

Policy C8 – Staff Capability Policy

This policy applies to staff at the following academies:

Blackthorns Community Primary Academy
Desmond Anderson Primary Academy
Holmbush Primary Academy
Lindfield Primary Academy
Pound Hill Infant Academy
The Burgess Hill Academy

1. Aim

- 1.1. The aim of this policy is to provide a framework for managing employees, who despite the help and support provided through the trust's Appraisal Policy / regular feedback meetings are unable to demonstrate the required level of performance or behaviours in their role.

2. Scope

- 2.1. This policy covers all staff employed by each academy in the trust and staff centrally employed by the trust as specified with the exception of:
 - those employed for less than one term.
 - support staff in their probationary period.
- 2.2. Where capability concerns relate to a principal¹, meetings will be conducted or chaired by a senior member of trust staff² on behalf of the trust's Board of Trustees.
- 2.3. For ease of reference throughout this document, the term 'Principal' is used to describe any member of staff responsible for the management and performance of employees in the trust (ie line managers such as Principal, Chief Executive, Management Director or Service Director), and the term 'Academy' is used to describe any employment setting in the trust (ie Academy or central trust team): the same principles will apply to each situation.

3. When to use the Capability Policy

- 3.1. Early intervention is critical when dealing with poor performance. Principals are expected to raise concerns with individuals about their performance, through feedback, at the earliest possible opportunity and to put in place supportive interventions to help support the employee reach the required standards and behaviours. This is particularly important where a teacher could be given a 'requires improvement' or 'inadequate' assessment at their mid-year or end of year appraisal.
- 3.2. For support staff it is recognised that they may not be subject to the full appraisal process but their performance should be managed, with concerns about performance being raised informally first through normal regular feedback meetings.
- 3.3. The Capability Policy will be instigated when, despite the help and supportive interventions provided through the Appraisal Policy and normal regular feedback meetings, the employee

¹ For the purposes of this document, 'Principal' means Principal, Associate Principal, Executive Principal, Acting Principal, Head of School/Academy or, in the Principal's absence, the most senior teacher who is acting in the role of Principal.

² Normally the Chief Executive or Director of School Improvement

is still unable to meet the required standards, and has **been formally notified that the Appraisal Policy and normal regular feedback meetings will no longer apply**. Although the Appraisal Policy will cease to be applicable in this instance, the requirement to provide necessary support and training will remain.

- 3.4. The Capability Policy may also be instigated when there are serious concerns about an employee's performance and immediate action is warranted.
- 3.5. The employee will not receive pay progression whilst they are subject to the Capability Procedure.
- 3.6. In cases where the employee does not reach and maintain the required standard of performance, the employee may be dismissed.
- 3.7. If the required standard is not met for reasons of misconduct (eg refusal to co-operate or follow instructions) then this will be treated as a disciplinary matter under the trust's Disciplinary Policy.
- 3.8. If the reason for poor performance is as a direct consequence of an underlying health condition or disability, this will be managed through the trust's Sickness Procedures. Sickness absence will also be managed through the Sickness Procedures.
- 3.9. This policy should be read in conjunction with the guidance notes attached as Appendix A.
- 3.10. This policy is developed from the guidance contained within the School Teacher Pay and Conditions Document published by the Department for Education, which is amended each year and as such may be subject to change alongside these conditions. It also follows "Teachers' Standards".

4. Right to be accompanied

- 4.1. Employees have the right to be accompanied at all formal meetings within the procedure. There is no right for the employee to be accompanied to regular meetings during review periods although employees may be given the opportunity for representation at the final informal discussion of the procedure.
- 4.2. The employee's companion can be:
 - a work colleague;
 - a Trade Union Official; or
 - an accredited Trade Union Representative.
- 4.3. The name of the companion attending any formal meeting should where possible be notified to the Principal no later than 3 working days prior to the formal meeting.

5. The formal procedure

- 5.1. Prior to commencing the formal procedure the employee will have been notified in writing that their performance is to be managed under the formal Capability Policy and that the Appraisal Policy no longer applies.
- 5.2. For a detailed outline of the procedure and additional information please refer to the Guidance notes in Appendix 1.
- 5.3. The formal procedure consists of three stages (see overleaf).

Stage	Purpose.	Outcomes	Meeting Chaired by
Stage 1 - Formal Meeting	To formally discuss the areas of development in the employee's performance and make clear the required standards, set objectives and timescales for improvement which are detailed within the guidance.	Written notice to improve OR No action is necessary and returns to normal appraisal policy/normal regular feedback.	Principal
Stage 2 - Formal Review Meeting	To review the employee's progress against the standards and objectives set in the written notice to improve and decide the next steps.	Final Written notice to improve. OR Extended monitoring period is given OR Employee has improved and formal capability procedures are discontinued and returns to appraisal policy/ normal regular feedback.	Principal
Stage 3 - Final Review and Decision Meeting	To review the employee's progress against the standards and objectives set in the written notice to improve and decide on the appropriateness of continuing the employee's employment.	Dismissal with notice is recommended. OR Employee has improved and formal capability procedures are discontinued and returns to appraisal policy/ normal regular feedback.	Principal or another senior manager from the trust ³

- 5.4. These would normally be followed sequentially, however there are certain circumstances where it would be appropriate to initiate stages 2 or 3 at an earlier point; these include:
- Where a notice of improvement is still 'active' and the employees' performance lapses during this period; OR
 - Where there is a significant or sudden drop in performance that jeopardises the education of children or is likely to endanger the health and safety of other people. Where this is the case, evidence will be provided to support the decision which will include an explanation as to why the problem was not resolved at an earlier stage.

5.5. In cases where it is not clear where the procedure should commence, advice should be sought from the central HR Department.

6. Notice of meetings

- 6.1. Where possible the date of the Formal Review meeting and Final review meeting should be set in advance, but in any case at least 5 working days written notice should be given of attendance at any formal meeting under the procedure. The notice of the meeting must contain sufficient information about the concerns, and their possible consequences, to enable the employee to prepare their response.

³ The Principal will normally chair the meeting if the outcome is that the formal capability procedures are discontinued. Another senior manager from the trust – ie a member of the Trust's SMT or a Principal from another academy - not previously involved in the review, will chair the meeting if dismissal is recommended

7. Postponements

- 7.1. A postponement may be requested in advance of the meeting, and providing the reasons for the request are reasonable this will be agreed to. Only one postponement will be allowed.
- 7.2. In the event that the employee fails to attend the meeting or chooses not to attend the meeting, the matter may be considered and decided in their absence.

8. Document Exchange

- 8.1. Any documentation to be considered at any formal meeting must be sent to the employee with the invitation to attend the meeting.
- 8.2. If the employee wishes to submit documentation to be considered this should normally be submitted no later than 3 working days prior to the meeting.

9. Witnesses

- 9.1. In certain circumstances it may be appropriate for the Principal or the employee to call witnesses to attend the hearing. Where this is the case, the Principal shall notify the names of the witnesses they intend to call in the invitation to attend the meeting. Where the employee wishes to call their own witness the name of the witnesses should be notified in writing no later than 3 days before the meeting.

10. Formal confirmation of decisions

- 10.1. The formal decision of the meeting and a copy of the notes of the meeting must be confirmed in writing to the employee within 5 working days of the meeting being held. (see below for special provisions relating to dismissal).

11. Monitoring Periods

- 11.1. The length of a monitoring period depends on the seriousness of the issue, but is expected in most cases, to be between 4 to 8 weeks per monitoring period.

12. Currency of notice to improve

- 12.1. If, at the end of their monitoring period, the employee has achieved the required standard, formal capability procedures will be discontinued and the employee will return to the normal appraisal process. The employee should be notified formally in writing of this.
- 12.2. However, the notice to improve will remain 'live' for a period of 9 calendar months (written notice to improve) or 12 calendar months (final notice to improve) or to the end of the academic year (whichever is the greater period) commencing from the date of the meeting, which confirms that formal procedures no longer apply.
- 12.3. Should the employee's performance lapse during this period they will return to the Capability procedure at the stage they left it.

13. Link to Pay Progression

- 13.1. Whilst an employee is subject to the Capability Procedure they are not eligible for pay progression under the Trust's Pay Policy.

13.2. However, an employee may be considered for pay progression (even if his/her notice to improve is still “live”), if he/she has reached the required targets and his/her performance has been assessed as ‘Good’ by his/her Appraiser, provided that the Appraiser is satisfied that the improvement in performance is sustained and warrants progression up the pay spine.

14. Dismissal

14.1. Final Review and Decision Meetings, where dismissal may be the outcome must be conducted in accordance with the procedure outlined in Appendix B.

14.2. The academy will issue the notice of dismissal within 5 working days of the decision being made. This will be confirmation of the employee’s dismissal.

15. Appeals

15.1. There is the right of appeal at all stages of the formal Capability Policy.

15.2. In the case of a notice to improve, the appeal will be heard by another senior manager in the trust, not previously involved in the review.

15.3. In the case of dismissal the employee has the right to appeal against any such dismissal to a panel.

15.4. The appeal panel would be comprised of three local governors or trust Trustees who have not been previously involved in the process⁴. Where this number is not reasonably practicable it can be reduced to two.

15.5. The senior manager or the panel will be advised by a representative from the trust’s HR department.

15.6. Employees wishing to appeal against a notice to improve or dismissal, must submit their appeal in writing, stating the grounds for their appeal, with 5 working days of receiving written confirmation of the decision to the appropriate person.

15.7. Arrangements will be made for the appeal meeting to be held within 10 working days of receiving the employee’s letter.

15.8. In the case of a notice to improve, the senior manager cannot increase the level of the notice to improve.

16. General Provisions

16.1. Overlapping Procedures

16.1.1. In certain circumstances an employee may have a difficulty that is covered by two policies (for example, Grievance); or another difficulty arises during the application of one policy (e.g. sickness absence). In these circumstances the meetings required could be combined to ensure that the issue is dealt with in its’ entirety rather than viewed in isolation. The aim should be to focus on resolving the difficulty, ensuring that the essential elements

⁴ If the member of staff appealing against dismissal is a principal or a member of the trust’s senior management team, at least two of the panel members will be Trustees of the trust

from each procedure have been included in order to minimise the number of meetings and correspondence.

16.1.2. Sickness Absence or Grievances will not necessarily mean the Capability Policy is suspended, each individual case will be examined on its merits and timescales may be amended accordingly.

16.1.3. Advice regarding these situations can be obtained from the trust's HR Department.

16.2. Link with Incremental Pay (Non-Teaching staff only)

16.2.1. The pay policy states that employees will usually progress to the next spinal column point on an annual basis, subject to their performance, until they reach the top of the pay spine. If an employee is given a notice to improve their Line Manager may authorise for the employee's increment to be withheld until the notice to improve has lapsed. If this is to be actioned, the employee will be informed in writing.

16.3. Trade Union Representatives

16.3.1. No formal action will be taken under this policy against an accredited representative of a trade union, until the circumstances of the case have been discussed with a full-time official of the trade union concerned.

16.4. Employees with Disabilities

16.4.1. If an employee requires any reasonable adjustments to be made to enable them to fully participate in the process, they should notify their Principal as soon as possible.

16.4.2. In the case of any formal meeting, any reasonable adjustments should be notified as soon as possible (and providing a minimum 3 working days' notice). See the Guidance notes in Appendix A for further information.

17. Policy status and review

Written by:	Christina Dawson, HR Manager
Owner:	HR Department
Status:	V1 – Approved
Approval date:	V1 = 14/11/16 (Resources Committee) Merger editorial changes 1 September 2017
Review Date:	2021/22

Appendix A - Capability Policy Guidance

1. Introduction

- 1.1. This guidance accompanies the Capability Policy and sets out in detail how the policy should be applied in practice and how the procedure should be operated.

2. When to use the Capability Policy

- 2.1. It is expected that in all, except the most serious cases, the feedback part of the Appraisal Policy will have been completed before matters are referred to the formal Capability Policy.
- 2.2. The Principal is responsible for making their expectations of employees clear and actively managing their performance through regular meetings with the employee and/or the Appraisal Process.
- 2.3. Teachers' performance will be assessed against the Teachers' Standards that came into force on 1 September 2012 along with any other performance objectives set as part of the appraisal process. The Teachers' Standards cover teaching and also personal and professional conduct. The Capability Policy is concerned with issues of performance, whilst the Disciplinary Policy covers matters of personal or professional conduct.
- 2.4. Employees are expected to raise with their Principal as soon as possible any issues that are impacting on their ability to perform at work.
- 2.5. Employees are jointly responsible for their own development and for participating in development and training activities.
- 2.6. The Capability Policy should be instigated when despite the help and supportive interventions provided through the Appraisal Policy/normal regular feedback meetings, the employee is unable to reach the required standard/behaviours.
- 2.7. The Appraiser should meet with the employee and formally advise them that the Appraisal Policy/ normal regular feedback meetings no longer apply and that the matter is being referred to the Capability Policy.
- 2.8. Please refer to the Appraisal Policy for more information about feedback and the steps to have to be completed before initiating the capability policy.

3. Notice to Attend

- 3.1. The employee should always be given a minimum of 5 working days written notice to attend any meeting under the formal Capability Procedure.
- 3.2. The dates of the Formal Review Meeting and Final Review and Decision Meeting should be set in advance (if possible), but the employee should be sent a reminder at least 5 working days before the meeting.
- 3.3. The letter sent to the employee should contain enough information about the concerns, and the possible consequences so the employee can prepare their response.

- 3.4. Any documentation to be considered at the meeting should be sent to the employee with the invitation to attend the meeting. This is likely to include evidence from the appraisal process, which has prompted the need for a formal capability meeting.
- 3.5. In certain circumstances it may be necessary to call witnesses to the meeting. Where the Principal intends to call witnesses the names of any witness should be notified to the employee in the invitation to attend the formal meeting.
- 3.6. The employee has the right to be accompanied to this meeting. In order to exercise their right to be accompanied, the employee should notify the name and position of their companion to the Principal and provide copies of any documentation that they wish to have considered at the meeting, no later than 3 working days before the meeting.
- 3.7. The employee may request a change of the date or time of the meeting if they, or their companion, are unable to attend at the invited time. The employee must provide reasons for this request.

4. Failure to attend

- 4.1. All parties should make every effort to attend any of the Formal Meetings.
- 4.2. If the employee fails to attend the meeting for reasons outside of their control, the meeting may be postponed and re-arranged. Usually only one postponement and re-arrangement will be agreed.
- 4.3. If the employee refuses to attend, the meeting can be held without the employee present. The employee should be allowed to submit documents for consideration at the meeting.
- 4.4. If the employee insists on a companion being present who continues to be unavailable, and a suitable companion is available, then the Chair of the meeting may decide to proceed with the meeting.

5. Meeting Attendees

- 5.1. Please refer to the table overleaf to see who would be expected to attend the meeting.

Stage 1 – Formal Meeting	Stage 2 – Formal Review Meeting	Stage 3 – Final Review and Decision Meeting	
		<i>If capability procedures are to be discontinued</i>	<i>If dismissal is recommended</i>
Principal will chair the meeting.	Principal will chair the meeting.	Principal will chair the meeting	A senior manager from the trust, not previously involved in the review with chair the meeting ⁵
n/a	n/a	n/a	Another senior manager from the trust, not previously involved in the review
n/a	n/a	n/a	The Principal to explain their position and recommendations.
Employee	Employee	Employee	Employee
Witness as required.	Witness as required.	Witness as required.	Witness as required.
Employee’s companion – Trade Union representative or work colleague.	Employee’s companion – Trade Union representative or work colleague.	Employee’s companion – Trade Union representative or work colleague.	Employee’s companion – Trade Union representative or work colleague.
Representative from the central HR department to advise chair and take notes.	Representative from the central HR department to advise chair and take notes.	Representative from the central HR department to advise chair and take notes.	Representative from the central HR department to advise chair and take notes.
Notes of the meeting must always be taken. If a note taker is not available then it is the responsibility of the chair to make notes of the meeting.			

6. Stage 1 – Formal Meeting

- 6.1. The purpose of this meeting is to formally discuss with the employee, the Principal’s concerns about the employee’s performance and to make clear the standards required and to set objectives or explore any reasonable adjustments/support that need to be made to enable the employee to perform to an effective level.
- 6.2. The employee should be given the opportunity to respond to the points made by the Principal and put forward their point of view.
- 6.3. Having considered the information the Principal will decide whether:
- No formal action is required OR
 - To issue a written notice to improve
 - Areas for discussion include:
 - The standard of performance required in the post and why the employee’s performance is a problem at the moment.
 - The reasons for the employee’s difficulties in reaching the standards. It is important to get the employee to understand that there is a problem and wherever possible propose their own solution to it;
 - Any reasonable support that will assist the employee in making the required improvements. Again it is important to try to get the employee to try and propose their own solution to the problem;

⁵A member of the Trust’s SMT or a Principal from another academy

- Setting performance objectives/targets (these may be additional to those already set in the appraisal process). It is important that the objectives are: SMART. (Specific, Measurable, Achievable, Resourced, Time bounded)
 - Setting a timescale for improvement.
 - The date for the Stage 2 formal review meeting (if it is decided to issue a written notice to improve)
- 6.4. A model development plan providing a framework for the above is available from the trust's HR Department.
- 6.5. Useful information to consider at the meeting may include:
- Copies, where relevant, of meeting notes, the job description, national/professional standards (particularly the "Teachers' Standards") and any other standards specific to the job;
 - Copies of any notes/follow up from meetings which document what measures have been put in place;
 - Evidence of the work not being up to standard, for example, lesson observation records, pupil progress data and where applicable examples of the appropriate standard.
 - Evidence from the appraisal process, which has prompted the need for a formal capability meeting.
- 6.6. From a management perspective, this can be a difficult meeting to handle, as the employee may become emotional or defensive. The Principal can adjourn the meeting if time is needed for the employee to compose themselves or for the chair to think about a point that an employee has raised.

7. Stage 2 – Formal Review Meeting

- 7.1. The purpose of this meeting is for the Principal to review the progress that the employee has made against the objectives set in the written improvement notice, and to consider any other relevant information and decide whether the employee:
- Has achieved the appropriate standard and formal procedures can be discontinued; or
 - Has made significant progress and would benefit from being given an extended monitoring period; or
 - Has made insufficient progress towards achieving the targets set and should be issued with a final written notice to improve.
- 7.2. At the meeting, the Principal will need to explain/explore the progress against objectives set.
- 7.3. Useful information to consider includes:
- Copies of the documentation used in the first meeting;
 - Copies of the objectives set for the employee at stage one of the process and of any other relevant evidence gathered during the first monitoring period including any development plan;
 - Copies of any notes/follow up that documents what measures have been put in place to support the employee and their progress towards achievement of the targets. This will have been gathered through regular monitoring meetings;
 - Whether the employee has been present during their monitoring period (are there any periods of leave or sickness absence which need to be taken into account?); and
 - What level of performance the employee has to achieve going forward. This is particularly the case if the employee's performance has improved slightly or not improved at all.

- 7.4. If the employee's progress has not improved, the following will need to be discussed:
- The reasons for any shortfall, if performance has not improved;
 - The need for any further support. (It is important to explore all reasonable options to enable the employee to achieve the required standard. This is because at the next stage of the process a decision will be made as to whether the employee's employment is terminated;
 - Objectives and timescales for the next review period).
 - The date for the final review meeting. It is important that the employee is made aware at this point that if their performance does not improve their employment could be terminated.

8. Stage 3 – Final Review and Decision Meeting

- 8.1. The purpose of this meeting is to decide whether the employee:
- Has made satisfactory progress against the set targets; or
 - Should be dismissed from their employment.
- 8.2. In preparation for the Final Review and Decision meeting, the Principal should compile a report. The report should include all the documentary evidence that weighs up the academy's needs and, where relevant, impact on pupil progress against the employee's current level of performance. It should also cover all the measures that have been put in place to support the employee. Advice should be sought from the trust's HR Department where required.
- 8.3. In essence the report will need to cover:
- The employee's performance record;
 - The nature of the poor performance;
 - The employee's progress in the capability procedure;
 - What measures, including support for the employee, have been put in place/explored to enable them to work at the desired level – why these failed or were disregarded;
 - The impact of the employee's performance on the school and, where relevant, pupil progress – how the work has been covered, additional costs, what has not been delivered as a consequence; and
 - Why the employee's employment needs to be terminated in the light of the above – if this is the recommendation.
- 8.4. The meeting needs to be conducted in accordance with the procedure set out in Appendix B of this policy and details of any witnesses attending should be provided.
- 8.5. The Chair will consider:
- All the steps that have been taken to date and the supporting documentation;
 - How long the employee's performance has been an issue and what improvement has been made, if any;
 - Whether reasonable actions have been taken to enable the employee to perform to the required standard;
 - Whether a reasonable level of support has been made available to the employee;
 - Any medical advice/prognosis (only if it is relevant to the case);
 - Impact on the school and pupil progress;
 - Whether reasonable adjustments have been made, and whether the Equality Act 2010 may apply, and how effective these have been in removing barriers; and
 - The views of the employee.

8.6. Before a decision to dismiss is reached, it is expected that the Principal would have reasonably explored and documented all appropriate options to try and enable the employee to work at a satisfactory level.

9. Outcomes

9.1. The outcome of any meeting held under the Capability Policy, should be confirmed to the employee at the meeting (where possible) and in any case should be confirmed in writing within 5 working days of the meeting along with their right of appeal.

9.2. The outcome of the meeting and information to be contained in the outcome letters are shown in the table below.

9.3. Redeployment is not usually an option under the Capability Policy, nor is there the scope to automatically 'demote' an employee. However in certain circumstances, under an extended review period, or as an alternative to dismissal, it may be possible to agree a mutual variation to contract to either to a lower graded or different post, this will be without pay protection.

Stage/Level of performance attained	Target Achieved or no evidence of poor performance	No improvement in performance or performance not satisfactory	Significant but not full improvement in process.
Stage 1 – Formal Meeting	Principal's reasons for, and decision are captured. Employee is advised that the Capability Policy no longer applies and they return to the appraisal policy and normal feedback arrangements.	Written Notice to Improve Confirmation of the notice to improve; A support and development plan outlining the objectives the employee has to meet, the timescale for improvement and support to be given; The date for the first formal review meeting.	N/A
Stage 2 – Formal Review Meeting	As stage 1 plus; Employee is advised that the notice to improve remains active for 9 months or until the end of the academic year, whichever is the longer and should their performance lapse during this period, they will return to the procedure at the same stage.	Final Written Notice to Improve As above, except the date is for the Final Review and Decision Meeting. Employee is advised that should they not meet the required standard in the specified timescale they could be dismissed.	Extended Monitoring Period Confirmation of extended notice period Confirmation of targets to be achieved and timescale Date for reconvened formal review meeting.
Stage 3 – Final Review and Decision Meeting	As stage 1 plus; Employee is advised that the notice to improve remains active for 12	Dismissal with notice Chair's decision and reasons are captured	Dismissal with notice Chair's decision and reasons are captured

	months or until the end of the academic year, whichever is the longer and should their performance lapse during this period, they will return to the procedure at the same stage.	Confirmation of right to appeal See Appendix B for Dismissal Procedures.	Confirmation of right to appeal See Appendix B for Dismissal Procedures.
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10. The Monitoring period

- 10.1. During the monitoring period the Principal must continually monitor and discuss the employee's performance to check progress against the objectives and timescales outlined in the notice to improve. This should be done through regular meetings with the employee. If regular meetings are normally held with the employee it may be necessary to increase the frequency of these meeting during the monitoring period. Where regular meetings are not normally held progress check meetings will need to be convened.
- 10.2. Employees do not have the right to be accompanied to these meeting by their Trade Unions Representative/ companion.
- 10.3. The Principal should keep notes of items discussed at the meeting and of the employee's progress as these will be relevant to Stage 2 and 3 meetings.
- 10.4. By the time the next formal meeting is convened the employee should have a clear understanding of their current level of performance so they can reasonably prepare for the meeting.
- 10.5. Where an extended review period has been given the relevant meeting will be reconvened (Stage 2) and then the Principal will make a decision either to discontinue proceedings or to issue a final written notice to improve. There is not usually at this stage, or at stage 3, an option for a further monitoring period.

11. Timescales for improvement

- 11.1. The timescale for improvement will depend on the nature of the issue. The timescale for improvement should be reasonable and proportionate and should provide sufficient opportunity for an improvement to take place.
- 11.2. As a guide it would be reasonable to allow in most cases, between 4 and 8 working weeks between the review meetings, with a view to completing the process within a term of commencement.

12. Serious Underperformance

- 12.1. If the formal procedure is initiated at a later stage it is possible that a final review and decision meeting that leads to dismissal could be reached within 4 weeks of commencing the process.
- 12.2. The meeting to consider the performance of the employee will be conducted along the same basis as the initial meeting, although the outcome could include the employee being issued with a final notice to improve.

13. Appeals against notice to improve

13.1. Introduction

13.1.1. If an employee wishes to appeal against the notice to improve given at Stage 1 or 2 of the procedure, they are asked to give written reasons for their appeal, so that the senior manager hearing the appeal can focus on these reasons. The request for an appeal should be lodged within 5 working days of receiving their written confirmation of the notice to improve. The letter requesting an appeal should be submitted to the Principal who issued the notice to improve.

13.1.2. The appeal will be heard by another senior manager in the trust, not previously involved in the review.

13.1.3. On advice from the trust's HR department, the senior manager appointed to hear the appeal will, within 10 working days of receipt of the appeal, arrange the meeting for the employee's appeal to be heard. This means the appeal will be heard within 10 working days.

13.2. Present at the appeal meeting

- 13.2.1. The appeal against the notice to improve meeting will be attended by:
- A senior member of staff from the trust, who is suitably independent to the case (Chair)
 - The Principal who issued the notice to improve
 - The employee
 - Their companion
 - Relevant witnesses
 - A note taker
 - A representative from the trust's HR department to advise the senior manager.

13.3. Other procedural details

- The companion may play a similar role to the one that they play in the formal meetings under the procedure.
- The Chair will open the meeting, make introductions, check all present have the same documentation and invite the employee to give their reasons for appeal. The employee will then explain their grounds for appeal and, where applicable, refer to other documents used in the original review meetings.
- The meeting will focus on these "grounds" for appeal and will not be a re-hearing of the formal meeting at which the notice to improve was issued.
- The Chair will ask questions of the employee.
- The employee and their union rep will have the opportunity to ask questions.
- The Chair may call the employee's Principal to the meeting to explain the rationale for their decision.
- The Chair will sum up at the end of the meeting, and will then call for a brief adjournment to consider the matter and reach a decision.

13.4. Outcome from an Appeal

- 13.4.1. The senior manager hearing the appeal can decide the following:
- Not to uphold the appeal, in which circumstances, the notice to improve will remain unchanged;

- To partially uphold the appeal – whereby the senior manager may find certain grounds to concur with the employee and adjust the objectives and timescales set out in the notice to improve;
- To partially uphold the appeal and allow the employee an extended review period under a notice to improve; or
- To uphold the employee’s appeal in full and revoke the notice to improve that was issued.

13.4.2. The senior manager cannot increase the level of the notice to improve given to the employee.

13.4.3. The outcome of the meeting will be communicated in writing to the employee within 5 working days.

14. Dismissal

14.1. The Chair of the Stage 3 Final Review and Decision Meeting will confirm their decision to dismiss the employee within 5 working days of the meeting, they must also include in this letter an explanation of the employee’s right of appeal.

15. Appeals against Dismissal

15.1. Introduction

15.1.1. If an employee wishes to appeal against the decision to dismiss them, the employee must write to the trust’s HR Department within 5 working days of receiving written notification of the decision to dismiss. In their letter, the employee must cite their reasons for appeal.

15.1.2. The appeal will be heard by an appeal panel comprised of representatives, not previously involved in the review.

15.1.3. On advice from the trust’s HR department, the clerk to the Panel will, within 10 working days of receipt of the appeal, arrange the meeting for the employee’s appeal to be heard. This means the appeal will be heard within 10 working days.

15.1.4. The format of the meeting will be a re-hearing of the dismissal case and held in accordance with the procedure set out in Appendix B.

15.1.5. Witnesses may be called to attend.

15.1.6. This is the final stage in the Capability Procedure.

15.2. Present at the appeal panel meeting

15.2.1. The appeal against the dismissal meeting will be attended by:

- A panel of three local governors or trust Trustees⁶ suitably independent to the case. Where this number is not reasonably practicable it can be reduced to two.
- The Principal who issued the notice to improve
- The employee
- Their companion

⁶ If the member of staff appealing against dismissal is a principal or a member of the trust’s senior management team, at least two of the panel members will be Trustees of the trust

- Relevant witnesses
- The Clerk to the Local Governing Body / Board of Trustees who will act as note taker
- A representative from the trust's HR department to advise the Panel.

16. Rights to be accompanied and the role of the companion

- 16.1. At any formal stage of the procedure the employee has the right to be represented at the meeting by a Trade Union representative or a work colleague.
- 16.2. The employee needs to provide the name of their companion to the person the meeting. This action fulfils the employee's legal obligation to make a 'written request'. This should be done no later than 3 working days prior to the meeting.
- 16.3. The companion is allowed to address the meeting in order to:
- Present the employee's case;
 - Respond on the employee's behalf to any views expressed at the meeting;
 - Confer with the employee during the meeting; and
 - Sum up the employee's case.
- 16.4. The companion may not answer questions on the employee's behalf, address the meeting if the employee does not wish it, or prevent the employee from explaining their case.

17. Record keeping

- 17.1. Records should be kept of all formal performance matters. This means the notice to improve and supporting paperwork, the notes from the Review meetings (where taken), and copies of any letters sent to the employee, or received from them.
- 17.2. Records will be kept in accordance with the Data Protection Act, which requires the organisation to keep relevant, accurate data securely, and for no longer than is necessary.
- 17.3. During all formal review meetings, notes must be taken, either by the Chair of the meeting, or by a note taker. If a note taker is to be present at the meeting, the employee will be told in advance. Short breaks during the meeting may need to be taken, to enable note taking to be made.
- 17.4. There should always be a note taker present at Stage 3, Final Review and Decision or Dismissal meetings and Appeals.
- 17.5. Notes do not need to be a verbatim account of the meeting, but be detailed enough to adequately reflect the conversation, and the views expressed by all parties. The note taker should also record opportunities given to the employee to comment, even if the employee chose not to do so.
- 17.6. During any adjournment, the note taker must remain in the room to record the rationale for any decision taken.
- 17.7. Following the meeting, the notes will be agreed by the Chair. It is very important that the notes are reviewed carefully, because the notes may be used later (for example, in an appeal meeting), and the Chair may be called upon to explain their decisions at the Review meetings
- 17.8. Copies of the notes will be given to the employee, for information only.

- 17.9. The capability procedure will be treated with confidentiality. All records will be kept confidentially, in secure, locked filing cabinets.
- 17.10. Notices to improve will be kept on the employee's file held by the academy and electronically by the central HR Department.
- 17.11. The use of equipment to record meetings is not normally permitted unless a participant has specific access requirements, and all parties are in agreement.
- 18. Employees with Disabilities**
- 18.1. Under the Equality Act 2010 employers have a duty to make reasonable adjustments for an employee with a disability, where this is required.
- 18.2. Where a Principal is aware, or could reasonably be expected to know that the individual has a disability, it is important that reasonable adjustments are put in place to remove any barriers to that individual performing effectively in the role. This requirement includes the need to regularly review the effectiveness of the reasonable adjustment in removing the barrier (s) and finding alternatives as necessary. The reasonable adjustments agreement can be used to assist this process. The Capability procedure should only be used where all reasonable adjustments have been put in place.
- 18.3. If it becomes necessary to manage an employee through the Capability Procedure Principals or Line Managers should also consider whether the employee needs any reasonable adjustments to help them participate in the process. This may include making adjustments to the process (for example – adjusting the format of the meeting, or allowing a longer monitoring period).
- 18.4. The Principal can obtain advice on reasonable adjustments either from the central HR Department.

Appendix B - Procedures for conduct during meetings

1. Rules of Conduct for a Dismissal Hearing and Appeal Panel

- 1.1. At least 5 clear working days' written notice shall be given to the employee of the date, time and place of the dismissal or the appeal panel advising of his/her right to be represented. The notice calling the employee to the capability hearing shall include a statement of any allegation, complaint or adverse report concerning the employee's conduct or capacity which is to be considered;
- 1.2. The concerns about the employee's capability will be presented by the appropriate person involved in the stages of the procedure.
- 1.3. The panel may be advised by a representative from the central HR Department. That person may retire with the panel for the purpose of giving advice (they do not, however, have any role in making the decision).
- 1.4. Persons presenting evidence shall not retire with the panel when it considers its decision, but the panel may recall anyone to clarify evidence previously given, provided that the two parties are also in attendance when that evidence is given;
- 1.5. At the conclusion of the hearing, if it is considered that dismissal should take effect the employee will be informed orally if possible and in any event the decision will be confirmed in writing within 5 working days.
- 1.6. In the case of an appeal, the employee shall set out in writing the grounds for the appeal, to be lodged with the appropriate person, within 5 working days of receipt of written confirmation of the dismissal;
- 1.7. The panel hearing the appeal may uphold the original capability decision, or modify it, by substituting a lower level of capability action or dismiss the concern(s) altogether. The panel may not make any award of compensation to the employee or vary unilaterally the employee's contract of employment. Once the decision has been reached, it should be given orally at the hearing if possible and confirmed in writing to the employee within 5 working days.

2. Conducting a Dismissal Meeting (Including Appeal Panel Meetings)

- 2.1. Those involved in capability proceedings need to be fair, impartial and reasonable throughout.
- 2.2. The following rules of conduct shall apply to all formal dismissal meetings including appeal meetings under this Procedure.
- 2.3. A potential panel member or chair is ineligible to serve on a capability dismissal committee where he or she is related to the employee in question, or has made allegations, or has been a witness to an alleged incident or involved in a matter, which results in capability proceedings.
- 2.4. Where a panel is required to determine an appeal against a determination of dismissal, that panel will normally include three local governors or trust Trustees⁷ who have had

⁷ If the member of staff appealing against dismissal is a principal or a member of the trust's senior management team, at least two of the panel members will be Trustees of the trust

prior involvement in the case. Where this number is not reasonably practicable it can be reduced to two.

- 2.5. Meetings will be held at a time and place, which, as far as possible, are acceptable to all parties. A meeting should be adjourned to another date after 5 hours or at 6 p.m.; whichever is the earlier, unless both parties agree otherwise.
- 2.6. Copies of all documentary evidence will be available to both parties as early as possible in advance of the meeting.
- 2.7. Accommodation will be provided for the employee and his or her representative or work colleague to meet in private before, during and after the meeting.
- 2.8. The Principal, any panel members (in the case of an appeal against dismissal), the employee and his or her representative will attend throughout the meeting. Witnesses will be present only for their submission to the meeting (if appropriate to the case).
- 2.9. During the meeting, the Principal or the employee may request one or more short adjournments. Such requests will not be unreasonably refused.
- 2.10. Witnesses will be instructed not to discuss their evidence with other witnesses during the meeting.
- 2.11. The Chair should start the proceedings by introducing themselves and others present to the employee, explaining the role of each of those present. The employee should introduce any person who is accompanying them. The Chair should then establish with both parties the names of any witnesses they intend to call to the meeting.
- 2.12. The Principal will first present the concerns(s) against the employee, as appropriate, providing such evidence, documentary or by oral statements of witnesses, as necessary.
- 2.13. The employee or his/her representative will then be asked to give an explanation of the circumstances which led to the convening of the capability meeting, providing such evidence, documentary or by oral statements of witnesses, as appropriate.
- 2.14. All witnesses may be questioned by the Principal, the employee or his/her representative, the Chair and any panel member (in the case of an appeal against dismissal). The Principal and the employee may be similarly questioned. Following the completion of both parties' submissions, witnesses may be recalled - but only to clarify evidence previously given, not to introduce any new material.
- 2.15. The Principal and the employee or his or her representative may sum up following the conclusion of statements by both parties. The employee will be given the opportunity to speak last. Neither summary may introduce any new material.
- 2.16. The chair of the meeting, having given the employee the opportunity to state his/her case, may adjourn the meeting for further investigations before a decision is made.
- 2.17. At the conclusion of the meeting, all those present except the panel (in the case of an appeal against dismissal) and adviser should leave the room to allow them to deliberate in private. The chair may recall the Principal and the employee/representative to clarify points of uncertainty on evidence already given. If recall is necessary, both parties must return even if only one is concerned with the point giving rise to doubt.

2.18. In coming to a conclusion on the facts of the case, the chair (in the case of a dismissal hearing) or panel (in the case of an dismissal appeal) will need to decide based on the evidence presented whether the employee's employment should be terminated. Once a determination has been reached, both parties should be recalled to the meeting. The Chair should inform the employee of the determination and right of appeal (in the case of a dismissal hearing). In exceptional circumstances, it may not be possible to reach a decision on the day of the meeting. In this case, both parties should be recalled to the meeting and so advised. The Chair should explain the reasons and inform the employee when the determination is likely to be reached. This must be no later than two working days after the meeting.