



**CAPABILITY**  
**POLICY AND PROCEDURE**

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## **1. INTRODUCTION**

This procedure applies to all employees of Delta Academies Trust ("Delta" or "the Trust") where there are concerns about their performance. The only exception to this is for NQTs who have their performance managed through the induction process.

The Trust is committed to the provision of continuous professional development (CPD) and effective performance management for employees, and as such it is expected that every employee is open and committed to learning and improving their practice.

Throughout this policy, reference is made to the 'Manager'. For clarity, see the scheme of delegation for the person responsible for managing the capability decision hearing in section 9. It is expected that the Line Manager will be the person leading the process prior to this point. This can be assigned to an alternative manager, through the course of the process, if it is deemed appropriate to do so following discussion with Delta HR.

Throughout the implementation of this policy, provision will be made for employees to be accompanied to meetings by either a work colleague or a trade union representative. This is considered to support the process in the following ways:

- English may not be the employee's first language and a companion may be in a position to help facilitate the discussion;
- It may be necessary under the Equality Act 2010 as part of a reasonable access requirement for a disabled employee;
- It can give the employee confidence;
- The colleague or trade union representative may have experience of prior successful arrangements and knowledge of wider workforce practices; and
- To ensure a fair and transparent process.

Where performance concerns emerge, the nature and seriousness of those concerns should be discussed as soon as possible with the employee by their line manager. As part of the usual performance management process, every effort should be made to resolve performance concerns through the provision of targeted additional support agreed in a discussion with the employee with regular feedback and review (see section 7).

Appropriate arrangements, from within the Academy / Core Team or through the Education Team, will ensure that an appropriate person is put in place to support the employee throughout the periods of review and monitoring.

Where concerns are such that the employee is not performing to the required standard, the line manager should be informed of the concerns and any discussions.

It is essential that the decision to move into the formal capability procedure should not come as a surprise to the employee.

## **2. SCOPE**

Delta has an obligation to our learners to be rigorous in the maintenance of a competent and skilled workforce. Delta has a legal duty to have procedures in place for dealing with performance issues for all employees (leadership, teaching and non-teaching).

This policy is in line with current employment legislation and takes into consideration guidance from the DfE and ACAS.

The procedure will be led and managed by the employee's line manager. The role of the line manager may be delegated to a nominated person where appropriate. Where the line manager is the subject of the capability process, a more Senior Manager will undertake the monitoring and manage the process.

**Delta expect the Manager to consult and engage with Delta HR to provide advice and support in the application of these procedures.**

### **3. PRINCIPLES**

The underpinning principles of this policy are:

- The capability policy and procedure will be applied fairly and consistently
- The employee will be provided with appropriate development and support. Their performance will be monitored through review periods as set out in this procedure.
- Any improvement plan, whether at the informal support stage (stage one), formal support stage (stage two) or formal capability stage (stage three), must be proportionate to the individual situation and provide an appropriate timescale for the employee to have the opportunity to be able to achieve the required level of improvement, whilst ensuring the health, safety and welfare of children at all times. This may require a shorter timescale and consideration may also be given to dealing with concerns through the Disciplinary Policy where appropriate to do so. In circumstances, where the health, safety and welfare of children is potentially at risk, it is essential that the employee is able to demonstrate urgent and significant improvement over a period not exceeding four weeks.
- Employees have the opportunity to be accompanied by a trade union representative or work colleague at all meetings within this policy.
- On joining the Trust, and following any change in role, employees will be provided with a clear understanding of their role, job purpose/job description and the standards expected of them.
- Employees are expected to:
  - Ensure they understand that they will have to develop their understanding and practice when they take on a new role
  - Attend training and/or engage with support provided in order to develop their practice and transfer this into the workplace to demonstrate improvement
  - Assess their own performance contextualised where relevant to professional standards
  - Be open to constructive critique of their performance and willing to use such an external assessment to consider change and improvement in their practice
- Managers, or the nominated person, will support and enable employees to reach the required standard of performance through:
  - Effective induction to any new role
  - Access to professional development opportunities, including coaching and mentoring support where appropriate
  - Effective application of the support and supervision arrangements within the context of the relevant professional standards
  - A commitment to identify and address performance concerns at the earliest reasonable opportunity
- Managers should ensure that employees are made aware of this procedure and that they are able to access the intranet to obtain a copy if they wish

- Where an employee is successfully removed from stage two (formal support) or stage three (formal capability) of the process but where similar concerns arise again within the following 12 month period, the employee will re-enter at stage three (formal capability) of this procedure.

#### **4. CONFIDENTIALITY**

The capability procedure will be treated with confidentiality at all stages. This requirement does not impact on the quality assurance processes undertaken by the Manager on the operation, effectiveness and fairness of these procedures.

#### **5. ILL HEALTH**

Where performance concerns are linked to ill health, the case should be discussed with Delta HR at the earliest opportunity to consider the most appropriate action. Consideration should be given to referring the employee to Occupational Health to determine whether or not there are any adjustments required for the performance to improve.

Where sickness absence appears to be triggered by the start of the support or formal capability procedure, the support or formal capability process will be adjourned and the sickness absence will be dealt with in accordance with the Trust's Sickness Absence Policy and Procedure, and there will be an immediate referral to Occupational Health for advice on the employee's health and fitness for continued employment, the appropriateness of continuing with support or formal capability procedures, as well as the cause of the absence and timescale for recovery.

The informal/formal support or formal capability procedure will be reconvened on the employee's return to work.

##### **5.1 DISABILITY**

If it is found that the employee's performance is due to a disability that comes under the Equalities Act 2010 and it is agreed that reasonable adjustments need to be implemented or specialist equipment is required by an employee, the process should cease until adjustments and equipment is in place, including training to use any specialist equipment, before the monitoring period restarts.

#### **6. GRIEVANCES**

Where an employee raises a grievance whilst they are in the formal capability procedure (stage three), the formal capability procedure may be temporarily suspended in order to deal with the grievance through the Trust's Grievance Policy and Procedure. Where the grievance and capability cases are related, it may be appropriate to deal with both issues concurrently.

#### **7. STAGES OF THE CAPABILITY PROCESS**

##### **7.1 INFORMAL SUPPORT (STAGE ONE)**

Where concerns about an employee's performance occur, the line manager should meet with the employee at the earliest opportunity to discuss these concerns and agree any appropriate level of support to the employee on an informal basis. It is important during this discussion that the employee has the opportunity to raise any concerns they have and the manager should consider any reasons provided for the employee's change in performance levels.

This discussion should ensure that the employee understands the requirements of their job description and highlight any areas of concern with the employee. In addition, the relevant support and training should be agreed to address the areas of concern.

It is recommended that the informal support plan is in place for a minimum of a six week period, except where the health, safety and welfare of children is potentially at risk, and followed with a review meeting to reflect on the effectiveness of the plan.

The employee has the opportunity under this policy to be accompanied to this meeting by either a work colleague or trade union representative. It is also advised to have a representative of Delta HR present at this meeting. This will provide both the line manager and the employee with support and advice, with the aim of reducing the likelihood of employees reaching further stages within this policy.

Should concerns continue into stage two, the Trust has a legal duty to inform any future employer of an employee who is in formal support (stage two).

## **7.2 FORMAL SUPPORT (STAGE TWO)**

Prior to entering a formal support plan, HR advice must be sought and it is expected that evidence has been gathered, through the informal support stage, to demonstrate the following:

- The employee has been informed of the performance required of them, that this is in accordance with their job description and details outlined of any shortfalls
- The employee has been provided with access to the appropriate training and support in order to achieve the required level of performance
- Despite the above, the employee is failing to achieve the required level of performance

Consideration should be made to the reason for any change in an employee's level of performance as this could be a result of external factors which could be temporary or relating to a significant change in their job role. These concerns may be addressed through discussion and support for the employee.

Discussions regarding poor performance should not come as a surprise to the employee as concerns should have been raised appropriately and informally, as outlined above, during normal working hours.

Delta recommends that prior to entering the formal capability procedure (stage three), a formal support programme is put in place in consultation with the employee (stage two). The support programme should be scheduled to take place over a minimum of a six working week period (with the exception of where the health, safety and welfare of children is potentially at risk) and followed with a review meeting to enable both the line manager and the employee to reflect on the learning and development arising from the support.

The employee will be invited to a meeting, in writing, to discuss the concerns and to agree the appropriate support programme. The employee will be given at least 10 working days' notice of the meeting. The employee is encouraged under this policy to arrange to be accompanied to this meeting by either a work colleague or trade union representative if they are a member of a union.

During the meeting, the Manager, or nominated person, should:

- Discuss aspects of work performance that do not meet the required standard(s)
- Consider as a priority any issue that has the potential to adversely impact on the health, safety and welfare of children

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- Listen to the employee's responses
- Identify required support, training and any other actions to help address the concerns raised
- Identify and agree targets
- Identify the timescale for improvement
- Agree an action / support plan
- Agree record keeping and evidence gathering measures
- Set an agreed date for the support programme review meeting
- Provide a copy of the Capability policy and explain the possible implications of each stage

All of the above should be recorded in writing and made available to relevant parties.

Throughout the duration of the support programme, the employee should raise any concerns regarding the provision of support, training or other resources that have been identified during the support programme, at the earliest opportunity.

### **7.2a. FORMAL SUPPORT (STAGE TWO) REVIEW**

At the end of the agreed timescale for the formal support plan, a review meeting must take place with the employee to review their progress against the agreed targets and action plan.

The employee will have been informed of the date and time of the formal support (stage two) review meeting during the formal support (stage two) meeting. The same arrangements for the opportunity to be accompanied by either a work colleague or trade union representative will apply at this meeting.

At this meeting, the Manager, or nominated person, will review all of the evidence gathered during the duration of the formal support plan and discuss the outcomes with the employee. The employee will also be given the opportunity to respond.

The Manager has the following options to consider at the end of this meeting:

- Where sufficient improvement has been made and agreed targets have been achieved, the employee will be deemed as having completed the formal support plan and, other than normal procedures, no further action will be taken; or
- Where there have been improvements but consistency needs to be assured, the Manager reserves the right to extend the period of support prior to entering formal capability (stage three); or
- Where there is insufficient or no improvement, the employee will be informed that they will be moved into the formal capability stage (stage three).

The outcome of this meeting will be confirmed in writing to the employee, within five working days.

Where the decision is made to move into formal capability (stage three), the concerns will be deemed as serious enough not to be able to be addressed through the appraisal process and the normal appraisal processes will be suspended.

Should concerns continue into stage three, the Trust has a legal duty to inform any future employer of an employee who is in formal capability (stage three).

### **7.3. EXCEPTIONAL CASES**

This procedure aims to improve the performance of the employee within set timescales. It is recognised that delay may not be in the interests of all parties and in extreme cases, such as where

the education of learners is jeopardised, the case will be reviewed and a decision based on the individual circumstances presented.

It is essential that clear evidence is available to demonstrate the exceptional circumstances and where the Manager considers there to be an exceptional case, Delta HR must be consulted in the first instance before any action is taken.

## **8. FORMAL CAPABILITY (STAGE THREE)**

Where the formal support plan has not resulted in the required improvement, the employee will be required to attend a formal capability meeting.

The employee will be invited to the formal capability meeting, in writing, ensuring ten working days' notice is provided. The written confirmation will contain the following information in order to enable to the employee to prepare to answer the case at the meeting:

- The mutually agreed date and time of the meeting;
- An outline of the performance concerns;
- The possible consequences of the meeting;
- Copies of any relevant supporting evidence;
- Provide a copy of the Trust's Capability Policy and Procedure;
- The employee's right to be accompanied by either a work colleague or trade union representative; and
- The employee's ability to produce any documents in evidence or references/testimonials at least five working days prior to the meeting.

The formal capability meeting is designed to establish the facts and allows the employee to respond to concerns about their performance and to make relevant representations. This may provide new information or a different context to the information/evidence already collected.

The formal capability meeting will be conducted by the Manager, or nominated person (see scheme of delegation in section 9). In all cases, Delta HR will also be present.

The person conducting the meeting is also responsible for ensuring that a suitable note taker is also present to formally minute the meeting.

During the meeting, the Manager, or nominated person, will:

- Identify the professional shortcomings (e.g. which standard or elements of the role have not been met);
- Give clear guidance on the improved standard of performance required to ensure that the employee can be removed from formal capability procedures (e.g. setting new or restating existing objectives focused on specific weaknesses, appropriate success criteria, evidence that will be used to assess whether or not the necessary improvement(s) has been made and how success criteria will be assessed);
- Agree any further support that will be provided to help the employee improve their performance;
- Set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the employee and is dependent on the severity of the concerns (the standard review period should be between 6 and 12 working weeks, but should be proportionate and reasonable, without being excessively long, and should provide sufficient opportunity for improvement to take place; an interim review should be

scheduled half way through the monitoring period to provide the employee with evidence of the pace of change or improvement);

- In very serious cases, such as those where it is clearly demonstrated that the education of learners and/or the efficient and effective functioning of the Academy/Trust is being jeopardised or undermined due to the serious performance concerns or where the health, safety and welfare of children is potentially at risk, the timetable for improvement in such cases may be reduced, or if the matters are considered conduct issues they may be dealt with under the Trust's Disciplinary Policy if appropriate;
- Inform the employee that failure to improve within the set period could lead to dismissal;
- The Manager, or nominated person, may also adjourn the meeting in certain instances, such as where further investigation is required or where more time is needed in order to consider any additional information.

Every effort should be made to reach an agreement. However, if the employee disagrees that they should be in the formal capability procedure, the Manager has the right to impose the procedure since it forms part of the employee's entitlement to continuous professional development (CPD) and their terms and conditions of employment. Any points of disagreement should be recorded.

A date and time for the formal capability review meeting to take place will also be fixed before this meeting is completed. This review meeting should be scheduled for the end of the monitoring and review period in accordance with the agreed timescales.

The outcome of the formal capability meeting will be confirmed in writing to the employee within five working days of the meeting date. This written confirmation will contain the following information:

- Details regarding the outcome of the meeting;
- Confirmation of the required improvement(s);
- Confirmation of the formal capability support plan; and
- Details of the monitoring and review process and associated timescales, including confirmation of the date and time of the formal capability review meeting.

A copy of the record of the meeting will also be provided with this letter.

#### **8a. FORMAL CAPABILITY (STAGE THREE) REVIEW MEETING**

The employee will have been informed of the date and time of the formal capability (stage three) review meeting during the formal capability (stage three) meeting. The same arrangements for the right to be accompanied by either a work colleague or trade union representative will apply at this meeting.

The formal capability review meeting will be conducted by the Manager, or nominated person. In all cases, Delta HR will also be present.

The person conducting the meeting is also responsible for ensuring that a suitable note taker is also present to formally record the meeting.

The formal capability review meeting should review the outcomes and actions from the previous meeting and consider the evidence provided from the monitoring and review period. This should focus on the extent to which the employee has demonstrated change and improvement in their practice.

The Manager, or nominated person, has the following options to consider at the end of this meeting:

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- Where sufficient improvement has been made and agreed targets have been achieved, the formal capability procedure will end and the normal appraisal process will resume;
- Where there is some improvement and there is confidence that more is likely, it may be appropriate for the formal capability monitoring and review period to be extended for a further period which is proportionate and mutually agreed, but normally no more than 6 weeks, after which a further review meeting would take place in accordance with section 8a; or
- Where there is insufficient or no improvement, the employee will be informed that they will be invited to a capability decision hearing.

The outcome of the formal capability review meeting will be confirmed in writing to the employee within five working days of the meeting date.

A copy of the formal record from the meeting will also be provided with this letter.

## 9. DELEGATION AUTHORITY

For all capability decision hearings and appeals, the following delegation model shall apply, in accordance with the Trust's Scheme of Delegations.

<b>Post</b>	<b>Capability Decision Hearing</b>	<b>Appeal</b>
Chief Executive / Executive Director	A Board Member	3 Board Members including one of Chair or Vice Chair
Member of the Executive Leadership Team	Chief Executive Officer	3 Board Members
Executive Principal	A Director of Education	3 of Chief Executive Officer, Directors of Education and ELT member
Principal, Head of Academy	A Director of Education or an Executive Principal	3 of Chief Executive Officer, Directors of Education and ELT member
Group Directors (Curriculum or of Central functions)	A Director of Education or ELT Member	3 of Directors of Education and ELT members
Vice Principal and SLT Members	An Executive Principal	3 of Directors of Education and ELT members
All Finance posts	Finance Director	3 of Directors of Education and ELT members
All other Academy posts	A Principal	3 of Directors of Education and ELT members
All other Group posts	An ELT Member	3 of Directors of Education and ELT members

## 10. CAPABILITY DECISION HEARING

Where the employee has exceeded the provisions outlined in section 8 and where there continues to be insufficient or no improvement, the employee will be invited to a capability decision hearing, in writing, ensuring ten working days' notice is provided. The written confirmation will contain the following information in order to enable to the employee to prepare for the hearing:

- The mutually agreed date and time of the hearing;

- An outline of the performance concerns;
- The possible consequences of the hearing;
- Copies of all relevant supporting evidence, including minutes from previous meetings within the three previous stages of the procedure;
- A copy of the Trust's Capability Policy and Procedure;
- The employee's right to be accompanied by either a work colleague or trade union representative; and
- The employee's ability to produce any documents in evidence or references/testimonials at least five working days prior to the hearing.

The capability decision hearing will be conducted by persons outlined in the scheme of delegation authority table (see section 9). Delta HR will also be present. The Manager, or nominated person, would also attend this hearing in order to explain the detail leading to the referral to a capability decision hearing.

The person conducting the hearing is also responsible for ensuring that a suitable note taker is also present to formally minute the hearing.

The capability decision hearing should review the outcomes and actions from the previous meeting and consider the evidence provided from the monitoring and review period focusing on change and improvement in the employee's practice.

Prior to any decision being verbally confirmed with the employee, the capability decision hearing will be adjourned to enable the evidence to be reviewed and discussed with Delta HR before reconvening to deliver the outcome to the employee.

Possible outcomes of this hearing are:

- Extension to the formal capability monitoring and review period for a further period to be reviewed in accordance with section 8a; or
- Dismissal on the grounds of capability.

The outcome of the capability decision hearing will be confirmed in writing to the employee within five working days of the hearing date. This written confirmation will contain the following information:

- Details regarding the outcome of the hearing;
- The reasons for the decision;
- In the case of a dismissal, the letter will also confirm the date on which their employment will end and their appropriate notice period; and
- Details regarding their right of appeal against the outcome of the hearing.

A copy of the formal minutes from the hearing will also be provided with this letter.

## **11. DECISION TO DISMISS**

The decision to dismiss on the grounds of capability rests with the persons holding the capability decision hearing as outlined in the delegation authority table in section 9.

## **12. APPEAL**

If an employee feels that a decision to dismiss, or other action taken against them, is wrong or unjust, the employee has the right to appeal against the decision. The appeal should be lodged in writing to the Delta HR Department within ten working days of the decision being made, clearly stating the grounds for the appeal.

The appeal hearing will only focus on the grounds of the appeal raised by the employee within the letter of appeal.

An appeal will be heard without unreasonable delay and, where possible, at an agreed time and place. The employee will be informed in writing providing ten working days' notice of the appeal hearing date.

The written notification will include the following information:

- The mutually agreed date and time of the appeal hearing;
- A copy of the minutes and evidence from the formal capability meetings/hearing;
- The employee's right to be accompanied by either a work colleague or trade union representative; and
- The employee's ability to produce any documents in evidence or references/testimonials, and/or any new evidence and/or new witnesses to be presented at the appeal hearing, at least five working days prior to the appeal hearing.

Where new evidence is presented by the employee, the appeal panel may adjourn the appeal hearing to allow them to properly consider the information presented. The appeal hearing will be reconvened at the earliest convenience, which may be at an agreed alternative date.

The appeal will be dealt with impartially by a panel comprising of persons outlined in the scheme of delegation table (see section 9). Any persons involved at the capability decision hearing must not be involved in the appeal hearing. Delta HR will also be present to support the panel.

The appeal panel has the following options to consider at the end of this hearing:

- Confirm and uphold the original decision
- Uphold the grounds of appeal

Wherever possible, but always following an adjournment, the appeal panel will convey their decision verbally to the employee before closing the hearing. This decision will be confirmed in writing to the employee within five working days of the hearing date. This letter will also confirm that this decision is final and there is no further right of internal appeal.

## **13. RETENTION OF RECORDS**

Records of both the formal support (stage two) and formal capability (stage two) outlined within this policy will be kept on the employee's personal file within the academy for a twelve month period following the employee being removed from that stage. After this time, the records will be removed from the file and destroyed under the secure arrangements for confidential waste.

As outlined in stage two and three of the process, the Trust has a legal duty to inform a future employer of an employee who is in a formal support (stage two) or formal capability (stage three) as part of any reference (this does not apply to employees in stage one – informal support).

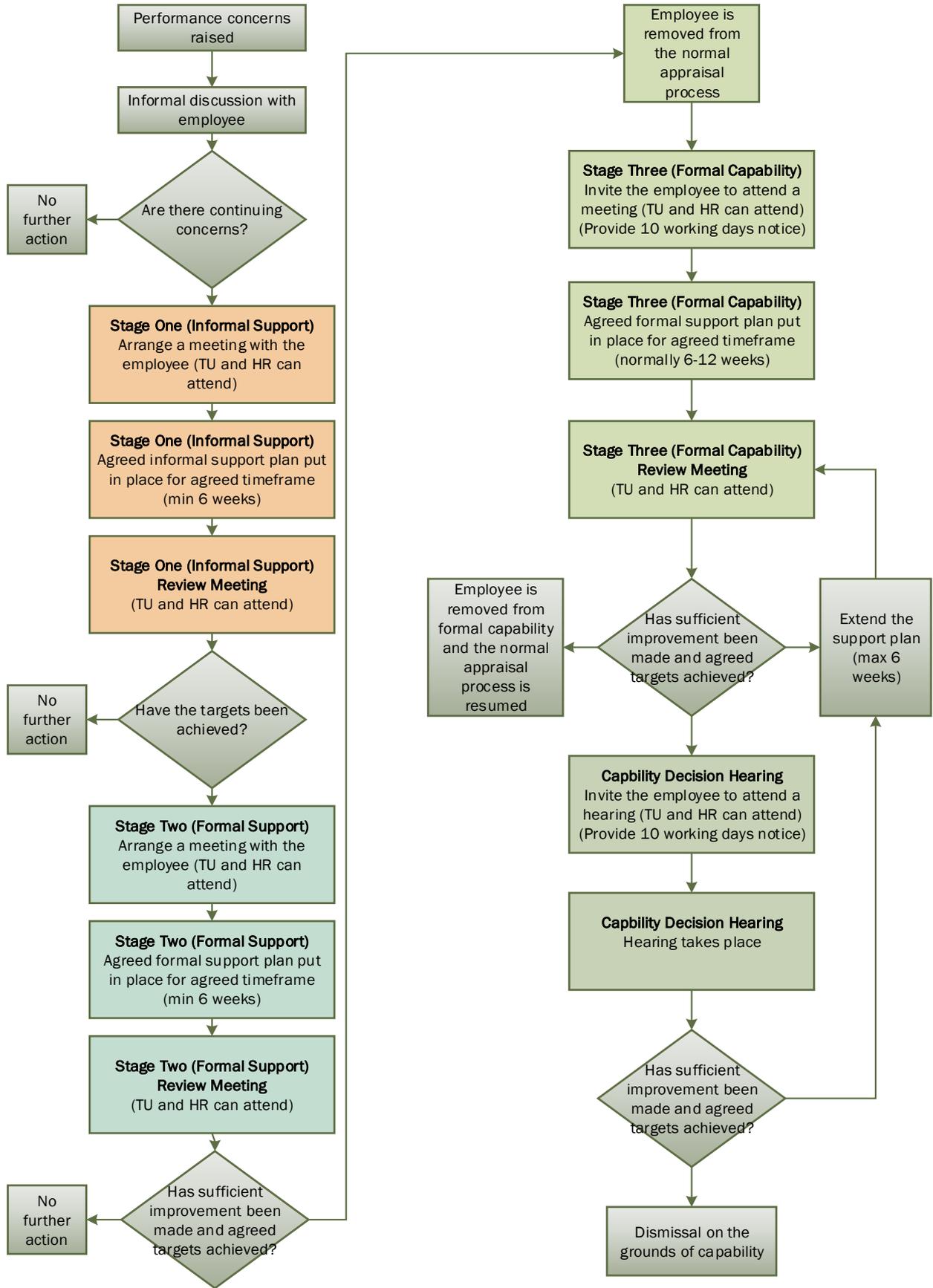
#### **14. MONITORING AND REVIEW**

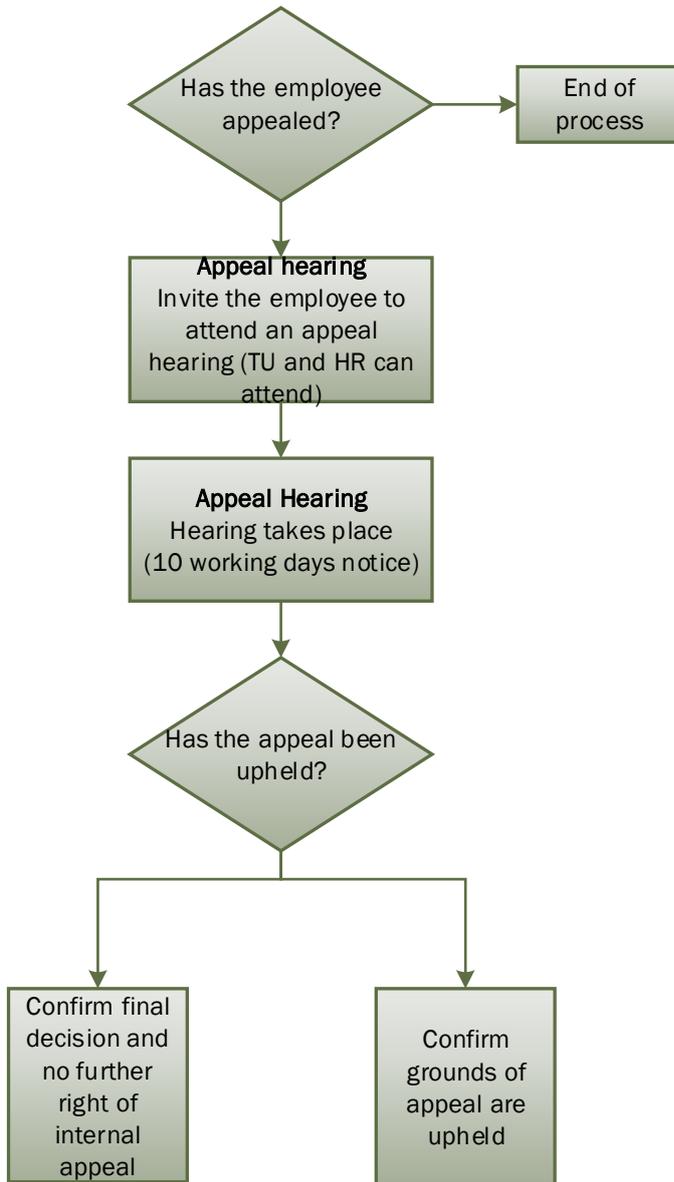
Through monitoring and review, the Trust will ensure that

- Individual records will be treated as confidential
- Consistency of application and adherence to Equality legislation
- An Equality Impact Assessment is completed

This policy will be reviewed every three years, or when there are changes to relevant legislation, by the Trust in conjunction with recognised trade unions.

**APPENDIX A – CAPABILITY PROCESS FLOWCHART**





## **APPENDIX B – ROLES AND RESPONSIBILITIES**

### **Employees**

- To be responsible for performing the duties of the post in accordance with the requirements of the job description and, in the case of Teachers, in line with the relevant national standards;
- To actively seek to improve their practice by identifying support requirements and participating in the monitoring, review, training and support arrangements;
- To identify their own sources of personal support and counselling outside of the formal procedure. It is expected that the employee will fully engage in the process of accessing support made available to them;
- To contact and brief their trade union representative (or work colleague) at the appropriate points in the procedure to ensure their professional support and representation is organised to attend meetings at the agreed dates within the procedure;
- To keep and maintain records and evidence of their progress during the review periods and also of any written advice given to them;
- To note, respond to and make every effort to implement advice and support provided.

### **Manager**

- To implement the procedures and to provide and manage the programme of monitoring and support. This will include careful planning of dates for meetings and review periods. The specific roles (e.g. mentor) may be delegated by the Manager to another member of the SLT or an appropriate external advisor;
- To ensure confidentiality and take account of the sensitivity of the situation including the welfare of the employee involved throughout the procedure;
- To ensure the process is evidence based and that the procedures are applied fairly where the performance concerns have not been resolved through support and supervision.

### **Delta HR**

- To provide advice and guidance on procedural matters, employment and legal matters and on the application of the capability procedures at meetings and appeals;
- To support the Manager in planning the timescales and dates for review periods to comply with statutory notice periods;
- To identify appropriate sources of support and professional advice regarding the monitoring of employees.

### **Trade Union**

- To ensure their members receive appropriate and timely support throughout the process;
- To make every reasonable effort to attend meetings on the dates and times agreed;
- To ensure their members understand the timescales and importance of preparing and attending meetings at the agreed date and time.

**APPENDIX C – SUPPORT PLAN TEMPLATE**

**Support Plan**

<b>Employee Name</b>	<b>Start Date</b>	<b>Informal Support*</b>	<b>Formal Support*</b>	<b>Formal Capability*</b>
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\*Circle as appropriate

<b>Academy / Department</b>	<b>Job Title</b>
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Areas of Concern	Improvement required (Target)	Support / Training Identified	Person(s) involved in support / training	Expected Outcomes	Review Dates	Progress

Signature of Manager or nominated person: \_\_\_\_\_ Date: \_\_\_\_\_

Signature of employee: \_\_\_\_\_ Date: \_\_\_\_\_