



**Tudor Grange Academies Trust**

**Capability Policy and Procedure (Associate Staff)**

<b>Document title</b>	Capability Policy and Procedure (Associate Staff)
<b>Author/originator</b>	J Brant
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03.03.2022	1.1	<ul style="list-style-type: none"> <li>• Update to para 2.3 definitions</li> <li>• Update to para 3.3, 3.8</li> <li>• Update to para 7.2</li> <li>• Update to para 8.1, 8.2</li> <li>• Update to para 9.2, 9.4</li> <li>• Update to para 10.1, 10.2, 10.3</li> <li>• Update to Guidance Document 1, Capability stage flowchart</li> </ul>

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*In the development of this policy consideration has been given to the impact on protected characteristics under the Equality Act and the work life balance of employees.*

## **1 Statement**

- 1.1 The Trust is responsible for ensuring that employees are provided with the opportunity, support and encouragement to recover their performance when it fails to meet the required standard. This Procedure applies to all associate staff apart from those still in the induction period whose performance is covered under the probation policy. This procedure applies only to associate staff about whose performance there are serious concerns and that the appraisal process has been unable to address.
- 1.2 This Capability Procedure provides a framework for managing and resolving problems that lead to an individual's performance persistently falling below the standard expected of the employee's level and experience. Where this is wilful the matter will be dealt with under the disciplinary Procedure. This Procedure aims to achieve a fair and consistent approach for the benefit of the managers and employees wherever performance problems occur.

## **2 Definitions**

- 2.1 In accordance with the Employment Rights Act, 1996 capability is assessed by reference to skill, aptitude, health or any other physical or mental activity in relation to performance at work.
- 2.2 For the purpose of this Policy “Lack of Capability” is defined as a situation in which an employee fails consistently to perform his/her duties to a wholly satisfactory standard of performance over a period of time due to lack of skill, ability or knowledge.
- 2.3 Acceptable levels of performance are normally identified through the individual Job Description, management responsibilities, and objectives, as agreed during the appraisal process.

<b>“Academy”</b>	Any school which falls within the umbrella of the Trust.
<b>“Appraiser”</b>	Any member of staff delegated by the Principal to deal with matters of performance and capability under these procedures.
<b>“Board”</b>	The Trust board which is made up of the Trustees who together are responsible for the delivery of the core functions and hold the Chief Executive Officer to account. Responsibilities may be delegated to a sub-committee of Trustees.
<b>“CEO”</b>	Chief Executive Officer charged with the overall responsibility for the day to day running of the Trust. The Principals of the individual schools are accountable to the Chief Executive Officer.
<b>“Executive Leader”</b>	Member of the Executive Leadership of the Trust
<b>“Principal”</b>	The person responsible for the day to day running of a particular school within the Trust.
<b>“Senior Manager”</b>	The term “senior manager” refers to any member of the Leadership Group, or senior staff member, delegated by the Principal to deal with a capability matter under these procedures.

	A senior manager may only make a decision to issue a sanction up to and including a final written warning.
<b>“the Trust”</b>	Tudor Grange Academies Trust (company number: 07365748) whose registered office is at Tudor Grange Academy, Dingle Lane, Solihull, West Midlands, B91 3PD.

### 3 Principles

- 3.1 When considering timescales senior managers may exercise discretion and due consideration will be given to the experience of the staff member as well as impact on pupils, service delivery, nature of concerns and any mitigating factors.
- 3.2 At each stage of the procedure, an employee will be told about the performance problem and will be given an opportunity to state his or her case before any action is taken.
- 3.3 Before embarking on Formal Capability Proceedings, the Principal, Executive Leader or Senior manager must be certain that clear evidence of underperformance exists and every aspect of appropriate informal support through the Appraisal Policy and the Capability policy has been exhausted, and has failed to achieve the required improvements. Where it proves to be necessary to begin a formal capability procedure with a member of associate staff, a formal meeting will be held. The initiation of the Capability Procedure should not come as a surprise to the employee.
- 3.4 At all formal stages of the procedure employees have the right to be accompanied by a Trade Union<sup>1</sup> representative or work colleague, and the Trust encourages staff to contact their union for support at all stages of this procedure. If the work colleague/representative is unable to attend the formal meeting on the date proposed, the meeting will be rearranged and an alternative date mutually agreed. The alternative date should normally be within five working days of the original date. This period may be extended by mutual agreement.
- 3.5 Full consideration will be given to invoking other policies or support services where appropriate.
- 3.6 Our aim is to deal with performance matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with a matter which is subject to this Capability Procedure.
- 3.7 In the event of any formal action being proposed under this Procedure against a Trade Union representative the appropriate Regional Officer of that Trade Union should be notified prior to the procedure being implemented.
- 3.8 Any Staff or Trustees contemplating using this procedure should seek advice from internal or external HR providers as appropriate.
- 3.9 The employee, and anyone accompanying the employee (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure, without

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<sup>1</sup> A trade union is defined as anybody appearing on the certification officers’ list of trade unions.

prior agreement. Failure to observe confidentiality could be a reason for disciplinary action under the academy's disciplinary procedure.

#### **4 Stage 1 – informal support**

4.1 The employee will have been informed in writing that the appraisal process no longer applies and the matter will now be considered within the Capability Procedure. The employee will be invited to a meeting held with the appraiser and a senior manager to consider the evidence and decide on the appropriate action. Although not a formal meeting the employee may be accompanied by a work based colleague or a union representative as long as it does not unreasonably delay proceedings. At the meeting held under Stage 1 of the Capability procedure the senior manager will consider the support and progress to date and a further period of informal support will be agreed. The aim of this period of informal support is to bring performance up to the standard required to perform the roles and responsibilities of their job. The support offered to employees during this period should be agreed and may include:

- coaching;
- guidance;
- visits to and from other schools;
- mentoring;
- additional training;
- work shadowing;
- regular supervision sessions.

4.2 The informal stage 1 will normally last 6 - 8 weeks followed by a review meeting to consider progress resulting in one of the following outcomes:

- that the employee has reached the required standard and the matter will now be referred back to the appraisal process. This outcome will be confirmed in writing;
- that where partial satisfactory improvement has been made and there is confidence that wholly satisfactory performance will be achieved, a brief extension of up to 4 weeks may be considered along with a revised support plan and review date.
- that the employee has made unsatisfactory progress towards the agreed targets and informed that the matter will now be handled under Stage 2 of the Procedure. A letter will be sent inviting them to a Formal Capability meeting.

#### **5 Stage 2 – formal capability**

5.1 If an employee's performance is not wholly satisfactory despite the support received via the appraisal process and Stage 1 of this Capability Procedure, the senior manager will invite the employee to a formal capability meeting to discuss with the employee the identified poor performance as specifically as possible.

5.2 The senior manager will write to the employee at least 5 working days in advance to inform him/her about:

- the date, time and place of the meeting;
- the details of the performance concerns;
- the employee's right to be accompanied by a representative of his/her trade union or a work based colleague of his/her choice;
- the titles of enclosed documents to be used at the meeting;

- names of any witnesses to be called and confirming the employees right to call witnesses;
- the names of those attending the meeting and their roles.

5.3 A duplicate letter and documents should be sent for the employee' companion.

5.4 This meeting is intended to establish the facts. It will be conducted by a senior manager delegated by the Principal. The meeting will allow the employee to respond to concerns about his/her performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected.

5.5 During the meeting, or any other meeting which could lead to a formal warning being issued, the senior manager will:

- identify the poor performance relating to the individual Job description and any management responsibilities not being met;
- ensure the employee is given an opportunity to ask questions, present evidence, call witnesses, respond to evidence and make representations;
- establish the likely causes of poor performance including any reasons why any measures taken so far have not led to the required improvement;
- give clear guidance on the improved standard of performance needed to ensure that the employee can be removed from formal capability procedures which may include the setting of new objectives focused on the specific area/s of poor performance that need to be addressed. It will include any success criteria that are appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made;
- identify whether there are further measures which may improve performance and explain any support that will be considered and planned to help the employee, e.g. inservice training, visits to other schools, discussion with appropriate colleagues or professionals;
- set out the timetable for improvement and explain how performance will be monitored and reviewed;
- set and agree a review date;
- Issue a First Written Warning and further warn the employee formally that failure to improve within the set period could lead to a final written warning which could then lead to his/her dismissal;
- inform the employee of the right of appeal.

5.6 The timetable will depend on the circumstances of the individual case, but will be reasonable and proportionate and will provide sufficient opportunity for improvement to take place (6 - 8 weeks usually).

5.7 Minutes will be taken of formal meetings and a copy sent to the employee and any companion. The outcomes of the meeting should be confirmed in writing and the right of appeal must be made clear. Where a first Warning is issued it will remain on the employees file for 12 months.

## **6 Stage 2 - formal review**

- 6.1 At least 5 working days before the agreed date for the formal review meeting a written reminder will be given to the employee together with details of the meeting as set out in paragraph 5.2 above.
- 6.2 The formal review meeting will follow a similar procedure to that identified for the informal capability meeting as set out in paragraph 4.2 above.
- 6.3 If the senior manager is satisfied that the employee has made sufficient improvement, the formal capability procedure will cease and the appraisal process will re-start. The employee should be advised in writing with a record retained on the employee's 6 personal file and kept 'live' for a period of 12 months. If during this 12 month period, there is a further lapse in performance, this original record can be referred to and used again. In this case, the procedure will be picked up at the same stage as was previously reached.
- 6.4 In cases:
- where partial satisfactory improvement has been made and there is confidence that wholly satisfactory performance will be achieved, a brief extension of up to 4 weeks may be considered along with a revised support plan and review date;
  - where no, or insufficient improvement has been made during the monitoring and review period, the employee will receive a final written warning and informed that the matter will now fall under Stage 3 of this procedure.
- 6.5 Minutes will be taken at the formal review meeting and a copy will be sent to the employee and any companion.
- 6.6 Where a final warning is issued, the employee will be informed in writing that failure to achieve an acceptable standard of performance may result in dismissal and will be given information about the further monitoring and review period and the procedure and time limits for appealing against the final written warning. The date of the decision meeting will be agreed with the employee and any Trade Union Representative or work place colleague.
- 6.7 At this stage or prior to dismissal; rather than refer the matter to a decision meeting, consideration could be given to the employee being given a different range of duties or an alternative post. By agreement, this may include transfer to a post suited to the employee's capabilities. If this post is at a lower salary level the substantive lower salary would apply.

## **7 Stage 3**

- 7.1 The stage 3 review period will last for approximately 4 - 6 weeks, and agreed support, monitoring and assistance will be given throughout this period in line with the requirements of Stage 2.
- 7.2 At least 5 working days before the date of the decision meeting a reminder will be given in writing together with details of the meeting as in paragraph 5.2 above. The meeting will be conducted by the Principal or an Executive Leader:
- if an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end and the appraisal process will re-start;
  - the employee should be advised in writing with a record retained on the employee's personal file and kept 'live' for a period of 12 months. If during this 12-month period,

there is a further lapse in performance, this original record can be referred to and used again. In this case, the procedure will be picked up at the same stage as was previously reached;

- if progress has been made and there is confidence that wholly satisfactory performance will be achieved by a short extension, it may be appropriate to extend the monitoring and review period rather than to dismiss. The final written warning will be extended for a short specified assessment period;
- if performance has remained unsatisfactory, a decision will be made that the employee will be dismissed. The employee will be informed in writing as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and whether the notice is to be served or there will be pay in lieu of notice, and the right of appeal.

## **8 Notice of dismissal**

- 8.1 Following a decision to dismiss, the employee will be notified in writing of the dismissal, and whether the decision is with notice or with pay in lieu of notice, in accordance with the decision of the Principal or Executive Leader.
- 8.2 In the event of a successful appeal against a decision to dismiss, the employee shall be informed immediately and the notice of dismissal shall be immediately withdrawn.

## **9 Right of appeal against a formal written warning**

- 9.1 If an employee feels that a decision to issue a first and/or final written warning, is wrong or unjust, s/he may appeal in writing against the decision.
- 9.2 Appeals against a written warning shall be restricted to considering the severity of sanction issued by the Senior Manager, any relevant new evidence not previously available to the /senior Manager or any procedural irregularities. A statement giving the reasons for the appeal should be submitted to the HR Director within 5 working days of the formal written warning being received.
- 9.3 All appeal hearings will be held as soon as possible after receipt at an agreed time and place.
- 9.4 The appeal will be heard by an appeal panel comprising one or more Executive leaders. The panel may be advised by a person engaged for the purpose by the Appeal Panel. The panel can either confirm the warning, reduce or cancel the warning. The outcome will be confirmed in writing as soon as possible.
- 9.5 The same arrangements for notification and the right to be accompanied by a companion will apply for an appeal hearing as for at the formal capability and review meetings and, as with those meetings, notes will be taken and a copy sent to the employee and any companion.
- 9.6 Pending appeal the employee will be expected to work in accordance with targets set for the next stage of the procedure and his or her progress may be monitored during this period.

## **10 Right of appeal against a decision to dismiss**

- 10.1 The employee has a right of appeal to the Appeals Committee of the Trust Board against a decision dismiss.



- 10.2 The Appeals committee shall consist of at least 2 Trustees, none of whom will have had any previous involvement in the case.
- 10.3 The employee's notice of appeal to the decision should be sent to the Executive Clerk to the Trustees within 5 Working days of receipt of the written decision to dismiss setting out the grounds of appeal.
- 10.4 Appeal hearing should be held as soon as possible after receipt of the appeal and will be conducted in the same way as the appeals referred to in paragraph.

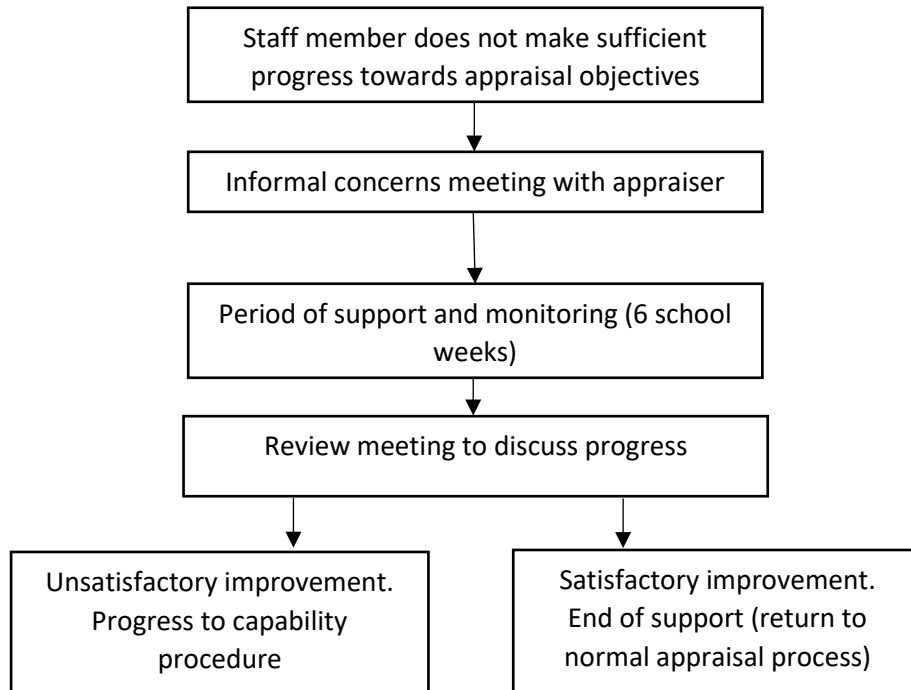
## **11 Grievances arising during this procedure**

- 11.1 Where an employee raises a grievance during a disciplinary process, it may be appropriate to suspend this procedure for short period to enable the grievance to be considered. Where the Grievance and Disciplinary cases are related it may be appropriate to deal with both cases concurrently.

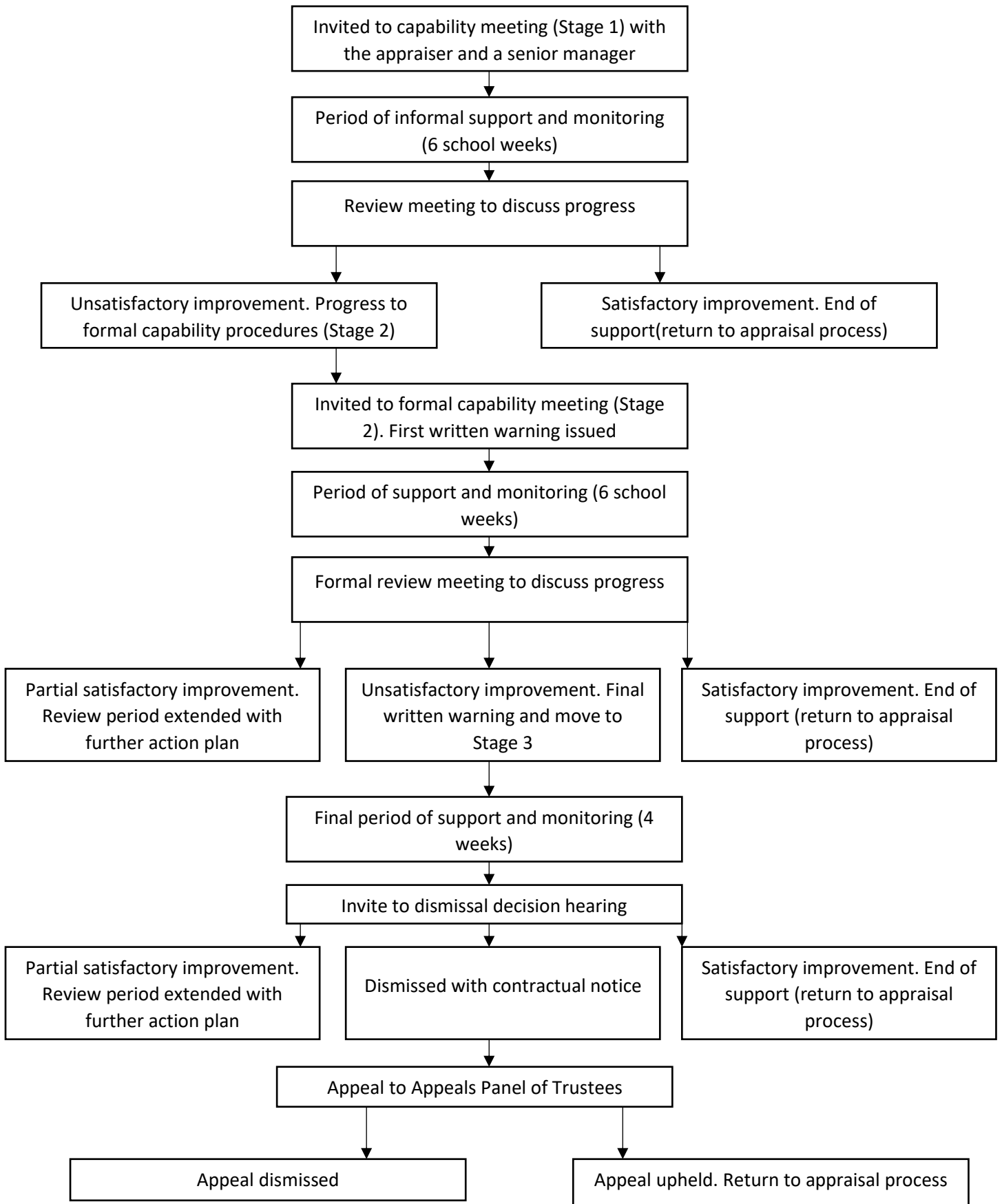
## **12 Relationship with sickness absence**

- 12.1 It is important that sickness absence should not delay the use of this procedure. It is in the interests of all parties to address concerns about performance without undue delay. Arrangements will be made to seek medical advice from an occupational health provider to assess the employee's fitness for continued employment at the academy.
- 12.2 Consideration will be given to whether the poor performance may be related to a disability and if so whether there are reasonable adjustments that could be made to the employee's working arrangements. We may also consider making adjustments to this procedure in appropriate cases i.e. in the case of terminating employment on the grounds of ill health.
- 12.3 If an employee's medical condition is not serious enough to warrant a consideration of termination on the grounds of ill health, then the Occupational Health provider will be asked to assess whether an employee is deemed fit to attend formal meetings. In the event that the employee is deemed not fit to attend a formal capability meeting then the employee may make a written submission for consideration of be represented by a union representative of work place colleague.

**Appraisal Stage**



**Capability Stage**



**GUIDANCE DOCUMENT 2      Performance Improvement Plan**

Performance Improvement Plan	
Name:	
Line Manager/Principal/Trustee	
Date original plan agreed	
Date second plan agreed	
Date third plan agreed	

Objective to be met	How to meet objective/Who is responsible	Timescale/Target date for completion	Comments/Review notes

Jointly agreed by:

Line Manager/Principal/Trustee: \_\_\_\_\_

Date: \_\_\_\_\_

Member of staff: \_\_\_\_\_

Date: \_\_\_\_\_

## **GUIDANCE DOCUMENT 3      Frequently Asked Questions**

### **Capability (Performance improvement) Procedure**

**Q1) Will this Procedure be started if I make a mistake?**

A1) This procedure is intended for use when an employee consistently under performs in their job. It is not intended for use on the odd occasion when someone makes a genuine mistake.

**Q2) If my Principal uses this procedure will it spoil my chances for promotion in the future?**

A2) If the improvement in an employee's performance is forthcoming, during this procedure and is sustained, the notes of the meetings and the Performance Improvement Action Plans will be removed from the personal file after 12 months.

**Q3) Can I ask for the documentation relating to my Performance Improvement to be removed from my file?**

A3) Yes, following the expiry of the 12 months period from when your Principal confirmed your performance now meets the required standard you may ask for confirmation that the documentation has been removed from your personal file.

**Q4) Will I lose my job if this process is used?**

A4) The procedure has been designed to give every encouragement and support to employees whose work performance does not currently meet the expected performance standards. It is designed to enable them to improve on the areas of performance that have been identified as requiring improvement. However, once stage 3 has been reached, there is a possibility that the panel at the hearing may choose to dismiss an employee who has been given every opportunity to make an improvement and this has not materialised.

**Q5) I have not been well recently and my work has been affected by this, will this procedure be applied?**

A5) Where sickness has been identified as the major contributory factor, the procedure would not normally be invoked during a sickness or recovery period. The issue of performance will be considered as a whole and not in isolation. It may be necessary to obtain medical advice from Occupational Health. If an employee is covered by the DDA. "Reasonable adjustments" will need to be considered when looking at the employees' overall performance.

**Q6) If this process is used will it affect my appraisal outcome?**

A6) The actions resulting from this process will, as a matter of course, need to be discussed further at your appraisal meetings and the standard of your performance will be reflected in your appraisal outcome.

**Q7) Will mitigating circumstances be considered by my Principal?**

- A7) Your Principal/Executive Leader/Trustee has the responsibility to look at the whole picture and consider all issues that you might raise with them.
- Q8) What do I do if my Principal sets me improvement standards/tasks which I do not feel I have the skills to undertake?**
- A8) The purpose of this process is for the Principal and employee to agree a way forward. Discussions on expectations will take place and both parties will be expected to contribute towards the agreement of achievable and realistic objectives.
- Q9) If I am taken through the procedure to Stage 3 and I am offered alternative work, will my salary remain the same?**
- A9) If the process goes to Stage 3 and an alternative post is found for you your salary will be paid according to the grade of that post. There will be no salary protection for redeployment under the Capability Procedure.
- Q10) If additional training is identified as the cause for my under performance what will happen?**
- A10) If your Principal/Executive Leader/ Trustee agrees that further training is necessary and can be justified, this will be arranged.
- Q11) Can I be accompanied throughout this procedure?**
- A11) An employee can be accompanied by a work place colleague or a Trade Union's representative throughout the formal stages of the procedure including formal review meetings. It would not normally be necessary for an employee to be accompanied during the informal process and regular employee/Line Manager/Principal monitoring meetings.