



Trinity Multi Academy Trust

Policy:	Capability Policy
Date or review:	September 2017
Date of next review:	September 2019
Lead professional:	HR Manager
Status:	Non-Statutory

1. Purpose of policy and guiding principles

- 1.1 Trinity Multi Academy Trust strives to be a centre of excellence for learning, and staff and students aim for the highest standards of attainment and behaviour.
- 1.2 The trust will at all times support staff to achieve and maintain a high standard of performance in their work. To this end, the trust has in place other policies that support training, development and performance management.
- 1.3 The purpose of this capability policy is to provide line managers, senior leaders and Directors/Governors with a clear and consistent policy and procedures for managing staff who are under-performing, and therefore not meeting the required expectations for their role.
- 1.4 This procedure should be used where evidence leads to concern that an employee is consistently failing to reach professionally acceptable standards through lack of capability, aptitude, skill or ability.
- 1.5 Misconduct, wilfully deficient performance, refusal to follow instructions, negligence and other similar situations should be dealt with under the Staff Disciplinary policy.
- 1.6 Where ill-health or other health issues are identified as the main cause of a failure in performance the matter should be dealt with under the Sickness Absence Management procedures.
- 1.7 Each case will be considered on its merits and handled constructively, equitably, supportively and with understanding. Confidentiality will be maintained by everyone involved in the procedure and only those who need information to fulfil their professional role will be made aware of an individual situation.
- 1.8 Individuals have the right to be accompanied by a colleague or trade union representative throughout the formal process. If concerns are raised about performance individuals will be encouraged to seek advice from a professional association.
- 1.9 'Working days' refers to an individual's usual working pattern, this is either term time, or all year round. Similarly 'working week' is a calendar week based on an individual's term time or all year round working pattern.
- 1.10 Every effort to resolve concerns informally must have been made prior to implementing the procedures outlined in this policy. All staff should be aware that entering the capability process may affect pay recommendations or decisions. Individuals will be made aware of this, in writing.
- 1.11 The Principal is responsible for managing staffing in their academy and is authorised to make a decision to dismiss on the grounds of capability. For non-academy based staff the CEO has this authority.
- 1.12 This policy applies to all employees of the trust, including Principals and trust leaders. Where the term 'Principal' is used in these procedures, the Principal has the right to delegate these responsibilities to a member of the Senior Leadership Group or other appropriately trained staff, to act as 'line manager'.
- 1.13 Where the Principal is subject to capability procedures, the Chair of the Local Governing Body will take the role of line manager. Where the CEO is subject to capability procedures, a Director will take the role of line manager.
- 1.14 This policy applies to all staff in the trust, with the exception of:
 - staff who are employed for less than four months
 - support staff within the contractual probationary period should be dealt with in accordance with probationary policy
 - specific guidance is in place for newly qualified teachers (NQT's) undergoing their induction period. See section 10.

2. Links with other policies or legislation

- 2.1. This policy links to the appraisal arrangements as set out in the Education (School Teachers' Appraisal) (England) Regulations 2012 (the Appraisal Regulations) which replace the Education (School Teacher Performance Management) (England) Regulations 2006 (the 2006 Regulations). These came into force with effect from 1 September 2012.
- 2.2. The trust is not obliged to follow this piece of legislation, but to maintain best practice has written this policy in conjunction with the model policies suggested by the Department of Education.

- 2.3. This policy also links with the CPD policy, the Disciplinary policy and the Performance Management policy.
- 2.4. This policy links to individual job descriptions, person specifications and any national standards of professionalism i.e. Teachers' Standards.
- 2.5. All relevant legislation applies, such as the Equality Act 2010, the Data Protection Act 2018 and all employment legislation.

3. Consultation

- 3.1. Although there is no statutory requirement the trust has put in place a capability policy. This policy has been developed from the model policy produced by the Department of Education with additions by the trust, in consultation with recognised Trade Unions.
- 3.2. The policy was approved by the Board of Directors after consultation with the recognised Trade Unions.
- 3.3. It should be noted that agreement on this policy could not be found through the JCNC arrangements. Directors have been advised of the situation and have agreed to adopt the policy.

4. Support and training

- 4.1. As part of their general responsibilities, line managers are expected to set appropriate standards of performance, communicate these to staff and provide a reasonable degree of training and support to assist staff to meet the required standards. This is documented in individual performance management, or probationary records.
- 4.2. Equally, it is the responsibility of the employee to focus their efforts, skills and knowledge to undertake their role to the best of their ability. All staff are expected to access a range of support provided to them, and this is detailed in the CPD policy.
- 4.3. Once an individual's probation or induction period is completed, it is expected that they continue to work to the highest standards of performance and professionalism.
- 4.4. Line managers are expected to make individuals aware of what is expected of them, in terms of levels of performance and that their performance will be regularly monitored and feedback provided.
- 4.5. Line managers will make comments, challenge, support and provide constructive feedback on an individual's performance with the aim of providing regular monitoring and support. This will include reviewing student data, work scrutiny, learning walks, lesson observations or other quality assurance processes.
- 4.6. It is recognised that occasionally an individual's work performance may vary however, over this procedure should only be used where evidence leads to a concern that an individual is regularly failing to reach professionally acceptable standards through their lack of ability, skills or aptitude.
- 4.7. When line managers are aware of an issue that may lead to a capability process they should seek support from HR. Advice from HR should be sought throughout the process.
- 4.8. It is recognised that it can be a difficult and anxious time for any individual who subject to, or involved with, capability procedures. The trust has a confidential counselling and support service, available to all employees. Details will be provided to individuals throughout the process. In addition, individuals may be referred for Occupational Health advice, if this is considered appropriate.

5. The capability procedure

- 5.1. Where there are serious concerns about an individual's performance the formal capability procedure will be followed.
- 5.2. Any employee subject to this policy must have been informally made aware of the concerns previously, through the performance management process, including 1-2-1 discussions or other appraisal meetings. It is also expected that a period of support has commenced as a result of these meetings. This is likely to take the form of a support package or plan, which is appropriate to the concerns raised.

- 5.3. The line manager should, before entering the formal process, be satisfied that they have sufficient evidence that demonstrates the areas of underperformance. Where possible independent or objective data or information is preferred. For example, external or internally verified data, joint lesson observations, feedback from internal and external professionals, more than one valid complaint from parents, students, or colleagues. These are examples and this list is not exhaustive.
- 5.4. **Appendix 1** summarises the process and provides a guide to timelines.
- 5.5. Notice of formal capability meeting
- 5.5.1. At least five working days' notice will be given of a formal capability meeting. This will be in writing, and will contain details about the concerns about an individual's performance to enable the individual to prepare to respond or answer the case at the formal capability meeting. A copy of the capability policy will also be provided.
- 5.5.2. The individual will be advised of the time, date and location of the meeting, as well as who will be in attendance and the individual's right to representation. Any written evidence will also be sent to the individual.
- 5.5.3. The meeting is intended to establish the facts. It will be conducted by the individual's line manager, or another appropriate manager, as designated by the Principal. In the case of a Principal, the CEO will conduct the meeting. In the case of the CEO, a nominated Director will conduct the meeting.
- 5.5.4. The meeting is an opportunity for the individual to respond to the concerns raised about their performance and make any relevant representations. This may provide new information or a different context to the information, or evidence, already collected.
- 5.5.5. Once the facts are gathered and the seriousness of the matter established the line manager will conclude the meeting by one of following options:
- decide that the employee is working at an appropriate/acceptable level of capability and continue with regular monitoring and feedback (insufficient grounds for pursuing the capability issue). Any remaining concerns will be addressed through providing support through the performance management process, or;
 - the line manager will adjourn the meeting. This would be to gather further information, or more time is required to consider the matter. In this case the meeting will be rearranged within five working days, or;
 - continue with the meeting. This is described below.
- 5.6. Formal capability meeting
- 5.6.1. If the formal capability meeting is continued (or reconvened after an adjournment),
- identify the professional shortcomings, *e.g. which of the standards expected of teachers are not being met.*
 - give clear guidance on the improved standard of performance needed to ensure that the individual can be removed from formal capability procedures (*this may include the setting of new objectives focused on the specific weaknesses that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made*).
 - explain any support that will be available to help the individual improve their performance. This could include external courses, observing colleagues, visiting other schools/practitioners. The CPD policy explains in more detail the ways in which the support and professional development is offered.
 - set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case but will be no less than four working weeks and no more than eight working weeks.
 - warn the individual 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.
 - advise the individual that entering the capability process may affect pay recommendations or decisions.
- 5.6.2. At this meeting the line manager can issue a first formal warning or, in more serious cases, a final formal warning.

- 5.6.3. A record of any formal meetings will be made and the individual will be informed in writing of the matters covered in the meeting, given information on the timeline set for improvement and when the formal capability review meeting will be held.
 - 5.6.4. Where a formal warning is issued the individual will also be informed in writing of the length of time the formal warning will remain on their personal file and the time limits for appealing against the warning, along with who the appeal should be addressed to.
 - 5.6.5. When a formal warning is issued the employee has a right to appeal against this decision. Any appeals must be in writing and be made within five working days of the formal meeting.
 - 5.6.6. When a first formal warning has been issued, please refer to 5.7 (capability review meeting) for next steps. When a final warning has been issued, please refer to 5.8 (formal decision meeting).
- 5.7. Formal capability review meeting
- 5.7.1. The formal capability meeting will agree a review and monitoring period. Formal monitoring, evaluation, guidance and support will continue during this period.
 - 5.7.2. The individual will be given five working days notice of the review meeting (although this would generally be agreed at the formal capability meeting, therefore ensuring sufficient notice). Details of the time, date and location of the meeting, as well as who will be in attendance and the individual's right to representation. Any written evidence will also be sent to the individual.
 - 5.7.3. The basis of the review meeting will be to review:
 - improvements made in the identified professional shortcomings.
 - improvements made in the standards of performance required.
 - how the support, monitoring and feedback has been accessed and utilised to support improvements.
 - 5.7.4. The meeting will gather the facts and there will be a discussion in which the individual is able to present their case on how they have improved their performance in the areas identified. The line manager will conclude the meeting by one of following options:
 - decide that the employee is working at an appropriate/acceptable level of capability and continue with regular monitoring and feedback (insufficient grounds for pursuing the capability issue). Any remaining concerns will be addressed through providing support through the performance management process, or;
 - if no, or insufficient improvement has been made during the review period the individual will receive a final formal warning.
 - 5.7.5. As in the capability meeting the line manager will set out a timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case but will be no less than four working weeks and no more than six working weeks.
 - 5.7.6. A record of any formal meetings will be made and the individual will be informed in writing of the matters covered in the meeting, given information on the timeline set for improvement and when the formal decision meeting will be held.
 - 5.7.7. If a final formal capability warning has been issued, the individual will also be informed in writing of the length of time the formal warning will remain on their personal file and will also be informed (in writing) that failure to achieve an acceptable standard of performance, within the set timescale, may result in dismissal and given information about the handling of the further monitoring and review period and the procedure and time limits for appealing against the final warning, and who this should be addressed to.
 - 5.7.8. Any appeals must be in writing and be made within five working days of the formal meeting.
- 5.8. Formal decision meeting
- 5.8.1. The formal capability meeting, or review meeting will agree a review and monitoring period. Formal monitoring, evaluation, guidance and support will continue during this period.
 - 5.8.2. The individual will be given five working days notice of the decision meeting (although this would generally be agreed at the previous meeting, therefore ensuring sufficient

notice). Details of the time, date and location of the meeting, as well as who will be in attendance and the individual's right to representation. Any written evidence will also be sent to the individual.

- 5.8.3. The basis of the decision meeting will be to review:
- improvements made in the identified professional shortcomings.
 - improvements made in the standards of performance required.
 - how the support, monitoring and feedback has been accessed and utilised to support improvements.
- 5.8.4. The meeting will gather the facts and there will be a discussion in which the individual is able to present their case on how they have improved their performance in the areas identified. The line manager will conclude the meeting by one of following options:
- decide that the employee is working at an appropriate/acceptable level of capability and continue with regular monitoring and feedback (insufficient grounds for pursuing the capability issue). Any remaining concerns will be addressed through providing support through the performance management process, or;
 - if no, or insufficient improvement has been made during the review period the individual will be advised that the case will be referred to capability hearing, before a panel of Governors or the Principal, with the recommendation to dismiss the individual.
- 5.8.5. At this stage, given that performance is unsatisfactory, then consideration should be given to suspending the individual pending the outcome of the capability hearing.

6. Capability hearing to consider dismissal

- 6.1. A capability hearing is a formal hearing to decide if an individual's employment is to terminate on the grounds of 'capability'.
- 6.2. At the decision meeting the individual will be made aware as to who will chair the capability hearing. A Principal has delegated responsibility to chair a capability hearing and make the decision to dismiss an employee. The CEO has delegated responsibility to chair the hearing for staff who work for the central trust team.
- 6.3. Where appropriate, the decision may be made to refer the matter to a Governors panel. In this case the hearing will be before a panel of Governors; this will usually be three Governors. The trust may use Governors or Directors from across the trust to form an appeal panel. This is in the interests of impartiality.
- 6.4. At least five working days' notice will be given of a formal capability hearing. This will be in writing, and will contain details the time, date and location of the hearing, as well as who will be in attendance and the individual's right to representation. Any written evidence will also be sent to the individual.
- 6.5. If witnesses are to be called to give evidence at the hearing these must be advised prior to the hearing.
- 6.6. An HR advisor should be present at the hearing to advise the chair or panel on matters of process, procedure and employment law.
- 6.7. The procedural format of the hearing is detailed in **Appendix 2**.
- 6.8. The purpose of the hearing is for the panel to determine one of the following outcomes:
- that the matter be referred back to the line manager to review, with any recommendations for further action, or;
 - that the employee be dismissed on a date which will normally follow the standard notice period, based on considering the evidence, recommendations and representations presented at the hearing.
- 6.9. The outcome of the hearing will normally be advised verbally to the employee at the end of the hearing, and this will then be confirmed in writing, advising of the right to appeal the decision, the time limits for appealing and who this should be addressed to.
- 6.10. Any appeal must be in writing and be made within five working days of the formal meeting. The appeal notification must state the grounds on which the appeal is made.
- 6.11. Where possible, the appeal will be heard within 20 working days of receiving the appeal, and will be heard by a Governors appeal panel. This panel will consist of three Governors, who have not previously been involved in the dismissal decision. The trust may use Governors or Directors from across the trust to form an appeal panel. This is in the interests of impartiality.

- 6.12. At least five working days' notice will be given of a capability appeal hearing. This will be in writing, and will contain details the time, date and location of the hearing, as well as who will be in attendance and the individual's right to representation. Any written evidence will also be sent to the individual.
- 6.13. The outcome of the appeal hearing will normally be advised verbally to the employee at the end of the hearing, and this will then be confirmed in writing, advising the employee that they have no further right of appeal.

7. Referral to the National College

- 7.1. The trust will follow the Department of Education's procedures on referring teachers who are subject to capability procedures to the DfE.

8. Redeployment/demotion

- 8.1. If during the capability procedure the individual requests to transfer to an alternative job, with the terms and conditions of employment relevant to that role, this may be considered as an alternative to a dismissal hearing. For this to happen there must be a vacant role available for the individual to transfer to.
- 8.2. The line manager of the individual and the line manager for the post they wish to transfer to, must be in agreement that the individual has proven skills, experience, knowledge and aptitude to be successful in the new role.
- 8.3. Should the line managers be in agreement, then the individual will be considered to have resigned from their substantive post, and therefore no salary safeguarding will apply, should the salary be lower than their substantive post.
- 8.4. If there are no other suitable alternatives the capability procedure will continue as outlined above. There is no obligation to create a role.
- 8.5. Where the individual accepts an alternative role, any formal warnings will remain on their personal file. The capability procedure will cease and usual performance management, review and monitoring procedures will apply for the new role.
- 8.6. Where there is evidence of serious concerns about an individual's performance in the new role the formal capability procedure will be followed. The individual will enter the procedure at the formal capability review stage, (where a final written warning will be issued) irrespective of where they were in the process in their previous role. The appeal processes described above will apply. Please refer to section 5.

9. Sickness absence

- 9.1. 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 Attendance Management policy and procedures.
- 9.2. Usually this will include referring the individual to the occupational health service, to seek further advice on the individual's health, and how the formal capability process and procedures should be managed on their return to work.
- 9.3. Any return to work discussions for individuals who have been absent due to long term sickness, who have entered the capability procedures, should refer to the process and how this will be managed, how timelines may be adjusted to accommodate and support a full return to work.
- 9.4. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

10. Newly Qualified Teachers (NQTs)

- 10.1. The trust will follow the statutory guidance (issued by the Department of Education) for Teachers employed during their induction or NQT year. Where under performance is a serious concern, the capability policy and procedures will be undertaken in parallel with the induction programme, as outlined in the statutory guidance document.
- 10.2. Advice will be sought from the Appropriate Body as early as possible if there are serious concerns about the performance of an NQT.

11. Grievances

- 11.1. Where an individual 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.

12. Roles and responsibilities

12.1. The role of the CEO/Principal

- 12.1.1. The role of the CEO is to ensure that this policy is applied fairly and consistently across the trust.
- 12.1.2. The role of Principal is to ensure that this policy is applied fairly and consistently across their academy.
- 12.1.3. The Principal, with the assistance of other Senior Leadership colleagues, will review capability information, including the effectiveness of this policy, and where required, report to the Local Governing Body.
- 12.1.4. The Principal will be made aware of pay decisions and recommendations that may have been affected by this process.

12.2. The role of the Directors/Governors

- 12.2.1. The Local Governing Body will be made aware this policy has been agreed by Directors and will be committed to ensuring that this policy is applied consistently and fairly.
- 12.2.2. Inform all staff of the policy which has been adopted.
- 12.2.3. The Directors/Governors will ensure that all written appraisal records are retained in secure place for the required period of time and then destroyed.
- 12.2.4. The Directors/Governors will monitor, evaluate and review policies in line with statutory and best practice guidelines, including equality legislation.

12.3. The role of senior leaders

- 12.3.1. The HR Manager is responsible for ensuring that professional, effective HR advice is provided to line managers, Principals and Governors.
- 12.3.2. The HR Manager will monitor how the capability policy has been used and report to Directors.
- 12.3.3. Senior leader teams in an academy will delegate all relevant administration processes, including ensuring records are retained appropriately.

12.4. The role of the employee/other staff

- 12.4.1. Line managers are responsible for ensuring they have undertaken sufficient training and have sought advice from HR.
- 12.4.2. HR will ensure there is training provision for this area of people management.
- 12.4.3. All employees should focus their efforts, skills and knowledge to undertake their role to the best of their ability. All staff are expected to access a range of support provided to them and this is detailed in the CPD policy.
- 12.4.4. All employees are required to keep the details of any capability procedure confidential. Only those involved in the procedure who need information to fulfil their professional role will be made aware of an individual situation. Any party involved in a capability procedure should be aware that breaching this confidentially could lead to disciplinary action.

13. Monitoring and Evaluation

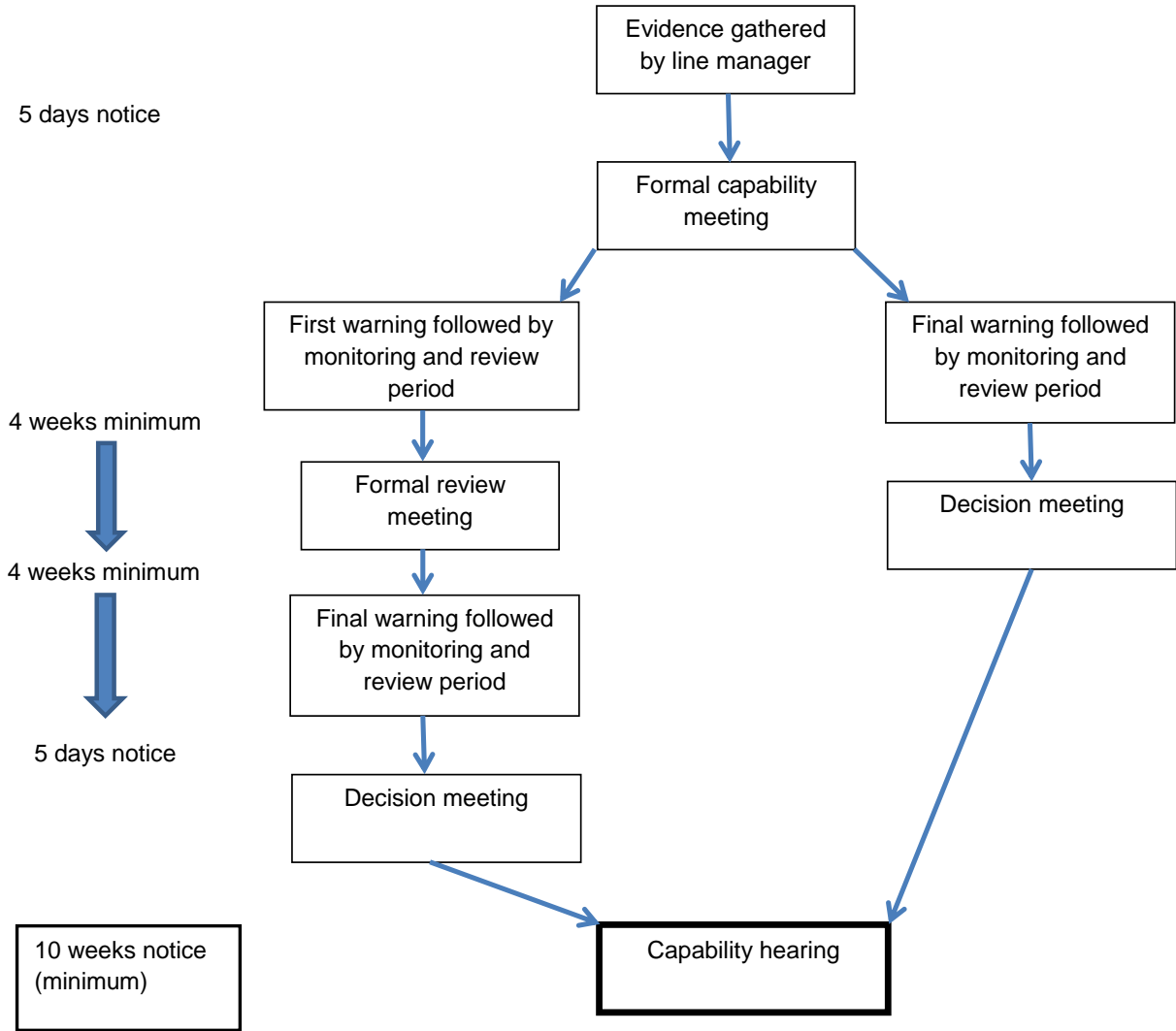
- 13.1. This process will be treated with confidentiality. However, the desire for confidentiality does not override the need for the CEO, Principals and a Governing Body to quality-assure the operation and effectiveness of the systems. For example, the Principal, or an appropriate member of the senior leadership group may review the documents and records taken during the process before a recommendation is made to refer a decision to a capability hearing.

- 13.2. This policy should be reviewed at least every two years to ensure compliance to legislation, educational needs, national and local terms of employment and good practice.
- 13.3. Any reviews to this policy will be in consultation with staff, including representatives of unions and associations recognised by the trust.

Appendix 1

Timeline for capability procedures

Concerns are raised and discussed with the individual and a programme or plan of support is agreed and underway. See Section 5 of the policy. If the support is not effective the line manager may consider capability procedures.



Appendix 2

Capability hearing procedures

In the room at the start of the hearing should be:

- the employee and their representative
 - the line manager, or other representative of the academy, with, where possible the HR advisor
 - either the Principal as chair of the panel OR a Governors panel
 - HR advisor to the Chair (or panel).
1. The Principal will be the chairperson. Alternatively, the Governors panel will nominate a chairperson to chair the hearing.
 2. The chairperson of the panel makes introductions, describes the reason for the hearing, outlines the procedure to follow and informs the employee (or their representative) of their right of adjournment at any time during the hearing.
 3. All documentation relevant to the hearing should have been submitted by both the academy and the employee prior to the hearing. Occasionally, new information is presented on the day of the hearing. If this is the case, the chair of the panel has the **option** of accepting new information. There is no requirement to accept new information, and the decision to accept will usually be based on the quantity of information, and the length of adjournment required for all parties to read and consider the information. The chairperson should seek advice from their HR advisor.
 4. The line manager presents the case for the academy (employer). This case outlines the capability procedure followed and refers to any documentation presented to the panel. The academy presents their witnesses to support their case and to respond to questions.
 5. After presenting their case, the line manager can be cross-examined by the employee (or their representative) and members of the panel. Witnesses can also be cross-examined by the employee, or any member of the panel.
 6. The employee, or their representative, will then present their case. The employee presents their witnesses to support their case and to respond to questions.
 7. After presenting their case, the employee can be cross-examined by the line manager, or panel. It should be noted that the employee's representative may participate in the hearing in support of the employee, including asking appropriate questions, but may not answer questions on the employee's behalf. Witnesses can also be cross-examined by the employee, or any member of the panel.
 8. After hearing both cases the chairperson should confirm with the panel whether they have further questions for any party. The chairperson will then inform both parties of their right to an adjournment before summing up their case.
 9. The academy representative (line manager) sums up the academy case. No new evidence should be presented at this stage.
 10. The employee sums up their case. No new evidence should be presented at this stage.
 11. Usually the chairperson will suggest an adjournment while the panel review and consider the information presented.
 12. The panel decide on a course of action, and are able to seek clarity on issues of procedure, process and employment law to their HR advisor.
 13. The chairperson calls both parties back into the room and informs all parties of the panel's decision and any relevant course of action. Where possible, the chairperson summarises the factors that have contributed to their decision.
 14. The chairperson confirms the decision will be confirmed in writing, and if appropriate any right of appeal.