

## SAET Capability Procedure for staff

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## **1. Introduction**

1.1 There may be occasions when the professional performance of a teacher/member of staff is alleged to be unsatisfactory. This procedure is intended to provide a way in which such a problem can be resolved and performance improved in a fair and reasonable manner. For the purposes of this procedure, a lack of capability in terms of professional performance is defined as a situation in which a teacher / member of staff fails consistently to perform his or her duties to a professionally acceptable standard (in terms of teachers the National Teachers' Standards, Teachers' Career Expectations and/or their job description). The procedure does not deal with concerns that may be due to ill-health, nor with misconduct, which are outlined in other policies.

1.2 At any stage of the procedure, as part of the support or monitoring measures, the line manager/senior leader/Headteacher/Principal/SAET CEO may decide to involve a suitably experienced external person.

1.3 The teacher/member of staff should be advised at all stages that they may wish to seek professional advice from such organisations as a union.

1.4 If justified by the circumstances, consideration could be given to the omission or shortening of stages in the procedure. In circumstances where the interests of pupils are deemed to be seriously at risk, a short procedure of up to 4 weeks in total could apply.

## **2. Interpretation**

2.1 Reference to the Local Governing Body (LGB) Chair of Governors shall include any Governor or Governors acting on his/her behalf or in conjunction with him/her.

2.2 In all cases where the Headteacher/Principal is the subject of action references to the Headteacher/Principal shall mean the Chair of Governors supported by the CEO.

2.3 In relation to support for teachers / other staff, references to the Headteacher/Principal shall include any nominated Deputy Headteacher/Principal/senior leader acting on his/her behalf. (This may include delegated dismissal proceedings).

2.4 References to the Appraiser shall include teachers/staff to whom the Headteacher/Principal has delegated responsibility for appraisal. Typically, this may be the teacher's/member of staff's line manager.

2.5 Periods of time and deadlines in this document may be varied by the mutual agreement of the parties concerned.

## **3. Principles**

3.1 As part of their normal management and staff development responsibilities Headteachers/Principals and line managers will from time to time discuss aspects of a teacher's/member of staff's performance with him/her. Such discussions will take place on an informal basis and should not be constrained by, or come within, the scope of this procedure, nor shall any counselling and advice given in this way count as warnings within the scope of this procedure.

3.2 Problems should be raised and discussed at the earliest possible moment and resolved where possible without recourse to the formal procedure.

3.3 As part of Appraisal arrangements, where there are concerns about any aspects of the teacher's/member of staff's performance, the appraiser will meet the teacher formally to:

- give clear feedback to the teacher about the nature and seriousness of the concern;
- give the teacher/member of staff the opportunity to comment and discuss concerns
- discuss targets for improvement and agree any support that will be provided to help address those specific concerns
- make clear how, and by when, the appraiser will review progress
- explain the implications and process if no - or insufficient - improvement is made

The teacher will be given a written record of this meeting.

#### **4. Informal stage**

4.1 If the appraiser is not satisfied with progress or if concerns arise about a teacher's/member of staff's performance through means other than appraisal, issues should be addressed at a meeting under the Informal Stage. It is expected that, before progressing to this stage, the appraiser/Headteacher/Principal should be able to demonstrate that concerns have already been raised with the teacher/member of staff.

4.2 Meetings under this stage should be conducted by the Headteacher/Principal or another suitable senior leader, although it may also be helpful for the appraiser to attend. The teacher should be given at least 5 working days' notice of this meeting and should be informed that he/she has the right to be accompanied by a colleague or representative.

4.3 Some academies may have policies for Appraisal, which include a formal meeting for Teachers Experiencing Difficulties, where he/she is given notice of the meeting, is invited to be accompanied by a colleague or representative and where an Action Plan for support is drawn up. Where this meeting and the support offered effectively replicates the informal stage of the Capability Procedure (4.4 - 4.8), then the equivalent stage of the capability procedure does not need to take place. In such cases, if it is determined at a review meeting that there has been insufficient progress, then the process will move directly to the Formal Stages (Section 5).

4.4 The manager will need to consider fully the context of the concerns and consider, in particular, whether the poor performance relates to the teacher/staff member themselves or to external factors.

4.5 The purpose of the meeting is to discuss those areas of the teacher's/member of staff's performance which need attention and to consider supportive measures. A programme of support may include coaching, mentoring, structured observation, observation of good practice within the academy or at another academy. The programme must be pursued positively and constructively by both parties with advice, encouragement and feedback automatically available for the teacher/member of staff as part of the support for the teacher. See Appendix 1.

4.6 The period of review will be made clear and will allow time for improvement. It will be negotiated between the parties, taking account of the degree of support already given.

4.7 The manager will produce a written record of the meeting (an Action Plan is often helpful - see Example at Appendix 2) and will keep details of the activities which take place during this stage.

4.8 At the end of the period of review, there should be a meeting to consider the teacher's /member of staff's performance and to form a view that either:

- the teacher's/staff member's performance has improved, in which case the appraisal process should resume

- further support under the informal stage is appropriate
- or, where there has been no, or insufficient, improvement, the teacher/staff member
- should be invited to a meeting under the Formal Stages of the Capability Procedure (Section 5). Where all parties agree, the first formal meeting may follow directly on from the review meeting.
- all parties may consider whether it is appropriate for the teacher/staff member to move to an alternative post within the academy.

4.9 In exceptional circumstances, where the interests of pupils are deemed to be seriously at risk, the line manager may refer to the Headteacher/Principal/CEO who may have to consider an improvement period of no more than 4 weeks during which a period of support and monitoring shall be conducted in accordance with section 5.4 of this procedure, and a final written warning may be issued at the meeting.

## 5. Formal stages

### Formal Meeting

5.1 This part of the procedure applies only to all staff about whose performance there are serious concerns, which an action plan of support under the appraisal and/or informal stages has been unable to address.

5.2 Meetings under the Capability Procedure will be conducted by the Headteacher/Principal (or delegated to a nominated line manager) or, in the case of a Headteacher/Principal, by the Chair of Governors (or nominated Governor supported by the CEO).

5.3 When there has been insufficient improvement following a formal meeting and action plan under the appraisal and/or informal stages, the Headteacher/Principal will invite the teacher concerned to a meeting, giving at least 5 working days' notice of that meeting. The teacher must be informed of his/her right to be accompanied by a colleague or representative, given a copy of this procedure and any relevant documentation and told who, will be present. It may be appropriate to invite the manager to all or part of this meeting to clarify any points.

5.4 The purpose of this meeting is:

- (a) to detail and review the support measures which have already been provided
- (b) to define the precise aspects in which the teacher's performance is still considered inadequate
- (c) to allow the teacher and/or their colleague or representative to express views and/or offer an explanation
- (d) to decide on a formal programme of further support designed to help the member of staff improve his/her performance including targets and performance standards, together with an appropriate support programme and structured timetable, designed to improve his/her performance

Wherever possible, the period of review should be agreed by all parties, although the decision remains the responsibility of the Headteacher/Principal/delegated line manager. The review period will usually last between 4 and 6 working weeks, allowing sufficient opportunity for an improvement to take place. The period required will depend upon the nature of the concern and will need to be reasonable and proportionate. The meeting will agree the date of the Review

Meeting, at which the teacher may be accompanied by a colleague or representative. It may be helpful to keep notes of this meeting and to send these to the teacher

(e) to inform the member of staff, if necessary, of the potential consequences of failure to improve, and the staff member will be given a first written warning, sent within 5 working days of the meeting setting out:

- (i) the date of the meeting
- (ii) details of the unsatisfactory performance
- (iii) the standards expected
- (iv) details of the support and monitoring measures to be made available over the review period
- (v) the date of the Review Meeting
- (vi) a warning that further unsatisfactory performance may lead to further and more serious action under this procedure
- (vii) that the warning will lapse after 6 months
- (viii) the right to lodge an appeal within 10 working days of receipt of this letter and the right to representation at any appeal (see Appendix 5 )
- (ix) where no appeal is made, the employee may submit a statement of mitigation to be held on file with the warning.

5.5 The notification of action under paragraph 5.4(e) above will constitute the date of entry into the Capability Procedure.

### Review Meeting

5.6 At the Review Meeting the staff member may be accompanied by a colleague or representative. At that meeting, the Headteacher/Principal/delegated line manager may:

- (a) decide that the teacher has made sufficient improvement, the Capability Procedure will cease; or
- (b) that some progress has been made and there is confidence that more is likely; the monitoring and review period under the first written warning will be extended; support will be provided and a date set for a Review Meeting; or
- (c) that no (or insufficient) improvement has been made; the teacher will receive a final written warning and a further review period will be put in place. The warning letter will be issued within 5 working days of the meeting and should clearly set out:
  - (i) the date of the Review Meeting
  - (ii) details of the unsatisfactory performance
  - (iii) the standards expected
  - (iv) details of the support and monitoring measures to be made available over the forthcoming review period
  - (v) the date of the Decision Meeting
  - (vi) a warning that further unsatisfactory performance may lead to further and more serious action under this procedure

(vii) that the warning will lapse after 18 months

(viii) the right to lodge an appeal within 10 working days of receipt of the letter and the right to representation at any appeal (see Appendix 5)

(ix) where no appeal is made the employee may submit a statement of mitigation to be held on file with the warning.

5.7 In the event of a final written warning having been issued, there shall be a further period of 4 to 6 working weeks during which support and advice shall continue and the progress of the teacher shall be monitored.

### The Decision Meeting

5.8 At the end of this period the teacher shall be called to a Decision Meeting at which he/she may be accompanied by a colleague or representative. At that meeting, the Headteacher/Principal/manager may:

(a) decide that the teacher has made sufficient improvement, the Capability Procedure will cease; or

(b) that some progress has been made and there is confidence that more is likely; the monitoring and review period under the final written warning will be extended; or

(c) that no (or insufficient) improvement has been made; the teacher will be invited to a hearing where dismissal may be considered.

(d) choose to take independent advice on the significance of the concerns or the support given.

### General points

5.9 At all stages in the procedure the teacher should receive appropriate support and/or training to assist him/her to improve performance to the standard required.

5.10 At any stage in the procedure the staff member may be placed under the direct supervision of an experienced colleague.

5.11 In cases where a staff member's performance is adversely affected by ill-health, the academy may seek medical advice in order that full consideration shall be given to medical factors.

5.12 In the event of a member of staff being subject to separate procedures in relation to both performance and conduct, they shall proceed separately unless and until the academy decides to consider the totality of a teacher's performance. In such cases, the appropriate procedure shall be determined by the academy although matters related to performance and conduct shall be delineated.

## **6. Headteacher/Principal**

6.1 Any concerns about unsatisfactory performance on the part of the Headteacher/Principal shall be dealt with by the Chair of Governors supported by the CEO (as the Headteacher/Principal/delegated line manager would in relation to any other teacher).

## **7. Chief Operating Officer**

7.1 Any concerns regarding the unsatisfactory performance of the CEO will be dealt with by the Chair of the board of Directors supported by a HR advisor.

## **8. Grievances**

8.1 Where a member of staff raises a grievance during the capability procedure the appropriate grievance procedure will be followed. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.

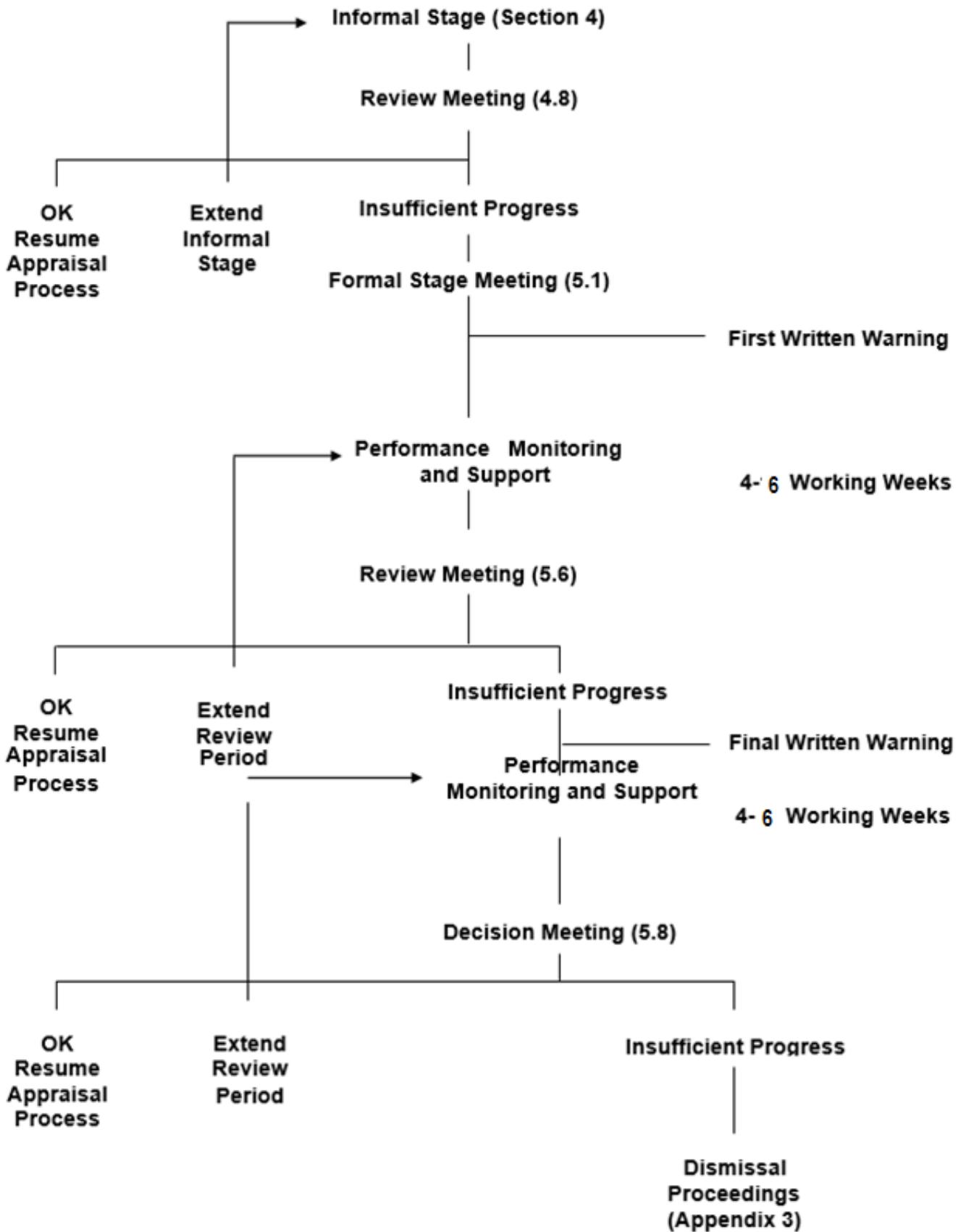
## **9. Confidentiality**

9.1 The capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the Principal/Headteacher/CEO and Governing Body to quality assure the operation and effectiveness of the agreed performance management system.

## **10. Consistency of treatment and fairness**

10.1 SAET is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments for disabled staff member. SAET is aware of the guidance on the Equality Act issued by the Department for Education.

## FLOWCHART



## **Menu of possible support measures**

The manager and teacher should discuss and, where possible, agree upon a programme of support designed to help the staff member improve his/her performance. This should be flexible to focus on individual needs and take account of the area of concern and outcome required; individual learning style; and time available. The staff member should be encouraged to take personal responsibility for this programme and not feel that it is something, which is 'done to him/her'.

The list below offers some ideas - it is not intended to be either exhaustive or exclusive:

- Classroom observation with verbal and written feedback
  - Headteacher/Principal/SLT
  - external observer, e.g. Leading Practitioner from another setting; Education Associate
  
- Observation/discussion of good practice (with clear focus)
  - within academy
  - at another academy
  - joint observation with mentor/SLT
  
- Mentor within the academy
  - regular meetings
  - observing and advising on classroom practice
  - feedback on planning/assessment
  
- Self-evaluation
  - use of CCTV or videotaping via a Tablet to observe own performance
  
- Working within a team
  - moderation activities
  - shared planning activities
  - team teaching or shadowing a colleague
  
- INSET
  - attendance at a professional course or conference
  - on-line or distance learning, e.g. DVDs or websites
  - in-school CPD (twilight or TED days)
  
- Support from a specialist, e.g. Learning and Teaching Adviser
- Counselling or other therapies

Example

**Teacher/Staff member Action Plan**

**Name:**

**Date:**

**Professional partner/mentor:**

**Planned review date:**

Areas for development*	Actions to be taken (and by whom)	Timeframe (to be completed by)	Success Criteria	Monitoring and evaluating (who, date and method for review)

**Additional Support plan**

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\*reference may be made to the Teachers' Standards

## Dismissal proceedings

### 1. Delegation of authority

#### Dismissal of staff other than Headteacher/Principal

The academy LGB Governing Body may delegate its power to dismiss its staff to:

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

For options (a) and (b), it is recommended to have an odd number of members to avoid the possibility of a split decision.

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

#### Dismissal of the Headteacher/Principal

The academy LGB Governing Body may delegate its power to determine that the Headteacher/Principal should be dismissed to a panel of three Governors, which will be supported by the CEO.

For the purposes of Appeal rights, a Dismissal Appeal Panel will be made up of Directors from the SAET board. This should be a panel of three Directors, other than in exceptional circumstances.

#### Dismissal of the CEO

The board of Directors may delegate its power to determine that the CEO is dismissed to a panel of three Directors supported by a HR advisor. For the purposes of appeal, a dismissal appeal panel will also be made up of three Directors supported by a HR advisor

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

#### Rights of attendance/Advisory Rights

Where the academy LGB Governing Body has delegated dismissal powers of staff other than the Headteacher/Principal to one or more Governors, the Headteacher/Principal has a right to attend and give advice to all relevant meetings/hearings held by those Governors and they must consider that advice in coming to their decisions. That advice shall be given by the Headteacher/Principal in the course of the presentation of the case against the employee.

Note: At formal hearings, a HR advisor would take notes for the Decision-Maker/s or Appeal Panel.

## Process

2. The member of staff must be given written notice of the hearing setting out:
  - (a) the date, time and location of the hearing
  - (b) the right of the teacher to be accompanied by a colleague or representative and to call witnesses
  - (c) details of the unsatisfactory performance, together with copies of any documentary information, which it is proposed to present to the 'Decision-Maker/s'
  - (d) that the result of the hearing could be a recommendation for dismissal and that it is very important for him/her to attend.
3. Notice of the hearing must be sent to the member of staff at least 10 working days before the date of the hearing in order to allow reasonable time for him/her to arrange representation.
4. A copy of these procedures must be sent with the notice of the hearing.
5. The 'Decision-Maker/s' must ensure that the hearing is conducted in a fair and reasonable manner and in accordance with the principles of natural justice.
6. The procedure to be followed at the hearing will be laid out in Appendix 3 to these procedures.
7. At this hearing, the 'Decision-Maker/s' may exercise their discretion to dismiss, take no action or take an alternative course of action. This action may involve an extension of the period of final warning with further support and monitoring; transfer to an alternative, possibly differently graded post, together with any training thought necessary; other action thought appropriate in the circumstances.
8. If, having regard to all the circumstances, the decision of the 'Decision-Maker/s' is that the teacher should be dismissed, this will be confirmed by letter to the staff member concerned within 5 working days. The letter should set out:
  - (a) the date of the hearing
  - (b) details of the unsatisfactory performance, including reference to any previous warnings under this procedure
  - (c) a statement that the academy LGB Governing Body (through delegated responsibility) has determined that the teacher should be dismissed
  - (d) the effective date of the dismissal, bearing in mind the period of contractual notice required
  - (e) the right to lodge an appeal within 10 working days and the right to representation in an appeal.

## **Recommended procedure for a dismissal hearing**

1. Pre-meeting of 'Decision-Maker/s', HR advisor to take notes for the Decision-Maker/s and to clarify any procedural matters.
2. Hearing: In addition to those attending the pre-meeting:
  - Employee and representative
  - Headteacher/Principal and/or other management/HR adviser/CEO ('Management')

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

Order of Business:

- (a) Academy LGB Chair to introduce those others present and to outline the order of business.
- (b) Chair to remind those present of the confidential nature of the proceedings.
- (c) The Clerk will take notes for the Decision-Makers and the employee/ representative may take notes for their own use.
- (d) 'Management' will state the case against the employee and may call witnesses.
- (e) The employee and/or his/her representative may ask questions of 'Management' and witnesses.
- (f) The 'Decision-Maker/s' may ask questions of the witnesses and 'Management' as appropriate.
- (g) The employee or representative will state the case and may call witnesses.
- (h) 'Management' may ask questions of the employee and/or witnesses.
- (i) The 'Decision-Maker/s' may ask questions of the member of staff and/or witnesses as appropriate.
- (j) 'Management' will conclude with a concise summary of the case but will introduce no new factors.
- (k) The employee or representative will conclude with a concise summary of the case but will introduce no new factors.
- (l) Management, employee and representative withdraw while the 'Decision-Maker/s' consider the case.
- (m) 'Decision-Maker/s' to consider the action open to them and to reach a decision.
- (n) 'Management', employee and their representative to be recalled and informed of the decision by the Chair.
- (o) The employee to be informed by the HR Adviser of any implications of the decision and any appeal rights.
- (p) A formal minute will be made of the outcome of the hearing.

**Note:** The SAET HR Adviser to the 'Decision-Maker/s' may attend any such hearing, ask questions at any point and advise the 'Decision-Maker/s' as appropriate, including once management and the employee have withdrawn during consideration of the case.

## **Appeals procedure**

1. The Appeals Procedure is intended to afford an employee a full and fair opportunity to present an appeal to the academy LGB Governing Body against any decision of the Headteacher/Principal or Governors in respect of a first or final warning, dismissal or action as an alternative to dismissal.
2. The appeal must be lodged in writing and must set out the grounds of the appeal. It must be addressed to the academy LGB Headteacher/Principal who will ensure that it is referred to the academy LGB Governors /SAET CEO. The appeal must be lodged within 10 working days of the notification of the sanction or dismissal.
3. The hearing of an appeal in respect of a warning or a decision that a person should be dismissed shall be delegated to a panel appointed by the academy LGB Governing Body. This should be a panel of three Governors other than in exceptional circumstances and must exclude any Governors involved in the hearing leading to the appeal.
4. The appeal may be presented by the employee or his/her representative. An SAET HR Adviser will attend to give advice to the panel.
5. The teacher will be given at least 10 working days' notice of the date, time and location of the hearing and must be advised of the right to representation and the procedural conduct of the hearing as described in Appendix 5.
6. At the end of the hearing a decision shall normally be announced but exceptionally it may be appropriate to reserve a decision so that fuller consideration can be given to all matters raised at the appeal.
7. The Appeal Panel may decide to:
  - (a) allow the appeal wholly or in part, in which case any subsequent action should be considered and specified in the decision
  - (b) dismiss the appeal.

If an appeal against dismissal is upheld, notification of dismissal would be rescinded.

8. The decision will be communicated in writing to the employee and his/her colleague or trade union representative within 5 working days of the decision.

### **Recommended procedure for meeting of an appeal panel**

1. Pre-meeting of academy LGB Governing Body representatives, academy LGB Clerk to take notes for the Panel and SAET HR Adviser(s) to clarify any procedural matters.
2. Hearing: In addition to those attending the pre-meeting:
  - Appellant (Employee and representative)
  - Respondent (Headteacher/Principal and/or other management/adviser) CEO

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

#### Order of Business:

- (a) Academy LGB Chair to introduce the members of the Committee/Panel and others present and to outline the order of business.
- (b) Chair to remind those present of the confidential nature of the proceedings.
- (c) The Chair will either read or circulate to all those present a copy of the warning or decision against which the appeal is being made.
- (d) The Appellant will state his/her case and may call witnesses.
- (e) The Respondent may ask questions of the witnesses.
- (f) The Governors and the SAET HR Adviser may ask questions of the Appellant and witnesses as appropriate.
- (g) Any final questions before the witness retires / the Appellant completes their case.
- (h) The Respondent will state his/her case and may call witnesses.
- (i) The Appellant may ask questions of the witnesses.
- (j) The Governors and the SAET HR Adviser may ask questions of the Respondent and witnesses as appropriate.
- (k) Any final questions before the witness retires / the Respondent completes their case
- (l) The Appellant will conclude with a concise summary of the case but will introduce no new factors.
- (m) The Respondent will conclude with a concise summary of the case but will introduce no new factors.
- (n) The Appellant and Respondent will withdraw while the Appeal Panel consider the case.
- (o) The Panel will consider the case and the action open to them and reach a decision.
- (p) Appellant and Respondent will be recalled and informed of the decision by the Chair.
- (q) A formal minute will be made of the outcome of the hearing.

Note: The SAET HR Adviser to the Governors may attend any such hearing, ask questions at any point and advise the Governors as appropriate, including once management and the employee have withdrawn during consideration of the case.