

# CHULMLEIGH ACADEMY TRUST

## CAPABILITY POLICY

The Policy was adopted by the Directors on: 5<sup>th</sup> February 2020

### Delegated responsibilities

The Board of Directors (acting by the Personnel Committee) has agreed to delegate the responsibility as follows:-

#### Responsibility for Formal Capability Hearings which may lead to dismissal:

To the Executive Headteacher                      Yes/No                      Date agreed \_\_\_\_\_

To the First Committee of Directors                      Yes/No                      Date agreed \_\_\_\_\_

#### Responsibility for suspension of employees:

To the Executive Headteacher                      Yes/No                      Date agreed \_\_\_\_\_

To the Chair of Directors                      Yes/No                      Date agreed \_\_\_\_\_

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## **1 INTRODUCTION AND PURPOSE**

### **1.1 Responsibility for Optimising Staff Performance and Managing Capability**

It is the responsibility of the Board of Directors and the Executive Headteacher to take appropriate steps to ensure that employees achieve and maintain the standard of performance required of them. The Board of Directors and Headteacher are responsible for ensuring that employees are aware of this Policy and are made aware of any concerns regarding their capability to do their jobs.

### **1.2 Aim of this Policy**

This Policy is to support and manage employees in a way that is fair, effective and consistent and in accordance with good management practice during periods where there are concerns about their capability and performance. The aim of this Policy is to provide clear guidance on addressing capability concerns to effect a sustained improvement in the employee's performance through a supportive approach.

### **1.3 Coverage**

1.3.1 This Policy applies to all employees at the Trust, including the Executive Headteacher and will be made available to every employee through the Trust's internal communication systems.

1.3.2 For ease of reference, if "(Chair of Directors)" is following the words 'Executive Headteacher', the Chair of Directors or nominated representative will manage this policy in relation to issues concerning the Executive Headteacher.

### **1.4 Time Limits**

The time limits included in this Policy may be varied by mutual agreement or where necessary. If it is necessary then reasons will be given for any change.

## **2 POLICY**

### **2.1 Application of the Policy**

This Policy:

2.1.1 will be applied in accordance with the Equality Act 2010;

2.1.2 will be consistently and fairly applied to employees across the Trust;

2.1.3 will be conducted with respect for the confidentiality of employees and in accordance with the Data Protection Act 2018;

2.1.4 will be based on open communication between employees and their managers; and

2.1.5 is explicit about the responsibilities for all involved.

### **2.2 Duty to Act**

2.2.1 The Board of Directors values the contribution of all its employees in the provision of education for pupils at the Trust. The Board of Directors has a duty to provide an effective education to the pupils and to minimise disruption to effective learning.

- 2.2.2 Whilst recognising that each employee may need different training and support at different times during his/her career, the Board of Directors is committed to ensuring that each employee performs effectively and at the appropriate level in line with his/her contract. This will be achieved through:
- 2.2.2.1 clarity of the required standards of performance;
  - 2.2.2.2 monitoring the performance of employees within the Trust; and
  - 2.2.2.3 supporting and managing employees at work.
- 2.2.3 The Board of Directors must be informed by the Executive Headteacher (Chair of Directors) if the Trust has an employee who is failing to meet the performance standards for his/her role and is being managed under this Policy. The Board of Directors should not be informed who the employee is or of any details.

## 2.3 Authority to Take Action

### 2.3.1 Designated Manager

Where there are concerns about an employee's capability and performance and action is to be taken in accordance with this Policy, a Designated Manager should be appointed by the Executive Headteacher (Chair of Directors) to deal with the matter. In some cases, it will be the Executive Headteacher (Chair of Directors) that carries out this role.

### 2.3.2 Formal Capability Hearings

Formal Capability Hearings may be conducted by the Executive Headteacher in accordance with his/her delegated responsibilities except where he/she has had significant previous involvement in the matters being considered and/or is the Designated Manager, in which case the First Committee of Directors will conduct the Formal Capability Hearing.

### 2.3.3 Appeal Hearings

Appeal Hearings will be conducted by a Committee of Directors who have had no previous involvement in the matters being considered.

## 2.4 Definition of lack of capability

- 2.4.1 Lack of capability is defined as circumstances in which an employee fails to consistently perform her/his duties to professionally acceptable standards and in accordance with her/his contract of employment.
- 2.4.2 Lack of capability and misconduct should not be confused.
- 2.4.3 Lack of capability is where the employee does not reach the required standard of performance expected by the Trust and/or does not reach the required professional standards for the job.
- 2.4.4 Misconduct is where the employee's conduct and/or behaviour is inappropriate and inconsistent with the standards expected by the Trust and/or the appropriate professional body.
- 2.4.5 In some circumstances, there may be a combination of lack of capability and misconduct. The manager should identify the issues clearly to determine whether one or both policies should be invoked.

- 2.4.6 Examples of lack of capability include but are not limited to:
- 2.4.6.1 consistently failing to meet reasonable deadlines for tasks, projects, reports, etc;
  - 2.4.6.2 regularly producing work which is sub-standard, inaccurate, badly presented, or poorly organised;
  - 2.4.6.3 failing to carry out effectively and consistently key areas of job responsibility, such as marking pupils' work;
  - 2.4.6.4 being unable to maintain standards of behaviour by pupils and/or contribute to the maintenance of good order throughout the Trust, particularly in the classroom;
  - 2.4.6.5 failing to consistently meet the appropriate professional standard e.g. Post Threshold Standards;
  - 2.4.6.6 failure to ensure pupils' progress;
  - 2.4.6.7 failure to provide accurate, detailed and appropriate information to the Board of Directors; and
  - 2.4.6.8 failing to provide effective leadership and management in the Trust (applicable to Headteachers and School Managers).
- 2.4.7 Not meeting acceptable standards of performance may be related to a number of different factors, for example the need for:
- 2.4.7.1 more specific training;
  - 2.4.7.2 further development of knowledge or skills;
  - 2.4.7.3 clear and explicit goals and targets;
  - 2.4.7.4 regular and focused supervision;
  - 2.4.7.5 a reasonable workload;
  - 2.4.7.6 effective working relationships with colleagues.
- 2.4.8 The inability to meet acceptable standards of performance may also be influenced by factors such as:
- 2.4.8.1 poor health, wellbeing and/or a disability;
  - 2.4.8.2 personal problems; and
  - 2.4.8.3 the employee's inability to accept that his/her performance does not meet the required standards.
- 2.4.9 Where there are issues that the employee feels are impacting upon his/her performance, the employee is expected to be pro-active and inform his/her manager of his/her concerns in a timely manner. The employee should take action to resolve these difficulties before performance is affected to the extent that s/he is unable to meet his/her contractual obligations and action needs to be taken by the Executive Headteacher under this Policy.

### 3 **CONFIDENTIALITY**

#### 3.1 **Need for Confidentiality**

3.1.1 Any matter being dealt with during the application of this Policy must be treated as strictly confidential except where:

3.1.1.1 a statutory obligations exist;

3.1.1.2 disclosure is necessary in order to obtain appropriate professional advice; and/or

3.1.1.3 necessary for the effective management of the Trust.

3.1.2 All parties, including the employee to whom this Policy is being applied, will be expected to maintain confidentiality at all times.

3.1.3 Breaches of confidentiality will be taken very seriously and may result in action being taken.

### 4 **RECORD KEEPING STANDARDS**

4.1 A written record must be made of all interviews and meetings held during the application of this Policy. Those involved in each meeting will be provided with a copy of any records made.

4.2 The Designated Manager will ensure there is a full, comprehensive case file of the process which should include all statements, records and evidence.

4.3 All records will be retained confidentially, securely and in accordance with the Data Protection Act (2018).

### 5 **GENERAL PRINCIPLES**

#### 5.1 **Being Accompanied at Meetings/Hearings under this Policy**

An employee who is the subject of this Policy will be permitted to be accompanied by either a representative from a recognised trade union or an appropriate work colleague. The work colleague or trade union representative must have no involvement in the circumstances and must make him/herself available appropriately to avoid delay to the process.

#### 5.2 **Support for the Employee during the application of this Policy**

5.2.1 Consideration must be given to any support the employee may need to reach the required standards in his/her performance.

5.2.2 The employee will be encouraged to contact his/her trade union/professional association for advice and support at the earliest stage.

#### 5.3 **Trade Union/Professional Association representatives**

The same standards of performance apply to employees of the Trust who are also trade union/professional association representatives. Prior to any action being taken under this Policy against an employee who is an accredited trade union/professional association representative the circumstances will be discussed with a paid official nominated for such purposes by the trade union/professional association concerned.

#### 5.4 **Ofsted Assessment of a Teacher's Performance**

The assessment of a teacher's performance as a result of an Ofsted inspection cannot be used exclusively to invoke this Policy. Such information may be used as evidence alongside other evidence the Executive Headteacher (Chair of Directors) has about an employee's performance.

## 5.5 Professional Standards for Teachers

The standards of performance expected for teachers are detailed in the Statutory Professional Standards in School Teachers' Pay and Conditions Document 2017. Any teacher that fails to consistently meet the appropriate Professional Standards can be subject to the provisions of this Policy.

## 5.6 Dismissal on the Grounds of Capability

Ultimately should the employee fail to meet the Professional Standards or requirements of his/her role, dismissal on the grounds of capability may occur.

## 6 MAKING DECISIONS ABOUT WHETHER AN EMPLOYEE REMAINS AWAY FROM WORK

### 6.1 Designated Manager's responsibilities

6.1.1 If the concerns about an employee's performance are so severe that his/her continued presence in the Trust could have a seriously detrimental effect on the health, safety and wellbeing of the pupils the matter should be referred to the Executive Headteacher (Chair of Directors). The Delegated Manager should prepare details of the concerns which have led to the consideration that the employee should remain away from work. The employee should also be informed of the referral to the Executive Headteacher (Chair of Directors) and the reasons for it and should be asked if s/he wishes to indicate any circumstances which have led to these concerns. The employee should also be advised that s/he should be aware that these concerns may result in a Formal Capability Hearing being held, which may impact upon his/her continued employment.

6.1.2 The Executive Headteacher (Chair of Directors) will consider the evidence provided by the Designated Manager.

### 6.2 Head teacher (Chair of Directors) responsibilities

6.2.1 The Executive Headteacher (Chair of Directors) will consider whether it is appropriate for the employee to remain in the Trust and/or whether one of the following courses of action is necessary:

6.2.1.1 To temporarily transfer the employee to alternative duties;

6.2.1.2 To direct the employee to remain at home on normal pay, pending a decision to suspend; or

6.2.1.3 To suspend the employee on normal pay. A decision to suspend can only be taken by the Executive Headteacher (Chair of Directors) depending on the delegation agreed by the Board of Directors.

6.2.2 If the Executive Headteacher (Chair of Directors) determines, having considered all the evidence, that the employee should remain away from work, the employee will be informed by the Executive Headteacher (Chair of Directors) that s/he should remain away from work and told the reasons for this determination. The employee will be informed that the matter will be referred to a Formal Capability Hearing for consideration by a Committee of Directors, in line with Section 8 of this Policy.

- 6.2.3 The Executive Headteacher (Chair of Directors) will write to the employee within 7 working days to confirm the action to be taken and, if appropriate, that the matter will be referred to a Committee of Directors for consideration which may impact upon her/his continued employment.
- 6.2.4 The Executive Headteacher (Chair of Directors) will liaise with the Clerk to Directors to set up a Formal Capability Hearing if appropriate.

## **7 FIRST FORMAL STAGE – FORMAL CAPABILITY MEETING**

### **7.1 Communicating the decision**

Within 10 working days of the employee being invited to a Formal Capability Meeting under this Policy, the employee must be provided with a copy of the report, a copy of this Policy and the reasons for the decision to invoke this Policy.

### **7.2 At the Formal Capability Meeting the Designated Manager must:**

- 7.2.1 tell the employee the areas of concern about his/her performance and outline exactly what standards are required;
- 7.2.2 give the employee the opportunity to respond and to detail any difficulties preventing him/her meeting the required standards;
- 7.2.3 carefully consider the employee's response;
- 7.2.4 inform the employee about how his/her performance will be formally reviewed, with clear and measurable targets being given. A review period will be set and will include teaching observation and assessment if the employee is a teacher or a teaching assistant working directly with pupils;
- 7.2.5 where appropriate, consider whether:
  - 7.2.5.1 a teacher's classroom control is so poor that effective teaching cannot take place;
  - 7.2.5.2 pupils fail to progress in that teacher's lessons; and/or
  - 7.2.5.3 effective leadership of the Trust is in serious doubt as a result of the employee's performance.
- 7.2.6 consider whether a 'fast track' assessment period not exceeding four weeks is necessary and if so, invoke the assessment and explain the reasons for this decision. (This should be detailed in the report);
- 7.2.7 outline the support to be provided and the process of evaluation;
- 7.2.8 consider identifying a mentor to support the employee (the mentor should have no involvement in the monitoring); and
- 7.2.9 inform the employee that if s/he fails to meet the required standards of performance, within the review period, with the support, that s/he should be aware that it may result in a Formal Capability Hearing being held, which may impact upon his/her continuing employment.

### **7.3 Formal Support**

- 7.3.1 At the Formal Capability Meeting, with the Designated Manager, the employee

should ensure that any issues that may be impacting upon his/her performance are raised with the Designated Manager. The Designated Manager can therefore consider, in conjunction with the employee, whether there is any support or other action that can be taken to assist him/her in achieving the required standards.

7.3.2 The employee should take all steps to attempt to improve performance to the required standards and ensure that any agreed actions relating to support are implemented prior to the Formal Review Meeting. If the employee has any concerns with that support, these should be raised with the Designated Manager in a timely manner.

7.3.3 Following the Formal Capability Meeting the Designated Manager will write to the employee within 7 working days to confirm:

7.3.3.1 the specific performance issues, which need to be addressed in order to achieve the required standards;

7.3.3.2 details of the support to be provided, including information on the Counselling Service;

7.3.3.3 the timescale over which the required standards of performance are to be achieved, how performance is to be monitored and evaluated and how feedback will be provided to the employee during that time, including if applicable, that the 'fast track' assessment period has been invoked and the reasons for this decision;

7.3.3.4 the date of the Formal Review Meeting; and

7.3.3.5 the potential implications for the employee's continuing employment, should the required standards of performance not be achieved.

Notes of the Formal Capability Meeting will be included with the letter. Any particular points which the employee wishes to record at this stage should be included in the record of the meeting.

7.3.4 The review period set will be dependent upon the factors involved in the situation. However, it is likely to be a minimum of six school weeks to a maximum of a term (unless the 'fast track' assessment period has been invoked, in which case it would be for four weeks or less. During the review period the employee's performance should be regularly monitored and feedback provided at agreed intervals. A record of the monitoring and feedback should be taken, with a copy provided to the employee.

7.3.5 At the end of the review period, the Designated Manager will meet with the employee again to formally review performance. At the Formal Review Meeting the Designated Manager will ensure that:

7.3.5.1 there is a discussion about whether or not the required standards are being met;

7.3.5.2 if performance has improved, this is acknowledged;

7.3.5.3 if there are continuing concerns about performance this is evidenced;

7.3.5.4 the employee is given the opportunity to respond;

7.3.5.5 careful consideration is given to the employee's response to the concerns before determining the way forward;

- 7.3.5.6 the performance standards expected from the employee with reasons for them are reaffirmed;
  - 7.3.5.7 any difficulties that the employee may have which are impacting upon his/her performance are discussed; and
  - 7.3.5.8 the support that has already been put in place is confirmed and there is a discussion to determine whether any additional support may be required to assist the employee securing the standards required.
- 7.3.6 Following careful consideration of all the points raised and actions taken to date, the Designated Manager will determine whether:
- 7.3.6.1 no further action is required, as performance has improved to meet the required standards;
  - 7.3.6.2 there has been significant performance improvement, but required standards have still not been met. In such circumstances, a further Formal Support Period of six weeks should be given. No such additional support will be provided where the 'fast track' process has been invoked; and
  - 7.3.6.3 there has been no or insignificant improvement towards meeting the required standards. In such circumstances, the matter should be referred to the Executive Headteacher (First Committee of the Board of Directors), who may make decisions regarding the employee's future employment.
- 7.3.7 Following the Formal Review Meeting the Designated Manager will write to the employee without unreasonable delay to confirm:
- 7.3.7.1 what was discussed at the meeting, including the specific issues which need to be addressed in order to achieve required standards, the support that has been provided and what actions have been taken to date, both before and after this policy was invoked, to support the employee to meet the required standards;
  - 7.3.7.2 what further action will be taken;
  - 7.3.7.3 if no further action is required at this stage as performance has improved to the required standard, this should be acknowledged. The employee must be encouraged to maintain that improvement and advised that should similar concerns about his/her performance arise within the next 12 months, the procedure will be recommence at the same;
  - 7.3.7.4 if a further Formal Review Period has been agreed, the timescale for this review and support period should be confirmed and the employee should be advised that if there is insufficient improvement to meet the required standards in performance by the end of that period, the matter may then be referred to the Executive Headteacher (First Committee of the Board of Directors);
  - 7.3.7.5 if the matter is being referred to a Formal Capability Hearing before the Executive Headteacher (First Committee of the Board of Directors), the employee should be informed that a report will be provided to the Executive Headteacher (First Committee of Directors) and the

employee. The employee will be given a copy prior to the Formal Capability Hearing; and

- 7.3.7.6 a record of the meeting will be included with the letter. Any particular points which the employee wishes to record at this stage should be included in the record of the meeting.

## 8 SECOND FORMAL STAGE - THE FORMAL CAPABILITY HEARING

8.1 The Clerk to Directors will write to the employee requiring his/her attendance at a Formal Capability Hearing. At least 10 working days' notice of the Hearing must be given. The letter should include:

- 8.1.1 the date, time and place of the Hearing;
- 8.1.2 the names of the person(s) who will hear the case;
- 8.1.3 the names of any witnesses to be called;
- 8.1.4 the Designated Manager's report and notification of who will present the management case (if it is not the Designated Manager);
- 8.1.5 copies of any written material and/or any evidence that is relevant;
- 8.1.6 the fact that the Hearing may result in the determination that the employee shall have his/her employment at the Trust terminated;
- 8.1.7 the fact that the Hearing may take place in the employee's absence if s/he fails to attend without a satisfactory explanation
- 8.1.8 if s/he is unable to attend through illness s/he should provide a medical certificate and arrange representation at the Hearing and/or provide a written submission to the Formal Capability Hearing;
- 8.1.9 the employee's right to be represented;
- 8.1.10 a copy of this Policy;
- 8.1.11 that the employee should confirm to the Executive Headteacher (Clerk to Directors) that s/he will be attending and who his/her representative will be;
- 8.1.12 that any documentation the employee wishes to submit should be provided to the Clerk to Directors at least 4 working days before the Hearing date.

8.2 A copy of the letter, report and any employee submissions should be sent to the person(s) conducting the Formal Capability Hearing.

### 8.3 Formal Capability Hearing

8.3.1 The Designated Manager with the Executive Headteacher, as appropriate, will attend the Formal Capability Hearing to present his/her report to the person(s) conducting the Formal Capability Hearing and answer any questions from the panel and/or employee.

8.3.2 The employee should attend the Formal Capability Hearing and provide any supporting documentation to the Executive Headteacher (First Committee) in accordance with the timescales. If the employee is not able to attend due to ill health, s/he can arrange representation at the Formal Capability Hearing and

provide a written submission.

8.3.3 At the Formal Capability Hearing the employee can respond to the Designated Manager's report and present his/her case and will answer any questions from the Executive Headteacher (First Committee) and/or the Designated Manager.

8.3.4 Following presentation of all the evidence and when the Executive Headteacher (First Committee) is satisfied that there is sufficient evidence to make a decision, the Formal Capability Hearing will be adjourned. All parties, except the person(s) conducting the Formal Conduct Hearing and their HR Adviser, if in attendance, should leave the meeting room.

#### 8.4 **Decision Making**

8.4.1 The person(s) conducting the Formal Capability Hearing will consider all the evidence presented.

8.4.2 The Committee should consider mitigating circumstances when making a decision on the outcome of the Formal Capability Hearing.

#### 8.5 **Potential Outcomes:**

8.5.1 The person(s) conducting the Formal Capability Hearing may decide on any of the following outcomes:-

##### 8.5.1.1 **No Formal Action**

If it is felt that the employee's performance has improved to the required standard. The employee will be encouraged to maintain that improvement and advised that should similar concerns arise about his/her performance within the next 12 months, the procedure will be started again at the stage which has been reached.

##### 8.5.1.2 **Final Written Warning**

If it is felt that it will be impossible for the employee to continue his/her employment unless his/her performance improves to the required standard, the employee will be issued with a Final Written Warning. The Executive Headteacher (First Committee) will determine what formal support will continue and over what time period. The employee should be warned that failure to improve to meet the required standards within the specified time period could lead to a further Formal Capability Hearing being held, which could lead to his/her employment being terminated.

##### 8.5.1.3 **Dismissal with Notice**

To dismiss the employee with notice as s/he is incapable of performing the job for which s/he has been employed. Depending upon the circumstances, it may be appropriate to consider whether alternative work of a nature more suited to the employee's capability should be sought during the notice period.

##### 8.5.1.4 **Other Appropriate Action**

Any other appropriate action in keeping with the spirit of this Policy (to secure performance improvement) that has due regard to the financial means of the Trust and does not impact on the provision of education

to the pupils or the health, safety and/or well-being of the employee and his/her colleagues, e.g. withholding an annual increment; offering a demoted post if there is an appropriate vacancy.

Where the employee has been asked to remain away from work a decision will need to be made about whether this should continue, bearing in mind what further action is to be taken.

- 8.5.2 The Formal Capability Hearing will be reconvened to inform the employee of the decision.
- 8.5.3 The decision should be confirmed in writing to the employee within 7 working days of the Hearing. If the decision has been to recommend dismissal, the Trust will issue notice of dismissal.
- 8.5.4 Where the Executive Headteacher (First Committee) determines that there will be a further review period with further formal support provided, the employee must ensure that s/he makes every effort to comply fully with that formal support to attempt to secure the required standards.
- 8.5.5 Where the employee decides to appeal against the decision of the Formal Capability Hearing s/he must ensure that s/he complies with the requirements and timescales set out in this Policy.
- 8.5.6 Reporting Obligations must be considered and adhered to.

## 9 **THIRD FORMAL STAGE - THE APPEAL HEARING**

- 9.1 Where an employee feels that the decision of a Formal Capability Hearing is wrong or unjust, the employee has the right to appeal against the decision.
- 9.2 The employee must appeal in writing within 5 working days of receipt of the letter confirming the outcome of the Formal Capability Hearing. The employee must specify the grounds for the appeal in writing.
- 9.3 The employee has the right to be accompanied by a recognised trade union representative or appropriate work colleague at the Appeal Hearing.

### 9.4 **Appeal Hearing Coordination and Notification**

The Appeal Hearing will be conducted by an Appeal Committee, consisting of three Directors with no previous involvement, and should be convened at the earliest convenient date.

- 9.5 The employee should be given reasonable notice of the date of the Appeal Hearing.

### 9.6 **All information and documents**

- 9.6.1 All information and documentation that is to be presented at the Appeal Hearing by either the employee or the Chair of the Formal Capability Hearing must be exchanged at prior to the Appeal Hearing.
- 9.6.2 The Chair of the Appeal Committee will determine if the Designated Manager and/or Executive Headteacher should be called as a witness.

### 9.7 **Conducting Appeal Hearing**

- 9.7.1 The Appeal Hearing should be conducted in accordance with employment law and good employee relations practice, with the employee presenting his/her grounds for

appeal first.

- 9.7.2 The appeal may either be a review of the disciplinary sanction or the process followed. It is not a re-hearing of the case.
- 9.7.3 The employee will attend the Appeal Hearing to present his/her appeal to the Appeal Committee and answer any questions from the Appeal Committee, their HR Adviser (if present), and the Chair of the Formal Capability Hearing.
- 9.7.4 The Chair of the Formal Capability Hearing will attend the Appeal Hearing to respond to the employee's appeal and answer any questions from the Appeal Committee, their HR Adviser (if present) and/or the employee. An HR Adviser may accompany the Chair of the Formal Conduct Hearing and may ask questions.
- 9.7.5 If the Designated Manager is called as a witness, s/he will attend the Appeal Hearing to answer any questions from any of the parties. S/he can attend the whole hearing if all parties agree.
- 9.7.6 If the employee is unable to attend the Appeal Hearing without a good reason, the Committee will decide whether to proceed in his/her absence. The employee may send a representative on his/her behalf and/or provide a written statement.

## 9.8 Decision Making

- 9.8.1 Once all the relevant issues have been thoroughly explored, the Appeal Committee will adjourn with its HR Adviser (if present) to consider its decision.
- 9.8.2 The Appeal committee may make one of the following determinations:
  - 9.8.2.1 To uphold the appeal if it is determined that the previous decision was not soundly based and to determine what further actions should take place;
  - 9.8.2.2 To conclude that significant procedural irregularities have occurred and make a recommendation to rectify the situation;
  - 9.8.2.3 To conclude that the penalty was too harsh and downgrade it;
  - 9.8.2.4 To conclude a further period of support, monitoring and review is required; or
  - 9.8.2.5 To reject the appeal and uphold the previous decision of the Formal Capability Hearing.
- 9.8.3 If the appeal is successful and the employee has been instructed to remain away from work or has been suspended, a decision will be made about whether this should continue and/or arrangements will be made for his/her return to his/her substantive post at the Trust.
- 9.8.4 The Appeal Committee must decide if there are any Reporting Obligations required and should action these.

## 9.9 Communicating the Decision

- 9.9.1 The Chair of the Appeal Committee will communicate the decision verbally at the conclusion of the Appeal Hearing unless otherwise agreed.
- 9.9.2 The decision will be confirmed in writing to the employee within 7 working days of

the Appeal Hearing and informed that the decision is final.

- 9.9.3 Where there is a determination to uphold the appeal against dismissal, the Chair of Directors will rescind the notice of dismissal.

**END OF POLICY**