

Capability Policy

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Related policies and documents

- Appraisal Policy
- Pay Policy
- Disciplinary Policy
- Classroom Observation protocol
- Sickness Absence Policy
- Employee Assistance Programme
- Teachers Standards
- Probation Procedure

Definitions

- Where the word 'Trust' is used in this document it refers to The Elliot Foundation Academies Trust.
- Where the words 'Governance Body' are used they refer to the relevant Governance Body of an individual academy within the Trust.
- Where the words 'Senior Leader' are used they refer to the CEO/Executive Principal/Principal/Director or member of the senior leadership team leading the process
- Where appropriate individual academies will publish details of the procedures and practices to implement Trust policies.

The Elliot Foundation Academies Trust Values

1. Put children first

- a. We trust and value your professionalism
- b. We share the responsibility for the learning and welfare of all of our children
- c. Our purpose is to improve the lives of children

2. Be safe

- a. Don't assume that someone else will do it
- b. Look after yourself, your colleagues and all children
- c. We are all responsible for each other's safety and well being
- d. Discuss any concerns with an appropriate member of staff

3. Be kind & respect all

- a. People are allowed to be different as are you
- b. Kindness creates the positive environment we all need to flourish
- c. This kindness should extend to ourselves as well as to others

4. Be open

- a. If you can see a better way, suggest it
- b. If someone else suggests a better way to you, consider it
- c. We exist to nurture innovators and support those who take informed risks in the interests of children

5. Forgive

- a. We all make mistakes
- b. Admit them, learn from them and move on

6. Make a difference

- a. Making the world a better place starts with you
- b. Model the behaviour that you would like to see from others

1. Policy statement and objectives

- 1.1. The Elliot Foundation Academies Trust (TEFAT) is committed to providing high quality teaching and learning. Our aim is to provide opportunities for every child whatever their ability and it is through our workforce that we hope to achieve this. Each employee will be given support to help them develop to their full potential in their job and in turn this will help improve outcomes for our young people.
- 1.2. The Trust also recognises its employees as the organisation's most valuable asset. The aim of this policy is to be fair and transparent and to support all employees of TEFAT to achieve agreed and acceptable standards of performance and to deliver their duties in line with relevant expectations for the role they fulfil and to do so in accordance with the Trust Values.
- 1.3. TEFAT is committed to continuous professional training and development of employees and seeks to support all employees in sustaining the highest possible standards whilst performing TEFAT duties.
- 1.4. This policy provides a framework of support and escalation route when managers identify that the concerns in relation to an employee's performance have not sufficiently improved via the informal process under the Appraisal Policy or are serious enough to warrant escalation to the formal capability procedure. The primary objective is to ensure maximum support through guidance, counselling and training in order that the employee's performance improves.
- 1.5. This policy will apply where, for reasons other than ill health or conduct, the performance of a member of staff falls below an acceptable standard over a sustained period.

2. Scope and principles

- 2.1. This policy applies to all employees of the Trust, including those employed on temporary contracts of employment, with the exception of those who are in their probationary period (support staff) or early career teachers (ECTs), who are subject to separate induction and assessment processes.
- 2.2. If an employee demonstrates serious underperformance, and has not responded to support provided within the appraisal process, the employee will be notified in writing that the appraisal system will no longer apply and that their performance will be managed under the capability procedure. In circumstances whereby an employee's ill health is impacting their ability to fulfil their duties to an acceptable standard, the Managing Sickness Absence Policy will apply.

- 2.3. Employees will be advised of the concerns relating to their performance in a timely manner and will be provided with the opportunity to respond/provide relevant information in accordance with this policy.
- 2.4. The Capability Policy and procedures are separate from the Disciplinary Policy which deals with conduct. The Capability Policy is designed to support situations in which employees are unable to perform to the required standards rather than those who choose not to do so. If a manager believes that the poor performance is due to misconduct, e.g. carelessness, negligence or lack of effort, these concerns will be dealt with in accordance with the Trust's Disciplinary Policy.
- 2.5. In the development of this policy, consideration has been given to the impact on protected characteristics under the Equality Act. We are committed to ensuring fairness and consistency and will, where possible and appropriate, make reasonable adjustments for our employees. In circumstances such as this, it may be appropriate to engage with third parties such as Occupational Health and Access to Work.
- 2.6. Managers are encouraged to consider if the underperformance of an employee is as a result of a disability or ill health. In these scenarios, managers should contact the Trust's central HR Team at their earliest opportunity to discuss the matter further and to obtain appropriate advice and guidance.
- 2.7. TEFAT recognises that employees subject to allegations relating to their performance and capability may find the process outlined in this policy difficult or stressful. Those leading any such process will be expected to take active steps to ensure that support mechanisms are identified and offered as appropriate on a case by case basis, including:
 - encouraging the employee to seek advice and support from their trade union
 - considering the use of a neutral venue for formal meetings
 - nominating a senior member of staff to act as a pastoral contact
 - providing details of the Trust's Employee Assistance Programme (EAP).

3. Definition

- 3.1. Concerns relating to the performance of an employee can take many forms, including but not limited to:
 - Persistent errors and/or omissions in completing necessary work
 - Failure to meet the requirements of the post as set out in the job description (and Teachers' Standards if applicable)
 - Persistent failure to meet agreed objectives and/or project deliverables
 - Serious underperformance that significantly impacts the quality of learning experience and the delivery of the education service for pupils or business service provision.

4. Roles and Remits

4.1. Senior Leaders & Line Managers

Line managers will know their staff and have an understanding of their performance through day to day interactions and relationship building. This will also be achieved through general line management responsibilities and other mechanisms such as lesson observations, lesson drop-ins, learning walks and appropriate data analysis and performance against targets. In the case of non-teachers this may be through monitoring of the quality of work, performance against targets and ability to meet required deadlines (this is not an exhaustive list). Line managers play an important role in creating a work environment which facilitates constructive, honest and open feedback in relation to performance and is supportive of employee professional development.

Senior Leader and Line Manager Responsibilities
Have an understanding of both the Appraisal Policy and Capability Policy and the role that is played by senior leaders/line managers in supporting employees to fulfil their full potential whilst at work and meeting agreed standards and expectations
Seek to embed the Trust Values in all areas of work life and support employees to do so too
Ensure that they agree objectives that are realistic, timely and measurable as part of the annual performance management process (appraisal) and identify any relevant support for employees to assist them in achieving objectives
Take active steps to understand the likely factors contributing to concerns about an employee's performance and seek to identify support mechanisms as appropriate on an ongoing basis
Continue to review standards of performance on an ongoing basis and provide feedback and support where required and ensure any initial performance concerns are addressed early
Take appropriate action promptly and in accordance with the procedure in a fair and equitable manner which reflects the collaborative nature of the process
Maintain confidentiality as appropriate throughout the procedure
Actively seek relevant and appropriate support, advice and guidance from the Trust's central HR team to ensure that matters are dealt with fairly, promptly and consistently
Ensure that accurate written records are maintained throughout in relation to any capability processes whether that be formal or informal

4.2. **Employee Responsibilities**

Employees are encouraged to speak to their line manager if they identify any training needs they may have and should be open to receiving feedback which can assist their professional development.

Employee Responsibilities
Have an understanding of both the Appraisal Policy and Capability Policy, comply and engage with processes under this policy as necessary
Seek to embed the Trust Values in all areas of work life
Ensure they understand the job specific standards and expectations contained in their job description
Strive to perform their duties to a satisfactory standard in accordance with their job description and TEFAT policies and procedures and relevant statutory procedures, such as Teachers' Standards
Seek support in a timely manner from their line manager if they identify additional training, advice or guidance may assist them in the delivery of their work
Undertake any additional training recommended by their line manager and other development opportunities appropriate to their role
Where an employee is suffering from an ill health or medical condition, or other personal circumstances that is affecting their performance at work they are encouraged to speak to their manager as soon as possible
Engage appropriately and collaboratively in relevant processes relating to under performance both at informal and formal stages as and when required
Maintain confidentiality as appropriate throughout the procedure

5. Management of the Capability Process

Affected Staff Category	Senior Leader responsible for managing the capability process	Capability Dismissal Hearing Officer/Panel	Capability Dismissal Appeal Panel
School based staff (except Principal/Executive Principal structures)	Executive Principal/Principal	Executive Principal* or Member of TEFAT Operations Group	Capability Dismissal Appeal Panel (3 members of TEFAT Operations Group**)
Executive Principals/ Principals	Member of TEFAT Operations Group/CEO	CEO* or nominated Trustee (appointed by Chair of Trustees)	Capability Dismissal Appeal Panel (3 Trustees)
Centrally employed staff (except Directors/CEO)	Member of TEFAT Operations Group/CEO	CEO* or nominated Trustee (appointed by Chair of Trustees)	Capability Dismissal Appeal Panel (3 Trustees)
Members of TEFAT Operations Group	Chief Executive Officer	Nominated Trustee (appointed by Chair of Trustees)	Capability Dismissal Appeal Panel (3 Trustees)
Chief Executive Officer	Nominated Trustee (appointed by Chair of Trustees)	Nominated Trustee* (appointed by Chair of Trustees)	Capability Dismissal Appeal Panel (3 Trustees)

* provided they have not previously acted as the senior leader managing the capability process

** one member of the panel may be a Principal of another TEFAT school

6. Informal handling of under performance (via Appraisal Policy)

- 6.1. Under performance concerns will ordinarily be addressed supportively by the line manager (or other senior leader) and collaboratively with the employee on an informal basis, through day to day management and in accordance with the Appraisal Policy. Conversations of this nature should take place as soon as possible. Any actions as result of such conversations should be followed up informally in writing to ensure the expectations and areas of improvement are clear, for example via email or through capturing objectives using an Action Plan such as those at **Appendix 1 and 2**.
- 6.2. If an employee demonstrates serious underperformance, and has not responded to support provided within the appraisal process, the employee will be notified in writing that the appraisal system will no longer apply and that their performance will be managed under the capability procedure.

- 6.3. When considering moving to the formal stages outlined within this policy, it is important to ensure that the following points have been incorporated into the informal stages of the process:
- Regular feedback on general performance has been provided, normally this would be done during general supervision and regular ongoing catch up meetings
 - The employee understands the expectations of their role as described in their job description
 - Where performance concerns have been raised, objectives or areas of focus have been agreed and support identified and provided before performance has been reviewed
 - Sufficient written records of agreed priorities, actions to be taken and support provided have been made and shared with the employee
 - In using the informal stage, a reasonable timeframe has been applied in the circumstances and the employee informed of this. This timeframe will depend on the complexity or seriousness of the issues of concern and the impact of the performance concerns but would be for no less than a period of four weeks.

7. Transition from Informal to Formal Capability (Stage 1)

- 7.1. Performance management is an ongoing process. The transition to a formal capability procedure applies only to employees where there is serious underperformance which the appraisal process has been unable to address. If the line manager, or individual responsible for the day-to-day management of the employee, considers this to be the case the employee will be invited to a meeting to discuss this.
- 7.2. The employee will be notified in writing that the purpose of the meeting is to consider whether the appraisal process should no longer apply and instead, their performance should be managed under the Capability Policy. The notification will contain sufficient information about the concerns about performance and their possible consequences to enable the teacher to prepare to answer the case at a formal capability meeting. It will also contain copies of any written evidence.
- 7.3. The employee will be given at least **5 working days'** notice of the meeting and may be accompanied by a work colleague or trade union representative. If the employee or their trade union representative is unable to attend the meeting for a valid reason, they should confirm this to the person conducting the meeting at the earliest opportunity and an alternative date should be arranged. This will normally be within five working days of the original date proposed by the employer.

- 7.4. The meeting is intended to be collaborative in nature and will consider the following:
- The evidence that has been collected throughout the informal process that has given rise to specific concerns relating to the employee's under performance
 - Any specific performance areas in which required standards are still not being fulfilled
 - Any sustained improvement in agreed standards during the informal review period
 - The seriousness of the concerns and the impact that this is having on the performance of the Academy/Trust
 - The employee's response to the performance concerns raised and any reasons/mitigation for this
 - The timeframe in which concerns have been present
 - The support that has been provided to date, including the employee's willingness to engage with the support being offered during the informal process and reflect on actions leading to improvement.
- 7.5. Having considered all the evidence available, the Senior Leader/Line Manager will confirm their decision regarding next steps. There are three possible outcomes:
- no further action, on the basis that the required standards have been met. Performance will then be monitored in the usual way via the Appraisal Policy
 - continuation with the informal process (Appraisal Policy) and associated informal plan for a minimum of 4 weeks, save for exceptional circumstances
 - proceed with the formal capability process (see paragraph 7.6 below)
- 7.6. If the decision is to proceed with the formal capability process, a further discussion should take place in relation to:
- The objectives to be met to achieve the required performance standards going forward
 - Support that will be offered to help the individual meet the necessary standards. This is also the time when the employee should raise if there is any specific training they feel is necessary to support them to meet the requirements
 - Details of interim review meetings within the formal monitoring period which will enable improvements to be monitored, the frequency of which will be agreed with the employee
 - Consequences of failing to meet the required standards within agreed timeframes
 - The timetable for improvement and an explanation of how performance will be monitored and reviewed (the timetable will depend on the circumstances of the individual case but in straightforward cases could be between 4 and 10 weeks)
 - The date of the Stage 1 Review meeting

- 7.7. The employee will receive a letter which confirms the outcome of the transition meeting and contains a summary of agreed action points (the templates in **Appendix 1 and 2** can be used if required). This will also confirm the date of the Stage 1 Review meeting, along with the employee's right to be accompanied either by a trade union representative or workplace colleague.

8. Formal Capability; Stage 1 Review Meeting

- 8.1. At the end of the monitoring period (outlined in 7.6) a Stage 1 Review Meeting will take place in order to assess progress against the objectives set at the last meeting. This will provide the opportunity for both parties to collaboratively discuss and make any necessary representations in relation to the progress that has been made towards the agreed objectives.
- 8.2. The employee will be given at least **5 working days'** notice of the Stage 1 meeting, along with their right to be accompanied either by a Trade Union Representative or workplace colleague.
- 8.3. The letter notifying the employee of the Stage 1 meeting will include the following:
- The objectives previously set relating to the employee's performance
 - The date, time and location of the meeting
 - The name of the individuals attending the meeting, including any HR advisor
 - The right to be accompanied and/or represented by a trade union representative or work colleague
 - Copies of documents to be considered at the meeting and names of any witnesses that will be asked to attend
 - The employee's entitlement to submit additional relevant documentation in advance of the meeting and to identify any additional witnesses they wish to call to attend
 - Advise the employee of the possible outcomes of the meeting
- 8.4. If the employee or their trade union representative is unable to attend the meeting for a valid reason, they should confirm this to the person conducting the meeting at the earliest opportunity and an alternative date should be arranged. This will normally be within five working days of the original date proposed by the employer.
- 8.5. The format and structure of the meeting will mirror that as outlined in section 7 of this policy.

- 8.6. If the line manager determines that the employee has met the objectives set during the monitoring period, the formal process at this point will conclude. However, should performance deteriorate within the next 12 months, Stage 1 of the formal process will be reconvened.
- 8.7. If the employee has met some of their performance objectives but further improvements are still required for the line manager to be satisfied that they are performing at the appropriate level, the monitoring period under Stage 1 may be extended to give the employee more time to meet the necessary standards expected of them. The length of the extension period will depend on the circumstances of the individual case. A further discussion will take place in order to agree any revisions to the objectives set and/or support to be provided and the date of the next meeting.
- 8.8. If the line manager determines that insufficient progress has been made towards the objectives during the review period, they will confirm that the process will move to Stage 2 of the formal procedure (see paragraph 9 below). A further discussion will take place in order to agree any revisions to the objectives set and/or support to be provided, the duration of the next monitoring period (usually no less than 4 weeks) and the date of the Stage 2 Review Meeting.
- 8.9. A letter will be provided to the employee within five working days following the Stage 1 Review Meeting confirming the outcome of the meeting and any associated actions.
- 8.10. The employee may appeal the decision taken at the Stage 1 Review Meeting. Further details, including how to do so, are set out in paragraph 12 below and will be set out in the outcome letter referred to in paragraph 8.9 above.

9. Formal Capability Stage 2

- 9.1. Ordinarily the review period under Stage 2 will last for no less than a period of four weeks, providing the employee with the opportunity to take advantage of the support/training which may have been offered with the overall intention of leading to improved performance and agreed objectives being met.
- 9.2. At this stage the Trust should consider discussing redeployment to find an agreed, alternative position (within other academies if available/appropriate) better suited to the employee if deemed appropriate. In the event the employee is successfully redeployed to another post by agreement, then pay protection would not apply and their salary payments will be in accordance with the new role offered to the individual.
- 9.3. It is important the employee is made aware that, if the required standards are not met at this stage, a decision may be made to proceed to a Contractual Review Hearing, and that one of the possible outcomes of the hearing would be dismissal.

10. Formal Capability (Stage 2 Review Meeting)

- 10.1. At the end of the monitoring period under Stage 2 of the procedure, a further meeting will take place in order to review progress against the objectives. This will provide the opportunity for both parties to collaboratively discuss and make any necessary representations regarding the employee's progress.
- 10.2. The employee will be given at least **5 working days'** notice of the Stage 2 meeting, along with their right to be accompanied either by a Trade Union Representative or workplace colleague.
- 10.3. The letter notifying the employee of the Stage 2 meeting will include the following:
 - The objectives previously set relating to the employee's performance
 - The date, time and location of the hearing.
 - The name of the individuals attending the meeting, including any HR advisor
 - The right to be accompanied and/or represented by a trade union representative or work colleague
 - Copies of documents to be considered at the meeting and names of any witnesses that will be asked to attend
 - The employee's entitlement to submit additional relevant documentation in advance of the meeting and to identify any additional witnesses they wish to call to attend
 - Advise the employee of the possible outcomes of the meeting
- 10.4. If the employee or their trade union representative is unable to attend the meeting for a valid reason, they should confirm this to the person conducting the meeting at the earliest opportunity and an alternative date should be arranged. This will normally be within five working days of the original date proposed by the employer.
- 10.5. If the line manager determines the employee has met the required standards of performance at the end of the Stage 2 monitoring period, the formal process at this point will conclude. However, should performance deteriorate within the next 12 months, Stage 2 of this process will be reconvened.
- 10.6. If the employee has met some of their performance objectives but further improvements are still required for the line manager to be satisfied that they are performing at the appropriate level, the monitoring period under Stage 2 may be extended to give the employee more time to meet the necessary standards expected of them. The length of the extension period will depend on the circumstances of the individual case. A further discussion will take place in order to agree any revisions to the objectives set and/or support to be provided and the date of the next meeting.

- 10.7. If the line manager determines that insufficient progress has been made towards the objectives during the review period, the manager will confirm that the process will proceed to Stage 3 (Contractual Review) and that one of the possible outcomes of the hearing will be dismissal.
- 10.8. A letter will be provided to the employee within five working days following the Stage 2 Review Meeting confirming the outcome of the meeting and any associated actions.
- 10.9. The employee may appeal the decision taken at the Stage 2 Review Meeting. Further details, including how to do so, are set out in paragraph 12 below and will be set out in the outcome letter referred to in paragraph 10.8 above.

11. Formal Capability (Stage 3) - Contractual Review Hearing

- 11.1. Where under performance has persisted and, despite support being offered, improvement has not been met to the required standards, a Contractual Review Hearing will be scheduled. The purpose of the Contractual Review Hearing is to consider whether the employee's continued employment with the Trust is appropriate. One of the possible outcomes of a Contractual Review hearing is dismissal.
- 11.2. Proceeding to Contractual Review will ordinarily mean that all efforts to support the improvement of the employee's performance have been exhausted and there is insufficient evidence to demonstrate that within a reasonable timeframe the employee is capable of fulfilling their contractual role to the required standards and expectations.
- 11.3. The employee will be given at least **5 working days'** notice of the Contractual Review Hearing, along with their right to be accompanied either by a Trade Union Representative or workplace colleague.
- 11.4. The letter notifying the employee of the Contractual Review Hearing will include the following:
- The areas of concern relating to the employee's performance and the objectives previously set
 - The date, time and location of the hearing.
 - The name of the person (or panel) chairing the hearing and relevant HR advisor/s
 - The right to be accompanied and/or represented by a trade union representative or work colleague
 - Copies of documents that the manager presenting the case will refer to at the hearing, and names of any witnesses that they will call.

- The employee's entitlement to submit additional relevant documentation in advance of the hearing and to identify any additional witnesses they wish to call to attend
 - Advise the employee that the hearing could result in dismissal
- 11.5. If the employee or their trade union representative is unable to attend the meeting for a valid reason, they should confirm this to the person conducting the meeting at the earliest opportunity and an alternative date should be arranged. This will normally be within five working days of the original date proposed by the employer.
- 11.6. A copy of the Agenda to be used at the hearing can be found at **Appendix 3**.
- 11.7. At the hearing, management will present their case to the Capability Dismissal Hearing Officer/Panel and may recommend the employee's dismissal on the grounds of capability, providing relevant documented evidence to support their case for consideration. Following this the employee and their companion may make representations to the Officer/Panel for consideration in response.
- 11.8. The Contractual Review Hearing will consider whether sufficient progress has been made towards objectives. Where partial improvement has taken place, an assessment must be made as to whether a further period of review would likely enable the employee to meet the standards required.
- 11.9. The Officer/Panel will review the history of the case including the steps that have been taken to support the employee to achieve the required level of performance and the overall impact of the employee's underperformance. The employee's explanation including any mitigation will be heard and considered prior to making a decision.
- 11.10. An extension to the employee's performance monitoring period may be proposed in the event that the Officer/Panel believes there is compelling evidence to suggest that the employee could make the necessary improvements to their performance within a reasonable timeframe. The length of the extension period will depend on the circumstances of the individual case.
- 11.11. Where all options have been explored and the Officer/Panel reasonably conclude that a further period of review would be unlikely to enable the employee to meet the standards required, the employee may be dismissed on the grounds of their lack of capability.
- 11.12. The outcome of the Contractual Review Hearing will normally be notified to the employee at the end of the hearing wherever possible. The decision will then be confirmed in writing within 5 working days of the hearing taking place.

- 11.13. Where the outcome is dismissal, the letter will inform the employee of the clear reason(s) for dismissal, the date of termination of employment and the employee's entitlement to notice pay where applicable. It will also advise them of their right of appeal, the timescale for appeal and to whom an appeal (in writing) should be addressed.

12. Formal Capability Appeals

- 12.1. An employee may appeal against decisions made at each of the three formal stages of the procedure, including against dismissal on the grounds of lack of capability. The appeal must be made in writing clearly outlining the reason within 10 working days of receiving the outcome letter for the relevant stage.
- 12.2. The appeal should be on the basis of one of the following grounds:
- process irregularity;
 - The Capability Hearing Officer/Panel took into account irrelevant evidence;
 - the Capability Hearing Officer/Panel failed to take into account relevant evidence;
 - the Capability Hearing Officer/Panel misinterpreted evidence; the sanction imposed was disproportionate to the offence established; and/or new evidence has come to light which the parties were not aware of at the time of the hearing;
 - the actions of the Capability Hearing Officer/Panel or a decision made during the capability procedure amounts to unlawful discrimination.
- 12.3. The letter of appeal should be submitted to the relevant individual identified in the letter confirming the outcome of the Contractual Review Hearing.
- 12.4. Appeal hearings will be convened as soon as is reasonably practicable. The employee will be given at least **5 working days'** notice of the Appeal Hearing, along with their right to be accompanied either by a Trade Union Representative or workplace colleague.
- 12.5. The letter notifying the employee of the Appeal Hearing will include the following:
- The date, time and location of the hearing.
 - Details of the individuals forming the Appeal Panel and the relevant HR advisor
 - Details of the individual and their HR advisor, where applicable, presenting the management case
 - The right to be accompanied and/or represented by a trade union representative or work colleague

- Copies of documents that the manager presenting the case will refer to at the hearing, and names of any witnesses that they will call.
 - The employee's entitlement to submit additional relevant documentation in advance of the hearing and to identify any additional witnesses they wish to call to attend
- 12.6. If the employee or their trade union representative is unable to attend the meeting for a valid reason, they should confirm this to the person conducting the meeting at the earliest opportunity and an alternative date should be arranged. This will normally be within five working days of the original date proposed by the employer.
- 12.7. The appeal hearing is not intended to be a rehearing of the original Contractual Review Hearing, but rather a consideration of the specific areas that the employee has cited that they are dissatisfied with in their letter of appeal.
- 12.8. The Capability Appeal Panel will consist of individuals not previously involved in the capability process. The panel may be accompanied by a member of the central HR Team or other suitable HR advisor, also without prior involvement.
- 12.9. Where possible, the outcome of the appeal hearing will be confirmed verbally to the employee at the end of the meeting, and will be followed up in writing within 5 working days of the hearing. The decision made at the appeal hearing will be final and there will be no further right to appeal.
- 12.10. The procedure to be followed at an Appeal hearing can be found at **Appendix 4**.

13. Sickness Absence

- 13.1. An employee's sickness absence during any stage of this procedure may be dealt with in accordance with the Trust's Managing Sickness Absence Policy. A referral to the Trust's occupational health providers may be made in order that advice can be sought to inform any decisions taken in relation to the capability process.
- 13.2. An employee's sickness absence during a formal stage of this policy may result in a monitoring period being extended.

14. Grievances

- 14.1. Where a member of staff raises a grievance during any stage under this policy, a decision will be taken in the individual circumstances whether to:
- temporarily suspended the capability process in order to deal with the grievance

- proceed with the capability process whilst the grievance is dealt with concurrently, having given consideration to assigning an alternative manager to lead the capability process if appropriate
- deal with the grievance as a complaint or appeal under the Capability Policy

15. Probation Period (Support Staff)

- 15.1. The main purpose of the Trust's probationary procedure is to ensure that all employees who join the Trust receive the support and training they need to succeed in their role. Early detection of capability issues should be addressed in a timely manner through regular meetings between the new employee and their line manager. The Probationary Procedure should be used for employees who have not yet completed their probationary period and this policy does not apply.

16. Redeployment of Staff

- 16.1. The Trust is committed to properly considering the appropriateness of an employee being redeployed into an alternative role prior to any decision being taken to dismiss them for reasons of poor performance.
- 16.2. Redeployment may be discussed and considered by the parties at any stage in the process. An employee is not entitled to be redeployed and is not obliged to agree to do so.
- 16.3. The opportunity for redeployment will be reliant on a vacancy being available which is deemed to be suitable by the line manager/those managing Stage 1 or 2 of the process or by the Officer/Panel holding the Contractual Review hearing. In order to be an appropriate redeployment the duties of the new role must be considered to be within the employee's capabilities.
- 16.4. There is no pay protection for employees who are redeployed to a lower graded post by agreement as a result of the Capability process.

Appendix 1 - Action Plan Template (Support Staff)

Target area (Detail specific area where performance standards have not been met)	Performance area of concern (Detail specific dates and examples of where the standards have not been met)	Expected standard of performance (Detail what is expected of the employee in terms of their performance i.e. what does 'good' look like)	Agreed improvement actions (Detail what actions need to be taken to meet expected standard of performance)	Support to be provided (Detail what has been agreed in terms of support required to achieve the expected standard of performance)	Review date (Detail the frequency of review meetings between the employee and line manager – this will usually be weekly update meetings with the line manager)	Review notes (Detail improvement made and any future review dates)	Date to achieve expected standard
EXAMPLE: Organisational skills - difficulty organising workload on a daily basis.	EXAMPLE: Two deadlines missed (insert details) and complaint received from Department X who did not receive a response to an email sent twice on (insert dates).	EXAMPLE: To effectively manage workload on a daily basis, meet deadlines efficiently, prioritise tasks and respond to emails in a timely manner. Measured by management observation of performance of tasks.	EXAMPLE: Operate daily 'To Do' checklist and a diary. To respond to emails received within 3 working days.	EXAMPLE: Training in Google Task lists and calendar. To work shadow colleague Y in prioritising her daily tasks.	EXAMPLE: To be reviewed in 1 weeks (insert date)	EXAMPLE: Google training completed on (insert date), daily to do lists being written. Responding to emails faster, but further improvement needed. Work shadowing will continue. Review in 2 weeks.	EXAMPLE: Standard expected to be achieved within 4 weeks (insert date)
EXAMPLE: Accuracy – in	EXAMPLE: Repeated	EXAMPLE: To produce accurate	EXAMPLE: Employee to	EXAMPLE: Further training in	EXAMPLE: To be reviewed during	EXAMPLE: Training attended	EXAMPLE: Standard expected

research data.	inaccuracy of research data (insert details) involving typing errors when transferring raw data into reports.	data and to enable meaningful analysis and for research publications.	double check own work before submission, keeping records of research carried out to refer to. Supervisor to also check data against records	writing research papers and handling complex data. Time management training.	next research project (insert date)	and applied effectively in day to day work (give specific examples). Accurate data produced for new research projects enabling meaningful analysis (insert details).	to be achieved within 6 months (insert date)
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This action plan has been agreed by	Manager	Employee
Signature		
Date		
<i>By signing this form you confirm you agree to and understand the objectives set out in the document</i>		

Appendix 2 - Action Plan Template (Teachers)

Name of employee		Job title			
Name of manager		Manager's job title			
Review date start		Date set for review meeting			
Performance concerns : details of performance concerns which have been identified and what will be put in place to support the required improvement					
Performance concern	Relevant teacher's standard (if applicable)	Objective (the standard of performance the employee is expected to achieve)	Success criteria (what does the employee need to do to improve performance to the required standard)	How will this be evidenced	Support to be provided
Summary and next steps					
Employee comments		Employee signature			
		Date			
Manager comments		Manager signature			
		Date			

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FIRST REVIEW MEETING SUMMARY

Name of employee		Name of manager:	
Date of review meeting:		Date of 2nd review meeting:	

Performance concerns: details of the performance concerns which have been identified and what will be put in place to support the required improvement

Performance concern	Progress against objectives	Further objectives set (if necessary)	How will this be evidenced	Support to be provided

Appendix 3 - Agenda for Formal Capability Stage 3 - Contractual Review Hearing

1. PRESENTATION OF MANAGEMENT'S CASE

- a. The Trust's representative presenting the management case may make an opening address outlining the case.
- b. The Trust's representative calls each witnesses in turn so that:
 - the witness is asked questions by the Trust's representative;
 - the employee's representative has the opportunity to ask the witness questions;
 - the Trust's representative may ask the witness questions of clarification; and
 - the Capability Hearing Officer/Panel has the opportunity to question the witness.

2. PRESENTATION OF THE EMPLOYEE'S CASE

- a. The employee's representative may make an opening address outlining the employee's case.
- b. The employee's representative calls each witness in turn so that:
 - the witness is asked questions by the employee's representative;
 - the Trust's representative has the opportunity to ask the witness questions;
 - the employee's representative may ask the witness questions of clarification;
 - the Capability Hearing Officer/Panel has the opportunity to question the witness;

3. SUMMING UP

- a. The Trust's representative and then the employee's representative shall have the opportunity to sum up their case if they so wish, with the employee's representative having the last word.
- b. Both parties then withdraw.

4. THE CAPABILITY DISMISSAL OFFICER/PANEL'S DECISION

- a. The Capability Dismissal Officer/Panel, together with an appointed adviser(s), are to deliberate in private, only recalling the parties to clarify points of uncertainty on evidence already given. If recall is necessary both parties are to return, notwithstanding that only one may be concerned with the point under clarification.
- b. The Capability Dismissal Officer/Panel is to announce the decision to both parties at the close of the proceedings whenever possible. The decision will be confirmed in writing soon afterwards. Where the decision is to dismiss, the employee will be advised of his/her right of appeal against the decision of the Capability Dismissal Officer/Panel.

NOTES ON THE PROCEDURE

- 1. The Capability Dismissal Officer/Panel will normally have access to an adviser to advise him/her/them on the law and on procedure. The Capability Dismissal Officer/Panel will make the decision. No adviser shall vote on the matter being considered by the Capability Dismissal Officer/Panel.

Appendix 4 - Agenda for Formal Capability Appeals

1. PRESENTATION OF THE EMPLOYEE'S APPEAL

- a. The employee's representative may make an opening address outlining the employee's case.
- b. The employee's representative calls each witness in turn so that:
 - the witness is asked questions by the employee's representative;
 - the Trust's representative has the opportunity to ask the witness questions;
 - the employee's representative may ask the witness questions of clarification;
 - the Capability Appeal Dismissal Hearing Panel has the opportunity to question the witness;

2. PRESENTATION OF THE MANAGEMENT RESPONSE

- a. The Trust's representative may make an opening address outlining the case.
- b. The Trust representative calls each witnesses in turn so that:
 - the witness is asked questions by the Trust's representative;
 - the employee's representative has the opportunity to ask the witness questions;
 - the Trust's representative may ask the witness questions of clarification; and
 - the Capability Appeal Dismissal Hearing Panel has the opportunity to question the witness.

3. SUMMING UP

- a. The Trust's representative and the employee's representative, have the opportunity to sum up their case if they so wish; the employee's representative to have the last word.
- b. Both parties then withdraw.

4. THE STAFF CAPABILITY DISMISSAL APPEAL PANEL'S DECISION

- a. The Capability Dismissal Appeal Panel, together with an appointed adviser(s), are to deliberate in private, only recalling the parties to clarify points of uncertainty on evidence already given. If recall is necessary both parties are to return, notwithstanding that only one may be concerned with the point under clarification.
- b. The Panel is to announce its decision to both parties at the close of the proceedings whenever possible. The decision will be confirmed in writing soon afterwards.

NOTES ON THE PROCEDURE

1. The Capability Dismissal Appeal Panel will normally have access to an adviser to advise the panel on the law and on procedure. The Capability Dismissal Appeal Panel will make the decision. No adviser shall vote on the matter being considered by the Capability Dismissal Appeal Panel.
2. In exceptional circumstances, where it is considered appropriate the appeal hearing may be conducted as a re-hearing, the procedure used at the Capability Dismissal Hearing (Appendix 3) will be used.