

# **CAPABILITY POLICY AND PROCEDURE TEACHING STAFF**

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# Teaching Staff Capability Policy

## 1. Introduction

Revised appraisal arrangements for teachers come into force with effect from 1 September 2012. They are set out in a model policy document issued by the Department for Education in May 2012 which has been revised March 2019.

The model policy sets out the baseline principles that apply to teachers in all maintained schools and unattached teachers employed by a local authority, in each case where they are employed for one term or more. Maintained schools and local authorities do have some freedom to design arrangements to suit their own individual circumstances providing it does not fall below this baseline. Academy Trusts are free to agree their own arrangements, but the Trust will apply the national arrangements.

Academy Trust and local authorities must stay within the legal framework set out in the Appraisal Regulations. All Academy Trusts must ensure they comply with relevant employment legislation e.g. equality, employment protection and data protection.

Schools and local authorities must have an appraisal policy for teachers and a policy, covering all staff, which deals with lack of capability. This policy and procedure incorporates the arrangements set out in the model document dealing with teacher capability, including that of Headteachers.

This policy and procedure takes account of Part B of the Department for Education model May 2012 (revised March 2019) which took effect on 1 September 2012 and remains in force. This document sets out the formal capability procedure and reflects the ACAS Code of Practice on disciplinary and grievance procedures. This Capability procedure applies only to teachers and headteachers about whose performance there are serious concerns that the appraisal process has been unable to address.

## 2. Scope of the Policy and Procedure

This capability policy and procedure applies to teachers (including the headteacher) about whose performance there are serious concerns that the appraisal process has been unable to address. This model Capability Policy covers Part B of the Department for Education model policy. Part A is covered by the separate Teaching and Executive Staff Appraisal Policy.

This procedure is designed to help and encourage teachers whose performance falls below the level required to achieve and maintain the standard of job performance expected by the Trust.

The procedure is not applicable in cases of misconduct, or sickness absence. These issues are dealt with under separate appropriate procedures.

## 3. Definition

The Trust's Capability Policy defines capability as the ability of an employee to perform their job to the required standard of performance.

The Trust's Capability Policy and procedure applies where there is a genuine lack of capability to do the work the employee is asked to with reference to a lack of skill, aptitude, knowledge or ability.

## **4. Application**

This procedure applies to all teaching staff. Where it is the Headteacher who is being considered under the procedure then it will be the CEO who will take the appropriate action. In the case of the Headteacher, the CEO may seek professional advice from an appropriate person.

This policy and procedure has been reviewed against the model document issued by the Department for Education.

## **5 Principles**

The first concern of the Trust will be to ensure that any teachers who experience persistent difficulty in performing their duties to the required standard receive appropriate and reasonable assistance, support and training to assist them to remedy the deficiencies giving rise to concern.

Under-performance or lack of capability as a teacher may manifest itself in different ways. Some examples are:

- poor class control
- lack of practical proficiency, perhaps evidenced by pupil underachievement or poor attendance
- inability to apply new professional concepts and/or requirements to their work
- poor planning and/or organisation of lessons or other work
- and for more senior teaching staff, the inability to fulfil a higher level of responsibilities

Each case will be different and will need to be considered on an individual basis. Sometimes the under-performance may be short-lived and, given prompt help, the teacher may be able to remedy the deficiencies by support or further experience. In other cases assessment over a longer period of time will be essential. Where the concerns are very serious, however, the period given for improvement after the date of a formal warning will be no more than four weeks.

Where a teacher's capability is in question and it is anticipated that it may be necessary to use this policy and procedure, they will be provided with a copy of this procedure at the first stage at which it is invoked. Additionally, they will have the right to be accompanied to formal meetings called under this procedure by a trade union representative or work colleague.

Where there are concerns regarding a teacher's or the Headteacher's performance, then the Trust will use this capability policy and procedure and the provisions of the appraisal policy will be suspended until the concerns are resolved to the Trust's satisfaction.

## **6. Role of Trustees**

Trustees should not normally be involved with a capability procedure before the dismissal stage. The exception to this is where Trustees are involved in considering an appeal against a warning or in a capability procedure against a Headteacher when some Trustees may be involved in the monitoring and evaluation of performance. It is important to be prepared for the possibility of dismissal and therefore the use of Trustees to hear any grievances or appeals against warnings should be limited to ensure a sufficient number of impartial parties remain available for a Contractual Review hearing or an appeal hearing.

## **7. Role of Advisers**

The Trust may use a suitable external person with education and personnel experience to advise the Trust and, where appropriate assist with the process, including classroom observation and providing support.

## **8. Representation at formal Meetings**

A teacher is entitled to be accompanied by a colleague or union representative. If the teacher's chosen companion is not available at the time proposed for the interview, meeting or hearing, and the teacher proposes an alternative that is reasonable and falls within 5 working days of the day proposed for the interview, the School may rearrange the event to the time proposed by the teacher.

## **9. Notice**

Notice of 5 working days/ 7 calendar days outside term-time must be given for an initial formal capability interview. Notice of at least 10 working days must be given for a Contractual Review Hearing or an appeal hearing.

## **10. Support for the teacher**

Those monitoring the performance should offer feedback and instruction to help the teacher improve performance. If training courses or assistance from colleagues would be helpful these should be arranged, if it reasonable to do so, as soon as possible but should not interrupt the timing of the procedure.

## **11. Monitoring Arrangements**

Monitoring should include observations of a range of relevant duties and functions. An objective record of the monitoring should be kept and used to assist with the evaluation of performance.

## **12. Written Records**

A written record should be made of all meetings with the teacher and any action taken following a meeting. Except in agreed circumstances any formal warnings should be disregarded for capability purposes after a specified period of satisfactory performance. These periods are 2 terms for a written warning and 6 terms for a final written warning.

## **13. Confidentiality**

The appraisal and performance management process and records will be treated with confidentiality at all times.

## **14. Staff who are absent through illness during the procedure**

Any long term absence which is triggered during the capability procedure, and which management believe is likely to be long term, should be referred immediately to the occupational health adviser to obtain medical guidance on how to proceed. Short term absences should not delay any part of the formal stage of the capability procedure. Reasonable steps should be made to enable the teacher to attend evaluation meetings, but where the teacher is unable to attend, these may proceed in the teacher's absence if delay would otherwise compromise the maximum time set

aside for the procedure. In such circumstances a full account of the evaluation should be provided in the letter confirming the decision taken.

## **15. Decisions on continuing the procedure and recommending dismissal**

Normally the decision to continue a capability procedure or recommend dismissal should be taken by the Headteacher, or by the line manager with the Headteacher's agreement (except where the Headteacher's performance is being considered). If there is a difference of opinion, the Headteacher's decision should prevail except where the Headteacher's performance is being considered.

## **16. Timetable**

References to terms throughout the model procedure and these notes on applying the procedure are taken to mean the normal School term lengths for Academy Trusts that operate a three term academic year. Any Academy Trusts that operate on more than the normal three terms in an academic year should make an approximate pro rata adjustment to any references to terms.

## **17. Grievances about the procedure**

Where an employee raises a grievance during a capability procedure the process may be temporarily suspended in order to deal with the grievance. Where the grievance and capability cases are related, it may be appropriate to deal with both issues concurrently. Alternatively, it may be that the facts of the grievance actually constitute a defence or mitigation in terms of the capability matter, in which case they will be considered as part of the capability review.

## **18. Appeals against formal warnings**

Appeals may be heard by a panel of Trustees.

Appeals should normally be restricted to considering the reasonableness of the decision made, any relevant new evidence, or any procedural irregularities. A teacher is entitled to be accompanied at an appeal hearing by a colleague or union representative.

The appeal decision should be confirmed in writing and the teacher told that there is no further appeal against the decision. Where an appeal is upheld the matter should be referred back to the Headteacher or manager for further appropriate action. Where monitoring would otherwise be continuing, it should not be halted while an appeal is pending.

## **Scope**

- In educational establishments with fully delegated budgets, it is for the Trust to decide whether or not it is appropriate to apply this policy to staff. Where it is decided that it is not appropriate, the Trust is reminded of its obligation as an employer to nevertheless satisfy the requirements of the law and, where appropriate, the requirements of specific conditions of service.
- The term 'employee' refers to any member of teaching staff, employed to work by the Trust either within a School or the wider Trust

## **Delegation**

- The Trust will decide when this policy applies. The term 'Headteacher' refers to Headteacher/Executive Head or CEO
- As per the policy or where delegation have been given to a Senior Manager.

# Teaching Staff Capability Procedure

## 1. Introduction

This procedure provides an opportunity for:

- Encouragement, support and assistance
- A structured and clear path for improvement
- Discussion and consideration of all the relevant factors
- The manager and employee to work together
- Employee representation

Managers should consider seeking HR support before any action under the formal capability procedure is taken to ensure that the process is carried out with fairness and consistency throughout the Trust.

## 2. Information Gathering Stage

It is important that performance problems are clearly identified and investigated and then given appropriate consideration and support at the earliest possible stage. The nature of the problem, its level of seriousness and cause(s), must be investigated and identified by structured information and systematic recording.

The Trust will investigate whether the employee has been made aware of expected standards or should reasonably know them from their qualification or other training or would be expected to have updated themselves as part of an individual's professional responsibility as a teacher and/or Trust manager.

Performance problems may be identified from single incidents, from routine checks of records or statistics (for example pupil progress, pupil attendance or regular failure to submit reports on time), from regular management meetings with the line manager or from performance management in the appraisal process.

Once the facts are gathered and the seriousness of the problem established there are three initial options:-

- No further action required under the capability procedure and the appraisal process will continue as normal; or
- Informal Stage: (For less serious situations) - arrange support and monitoring; or
- Formal Stage: (For more serious situations) - arrange a Formal Capability Meeting; notify the teacher in writing that the appraisal system will no longer apply and that their performance will be managed under the capability procedure.

## 3. Informal Stage

In less serious situations, where it is anticipated that performance can be improved to the appropriate level within a reasonable time by support without using the formal procedure, counselling and informal coaching may be used with the aim to encourage and help the teacher to improve. It should be conducted discreetly.

A meeting will be called by the line manager or Senior Manager with notice of 5 working days/7 consecutive days outside term-time, at which the teacher must be given an opportunity to respond. Explanations should be considered carefully, and no further action taken under the capability procedure if it becomes evident that there is no case to answer, in which eventuality the normal

appraisal process will continue. If, however, there are continuing concerns then the teacher must be told:

- what is required;
- how performance will be reviewed;
- the review period, and
- that the formal procedure will commence if there is no improvement.

A note of the discussions should be put in writing following the meeting including a Performance Improvement Plan, setting out targets, times, dates, success criteria, and who is monitoring them. Appropriate guidance will be given and/or learning resources identified giving practical advice to address whatever the particular problem may be. If development needs are identified, the Line Manager/Senior Manager may suggest further training within the Trust or by attendance at in-service courses, or visits to other Academy Trusts, subject to the staffing or resource implications for the Trust.

The monitoring process should be under the guidance of the Line Manager/Senior Manager or a designated member of staff who is competent and experienced to assist the teacher in their work. This support process should provide observations and feedback to enable the employee to understand whether the actions they are endeavouring to implement are effective or not and for the Line Manager/Senior Manager to decide action at the end of the review period.

The teacher shall be given a period of up to eight weeks to achieve improvement and at the end of that period a second meeting will take place to review the position.

If, after the agreed period of support and supervision, the Line Manager/Senior Manager is satisfied that progress is being made, the process may be modified or ended, and the teacher informed accordingly.

If during the review period more serious concerns regarding the teacher's past or current performance come to light, the Headteacher may decide to move immediately to the Formal Stage of this procedure, without completing the Informal Stage.

The meeting at the end of the review period will be called by the Line Manager/Senior Manager, with notice of 5 working days/ 7 calendar days outside term-time, at which the teacher will be informed of observations and feedback and given an opportunity to respond.

If the Line Manager/Senior Manager accepts that targets have been met according to the success criteria and those satisfactory standards have been attained, that shall be stated, there shall be no further action under this procedure and the normal appraisal process will continue. If not, then further action shall be taken under the formal stage that follows and a letter advising of the date of a Formal Capability Meeting shall be sent to the teacher.

## **4. Formal Stage**

### **4.1 Progression to the Formal Stage**

The formal stage of the procedure will be commenced by a Formal Capability Meeting as set out below if:

- a) no significant improvement is evident at the end of the informal stage, or
- b) at the time of the information gathering stage there are serious concerns and action under the informal stage would not be sufficient e.g. where performance is affecting pupils' education,

## 4.2 Formal Capability Meeting

- a)** The Headteacher will convene a formal capability meeting. The teacher will be informed in writing, giving notice of at least 5 working days or 7 consecutive days out of term-time, of the meeting and the nature of the concern(s) as to the perceived lack of capability, as well as their right to be accompanied by a trade union representative or work colleague. A copy of this procedure, and of any documents or evidence brought forward from the informal stage to these proceedings, should be included with the letter.
- b)** The meeting should take the form of a formal recorded meeting with the teacher, who has the right of response. The teacher must be given the opportunity to make a case and/or to provide a written response. The Line Manager/Senior Manager who supported during the informal process may be asked to attend the meeting to provide feedback and information on the process.
- c)** The meeting may provide new information or lead to a different perspective on evidence collected. If it becomes clear that further investigation is needed the interview should be adjourned by the Headteacher for an appropriate length of time to allow this to happen. If the Headteacher does not require further investigation then they will adjourn the meeting to consider the appropriate option before delivering a decision to the teacher, either by recalling them or by letter.
- d)** The Headteacher may decide:
- To adjourn the meeting for a further period, for example if they decide that further investigation is needed, or that more time is needed in which to consider any additional information
  - No further action is required where there is no case to answer, or it is trivial, or that the matter is not as serious as it first seemed)
  - Action the Informal Stage - arrange support and monitoring, except where this has already been undertaken without improvement
  - Issue a formal warning (where there is continued or serious concern about the standard of performance)
  - Issue a final written warning (in cases of very serious concern)

The decision will depend upon the seriousness of the underperformance.

A formal warning will invoke an assessment period of a maximum of two terms, but the period will normally be less and is at the discretion of the Headteacher.

A final written warning will invoke an assessment period not exceeding 4 weeks.

- e)** Where a formal or final warning is issued, the Headteacher will use the remainder of the meeting to set out a clear Performance Improvement Plan, (PIP) that will:
- Identify the level and extent of underperformance, e.g. which of the standards expected of teachers are not being met
  - Give clear guidance on the standard required (this may include the setting of new objectives focused on the specific areas to be addressed, appropriate success criteria and the evidence that will be used to assess whether or not the necessary improvement has been made);
  - Explain any support that will be available to help the teacher improve their performance
  - Set out the timetable for improvement, explain how and by whom performance will be monitored and reviewed and set a date for the next/final evaluation meeting; and
  - Make it clearly understood that failure to improve may lead to further formal action up to and including dismissal

**f)** A letter will be sent to the teacher by the Headteacher within 5 working days (or 7 consecutive days out of term-time) of the formal meeting, recording the main points discussed at the meeting and confirming the decision. Where a formal or final warning is issued, the employee will also be advised in the letter that failure to improve to a satisfactory standard within the set timescale could result in further action, up to and including dismissal, being taken. The letter will include the Performance Improvement Plan as described above and the right of appeal against the issue of the warning.

**g)** If the teacher exercises the right of appeal against a formal or final warning, the appeal may be considered by Governors/Trustees. Any appeal against a warning must be made within 5 working days (or 7 consecutive days outside term-time) of receipt of the letter from the Headteacher.

**h)** Any appeal against the decision to issue a formal or final warning will be conducted by holding a meeting with the teacher and their trade union representative, or work colleague if they choose to be accompanied, together with the Headteacher. The outcome will be notified in writing within 5 working days/ 7 calendar days outside term-time. All actions agreed as part of the warning and PIP will continue pending the appeal but may be amended or halted if the appeal is successful.

**i)** The Headteacher will arrange for the PIP to be implemented. During the review period specified in the plan, further support and assistance may be given as appropriate. The School may use the Line Manager/an experienced member of Trust staff, or a suitable external person, to assist in advising on progress and supporting the teacher. The Formal Capability meeting will have informed the teacher what level of performance is expected, the clear targets set and what success criteria have been identified, but if the Headteacher believes that further details are required they will be provided. The teacher shall be informed of the time limits and end date of the assessment period. During this process continued feedback on progress or lack of it should be provided to the employee so they are aware of whether the actions they are endeavouring to implement are effective or not

**j)** A final assessment will then be made by the Headteacher taking account of feedback with all those involved in the guidance and supervision of the teacher. The assessment will be discussed at the Formal Review meeting with the member of staff by the Headteacher and any adviser unless the teacher was previously issued with a final written warning, in which case they will be invited to a Decision Meeting - Contractual Review Hearing (see section 4.4).

**k)** The Headteacher will convene the Formal Review meeting at the end of the assessment period. The teacher will be informed in writing, giving notice of at least 5 working days/ 7 calendar days outside term-time, of the meeting and their right to be accompanied by a trade union representative, or work colleague.

**l)** If during the assessment period following a formal warning, more serious concerns regarding the teacher's past or current performance come to light, the Headteacher may decide to move immediately to a Final Warning, with the assessment period not exceeding 4 weeks, and at the end of this assessment period the situation will be reviewed at a Decision Meeting - Contractual Review Hearing, not a Formal Review meeting.

### **4.3 Formal Review**

At the end of the PIP monitoring period following the Formal Capability meeting, the Headteacher will convene a Formal Review meeting. If the date was not set at the Formal Capability meeting, then the teacher will be invited to the meeting in writing, with notice of at least 5 working days/ 7

calendar days outside term-time. The invitation letter will set out the nature of the perceived lack of capability, as well as their right to be accompanied by a trade union representative, or work colleague.

The assessment of the teacher's progress will be discussed by the Headteacher, and any adviser, with the teacher and any trade union representative, or work colleague.

The course of action to be followed after this meeting will depend on the view taken on the teacher's performance, as set out below:

- i. **Teacher has made sufficient improvement:** the capability procedure will cease, and the appraisal process will re-start, or
- ii. **Some progress has been made without achieving the desired standard.** Where some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period.
- iii. **The standard of professional performance of the teacher is still unacceptable:**
  - If a formal warning was issued at the Formal Capability meeting, then a final written warning will be issued by the Headteacher. The teacher will be told clearly that failure to achieve an acceptable standard within the set timescale, with confidence that it can be maintained, may result in dismissal.
  - If a final written warning was issued at the Formal Capability meeting then the Headteacher will refer the teacher to a Decision Meeting - Contractual Review Hearing without any further assessment period, review, or other action.

A final written warning issued at the Formal Review meeting will lead to an assessment period not exceeding 4 weeks. At the end of this assessment period the situation will be reviewed at a further Formal Review Meeting.

Where a final warning is issued at the Formal Review meeting, the headteacher or manager will use the remainder of the meeting to outline a further PIP which will:

- Identify the level and extent of underperformance, e.g. which of the standards expected of teachers are not being met;
- Give clear guidance on the standard required (this may include the setting of new objectives focused on the specific areas to be addressed, appropriate success criteria and the evidence that will be used to assess whether or not the necessary improvement has been made);
- Explain any support that will be available to help the teacher improve their performance;
- Set out the timetable for improvement, explain how and by whom performance will be monitored and reviewed and set a date for the next/final evaluation meeting; and
- Make it clearly understood that failure to improve may lead to further formal action up to and including dismissal

A letter will be sent to the teacher by the Headteacher within 5 working days/7 calendar days outside term-time of the formal review, recording the result of the investigations, the main points discussed at the meeting and confirming the decision.

- Where a final warning is issued at the Formal Review meeting, the letter will include a warning that failure to improve to a satisfactory standard could result in further action, up to and including dismissal, being taken. It will set out details of the PIP and will confirm the right of appeal against the issue of the warning.

- Where a final written warning was issued at the Formal Capability meeting and the Headteacher's decision at this stage is to refer the teacher to a Decision Meeting – Contractual Review Hearing. The teacher will be requested to attend the meeting, in writing. The letter will state that a potential outcome of the Decision Meeting could be dismissal on the grounds of incapability and give information about the hearing process. The letter will confirm the teacher's right to be accompanied by a trade union representative, or work colleague.

The teacher will have the right of appeal against a decision to issue a final warning at the Formal Review meeting and, in these situations, the appeal may be considered by a panel of Trustees who have not been directly involved in the case. Any appeal against a warning must be made within 5 working days/ 7 calendar days outside term-time' of receipt of the letter from the Headteacher.

Any appeal against the decision to issue a final warning at the Formal Review meeting will be conducted by holding a meeting with the teacher and their trade union representative, or work colleague, together with the Headteacher and the outcome notified in writing within 5 working days/ 7 calendar days outside term-time All actions agreed as part of the warning and PIP will continue pending the appeal but may be amended or halted if the appeal is successful.

If a final warning was issued at the Formal Review meeting then, at the end of the period of review, the Headteacher will convene a further Formal Review meeting with the purpose of undertaking a final evaluation to consider whether the required improvement in performance has been secured. The date will have been set at the Formal Review meeting or the teacher will be informed in writing, giving notice of at least 5 working days/ 7 calendar days outside term-time, of the meeting and the nature of the perceived lack of capability, as well as confirming their right to be accompanied by a trade union representative, or work colleague.

The teacher's performance during the period of review will be discussed by the Headteacher and Line Manager/Senior Manager or adviser with the teacher and any trade union representative, or work colleague. If, after this discussion, the Headteacher is satisfied that the teacher has made sufficient improvement and that satisfactory standards have been attained, the capability procedure will cease, and the appraisal process will re-start. If the Headteacher considers that no significant sustained improvement is evident the teacher will be told that the matter will be referred to a Decision Meeting – Contractual Review Hearing (see Section 4.4) where a panel of Trustees will consider dismissal.

A letter will be sent to the teacher by the Headteacher within 5 working days/ 7 calendar days outside term-time of the Formal Review meeting, recording the result of the assessment, the main points discussed at the meeting and confirming the decision. Where the Headteacher's decision is to refer the teacher to a Decision Meeting the teacher will be informed that a potential outcome could be dismissal on the grounds of incapability and will be given information about the hearing process as well as their right to be accompanied by a trade union representative, or work colleague.

If, during the review period, it is clear that the reports upon the teacher's performance remain unsatisfactory, consideration will be given by the Headteacher to exploring the scope for suitable alternative employment within the Trust, if available. Any search for alternative employment must not interrupt the progress of the procedure, unless the likelihood of successful redeployment leads to the matter being reconsidered.

#### 4.4 Decision Meeting – Contractual Review Hearing

If, the Headteacher/CEO decides to refer the teacher to a Decision Meeting – Contractual Review Hearing, dismissal on the grounds of incapability will be considered then.

The Contractual Review Hearing will be conducted by the CEO/Headteacher or, if they have acted as the manager in the case, by a Panel of Trustees and will be attended by the Senior Manager, line manager, HR Representative and the employee. As at all stages of the formal procedure, the employee may be accompanied by a work colleague or trade union official.

The following paragraphs outline the procedure which should be used in the Contractual Review Hearing.

Prior to the Hearing the Headteacher should:

- Prepare a written report on the teacher's performance, recording their qualifications, employment record and any previous consideration under this procedure and;
- Obtain relevant written evidence, which may include the Headteacher's, Line Manager or adviser's own report and such other written statements, as may be required for compilation of Contractual Review Hearing pack.

At least 10 working days before the date of the Contractual Review Hearing the teacher and their representative shall be:

- notified in writing of the date, time and place of the Hearing and receive a copy of this procedure;
- supplied with the case papers and all written evidence prepared by the Headteacher for the hearing;
- notified in writing of the purpose of the hearing, the possibility of dismissal and of his/her right to be represented by a trade union representative or work colleague;
- notified in writing of their right to call witnesses and submit written statements for circulation to the members of the Panel prior to the date of the Contractual Review Hearing.

Five working days/ 7 consecutive days outside term-time) before the date of the Hearing the teacher will:

- advise the Headteacher whether they intend to be present at the hearing and be accompanied, and if so, by whom;
- advise the Headteacher if they intend to call witnesses and confirm the number and identity of them.
- supply the Headteacher with copies of any written statements or documents which the teacher wishes distributed to Hearing Panel prior to the date of the hearing.

The Contractual Review hearing will be conducted in accordance with Appendix 1 and the Headteacher should, after following the procedure outlined above, decide:

- the capability procedure will cease, and the appraisal process will re-start, but no other action will be taken; or
- to take such action short of dismissal as they consider appropriate, having regard to the needs of both the teacher and the Trust e.g., return to the formal stage of the procedure for a further period of monitoring, additional training and support, revised supervision arrangements, changes to role undertaken etc; or
- to dismiss the teacher on the grounds of incapability.

Trustees have no power to transfer a teacher to a post in another school or to an unattached post except in the cases of a multi-academy trust that may redeploy teachers to another school within its chain.

If dismissal is decided upon then it will normally be with the notice period as appropriate under the terms and conditions of service or statute, whichever is greater.

A letter will be sent to the teacher by the decision maker at the Hearing, within 5 working days/ 7 calendar days outside term-time of the hearing, recording the main points discussed at the meeting and confirming the decision. Where dismissal is decided or action short of dismissal, the letter will include notification of the right of appeal against that decision.

Any appeal against dismissal or action short of dismissal must be made within 5 working days/ 7 calendar days outside term-time of receipt of the letter from the Hearing Panel.

The teacher may appeal against dismissal on the grounds of lack of capability. The appeal must be made in writing to the CEO or in the case that the CEO provided the outcome, the appeal must be made to the Chair of Trustees, stating the basis for the appeal.

If the appeal is to the CEO the panel will be formed of three members, consisting of members of either of the Executive team or Trustees who have had no prior involvement in the case. If the appeal is to the Chair of Trustees, the hearing panel will be formed of the first three Trustees available, providing there is no conflict of interest or prior involvement in the case. This is the final stage of the appeals procedure/

The teacher will be advised in writing of the date for the appeal to be heard, and that they may be accompanied by a trade union representative or work colleague. The teacher will be given 10 working days' notice of the meeting.

The appeal must be made to the CEO via the Trust central address or by email to [admin@secat.co.uk](mailto:admin@secat.co.uk) or in the case of a referral to the Chair of Trustees, to the Governance Manager, by post via SECAT House or to [katylove@secat.co.uk](mailto:katylove@secat.co.uk). Appeals must be made within 10 school days of receipt of the outcome specifying the grounds for appeal.

The CEO/Governance Manager will record the date the appeal is received and acknowledge receipt of the appeal in writing (either by letter or email) within 5 school days.

Requests received outside of this time frame will only be considered if exceptional circumstances apply.

The CEO/Governance Manager will write to the appellant to inform them of the date of the meeting. They will aim to convene a meeting within 15 school days of receipt of the appeal. If this is not possible, the Governance Manager will provide an anticipated date and keep the appellant informed.

If the appellant rejects the offer of three proposed dates, without good reason, the CEO/Governance Manager will decide when to hold the meeting. It will then proceed in the appellant's absence on the basis of written submissions from both parties.

## **5. Appeal Hearing**

An Appeal Hearing against a decision to dismiss will be conducted by a Panel of Executive Team/Trustees in accordance with the procedure detailed in Appendix 1.

There will be no further right of Appeal except where the Panel of Trustees decides at Appeal that there should be a dismissal when a lesser sanction was originally given.

## Appendix 1

### **Contractual Review Hearing and Appeal Hearing Procedure**

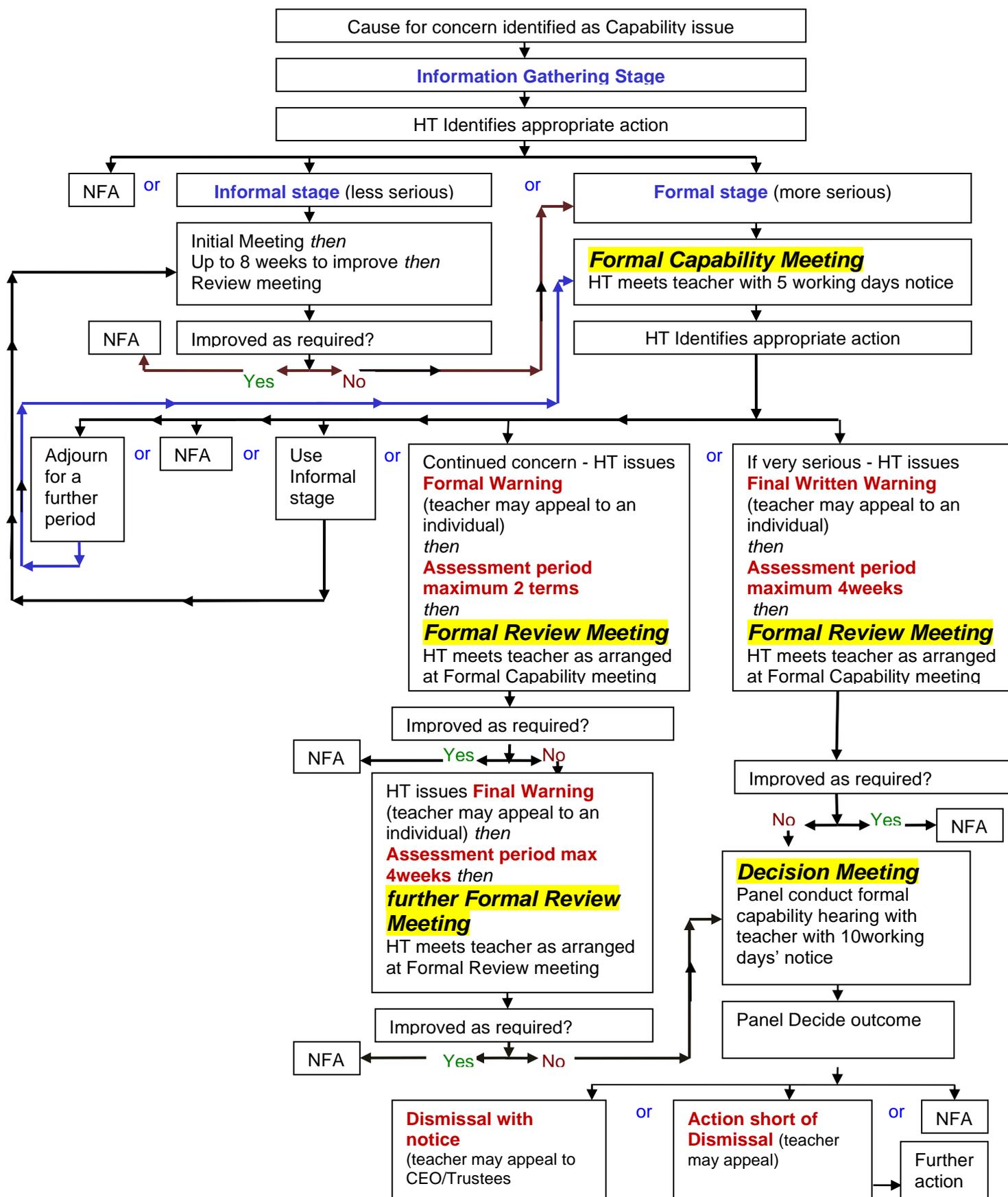
The employee appearing at a Contractual Review Hearing Decision Meeting or an appeal hearing shall be given notice, in writing, at least 10 working days of the date, time and place of the hearing, and shall be allowed to be accompanied by a trade union representative, or work colleague. They shall be allowed to call witnesses and present documentation relevant to their case.

#### **Process**

1. The Chair of the Panel should introduce all parties, confirm they have all received the appropriate paperwork and explain the purpose of the hearing. In an appeal hearing they will also confirm the grounds of appeal with the teacher and their representative (if any)
2. The presenting officer will present the management case in the presence of the teacher and their representative (if any) and the panel.
3. The other parties may ask questions of the presenting officer in the following order: teacher and/or representative, Panel members, HR Adviser.
4. The presenting officer may then call witnesses who can be questioned in the following order: presenting officer, teacher and/or representative, Panel Member, HR Adviser.
5. The presentation is then reversed, with the teacher and/or representative having the chance to put their case and call witnesses.
6. Questions may be asked on the teacher's case by the presenting officer, followed by Panel members and the HR Adviser.
7. The teacher and/or representative may then call witnesses who can be questioned in the following order: teacher and/or representative, presenting officer, Panel members, HR Adviser.
8. The Presenting Officer, followed by the teacher /representative, will have the opportunity to sum up their cases, if they so wish.
9. Both parties will withdraw, leaving the Panel to deliberate, accompanied by the HR Adviser.

If recall is necessary to clear points of uncertainty both parties will be called back to the hearing. In addition, the Panel may require that other witnesses/evidence should be called or produced in order to ensure that all necessary facts are considered before making a decision. The Panel may decide to adjourn the hearing to allow for this if necessary.

If a decision can be made within a reasonable time of the parties withdrawing, both parties should be recalled and informed of the Panel's decision. In all cases, and whether or not the decision has been given verbally at the end of the hearing, the teacher will be sent a letter, outlining the reasons for the decision, within 5 working days/ 7 calendar days outside term-time of the hearing.



Capability flowchart – Teaching Staff

NFA = no further action, use Appraisal process