



## Capability Procedure

### Version 1

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| <b>Status</b>                                  | Statutory                                                                                                                                                                                                                                                          |
| <b>Responsible Board/ Committee/Individual</b> | Board of Trustees                                                                                                                                                                                                                                                  |
| <b>Author</b>                                  | CEO /HR Adviser                                                                                                                                                                                                                                                    |
| <b>Target Audience</b>                         | Trust Staff                                                                                                                                                                                                                                                        |
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| <b>Related Documents</b>                       | ACAS Code of Practice – Disciplinary and Grievance Procedures<br>Staff Disciplinary and Grievance Policy<br>Staff Induction Policy<br>Governance Handbook<br>Teachers' Standards<br>Professional Growth Policy<br>QA of Teaching and Learning Policy<br>Pay Policy |

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The success of the **Brighter Futures Learning Partnership Trust (The Trust)** relies on the performance of all its employees and members of its communities. The Trust is committed to providing staff with roles which support strong professional development opportunities:

- appropriate learning and development opportunities;
- targeted support when required;
- clarity of role and objectives
- constructive and meaningful feedback.

Where staff experience problems in attaining the appropriate standards of work, the Trust will endeavour to support them to reach the required standards **through a bespoke coaching plan**.

Employees should be clear of the standards and expectations at the Trust and the potential consequences of failing to meet them. Staff have a contractual responsibility to perform to a satisfactory level, and they should be given guidance, support and encouragement to do so, alongside honest and constructive feedback. Managers have a responsibility for setting realistic and measurable standards of performance and for explaining those standards carefully to employees as well as monitoring those standards.

## **PURPOSE AND SCOPE**

This policy applies only to Trust staff about whose performance there are serious concerns that the Professional Growth process has been unable to address.

The policy and procedure must be followed when an employee's ability to perform the duties of their post is giving cause for concern. Lack of capability is highlighted when an employee consistently fails to perform their duties to an acceptable standard.

The Employment Rights Act 1996 defines capability as 'capability assessed by reference to skill, aptitude, health or any other physical or mental quality'.

The Trust operates a staged approach to supporting employee performance, aligned with the Professional Growth, Quality Assurance and Pay Policies. These stages are defined as follows:

### **Professional Growth (Universal Practice)**

All employees engage in ongoing coaching, feedback and professional dialogue as part of normal practice. This is developmental in nature and does not indicate a performance concern.

### **Enhanced / Informal Support**

Where early concerns are identified, the employee will receive additional support through coaching, guidance, monitoring and professional development. This stage is informal, supportive and preventative, and does not constitute a formal performance process.

### **Formal Support Process**

Where concerns are more serious or have not been resolved through informal support, a formal, time-bound support process will be initiated. This will:

- be confirmed in writing
- clearly identify the areas of concern
- set out the support to be provided
- define expected improvements and success criteria
- specify a review period (normally a minimum of 6–8 working weeks, which may be extended where improvement is being demonstrated or where circumstances justify additional time)

This stage represents a formal performance concern. Where sufficient and sustained improvement is not demonstrated, this may result in pay progression being withheld in accordance with the Trust Pay Policy.

### **Capability**

Entry into the formal Capability Procedure will only occur where:

- sufficient improvement has not been achieved through the formal support process or;
- Immediate escalation to formal capability which will occur only in exceptional circumstances where concerns are serious, evidenced, and continued informal or formal support would clearly be inappropriate. Reasons must be confirmed in writing.

The Trust will ensure that all actions taken under this policy are reasonable, proportionate, and applied consistently. Similar cases will be treated in a similar manner, taking into account individual circumstances. Employees are encouraged to seek advice and support from their trade union or professional association at an early stage where concerns about performance are identified.

### **Examples of areas which may give rise to concern, see Appendix 1.**

All staff must have ready access to this procedure and are entitled to complete confidentiality in relation to personal, professional and medical information.

This procedure applies to:

- all staff employed by the Trust, including the Headteacher/Principal/CEO, except NQTs and staff still in their probationary period (see below);

The procedure does not apply to:

- Newly Qualified Teachers (alternative procedures are in place for newly qualified teachers during their period of induction);
- Schools' meals staff employed by Catering organisations or other external catering contractors.
- Employees of external contractors and providers of services (e.g. contract cleaners).

At every stage in the procedure, with the exception of the management period, the employee will:

- Be advised in writing of the nature of the performance concerns against him or her.
- Have the right to be accompanied by their trade union representative, professional association representative or work colleague and by *no-one* else.
- Have a right of appeal against any penalty imposed.
- Ensure covert recordings of any meetings held under this procedure are **not permitted**, unless required by law or where all parties have provided prior written agreement.

When staff fail to meet required standards of performance, they will be supported initially via the relevant coaching processes, and this may involve support from a member of the senior leadership team. When the process fails to result in a significant, sustainable improvement it will cease to apply and the Capability Policy and Procedure will be triggered.

The purpose of the Capability Policy and Procedure is to provide a fair and consistent framework to enable managers and staff to:

- Identify constructive agreed support with the aim of improving performance
- Enable staff to achieve and maintain an acceptable standard of work through constructive support
- Follow a fair and consistent process in managing and improving poor performance This policy may also be used to enable and encourage staff to raise concerns regarding their ability to adapt to changes affecting their roles. **This policy must not be used where inadequate performance is the result of wilful misconduct or negligence. Capability will not be used to address misconduct, redundancy, organisational change, personality conflict, or other matters more appropriately managed under alternative procedures** In accordance with the ACAS Code of Practice for Disciplinary and Grievance Procedures, before any action is taken against an employee who is a trade union representative, except for initial concerns, the matter should be discussed with a full-time official of their trade union, with the employee's agreement.

**This policy is designed to be used for staff who are not achieving the required standards of performance either because they lack the skills and/or aptitude or because their performance has deteriorated.**

## **ROLES AND RESPONSIBILITIES**

The **Board of Trustees** is responsible for ensuring this policy is applied fairly and consistently across the Trust alongside holding specific responsibilities relating to the potential dismissal of employees under this policy. All decisions taken under this policy will be in accordance with the Trust's Scheme of Delegation to ensure clarity, consistency and appropriate levels of authority across all academies within the Trust.

The **CEO** is responsible for ensuring employees are treated fairly and consistently across the Trust. The **CEO** also has specific responsibilities detailed within this policy regarding decision-making and the issuing of sanctions.

The **Local Governing Bodies and Headteachers/Principal** are responsible for monitoring the application of this policy within their respective schools, ensuring capability issues are managed effectively and other related policies are shared, understood and adhered to by all employees. They are also responsible for ensuring managers, leaders and supervisors have access to appropriate training and development to enable them to apply this policy fairly, consistently and professionally.

The Trust's central **HR Manager** is responsible for overseeing the introduction, implementation, monitoring and review of this policy and will report to the CEO, the Board and Local Governing Bodies as directed by the CEO. The Trust's **external HR support** will provide advice, guidance and support in the implementation of this policy and procedure, acting as a point of contact for Trust Central HR Team. The Trust's **HR Manager** will ensure that this policy is implemented fairly and consistently, whilst also ensuring that relevant employment legislation and statutory guidance is adhered to.

**Line-Managers** must operate within this policy in a fair, consistent and reasonable way; ensuring confidentiality is protected where possible. It is a Line-Manager's responsibility to manage performance issues. Line- Managers must ensure that employees are supported throughout the capability processes appropriately and they must not take any formal action without speaking to their Headteacher/Principal. **Headteachers/Principal are expected to inform the CEO** of any staff who have reached the thresholds for capability.

Line-Managers are encouraged to deal with performance issues promptly, professionally and discreetly, ensuring staff dignity is maintained wherever possible. **Line-Managers are encouraged**

**to seek advice from their Headteacher/Principal even when dealing with matters of inadequate performance informally.**

The Trust expects that staff perform to a high standard, striving to continuously learn, develop and improve their performance. Where staff experience difficulties in their ability to perform to the required standards and expectations it is vital that they access the appropriate support, advice, guidance, learning and development opportunities and that they actively seek the support of both their line manager at an early stage. **Staff** are expected to ensure they comply with their statutory, mandatory and other identified learning and development requirements and that standards and expectations highlighted within their coaching and professional growth processes are met within appropriate timescales.

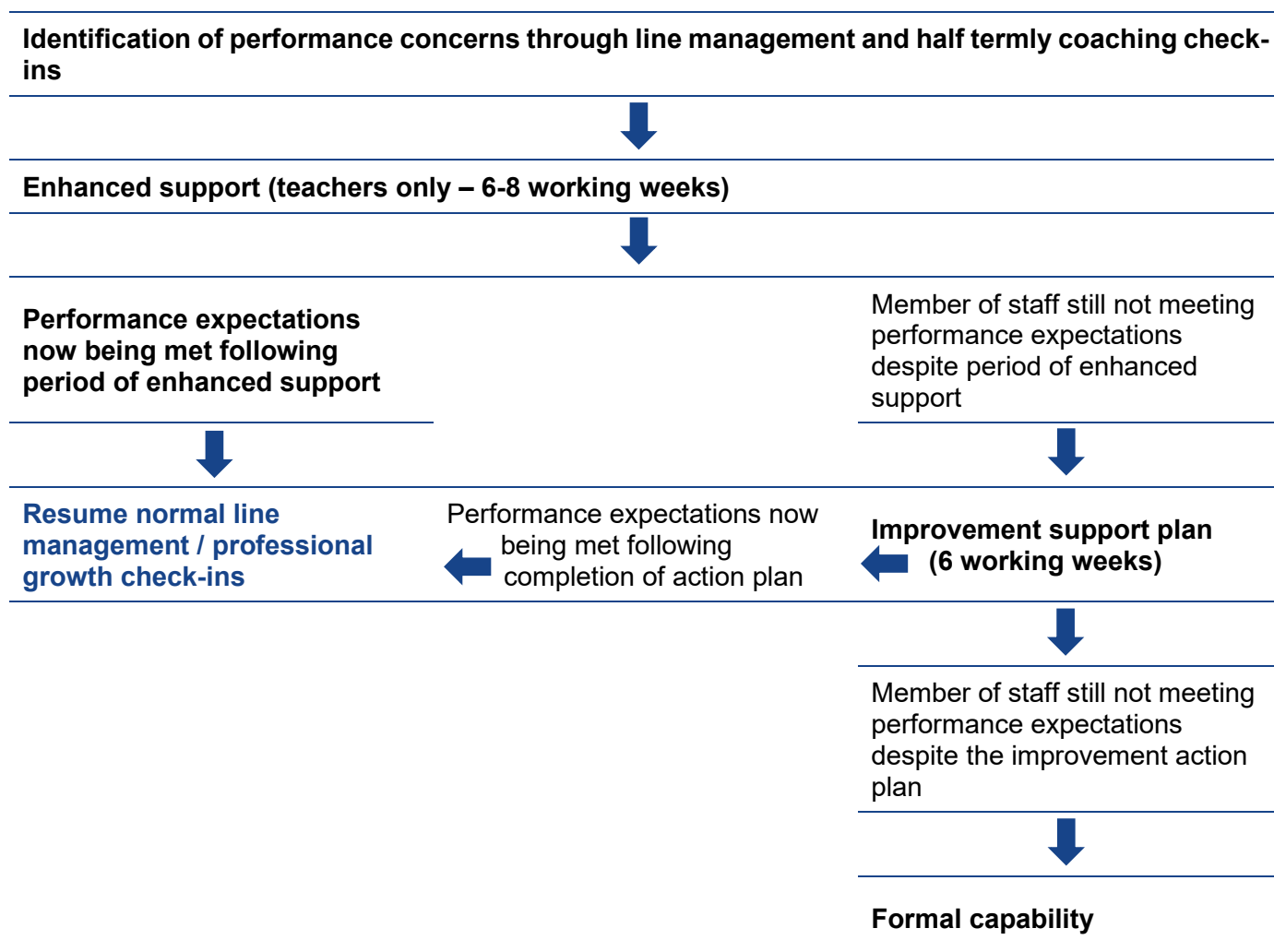
## **EQUALITY AND DIVERSITY**

The Trust is committed to:

- Promoting equality and diversity in its policies, procedures and guidelines
- Ensuring staff are protected from unlawful direct or indirect discrimination resulting from a protected characteristic (e.g. age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation)
- Delivering high quality teaching and services that meet the diverse needs of its student population and its workforce, ensuring that no individual or group is disadvantaged

## PROCESS

Staff experiencing difficulties in achieving the appropriate standards of performance will be given help and support by their Line-Manager, summarised in the flow chart below:



Line-Managers have a duty to continuously monitor the performance of staff they are responsible for, advising, guiding and encouraging staff to attain high levels of performance. Performance should be reviewed formally through the relevant process. Line-Managers are encouraged to deal with inadequate performance on an informal basis initially, wherever possible, at the earliest opportunity. In addressing issues of poor performance, they should be clear, honest, supportive and encouraging, highlighting any learning and development options and seeking advice from Senior Leaders and Line-Managers. Staff should have clear, time-related targets that are monitored. The process will often mean that Line-Managers and Leaders carry out more lesson observations and lesson drop-ins for teaching staff or quality assurance processes for support staff. Line-Managers should ensure employees are aware of the range of support options available to them. Monitoring arrangements must be proportionate, supportive, and directly linked to identified concerns

Dismissal (with notice) on the grounds of capability will only happen where improvement plans and assistance have been implemented and the outcome is that of inadequate improvement within a reasonable timescale. Staff will have the right of appeal against any decision to dismiss for poor performance. Confidentiality will be maintained and information relating to poor performance will be shared on a 'need to know' basis.

The CEO and Central HR must be consulted before any action is taken under this policy. At every stage of the capability process, the employee will have a right to be accompanied by a trade union representative or work colleague. **The CEO in consultation with the Headteacher / Principal will determine who is to attend the meeting on behalf of the Trust.**

### **AUTHORITY TO TAKE ACTION**

Line-Managers must seek advice from their Headteacher/Principal when considering the capability of staff. Headteachers/Principals must consult with the CEO.

### **INFORMAL SUPPORT REVIEW AND PRE-CAPABILITY MEETING**

When an employee's performance at work is giving rise to concern and the support, learning and development offered through the coaching and professional growth processes has not resulted in the required improvements, a pre-capability meeting will be arranged to determine whether it is appropriate to invoke the formal capability procedure.

Before the pre-capability meeting takes place, any concerns relating to an employee's lack of skill, aptitude or ability must be brought to the attention of the Headteacher/Principal. The Headteacher/Principal will then review the evidence and will determine whether it is appropriate to meet with the employee to undertake a pre-capability meeting. Where they have not already done so, employees are encouraged to discuss this with their Trade Union Representative (as appropriate).

Where it is deemed appropriate, the Headteacher/Principal will meet with the employee to undertake a pre-capability meeting, the purpose of which is to allow a two-way, professional and respectful discussion to take place and will cover a number of issues such as:

- Current and previous performance
- Suitability and impact of support provided to date
- Any mitigation and/or external causes brought to the employer's attention

Before commencing or progressing any capability procedure, the school will consider whether factors beyond the employee's reasonable control may be contributing. Consideration will be given to any factors that may be impacting performance, including workload, wellbeing, health, or personal circumstances. Where appropriate, additional support or reasonable adjustments will be considered. Any sensitive or personal information will be managed discreetly, respectfully and confidentially, on a need-to-know basis.

As a result of this meeting, a number of outcomes may be possible such as:

- The formal Capability Policy and Procedure being invoked
- The informal support plan being extended
- The informal support plan being re-designed
- Counselling, support and/or modifications

### **EXTENUATING CIRCUMSTANCES**

#### **Ill Health and Absence**

Where it is established that the employee's unsatisfactory performance is caused by ill health, the School's Managing Attendance procedure should be followed.



Where poor performance is due to an employee having a disability, this procedure should be adapted to meet the requirements of the Equality Act 2010. For example, in addition to the support offered, reasonable adjustments to assist the employee reach the required standard must be considered.

Where an employee becomes sick, having entered Capability Procedures, it may be necessary to refer the employee to the Occupational Health Physician, **but this will not be automatic**. Advice should be sought from the Central Trust.

Short absences should not delay any part of the Capability Procedure.

## **Disability**

Where poor performance may be related to a disability as defined under the Equality Act 2010, the Trust will ensure that appropriate consideration is given to the need for reasonable adjustments.

This may include adjustments to duties, working practices, targets, timescales, support mechanisms, or monitoring arrangements.

The Trust will work collaboratively with the employee, and where appropriate Occupational Health, to identify and implement suitable adjustments.

Capability procedures will only be progressed where it is reasonable to do so, having fully considered the impact of the disability and any adjustments that can be made to support the employee in achieving the required standards.

## **Misconduct**

In some circumstances, performance may be unsatisfactory due to an employee's own negligence or wilful misconduct. In such cases the Disciplinary Procedure should be used rather than the Capability Procedure.

## **DEFINITION AND SEPARATION OF ROLES**

### **Employees**

Every employee has a contractual responsibility to perform at an appropriate level. Employees are, therefore, expected to be committed to achieving appropriate levels of performance.

### **The Headteacher/Principal**

In all cases, except where the Headteacher/Principal is the subject of concerns, formal Capability meetings for teachers will be arranged and conducted by the Headteacher/Principal. The Headteacher/Principal will consider the evidence, reach a conclusion and issue a warning as necessary. The Headteacher/Principal will specify the improvement required and support to be provided as part of the warning process.

Where the performance of the Headteacher/Principal is the subject of concerns, formal Capability meetings will be arranged by the CEO in consultation with the Chair of Governors.

Where the performance of the CEO is subject to concerns the Chair of Trustees will arrange formal capability meetings with the Trust's external HR Advisers.

It is possible that as part of the normal working relationship between the Headteacher/Principal, Chair of Governors, they will have discussed details of concerns

about the employee. If that is the case, the Chair of Governors can take no part in appeal hearings or in dismissal hearings. If the CEO has been involved with any of the Capability process he/she will not be involved in any appeal hearings or dismissal hearing. This may be true if he/she is the presenting officer.

### **Members, Trustees, Governors and the CEO**

The CEO, Trustees and Governors have quite specific tasks to perform under this procedure (see SOD page 31) in relation to appeal and dismissal hearings, when they will be expected to be involved in a dismissal or be part of a review panel. Governors who are employees of the school should not form part of the panel. It is inappropriate for Members, Trustees or Governors to be involved in detailed discussion or consideration of performance concerns at any other time. It is also inappropriate for details of any capability cases to be discussed at any full Board meeting.

The CEO will seek advice from the Trust's HR Adviser before starting any process.

## **STEPS TO TAKE BEFORE EMBARKING ON THE CAPABILITY PROCEDURE**

**Before** embarking on the Capability Procedure, the Headteacher/Principal should ensure that through the normal coaching/professional growth procedures that:

- The employee has been alerted to concerns.
- The employee has an agreed job description, which is fully understood and that there is a clear agreed expectation of standards of performance.
- A formal, time-bound support process has been implemented, documented and reviewed for the employee (e.g. regular meetings, monitoring, objectives set, training and mentoring).
- A reasonable timescale for improvement has been set, and the employee has been informed of the programme of support in writing.
- In line with the Trust's commitment to fairness, consideration will also be given to whether external or organisational factors may be contributing to the concerns

### **Investigation of Concerns**

Before any formal capability meeting is convened, a reasonable investigation will be undertaken to establish the facts of the case. This may include review of performance data, lesson observations, work scrutiny, and discussions with the employee. The purpose of the investigation is to ensure that any formal action is based on clear and objective evidence and that the employee has had a fair opportunity to respond to concerns at an early stage.

Where concerns about performance relate to **safeguarding practice**, the Designated Safeguarding Lead (DSL) must be informed without delay and appropriate advice sought, in line with *Keeping Children Safe in Education (KCSIE)*.

Safeguarding considerations will take priority, and where necessary, concerns may be managed in accordance with safeguarding procedures rather than, or alongside, this capability procedure.

## THE CAPABILITY PROCEDURE

### See Appendix 2 for a procedural flowchart

When an employee enters the Capability Procedure, confirmation of this must always be given in writing.

### Formal Capability Meeting

Where performance concerns have been unsuccessfully addressed and managed using the coaching/professional growth procedures, the employee should be invited in writing to attend a Formal Capability meeting with their union representative or work colleague and no-one else. At least five but no more than ten working days' notice will be given. The invite will contain sufficient information about the performance concerns and possible consequences to enable the employee to prepare their case for the formal capability meeting. Any copies of written evidence will be enclosed with the letter together with a copy of the Capability Procedure.

The meeting is intended to establish the facts. At this meeting the Headteacher/Principal will:

- Identify the performance concerns, the support already given the standards required and where the shortfall in their performance has occurred.
- Provide written evidence of the concerns identified (e.g. from job descriptions, supervision notes, classroom observations, examples of pieces of work that do not meet the required standards).
- Consider and discuss any causes and reasons for the shortfall. The employee should be given the opportunity to discuss any contributory factors they feel may have affected their performance.
- Reach agreement to the future standard of performance with agreed objectives set out showing clearly how these will be achieved and measured.
- Identify the support to be provided to assist the employee in reaching the required standard (e.g. additional supervision, coaching, observing exemplar lessons), together with clear timescales and a review date.
- Timescales will be determined following discussion with the employee and consideration of the nature of the concerns, role, and individual circumstances and will normally be a minimum of 6–8 working weeks. This may be extended where improvement is being demonstrated or where circumstances justify additional time. The period should be reasonable and proportionate, taking into account the nature of the concerns, the role, and any individual circumstances, and should provide sufficient opportunity for significant improvement to take place.
- At this stage, after reviewing the evidence before them and taking into account any contributing factors the employee has put forward, the reviewer will decide.
  - whether to allow a further period of monitoring
  - to issue a warning
  - to issue a final written warning (serious cases only)
- If a formal warning is given, this must be confirmed in writing within 3 working days of the meeting, the opportunity to appeal the decision and clear information about possible outcomes and the next stage.
- Notes must be taken of the meeting and a copy given to the employee.

No decision will be made during the meeting itself. The meeting may be adjourned to allow for full consideration of all evidence and representations made. Any decision will be communicated to the employee following this consideration.

## **Monitoring and review period following a formal capability meeting**

A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. The member of staff will be invited to a formal review meeting, (date agreed in the letter confirming the outcome of the formal capability meeting) unless they were issued with a final written warning, in which case they will be invited to a decision meeting.

## **Formal review meeting**

### **Arranging a formal review meeting**

The formal review meeting allows the employee to prepare a response to concerns about performance and make his/her case in the company of their union representative or work colleague.

The employee must receive written notice of the meeting in writing, which may be provided electronically unless otherwise requested, **at least 5 but no more than 10 working days in advance**

- The purpose, time and place of the meeting.
- Specific concerns, confirming that this is a formal meeting under the Capability Procedure.
- A copy of this procedure (if not provided previously).
- The right to be accompanied by a work colleague or his/her trade union representative (and no one else).
- Details of who will be attending the meeting (e.g. Head, employee, expert witness/es).
- Relevant documentation (e.g. copies of objectives, the support provided, review meeting minutes).

If an employee is unable to attend a formal interview, he/she may choose to provide written permission to the effect that his/her representative may act on full authority, and he/she will accept any decision that their representative has been party to. The employee may also choose to provide a written response.

Alternatively, if he/she cannot attend for a genuine reason and are not willing for his/her representative to act on their behalf, it may be reasonable to arrange another interview. However, if the employee fails to attend for a second time, management will decide based on the facts and evidence gathered during the review period in the employee's absence.

## **Conducting a Formal Review Meeting**

Follow the guidelines set out in policy below.

### **Outcome of Formal Review Meeting**

There are four possible outcomes to the formal review meeting:

- |                  |                                                                                                                                                                                                                                                                                                                                                                                                                      |
|------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Outcome 1</b> | Sufficient improvement, in which case the capability procedure will cease.                                                                                                                                                                                                                                                                                                                                           |
| <b>Outcome 2</b> | There has been some improvement, and there is confidence that more is likely, but further support or monitoring is required, and the monitoring and review period will be extended. The extension of the monitoring period in all cases should be between 6 and 8 weeks.                                                                                                                                             |
| <b>Outcome 3</b> | If no, or insufficient improvement has been made, the employee will receive either a first written warning if one wasn't issued at the commencement of the capability meeting or a final written warning. Where a final written warning is issued the member of staff will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale), may result in dismissal. |

If the employee received a final written warning at the first formal capability meeting, then a decision meeting will be arranged. The outcome of the decision meeting will be either that there has been sufficient improvement, or that dismissal proceedings will be started.

### **Decision Meeting**

The employee must receive written notice of the decision meeting in writing, which may be provided electronically unless otherwise requested, **at least 5 but no more than 10 working days in advance by**

There are two possible outcomes of the Decision Meeting:

- **Satisfactory Performance**  
Performance has been satisfactory and there is sufficient confidence that it can be maintained. In these circumstances the Capability Procedure will end, with a letter from the Headteacher/Principal; stating that the improved performance must be sustained.
- **Unsatisfactory Performance**  
If performance is unsatisfactory, a recommendation to dismiss may be made by the Headteacher/Principal to the CEO. The Headteacher (in consultation with the Central HR Manager) may take the decision to suspend the employee pending the Hearing where this is considered necessary. Suspension under this procedure will only be considered in exceptional circumstances where there is a clear operational or safeguarding justification

At the decision meeting, the following should be agreed:

- Identify the professional shortcomings.
- Identify the performance concerns, the support already given during coaching/professional growth procedures, and the monitoring and review period. The standards required and where the shortfall in their performance has occurred.
- Provide written evidence of the concerns identified (e.g. from job descriptions, supervision notes, classroom observations, examples of pieces of work that do not meet the required standards).
- Consider and discuss any reasons or causes for shortfall. The employee should be given the opportunity to discuss any contributory factors they feel may have affected their performance.
- Write to the employee within 3 working days of the decision meeting recording the outcome and the above points. Hand-deliver the letter or send by recorded post.

### **THE HEARING**

A panel of 3 (CEO/Members/Trustees/Governors – see SOD page 31) are appointed to hear the case which is presented by the Headteacher/Principal or CEO if not already involved in the process. The Headteacher/Principal/CFO or CEO could be the presenting Officer depending on their involvement in the process.

The employee will be given at least 10 working days' notice in writing of the hearing.

The letter will contain:

- The purpose, time and place of the hearing.

- The right to be accompanied by a work colleague or his/her trade union representative (and no one else).
- Details of who will be attending the meeting (e.g. Head, employee, expert witness/es).
- The requirement for the employee to provide to the school, at least 3 working days before the Hearing, hard copies of all documents that he/she intends to present at the hearing and enough copies for all those, except witnesses who will be present at the Hearing.
- All relevant documentation that will be used as evidence at the hearing (e.g. copies of objectives, the support provided, review meeting minutes).

Copies of all relevant documents (which may be shared electronically unless otherwise requested) will be sent by the school to the panel members 2 days before the Hearing.

## APPEALS

An employee may appeal against any warning given or on a decision to dismiss. Appeals at any stage should be made within 10 working days of the receipt of the warning or dismissal letter. Appeals must be made to the Central HR Manager, who will arrange a panel of 3 Members/Trustees/Governors (see SOD page 28) who have not previously been involved in the case to hear the appeal within 10 working days or as soon as possible thereafter.

The employee will provide, in at least 3 working days before the hearing, all documents which may be shared electronically unless otherwise requested) that he/she intends to present at the hearing. The documents must be presented in hard or electronic copy and with sufficient copies for those, except witnesses, who will attend the hearing. Copies of all the papers to be presented will be sent to panel members 2 working days before the hearing either electronically or hard copy as preferred.

Panel members must not discuss any aspect of the case or the contents of the case papers with anyone, including other panel members, before the hearing. The panel will consider all the information submitted to the final capability meeting and will review the decision to dismiss and the rationale. The panel will review the decision made and the process followed. Where appropriate, the panel may rehear part or all of the case, particularly where new evidence is presented or where there are concerns about the fairness of the original decision. The panel will consider:

- Unfairness in the conduct of the hearing
- Inconsistent or inappropriate decision based on evidence presented
- Bias of any member of the Appeal Panel
- Failure to follow the Capability Process
- Extenuating Circumstances

It is the decision of the Appeals Panel, whether or not, new information can be introduced at this stage, and the panel will consider the reasons why the information was not included at an earlier stage.

The decision of an appeal panel at each stage will be final and will be reported to the Trust Board and the Local Governing Body.

The following general points are important:

- An appeal at the formal meeting and review stages will not interrupt the procedure (unless the appeal decision leads to reconsideration).

- The request for an appeal should specify the grounds for the appeal and, in particular, whether these refer to the reasonableness of the decision or to procedural matters.
- If either side intends to produce new evidence and the panel is happy to accept this, all relevant documentation should be circulated in advance within the agreed timescales.

**To ensure that the correct HR Panels and levels of authority are adhered to throughout this policy procedure, please refer to p31 of the Trusts Scheme of Delegation to ensure that the correct delegation models are applied where appropriate.**

### **UNSUSTAINED IMPROVEMENT**

If an employee's performance improves but is not sustained for a period of 12 months the employee will be invited to a review meeting at the same stage of the process they had reached when the formal capability processes ceased. The meeting will be a formal meeting.

### **EXPIRY OF WARNINGS AND REFERENCES**

Any warnings given will remain on file for 12 months or until an appeal has overturned the warning. If an employee is subject to the formal capability procedure, or has a formal warning in place at the time of the reference request, this will be referred to in any employment reference

### **REFERRALS TO STATUTORY BODIES**

There are statutory duties on employers to refer individual cases to national bodies in the event of a dismissal or resignation when dismissal may have been a likely outcome.

Cases of serious misconduct by teachers will be considered by the new Teaching Agency, acting on behalf of the Secretary of State.

### **AUTHORITY TO TAKE ACTION**

| <b>Action</b>                      | <b>Authority</b>                 | <b>Appeal</b>                   |
|------------------------------------|----------------------------------|---------------------------------|
| Stage 1 Formal                     | Manager with delegated authority | As per the Scheme of Delegation |
| Stage 1 Review                     | Manager with delegated authority | As per the Scheme of Delegation |
| Stage 2 Formal                     | Manager with delegated authority | As per the Scheme of Delegation |
| Stage 2 Review                     | SLT/Executive Board Member       | As per the Scheme of Delegation |
| Final Capability Meeting/Dismissal | As per the Scheme of Delegation  | As per the Scheme of Delegation |

**Capability Procedure Version 1 agreed at Trust Board July 2026**

## APPENDIX 1 AREAS WHICH MAY GIVE RISE TO CONCERN

The following list gives examples of areas in which deficiency in performance may give rise to concern and, in due course, lead to formal action. **This list is neither exclusive nor exhaustive:**

Discharge of specific responsibilities associated with a particular appointment which may include leading, managing or supervising responsibilities.

Compliance with further specific requirements as detailed by the Headteacher or other senior manager and the governing body, which are consistent with the relevant job description or conditions of service of employees in operation at the time.

Failure to reach career stage expectations.

Consistent failure to perform work to a reasonable and acceptable standard.

Organisation of the teaching or work area and management of suitable materials and equipment, including adequate course preparation.

Ability to teach effectively and/or supervise pupils.

Maintenance of an adequate level of class discipline and control.

Setting and appropriate marking of pupils' work.

Keeping suitable records of pupils' work, progress and attainment.

Failure to maintain appropriate standards of accounts or other school records.

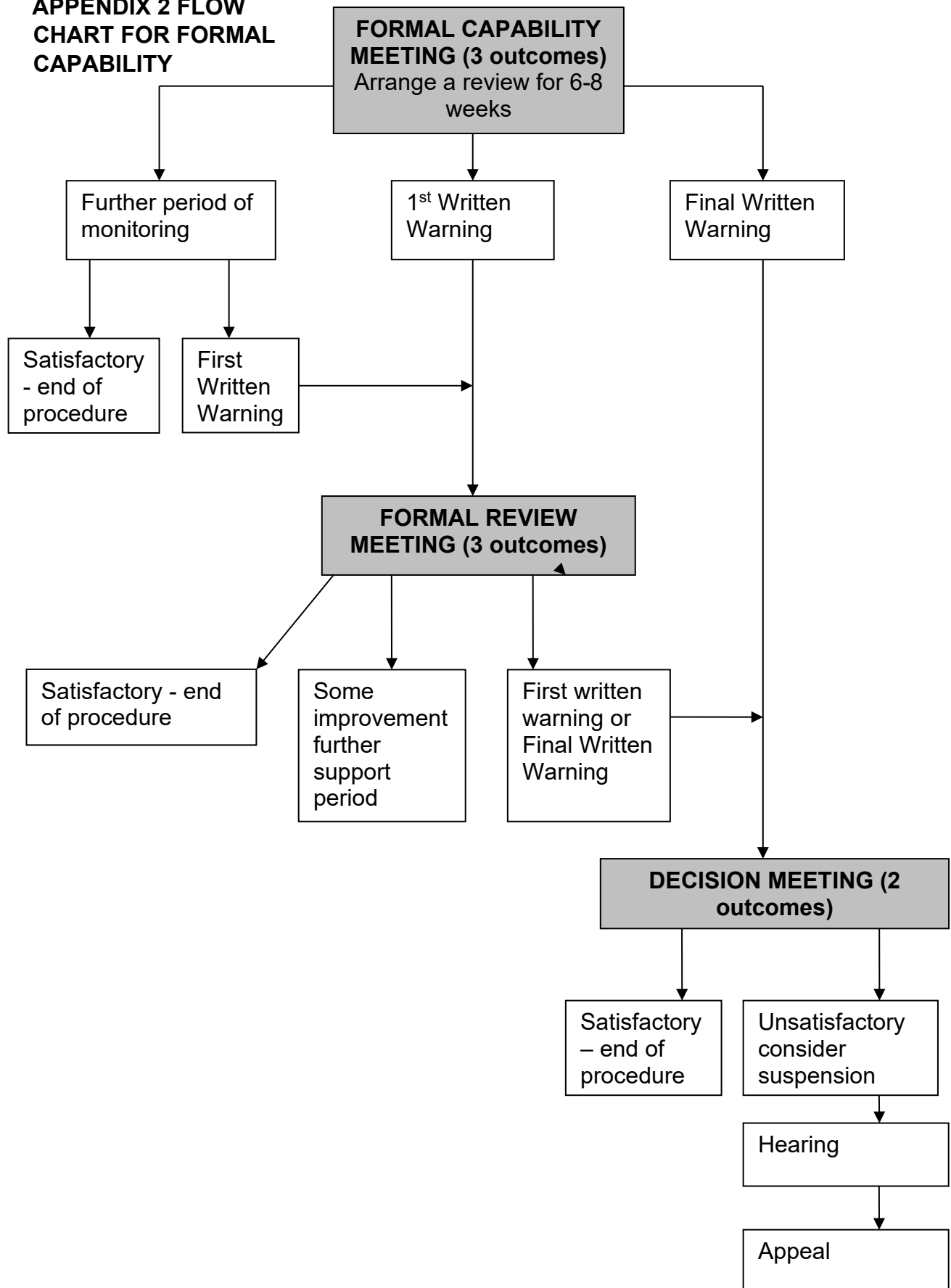
Failure to maintain a secure and safe environment.

Failure to follow the Teachers' Standards.

Some of these areas may be considered as falling into concerns regarding employee conduct and advice should be sought from your HR Service before embarking on this process.



**APPENDIX 2 FLOW  
CHART FOR FORMAL  
CAPABILITY**



At each stage if a formal sanction is given the employee has the right to appeal.

## APPENDIX 3 TEMPLATE PERFORMANCE IMPROVEMENT PLAN

Name:

| Expectation                                                                                                                                                                                                      | Area of Concern (examples)                                          | Action taken and Plans for Support                                                                                                                                                                              | Expected Improvement (Success Criteria)                                                                            | Timescales /Deadlines                                | Monitoring /Who                                                                        | Teacher Standards |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------|------------------------------------------------------|----------------------------------------------------------------------------------------|-------------------|
| <p><b>For example:</b></p> <p>Well-prepared and well-organised lessons</p> <p>Students clear about expectations</p> <p>Behaviour policy being used explicitly through expectations and teacher interventions</p> | <p>Give specific concerns relating to narrative in first column</p> | <p>Specify Actions taken through performance management/appraisal process and coaching plans.</p> <p>Detail specific support, training, mentoring, guidance to be put in place during the monitoring period</p> | <p>Detail specifically what action and improvement is expected</p> <p>Be specific about what 'good' looks like</p> | <p>When should actions be completed and by whom?</p> | <p>Be specific about monitoring activities and ensure these are matched to targets</p> |                   |

## **APPENDIX 4 TEACHERS' STANDARDS**

### **Preamble**

Teachers make the education of their pupils their first concern and are accountable for achieving the highest possible standards in work and conduct. Teachers act with honesty and integrity; have strong subject knowledge, keep their knowledge and skills as teachers up-to-date and are self-critical; forge positive professional relationships; and work with parents in the best interests of their pupils.

### **Part One: Teaching**

A teacher must:

1. Set high expectations which inspire, motivate and challenge pupils
  - establish a safe and stimulating environment for pupils, rooted in mutual respect
  - set goals that stretch and challenge pupils of all backgrounds, abilities and dispositions
  - demonstrate consistently the positive attitudes, values and behaviour which are expected of pupils.
2. Promote good progress and outcomes by pupils
  - be accountable for pupils' attainment, progress and outcomes
  - be aware of pupils' capabilities and their prior knowledge, and plan teaching to build on these
  - guide pupils to reflect on the progress they have made and their emerging needs
  - demonstrate knowledge and understanding of how pupils learn and how these impacts on teaching
  - encourage pupils to take a responsible and conscientious attitude to their own work and study.
3. Demonstrate good subject and curriculum knowledge
  - have a secure knowledge of the relevant subject(s) and curriculum areas, foster and maintain pupils' interest in the subject, and address misunderstandings
  - demonstrate a critical understanding of developments in the subject and curriculum areas, and promote the value of scholarship
  - demonstrate an understanding of and take responsibility for promoting high standards of literacy, articulacy and the correct use of standard English, whatever the teacher's specialist subject
  - if teaching early reading, demonstrate a clear understanding of systematic synthetic phonics
  - if teaching early mathematics, demonstrate a clear understanding of appropriate teaching strategies.
  -
4. Plan and teach well structured lessons
  - impart knowledge and develop understanding through effective use of lesson time
  - promote a love of learning and children's intellectual curiosity
  - set homework and plan other out-of-class activities to consolidate and extend the knowledge and understanding pupils have acquired
  - reflect systematically on the effectiveness of lessons and approaches to teaching
  - contribute to the design and provision of an engaging curriculum within the relevant subject area(s).
5. Adapt teaching to respond to the strengths and needs of all pupils
  - know when and how to differentiate appropriately, using approaches which enable pupils to be taught effectively
  - have a secure understanding of how a range of factors can inhibit pupils' ability to learn, and how best to overcome these

- demonstrate an awareness of the physical, social and intellectual development of children, and know how to adapt teaching to support pupils' education at different stages of development
  - have a clear understanding of the needs of all pupils, including those with special educational needs; those of high ability; those with English as an additional language; those with disabilities; and be able to use and evaluate distinctive teaching approaches to engage and support them.
6. Make accurate and productive use of assessment
- know and understand how to assess the relevant subject and curriculum areas, including statutory assessment requirements
  - make use of formative and summative assessment to secure pupils' progress
  - use relevant data to monitor progress, set targets, and plan subsequent lessons
  - give pupils regular feedback, both orally and through accurate marking, and encourage pupils to respond to the feedback.
7. Manage behaviour effectively to ensure a good and safe learning environment
- have clear rules and routines for behaviour in classrooms, and take responsibility for promoting good and courteous behaviour both in classrooms and around the school, in accordance with the school's
  - behaviour policy
  - have high expectations of behaviour, and establish a framework for discipline with a range of strategies, using praise, sanctions and rewards consistently and fairly
  - manage classes effectively, using approaches which are appropriate to pupils' needs in order to involve and motivate them
  - maintain good relationships with pupils, exercise appropriate authority, and act decisively when necessary.
8. Fulfil wider professional responsibilities
- make a positive contribution to the wider life and ethos of the school
  - develop effective professional relationships with colleagues, knowing how and when to draw on advice and specialist support
  - deploy support staff effectively
  - take responsibility for improving teaching through appropriate professional development, responding to advice and feedback from colleagues
  - communicate effectively with parents with regard to pupils' achievements and well-being.

## **Part Two: Personal and professional conduct**

A teacher is expected to demonstrate consistently high standards of personal and professional conduct. The following statements define the behaviour and attitudes which set the required standard for conduct throughout a teacher's career.

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by:
  - treating pupils with dignity, building relationships rooted in mutual respect, and at all times observing proper boundaries appropriate to a teacher's professional position
  - having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions
  - showing tolerance of and respect for the rights of others
  - not undermining fundamental British values, including democracy, the rule of law, individual liberty and mutual respect, and tolerance of those with different faiths and beliefs
  - ensuring that personal beliefs are not expressed in ways which exploit pupils' vulnerability or might lead them to break the law.
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach and maintain high standards in their own attendance and punctuality.
- Teachers must have an understanding of, and always act within, the statutory frameworks which set out their professional duties and responsibilities.

The Teachers' Standards can be found on the GOV.UK website:  
<https://www.gov.uk/government/publications/teachers-standards>