a statement of case and will be entitled to call witnesses to support the case.

The presenter of the report and the person/Committee hearing the case will question the employee and any witnesses called.

(f) The presenter of the report and the employee and/or their representative (in that order) will have the opportunity to make a closing statement (No new evidence may be introduced at this stage)

All parties will withdraw except the person/Committee conducting the hearing who will deliberate in private, and if present, the Executive Director Education & Children's Services representative and Clerk to the meeting. Should either party need to be recalled to clarify any points of uncertainty, both sides should return notwithstanding that the point giving cause for concern relates to one party.

The parties will be informed of the decision and the employee will be given written confirmation of the decision, within 5 working days, which will also indicate any right of appeal.

## ANNEX 2

### **ADDENDUM TO CAPABILITY PROCEDURE**

#### **School Staffing (England) Regulations 2003 – Delegation to Headteacher of authority to make initial dismissal decisions.**

These Regulations allow for the Governing Board to delegate authority to make initial dismissal decisions to Headteachers. Therefore, the Headteacher becomes responsible for all initial disciplinary action up to and including dismissal.

The Governing Board will need to take a decision as to whether they wish to delegate this responsibility. They need to bear in mind that the statutory guidance accompanying the Regulations specifies a series of circumstances where such an arrangement may not be appropriate. These are as follows:

A Headteacher who is unwilling to accept this function and who has hitherto not been required to do so. The position could be reviewed on the appointment of a successor Head.

Where the Headteacher has been directly involved in the process leading up to the consideration of dismissal – for example, through managing the capability case. Experience shows that this is invariably the case and therefore, referral for consideration by the Dismissals Committee preserves the integrity of the disciplinary process. However, in large Schools, it may be possible to delegate the responsibility for investigation to another member of the management team, thereby leaving the Headteacher available to consider, what disciplinary action, up and including dismissal, should be taken. Appeals against disciplinary action should still be considered by the Appeals Committee.

Where the Governing Board of a school with a religious character (i.e. Voluntary Aided, Foundation and Voluntary Controlled Schools) has agreed that governor involvement will serve to preserve this character. Therefore, advice should be sought from the relevant Diocesan Authority.

Where the local authority may have made representations to the Chair of Governors on the grounds of serious concerns about the performance of the Headteacher.

Where a Governing Board does decide to delegate the authority to make initial dismissal decisions, they are strongly advised to consult with staff and their professional associations before finally confirming their decision.