

Ormiston Academies Trust

Ormiston SWB Academy Managing Support Staff Capability

Policy version control

Policy prepared by:	Melanie Wheeler – OAT HR
In consultation with:	ASCL, ATL, GMB, NAHT, NASUWT, NUT, Unison
Original consultation:	June 2019 Fully Consulted Live date 1 st September 2019
Name and date of executive approval:	Carmel Brown – OAT HR June 2019
Review date	June 2022
Academies transferring to OAT after 01/09/2014	Academies are required to adopt OAT policies Academies should inform staff and Governors that this policy has been adopted and fully consulted with unions at national level prior to release.
Academies that transferred before 01/09/2014	The Principal should issue the policy to all staff and academy representatives for consultation over a calendar month. Once adopted, any further changes consulted with the JCC will follow the process of informing not consulting

Contents

Page

1. Introduction.....	3
2. Purpose	3
3. Considerations	3
4. Capability Overview	4
5. Notification of formal capability meeting	4
6. Formal capability meeting	4
7. Monitoring and review period	3
8. Formal review meeting	3
9. Final monitoring and review period	6
10. Decision meeting.....	6
11. Appeal	5

1. Introduction

- 1.1. This procedure has been adopted by the governing body of Ormiston SWB Academy on September 2019 for the purposes of managing capability of support staff.

2. Purpose

The purpose of this procedure is to detail arrangements which will apply when an employee falls below the levels of competence that is expected of them in their role and provide a framework to improve performance. There is a commitment by the academy to treat individuals with fairness throughout the process. A separate policy applies to Teachers.

- 2.1 This policy is not intended to address issues of willful under-performance; these cases should be addressed using the disciplinary procedure, nor should it be applied to cases of unsatisfactory performance due to absence which should be dealt with using the absence management policy.
- 2.2 The formal capability procedure applies where there are serious substantiated concerns about performance that the appraisal process has been unable to address through either the day-to-day discussions about performance/issues with line managers, or the appraisal process.

The procedures set out in this policy seek to ensure that this is achieved in a fair equitable and transparent way.

The Governing Body/Trust recognises its responsibilities under relevant legislation including the Equality Act 2010, the Employment Relations Act 1999, the Part-time workers (Prevention of Less Favorable Treatment) Regulations 2000, the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002, The Employment Rights Act 1996, The Employment Act 2002, The Employment Act 2002 (Dispute Resolution) Regulations, and will ensure that all pay related decisions are taken equitably and fairly, in compliance with statutory requirements.

3. Considerations

- 3.1 If sickness absence appears to have been triggered by the commencement of formal capability procedures, the case will be dealt with in accordance with the supporting attendance policy and the employee will be referred immediately to occupational health service. Having sought advice from occupational health service monitoring for example evidence gathering and/or formal capability the procedures **may continue** during a period of sickness absence.
- 3.2 Due to the formal nature of capability meetings, all meetings held under this policy will be arranged with a minimum of 5 working days' notice and with the right to be accompanied by either a work colleague or trade union representative. A record will be kept of all formal meetings.

The purpose of the capability procedure is to improve performance through support and monitoring and applies when there are serious concerns which have failed to be addressed through the appraisal process and informal support. Ultimately if the application of this procedure fails to secure sufficient progress it may lead to dismissal.

4. Capability Overview

- 4.1 It is expected that the capability process will take no more than one term (i.e. thirteen weeks) however, each review period should be no less than four working weeks to allow improvements to be made. An overview of the process and timescales can be found in **Appendix 1**.
- 4.2 In cases other than where there are very serious concerns substantiated by evidence about performance, it is expected that support will have been provided under the appraisal process prior to moving to formal capability procedures.

5. Notification of formal capability meeting

- 5.1 As with all formal meetings held under this procedure, at least five working days' notice will be given in writing of the formal capability meeting. This will contain sufficient evidence regarding the concerns about performance, copies of evidence of these concerns and their possible consequences, to enable the employee to prepare.
- 5.2 Advice from OAT HR or EPM on this policy in these cases.
- 5.3 At all meetings, the employee may be accompanied by either a work colleague or a trade union representative and should be encouraged to seek support.

6. Formal capability meeting

- 6.1 This meeting will be conducted by the Principal or formally nominated member of the Senior Leadership Team at the direction of the Principal.
- 6.2 The first stage of 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.
- 6.3 Once all representations have been heard either party may request an adjournment. During the adjournment, the person conducting the meeting will consider the information presented and make a decision on how the case will progress.
- 6.4 Following reviewing this, the person conducting the meeting has four options
 - 1. To conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases, the capability procedure will come to an end. A further meeting may then be arranged under the appraisal process to reassess objectives and timescales.
 - 2. To choose to suspend the meeting to gather more information in light of the employee's response or to give more time to consider the information. In this case a date for the reconvened meeting should be agreed.

3. To decide that there is a need to instigate the formal capability process.

In this case a formal written warning should be issued to the employee. The formal capability meeting will continue following the format at **Appendix 2** and seek to agree a Performance Improvement Plan (template found in 10); if agreement on this is not possible the person conducting the meeting will determine the content of the plan. In these circumstances, the PM process will stop.

4. To decide that there is a need to instigate the formal capability process. However, if issues raised are so serious a final formal written warning should be issued. *The advice of HR may be sought prior to this action.* Where a final formal written warning is to be issued the meeting format at **Appendix 4** should then be followed and should seek to agree an appropriate Performance Improvement Plan, (template found in **Appendix 5** where agreement is not possible the person conducting the meeting will determine the content of the plan.

6.5 The outcome of this meeting will be confirmed in writing along with details of the right to appeal the decision. This letter will also inform the employee of the matters covered during the meeting, (and where appropriate) a copy of the Performance Improvement Plan, details of the timescales and the review stage. A template letter can be found in **Appendix 3**.

6.6 Appeals should be made in writing to the chair of governors within five working days of receipt of the letter confirming the warning being issued. Where the employee submits an appeal, the process will continue whilst awaiting the outcome.

7. Monitoring and review period following a formal capability meeting

7.1 A performance monitoring and review period will follow the formal capability meeting, in line with the timescales outlined and will reflect the complexity and number of objectives set in the Performance Improvement Plan. Formal monitoring, evaluation, guidance and support will continue during this period.

8. Formal review meeting

8.1 On conclusion of the monitoring and review period the employee will be invited to a formal review meeting to review their progress and improvement. If they were issued with a final written warning initially they will be invited to a final review meeting.

8.2 **Appendix 6** details the points to be addressed during this meeting.

8.3 After reviewing the progress made against the previously agreed targets, a decision should be made as to whether sufficient improvement has been made. There are two possible outcomes:

- a. After reviewing the progress made against the previously agreed targets, a decision should be made as to whether sufficient improvement has been made. There are two possible outcomes: If the reviewer is satisfied that they have met the targets or made sufficient improvements/progress set out in the Performance Improvement Plan, the capability procedure will cease, and the appraisal process will re-start. This decision should be confirmed in writing (**Appendix 7**).

- b. If the targets in the Performance Improvement Plan have not been met during the monitoring and review period, they will receive a final formal written warning.

8.4 Where a final formal written warning is issued, they will receive written information about the further monitoring and review period and informed in writing that failure to meet the Performance Improvement Plan, within the set timescale, may result in dismissal. This monitoring period should be determined with consideration to the targets set in the Performance Improvement Plan. This should be a minimum of four working weeks to allow sufficient time for improvements to be made.

8.5 The employee should be given the right of appeal against the final formal written warning; this should be made in writing to the chair of governors within five working days of receipt of the letter confirming the warning being issued.

9. Final monitoring and review period

9.1 Following the final monitoring and review period, a final review meeting will be held, employees should be given five working days' notice of this meeting along with the right to be accompanied at the meeting by a work colleague or trade union representative.

9.2 This meeting will follow the format for the formal review meeting as described in **Appendix 6**.

10. Decision meeting

10.1 The employee will be given a minimum of ten working days' notice of the decision meeting and will be given copies of any documentary evidence to be referred to during the meeting. Employees should be informed that any documentation they wish to refer to during the meeting should be sent to the chair of the decision meeting panel no later than two working days before the meeting.

10.2 The decision meeting panel should consist of three governors however one panel member can be the Principal as long they have had no previous involvement in the capability process. The meeting should follow the format in **Appendix 8**.

10.3 There are three potential outcomes for the decision meeting:

- a. That the panel determine that performance in relation to the targets stated in the Performance Improvement Plan, have been met, therefore the employee should remain in post and resume their role in the normal appraisal process.
- b. That the panel determine that performance in relation to the targets stated in the Performance Improvement Plan have not been met due to exceptional circumstances and as such progress toward meeting those targets will be reviewed again after an agreed period.
- c. That the panel determines that the employee has failed to make sufficient improvement in relation to the targets set in the Performance Improvement Plan and that they should be dismissed.

10.4 If a decision to dismiss has been taken, the employee will receive appropriate notice.

11. Appeal

11.1 There is a right of appeal against dismissal. Any appeal should be in writing to the clerk of governors within ten working days of receiving the letter confirming the decision, stating the grounds for appeal.

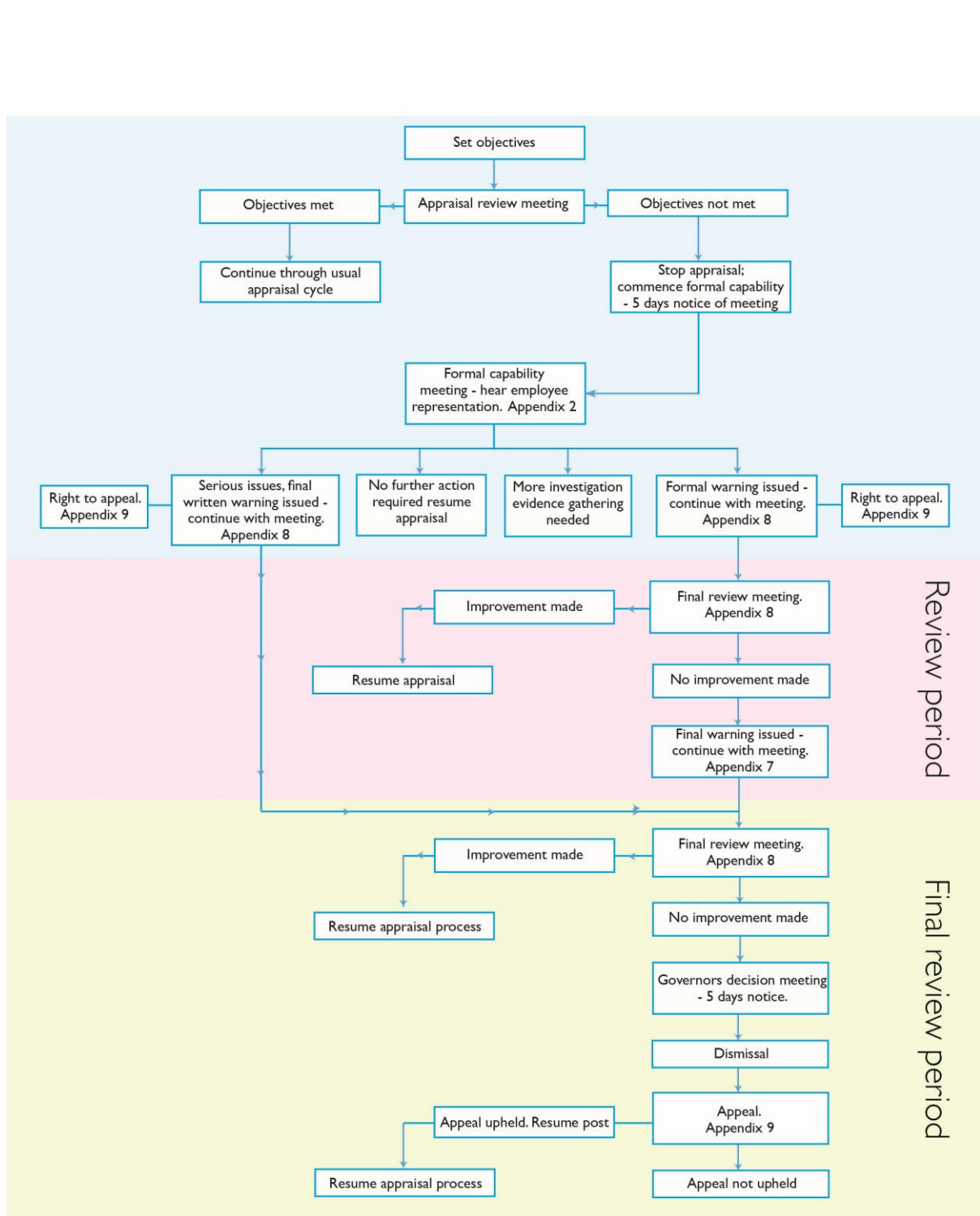
11.2 Appeals will be heard without unreasonable delay and will be heard by three governors who have not previously been involved in the case. The meeting will take the format as describe in **Appendix 9**.

11.3 The employee will be informed in writing of the outcome of the appeal hearing as soon as possible.

11.4 There is no further recourse for appeal under this procedure.

Appendix 1

Capability flowchart



Appendix 2

Guidance Note: Conducting a formal capability meeting

- Advise the employee of the nature of the meeting and that they have the right to be represented.
- Ensure they are provided with a copy of this policy, if not already provided.
- Give clear feedback to them about the nature and seriousness of the concerns
- Ensure they have the opportunity to respond, provide reasons/explanation for the performance shortfall.
- Ask them if there are any underlying issues that may impact on performance, e.g. health, issues outside work etc. If health is a concern advise them that you will arrange an appointment with Occupational Health.
- On hearing all representations either party may request an adjournment to consider information presented.
- Following this there are four options:
 1. *To conclude there are insufficient grounds to pursue capability and therefore cease capability and resume appraisal process.*
 2. *Suspend the meeting to gather more information*
 3. *To instigate formal capability and issue a formal written warning – follow this format of remainder of meeting.*
 4. *To instigate formal capability however due to seriousness of concerns issue a final formal written warning. Refer to Appendix 9 for format of remainder of meeting.*

If continuing formal capability and issuing a formal written warning:

- Advise them that they are being issued with a formal warning under this policy, and that this will be confirmed in writing.
- Advise them that they have the right of appeal against the formal warning, and that details of the appeal process will be confirmed to them in writing.
- Agree any support (e.g. coaching, mentoring, training, structured observations), that will be provided to help address those specific concerns, performance measures and timescales. Agree interim review meetings if appropriate.
- Advise them that if performance doesn't meet the required level within the review period they may be issued with a final written warning, and that ultimately the capability process can lead to dismissal.

Appendix 3

Outcome of formal/final formal capability meeting letter

Your reference

Our reference Letter – outcome of formal meeting

Date

[Name]

[Address]

Dear XXXX,

Outcome of formal/final formal capability Meeting

Thank you for attending the meeting on XXX at which you chose/chose not to be accompanied by your Union representative XXXX to discuss your performance. This meeting was held in accordance with the capability procedures.

At the meeting, I explained to you that the purpose of the meeting was to discuss concerns regarding your performance and to hear your responses in relation to these.

During the meeting, I explained that *(insert details of concerns and evidence)*. You were given the opportunity to respond to these, you explained that *(insert details of response)*.

Having considered the points raised I concluded that: *(delete as appropriate)*

- a) *That whilst there are issues with aspects of your performance, it would be more appropriate to address these concerns through the appraisal process. As such the capability process will now cease and you will resume the appraisal process. A further meeting will be arranged to reassess your objectives.*
- b) *The meeting should be suspended to allow time to collect/consider further information. (insert details of reconvened meeting)*
- c) *That significant performance concerns exist and as such it is appropriate to continue with the capability process as such you were issued with a formal warning that your performance should improve.*

You have the right to appeal this decision; appeals should be made in writing to the chair of governors within ten days of receipt of this letter.

- d) *That performance concerns exist which are serious in their nature, as such it is appropriate to continue with the capability process as such you were issued with a final formal warning that your performance should improve.*

You have the right to appeal this decision, appeals should be made in writing to the chair of governors within ten days of receipt of this letter.

In light of this decision I then explained you will be subject to a monitoring period of XX weeks (minimum 4) and discussed the Performance Improvement plan with you to highlight your targets, measures and agreed support. (insert summary of agreed plan). A copy of the revised plan is enclosed.

Following this period, you will be reviewed again. Failure to make sufficient improvements during this review period will result in you being issued with a final formal warning to improve performance/ your case being referred to governors for a decision to be made on your ongoing employment.

I am sorry that this has become necessary however I would encourage you to contact me should you need any clarification on the issues raised or require additional support and hope that you will be able to make and sustain the necessary improvements.

Yours sincerely

Name

Designation

E-mail address

Telephone number

Appendix 4

Guidance note: Conducting a final formal meeting

- Advise the employee the nature of the meeting and that they have the right to be represented.
- Ensure the employee is provided with a copy of policy, if not already provided.
- Highlight clearly the specific areas of performance that are causing concern and discuss the evidence of this.
- Ensure the employee has the opportunity to respond, provide reasons/explanations for the performance shortfall
- Ask the employee if there are any underlying issues that may impact on performance, e.g. health, issues outside work etc. If health is a concern advise the member of staff that you will arrange an appointment with Occupational Health
- Advise the employee that they are being issued with a final formal warning under this policy, and that this will be confirmed in writing.
- Advise the employee that they have the right of appeal against the final formal warning, and that details of the appeal process will be confirmed to them in writing.
- Advise the employee that Performance Management under the PM policy is suspended pending the outcome of the informal capability procedures.
- Agree any support (e.g. coaching, mentoring, structured observations), that will be provided to help address those specific concerns, performance measures and timescales. Agree interim review meetings if appropriate
- If appropriate discuss the generic stress risk assessment with the staff member, ask the employee if there are any additional actions that can be taken to support them and to help minimise stress.
- Agree a date for review against the targets, minimum of four weeks.
- Advise the employee that if performance doesn't meet the required level within the review period then the matter may be referred to the governors with a recommendation for their dismissal.

Appendix 5

Performance improvement and support plan

To be used in conjunction with the capability procedure.

Target	Measured by	Support e.g. training, supervision, mentoring etc.	Date to be achieved by/review date

Once completed, a copy of the agreed plan should be sent to the employee with a copy to their representative.

Appendix 6

Guidance note: Conducting a formal capability review

- Advise the employee that this meeting is a formal review under the capability policy, and that they have the right to be represented.
- The Principal/Manager should present evidence regarding the employees' performance against the targets specified in the formal capability Meeting.
- The employee should be asked for their opinion regarding their performance against the targets.
- The employee should be asked if there are any underlying reasons, health, etc., that should be taken into consideration.
- The principal should adjourn the meeting at this point to consider the evidence.
- If the employee has achieved the targets, and the principal believes this can be sustained, they should be advised that the capability process is finishing, and they should be encouraged to maintain this level of performance. A discussion may take place regarding phasing out of any support.
- A discussion should take place around the re-commencing of normal appraisal process, and an addendum may need to be made to the Performance Management statement detailing any revision of targets etc.
- If the employee has not achieved the targets they should be advised that they are being issued with a final formal warning which will be confirmed in writing. Advise that they have the right to appeal the warning and that details of this will be confirmed in writing.
- Revisit performance development plan revise as appropriate and set new targets, measures and timescales as necessary.
- Explain that failure to make improvement after this review period will result in case being referred to governors for a Decision Meeting.

Appendix 7

Letter following formal/final formal review meeting

Your reference

Our reference Letter – improvement made following capability

Date

[Name]

[Address]

Dear XXXX,

Outcome of meeting– *(formal/final formal) capability review*

Thank you for attending the meeting on XXX at which you chose/chose not to be accompanied by your Union representative XXXX to discuss your performance. This meeting was held in accordance with the capability procedure for support employee.

At the meeting, I explained to you that the purpose of the meeting was to review the progress since our initial meeting/first formal review meeting that took place on XXXX. At this meeting, an action plan of specific performance targets was provided to you in order to help you address those issues and enable you to perform to the required standards.

We reviewed those targets as set out within the agreed action plan which are summarised below;

i. Insert summary of performance improvement support plan

You responded to the review stating xxxxxxxx *(insert summary of response)*

Following consideration of the points raised I concluded that *(delete as appropriate)*

- a) *That you have made sufficient improvement over the review period, as such the capability process will now end and you will resume the usual appraisal process. As discussed in the meeting any remaining issues (insert detail of issues) will now be addressed using additional objectives and support in the appraisal process.*

It is important however that these improvements are sustained, failure to sustain the required level of performance may result in you re-entering the capability process.

- b) *That you have made insufficient/no progress against the agreed targets, as such you are issued with a final formal warning.*

You have the right to appeal this decision, appeals should be made in writing to the chair of governors within ten days of receiving this letter, stating your reasons for appeal.

In light of this decision I then explained you will be subject to a further monitoring period of XX weeks (minimum 4). During this period, you will receive the support as agreed in your revised Performance Improvement Plan and will be assessed against the agreed targets. A copy of the revised plan is enclosed.

Following this period, you will be reviewed again. Failure to make sufficient improvements during this review period will result in your case being referred to governors for a decision to be made on your ongoing employment.

- c) *That you have made little/no improvement against agreed targets. As you have previously received a final formal warning regarding your capability your case will now be referred to governors for a decision to be made on your ongoing employment. You will receive a letter inviting you to this meeting in due course.*

(Delete as appropriate) I am pleased that you have been able to make these improvements and hope that you will be able to sustain these and develop further. Should you require any ongoing support please do not hesitate to contact me.

I am sorry that this has become necessary however I would encourage you to contact me should you need any clarification on the issues raised or require additional support and hope that you will be able to make and sustain the necessary improvements.

Yours sincerely

Name

Designation

E-mail address

Telephone number

Appendix 8

Meeting to consider dismissal on the grounds of capability

1. Introduction by chairperson; explanation of procedure.
2. The principal or relevant designated manager should present the case for dismissal.
3. Employee (or representative) may ask questions of principal.
4. The chairperson/committee members and HR representative may ask questions of the principal.
5. Principal to call witness(es) if applicable.
6. Employee (or representative) may ask questions of principal's witness(es).
7. The chairperson/committee members and HR representative may ask questions of the principal's witness(es).
8. Employee (or representative) should present his/her case.
9. The principal may ask questions of the employee (or representative).
10. The chairperson/committee members and director's representative may ask questions of the employee (or representative) and ask further questions of the principal regarding the case made on behalf of the employee.
11. Employee (or representative) to call witness(es) if applicable.
12. The principal/Investigating officer may ask questions of the employee's witness(es).
13. The chairperson/committee members and HR representative may ask questions of the employee's witness(es).
14. Principal to sum up case.
15. The employee (or representative) to sum up case.
16. Parties to retire; the HR representative may remain with the chairperson/committee to offer advice. The chairperson/committee to consider the cases presented. The chairperson will notify the parties of their decision. This may be conveyed at the conclusion of the hearing but will in any case be confirmed in writing, with information on any further appeal rights where appropriate.

This procedure may be varied by agreement with all the parties.

Appendix 9

Guidance note: meeting to hear an appeal against a formal (or final formal) warning, dismissal on the grounds of capability

1. Introductions by chair: explanation of procedure.
2. Appellant or representative to state his/her grounds for appeal.
3. First committee representative/principal may ask questions of appellant.
4. Appeals committee members/HR representative may ask questions of the appellant.
5. Appellant to call witness(es) (if applicable)
6. First committee representative/principal may ask questions of appellant's witness(es)
7. Appeals committee members/HR representative may ask questions of the appellant's witness(es).
8. First committee representative/principal to state the academy's case.
9. Appellant (or representative) may ask questions of first committee representative/principal.
10. Appeals committee members/HR representative may ask questions of first committee representative/principal.
11. First committee representative/principal to call witness(es) (if applicable)
12. Appellant (or representative) may ask questions of first committee representative/principal's witness(es) (if applicable)
13. Appeals committee members/HR representative may ask questions of academy's witness(es) (if applicable).
14. First committee representative/principal to sum up case. *
15. Appellant (or representative) to sum up case. *
16. Parties to retire. HR representative may remain with the appeals committee to offer advice.

* N.B. New evidence or material must not be allowed at this stage.

Appeals committee to consider the case and notify the parties of their decision. This may be conveyed at the conclusion of the appeal hearing and then confirmed in writing or confirmed in writing at a later date by the committee.

This procedure may be varied by agreement of all the parties.