



Capability Procedure

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Capability Procedure

Contents

1. Purpose	3
2. Applicability	3
3. Roles and Responsibilities	4
4. Principles	5
5. Informal Pre-Capability Support Plan	6
6. Formal Stage One – Capability Meeting	7
7. Formal Stage Two – Formal Review Meeting	10
8. Formal Stage Three - decision hearing	11
9. Formal Stage Four – Appeal	12
10. Authority to act under the Capability Procedure	14
11. Sickness	15
12. Review	15
Annex 1 - Support Plan	16
Annex 2 - Order of proceedings for Capability Procedure Decision Hearing	17
Annex 3 - Order of proceedings for a Capability Procedure Appeal Hearing	20

Capability Procedure

1. Purpose

1.1 The purpose of this procedure is to encourage and ensure colleagues of Co-op Academies Trust ("the Trust") achieve and maintain acceptable and agreed standards of performance and perform their jobs to the best of their ability. It is designed to ensure fairness & consistency and to provide support for colleagues to improve their practice.

1.2 Capability refers to a colleague's ability to perform the work expected of them to the level required in fulfilment of agreed contractual duties. This may be assessed by reference to a colleague's skill, aptitude, or ability in relation to the job that they are employed to do, and this appears to be because the colleague 'can't' (rather than 'won't') do something or may need the appropriate support and training to reach the required standards.

1.3 Very few colleagues choose to perform their work badly, make mistakes or fail to complete tasks. Consequently in the event that a colleague is underperforming, a manager should examine the circumstances to identify underlying causes and provide additional support to the colleague to help them to improve to the required standard of performance.

1.4 This Procedure will be applied with due consideration to the Trust's Equality, Diversity & Inclusion Policy and our co-operative values.

2. Applicability

2.1 This procedure applies to all colleagues employed by the Trust on a permanent contract with the exception of those staff within their Induction Period and ECTs. It applies to colleagues employed for over 12 months on a fixed term or temporary basis. It does not apply to colleagues employed on a temporary or fixed term basis for less than 12 months, agency workers, contractors or volunteers.

2.2 This procedure is used to manage under-performance, because of lack of aptitude, skill and/or ability, which the performance management process has been unable to address.

2.3 Where the colleague's health is affecting their performance this may be dealt with under the Supporting Attendance Policy.

2.4 This procedure is not intended to be used where poor performance is the result of carelessness, wilful neglect of duty, deliberate failure to carry out reasonable directions or other such actions which can be considered under the Trust's Disciplinary Procedure.

2.5 As part of day to day practice, managers may from time to time have discussions about performance with a teacher and that these discussions do not form part of a capability process.

2.6 Where, after further investigation or discussion, it is found that the issue is one of incapability due to ill health or disability, or to misconduct, action under the Capability Procedure may stop and further action will be considered under another appropriate procedure if required.

2.7 The Capability Procedure should only be invoked where there is clear triangulated evidence of sustained underperformance which the documented and agreed support offered as part of the Performance & Professional Development Review (PPDR) process has failed to address.

3. Roles and Responsibilities

3.1 We are committed to ensuring consistency of treatment and fairness and will abide by all relevant legislation.

3.2 Our academies will help colleagues' career and professional development through education, training, information and other frameworks that support performance management.

3.3 Headteachers / Principals / Managers are responsible for:

- Ensuring that they agree realistic and measurable development priorities as part of usual PPDR procedures
- Supporting staff to achieve the development priorities agreed and the required level of performance
- Seeking advice from HR at an early stage should concerns regarding a colleague's performance arise.
- Implementing the parts of this procedure which fall within their area of responsibility (e.g. informal handling of under-performance, referring to the Headteacher / Principal if required, supporting team members to complete a Support Plan agreed under the formal procedure)

3.4 Headteachers / Principals are responsible for providing information on formal capability proceedings (i.e. not including Pre-Capability Support Plan stage) in relation to teaching staff (inc. leaders), if this is asked for in a reference request by another school. This may include providing information on the concerns which gave rise to capability proceedings, the duration of the proceedings, and the outcome. This may include information on ongoing matters. Please seek advice from your Regional HR Manager.

3.5 Colleagues will take responsibility for and be accountable for their actions, in line with their contractual duties and co-operative values. They are responsible for complying with the requirements of this procedure. Where a colleague is suffering from an ill health or

medical condition, or other personal circumstances that are affecting their performance at work they are encouraged to speak to their manager as soon as possible.

3.6 A colleague may be accompanied by a trade union representative or work colleague at any meetings taking place under this Capability Procedure, as although there is no right to be accompanied at the informal stage, the Trust recognises the value of trade union involvement if matters have not been resolved within usual PPDR discussions. The colleague must provide notification in advance regarding who will be accompanying them.

The companion should be allowed to address the meeting in order to:

- put forward the colleague's case
- sum up the colleague's case
- respond on the colleague's behalf to any view expressed at the hearing
- confer with the colleague during the meeting.

The companion does not, however, have the right to answer questions on the colleague's behalf, address the hearing if the colleague does not wish it, or prevent the employer from explaining their case.

4. Principles

4.1 We need the effective performance of all colleagues to deliver the aims and vision of each academy, and the Trust as a whole. To achieve this, each academy aims to ensure that effective recruitment is undertaken and performance expectations are clearly defined through the PPDR process, performance is monitored and colleagues are given appropriate feedback, training and support.

4.2 Colleagues should be provided with appropriate information, support and advice during their Induction Period to help them achieve the level of performance expected.

4.3 Our academies will try to resolve initial concerns around performance as part of the usual PPDR process. However, where this approach has been ineffective or the performance concerns are more serious, action under the Capability Procedure will be considered.

4.4 Under the Capability Procedure, the colleague will be invited to a meeting to be advised of the concerns arising from their performance and given the opportunity to respond and present relevant information.

4.5 The colleague will normally be given at least 5 days' notice for informal meetings, and 10 working days' notice of all formal meetings, under this procedure. Wherever possible, meetings will be held at a mutually agreed time, date and venue. All parties must ensure that there are no unreasonable delays to the process.

4.6 All reasonable efforts will be made to accommodate any disability or language issues affecting the colleague or their representative, these will be reasonably addressed so that proceedings can take place fairly.

4.7 Where there is an indication that underperformance may be due to a disability or health issues, the manager should contact their Regional HR Manager in order to receive advice in line with the Equality Act 2010 and/or to organise a referral to occupational health.

4.8 The Capability Procedure will be managed with due regard to the need for individual confidentiality.

4.9 The time-scales within this procedure may be amended by mutual consent, taking into consideration the needs of all parties and the welfare of students.

4.10 Please note extra care should be taken when distributing papers in advance of a hearing. In line with GDPR, sensitive personal data must be processed securely and all sensitive information should therefore be hand delivered or posted by recorded delivery with a return address in case of any postal issues. Please ensure all tracking evidence is retained to confirm direct receipt from intended recipients.

5. Informal Pre-Capability Support Plan

5.1 Any concerns regarding a colleague's performance should be discussed with them at the earliest opportunity, and managers should try to resolve issues of minor incapability in a supportive manner as part of the usual PPDR process.

5.2 Where this has not succeeded in improving performance, or where the underperformance is more serious, an informal Pre-Capability meeting should be organised under the Capability Procedure.

5.3 The colleague should be informed of the reason for the meeting, and be given five days' notice, in writing. It should be made clear that this is not part of the formal capability process and this will not be noted in references. Although it is an informal meeting, they may be accompanied by a work colleague or trade union representative (see 3.6). The colleague must provide notification in advance regarding who will be accompanying them. A representative from HR may also attend.

5.4 This meeting should:

- Introduce the issue - give clear feedback about the nature and seriousness of the concerns.
- Set the level – the manager should bring to the attention of the colleague how they are failing to meet the required level of performance and of the concerns that exist.

- Seek an explanation - provide the colleague with an opportunity to comment and discuss the situation, to provide information on any issues impacting on why they are not meeting the required level of performance, and to discuss the acceptability of the explanation(s).
- Require improvement - advise the colleague what they are expected to do to bring about improvements in performance.
- Document support - outline any management action and support (*e.g. coaching, mentoring, structured observations, training, professional courses, stress risk assessment, referral to support agencies*) that will be provided to help address those specific concerns.
- Document timescales - discuss & document a reasonable time limit within which the colleague can be expected to demonstrate improvement, making clear how, and by when, progress will be reviewed. The amount of time must be reasonable and will need to reflect the seriousness of the concerns.
- Warn of the consequences - of failure to improve, to meet and sustain the level of performance required, such as formal action under the Capability Procedure.

5.5 The main points discussed should be noted and a copy provided to the colleague, along with the agreed Pre-Capability Support Plan (see Annex 1).

5.6 A review meeting should be convened at the end of the documented time period and, if performance has not improved, a referral should be made to the Headteacher/Principal that the matter may need to be considered under Formal Stage One of the Capability Procedure (see section 6 below).

6. Formal Stage One – Capability Meeting

6.1 If a colleague's performance continues to be unsatisfactory, or where unsatisfactory performance is sufficient to warrant moving straight to formal action, the colleague should be invited to a formal meeting to discuss the concerns.

6.2 The Headteacher/Principal should write to the colleague inviting them to a meeting and the colleague should be given at least 10 working days' notice of the meeting. The notification letter should include:

- The time and place of the meeting
- A statement of the concerns regarding their performance
- The possible consequences of the meeting
- Their right to be accompanied by either a work colleague or trade union representative. The colleague must provide notification in advance regarding who will be accompanying them.
- Copies of any written evidence that might be relied upon

6.3. The purpose of this meeting is to establish the facts. The colleague should be given the opportunity to respond to, or refute, the concerns about their performance and make any relevant representations. This may provide new information or a different context to that which has already been collected. The colleague will be reminded of any informal discussions, Pre-Capability Support Plan and the steps already taken to support an improvement in performance. Specific reference will be given to the performance management procedure along with the agreed objectives and any support agreed to meet those objectives. Colleagues may comment on the support which they have received.

6.4. Every effort should be made to reach agreement, however if the colleague disagrees that they should be in the Capability Procedure or at a particular stage within the Procedure, the Trust has the right to impose it since the Capability Procedure forms part of a colleague's terms & conditions of employment. The manager should seek advice from their Regional HR Manager in this situation. The points raised by the colleague should be documented as part of the Stage One process. Equally, the colleague has the right to raise a grievance under the Grievance Procedure, along with the right to trade union representation.

If, during the course of an ongoing capability process, a colleague initiates a process under the Trust's policies or procedures, or is being managed under the Trust's Disciplinary Procedure or Supporting Attendance Policy, advice must be sought from a Regional HR Manager.

These situations shall be considered on a case by case basis and it may be appropriate to:-

- temporarily suspend one process whilst dealing with another, or
- continue without temporarily suspending processes and deal with the matters separately.

Due consideration will be paid to the ACAS Code of Practice on disciplinary and grievance procedures.

6.5 The manager leading the meeting will take a decision regarding the required action from one of the following options. Where:

- There are insufficient grounds for pursuing the capability issue, the concerns will be addressed informally and therefore formal action under the Capability Procedure will not proceed. In this instance, a note should be sent to confirm that the colleague has not entered formal proceedings.
- It is found that the concerns are as a result of misconduct or ill health, action under the Capability Procedure may stop and further action will be taken under another appropriate procedure if required.
- Further investigation proves necessary: the meeting may be adjourned and then reconvened once the investigation is complete.

- There is evidence for the concerns: the meeting will continue and will address the points outlined in section 6.6 below.

6.6 Where the meeting continues, it should address the following:

- Identify the areas of concern regarding performance.
- Confirm the suspension of the usual PPDR Policy.
- Give clear guidance on the improved standard required, this must include setting objectives, identifying success criteria or the evidence that will be used to determine improved performance.
- Set out the timetable for improvement and discuss & document how performance will be monitored and reviewed. The timetable will depend on individual circumstances and should be agreed by both parties wherever possible. It should be reasonable and proportionate to allow the opportunity for improvement to take place but should not be excessively long. A guide for the monitoring and review period at Stage One is up to thirteen weeks. *[Note: in serious cases where it can be demonstrated that the education of students and/or the efficient and effective running of the Trust or an academy is being jeopardised or undermined it is expected that the period for improvement would be no more than four working weeks at each stage].*
- Issue a Support Plan (Annex 1), setting out the concerns, the agreed actions and timescales, the support that will be provided, and making clear the consequences of a failure to improve within the set period.

6.7 At the meeting consideration should be given regarding any reasonable support or training that would assist the colleague in achieving a satisfactory standard of performance.

6.8 Reasonable measures to assist the colleague to meet agreed objectives and perform at the level expected should be discussed and documented. The measures may include any or all of the following (provided they are available and do not adversely affect the academy and its pupils/students):

- Changes to working practices within the terms of the colleague's job description;
- Increased supervisory support for a specified period of time
- Work shadowing a competent colleague
- Modified workload or tasks for a specified period of time
- Further training
- Other reasonable relevant support

6.9 An important part of the support offered to a teacher would be a clearly defined amount of classroom observation with structured oral and written feedback. The amount of classroom observation should be discussed and, where possible, agreed with the teacher and their trade union representative.

6.10 The colleague will receive a letter confirming the outcome of the meeting, including details of the Support Plan if issued, within 5 working days of the meeting. Notes of the meeting should be taken and a copy provided to the colleague, who should be asked to sign these and who will be given the opportunity to add comments regarding matters of accuracy.

6.11 A formal review meeting should be held at the end of the specified monitoring and review period (see section 7).

7. Formal Stage Two – Formal Review Meeting

7.1 A formal review meeting will be held at the end of the monitoring and review period in order to evaluate whether sufficient improvement in performance has been made.

7.2 The colleague should be given 10 working days' written notice of the meeting which must include:

- The time and place of the meeting
- Confirmation of the performance concerns that are to be reviewed
- The possible consequences of the meeting
- Their right to be accompanied by either a work colleague or trade union representative (the colleague must provide notification in advance regarding who will be accompanying them).
- Copies of any written evidence that might be relied upon

7.3 At the review meeting the person(s) chairing the meeting and colleague will discuss the monitoring and review period and any support provided. The person(s) chairing the meeting will assess whether the colleague's performance has improved sufficiently. The colleague will have the opportunity to comment and provide further evidence on their performance during this period.

7.4 Following discussion at the meeting, the person(s) chairing the meeting may decide that:

- a) The colleague's performance has improved sufficiently and no further action is required under the procedure. The colleague will be advised that satisfactory performance must be maintained and that if performance becomes unsatisfactory again under the performance management policy further action may be taken under the Capability Procedure. If this occurs within 12 months, it may take into account action taken previously.
- b) That some progress has been made and there is confidence that more is likely, so the monitoring and review period may be extended. The person(s) chairing the meeting will confirm the continuing areas of concern and the improvement required. Consideration will be given to any further support that can be provided. A further period for monitoring and review will be given, normally of no more than four weeks. At the end of this period a further review meeting will be convened.
- c) That there has been no, or insufficient improvement made and performance remains unsatisfactory so a second Support Plan will be discussed & documented. The colleague should be informed that failure to improve sufficiently within the set timescale, may result in dismissal. The person(s) chairing the meeting will confirm the continuing areas of concern and the improvement required. Consideration will be given to any further support that can be provided. A further monitoring and review period will be given, which must be a minimum of four weeks and a length

of time which is reasonable to enable support measures to be put in place and an opportunity for improvement to be achieved. At the end of this period a further review meeting will be convened.

7.5 The colleague will be informed of the outcome of the review meeting in writing, including details of the Support Plan, normally within five working days of the meeting. Notes of the meeting will be taken and the colleague provided with a copy.

7.6 Where a second Support Plan is issued (7.4 c), a further review meeting will take place at the end of the second monitoring and review period, where the following decisions can be made:

- The colleague has reached a satisfactory standard of performance and no further action is required under the procedure (see 7.4 a).
- There has been no, or insufficient improvement made and performance remains unsatisfactory, the person(s) chairing the meeting will arrange a dismissal hearing under stage three.

7.7 Every effort should be made to reach agreement, however if the colleague disagrees that they should be in the Capability Procedure or at a particular stage within the Procedure, the Trust has the right to impose it since the Capability Procedure forms part of a colleague's terms & conditions of employment. The manager should seek advice from their Regional HR Manager in this situation. The points raised by the colleague should be documented as part of the Stage Two process. The colleague may add their own comments to this documentation.

8. Formal Stage Three - decision hearing

8.1 A hearing to consider dismissal on the grounds of capability will be arranged where the colleague does not make a sufficient improvement in performance or meet agreed objectives during the specified monitoring and review period(s). Further details on who should Chair the hearing is given in section 10, and details of the procedure for the hearing at Annex 2.

8.2 The colleague will normally be given 10 working days' notice in writing of a decision hearing. The Chair of the hearing will confirm arrangements to the colleague in writing, including:

- The deficiencies in the colleague's performance and the reasons for contemplating dismissal
- The date, time and location of the hearing. If the date / time is not convenient for any party an alternative date will be agreed, this will not normally be more than 5 working days after the date originally proposed by the Chair.
- The name of the person (or panel) chairing the hearing
- The right to be accompanied and/or represented by a trade union representative or work colleague. The colleague must provide notification in advance regarding who will be accompanying them.

- The requirement to provide the Chair with a copy of the documents that they will be relying upon and the names of any witnesses that they will be calling at the hearing at least 5 working days before the hearing
- Advise the colleague that the hearing could result in dismissal
- Copies of documents that the manager presenting the case will refer to at the hearing, and names of any witnesses that they will call.

8.3 At the hearing the person(s) chairing Stage Two will be given the opportunity to put forward their case for dismissal, and the colleague will be given the opportunity to present their case against the dismissal. Both parties may call witnesses and ask questions. HR will attend the hearing to provide procedural advice.

8.4 The hearing will normally be adjourned whilst the panel hearing the matter (see section 10) consider the evidence put forward and reach a decision.

8.5 The outcome of the hearing may be either dismissal on the grounds of lack of capability or alternative action in the light of evidence presented at the hearing (see 8.7). Where a colleague is dismissed they should be dismissed with appropriate notice. The colleague will be notified in writing of the outcome normally within 5 working days and of their right of appeal.

8.6 A postponement may be granted if the colleague or their representative is unable to attend on the proposed date. A postponement should not be for more than 5 working days after the original date proposed, however, an extension to this time limit can be made by mutual agreement. Where a hearing is rearranged and the colleague is unable to attend a second time, the hearing will normally convene, as arranged, and a decision taken in the colleague's absence.

8.7 Alternative actions might include:

- a further period of monitoring and review. If the required level of performance is not achieved and this leads to a further dismissal hearing it should be heard, if possible, by the same person / panel.
- redeployment to a different post within the academy if a vacant existing post is available as an alternative to dismissal; if the post is on a lower grade there will be no entitlement to protection of salary.
- reduction of responsibility; this may be linked to the redeployment option or could apply to the post currently held by the colleague – again salary protection will not apply in such circumstances.

9. Formal Stage Four – Appeal

9.1 A colleague is entitled to appeal against the decision to dismiss due to capability.

9.2 The appeal should be on the basis of one of the following grounds:

- The procedure - a failure to follow procedure had a material effect on the decision
- The decision - the evidence did not support the conclusion reached

- The penalty - was too severe given the circumstances of the case
- New evidence
- Bias or discrimination

9.3 The appeal must be made in writing, stating the grounds for the appeal, within five working days of receiving written notification of the decision to dismiss.

9.4 The appeal will be heard as soon as possible and not normally later than four weeks after being received.

9.5 The colleague will normally be given 10 working days' notice, in writing, of the date of the appeal hearing. This notification will give the name of the person chairing the appeal hearing (and the names of panel members - see section 10). It will remind the colleague of their right to be accompanied at the hearing by either a trade union representative or work colleague. The colleague must provide notification in advance regarding who will be accompanying them. An HR representative who has not previously been involved will attend the hearing to provide procedural advice.

9.6 Both parties must indicate at least 5 working days in advance of the appeal hearing which, if any, witnesses they wish to call and provide copies of any documentation that will be relied upon at the hearing. In exceptional circumstances an alternative time-scale may be agreed.

9.7 The appeal hearing should consider the evidence presented in relation to the grounds for appeal put forward by the colleague. See Annex 3.

9.8 The Chair of the decision hearing will attend the appeal to present the management case in relation to the grounds of the appeal. They may be accompanied by an HR colleague. The person(s) who acted at stages 1 and 2 in the procedure may be called to attend as a witness.

9.9 The colleague will be able to present evidence on the grounds of the appeal. Management will have the opportunity to respond.

9.10 The appeal hearing may:

- confirm the decision of the decision hearing
- overturn the decision of the decision hearing, and specify an additional period of time within which performance must improve
- may recommend alternative action (for example, redeployment).

9.11 The colleague will be informed of the appeal decision in writing, normally within 5 working days. The decision of the appeal hearing is final.

10. Authority to act under the Capability Procedure

These levels of authority are in line with the Trust's Scheme of Delegation. AGC - Academy Governing Committee

At stages 3 and 4 there is an expectation that persons have not previously been involved.

Group of colleague being managed under this Procedure	Pre-Capability Support Plan	Responsible for Stage 1 & 2 Meetings	Stage 3 Hearing	Stage 4 Appeal
Trust CEO	Chair of the Trust Board	Chair of the Board, or nominated delegate	Panel of three from the Trust Board	Panel of three from Trust Board
Headteacher / Principal	Regional Director	Chair of Governors and/or Regional Director or Trust CEO	Panel of three which may include Trust CEO and members of the Trust Board, and/or other senior colleagues appointed by the Trust CEO	Panel of three from the Trust Board
All other academy based colleagues	Line Manager	Headteacher / Principal	Panel of three from the AGC, or two members of the AGC and a member of senior Trust staff e.g. CEdO	Panel of three from the AGC, or two members of the AGC and a member of senior Trust staff e.g. CEdO
Members of the Trust's Executive Leadership Team (ELT)	Trust CEO	Trust CEO	Panel of three from the Trust Board	Panel of three from the Trust Board
All other central team colleagues	Line Manager	Relevant ELT member, or an appropriately senior nominated delegate	Trust CEO, or member of Trust Board	Panel of three from Trust Board

Note: whilst it would be usual to draw panel members from an individual academy's AGC, in exceptional circumstances the Trust may appoint Governors from another Trust academy in order to ensure neutrality or expediency of proceedings.

11. Sickness

11.1 If long term sickness appears to have been triggered by the commencement of monitoring or the formal Capability Procedure, the case will be dealt with in accordance with the Supporting Attendance Policy and monitoring and/or formal procedures resumed on return to work. In some cases, it may be appropriate for formal procedures to continue during a period of sickness absence (e.g. a meeting / hearing to discuss performance / capability may take place, if the colleague is well enough to attend). If a colleague is absent during the capability process, upon their return it will recommence from the same point i.e. the process will not restart.

12. Review

12.1 This procedure will be reviewed to respond to any changes in employment legislation, and in any event at least every three years. This Procedure will be monitored in conjunction with the Trust and union representatives annually, including an Equality Impact Assessment.

Annex 1 - Support Plan

Colleague name:	
Date of meeting:	

Concern / Area of performance for review	Level of improvement required*	Support to be provided (nature of support, who should make arrangements)	Timescales for improvement / review date(s)

**Actions agreed under this improvement note / support plan should be "SMART": specific, measurable, achievable, relevant, time-related, in other words it should be very clear what is required, by whom and by when, and clear how this will be evaluated and reviewed.*

This plan has been agreed to provide support in improving performance as part of
(*Pre-Capability discussions / the Capability Procedure Stage X*) (delete as applicable).

Colleague comments (optional):

Signed:
Colleague

Date:

Signed:
Manager

Date:

Annex 2 - Order of proceedings for Capability Procedure Decision Hearing

Introduction by the Chair

- Introduce those present, and explain why they are there. A note taker should be appointed to record the proceedings and an HR representative may be present throughout the hearing.
- Explain the purpose of the meeting i.e. to establish as fully as possible the facts, and to consider the case for dismissal in accordance with the Trust's Capability Procedure.
- Explain how the meeting will be conducted

Statement of capability issue

- The manager presenting the case for dismissal should state precisely what the capability issue is and outline the case for dismissal by going through the evidence that has been gathered.
- Ensure that the colleague and his/her companion are allowed to see any statements made by witnesses and to raise questions. All written witness statements will be included in the hearing documentation.

Colleague's reply

- Give the colleague the opportunity to state their case against dismissal, and to respond to the evidence that has been put forward. They should be able to ask questions, present their own evidence and call witnesses. The colleague and their companion should be given the opportunity to confer privately if necessary.
- Ensure that Trust representatives have (a) seen any witness statements put forward and (b) have the opportunity to raise questions of the colleague or witnesses.

General questioning and discussion

- The panel hearing the matter should:
 - Use this stage to establish all the facts
 - Ask the colleague if there are any special circumstances to be taken into account
 - Keep the approach formal and polite, and encourage the colleague to speak freely; it should be a two-way process.
 - Use questions to clarify the issues and check that what has been said is understood.

- If new facts emerge, it may be necessary to adjourn the hearing to investigate. In this case the hearing will be adjourned and will be rearranged at a time agreeable to both parties.

Summing up

- Chair asks the manager presenting the case to sum up
- Chair asks the colleague to sum up

Adjournment before decision

- Adjourn before a decision is taken about whether dismissal is appropriate, to allow reflection and proper consideration. It also allows for further checking of any matters raised, particularly if there is a dispute over facts.

Giving the decision

- Unless a mutual agreement has been reached otherwise, the meeting will be reconvened and the Chair will give a summary and concluding remarks
- The colleague will be informed of the outcome of the hearing and the right of appeal.
- The decision will be communicated in writing within 5 working days.

Annex 3 - Order of proceedings for a Capability Procedure Appeal Hearing

This should be read in conjunction with section 9 of the Capability Procedure. This document is intended as a guide. In certain circumstances all parties may agree to a slightly different order at the start of the Hearing e.g. for the reasons for the original hearing's decision making to be set out first.

1. Introduction

- The Chair will introduce those present, and explain why they are there. Someone who is not involved in the case should be appointed to take notes on the proceedings. Human Resources may be present throughout the hearing, but will not present the management case.
- Explain the purpose of the meeting i.e. in line with the Trust's Capability Procedure, to understand as fully as possible the facts of the appeal, and to consider whether the decision of the Stage 3 Decision Hearing should be upheld or not
- Explain how the meeting will be conducted

2. Statement of the appeal

- The colleague will state precisely what the grounds for appeal are, and present the evidence in support of this.

3. Decision maker's reply

- The person, or a representative from the panel, making the original decision will be given the opportunity to respond

4. General questioning and discussion

- The panel hearing the appeal should:
 - Use this stage to establish all the facts
 - Ask questions to clarify the issues and check that what has been said is understood
 - Keep the approach formal and polite, and encourage the participants to speak freely; it should be a two-way process
- If new facts emerge, it may be necessary to adjourn the hearing to investigate. The hearing will be reconvened at a time agreeable to both parties.

5. Summing up

- Chair asks the original decision maker to sum up
- Chair asks the colleague to sum up

6. Adjournment before decision

- Adjourn so the panel can reflect and consider their decision
- It also allows for further checking of any matters raised, particularly if there is a dispute over facts

- The appeal panel may confirm or overturn the decision of the original decision hearing, or may recommend some alternative action

7. Giving the decision

- Unless a mutual agreement has been reached otherwise, the meeting will be reconvened and the colleague be informed of the outcome of the appeal hearing
- The decision will be communicated in writing within 5 working days
- The decision of the appeal hearing is final