

Chorus Education Trust

Capability of Employees Procedure

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Author: Ann Allen, COO

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Contents

1. Aims	3
2. Legislation and Guidance	3
3. Definitions	3
3.1 Application of the Procedure	3
4. Roles and Responsibilities	4
5. Capability Procedure	5
5.1 Other Considerations	5
5.1.1 Redeployment	5
5.1.2 Representation	5
5.2 Informal Period of Support	5
Step 1: Meet with the employee.....	5
Step 2: Setting improvement targets	6
Step 3: Providing effective support.....	6
Step 4: Review progress and decide on next stage	7
5.3 Capability Flowchart.....	8
5.4 Triggering Formal Capability Procedures	9
5.4.1 Capability meeting pre formal hearing	9
5.4.2 Capability support plan	9
6. Capability Hearings	9
6.1 Stage One - Capability Hearing/ Formal Capability Meeting	9
6.1.1 Possible outcomes	10
6.1.2 The process at the Stage 1 Capability Hearing/ Formal Meeting	10
6.1.3 Support and monitoring of Capability Support Plan – formal review period	12
6.2 Stage 2 - Formal Capability Review Meeting.....	12
6.2.1 The process at Stage 2	12
6.2.2 Letter to confirm the meeting and provide evidence	12
6.2.3 Capability review meeting	12
6.2.4 Final Warning Review/ Decision Meeting	13
6.3 Stage 3 - Dismissal Hearing	14
6.3.1 The Process.....	14
6.3.2 Notice Periods.....	15
6.3.3 Reporting the Dismissal	15
6.3.4 References and Compromise Agreements	15
6.3.5 Suspension from Duty.....	15
7. Right to Appeal	16
7.1 Appeal Against a Recorded Written or a Final Written Warning	16
7.2 Appeal Hearings	16
7.2.1 Appeal Against Dismissal	17
8. Confidentiality	17
9. Consistency of Treatment and Fairness	17
10. Monitoring Arrangements	17
11. Links with other Policies and Procedures	17
Appendix 1: Capability Stages – Roles and Delegation	19
Appendix 2 – Capability Support Plan	20
Teaching Staff Capability Support Plan Proforma	20
Non-Teaching Staff Capability Support Plan Proforma 1	22
Non-Teaching Staff Capability Support Plan Proforma 2	24

1. Aims

The aim of our capability of employees procedure is to set out a clear and consistent process for when any member of staff falls below the levels of competence expected of them, as set out in the relevant professional standards, job descriptions and overall performance expectations.

It is recognised that the vast majority of employees in schools make a valuable contribution to the education and progress of the pupils, and the effective operation of the schools/trust. All employees' performance is continually monitored under the [Appraisal Policy and Procedures](#), and support is given to them to help them further develop their skills and improve their performance.

The capability procedure will only be used to manage the minority of staff whose performance in their job is causing concern and is below the expectations of their role.

2. Legislation and Guidance

This procedure is based on the [Department for Education's model policy and guidance](#), and the [Acas code of practice on disciplinary and grievance procedures](#).

It also complies with our trust's [Funding Agreement](#) and [Articles of Association](#).

When carrying out capability procedures, we will ensure we abide by the **Equality Act 2010**. Chorus Education Trust is committed to:

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

3. Definitions

Lack of capability is defined as:

- An employee failing to perform their role at the level of competence expected of them and that their job requires

References to '**staff or employees**' include all employees of the trust (the CEO, Headteacher, teachers, support staff, and business services staff), unless indicated otherwise.

3.1 Application of the Procedure

The procedure applies to all staff employed by Chorus Education Trust except Newly Qualified Teachers undergoing induction (NQT's). A separate procedure applies where there are concerns about the performance of an NQT.

The procedure will be used:

- In circumstances where necessary steps have been taken to try and address the underperformance of an employee through the [Appraisal Procedure](#), but this has not resulted in the individual reaching the expected standard of performance.
- Where concerns about performance are so serious that informal measures for managing capability are not felt to be appropriate and formal action is required. This could include moving straight to a dismissal hearing in severe cases, for example safeguarding issues.

The application of the capability procedure in the trust will be supportive and guidance will be offered to improve performance. However, the seriousness of the situation will be stressed to the employee along with the consequences of failing to make the necessary improvements within a defined timescale. Staff are entitled to be represented by a Trade Union representative or work colleague throughout this formal process.

In accordance with *The School Staffing (England) (Amendment) Regulations 2012*, a teacher who has been subject to capability procedures during the last two years of their employment with the trust and applies for a teaching post at another school, the Local Governing body of this school (or Board of Trustees) will provide written details of their concerns which gave rise to this, the duration of their proceedings and the outcome.

The capability procedure does not deal with lack of capability due to ill health ([Sickness Absence Procedure](#)), nor with misconduct ([Disciplinary Procedure](#)), which may be defined as an act or omission by a member of staff which is considered to be unacceptable professional behaviour. However, an employee may be managed under more than one procedure at any one time.

Whenever a concern is raised regarding any aspect of the operation of the capability policy/procedure, it should be dealt with as promptly as possible and within this procedure.

4. Roles and Responsibilities

Authority to deal with capability issues is delegated in accordance with [Appendix 1](#) and the trust [Scheme of Delegation](#).

Managers must seek advice from the Human Resources department at all stages of this procedure, plus the SLT member responsible for Teaching and Learning when considering the capability of teachers.

Where the member of staff subject to the procedure is the CEO, the Chair of Chorus Education Trust Board of Trustees will be responsible for co-ordinating the procedure.

Where the member of staff subject to the procedure is the Head of School, the CEO and the Chair of the Local Governing Body will be responsible for co-ordinating the procedure, if it is part of their delegated responsibility under the trust's [Schemes of Delegation](#).

Where the member of staff subject to the procedure is not the Head of School, the Head of School or a nominated member of senior staff will be responsible for co-ordinating the procedure.

Where appropriate, other members of staff may be asked to provide additional support to the teacher/employee, or to assist in monitoring the effectiveness of the procedure. Where this happens, responsibilities will be made clear in advance.

5. Capability Procedure

Performance is monitored on a day-to-day basis by line managers, in our trust support is provided in regular 1-1s and through the appraisal process. Concerns over an employee's job performance may arise from evidence through a variety of sources.

The employee's line manager should refer to the appropriate information from the following when assessing the gap in performance:

- *Code of Conduct*
- Teacher Standards
- other relevant occupational or professional standards
- job description and person specification.

Capability procedures will begin when line management support and the appraisal process have been unable to bring about satisfactory performance or improvements in the employee's work.

See [Appendix 1: Capability Stages – Roles and Delegation](#) for details of delegated authority for management.

In Chorus Education Trust an informal period of support, put in place and monitored by the line manager, will have been in place before capability procedures are triggered. Evidence of this will be available before the process begins.

5.1 Other Considerations

5.1.1 Redeployment

If employees feel they are unable to carry out their role, duties and responsibilities, and a satisfactory improvement is genuinely beyond their ability, the redeployment process should be initiated to support the employee in preparing for their future in a different type of role, potentially in a different organisation (where suitable alternative employment is not available at the trust). The redeployment process should run alongside this procedure in those circumstances, providing the employee with additional support wherever possible.

5.1.2 Representation

Representation by Trade Unions is encouraged. An employee has a legal right to be accompanied by their Trade Union representative or another employee of the trust at every stage of this procedure.

5.2 Informal Period of Support

The process for the line manager informal period of support is as follows:

Step 1: Meet with the employee

- Give clear feedback about the nature and seriousness of the concerns
- Give the employee the opportunity to comment, and discuss the concerns
- Agree on improvement targets to be met, and a realistic timescale for when these should be met (This should be no shorter than 4 weeks and no longer than 8 weeks. For the trust,

the average is usually 6 weeks so impact can be seen, but this can alter depending on the urgency of improvement needed.)

- Agree any support (e.g. coaching, mentoring, structured observations), that will be provided to help address concerns and meet the targets
- Make clear how, and by when, the person monitoring will review progress (e.g. regular lesson observations, looking at the work of pupils)
- Explain the implications and process if no, or insufficient, improvement is made (e.g. moving onto formal capability procedures).

Step 2: Setting improvement targets

- Keep extensive written records of what you discuss in each meeting and what outcomes you agree with the employee
- Approach the conversation sensitively
- Ensure that you make sure the employee feels supported and not persecuted as a result of this conversation
- Set targets for improvement to make it clear what exactly you want to see the employee work on, and to give you something to measure their progress against
- Personalise improvement targets to the individual concerned
- The targets will vary according to the employee's experience, needs, and professional shortcomings. For example, for a middle or team leader, the targets will depend on whether the individual is underperforming in the area of leadership or teaching/ their specific role
- Ensure the employee is engaged with the process
- Ensure that the employee accepts the need for improvement. If they are in agreement over the areas that have been identified for improvement, they are more likely to engage with the targets and improvement process
- When setting improvement targets, provide evidence of why improvement is necessary, and set targets based on this evidence
- Establish clear timescales and processes for monitoring the targets.

Step 3: Providing effective support

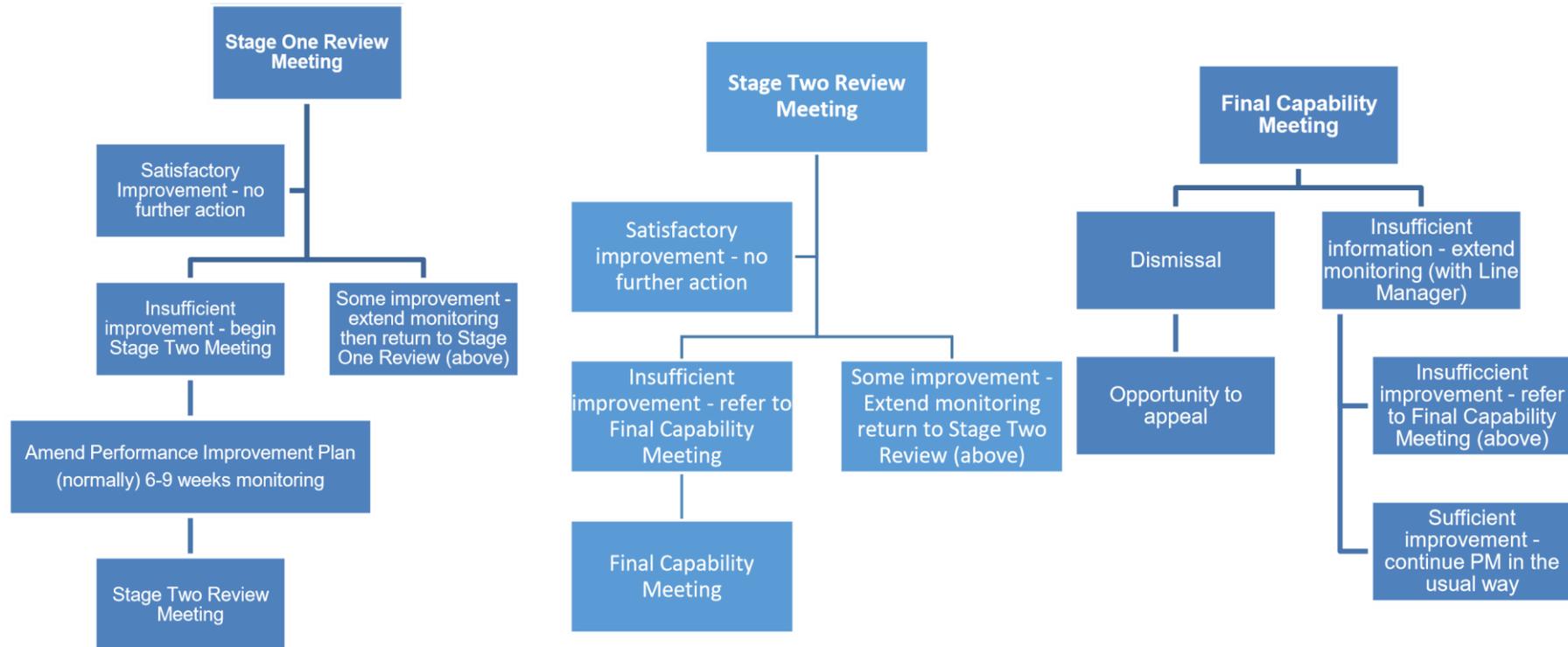
- Have a conversation with the employee to choose which form of support is appropriate, while taking into account their needs and the desired outcomes of the support
- Make sure that you monitor the success of these support programmes regularly, both during the support period and immediately after. (A weekly or bi-weekly meeting face to face meeting should be arranged for this purpose.)
- Coaching/mentoring will involve regular one-to-one training with an experienced peer to address performance issues
- Choose a coach/mentor who the employee is comfortable with. This might be another staff member at the school, but you may also consider seeking a coach from the trust via another trust school or team

- Avoid using senior leaders, as their presence may make the employee feel uncomfortable in sharing their issues
- Training; consider if sending your employee on formal training programmes would be helpful. These can be particularly useful if there is a specific gap of knowledge or skill that is hindering performance
- Observing other staff members; allow your employee to observe other colleagues at work in your school/trust. This can help them reflect on their own practice/work, and pick up tips on how to improve.

Step 4: Review progress and decide on next stage

- Hold a review meeting aiming to give the employee 5 working days' notice and the opportunity to bring Union Representation or a trust colleague with them
- Review the progress against the targets set
- If insufficient progress has been made there are two options:
 - Extend the period of support and monitoring for another period of time. It is advisable that this should be no longer than 4 working weeks and that there should not be a second extension.
 - Advise the employee that they will be moving into a Capability Procedure.

5.3 Capability Flowchart



5.4 Triggering Formal Capability Procedures

Managers must be clear that there are sufficient concerns regarding the employee's performance, and there is a pattern of underperformance sufficient to warrant dealing with the matter through the trust's Capability Procedure.

If you are unsatisfied with the progress made following informal capability procedures, you may want to consider beginning with formal capability procedures. (See [section 6.2](#) Stage 2 - Formal Capability Review Meeting below).

5.4.1 Capability meeting pre formal hearing

Where a manager believes it is appropriate to instigate the Capability Procedure they will:

- Speak confidentially on a one-to-one basis with the employee.
- Ask them to attend (in writing) a stage 1 formal capability hearing, aiming to give a minimum of 5 working days notice.
- Make them aware that the purpose of the meeting will be to discuss concerns regarding their performance.
- Offer them the right of representation.
- Provide them with a copy of the Capability Procedures which ensure they are aware of the possible outcomes/consequences.

Where the issues have been considered informally under the [Appraisal Procedures](#) but the required level of performance has not been achieved - the employee will have been informed of this at the Initial Performance Review meeting (teachers) or in 1-1's (other employees) and had opportunity to discuss this with the manager before it is confirmed in writing to them.

5.4.2 Capability support plan

In preparation for the meeting, the manager will produce a draft [Capability Support Plan \(See Appendix 2\)](#) and give it to the employee for consideration at the meeting.

The [Capability Support Plan](#) should make reference to the relevant professional standards (e.g. Teacher standards, etc) and should be linked to the employee's appraisal objectives, their Job Description and Person Specification.

Where the Capability Procedure has commenced as a result of concerns raised during the [Appraisal Procedure](#) of the member of staff, the [Capability Support Plan](#) should detail evidence of the concerns raised and support provided during the informal support and monitoring period.

6. Capability Hearings

See [Appendix 1: Capability Stages – Roles and Delegation](#) for details of delegated authority for management.

6.1 Stage One - Capability Hearing/ Formal Capability Meeting

Aim to give at least five working days' notice of the formal capability meeting, per [section 5.4.1](#) above.

The stage one capability will be conducted/heard by:

See [Appendix 1: Capability Stages – Roles and Delegation](#) for details of delegated authority for management.

The manager or Trustee/Governor will be advised by an HR representative. Staff have the right to be accompanied to this hearing by a Trade Union representative or trust colleague only. The accompanying representative has a right to address the meeting but no right to answer questions on the staff's behalf.

The purpose of the meeting is to establish the facts, and to allow the employee to respond to the concerns and make relevant representations, the process is detailed below [section 6.1.2](#).

6.1.1 Possible outcomes

The meeting may establish that there are no grounds to pursue the capability issue. In this case, the procedure will come to an end and the issues will continue to be addressed through the [Appraisal Process](#).

The meeting may be adjourned if further investigation is needed, or if more time is needed to consider additional information presented.

If the meeting continues, the person conducting the meeting will:

- Explain the expected standards that are not being met based on the teacher's standards, other relevant professional body standards, career stage expectations and/or job description
- Give clear guidance on the standard of performance needed to end the procedures
- Explain the support available to help the employee improve their performance
- Set out the timetable for improvement and explain how performance will be monitored and reviewed
- Warn the employee that failure to improve within this timetable could lead to dismissal

6.1.2 The process at the Stage 1 Capability Hearing/ Formal Meeting

- 1. Establish the purpose of the meeting** The manager confirms the purpose of this hearing is to establish the facts and determine whether a warning should be issued together with confirmation of the support and monitoring which will take place to help the employee reach the standard of performance required.
- 2. Give an overview of the process and establish the possible outcomes** At the meeting, the employee will be given an overview of the entire process including all possible outcomes:
 - The manager conducting the hearing may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through support and monitoring under the [appraisal process](#).
 - The manager conducting the hearing may also adjourn the meeting if they believe further investigation is required or more time is needed to consider any additional information.
 - Following a full discussion of the issues raised, including the draft [Capability Support Plan](#), the manager conducting the meeting may decide to issue a Stage

One Written Warning. Where this is the case, a final version of the *Capability Support Plan* will be agreed and confirmed to the employee, in writing within 5 days of the hearing.

- 3. Outline the performance concerns and evidence** The manager will outline the performance concerns, by clearly identifying the nature of the problem(s) and providing supporting evidence (e.g. information collated during the support and monitoring period under the *Appraisal Procedure* or other evidence to demonstrate underperformance).
- 4. Give an opportunity to respond** The employee will be offered the opportunity to respond and outline their position. If they wish to appeal against being managed within the Capability Procedure, they should include this within their case for consideration at the hearing.
- 5. Adjourn for consideration** The manager leading the meeting should adjourn to consider the evidence and the three possible outcomes and make a final decision.
- 6. Communicate the decision** The manager should restart the meeting and communicate clearly their decision, the reasons for it, the next steps to be taken and the timeframe in which it is to happen.

Decision to Issue the Capability Support Plan

If it is decided that a formal warning is to be given then a *Capability Support Plan* will need to be invoked. This will include:

- Key issues to be addressed from the Teaching Standards, other relevant professional body standards, Job Descriptions and Person Specifications
- Any weightings attached to the key issues
- The behaviours the employee needs to demonstrate
- The actions that need to be taken
- Any additional support and/or resources needed
- The arrangements for monitoring and assessment and the timescales involved
- The success criteria for each issue.

The objectives set within the *Capability Support Plan* will be **Specific, Measurable, Achievable, Realistic** and **Time-bound** and will be appropriate to the employee's role and level of experience. In setting the objectives, the manager will have regard to what can reasonably be expected in the context of roles and responsibilities. Targets may be weighted in terms of importance. When this occurs the weighting arrangements and how these may affect the overall outcome of the process should be made clear to the employee at this stage and noted on the *Capability Support Plan*.

Communicate clearly what action is to be taken if targets are not met

The manager conducting the hearing should make the employee aware that failure to improve within the set period could lead to a final written warning. In addition to the *Capability Support Plan*, notes will be taken by HR colleagues at all formal meetings summarising the key points and a copy sent to the employee.

Set Timescales

The time allowed for employees to demonstrate a significant improvement depends on the seriousness of the consequences of underperformance. Following the Stage One Formal Capability Meeting, the

minimum timescale anticipated before a formal review meeting takes place is four weeks (as recommended by the Department for Education for teaching staff).

While the timescale will be determined on a case by case basis, evidence of a significant improvement will usually be required, within four to eight weeks. A significant deterioration in performance may bring forward the date of the review meeting. The timescale may also reflect the amount of time and support an employee has already received. It will be for the person managing the hearing meeting to determine if a longer timescale is justified.

6.1.3 Support and monitoring of Capability Support Plan – formal review period

Support and monitoring functions should be delivered by different individuals, in line with the objectives that have been set. The manager should speak to all who are involved in monitoring and support to confirm their roles, the confidentiality and the timetable involved emphasising the confidentiality requirements. It is important that everyone follows the [Capability Support Plan](#), including the timescale. If the plan is amended the reason will be discussed and agreed with the employee as soon as possible.

If the employee is absent due to sickness for a significant period during the process, managers should refer to the [Sickness Absence Policy/Procedure](#) and consult with their HR advisor. It may be necessary for an employee to be managed within both the [Sickness Absence Policy /Procedure](#) and Capability Procedure at the same time. In these circumstances there may be one meeting where issues of both sickness and capability are discussed to avoid the employee having to attend more than one meeting whilst ill.

6.2 Stage 2 - Formal Capability Review Meeting

The stage two capability review will be conducted by the manager/person who issued the Stage 1 warning. They will be advised by an HR representative. Employees have the right to be accompanied to this meeting by a Trade Union representative or a trust work colleague. The accompanying representative has a right to address the meeting but not to answer questions on the member of staff's behalf.

See [Appendix 1: Capability Stages – Roles and Delegation](#) for details of delegated authority for management.

6.2.1 The process at Stage 2

Following the period of support and monitoring a review meeting will be held in accordance with the timescale determined in the [Capability Support Plan](#).

6.2.2 Letter to confirm the meeting and provide evidence

The employee should receive a letter from the manager, aiming for a minimum of 5 working days before the meeting, confirming the date, time and venue and any written documentation.

(Beforehand, the manager should ensure they have collated and reviewed any evidence which supports their concerns about performance. Any written evidence should be provided in advance of the meeting, with sufficient time for both parties to give due consideration to the content of the documents.)

6.2.3 Capability review meeting

Step 1 – Overview of meeting

The manager conducting the meeting will give an overview of the process and establish the possible outcomes:

1. Return to normal monitoring under the [Appraisal Policy/Procedure](#) - That the employee has achieved and maintained the required standards of performance, as the [Capability Support Plan](#) has been successfully completed.
2. Extended monitoring - If some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period. This should be for a maximum of four weeks. It will be for the person leading the meeting to determine if a longer timescale is justified.
3. Issue Final Written Warning - If the employee has failed to show sufficient improvement towards achieving the targets to satisfy the manager that the individual is capable of achieving and maintaining the required standards of performance, it may be appropriate to issue a final warning. If this occurs, the employee will receive an updated [capability support plan](#) and be subject to a further monitoring period.

Step 2 - Discuss progress against the Capability Support Plan using the evidence/feedback collected

The manager states their view and evidence, the member of staff will be invited to respond.

Step 3 - Adjourn to consider evidence

The manager makes their decision. (There may be occasions where specific targets are given greater weighting, and that if they are not achieved, despite others having been met, a decision is made that the individual has been unsuccessful. In such situations, the individual will be made aware, before the plan has commenced, of the significance of certain targets, when applicable.)

Step 4 - Restart meeting and communicate decision and reasons for it

The final written warning will mirror any previous warnings that have been issued. Where a final warning is issued, the employee will be informed in writing that failure to achieve an acceptable standard of performance within the set timescale may result in dismissal. They will be given information about the further monitoring and review period, the procedure and time limits for appealing against the final warning. The employee will be invited to a decision meeting.

6.2.4 Final Warning Review/ Decision Meeting

The manager/person who issued the Final Warning will be present. They will be advised by an HR representative.

See [Appendix 1: Capability Stages – Roles and Delegation](#) for details of delegated authority for management.

Employees have the right to be accompanied by a Trade Union representative or a trust work colleague. The accompanying representative has a right to address the meeting but not to answer questions on the employee's behalf.

Step 1 - Outline the purpose of the meeting and potential outcomes

Step 2 - Review the progress made against the updated capability support plan

Step 3 - Give the employee an opportunity to outline their view of the progress made.

Step 4 - Adjourn meeting to consider evidence and make a decision

The manager will either confirm progress and the employee will return to normal appraisal process, or that insufficient progress has been made and confirm that a dismissal hearing will be held.

6.3 Stage 3 - Dismissal Hearing

See [Appendix 1](#): Capability Stages – Roles and Delegation for details of delegated authority for management. The power to decide that employees should no longer work for the trust has been delegated per [Appendix 1](#) and the [Scheme of Delegation](#).

In line with the **Education Act 2002**, Boards of Trustees and Local Governing Bodies must appoint two separate panels of not less than 3 people to consider capability at work cases at the final stage when the dismissal of an employee is being considered.

In a small school or schools experiencing Governor recruitment issues, it may be possible for sub-committees to have less people provided there are either equal numbers on both or a higher number on appeal. In a trust the Governors used can be from any school on either panel.

One panel will consider the case presented at Stage 3 and the second separate panel will consider any appeal against the outcome of the original hearing. The panels will be advised by a trust HR representative.

Employees the right to be accompanied to this hearing by a Trade Union representative or trust work colleague. The accompanying representative has a right to address the meeting but not to answer questions on the member of staff's behalf. The presenting manager/Headteacher may be supported by an HR Representative.

6.3.1 The Process

A letter aiming to give a minimum of 10 working days' notice should be sent to the employee informing them of the date, time and venue of the hearing and of the right to be accompanied by a trade union representative or trust work colleague. Where the employee and/or representative are unable to attend on this date, a request should be made to the Chair of the hearing to offer an alternative date. The Chair of the hearing will determine whether this is appropriate taking account of the circumstances of the case and a suitable alternative arranged as soon as possible.

Step 1 - Hold the meeting, clearly outline the purpose and potential outcomes – the chair confirms the potential outcomes are as follows:

- Extend the period for improvement and/or modify the targets, outline any further monitoring required and set dates for the appropriate review process.
- Conclude that sufficient progress has been made, therefore the capability process ends and the [appraisal process](#) recommences.
- Dismissal on the grounds of capability with an appropriate period of statutory notice and/or contractual notice.

Step 2 - Review progress against the reviewed capability support plan - The manager view and evidence is considered.

Step 3 - Allow the member of staff to make representation of their view of the progress made with evidence - the member of staff will be invited to respond

Step 4 - Adjourn to consider the evidence and make a decision – with the advice of the HR advisor.

Step 5 - Restart the meeting and communicate clearly the decision and the reason for it

This includes:

- The reasons for the dismissal.
- The date on which the employment contract will end.
- The appropriate period of notice.
- The right of appeal.

Step 6 - Write formally to the member of staff – within 5 working days of the hearing.

6.3.2 Notice Periods

An employee who is dismissed is entitled to contractual notice in accordance with their conditions of service.

Teachers' notice can only be effective from the end of each term i.e. 30 April, 31 August, and 31 December. The Conditions of Service for School Teachers states the final date each term when notice can be issued. It must also be ensured that a teacher is given statutory notice, which is 1 week's notice for every year of service, up to a maximum of 12 weeks.

Education Support and Business Services staff notice depends on their contract and length of service, but is usually 4 weeks to 3 months for most.

6.3.3 Reporting the Dismissal

Where the employee is employed in more than one school, and/or in more than 1 contractual role, trustees and governors at each school will be required to consider the case on a mixed panel. Advice from Trust HR Advisors must be sought on the process.

6.3.4 References and Compromise Agreements

In accordance with *The School Staffing (England) (Amendment) Regulations 2012*, a teacher who has been subject to capability procedures during the last two years of their employment with the school and applies for a teaching post at another school, the Board of Trustees/ Local Governing body of this school will provide written details of their concerns which gave rise to this, the duration of their proceedings and the outcome. These regulations also need to be considered for the purposes of compromise agreements.

6.3.5 Suspension from Duty

At any stage of the procedure, where the member of staff's performance is such that their continuing attendance at work may put them or other people at risk or may seriously detriment service provision, it may be appropriate to suspend the person from work with pay. A temporary transfer to another suitable post or worksite may be an alternative. This precautionary action should be taken after consultation with the trust HR Advisor.

An employee is entitled to be accompanied to a suspension meeting by a Trade Union representative or work colleague, however where a representative is not available the suspension meeting will not be unreasonably delayed. In these circumstances it may be necessary to meet with the employee for the

purposes of suspension and confirm arrangements in writing at a later date to both the employee and their representative.

7. Right to Appeal

The trust will give the employee the right of appeal against any formal warning issued under the procedure and the right of appeal against a decision to dismiss them at a stage three hearing. In order to register an appeal, the employee will need to write to the Head of School or Chair of Governors. If the member of staff is the Head of School or CEO, they must write to the CEO or Chair of the Trustees as appropriate within 5 working days of the hearing and will need to specify the reasons for the appeal. **The letter must set out the grounds for an appeal.**

Appeals should normally be restricted to:

- considering the reasonableness of the decision made
- any relevant new evidence
- procedural irregularities.

The appropriate appeals panel will aim to hear the appeal within 10 clear working days of receiving the request.

7.1 Appeal Against a Recorded Written or a Final Written Warning

The power to decide that employees should no longer work for the trust has been delegated per [Appendix 1](#) and the [Scheme of Delegation](#). [Appendix 1](#) details the roles and delegated authority for management, plus appeals panels.

The employee's right of appeal against a written or final warning will be to:

- The CEO if the warning was issued by the Head of School.
- The Head of School, if the warning was issued by another member of the School Leadership Team/Manager.
- The CEO if the warning was issued by the COO.
- The Board of Trustees if the warning was issued by the CEO.

The purpose of the appeal hearing will be to consider grounds upon which the employee is dissatisfied with the issuing of a warning under the Capability Procedure. The decision will be final and will be confirmed in writing to the employee within 5 clear working days of the appeal hearing.

7.2 Appeal Hearings

The original management statement of case, and any written statement submitted by the employee at the hearing will be used at the appeal hearing. This should be available to the person/panel hearing the appeal (per [Appendix 1](#)) wherever possible at least 5 clear working days before the appeal hearing. No new evidence will normally be submitted unless it can be demonstrated this was not available at the original hearing.

The appeals panel must be made up of people who have not previously been involved in the case.

7.2.1 Appeal Against Dismissal

An appeal against dismissal will be a rehearing.

Trusts/Schools are required to have an Appeal Panel for dismissals. [Appendix 1](#) details the roles and delegated authority for management, plus appeals panels.

An employee may appeal against the decision to dismiss by writing to the Chair of Trustees /Governors. **The letter must specify the reasons/ grounds for appeal.** This request must be made within 5 clear working days of receipt of the dismissal decision. The Appeal Panel will aim to hear the appeal within 10 clear working days of receiving the request.

The decision will be confirmed in writing by the Appeal Panel within 5 clear working days of the Appeal.

8. Confidentiality

The capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the CEO/COO/Head of School and the Board of Trustees/Local Governing Body to quality assure the operation and effectiveness of the system.

9. Consistency of Treatment and Fairness

The Board of Trustees and the Local Governing Bodies are committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments where these are deemed either necessary or appropriate.

The Board of Trustees and the Local Governing Bodies are aware of the guidance and provisions of the **Equality Act 2010**.

10. Monitoring Arrangements

The effectiveness of this procedure will be monitored by the CEO and the Board of Trustees.

The procedure will be reviewed every 2 years, but can be revised as needed.

The procedure will be noted by the Resources Committee of Chorus Education Board of Trustees.

11. Links with other Policies and Procedures

This procedure links with our policies on:

- Appraisal policy/procedures
- Employee Code of conduct
- Grievance procedures
- Disciplinary procedures
- Equality and diversity policy/ procedure

- Sickness Absence policy/procedure
- Articles of association
- Funding agreement
- Scheme of delegation

Appendix 1: Capability Stages – Roles and Delegation

Per the relevant schemes of delegation, the following are recommended roles and suitable staff to undertake the roles and panels:

Employee level	Informal Capability & Review	Stage 1 and 2 - Formal Capability Inc Final Warning Review/ Decision Meeting	Stage 3 - Dismissal Hearing	Appeal - Written or Final Written Warning	Appeal Panel - Dismissal
Staff member Inc Middle leader or Team leader	Immediate line manager	DHT or HOS for Teaching/Ed supt – school BSSM – Business Services – school	HoS - school SLT issued CEO - HoS issued COO – BSSM issued	HOS – DHT/BSSM issued CEO – school HoS issued COO – BSSM issued	CEO – school HoS issued or independent HoS in Trust (Scheme of Delegation) CEO – trust COO issued Trustee – trust CEO issued
	SLT line manager	or independent SLT of same role in Trust (Scheme of Delegation) CEO - Teaching/Ed supt – trust team COO – Business services – trust team	or independent HoS in Trust (Scheme of Delegation) CEO – trust COO issued Trustee – trust CEO issued With 2 LGB governors and/or trustees (Scheme of Delegation)	or independent HoS in Trust (Scheme of Delegation) CEO – trust COO issued Trustee – trust CEO issued	With 2 LGB governors and/or trustees (Scheme of Delegation)
	School HR	Supported by Trust HR	Supported by Trust HR	Supported by independent Trust HR	Supported by independent Trust HR
SLT school	Higher SLT member in school	As above	CEO – COO issued	CEO – trust COO issued Trustee – trust CEO issued	Independent Trustee
	or CEO for HoS	CEO for HOS COO for BSSM	Trustee – CEO issued With 2 LGB governors and/or trustees (Scheme of Delegation)	Chair of Govs (SOD)	Chair of Govs (SOD) With 2 independent LGB governors and/or trustees (Scheme of Delegation)
	Trust HR	Supported by Trust HR	Supported by Trust HR	Supported by independent Trust HR	Supported by independent Trust HR
SLT Trust	CEO or Trustee Chair of Trustees for CEO	CEO or Trustee	Chair of Trustees for CEO With 2 trustees	Independent Trustee Vice Chair or Chair of Resources preferable for CEO	Independent Trustee Vice Chair or Chair of Resources preferable for CEO With independent 2 trustees
	Trust HR	Supported by Trust HR	Supported by Trust HR	Supported by independent Trust HR	Supported by independent Trust HR

Appendix 2 – Capability Support Plan

Teaching Staff Capability Support Plan Proforma

NAME OF STAFF MEMBER	NAME OF APPRAISER	DATE OF MEETING

OBJECTIVE 1:		
Teachers' standard(s) that the objective relates to	Success criteria	Evidence to be used to assess progress
Support/resources to be provided	Monitoring arrangements	Review date

OBJECTIVE 2:		
Teachers' standard(s) that the objective relates to	Success criteria	Evidence to be used to assess progress

OBJECTIVE 2:		
Support/resources to be provided	Monitoring arrangements	Review date

OBJECTIVE 3:		
Teachers' standard(s) that the objective relates to	Success criteria	Evidence to be used to assess progress
Support/resources to be provided	Monitoring arrangements	Review date

OTHER SUPPORT PROVIDED:	
MENTOR/COACH ALLOCATED	YES/NO (IF YES GIVE NAME)
COUNSELLING TO BE PROVIDED	Yes/No
OCCUPATIONAL HEALTH REFERRAL TO BE MADE	Yes/No
FORMAL REVIEW DATE	

Non-Teaching Staff Capability Support Plan Proforma 1

NAME OF STAFF MEMBER	NAME OF APPRAISER	DATE OF MEETING

OBJECTIVE 1:		
Task or competency from job description or person spec	Success criteria – targets for improvement	Evidence to be used to assess progress
Support/resources to be provided	Monitoring arrangements	Review date

OBJECTIVE 2:		
Task or competency from job description or person spec	Success criteria – targets for improvement	Evidence to be used to assess progress
Support/resources to be provided	Monitoring arrangements	Review date

OBJECTIVE 2:		

OBJECTIVE 3:		
Task or competency from job description or person spec	Success criteria – targets for improvement	Evidence to be used to assess progress
Support/resources to be provided	Monitoring arrangements	Review date

OTHER SUPPORT PROVIDED:	
MENTOR/COACH ALLOCATED	YES/NO (IF YES GIVE NAME)
COUNSELLING TO BE PROVIDED	Yes/No
OCCUPATIONAL HEALTH REFERRAL TO BE MADE	Yes/No
FORMAL REVIEW DATE	

Non-Teaching Staff Capability Support Plan Proforma 2

To be completed by the line manager and agreed with the employee to aid the support process within the **XX stage** of the capability procedure

Expectations of role – taken from Job Description	Targets for Improvement	Support Agreed