



## Capability of Staff Policy & Procedure

### Table of Contents

1. Aims .....	2
2. Legislation and guidance .....	2
3. Definitions .....	2
4. Roles and responsibilities .....	2
5. Timescales.....	3
6. Trade Union Representatives.....	3
7. Representation.....	3
8. Capability procedure .....	4
9. Informal Support .....	4
10. Application of Formal Procedure.....	4
11. Formal Procedure – Stage 1 Capability Interview.....	4
12. Formal Procedure – Stage 2 Capability Interview.....	6
13. Procedure – Stage 3 Capability Hearing.....	7
14. Right to appeal .....	8
15. Confidentiality .....	9
16. Consistency of treatment and fairness.....	9
17. Monitoring arrangements .....	9
18. Links with other policies .....	9
Appendix 1 – General Principles Underlying this Procedure.....	10
Appendix 2 – Capability action plan template.....	11
Appendix 3 – Format for Stage 3 Capability Hearing .....	13
Appendix 4 – Format for a Capability Appeal Hearing .....	14

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Approved By	Trust Board
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# HISP Multi Academy Trust

## Capability of Staff Policy & Procedure

### 1. Aims

The aim of our capability of staff policy 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.

This procedure will not apply to employees who remain in their probationary period.

This procedure will not apply to teachers who are in their statutory induction period unless there are serious capability concerns, which require formal action outside of the process provided for in the regulations relating to teachers undergoing induction.

This procedure will not apply where the matter is related to conduct, as in these circumstances the separate Disciplinary Procedure should be used.

Where there are issues relating to ill health, the HISP's Sickness Absence Policy should be consulted to ensure that the most appropriate action/support is implemented.

### 2. Legislation and guidance

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

When carrying out capability procedures, we will ensure we abide by the [Equality Act 2010](#).

This policy also complies with our funding agreement and articles of association.

See appendix 1

### 3. Definitions

**Lack of capability** is defined as:

- A staff member failing to perform their role at the level of competence expected of them and that their job requires

References to '**staff**' include the headteacher, teachers and support staff, unless indicated otherwise.

### 4. Roles and responsibilities

Where the member of staff subject to the procedure is the CEO the chair of trustees will be responsible for co-ordinating the procedure.

Where the member of staff subject to the procedure is not the CEO, the CEO/headteacher/head of School/Principal 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 or to assist in monitoring the effectiveness of the policy. Where this happens, responsibilities will be made clear in advance.

# **HISP Multi Academy Trust**

## **Capability of Staff Policy & Procedure**

At any meeting under this procedure, the CEO/headteacher/head of School/Principal headteacher/SLT/ governors may be accompanied/advised by a representative from Human Resources.

### **5. Timescales**

For teaching staff all timescales stated in this procedure will be working days and weeks (meaning Monday to Friday during term time and excluding school holidays, regardless of an individual's actual working pattern). For leadership group staff there may be exceptions to this according to contractual terms.

For non-teaching staff who work term-time only, all timescales stated in this procedure will be working days and weeks (meaning Monday to Friday during term time and excluding school holidays, regardless of an individual's actual working pattern).

For non-teaching staff who work 52 weeks per year, all timescales stated in this procedure will be working days and weeks (meaning Monday to Friday including school holidays, regardless of an individual's actual working pattern). For those people who are required to work only sometime in the school holidays, only these periods will be counted as working days and weeks.

All timescales stated can be varied with mutual agreement between parties (see guidance on timescales and representation). Agreed changes to timescales should be confirmed in be confirmed in writing.

### **6. Trade Union Representatives**

The term 'trade union representative' throughout this document means either a lay trade union official (i.e. a steward/representative or full time official) or a full-time official employed by a trade union.

Action under this procedure must not be taken against an accredited trade union representative until a full-time officer of the trade union concerned has been informed.

### **7. Representation**

Any member of staff who is the subject of this capability procedure may, if he/she so wishes, be advised and/or represented by a trade union representative or accompanied by a colleague who is a member of the school at every stage of the formal procedure.

While there is no statutory right to be accompanied at informal meetings (eg informal review meetings) by a Trade Union representative or a colleague employed at the school, this will not be unreasonably refused if the member requests it.

In cases where the member has a statutory right of accompaniment, and his/her chosen companion cannot attend on the date proposed for meeting, the member can offer an alternative time and date. Any alternative time and date must be reasonable and fall within five working days, beginning with the first working day after the date originally proposed by management (see guidance on timescales and representation).

# **HISP Multi Academy Trust**

## **Capability of Staff Policy & Procedure**

### **8. Capability procedure**

Performance is monitored on a day-to-day basis by line managers. This will take place through learning walks, lesson observations, meetings and observation.

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

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.

### **9. Informal Support**

Where concerns about a member's performance are identified, in the first instance it will be appropriate to deal with these issues informally, as part of normal day to day management/supervision arrangements or in accordance with normal ongoing performance management/appraisal processes if these are applicable. Application of the formal capability procedure would then only be necessary if informal focused support (under appraisal arrangements) to address the concerns were not successful.

However, if the concerns about performance are more serious it may be appropriate to implement the formal procedure without having addressed the issues informally, depending on the circumstances.

### **10. Application of Formal Procedure**

Where it is appropriate to apply the formal capability procedure the procedure will normally be applied sequentially through stages 1, 2 and 3. However, in very serious cases it may be appropriate to move immediately to either Stage 2 or 3 without having applied the earlier stages, depending on the circumstances. Such occasions are likely to be rare, occurring in only exceptional circumstances. Advice should be sought before considering such action.

At all stages of the capability procedure prior to a possible outcome of dismissal, the overarching aim will be to seek to secure required improvements in performance through constructive feedback and support. See Appendix 2

### **11. Formal Procedure – Stage 1 Capability Interview**

Where a CEO/head of School/Principal headteacher/SLT determines that the formal capability procedure should be implemented, a Stage 1 Capability Interview will be convened.

At least five working days' notice in writing will be given of the formal Capability Interview. The notification will contain sufficient information about the concerns about performance and their possible consequences, to enable the employee to prepare to respond at the formal interview.

The written notification should also contain copies of any written evidence and the details of the date, time and place of the meeting. It will also advise the employee of their right to be

# HISP Multi Academy Trust

## Capability of Staff Policy & Procedure

accompanied by a companion, who may be a colleague employed by the MAT or a Trade Union representative.

This meeting is intended to examine the evidence. It will be conducted by a member of the school Senior Leadership Team for school staff. [usually the chair of trustees for the CEO, a member of the Central Team for a Headteacher/Head of School/Principal and usually a member of the management team for other teachers]. At the meeting the staff member will be able to respond to the concerns about their performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected.

The CEO/head of School/Principal headteacher/SLT conducting the meeting 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 the appraisal process or other informal means. In such cases, the capability procedure will come to an end and this should be confirmed in writing.

The meeting may also be adjourned before the CEO/head of School/Principal headteacher/SLT reaches a conclusion, for example, if further investigation or consideration of evidence is needed, or that more time is needed in which to consider any additional relevant information.

Where the CEO/head of School/Principal headteacher/SLT concludes that formal action under the capability procedure is appropriate, the meeting will continue, and the CEO/head of School/Principal headteacher/SLT will:

- identify the shortcomings in the employee's performance and where appropriate, refer to any relevant frameworks or documented expectations, for example job description, or which of the standards expected of teachers are not being met;
- give clear guidance on the improved standard of performance required to ensure that the employee can be removed from formal capability procedures (this may include the setting of new objectives focused on the specific weaknesses that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made);
- explain and discuss any support that will be available to help the employee improve their performance; (eg coaching, mentoring, training, structured observations)
- set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case. It is for the school to determine the length of the period set however it should be reasonable and proportionate in the circumstances, a minimum of four weeks but not excessively long (usually no more than ten weeks), and should provide sufficient opportunity for an improvement to take place. Relevant factors to consider include the impact of the unsatisfactory performance on the school, the support being put in place and the seriousness of the shortcomings;
- Where possible, the plan for support, monitoring and review should be agreed with the employee, however where agreement is not possible, the headteacher/senior manager will determine the plan to be implemented. Sufficient time should be allowed to enable the employee to reflect and respond to feedback (eg for teaching staff sufficient time between lesson observations).

# **HISP Multi Academy Trust**

## **Capability of Staff Policy & Procedure**

The CEO/head of School/Principal headteacher/SLT must inform the employee that they are being issued with a formal Written Warning and that failure to improve within the set period could lead to dismissal.

Notes will be taken during this interview and a copy sent to the employee. Where a warning is issued, the employee will be informed in writing of the matters covered in the bullet points above and given information about the timing and handling of the review stage and the procedure. The employee should be informed they have the right to appeal against the issuing of a Written Warning and the process for doing this (detailed in paragraph 14 of this procedure).

A performance monitoring and review period will follow the formal capability interview. Formal monitoring, evaluation, guidance and support will continue during this period.

During the review period, informal monitoring meetings will take place at agreed intervals to review progress against the identified objectives/ improvements required and monitor the implementation of support plan. Feedback should be given promptly to the employee, so they are aware of how well they are progressing and what (if any) concerns remain.

If, at any time the CEO/head of School/Principal headteacher/SLT considers that performance has improved to a satisfactory level and that this is likely to be sustained, then they can choose to cease the application of the formal capability procedure without a further formal meeting and normal appraisal processes/informal management arrangements will recommence. This should be confirmed in writing, with details of the standards of performance to be maintained and the implications if further concerns about performance arise in the future. The member of staff should be informed that the warning will remain on their file for 12 months and will be disregarded for capability purposes after that time, unless their performance lapses below the required standard before the end of this period. In these instances, the procedure may be re-entered at the stage previously applied.

If the performance has not improved at the end of the formal review period, the employee will be invited to a Stage 2 Capability Interview.

### **12. Formal Procedure – Stage 2 Capability Interview**

As with the Stage 1 Capability Interview, at least five working days' notice will be given of this meeting in writing and the notification will give details of the date, time and place of the meeting. It will advise their right to be accompanied by a colleague employed by MAT or a Trade Union representative and that this meeting could result in a Final Written Warning.

At this meeting the CEO/head of School/Principal headteacher/SLT will review the action taken to date, the outcome of any support and monitoring period put in place and outline the continuing concerns about performance. The member will be able to respond to the concerns presented by the CEO/head of School/Principal headteacher/SLT .

If the CEO/head of School/Principal headteacher/SLT conducting the meeting is satisfied with the explanation of the member and/or that the member has made sufficient improvement, the capability procedure will cease, and normal appraisal processes/informal management arrangements will re-commence. This should be confirmed in writing, with details of the standards of performance to be maintained and the implications if further concerns about performance arise in the future. The member should be informed that the warning will remain on their file for 12 months and will be disregarded for capability purposes after that time, unless

# **HISP Multi Academy Trust**

## **Capability of Staff Policy & Procedure**

the employee's performance lapses below the required standard before the end of this period. In these instances, the procedure may be re-entered at the stage previously applied.

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 under Stage 1 without issuing a Final Written Warning. A further Stage 2 Capability Interview will be convened at the end of the extended period. In these circumstances a further plan for support monitoring and review should be implemented.

If no, or insufficient improvement has been made during the monitoring and review period, the CEO/head of School/Principal headteacher/SLT will issue a Final Written Warning. The member should be informed they have the right to appeal against the issuing of a Final Written Warning and the process for doing this (detailed in paragraph 14 of this procedure).

Notes will be taken of the Capability Interview and a copy sent to the member of staff.

Where a Final Written Warning is issued, the member will be informed in writing that failure to achieve an acceptable standard of performance within the set timescale, may result in dismissal and they should be given information about the handling of the further monitoring and review period.

During the review period, informal monitoring meetings will take place at agreed intervals to review progress against the identified objectives/improvements required and monitor the implementation of support plan. Feedback should be given to the employee, so they are aware of how they are progressing and what concerns remain.

If, at any time, the CEO/head of School/Principal headteacher/SLT considers that performance has improved to a satisfactory level and that this will be sustained, then they can choose to cease the application of the formal capability procedure without a further formal meeting and normal appraisal processes/informal management arrangements will recommence. This should be confirmed in writing with details of the standards of performance to be maintained and the implications if further concerns about performance arise in the future. The member should be informed that the warning will remain on their file for 12 months and will be disregarded for capability purposes after that time, unless their performance lapses below the required standard before the end of this period. In these instances, the procedure may be re-entered at the stage previously applied.

At the end of the monitoring and review period, a review meeting must be held to consider whether sufficient progress has been made and what further action may be appropriate.

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.

If no, or insufficient improvement has been made during the monitoring and review period, the CEO/head of School/Principal headteacher/SLT will advise the employee that a Stage 3 Capability Hearing will be convened where the member's dismissal on the grounds of capability will be considered.

### **13. Procedure – Stage 3 Capability Hearing**

As with the formal capability interviews at Stages 1 and 2, at least five working days' notice will be given in writing and the notification will provide details of the date, time and place of the

# HISP Multi Academy Trust

## Capability of Staff Policy & Procedure

meeting and will be advise the of their right to be accompanied by a colleague employed at the MAT or a Trade Union representative.

If the trustees/governing body has delegated the authority to dismiss to the CEO/head of School/Principal headteacher, the Capability Hearing will be conducted by the CEO/head of School/Principal headteacher. Alternatively, a properly constituted panel of governors (who have been delegated the authority to dismiss) will conduct the hearing and consider the recommendations of the CEO/head of School/Principal headteacher/SLT. Any Governor who has been involved in any support or monitoring should not be a member of the panel.

The recommended format for the formal Capability Hearing is set out in Appendix 3.

The options available to the CEO/head of School/Principal headteacher/ of governors at this hearing are:

- To determine that the member should cease to work in his/her present post at the MAT;
- To determine that the member should cease to work in his/her present post at the MAT offer employment in another post within the MAT;
- To determine that the monitoring and support programme should be continued for a defined timescale;
- To determine that the member should continue to work at the MAT that no further formal action under these procedures is required.

The panel will adjourn after the hearing to consider the case carefully before deciding. The member will normally be informed of the decision orally at the conclusion of the hearing which will then be confirmed in writing within five working days.

### 14. Right to appeal

If a member feels that a decision to dismiss them is wrong or unjust, they may appeal in writing against the decision within 10 working days of the decision, setting out at the same time the grounds for appeal.

Appeals will be heard without unreasonable delay and at an agreed time and place. The same arrangements for notification and statutory right to be accompanied will apply as with formal capability and review meetings. Notes will be taken, and a copy sent to the them.

The appeal will be dealt with impartially and by senior leaders or trustees who have not previously been involved in the case.

The options open to the Appeal Panel in considering an appeal will be to either:

- Uphold the appeal and substitute an alternative decision as provided for under the relevant part of this procedure depending under which stage of the procedure the original decision was made; or
- Reject the appeal and reconfirm the decision that is being appealed.



# **HISP Multi Academy Trust**

## **Capability of Staff Policy & Procedure**

The panel will adjourn after the appeal hearing to consider the case carefully before deciding. The member will normally be informed of the decision orally at the conclusion of the hearing which will then be confirmed in writing within five working days.

The format for an appeal hearing is set out in Appendix 4

### **15. Confidentiality**

The capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the headteacher/head of school/principal to quality assure the operation and effectiveness of the system.

### **16. Consistency of treatment and fairness**

The trust board is 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 trust board is aware of the guidance and provisions of the Equality Act 2010.

### **17. Monitoring arrangements**

The effectiveness of this policy will be monitored by the CEO and trust board.

This policy will be reviewed annually but can be revised as needed.

This policy will be approved by the trust board.

### **18. Links with other policies**

This policy links to our policies on:

- Staff code of conduct
- Teachers' appraisal
- Staff grievance procedures
- Staff disciplinary procedures
- Equality information and objectives

# **HISP Multi Academy Trust**

## **Capability of Staff Policy & Procedure**

### **Appendix 1 – General Principles Underlying this Procedure**

#### **ACAS Code of Practice on Disciplinary and Grievance Procedures**

This procedure will be implemented in accordance with the provisions of the ACAS Code of Practice.

#### **Confidentiality**

Capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the headteacher and governing body to quality-assure the operation and effectiveness of the procedure.

#### **Consistency of Treatment and Fairness**

The governing body is committed to ensuring consistency of treatment and fairness and will abide by all relevant equality legislation.

#### **Delegation**

Normal rules apply in respect of the delegation of functions by the CEO/headteacher/head of School/Principal headteacher or governors.

#### **Grievances**

Where a member of staff raises a grievance during the capability procedure the capability procedure may be temporarily suspended, in order to deal with the grievance depending on the circumstances. However, where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently or wholly within the Capability Procedure.

#### **Sickness**

If long term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case may be dealt with in accordance with the school's Sick Absence Management procedure (e.g. referred immediately to the occupational health service to assess the member of staff's health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures). In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

#### **Monitoring and Evaluation**

The effectiveness of this policy will be monitored by the CEO and trust board.

# HISP Multi Academy Trust

## Capability of Staff Policy & Procedure

### Appendix 2 – Capability action plan template

This template can be used as part of the process of supporting a teacher/support staff who is underperforming. It records the outcomes of the initial capability meeting, where targets and timescales are set and agreed.

Where possible, the objectives should be linked to the relevant professional standards, appropriate to the career experience of the member of staff concerned.

Name of Staff Member	Name of Appraiser	Date of Meeting

Objective 1:		
Professional 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:		
Professional 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

# HISP Multi Academy Trust

## Capability of Staff Policy & Procedure

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<b>Objective 3:</b>		
Professional 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
[Insert any other support provided]	
Formal review date	

Signed by member of staff	Signed by Appraiser	Date

# HISP Multi Academy Trust

## Capability of Staff Policy & Procedure

### Appendix 3 – Format for Stage 3 Capability Hearing

1. References in this appendix to Hearing Chair could mean either the CEO/headteacher/head of School/Principal headteacher/SLT or the Chair of a panel of governors depending on the circumstances.
2. References in this appendix to presenting manager could mean the CEO/headteacher/head of School/Principal headteacher/SLT or other senior manager of the school nominated by the CEO depending on the circumstances.
3. Where a panel of governors is hearing the case, the panel will first elect one member to be the Hearing Chair.
4. The Hearing Chair will explain the purpose of the hearing and ensure introductions are made and outline the format of the hearing.
5. The presenting manager to present the case in the presence of the member of staff and his/her representative including, as appropriate:- a) referring to the written statements and other written evidence; b) the calling of witnesses.
6. The member of staff (or his/her representative) to have the opportunity to ask questions on the evidence given by the presenting manager and any witnesses called, as they are called.
7. The Hearing Chair/panel members to have the opportunity to ask questions on the evidence given by the presenting manager and witnesses, as they are called.
8. The member of staff (or his/her representative) to put his/her case in the presence of the presenting manager including as appropriate:- a) referring to the written statements and other written evidence; b) the calling of witnesses.
9. The presenting manager to have the opportunity to ask questions on the evidence given by the employee and any witnesses called, as they are called.
10. The Hearing Chair/panel members to have the opportunity to ask questions on the evidence given by the member of staff and any witnesses called, as they are called.
11. The presenting manager and then the member of staff (or his/her representative) to have the opportunity to sum up their cases if they so wish.
12. The presenting manager and the member of staff (and his/her representative) and any witnesses to withdraw.
13. The person(s) hearing the case (with any adviser(s)) to deliberate in private and come to a decision, only recalling the presenting manager and the member of staff to clear points of uncertainty on evidence already given. If recall is necessary, both parties are to return, notwithstanding only one is concerned with the point giving rise to doubt.
14. The decision will be notified to the member of staff and his/her representative at the meeting and confirmed in writing within five working days of the meeting.

# HISP Multi Academy Trust

## Capability of Staff Policy & Procedure

### Appendix 4 – Format for a Capability Appeal Hearing

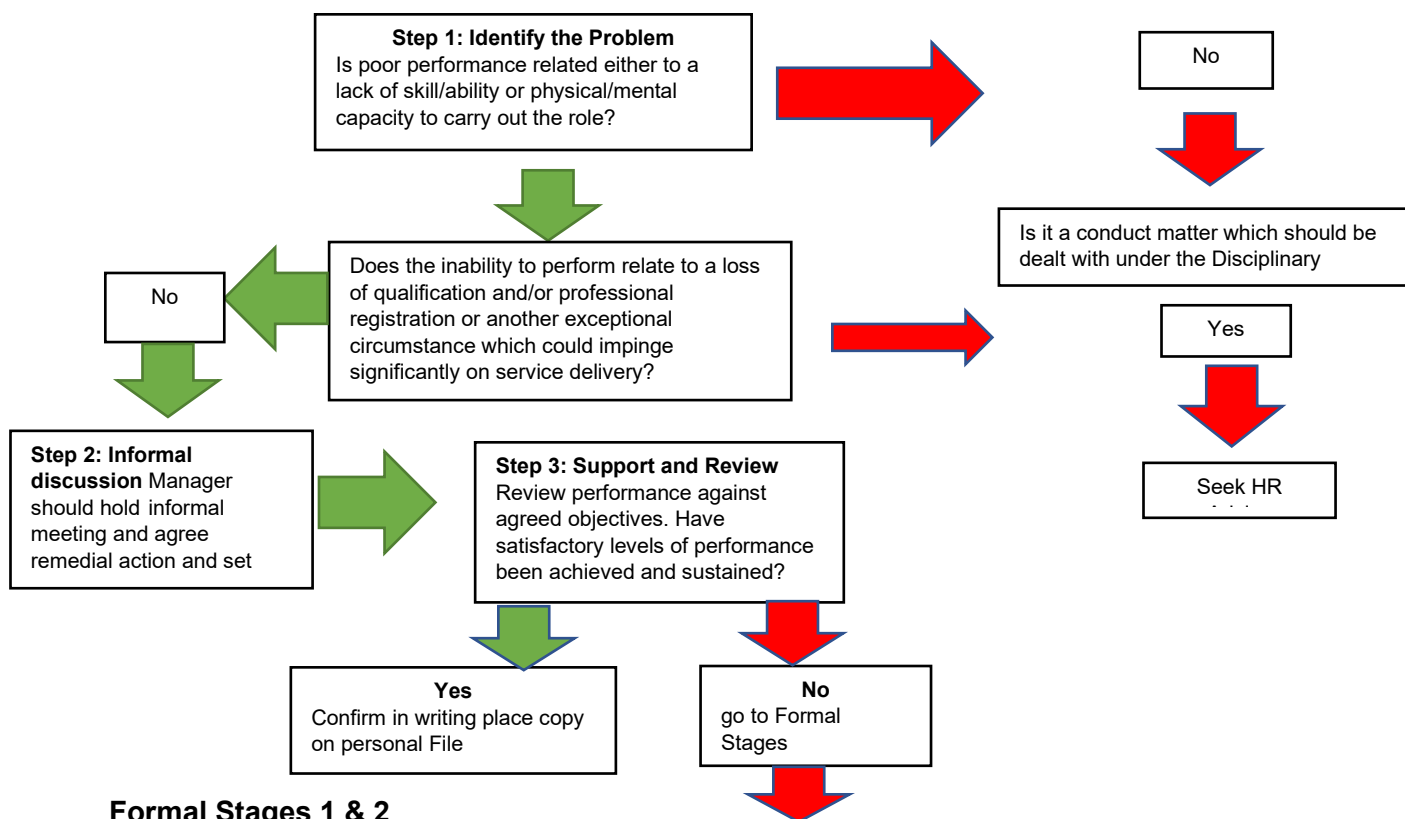
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3. Where a panel of governors is hearing the case, the panel will first elect one member to be the Hearing Chair.
4. The Hearing Chair will explain the purpose of the hearing and ensure introductions are made and outline the format of the hearing.
5. The member of staff (or his/her representative) to put his/her case for appeal in the presence of the presenting manager including as appropriate:- a) referring to the written statements and other written evidence; b) the calling of witnesses.
6. The presenting manager to have the opportunity to ask questions on the evidence given by the employee and any witnesses called, as they are called.
7. The Hearing Chair/panel members to have the opportunity to ask questions on the evidence given by the member of staff and any witnesses called, as they are called.
8. The presenting manager to present the case in response to the appeal in the presence of the member of staff and his/her representative including, as appropriate:- a) referring to the written statements and other written evidence; b) the calling of witnesses.
9. The member of staff (or his/her representative) to have the opportunity to ask questions on the evidence given by the presenting manager and any witnesses called, as they are called.
10. The Hearing Chair/panel members to have the opportunity to ask questions on the evidence given by the presenting manager and witnesses, as they are called.
11. The presenting manager and then the member of staff (or his/her representative) to have the opportunity to sum up their cases if they so wish.
12. The presenting manager and the member of staff (and his/her representative) and any witnesses to withdraw.
13. The person(s) hearing the appeal (with any adviser(s)) to deliberate in private and come to a decision, only recalling the presenting manager and the member of staff to clear points of uncertainty on evidence already given. If recall is necessary, both parties are to return, notwithstanding only one is concerned with the point giving rise to doubt.
14. The decision will be notified to the member of staff and his/her representative at the meeting and confirmed in writing within five working days of the meeting.

# HISP Multi Academy Trust

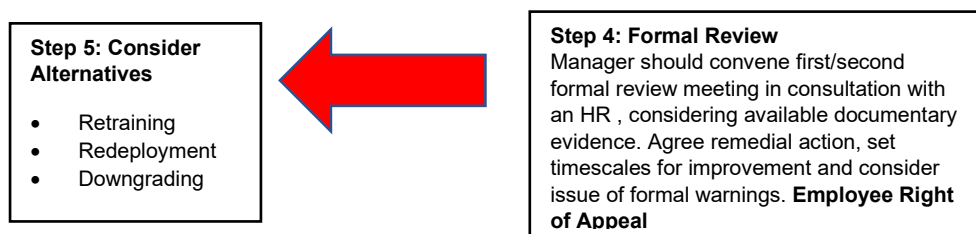
## Capability of Staff Policy & Procedure

### Capability Procedure flowchart – Informal and Formal

#### Informal Stage



#### Formal Stages 1 & 2



#### Stage 3 Capability Hearing

