



Keystone Academy Trust

**Policy for
Appraising Performance &
Dealing with Capability
Issues for all Academy Staff**

Statement of Intent

The policy outlined below applies to all teaching staff employed within the Keystone Academy Trust (KAT) as defined below. The KAT policy is based upon the model policy approved by the Department of Education (DfE) and includes all statutory elements. It also follows and incorporates written advice given by our HR advisors. The Trustees and Local Governing Boards will review this policy every three years following consultation with the staff to which appraisal applies.

1. Definitions

- 1.1 The term “CEO” refers to any other title used to identify the Chief Executive Officer.
- 1.2 The term “Headteacher” also refers, where appropriate, to any other title used to identify the Headteacher, including “Head of School”.
- 1.3 The term “employee” refers to any member of the staff employed to work at the each individual school and or across the Keystone Academy Trust (KAT).
- 1.4 The term “senior manager” refers to any member of the Leadership Group, as defined by the KAT’s Pay and Conditions Document, or a senior support employee in cases involving support staff, delegated by the Headteacher/Head of School/CEO to deal with an appraisal and/or capability matter under these procedures.
- 1.5 It should normally be the Headteacher/Head of School who leads any capability process, however in extreme circumstances this can be delegated to a senior manager, following consultation with the Chair of the Local Governing Board.
- 1.6 The role of the Headteacher/Head of School will be taken by the CEO as indicated where the appraisal and or capability being reviewed is that of the Headteacher/Head of School.
- 1.7 A “lack of capability” is defined as a situation in which an employee fails consistently to perform his/her duties to a good standard of performance over a period of one term.

2. Guiding Principles

- 2.1 In its oversight of the appraisal system, each Local Governing Board, overseen by the Trustees, is committed to ensuring consistency of treatment and fairness and to stay within the prevailing legal framework applicable to all employers; for example, the Equality Act 2010, the Employment Rights Act 1996, the Part-Time Workers Regulations 2000, the Fixed Term Employees Regulations 2002 and the Data Protection Act 1998.
- 2.2 The Headteacher/Head of School will moderate a sample of the planning statements to check that the agreed plans are consistently weighted between employees who have similar levels of responsibility and that the plans comply with the school’s appraisal policy.
- 2.3 The appraisal and the capability processes and the supporting documentation will be treated with strict confidentiality at all times. Only those who need access to such information will be granted access

to enable them to discharge their responsibilities as directed by the school. The Local Governing Board will monitor the operation of the appraisal system and review it at appropriate intervals.

3. Purpose

3.1 This policy sets out the framework for a clear and consistent assessment of the overall performance of teachers and support staff and for supporting their development needs within the context of each school's improvement plan; as well as the standards expected of employees in their respective roles. It also sets out the arrangements that will apply when employees fall below the levels of competence that are expected of them.

3.2 This policy does not form part of any employee's contract of employment and it may be amended at any time following consultation. We may also vary any parts of this procedure, including any time limits, as appropriate in any case.

4. Application of the Policy

The policy is in two separate sections.

Part A of the policy, which covers appraisal, applies to all staff, including the CEO, employed by each academy, except those on contracts of less than one term, those teachers undergoing induction (*i.e.* *NQTs*), those teaching assistants subject to a probationary period and those have been transferred to Part B of the policy.

Part B of the policy, which sets out the formal capability procedure, applies to all employees of the academy (including the CEO). Concerns about the employee's performance will have been identified by the appraisal process and have not been able to be resolved.

Part A - Appraisal

The appraisal policy for each academy will be a supportive and developmental process designed to ensure that all employees identified by the policy have the skills and support they need to carry out their role effectively. It will help to ensure that all employees are able to continue to improve their professional/employment practice and to develop in their respective roles.

1. The Appraisal Period

- 1.1 The appraisal period for Headteachers/Head of School and the CEO will normally run for 12 months, normally from November to November.
- 1.2 The appraisal period for all other staff will normally run during an academic year.
- 1.3 The cycle will begin with a Planning Meeting (PM) and will end with a Review Meeting (RM). Mid-year Review Meetings (MRM) will normally take place as well. (Teachers: Term 1 PM, Term 3 MRM & Term 6 RM. All other staff: Term 2 PM, Term 4 MRM & Term 6 RM).
- 1.4 Employees who are employed on a fixed term contract of less than one year will have their performance managed in accordance with the principles underpinning this policy. The length of the review period will be determined by the duration of their contract.
- 1.5 Where a member of staff starts their employment or transfers to a new post within the school part way through a performance management cycle, the Headteacher/Head of School, or in the case where the employee is the Headteacher/Head of School, the CEO, shall determine appraisal arrangements for the remainder of the appraisal period, with a view to bringing their cycle into line with the cycle for other members of staff as soon as possible. If the new member of staff is the CEO, then the appraisal arrangements will be determined by the Trustees of KAT.
- 1.6 Employees will not normally be dismissed for performance reasons without previous warnings.[However, in serious cases of gross negligence, or in any case involving an employee who has not yet completed their probationary period, dismissal without previous warnings may be appropriate].

2. The Appraisers

- 2.1 All appraisers, including allocated members of the Local Governing Body/Trustees, should be suitably skilled and provided with appropriate training if necessary.

CEO

- 2.2 The CEO will be appraised by Trustees and an external adviser.
- 2.3 Where a CEO is of the opinion that any of the Appraisal panel appointed by the Trustees is unsuitable to act as his/her appraiser, s/he may submit a written request for that individual to be replaced, stating the reasons for the request. The Trustees will consider the request, taking into account what is reasonable, however; ultimately the decision rests with the Trustees of KAT.

Headteacher/Head of School

2.4 The Headteacher/Head of School will be appraised by the CEO, a member of the Local Governing Board, a Trustee and supported by a suitably skilled and experienced external advisor.

2.5 Where a Headteacher /Head of School is of the opinion that any of the Appraisal panel appointed by the Trustees is unsuitable to act as his/her appraiser, s/he may submit a written request for that individual to be replaced, stating the reasons for the request. The Trustees will consider the request, taking into account what is reasonable, however; ultimately the decision rests with the Trustees of KAT.

All other employees

2.6 The Headteacher/Head of School is responsible for the appraisal of all other employees but may delegate this responsibility to others who will normally have line management responsibility for those they appraise.

2.7 Staff should be able to object to the appointment of an appraiser, on professional grounds, in writing to the Headteacher/Head of School who will consider this and make a decision. Where the objections are rejected by the Headteacher/Head of School, the member of staff should be advised in writing.

2.8 Where it becomes apparent that the appraiser appointed by the Headteacher/Head of School will be absent for the majority of the appraisal cycle, the Headteacher/Head of School may perform those duties herself/himself or delegate those duties to another member of staff for the duration of that absence.

2.9 Where a member of staff is experiencing difficulties that relate to performance concerns and the Headteacher/Head of School is not the appraiser, the Headteacher/Head of School may undertake the role of appraiser. Where these difficulties do not relate to performance concerns (for example, health, conduct, etc), the appropriate policy must be followed.

3. Setting Objectives

3.1 The setting and agreement of objectives is fundamentally important to the effective operation of a performance management system that aims to link individual performance to successful outcomes for pupils and each academy; as well as pay progression.

3.2 The purpose of the first appraisal meeting is to review the employee's current job, their performance and their future plans. More specifically, the meeting will also be an opportunity to discuss how the employee can contribute to the wider work of the school and to agree and set a number (typically 3 for the CEO, Headteacher/Head of School and teachers) of objectives (there is no minimum or maximum number of objectives however). These may link directly to whole school priorities, relate to an explicit role within the organisation or a specific need for an individual, including taking into account future, professional aspirations.

3.3 The objectives set will be Specific, Measurable, Achievable, Realistic and Time-bound (SMART) and will be appropriate to the appraisee's role and level of experience. In setting the objectives, reviewers will have regard to what can reasonably be expected in the context of roles, responsibilities and experience,

consistent with each school's strategy for achieving a work/life balance for all staff. Appraisees may at any point append their comments alongside their objectives.

3.4 Every effort should be made to achieve agreement on the CEO and the Headteacher's/Head of School objectives; only in the last resort, should targets be imposed on the CEO and the Headteacher/Head of School. Similarly, all appraisers and appraisees should look to agree objectives; where agreement cannot be reached, the appraiser will make the final determination.

3.5 Objectives should also be fair and equitable when judged across employees with similar roles and responsibilities. However, appraisal objectives will normally become more challenging as a teacher progresses up the main pay scale.

3.6 The appraiser will take into account the effects of an individual's circumstances, including any disability, when agreeing objectives. For example, this might include a reasonable adjustment to allow an individual slightly longer to complete a task than might otherwise be the case. When staff return from a period of extended absence, objectives may be adjusted to allow them to readjust to their working environment.

3.7 On the grounds that emerging issues are unlikely to be known at the outset of an appraisal period, objectives may need to be adjusted throughout the appraisal period so that they remain relevant to the performance of the individual and to the priorities of the Academy.

3.8 The standards against which performance must be assessed in respect of a teacher are the set of standards articulated in the Teachers' Standards document (*these standards define the minimum level of practice expected of trainees and teachers from the point of being awarded QTS*) and any other set of standards relating to teachers' performance published by the secretary of state as the Local Governing Board or Headteacher/Head of School determine as being applicable.

3.9 Appendix A sets out one possible way of recording these objectives for teaching staff and Appendix B contains a similar form for all other staff.

4. Gathering the evidence

4.1 As part of the overall appraisal process, it is critically important for all members of staff who are subject to the school's staff appraisal policy to be clear about the evidence that will be required by their appraiser to enable the appraiser to assess their performance and make a substantiated and evidence-based pay recommendation to the 'decision maker'.

4.2 Judgements relating to performance should be supported by evidence. This evidence should show and demonstrate a contribution towards:

- an increasing positive impact in pupil progress;
- an increasing impact on wider outcomes for pupils;
- improvement in specific elements of practice, e.g. lesson planning;
- an increasing contribution to the work at the school;
- an increasing impact on the effectiveness of staff.

4.3 The evidence gathered by a member of staff will largely be determined by the nature and scope of the agreed objectives, their role and / or the Teachers' Standards. Examples of evidence may include:

- classroom observations
- task observations
- reviews of assessment results

- reviews of lesson planning records
- reviews of procedures
- internal tracking
- moderation within and across schools
- pupils' voice
- parents' voice
- walkabouts
- evidence supporting progress against Teachers' Standards
- the introduction of an improved system
- personal, professional development
- drop ins

4.4 Observation

Teachers

4.4.1 KAT believes that observation of classroom practice and other responsibilities for teachers, and support staff who support teachers in the classroom, is important both as a way of assessing performance. It can also be used to identify any particular strengths and areas for development as well as a means of gaining useful information which can inform academy improvement more generally.

4.4.2 All observation will be carried out in a supportive fashion in accordance with the monitoring protocol (outlined in section 5)

4.4.3 Teachers' performance will be regularly observed but the amount and type of classroom observation will depend on the individual circumstances of the employee and the overall needs of the academy.

4.4.4 Classroom observation of teachers will be carried out by senior or middle managers with QTS.

4.4.5 Employees who have responsibilities outside the classroom should also expect to have their performance of those responsibilities observed and assessed.

Teaching assistants

4.4.6 Teaching assistant appraisal will focus on the job description of the employee, the expected standards of performance (moving towards the HLTA standards) and the targets they have been set.

Support staff

4.4.7 Support staff appraisal will focus on the job description of the employee and the targets that they have been set.

4.5 Drop ins

4.5.1 In addition to formal observation, the Headteacher/Head of School or other leaders with responsibility for teaching standards may "drop in" in order to evaluate the standards of teaching and to check that high standards of professional performance are established and maintained. The length and frequency of "drop in" observations will vary depending on specific circumstances. "Drop in" sessions will apply to all staff.

4.5.2 All "drop ins" will be carried out in accordance with the following protocol:

Drop in protocol

- Drop-ins will last up to 15 minutes

- Drop-ins (where possible) will be timetabled in the monitoring and evaluation schedule but they may also be used to gain information about an emerging school priority
- Drop-in observations can have many purposes but they are fundamentally to establish consistency and continuity across the academy
- Personal circumstances will also be taken into account when planning drop-in visits

5. Monitoring Protocol

5.1 For appraisal purposes, the Local Governing Board and the Trustees are committed to ensuring that classroom and task observation is developmental and supportive and that those involved in the process will:

- carry out the role with professionalism, integrity and courtesy;
- evaluate objectively;
- report accurately and fairly;
- respect the confidentiality of the information gained.

5.2 Classroom observation will be carried out by qualified teachers. At least 5 working day's notice of the date and time of the observation will be given and verbal feedback provided by the end of the next school day in a suitable private environment. Written feedback will be provided within 5 working days. The appraisee has the right to append written comments to the feedback document.

5.3 All teachers will be observed at least once during an academic year, but this may be up to three times for some teaching staff. Teaching Assistants may also receive observations. This will be decided by each Academy, based upon whole school and individual, personnel needs.

5.4 Appendix C contains a possible lesson observation form that each Academy may wish to use, but it is down to each establishment to decide the format. The elements of the form, where possible, should be shared with staff once notice of an observation is given.

5.5 The teacher being observed should make available a copy of their planning on the morning of the observation, wherever possible this should be discussed briefly prior to the observation. During the observation the observer will expect to talk to children and look at children's' current and previous work. The observer should ensure that they are aware of the characteristics of individual and groups of pupils within the class. All observations and other monitoring activities for the purpose of appraisal will be carried out by individuals who have received appropriate training. However, a range of leaders, including governors, will take an active role in monitoring and evaluating the quality of teaching and learning within the academy. If governors are involved in direct observations of lessons, they will always be accompanied by a senior leader and guided as to the focus of the observation.

6. Development and Support

6.1 Appraisal is a supportive process which will be used to inform continuing professional development. Each Academy wishes to encourage a culture in which all employees take responsibility for improving their performance through appropriate development which will include an explicit focus on coaching for all teaching staff. There is an expectation that all staff will be reflective and be proactive in their appraisal process through sufficient preparation. Fulfilment of this requirement will be a consideration in the appraisal process.

6.2 Teachers professional development will be linked to academy improvement priorities and to the on-going professional development needs and priorities of individual teachers.

6.3 Employees will receive constructive feedback on their performance throughout the year. Feedback will highlight particular areas of strength as well as any areas that need attention.

7. Staff experiencing difficulties

7.1 When a member of staff is experiencing difficulties, support and guidance will be provided through the appraisal process. Where it is clear that a member of staff's personal circumstances are leading to difficulties at work, appropriate support should be offered at the earliest opportunity.

7.2 If long-term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case will be dealt with in accordance with the school's absence policy and will be referred to the occupational health service who will assess the member of staff's health and fitness for continued employment and whether continuing with monitoring or formal procedures is deemed to be appropriate.

7.3 If the appraiser identifies through the appraisal process or through other sources of information, that the difficulties experienced by a teacher are such that, if not rectified could lead to the capability procedure, the appraiser will, as part of the appraisal process, meet the member of staff to:

- give the employee the opportunity to comment and discuss the concerns and establish the likely causes of poor performance and identify any training needs/support needed (e.g. coaching, monitoring, structured observations);
- clarify the required standards and agree any support (e.g. coaching, mentoring, structured observations), that will be provided to help address those specific concerns;
- agree and establish an action plan, with support, that will help to remedy specific concerns;
- make clear how, and by when, the appraiser will review progress;
- if it is appropriate to revise objectives, it will be necessary to allow sufficient time for improvement;
- the amount of time will reflect the seriousness of the concerns; explain the implications and process if no, or insufficient, improvement is made.

7.4 The teacher's progress will continue to be monitored as part of the appraisal process and a reasonable time given for the teacher's performance to improve. During this monitoring period, the teacher will be given regular feedback on progress and arrangements will be made to modify the support programme if appropriate.

7.5 If sufficient progress is made, the teacher should be informed of this at a formal meeting and the appraisal process will continue as normal.

7.6 If no, or insufficient improvement has been made, the teacher will be invited to a transition meeting to determine whether formal capability proceedings will be invoked.

8. Transition to Capability

8.1 If the appraiser is not satisfied with progress, the employee will be notified in writing that the appraisal system will no longer apply and that his/her performance will be managed under the capability procedure. The employee will be invited to a formal capability meeting. The capability procedures will be conducted as in Part B of this policy.

9. Reviewing Performance and the Annual Assessment

9.1 The performance of each employee covered by the appraisal policy will be formally assessed in respect of each appraisal period.

9.2 In assessing the performance of the CEO, the Local Governing Board and Trustees must consult the external adviser.

9.3 In assessing the performance of the Headteacher/Head of School, the Local Governing Board and Trustees must consult the external adviser.

9.4 This assessment is the end point to the annual appraisal process, but performance and development priorities will be reviewed and addressed on a regular basis throughout the year (both formally and informally).

9.5 The employee will receive a written appraisal report, as soon as practicable, following the end of each appraisal period, and have the opportunity to comment in writing on the report.

9.6 Teachers and support staff will receive their written appraisal reports by 31 October (31 December for the CEO/ Headteacher/Head of School).

9.7 Good progress towards the achievement of a challenging objective, even if the performance criteria have not been met in full, may be assessed favourably. If agreement cannot be reached, especially on the outcomes of an appraisal meeting, the teacher may appeal to the Headteacher/Head of School or the Headteacher/Head of School may appeal to the chair of the Trustees, whose decision will be final.

9.8 The appraisal report will include:

- details of the employee's objectives for the appraisal period in question;
- an assessment of the employee's performance of their role and responsibilities against their objectives and, for teachers, against the relevant standards;
- an assessment of the employee's training and development needs and identification of any action that should be taken to address them. The assessment of performance and of training and development needs will inform the planning process for the following appraisal period.
- for some staff a recommendation on pay progression may be made as part of this process.

9.9 The overall assessment of performance and its subsequent performance rating for individual members of staff will be subject to a process of moderation, arrangements for which will be put in place by the Headteacher/Head of School with the approval of the Local Governing Board.

9.10 The final version of the appraisal documentation will be placed on the employee's file.

9.11 The Local Governing Board and Headteacher/Head of School will ensure that all written appraisal records are retained in a secure place for 6 years and then destroyed.

9.12 The Headteacher might decide to issue a 'Letter of professional advice' where performance falls below the expected level in between appraisal reviews. This letter will highlight where performance has fallen below expectation and what is required in order for it to improve. If the teacher believes they require further help/support in order to make the necessary improvements, it is their responsibility to make this known to the Headteacher in writing no more than 5 working days following receipt of the letter.

10. Pay progression linked to performance (Teaching staff)

10.1 The Local Governing Board must consider annually whether or not to increase the salary of teachers who have completed a year of employment since the previous annual pay determination and, if so, to what salary within the relevant pay ranges.

10.2 All pay recommendations should be clearly attributable to the performance of an employee.

10.3 The relevant body must decide how pay progression will be determined, subject to the following:

- a. The decision, whether or not to award pay progression, must be related to a teacher's performance.
- b. A pay recommendation must be made in writing as part of a teacher's annual appraisal report.
- c. Where a teacher is not subject to either the 2012 or the 2011 regulations, the relevant body must determine through what process the teacher's performance will be assessed and a pay recommendation made for the purposes of making its decision on pay.
- d. Continued good performance, as defined by an individual school's pay policy, should give a classroom or an unqualified teacher an expectation of progression to the top of their respective pay ranges.
- e. Poor performance, or failure to achieve performance objectives, may not attract a pay increase.
- f. A decision may be made not to award pay progression, whether or not the teacher is subject to capability proceedings.

10.4 The relevant body within the KAT must set out clearly in the pay policy how pay progression will be determined. The Headteacher /Head of School will be responsible for ensuring that appropriate arrangements are put in place to support the links between performance and pay and that rates of pay progression are affordable and comply with prevailing legislation.

10.5 Where teachers are eligible for pay progression, the recommendation made by the appraiser will be based on an assessment of performance against agreed performance objectives. The decision made by the relevant decision-making body will be based on the statutory criteria and guidance set out in the STPCD and the relevant teacher standards.

10.6 To move up the main pay range, one point at a time, teachers will need to have made good progress towards achieving their objectives and have demonstrated that they are competent in all elements of the Teachers' Standards.

10.7 If the overall appraisal evidence shows that a teacher has demonstrated exceptional performance, the Local Governing Board will consider awarding enhanced pay progression, up to a maximum of 2 reference points.

10.8 Each Headteacher/Head of School will consult with staff and union representatives on the establishment of appraisal and pay policies and will ensure that appraisers have the knowledge and skills to apply procedures fairly.

10.9 Teachers will work with their appraisers to ensure that there is sufficient evidence to support pay recommendations. Teachers will also keep records of objectives and review them throughout the appraisal period.

10.10 Leading Practitioner role.

10.10.1 Typically, the additional duties of a leading practitioner role will include:

- A leadership role in developing, implementing and evaluating policies and practices in a school that contribute to school improvement;
- The improvement of teaching within school which impacts significantly on pupil progress;
- Improving the effectiveness of staff and colleagues, particularly in relation to specific areas e.g. lesson planning.

10.10.2 The Headteacher/Head of School will agree appraisal objectives for the leading practitioner, who, in turn, must demonstrate that, they:

- have made good progress towards their objectives;
- are an exemplar of teaching skills which should impact significantly on pupil progress within school and within the wider school community;
- have made a substantial impact on staff and colleagues, including any specific elements of practice that have been highlighted as in need of improvement;
- are highly competent in all aspects of the Teachers' Standards;
- have shown strong leadership in developing, implementing and evaluating policies and practices in their workplace that contribute to school improvement.

11. Conflict of Interest

11.1 In any circumstances where an individual believes that their participation in any part of the appraisal process amounts or may amount to a 'conflict of interest' they should declare this to their appraiser and / or absent themselves from any part of the appraisal process where they believe that a 'conflict of interest' would or is likely to prevail.

Part B - Capability Procedure

1. Formal Capability Meeting

1.1 This procedure applies only to employees about whose performance there are serious concerns that the appraisal process has been unable to address. If under Part A above an employee's performance, who is covered by Part A, is not good, the Headteacher/ head of school will immediately inform the CEO prior to inviting the employee to a formal capability meeting to discuss with the employee the identified poor performance as specifically as possible against the relevant standards. During this process, advice and guidance will be sought from our human resources advisers.

1.2 The Headteacher/ head of school will write to the employee at least 10 working days in advance to inform him/her about:

- a) the date, time and place of the meeting.
- b) the basic details of the concerns about the employee's performance
- c) the employee's right to be accompanied by a representative of his/her trade union or a workplace colleague of his/her choice
- d) the titles of enclosed copies of any documents to be used at the meeting.
- e) names of any witness statements that will be submitted
- f) his/her right to call witnesses/submit witness statements on his/her behalf.
- g) The name and office of any adviser who will accompany the Headteacher/ head of school at the meeting.

An extra copy, together with any enclosures, will be provided for his or her companion.

1.3 This meeting is intended to establish the facts. It will be conducted by the Headteacher/Head of School or the Chair of the Local Governing Board in the case of the Headteacher/Head of School. If the focus of the capability meeting is the CEO, then this will be conducted by the Chair of the Board of Trustees. The meeting will allow the employee to respond to concerns about his/her performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected.

1.4 The Headteacher/ head of school 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. In such cases, the capability procedure will come to an end.

1.5 The Headteacher/ head of school may also adjourn the meeting if it is decided that further investigation is needed, or that more time is needed in which to consider any additional information. In other cases, the meeting will continue.

1.6 During the meeting, or any other meeting, which could lead to a formal warning being issued, the Headteacher/ head of school will:

- in the case of a teacher, identify the poor performance, including which of the standards expected of the teacher is not being met;
- ensure the employee is given an opportunity to ask questions, present evidence, call witnesses, respond to evidence and make representations;
- establish the likely causes of poor performance including any reasons why any measures taken so far have not led to the required improvement;
- give clear guidance on the improved standard of performance needed to ensure that the employee can be removed from formal capability procedures which may include the setting of new objectives focused on the specific area/s of poor performance that need to be addressed. It

will include any success criteria that are appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made;

- identify whether there are further measures which may improve performance and explain any support that will be considered and planned to help the employee, e.g. in-service training, visits to other schools, discussion with appropriate colleagues or professionals;
- set out the timetable for improvement and explain how performance will be monitored and reviewed;
- the timetable will depend on the circumstances of the individual case but will be reasonable and proportionate, between four and ten weeks in normal circumstances, and will provide sufficient opportunity for improvement to take place. The length of time required will depend on the concerns raised with the employee, the nature of any support and training required, and sufficient time to establish whether performance has improved; and
- warn the employee formally in writing that failure to improve within the set period could lead to a final written warning which could then lead to his/her dismissal;
- informed the employee of the right of appeal;
- agree with the employee and any companion the date of the formal review meeting.

1.7 Notes will be taken of formal meetings and a copy sent to the employee and any companion. Where a first warning is issued, the employee will be informed in writing of the matters discussed in 1.6 above. S/he will also be informed in writing that failure to achieve an acceptable standard of performance within the set timescale may result in a final written warning which could then lead to dismissal if good performance is not achieved, together with the time limit for appealing against the first written warning.

1.8 If the concerns relate to a lack of capability that poses a risk to the health, safety or well-being of children, or is likely to result in serious damage to pupils' education, the shorter timescale may be appropriate. In such cases, the senior manager may exceptionally decide to issue a first and final written warning, if to do otherwise would expose students to serious risk in terms of their health, safety, well-being or educational prospects.

2. Sickness Absence and the Use of this Procedure

2.1 It is important that sickness absence should not delay or avoid the use of formal capability procedures. It is in the interests of all parties to address concerns about performance without undue delay. Arrangements will normally be made to seek medical advice from an occupational health adviser to assess the employee's health and fitness for continued employment at the academy.

2.2 Consideration will be given to whether poor performance may be related to a disability and, if so, whether there are reasonable adjustments that could be made to the employee's working arrangements, including changing the employee's duties or providing additional equipment or training. It may also be considered appropriate to make adjustments to this procedure in particular cases e.g. moving from this procedure to procedures used by the academy to terminate the employment of the employee on the grounds of ill health.

2.3 If an employee's medical condition is not serious enough to warrant a consideration of termination of employment on the grounds of ill health, the occupational health adviser will normally be asked to assess whether an employee absent through sickness is fit enough to attend a meeting under this procedure. In the event that the employee is deemed not fit to attend a formal capability meeting s/he may present a written submission for consideration and/or be represented by a companion in her/his absence.

3. Monitoring and Review Period Following a Formal Capability Meeting

3.1 A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. Following this monitoring and review period, the employee will be invited to a formal review meeting (see paragraph 4 below), unless s/he had been issued with a final written warning, in which case s/he will be invited to a decision meeting (see paragraph 6 below).

4. Formal Review Meeting

4.1 At least 5 working days before the date for the formal review meeting a written reminder will be given to the employee together with details of the meeting as set out in paragraph 1.2 above.

4.2 The formal review meeting will follow a similar procedure to that identified for the formal capability meeting as set out in paragraph 1.6 above.

4.3 If the senior manager (Headteacher/Head of School or the Chair of the Local Governing Board in the case of the Headteacher/Head of School or by the Chair of the Board of Trustees in the case of the CEO) is satisfied that the employee has made sufficient improvement, the formal capability procedure will cease and the appraisal process will re-start where the employee is subject to Part A above.

4.4 In cases:

- where some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period;
- where no, or insufficient improvement has been made during the monitoring and review period, the employee will receive a final written warning.

4.5 Notes will be taken at the formal review meeting and a copy will be sent to the employee and any companion.

4.6 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 and will be given information about the further monitoring and review period and the procedure and time limits for appealing against the final written warning. The date the decision meeting will be agreed with the employee and any companion.

4.7 At this stage, rather than refer the matter to a decision meeting, consideration could be given to the employee being given a different range of duties or an alternative post. By agreement, this may include transfer to a post suited to the employee's capabilities. If this post is at a lower salary level, the substantive lower salary would apply.

5. Right of Appeal Against a Formal Written Warning

5.1 If an employee feels that a decision to issue a first and/or final written warning, is wrong or unjust, s/he may appeal in writing against the decision

5.2 Appeals against a written warning shall be restricted to considering the reasonableness of the decision made by the senior manager, any relevant new evidence not previously available to the senior manager or any procedural irregularities. A statement giving the reasons for the appeal should be

submitted to the Clerk to the Governors within 10 working days of the formal written warning having been received.

5.3 All appeal hearings will be held as soon as possible after receipt of the appeal at an agreed time and place.

5.4 The appeal will be heard by the Appeals Panel of the Local Governing Board/ Trustees. The number of governors/trustees on the Appeals Panel will not be less than two. The panel may be advised by a person engaged for the purpose by the Local Governing Board and may include the CEO. In the case of the CEO, the Appeals Panel will consist of Trustees and may also be advised by a person engaged for the purpose by the Trustees. The panel can confirm the warning, reduce a final warning to a warning, or cancel the warning. The employee will be informed in writing of the results of the appeal hearing as soon as possible.

5.5 The same arrangements for notification and the right to be accompanied by a companion will apply for an appeal hearing as for the formal capability and review meetings and, as with those meetings, notes will be taken and a copy sent to the employee and any companion.

5.6 Pending any appeal the employee will be expected to continue to work in accordance with targets set for the next stage of the procedure and his/her progress towards the achievement of these targets may be monitored during this period.

6. Decision Meeting

6.1 At least 10 working days before the date of the decision meeting a reminder will be given in writing together with details of the meeting as in paragraph 1.2 above. The meeting will be conducted by the Headteacher/Head of School (Local Governing Board for the Headteacher/Head of School and Trustees for the CEO).

6.2 If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end and the appraisal process will re-start where the employee is subject to Part A above.

6.3 If progress has been made and there is confidence that wholly satisfactory performance will be achieved by a short extension, it may be appropriate to extend the monitoring and review period rather than to dismiss. The final written warning will be extended for a short specified assessment period.

6.4 If performance has remained unsatisfactory, a decision will be made that the employee will be dismissed. The employee will be informed in writing as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and whether the notice is to be served or there will be pay in lieu of notice, and the right of appeal.

7. Right of Appeal Against a Decision to Dismiss

7.1 The employee has a right of appeal to the Appeals Committee of the Local Governing Board /Trustees against a decision to dismiss.

7.2 The Appeals Committee shall consist of at least 3 governors/trustees, none of whom will have had any previous involvement in the case.

7.3 The employee's notice of appeal should be sent to the Clerk to the Local Governing Board/Board or Trustees within 10 working days of receipt of the written decision to dismiss, setting out the grounds of appeal.

7.4 Appeal hearings should be held as soon as possible after receipt of the appeal and will be conducted in the same way as appeals referred to in paragraph 5 above.

8. Notice of Dismissal

Following a decision to dismiss, the Board of Trustees will notify the employee in writing that the employee is to be dismissed, whether with notice or with pay in lieu of notice in accordance with the decision of the Headteacher/ Head of School/CEO (or Disciplinary Committee).

8.1 In the event that the Appeal Committee of the Governors/Trustees decides not to uphold the decision to dismiss, the employee shall be informed immediately and the notice of dismissal shall be immediately withdrawn.

9. Grievances Arising During the Procedure

9.1 Where an employee has a grievance against the way the senior manager has conducted the procedure this will normally be dealt with under the appeals process set out above. However, in very exceptional circumstances, where the behaviour of the senior manager is the cause of the grievance, it may be appropriate to suspend this procedure for a short period until the grievance has been considered

10. Trade Union Officials

10.1 Although normal performance standards must apply to an employee who is a lay trade union official, no disciplinary action, beyond an informal oral warning will be taken until the circumstances of the case have been discussed with the relevant professional trade union officer.

11. Confidentiality

11.1 Our aim is to deal with performance matters sensitively and confidentially with due respect for the well-being and self-esteem of any individuals involved. All employees must treat as confidential any information communicated to them in connection with a matter which is subject to this capability procedure.

11.2 The employee, and anyone accompanying the employee (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure. Failure to observe confidentiality could be a reason for disciplinary action under the academy's disciplinary procedure.