

# All Saints Schools Trust



## Capability Procedure

2022- 26

	Date	Signed
Agreed by Trust Board:	June 2022	Chair of Board James Hargrave
Lead:	HR Committee	
Review date:	June 2026	

# Capability Procedure

## Rationale:

Every job carries standards of performance that employees are expected to achieve, but occasionally an employee's performance may fall short of the standards expected.

It is important therefore to have a procedure that applies in cases of capability. Its emphasis should be one of support and it is important that guidance is given to ensure that the right procedure is used according to the specific situation under review.

## Aims:

The Trust seeks to provide each employee with the direction, development and support necessary to assure a productive and rewarding career. It also seeks to ensure that the Trust has a fair and consistent framework for dealing with capability matters effectively, consistently and in a timely matter to ensure that no individual is discriminated against.

The Capability Procedure is designed to:

- Encourage staff to meet agreed standards of behaviour, conduct and job performance
- Deal fairly and consistently with staff who do not improve to meet those standards and identify ways to help them improve
- Be applied in a consistent, fair prompt and supportive way.

## Guidance:

For a variety of reasons, the performance of an employee may give rise to concern because the evidence suggests that they are unable to carry out the duties and responsibilities of their post to a professionally acceptable standard, through lack of capability, aptitude, skill or ability and not through any lack of willingness or effort on their part. Where the employee concerned fails to carry out their duties and responsibilities to a reasonable and acceptable standard for reasons of their capability, the procedure set out in this document should be used. One important factor will be the impact of the employee's performance on pupils' achievement, progress and well being.

Another reason for concerns about performance may be genuine but unacceptable absence due to ill-health. This may affect the long-term ability for employees to continue to carry out the requirements of the role and may have a detrimental effect upon service delivery. In such circumstances, the issues should be addressed in accordance with the absence management procedures.

This policy is modelled on that provided by Suffolk County Council which has been agreed with the recognised trades unions following appropriate and meaningful consultation. This policy will be reviewed as may be required by legislative or organisational change.

For specific advice and guidance, managers are expected to consult the Trust's HR team/caseworker.

There are template letters and additional guidance on the Schools' Choice website.

### **General Principles:**

An outline of the general principles underlying this policy in accordance with the ACAS Code of Practice on Disciplinary and Grievance Procedures are attached to this policy as Appendix A.

### **Scope:**

This policy applies to all leadership, teaching and support staff within the Trust.

An employee working within a school but employed on another organisation's terms and conditions of employment should be managed under their appropriate policy/procedure.

### **Exclusions:**

Disciplinary procedures exist to deal with misconduct, wilfully deficient performance, refusal to follow instructions, negligence and other similar situations, and should be used where such considerations form a significant part of any complaints.

The assessment and treatment of employees undergoing an induction or probationary period (including Newly Qualified Teachers), or similar, will be dealt with according to the terms of their probationary period, unless the employee's performance falls so far below professionally acceptable standards as to require immediate action.

Separate guidance also exists for dealing with problems arising from alcohol dependence. However, this procedure may be applied where this or substance abuse has a significant effect on the employee's performance.

### **Purpose:**

The purpose of the Capability Procedure is to:

- Positively and constructively support employees to improve their performance through advice, guidance and support, when it is identified they are not performing to the required standard
- Ensure that all employees are treated in a fair, consistent, understanding and timely manner and in accordance with all relevant legal requirements
- Contribute towards the improvement of the performance and effectiveness of the Trust/School(s)
- Support managers in carrying out their responsibilities for the maintenance of high standards of work performance by all employees
- Ensure the employee is aware of each stage of the procedure and the possible outcomes
- Ensure all children receive an education of the highest standard

While it is important to deal with capability issues fairly and effectively, it is just as important to look at ways of preventing problems escalating in the first place, for example, through:

- Careful recruitment, selection and training
- Clear standards, expectations and effective communication
- Regular supervision and performance development reviews.
- Identification and, where appropriate, assistance in resolving underlying problems

Many factors can contribute to poor performance, including those which are not directly related to the workplace. Assistance with resolving underlying issues could include reference to:

- A Wellbeing Service
- An Occupational Health Scheme (where appropriate)

Good performance management is an all-year process, with regular supervision and feedback. Concerns about performance should be addressed promptly and not left until formal review meetings.

In many cases, the right word, at the right time and in the right way may be all that is needed to address poor performance. Managers must, in the first instance, and for at least 6 weeks, seek improvement through normal performance management. This should include two-way discussion, with the

objective of encouraging and helping the employee to improve and for the improvement to be sustained. This should include the development of a clearly documented improvement plan with defined outcomes and success criteria. Although there is no right for the employee to be accompanied at this stage, it may be helpful for the employee's trade union representative to be involved at an early stage. Additional training, coaching or advice may be agreed.

## **Application of the Procedure:**

### **a) Normal Performance Management Arrangements**

Informal feedback on performance does not form part of this procedure as this should be given through 'normal performance management arrangements' i.e. performance review meetings, one to one meetings, etc.

Feedback through normal performance management arrangements must include positive, proactive feedback on performance and constructive feedback when performance is not at the required standard – this must include

- confirmation of the required standard,
- the standard the employee is currently performing at,
- an agreement of how the required standard will be achieved and
- the consequences if standards are not achieved.

Every effort should be made to resolve performance issues on an informal basis.

Where concerns continue, discussions should include clear advice about the improvements needed, support available and how and when the employee's performance will be reviewed. This should be confirmed in writing and, where appropriate, may be linked to the Performance Development Review process and pupil progress evaluation processes. Use of SMART principles may assist in objective setting, i.e. They should be:

- S**pecific – they are well defined
- M**easurable – both quantitatively and qualitatively
- A**chievable – they are not set too high to make it impossible to achieve them
- R**esourced – the resources necessary are readily available
- T**imed – the timescales set are reasonable

### **b) Timescales**

Capability issues should normally be resolved within ten to twelve weeks, (a proposed timeline is attached as Appendix B) however, it is acknowledged that there may be circumstances when the process will take longer to

complete. These may include annual leave, working patterns or ill-health where reasonable adjustments need to be made under the Equality Act 2010. Where this is anticipated, advice must be obtained from the Trust's HR Team/caseworker.

The period of monitoring under a first or final written warning will not normally exceed six weeks, (excluding school closure periods where appropriate) , according to the needs of the individual and the school. Whilst every effort should be made to agree the appropriate length of this period of monitoring, where agreement cannot be reached, it will set by the Head Teacher.

### **c) Progressing to the Next Stage of the Procedure**

Before action under the formal stages of this procedure is considered, the employee should be informed in writing that this will be considered if there is no improvement within the agreed review period and the employee should be invited to a meeting to discuss the evidence in more detail.

In many circumstances, significant evidence will have already have been gathered as part of pupil progress monitoring, normal performance management and the additional support provided, which the School will simply collate and summarise as evidence.

The collated evidence will clearly indicate the support and advice offered to date and make a recommendation for one of the following:

- No further action,
- Further support as part of normal performance management
- Formal action under this procedure

In all cases, the outcome will be confirmed in writing to the employee.

Where the decision is made to take formal action under this procedure because the employee has made insufficient improvement despite the support and monitoring, the employee will be invited to a formal meeting under Formal Stage 1 of the procedure.

All employees should progress through each stage of the procedure in accordance with agreed timescales.

Exceptions can apply in the following circumstances and consequently, line managers can decide to progress the employee to the next stage of the procedure earlier than agreed:

- Deterioration in performance
- Not meeting the targets in the agreed Development Plan.

## **Formal Stage 1 - Meeting (Written Warning):**

### **a) Purpose**

The purpose of Formal Stage 1 is to support the employee in improving their performance to meet the required standard against an agreed Development Plan (a template Development Plan is enclosed).

### **b) Procedure**

At least five working days' notice will be given of the formal capability meeting. The notification will contain sufficient information about the performance concerns and their possible consequences to enable the employee to prepare to answer the case at a formal capability meeting. It will also contain copies of any written evidence; the details of the time and place of the meeting, and will advise the employee of their right to be accompanied by their accredited Trades Union Representative, or a work colleague.

This meeting is intended to establish the facts. It will be conducted by the CEO (for Head Teacher capability meetings) or the Head Teacher (or other senior school leader/the employee's line manager) for other employees. The meeting allows the employee to respond to concerns about their performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected.

This is the start of the performance monitoring and review period. Formal monitoring, evaluation, guidance and support will continue during this period. The employee will be invited to a formal review meeting, unless they were issued with a final written warning, in which case they will be invited to a decision meeting (see below).

#### **At the meeting the manager will:**

- Confirm that the employee has the right to representation;
- Confirm that the meeting is being held under the Trust's Capability Procedure and explain the process that will be followed and the possible outcomes;
- Confirm the expected standard of performance and the standard at which the employee is currently performing, i.e. identify the professional shortcomings, e.g. for teachers, which of the standards expected of teachers or pupil progress targets are not being met;
- Ensure the employee has the opportunity to respond to and explain any factors affecting their current performance and consider this when determining the appropriate course of action (it is not anticipated that any information that was not shared during normal performance management arrangements will be disclosed);

- Confirm the risks to the Trust/School and pupils of the underperformance;
- Confirm the options available to support the employee in improving their performance (i.e. support, development, training, etc.);
- Ensure the employee is aware of what support is available to them e.g. any Employee Assistance or Wellbeing Programme, Trade Union support, etc.;
- Confirm that Formal Stage 1 constitutes a 'written warning' which if no further action is taken, will remain active for 6 months from the end of Formal Stage 1.

On occasion, the manager may decide to adjourn the meeting if they decide that further investigation is needed, or that more time is need in which to consider any additional information.

**At the meeting the manager and employee will discuss and agree:**

- The employee's current and expected levels of performance;
- The objectives for the Development Plan, how they will be achieved, the timescales for achieving them and when progress against each objective will be reviewed;
- The reasons the employee is not meeting the expected standards (which may be as a consequence of personal issues);
- When review meetings will be held;
- Warn the employee formally that failure to improve within the set period could lead to dismissal. (In very serious cases, this warning could be a final written warning);
- Write, agree and sign the Development Plan;
- Any agreed reasonable adjustments to be made under the Equality Act 2010.

**At the end of the meeting the manager will:**

- Summarise the meeting;
- Ensure the employee understands what is expected of them, the process that will be followed and the possible next stages of the procedure, including the right of appeal against the warning (any appeal must be lodged, in writing, within 14 days of the date of the



letter issuing the warning. The grounds of the appeal must also be detailed at this stage);

- Agree what support, development and reasonable adjustments (if appropriate) will be put in place

**After the meeting the manager will:**

- Confirm the outcome of the meeting in writing, including that a written warning has been issued;
- Ensure that the employee receives the support agreed in the Development Plan;
- Ensure that the agreed review meetings and any further review meetings deemed necessary take place;
- Continue to monitor the employee's progress against the Development Plan and progress the employee through the procedure as appropriate and in line with this procedure;
- Ensure that any agreed support, development or reasonable adjustments are put in place in a timely manner.

**After the meeting the employee will:**

- Make every effort to meet the objectives agreed in the Development Plan;
- Attend the agreed review meetings and any further review meetings deemed necessary;
- Give honest feedback on their current performance and progress against the Development Plan and pupil progress targets.

**c) Formal Review Meeting**

The letter confirming the outcome of the first formal meeting and a copy of the Development Plan will be sent to the employee and will invite the employee to a formal review meeting at the end of the agreed review period (***this can be brought forward if necessary***). The employee has the right to be accompanied at the formal review meeting by their accredited Trades Union Representative, or a work colleague.

At the formal review meeting, the manager and employee will review the employee's progress against the Development Plan and the manager will confirm one of the outcomes stated below.

## **d) Possible Outcomes of Formal Stage**

### **1. The required standard of performance has been met**

The employee's performance will be managed under normal performance management arrangements and the written warning will remain active for 6 months from the date of the Formal Review Meeting.

### **2. The required standard of performance has not been met or significant progress has not been made towards meeting the required standards**

The employee will be progressed to Formal Stage 2 of the procedure and a 'final written warning' will be given. Until the hearing takes place, the employee will continue to be supported to meet the requirements of the Development Plan.

The outcome of the formal review meeting will be confirmed to the employee in writing. If the employee has been progressed to Formal Stage 2 of the procedure, the letter will include an invitation to a hearing (see following section) and confirmation that a final written warning has been issued, which if no further action is required, will remain active for 12 months from the end of Formal Stage 2, and warning the employee that failure to achieve an acceptable standard of performance (within the set timescale) may result in dismissal. The letter will also give information about the handling of the further monitoring and review period and the procedure and time limits for appealing against the final warning.

## **Formal Stage 2 - Decision Making:**

As with the formal capability meetings and formal review meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting, and will advise the employee of their right to be accompanied.

### **a) Purpose**

The purpose of Formal Stage 2 is to determine:

- If the Trust has exhausted all options in supporting the employee to improve their performance;
- What the outcome of the procedure should be.

### **b) Procedure**

The procedure for the hearing will follow the procedure set out in the 'Procedure for a Hearing' as outlined in the Disciplinary Procedure.

### **c) Possible Outcomes**

The outcome of the hearing will be one of the following:

**1. The required standard of performance has been met**

The employee is performing to the required standard and will be managed under normal performance management arrangements.

**2. The required standard of performance has not been met but it has been determined that the required standard can be met within a short period**

A further review period (it is recommended this is no more than two working weeks from receipt of the Development Plan) and Development Plan will be implemented (under Formal Stage 2 of this procedure).

In these circumstances:

- i. The additional support to be given to the employee and the duration of the extended review period will be explained to the employee verbally at the meeting and a development plan detailing this will be forwarded to them with the letter confirming the outcome of the meeting
- ii. A review meeting will take place at the end of the extended review period and one of the three outcomes, as set out within this section, will be determined.

**3. The required standard of performance has not been met and the panel has determined:**

**a) The required standard cannot be met within a short period  
OR**

**b) The employee is capable of performing at the required standard but does not due either to negligence or carelessness or idleness, or a combination of some or all of these.**

If performance remains unsatisfactory, a decision, or recommendation to the Trust HR Committee will be made that the employee should be dismissed or required to cease working at the school. The employee is dismissed with notice (unless their performance has been so negligent so as to amount to gross misconduct, in which case they may be dismissed without notice). However, it may be agreed that the employee will not return to work at the school in a capacity which directly affects the education of pupils, or they may be granted paid leave for the duration of their notice period.

The outcome of the hearing will be confirmed to the employee in writing as soon as possible, and will include information about the

employee's right of appeal. If a further review period has been granted (see outcome 2 above), the letter will include an invitation to the review further hearing.

### **Returning to Earlier Warnings:**

If there is evidence within six months of the procedure ceasing (for a first written warning or within twelve months for a final written warning) that the employee has not sustained the level of performance required, the procedure may be resumed at any stage up to and including that stage previously reached.

### **Exceptional Circumstances:**

In exceptional cases where the level of performance could have serious consequences successive warnings may not be appropriate. For example;

- where the employee's performance falls so far short of an acceptable standard, that improvement to an acceptable level may reasonably be deemed impossible; or
- where a lack of competence has a seriously detrimental effect on the education of pupils and students; or
- where the employee's lack of competence could have other serious consequences, e.g. safety considerations

In such circumstances, the school may proceed directly to consideration of a final written warning or dismissal, as appropriate. Schools should seek advice from their Human Resources Advisor before taking such a decision.

### **Head Teachers:**

In the event that there are concerns about the capability of the Head Teacher, it would clearly be inappropriate for him/her to carry out the roles normally assigned to the Head Teacher in this procedure. This section sets out how these roles may be appropriately reassigned, within the spirit and intent of this procedure.

Concerns about the performance of a Head Teacher may emerge from a number of sources including the Governing Body, one of the co-principals or the CEO, an external advisor or from external assessment such as an Ofsted inspection

The Chair of Governors may discuss concerns about the Head Teacher's performance as part of the normal dialogue between the Head Teacher and Chair of Governors. Such discussions will precede the informal stages detailed in this procedure.

The Chair of Governors may consult the CEO or the Trust's HR Team/caseworker and arrange for help and support to be provided. Consultation with the Head Teacher's trade union may also assist the process. However, if the matter is, or becomes, sufficiently serious, the Head Teacher should be advised that if the identified deficiency persists, it may be necessary to convene a committee to consider the matter under the formal stages of this procedure. This possibility should be set out in writing.

If the help and support which has been provided within the normal management processes do not lead to the required improvement, the CEO will request that a member(s) of the Trust Board with advise and assistance from an external advisor investigate the nature of the problem and its level of seriousness and causes, through a formal investigation.

When this investigation is complete, the CEO will convene a Special Committee, made up of members of the Trust Board and members of the Local Governing Body of the school(s) in which the Head Teacher is deployed (which should not include any members from the relevant Appeals Committee) to receive the report referenced in the preceding paragraph and determine what action is appropriate. The CEO will normally be a member of this committee.

This Special Committee will, if action is required, proceed as described in all other stages of this procedure. This Special Committee will carry out those functions normally undertaken by the Head Teacher/line manager.

A Head Teacher who is the subject of this procedure will have all the rights accorded to other employees at the various stages.

### **Trust Staff:**

The principles of the above policy apply with the relevant roles being carried out by the CEO or Trust Board as appropriate. These would include for example employees employed on a trust wide basis such as a clerk or the Chief Financial Officer.

In the event that the question of capability concerns the CEO or a Co-Principal(s), the above roles will be carried out by the Trust board who, where appropriate, may involve a representative of a relevant governing body.

## **Appeals:**

Employees have the right to appeal against the first written warning, final written warning and any outcome of the Formal Stage 2 decision meeting. The procedure for any appeal will follow that set out in Appendix C, "Procedure for a Hearing", except that the running order will be reversed.

If an employee feels that a decision to dismiss them, or other actions taken against them, is wrong or unjust, they may appeal in writing against the decisions within 14 days of the decision, setting out at the same time, the grounds for appeal.

## **Period of Review:**

This policy will be reviewed every 4 years or sooner if new guidance is issued.

## Appendix A

### General principles underlying this policy

#### ACAS Code of Practice on Disciplinary and Grievance Procedures

This procedure will be implemented in accordance with the provisions of the ACAS Code of Practice.

#### Confidentiality

The appraisal and capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the head teacher and governing body to quality-assure the operation and effectiveness of the appraisal system. Schools to say here how they might achieve this, for example, the head teacher or appropriate colleague might review all teachers' objectives and written appraisal records personally, in order to check consistency of approach and expectation between different appraisers. The head teacher might also wish to be aware of any pay recommendations that have been made.

#### Consistency of Treatment and Fairness

The Trust Board is committed to ensuring consistency of treatment and fairness and will abide by all relevant equality legislation.

#### Definitions

Unless indicated otherwise, all references to "teacher" include the head teacher.

#### Delegation

Normal rules apply in respect of the delegation of functions by the Trust Board and Head Teachers

#### Grievances

Where a member of staff raises a grievance during the capability procedure the capability procedure may be temporarily suspended in order to deal with the grievance. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.

#### Sickness

If long term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case will be dealt with in accordance with the Trust's Absence Policy and will be *(e.g. referred immediately to any occupational health service to assess the member of staff's health and potential fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures)*. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

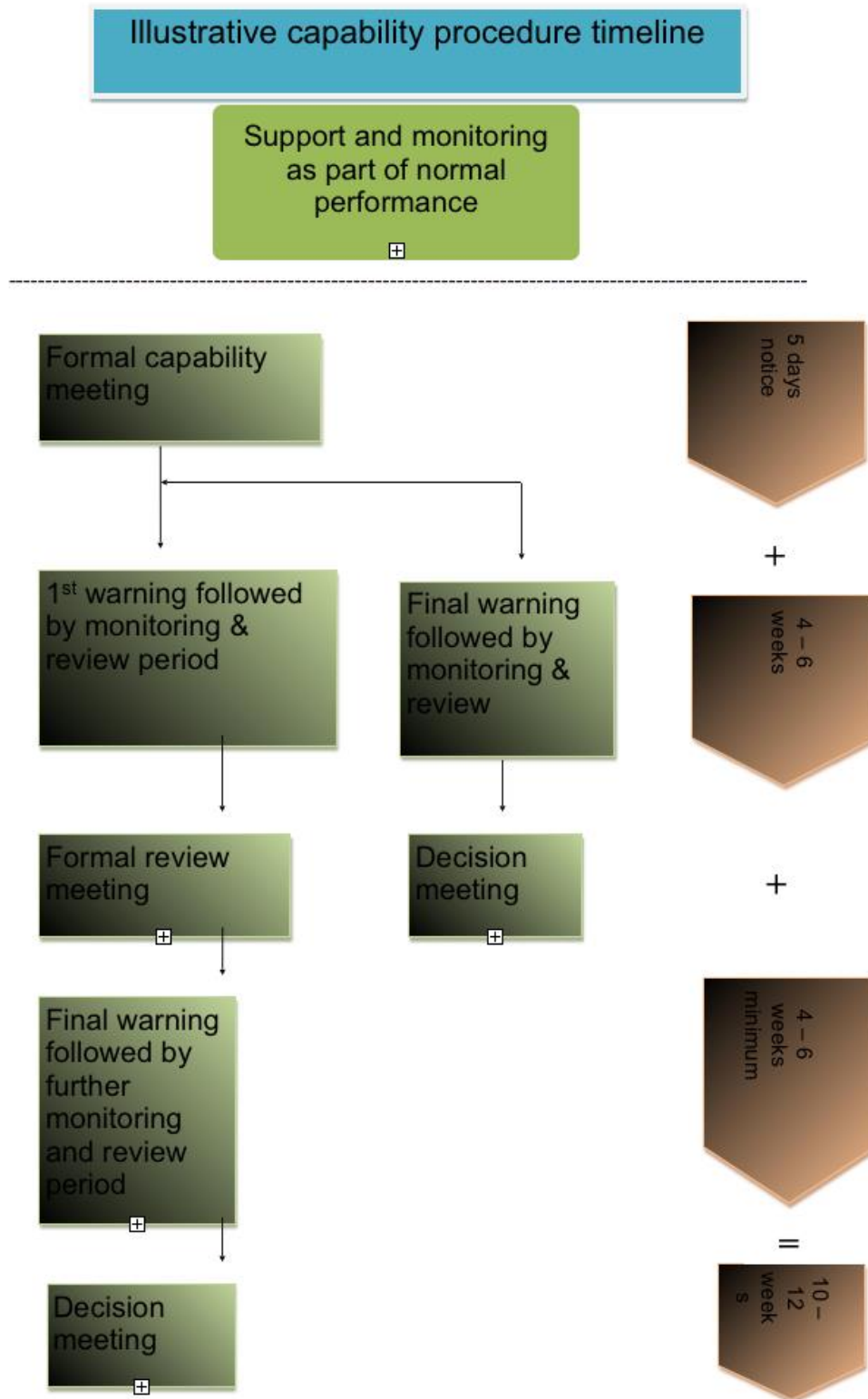
#### Monitoring and Evaluation

The Trust, CEO and Head Teachers will monitor the operation and effectiveness of the Trust's appraisal arrangements.

#### Retention

The Trust and Head Teachers will ensure that all written appraisal records are retained in a secure place for six years and then destroyed.

## Appendix B





# Appendix C

## Procedure for a hearing

Hearings will be held in as informal a manner as possible and the employee will be afforded every reasonable assistance to put their case. The conduct of the hearing is at the discretion of the CEO, Head Teacher, Chair of the committee or manager hearing the case, but they will allow the parties every reasonable opportunity to present their case.

In the case of an appeal the order of presentation set out below would normally be reversed, with the employee as appellant presenting their case first. However, by prior agreement or where the appeal constitutes a re-hearing of the full case, the case against the employee may be presented first as at the initial hearing. Chairs of appeal committees or managers hearing appeals should ensure that all parties have a common understanding and agreement on the order of presentation.

### **Introduction**

The CEO, Head Teacher, Chair of the appropriate committee or manager hearing the case will ensure that those present are introduced to each other and that they are aware of the procedure to be followed.

### **Presentation of the Case**

The person presenting the case against the employee may make an opening statement outlining the case. The person or committee hearing the case and the employee responding to it may ask questions.

They will then call any witnesses and ask them to give their evidence. The employee or their representative may then ask questions of each witness. The person or committee hearing the case may also ask questions of any witness. The person presenting the case may then re-examine the witness.

Where evidence is presented in the form of documents, the person presenting the case or an appropriate witness will explain the nature and significance of the documents.

### **The Employee's Case**

The employee or their representative may make an opening statement. The person or committee hearing the case and the person presenting the case against the employee may ask questions.

They may call any further witnesses and invite them to give their evidence. The person presenting the case against the employee may ask questions of each witness after they have given their evidence. The person or committee hearing the case may then ask questions. The employee or their representative may re-examine the witness.

Where there is any documentary evidence, the employee or any witness on their behalf will explain its significance.

### **Re-examination**

Both parties will be asked if they wish to re-examine any evidence. The person or committee hearing the case may also do so at its discretion.

### **Final Statements**

The person presenting the case against the employee may make a final statement. The employee or their representative may then also make a final statement.

### **Adjournment**

Either party may ask for an adjournment at any stage. The decision to adjourn is at the discretion of the Chair, who will consider a request in the light of the reason given for it.

### **Consideration of the Case**

All parties will withdraw. The Head Teacher or the committee will deliberate. Legal or HR advice may be sought if felt necessary.

If it is necessary to recall either party or any witnesses, to resolve a point of uncertainty, both parties will be invited to be present, whether or not the point of doubt concerns one party or both.

### **Decision**

If possible the decision will be communicated orally to the employee after the hearing. The decision will be confirmed in writing to the parties involved as soon as possible after the hearing.

## Document History

Version	Date	Comments
Issue 1	June 2018	Based on SCC Model Policy
Issue 2	June 2022	No major revisions to SCC Model Policy