



HR Service

# Diocese of Nottingham Catholic Multi-Academy Trusts

Capability Policy and  
Procedure



**DIOCESE OF NOTTINGHAM CATHOLIC MULTI ACADEMY TRUSTS  
CAPABILITY POLICY AND PROCEDURE**

**HR Service**

**Capability Policy and Procedure**

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**DIOCESE OF NOTTINGHAM CATHOLIC MULTI ACADEMY TRUSTS  
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**Commitment to equality:**

**We are committed to providing a positive working environment which is free from prejudice and unlawful discrimination and any form of harassment, bullying or victimisation. We have developed a number of key policies to ensure that the principles of Catholic Social Teaching in relation to human dignity and dignity in work become embedded into every aspect of school life and these policies are reviewed regularly in this regard.**

**This Capability Policy and Procedure has been subject to consultation with the Recognised Trade Unions. It was approved and adopted by the CMAT as detailed below:**

<b>Policy Approved by:</b>	<b>Date of Approval</b>
Board of Directors – Our Lady of Lourdes Catholic Multi Academy Trust	12.10.2022
Board of Directors – St Ralph Sherwin Catholic Multi Academy Trust	8.12.2022
Board of Directors – St Thomas Aquinas Catholic Multi Academy Trust	3.11.2022

**It will be reviewed after 24 months in consultation with the Recognised Trade Unions.**

**Signed by Director of the CMAT:** 

**Signed by CEO:** 

# **DIOCESE OF NOTTINGHAM CATHOLIC MULTI ACADEMY TRUSTS CAPABILITY POLICY AND PROCEDURE**

## **DEFINITIONS**

**In this Capability Policy and Procedure, unless the context otherwise requires, the following expressions shall have the following meanings:**

- i. 'Academy' means the academy named at the beginning of this Capability Policy and Procedure and includes all sites upon which the Academy undertaking is, from time to time, being carried out.
- ii. 'Academy Trust Company' means the company responsible for the management of the Academy and, for all purposes, means the employer of staff at the Academy.
- iii. 'Board' means the board of Directors of the Academy Trust Company.
- iv. 'Capability due to ill-health' means any health condition or any other physical or mental quality which results in unsatisfactory performance. In these cases, the Sickness Absence Policy and Procedure will apply. 'Capability due to lack of competence' means a lack of skill or aptitude leading to unsatisfactory performance. In these cases, this Capability Policy and Procedure will apply.
- v. 'Chair' means the Chair of the Board as appointed from time to time.
- vi. 'Companion' means a work colleague or an accredited representative of a trade union.
- vii. "Diocesan Schools Commission" means the education service provided by the diocese in which the Academy is situated, which may also be known, or referred to, as the Diocesan Education Service.
- viii. Directors' means directors appointed to the Board from time to time.
- ix. 'Governing Board' means the Board of Directors responsible for carrying out the employment functions of the academy (CMAT).
- x. 'Headteacher' means the most senior teacher in the Academy who is responsible for its management and administration. Such a teacher may also be referred to as Executive Headteacher or Head of School.
- xi. Misconduct means any action or inaction which contravenes the provisions of the employee's contract of employment, the rules laid down by the Academy Trust Company and/or any Professional Code of Conduct and Practice.
- xii. 'Performance Review Period' means the period as defined in accordance with the Academy's relevant Performance Review Policy and Procedure.
- xiii. 'Policy' means the Capability Policy and Procedure.
- xiv. 'Working day' means any day on which an employee would ordinarily work if they were a full-time employee. In other words "working day" will apply differently to teaching and non-teaching staff. However, part-time and full-time staff will not be treated differently for the purposes of implementing this policy and procedure.
- xv. 'Working week' means any week that an employee would ordinarily work.

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xvi.

## **PURPOSE**

This Policy sets out the process that will be followed where the School/CMAT has concerns about capability due to a lack of competence, skill and/or aptitude and/or where an individual is not providing satisfactory performance.

### **I. SCOPE**

- I.1 This Capability Policy and Procedure applies to employees at the CMAT (hereinafter referred to as an “employee” or “you”). For the avoidance of doubt, it does not apply to casual workers, volunteers, agency workers or contractors.
- I.2 This Policy does not apply during any probation period. The Policy also does not apply to Early Career Teachers, whose performance will be managed through the induction process.
- I.3 The purpose of this Capability Policy and Procedure is to establish a structure which will support employees in improving their performance to the standards expected and to take appropriate action to address identified weaknesses where there has not been sufficient improvement following documented support being provided under the Performance Review Policy and Procedure. Relevant standards include, where applicable, Teachers’ Standards, the National Standards of Excellence for Headteachers and Professional Codes of Practice.
- I.4 This Capability Policy and Procedure shall be invoked when there is an identified need to address, with a view to remedying, capability due to lack of competence.
- I.5 This Capability Policy and Procedure can be invoked by the Board or its delegate at any stage deemed appropriate although the expectation is that it will only be invoked after the procedure set out in the relevant Performance Review Policy and Procedure has been exhausted.
- I.6 An employee is entitled to have access, by arrangement, to their personnel file and to request the deletion of time-expired records in line with the provisions of the General Data Protection Regulation (GDPR) and the Data Protection Act 2018.
- I.7 There may be some occasions where an employee’s lack of capability could also be described as Misconduct. The CMAT will ascertain at an early stage of the investigation if the issue is to be dealt with under the Capability or Disciplinary Policy. This Capability Policy and Procedure and the CMAT’s Disciplinary Policy and Procedure may be used concurrently where there are separate concerns both about an employee lack of competence and possible misconduct.
- I.8 There may be occasions where an employee’s lack of capability could relate to their health. This Capability Policy and Procedure may be used concurrently with the CMAT’s Sickness Absence Policy and Procedure. In particular, if an employee is absent from work on sick leave following this Capability Policy and Procedure being invoked, the CMAT may use its Sickness Absence Policy and Procedure. However, the process of managing unsatisfactory performance due to capability will not necessarily cease where the employee is absent on the grounds of sickness.
- I.9 The CMAT is committed to ensuring respect, objectivity, belief in the dignity of the individual, consistency of treatment and fairness in the operation of this Capability Policy and Procedure

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This commitment extends to promoting equality of opportunity and eliminating unlawful discrimination throughout the CMAT community.

- 1.10 This Policy offer opportunities to ensure justice for teachers, support staff and pupils alike and has the potential for the expression of Christian qualities such as honesty, self-knowledge, respect for others and their gifts, recognition of the needs and achievements of others, challenge of self and others, personal growth and openness.
- 1.11 This Policy may be invoked at any time during any 'Performance Review Period' as defined in the CMAT's Capability Policy and Procedure. The expectation is it will only be invoked after the procedure set out in the relevant Performance Review Policy and Procedure has been fully exhausted.
- 1.12 Relevant information from the Performance Review process, including the Performance Review Report, may be taken into account in the application of this Policy.
- 1.13 The management of unsatisfactory performance and related investigations will be treated in confidence as far as possible by all parties involved at all stages of this Capability Policy and Procedure.
- 1.14 The School/CMAT will maintain records of all data and evidence collated in connection with this Policy including, but not limited to, interviews and reviews for a period of at least 12 months. The School/CMAT may, in certain circumstances, consider such records will be held for longer where it reasonably determines necessary and appropriate. Any such information will be held in accordance with the CMAT's Data Protection Policy.

### **2. CAPABILITY POLICY AND PROCEDURE – EMPLOYEES EXPERIENCING DIFFICULTIES**

- 2.1 This Policy should, except in exceptional circumstances only be invoked where the measures set out in Paragraph 9 and 10 (if an appeal is lodged) of the CMAT's Performance Review Policy and Procedure for Teachers or Paragraphs 9 and 10 of the CMAT's Performance Review Policy and Procedure for Support Staff have been exhausted (as appropriate); **and**
  - a) the employee has made no improvement or insufficient improvement as required under the relevant Performance Review Policy and Procedure; **and/or**;
  - b) the employee is failing to respond successfully to feedback in relation to unsatisfactory performance and support has been provided; **and**
  - c) a recommendation has been made under the relevant Performance Review Policy and Procedure that a Capability Manager be appointed and, following a formal meeting (as detailed in section 4 below) , the Capability Manager has determined that this Capability Policy and Procedure should be invoked.

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- 2.2 The relevant Performance Review Policy and Procedure should provide an opportunity for performance to improve prior to action being taken under this Policy. However, the School/CMAT reserves the right to invoke this Policy in exceptional circumstances.
- 2.3 If a Headteacher is subject to this Policy they will normally continue to be responsible for the performance management process for staff at the School. The CMAT, in its absolute discretion, reserves the right to remove such responsibilities from the Headteacher where it considers necessary and/or appropriate with the decision being taken by the CEO.
- 2.4 The Diocesan Director of Education must be advised when the Capability Procedure is implemented for any of the following posts/reasons:
- CEO
  - Headteacher (including Acting and Executive Headteachers)
  - Executive posts within the CMAT Central Team.
  - Any other reserved posts
  - The potential or actual dismissal of any other member of staff

In such cases the Diocesan Education Service may send a representative to advise the Capability Manager, Final Capability Manager or Appeal Manager.

- 2.5 The CEO must be informed where it is proposed to implement the Capability Procedure for any member of staff employed by the CMAT.

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**3. CAPABILITY MANAGER, FINAL CAPABILITY MANAGER AND APPEAL MANAGER**

The table below sets out the persons to be appointed throughout the stages of the Capability Procedure, depending on the person who is the subject of the Capability proceedings:

<b><i>Employee Level</i></b>	<b><i>Stage 1/Stage 2 Capability Meeting – the Capability Manager</i></b>	<b><i>Final Capability Meeting – the Final Capability Manager</i></b>	<b><i>Appeal Manager (re Written Warnings)</i></b>	<b><i>Appeal Manager (re Dismissal)</i></b>
School support staff (other than School Business Manager)	Headteacher or a person appointed by the Headteacher	Directors' Capability Panel	CEO	Directors' Appeal Panel
Teaching Staff (other than Headteacher, staff on Leadership spine or reserved posts)	Headteacher or a member of the Senior Leadership Team appointed by the Headteacher	Directors' Capability Panel	CEO	Directors' Appeal Panel
Leadership spine – Non reserved post and School Business Manager	Headteacher	Directors' Capability Panel	Chair of the Board or a Director nominated by the Chair	Directors' Appeal Panel
Headteacher (and other reserved posts)	CEO	Directors' Capability Panel	Chair of the Board or a Director nominated by the Chair	Directors' Appeal Panel
Staff in Central Team (other than Executive Team)	Line Manager	Directors' Capability Panel	Chair of the Board or a Director nominated by the Chair	Directors' Appeal Panel



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CMAT Executive Team (other than CEO)	CEO	Directors' Capability Panel	Chair of the Board or a Director nominated by the Chair	Directors' Appeal Panel
CEO	Chair of the Board or a Director (other than the Vice-Chair) nominated by the Chair of the Board	Directors' Capability Panel	A Director (other than the Chair or Vice Chair) nominated by the Vice Chair of the Board	Directors' Appeal Panel appointed by the Vice Chair of the Board

**4. STAGE I CAPABILITY MEETING**

4.1 Where the School/CMAT has exhausted the relevant Performance Review Policy and Procedure including the appeals process under that Policy (if an appeal is lodged) (or under the exceptional circumstances provided for under clause 2.2 above) , the CMAT will appoint a Capability Manager in accordance with Paragraph 3 above. On behalf of the Capability Manager, the CMAT HR Team will write to the employee inviting them to a Stage I Capability Meeting. The employee will be given at least 10 working days' notice in writing of such a meeting and will be advised in the letter that they have the right to be accompanied by a representative from a recognised Trade Union or a Work Colleague. At the same time as being sent the letter inviting them to the Stage I Capability Meeting, the employee will also be sent a copy of the Performance Report which the Capability Manager has prepared and which shall set out:

- (a) what aspects of the employee's performance are causing concern;
- (b) what specific and achievable performance standards are expected of the employee; and
- (c) the support that has been provided to the employee so far;
- (d) if applicable, any agreed reasonable adjustments.

4.2 Any documentation that the employee wishes to rely on must be submitted to the Capability Manager at least 3 working days ahead of the Capability Meeting. Failure to provide documentation within this timescale may mean that it will not be considered at the meeting.

4.3 At the Stage I Capability Meeting the employee will have an opportunity to respond to the contents of the Performance Report and to discuss the concerns raised in the Report including any professional shortcomings identified, support and guidance required and how their performance will be monitored and supported going forward. Where any agreed reasonable adjustments have been made, the employee should be given the opportunity to comment on

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the extent to which these have been of assistance and they should also be given the opportunity to suggest any further reasonable adjustments that they would like the School/CMAT to consider.

- 4.4 At the end of the Stage I Capability Meeting, having considered the employee's comments, the Capability Manager may:
- (a) decide there is no case for the Capability Policy and Procedure to be invoked and performance will be managed under the relevant Performance Review policy and Procedure and the employee will be notified of this in writing within five working days;  
**or**
  - (b) decide there is a case for the Capability Policy and Procedure to be invoked, formally invoke the Policy and Procedure and issue the employee with a First Written Warning. The Capability Manager will then prepare an Improvement and Support Plan as detailed in 4.5 below ; **or**
  - (c) decide that the Capability Policy and Procedure should not be invoked at this stage but that Stage I Capability Meeting should be adjourned to allow the employee's performance to continue to be assessed over an "Further Review Period (Stage I)" following which a reconvened Stage I Capability Meeting will be held.

Following any reconvened Stage I Capability Meeting the possible outcomes will be either (a) or (b) above

### **4.5 Action following First Written Warning issued under 4.4 (b) above**

- 4.5.1 Where the Capability Manager determines that the employee should be issued with a First Written Warning, the Capability Manager will prepare an Improvement and Support Plan which will:
- (a) detail the professional shortcomings identified;
  - (b) give clear guidance on the improved sustainable standard of performance needed to exit the Capability Procedure;
  - (c) explain the support that will be provided and detail how the employee's performance will be monitored and supported over a period of time, referred to as the 'Stage I Assessment Period';
  - (d) identify a reasonable timetable for improvement; and
  - (e) state that a failure to improve may lead to dismissal.

The contents of the Improvement and Support Plan should be finalised following a conversation with the employee with a view to identifying appropriate support that can best assist the employee to improve and sustain their level of performance at the standard needed to exit the Capability Procedure.

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- 4.5.2 The length of the Stage 1 Assessment Period following a First Written Warning should normally be at least 6 working weeks and no more than 8 working weeks.
- 4.5.3 An appeal will not delay the commencement of the Stage 1 Assessment Period.
- 4.5.4 A Stage 1 Assessment Period Review Meeting will be held at the end of the Stage 1 Assessment Period. The CMAT HR Team will write to the employee inviting them to the meeting. The employee will be given at least 10 working days' notice in writing of such a meeting and will be advised in the letter that they have the right to be accompanied by a representative from a recognised Trade Union or a Work Colleague.
- 4.5.5 Any documentation that the employee wishes to rely on must be submitted to the Capability Manager at least 3 working days ahead of the Stage 1 Assessment Period Review Meeting. Failure to provide documentation within this timescale may mean that it will not be considered at the meeting.
- 4.5.6 The possible outcomes following the Stage 1 Assessment Period Review Meeting are either:
- (a) the Capability Manager concludes that the employee's performance is satisfactory, the employee will no longer be subject to this Policy and they will be notified in writing, within 5 working days of the decision. In such circumstances, the employee will be subject to the relevant Performance Review Policy and Procedure, as usual.

or

  - (b) the Capability Manager considers that the employee's performance continues to be unsatisfactory and the employee will be invited to a Stage 2 Capability Meeting. The employee will receive a formal letter giving 5 working days' notice of the meeting and explaining their right to be accompanied by a representative from a recognised Trade Union or a Work Colleague. This letter will include the relevant evidence from the Stage 1 Assessment Period.
- 4.5.7 For all employees, a First Written Warning will remain on record for 6 months. If, within that 6-month period, the required standard of performance is not sustained, the Capability Manager will meet with the employee and advise them that the Capability Procedure will be recommencing at the stage it was previously concluded and, following the meeting, the employee will be notified of this decision in writing.
- 4.5.8 The employee may appeal against a First Written Warning by submitting the CMAT Appeal Registration Form to the HR Manager within 10 working days of the date of the First Written Warning (see Section 7 – Appeals).

### **4.6 Action following decision to continue to assess under 4.4 (c) above**

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- 4.6.1 Where the Capability Manager determines that a Further Review Period (Stage 1) should be implemented, they will explain how the employee's performance will be monitored during that Further Review Period" and confirm the improvements that are expected and the support that will be provided.
  - 4.6.2 The length of the Further Review Period (Stage 1) should normally be at least 4 working weeks and no more than 6 working weeks.
  - 4.6.3 A reconvened Stage 1 Capability Meeting will be held at the end of the Further Review Period (Stage 1) . The employee will be given at least 10 working days' notice in writing of such a meeting and will be advised in the letter that they have the right to be accompanied by a representative from a recognised Trade Union or a Work Colleague.
  - 4.6.4 Any documentation that the employee wishes to rely on must be submitted to the Capability Manager at least 3 working days ahead of the reconvened Stage 1 Capability Meeting. Failure to provide documentation within this timescale may mean that it will not be considered at the meeting.
- 4.7 The Stage 1 Assessment Period (including any Further Review Period (Stage1) as outlined under 4.6 above must not exceed 12 working weeks.

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**5. STAGE 2 CAPABILITY MEETING**

- 5.1 On behalf of the Capability Manager, the CMAT HR Team will write to the employee at least 10 Working Days prior to the Stage 2 Capability Meeting and will send the employee an Updated Performance Report prepared by the Capability Manager which sets out the assessments, support and evaluation of the employee's performance during the Stage 1 Assessment Period (and Further Review Period where applicable) . The letter will advise the employee of their right to be accompanied by a Trade Union Representative or work colleague.
- 5.2 Any documentation the employee wishes to rely on during the Stage 2 Capability Meeting must be submitted to the Capability Manager at least 3 Working Days prior to the Stage 2 Capability Meeting.
- 5.3 At the Stage 2 Capability Meeting the employee will have an opportunity to respond to the contents of the updated Performance Report to discuss any continuing professional shortcomings, support and guidance required and how their performance will be monitored and supported going forward.
- 5.4 At the end of the Stage 2 Capability Meeting, having considered the employee's comments, the Capability Manager may:
- (a) conclude that the employee's performance is satisfactory, in which case the employee will no longer be subject to this Policy and they will be notified in writing, within 5 working days of the decision. In such circumstances, the employee will be subject to the relevant Performance Review Policy and Procedure, as usual. If the required standard of performance is not sustained at any time during the life of the First Written Warning, the Capability Manager will meet with the employee and advise them that the Capability Procedure will be recommencing at the stage it was previously concluded and, following the meeting, the employee will be notified of this decision in writing.

**or**

  - (b) decide that no, or insufficient, improvement has been made so that the employee's performance remains unsatisfactory, the employee will be given a Final Written Warning setting a Stage 2 Assessment Period of 4 Working Weeks. The employee will be informed that failure to make satisfactory sustainable improvement during the Stage 2 Assessment Period may result in their dismissal;

**or**

  - (c) conclude that that some progress has been made and that with a further period of monitoring an acceptable level of performance will be achieved, the Capability Meeting should be adjourned to allow the employee's performance to continue to be assessed over a "Further Review Period (Stage 2)" following which a reconvened Stage 2 Capability Meeting will be held.

Following any reconvened Stage 2 Capability Meeting the possible outcomes will be either (a) or (b) above.

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- 5.5 On behalf of the Capability Manager, the CMAT HR Team will write to the employee to confirm the outcome of the Stage 2 Capability Meeting within 5 working days of the date of such a meeting.
- 5.6 **Action following Final Written Warning issued under 5.4 (b) above**
- 5.6.1 The Capability Manager will explain how the employee's performance will be monitored during that Stage 2 Assessment Period and confirm the improvements that are expected and the support that will be provided.
- 5.6.2 The employee may appeal against a Final Written Warning by submitting the CMAT Appeal Registration Form to the HR Manager within 10 working days of the date of the Final Written Warning, setting out the full grounds of their appeal.
- 5.6.3 An appeal does not delay the commencement of the Stage 2 Assessment Period.
- 5.6.4 A Stage 2 Assessment Period Review Meeting will be held at the end of the Stage 2 Assessment Period. The CMAT HR Team will write to the employee inviting them to the meeting. The employee will be given at least 10 working days' notice in writing of such a meeting and will be advised in the letter that they have the right to be accompanied by a representative from a recognised Trade Union or a Work Colleague.
- 5.6.5 Any documentation that the employee wishes to rely on must be submitted to the Capability Manager at least 3 working days ahead of the Stage 2 Assessment Period Review Meeting. Failure to provide documentation within this timescale may mean that it will not be considered at the meeting.
- 5.6.6 The possible outcomes following the Stage 2 Assessment Period Review Meeting are either:
- (a) the Capability Manager concludes that the employee's performance is satisfactory, the employee will no longer be subject to this Policy and they will be notified in writing, within 5 working days of the decision. In such circumstances, the employee will be subject to the relevant Performance Review Policy and Procedure, as usual.
- or
- (b) the Capability Manager considers that the employee's performance continues to be unsatisfactory, the employee will be invited to a Final Capability Meeting as detailed in Section 6.
- 5.6.7 For all employees, a Final Written Warning for all employees will remain on their record for 12 months from the date that it is issued. If, within that 12-month period, the required standard of performance is not sustained, the Capability Manager will meet with the employee and advise them that the Capability Procedure will be recommencing at the stage it was previously concluded and, following the meeting, the employee will be notified of this decision in writing.

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- 5.6.8 The employee may appeal against a Final Written Warning by submitting the CMAT Appeal Registration Form to the HR Manager within 10 working days of the date of the Final Written Warning (see Section 7 – Appeals).

**5.7 Action following decision to continue to assess under 5.4 (c) above**

- 5.7.1 Where the Capability Manager determines that a Further Review Period (Stage 2) should be implemented, they will explain how the employee’s performance will be monitored during that Further Review Period (Stage 2) and confirm the improvements that are expected and the support that will be provided.
  - 5.7.2 The length of the Further Review Period (Stage 2) should normally be at least 6 working weeks and no more than 8 working weeks.
  - 5.7.3 A reconvened Stage 2 Capability Meeting will be held at the end of the Further Review Period (Stage 2) . The employee will be given at least 10 working days’ notice in writing of such a meeting and will be advised in the letter that they have the right to be accompanied by a representative from a recognised Trade Union or a Work Colleague.
  - 5.7.4 Any documentation that the employee wishes to rely on must be submitted to the Capability Manager at least 3 working days ahead of the reconvened Stage 1 Capability Meeting. Failure to provide documentation within this timescale may mean that it will not be considered at the meeting.
- 5.8 The Stage 2 Assessment Period (including any Further Review Period (Stage 2), as outlined under 5.7 above, must not exceed 12 working weeks.

**6. FINAL CAPABILITY MEETING**

- 6.1 On behalf of the Final Capability Manager, the CMAT HR Team will write to the employee at least 10 working days prior to the Final Capability Meeting to which they will have been invited to in accordance with paragraph 5.6 above. The letter will advise the employee of their right to be accompanied by a Trade Union Representative or work colleague. The CMAT HR Team will send the employee a copy of the Final Performance Report which has been prepared by the Capability Manager and which shall contain an evaluation of the employee’s performance and will detail any support provided during the Further Assessment Period.
- 6.2 Any documentation the employee wishes to rely on during the Final Capability Meeting must be submitted at least 3 Working Days prior to the Final Capability Meeting. As the Final Capability Manager will be a Directors’ Capability Panel, the documentation should be submitted to the CMAT HR Team who will ensure that the documentation is circulated to the Panel members.
- 6.3 At the Final Capability Meeting the employee will have an opportunity to respond to the contents of the Final Performance Report and to discuss any continued professional shortcomings.

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- 6.4 The CMAT HR Team will confirm the outcome of the Final Capability Meeting, on behalf of the Directors, in writing within 5 working days of the date of such a meeting.
- 6.5 Where the Final Capability Manager concludes that the standard of performance is satisfactory, the employee will no longer be subject to this Capability Policy and Procedure and the CMAT's relevant Performance Review Policy and Procedure will resume. However a Final Written Warning for all employees will remain on their record for 12 months from the date that it is issued and if, within that 12 months, the required standard of performance is not sustained the Capability Manager will recommence the Capability Procedure at the stage it was previously concluded and the employee will be notified of this in writing.
- 6.6 Where it is concluded that the employee's performance remains unsatisfactory and is not capable of sustainable improvement, the CMAT Directors, who are acting as Final Capability Manager, may determine that the employee's employment should be terminated in accordance with their contract of employment. In the event that the Directors determines that the employee's employment should be terminated, the CMAT HR Team will take the appropriate steps to terminate the employee's employment with notice. Alternative sanctions should also be considered, for example, redeployment, or demotion to a lower graded role, by mutual agreement. Alternative employment in these circumstances does not have to be in equivalent terms and conditions to the current post and protection of salary will not apply. A decision to dismiss will always be the last resort.
- 6.7 The employee may appeal against a decision to dismiss them with notice by completing the CMAT Appeal Registration Form and submitting this to the HR Manager within 10 working days of being sent the notice of termination, setting out the full grounds of their appeal.
- 6.8 An appeal will not delay the commencement of the notice period and/or the expiry of such notice.
- 6.9 In the event that the employee's employment is terminated in accordance with Paragraph 6.6 above:
- (a) if the employee's contract of employment contains a garden leave clause the CMAT may exercise that clause so that the employee is not required to attend the School/CMAT Central Offices during the notice period but remain employed and so bound by the terms of their contract of employment until the expiry of the notice period; **or**
  - (b) if the employee's contract of employment contains a payment in lieu of notice clause the CMAT may exercise that clause to bring the employee's contract to an end with immediate effect.



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**7. APPEALS AGAINST DECISIONS MADE BY CAPABILITY MANAGER AND/OR FINAL CAPABILITY MANAGER**

- 7.1 An appeal against a decision of the Capability Manager or Final Capability Manager can be made at each stage of the procedure set out at Paragraphs 4, 5 and 6 above which will be dealt with in accordance with the CMAT's Appeals Policy and Procedure as detailed below.
- 7.2 In all cases the employee must comply with the CMAT's Appeals Policy and complete and submit the CMAT Appeal Registration Form. The appeal must be sent to the HR Manager and set out the full grounds of the appeal in detail. The Appeal Meeting will normally be held within 20 working days of the appeal being received by the HR Manager.
- 7.3 An appeal will be heard by the relevant Appeal Manager appointed in accordance with Paragraph 3 within 20 working days of the HR Manager receiving the completed Appeal Registration Form.
- 7.4 On behalf of the Appeal Manager, the CMAT HR Team will write to the employee inviting them to an Appeal Meeting and giving them 10 Working Days' notice of such a meeting and notifying the employee of their right to be accompanied by a Companion. The letter will confirm what evidence the Appeal Manager will rely on at the Appeal Meeting. If written evidence is to be relied upon, the employee will be provided with copies of such evidence not less than 5 working days before the Meeting to enable them to prepare for the Appeal Meeting. If oral evidence is to be relied upon at the Appeal Meeting, the employee will be given details of who will be in attendance.
- 7.5 The employee will be given an opportunity to comment on the evidence provided during the Appeal Meeting whether such evidence is given in writing or orally. The Appeal Manager will consider the submission provided by the employee and by the Capability Manager or Final Capability Manager (as appropriate) in order to determine whether the relevant decision was fair and reasonable.
- 7.6 Any further documentation not submitted with the Appeal Registration Form, must be submitted by the employee to the Appeal Manager at least 3 working days prior to the Appeal Meeting. In the case of an appeal against dismissal, where the Appeal Manager is a Directors' Appeal Panel, the documentation should be submitted to the CMAT HR Team who will ensure that the documentation is circulated to the Panel members.

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- 7.7 On behalf of the Appeal Manager, the CMAT HR team will confirm the outcome of the Appeal Meeting in writing to you within 5 working days of the date of the Appeal Meeting. The decision of the Appeal Manager is final and there will be no further right of appeal. The potential outcomes of an Appeal Meeting are:
- (a) the Appeal Manager may uphold the decision of the Capability Manager or Final Capability Manager; **or**
  - (b) the Appeal Manager may uphold the employee's appeal and overturn the decision of the Capability Manager or Final Capability Manager. In such circumstances, the matter will usually be referred back to the Capability Manager or Final Capability Manager to determine the further support and guidance needed by the employee to enable them to improve and sustain their level of performance at the standard needed to exit the Capability Procedure and/or the Appeal Manager may substitute a different warning, where it is considered appropriate.
- 7.8 Should an appeal against dismissal be successful, the employee will be reinstated with no break in their Continuous Service.

**8. DIRECTORS' PANELS**

- 8.1 Directors' Capability and Appeal Panels shall, where possible, usually comprise three Directors not previously involved in the matter. The Chair or Vice-Chair will not usually be on any such Panel unless there are insufficient numbers of Directors not previously involved in the matter.
- 8.2 In the exceptional event that there are insufficient numbers of Directors available to participate in a Directors' Capability or Appeal Panel, the CMAT may appoint appropriate associate members solely for the purpose of participating in the relevant Directors' Capability or Appeal Panel on the recommendation of the Diocesan Education Service.

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**9. COMPANION (see Definitions section)**

- 9.1 If an employee is the subject of any Capability Meeting under this Policy and Procedure they may be accompanied by a Companion.
- 9.2 The employee must let the relevant Manager know who their Companion will be at least one working day before the relevant meeting.
- 9.3 If the employee has any particular reasonable need, for example, because they have a disability, they may also be accompanied by a suitable helper.
- 9.4 The employee's Companion can address the meeting in order to:
- (a) put the employee's case.
  - (b) sum up the employee's case.
  - (c) respond on the employee's behalf to any view expressed at the meeting; and
  - (d) ask questions on behalf of the employee.
- 9.5 A Companion can also confer with the employee during the meeting.
- 9.6 A Companion has no right to:
- (a) answer questions on the employee's behalf.
  - (b) address the meeting if the employee does not wish them to; or
  - (c) prevent the employee from explaining their case.
- 9.7 Where the employee has identified their Companion and the employee has confirmed in writing that the Companion cannot attend the date or time set for a meeting, the meeting will be postponed for a period not in excess of five working days from the date set by the CMAT. Should the employee's Companion subsequently be unable to attend any rearranged date, the meeting may be held in their absence or written representations will be accepted.

**10. TIMING OF MEETINGS**

- 10.1 The aim is that meetings under this Capability Policy and Procedure will be held at mutually convenient times but depending on the circumstances meetings may:
- (a) need to be held when the employee was timetabled to teach (if that is appropriate to their role);
  - (b) normally not be held during planning, preparation and administration time (if this is appropriate to the employee's role).
  - (c) exceptionally be held after the end of the School/working day.
  - (d) not be held on days on which the employee would not ordinarily work.
  - (e) be extended by agreement between the parties if the time limits cannot be met for any justifiable reason.

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**11. VENUE FOR MEETINGS**

- 11.1 The relevant Manager may hold the meeting off the School or Central Offices site to minimise any distress for the employee.
- 11.2 Meetings may also be held virtually.

**12. MONITORING**

- 12.1 The Policy will be monitored to ensure consistency of application and adherence to Equalities legislation.