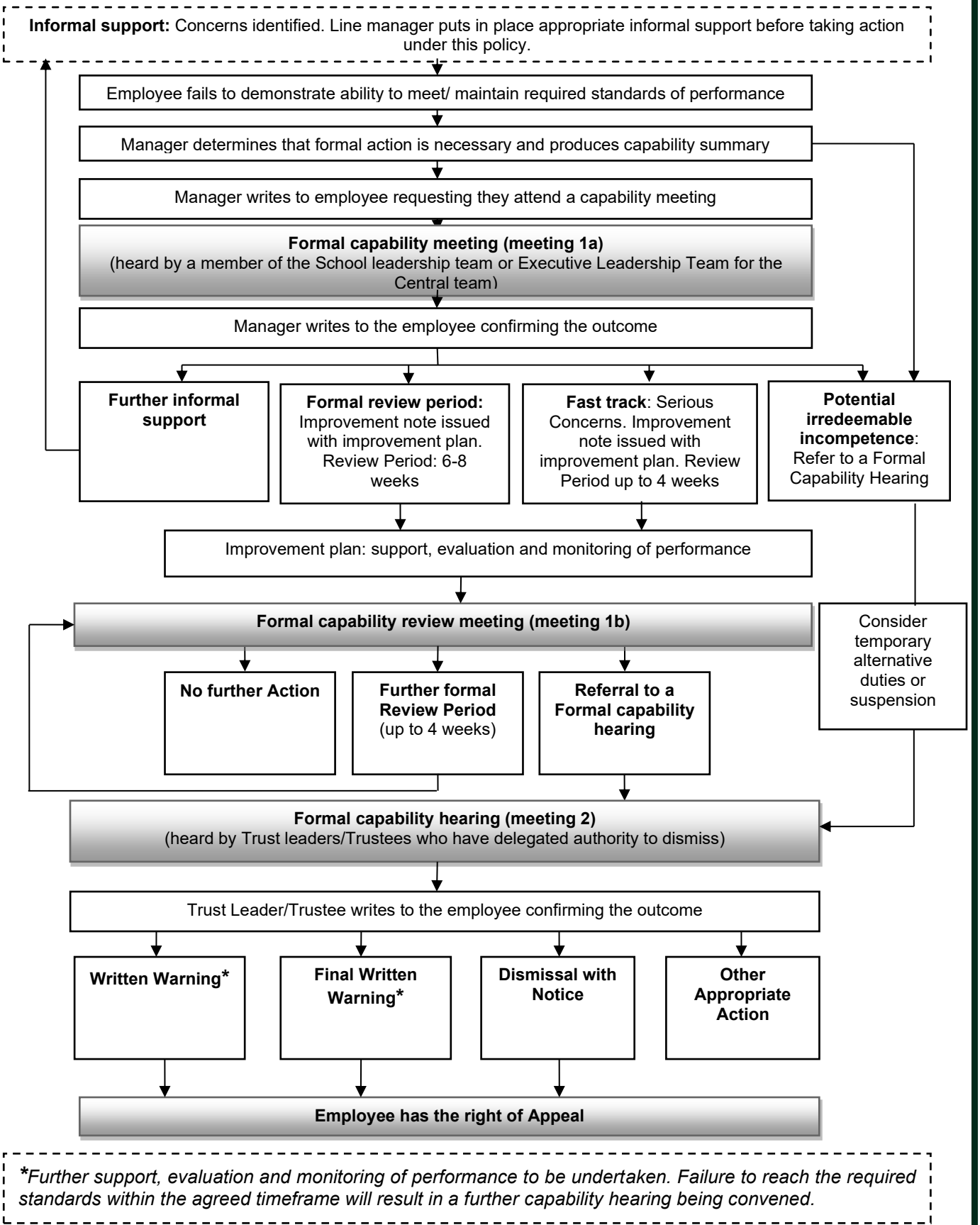
Capability Policy and Procedure

Capability procedure: flow chart



**Further support, evaluation and monitoring of performance to be undertaken. Failure to reach the required standards within the agreed timeframe will result in a further capability hearing being convened.*

1. Purpose

The Trust is committed to providing high-quality teaching and learning and high- quality support services. We will help and encourage employees to achieve and maintain the required standards of performance.

All our employees have a contractual responsibility to carry out the requirements of their job to a satisfactory standard and, where applicable, in line with any standards set by their professional body.

Should, performance not be at the required standard, this policy / procedure will be used to address poor performance in a fair, supportive, effective and consistent way. This policy / procedure does not form part of any employee's contract of employment.

2. Definitions and scope

Lack of capability: is defined as an employee failing to reach, and/ or maintain the required standards of performance that their job demands.

Examples of lack of capability include but are not limited to:

- Failing to meet reasonable deadlines for tasks, projects, reports, etc.
- Regularly producing work which is sub-standard, inaccurate, badly presented or poorly organised
- Failing to carry out key areas of job responsibilities, effectively and consistently
- Failing to meet the relevant professional standards, e.g., for teachers on the main pay scale, Teachers' Standards
- Failing to provide effective leadership and management, where applicable
- Poor practice with regard to child/adult safeguarding
- Physical factors that are not disability or health related but prevent the employee from undertaking all aspects of their job.
- Failing to meet the necessary standard of spoken English in public-facing roles in line with the Fluency Duty

Capability summary: A capability summary is a document that outlines the detail of the unsatisfactory performance and the support/adjustments that have been put in place (current at the time the document is produced) to assist the employee

Improvement plan: An improvement plan is a document that details the areas of concern, the standards required, the improvements required, and details of any support being put in place together with relevant timescales.

Professional standards: where there is a reference to professional standards, this refers to any standards applicable to the post(s) and the career stage of the post holder (e.g., Teachers' standards 2012 are applicable to all teachers).

This policy applies to all employees of Ivy Education Trust, including teachers and support staff (excluding support staff who are in their probationary period).

3. Principles

Confidentiality - All parties involved in these procedures must ensure that they maintain an appropriate level of confidentiality.

Right to be accompanied - All employees who are subject to the formal stages of this policy/procedure have the right to be accompanied at any formal meeting by a recognised trade union representative or work colleague.

Equality and diversity – To ensure equitable provision of support in the application of this policy, where an employee has a disability, reasonable adjustments will be considered to support them achieve the performance standards required for their role.

Time limits - time limits in the policy should be adhered to whenever possible. They may be altered to meet particular circumstances by agreement between the parties. Where school holidays occur, there may be a delay to the process while staff are absent.

Recordings - audio / visual recordings at any stage of the process, informal or formal are not permitted.

Working days – the policy refers to 'working days' within which certain actions should take place. 'Days' are Monday to Friday excluding bank/public holidays. School holiday periods are not counted as working days.

Record keeping – a record of meetings held under this process will be made including any appeal.

Employment references - where a teacher leaves employment within two years of being managed under this policy, managers providing references to prospective employers must communicate the duration in which the teacher was managed under formal capability and the outcome.

Attendance at formal meetings - If an employee fails to attend a meeting or hearing through circumstances beyond their control, such as certified illness, an alternative time

and date may be offered. Alternatively, they may submit a written statement or nominate a representative to attend on their behalf. Where an employee is persistently unable or unwilling to attend the meeting/hearing without good cause, it will proceed in their absence and a decision based on the evidence available will be made.

Formal action: Trade union representatives – The Trust recognises that the usual performance standards must apply to trade union representatives, however, we will not take any formal action within this policy against any employee who is an accredited representative until the circumstances of the case have been discussed with a paid official nominated for such purposes by the trade union / professional association concerned.

4. Support

Informal Support

Prior to using the formal stages of this policy, managers will ensure that support has been put in place to address any concerns surrounding an employee's performance,

The manager will be clear with the employee what the concerns are and what they need to achieve in order to meet the required standards of performance. The informal discussions will be dated and recorded for future reference, and may be confirmed in writing. The employee will be given a reasonable timeframe to improve.

Where there are concerns about an employee's performance following a reasonable period of informal support, the manager will put the concerns in writing and advise the employee that the formal stages of this policy are to be applied.

If the poor performance is thought to be health or disability related, medical advice may be sought from the Trust's occupational health provider before any formal action is taken.

In exceptional circumstances, cases may arise in which the inadequacy of the employee's performance is potentially so seriously lacking that the situation is irredeemable within a reasonable period of time. In such cases, the matter may be referred directly to a Formal capability hearing (meeting 2 on flow chart).

Employee assistance programme (moved from later in current policy)

As a Trust we have an Employee Assistance programme available to all staff. Confidential help and support can be accessed 24/7, 365 days a year on 08000 856 148.

5. Notification and procedure for formal meetings/ hearings

5.1 An employee will be given at least five working days' written notice of any formal meeting under this of policy /procedure. Any supporting documentation will be exchanged at least five working days prior to the meeting. Notification will normally confirm: the details of the meeting (date, time, venue, who will be in attendance), the possible outcomes of the meeting, the employee's right to be accompanied, the timescale to submit any documentation to be considered and that the meeting / hearing may take place in the employee's absence if they fail to attend without providing a satisfactory reason.

5.2 Formal meetings will be conducted by an appropriate manager:

For formal capability meetings (meeting 1a) this could be a member of the School leadership team or for staff in the Central team, the Executive leadership team.

For formal capability review meetings (meeting 1b) this could be a member of the School leadership team or for staff in the Central team, the Executive leadership team.

Formal capability hearings (meeting 2) will be heard by Trust Leaders. A Governor and / or Trustee may also be part of the panel. A leader and Trustee on this panel must have delegation to dismiss.

Where the concerns relate to the Chief Executive Officer, the Chair of Trustees will manage the matter.

5.3 At a formal meeting held under this procedure the manager conducting the meeting will:

- explain to the employee where their performance is not meeting the required standards and outline what these are
- give the employee the opportunity to respond and advise of any issues preventing them from meeting the required standards, including any new evidence and / or mitigating factors
- confirm what action (including support provided) has been put in place to assist the employee and what the outcome was
- where appropriate identify and explore any further options which may support them to achieve the required standard of performance.

- carefully consider the employee's response.
- the manager conducting the meeting may adjourn the meeting, for example, for further investigation or to consider if additional information is required.

The manager will then:

- consider all the information and come to a decision regarding the most appropriate course of action

5.4 Following a formal meeting, the manager will write to the employee within 5 working days to confirm the matters discussed (5.3) and any other relevant points.

Possible outcomes at each meeting are detailed below:

Formal capability meeting (meeting 1a)

Further informal support: The manager advises that further informal support will be put in place. Should the required improvement not be achieved and /or sustained, the employee will be advised that this could result in a further Formal capability meeting (1a)

A Formal review period is set: The line manager will issue an improvement note with a formal improvement plan. The time period for a formal improvement plan will depend on the circumstances of the individual case, the period will be reasonable and proportionate (6-8 weeks) and should provide sufficient opportunity for an improvement to be made. In cases where there are serious concerns, the review period can be for a Fast-track period of up to four weeks.

The manager will advise the employee that if they fail to meet the required standards within the review period, this may result in a referral to a formal capability hearing (meeting 2), at which a determination may be made regarding their continued employment.

A date for the Formal capability review meeting (meeting 1b) where the employee's performance against the improvement plan in accordance with the agreed timescales will be formally reviewed, will be set.

Potential irredeemable incompetence: In cases of potential irredeemable incompetence, confirm that the matter is being directly referred to a formal capability hearing (meeting 2), at which a decision will be made regarding their continued employment.

Formal capability review meeting (meeting 1b)

The outcomes available are:

Where performance has improved to the required standard and there is evidence the employee is likely to sustain this, the employee will be advised no further action is required. The employee may be informed that if similar concerns arise within the next 12 months, a further capability meeting (1a) will be convened.

Where it is felt that a further formal review period is required to ensure the employee has met and can sustain the improvements required a further formal review period of no more than 4 weeks may be agreed.

Where there has been insufficient improvement, the matter will be referred to a formal capability hearing (meeting 2).

Formal capability hearing (meeting 2)

The outcomes available are:

Where the employee is found to be performing unsatisfactorily, to issue a formal written warning, outlining the shortcomings in performance, the improvement required and the timescale for achievement. The employee will be informed of who will undertake the monitoring, the review date and details of any support, including training that will be provided.

The employee will be informed that failure to improve within the timeframe set would normally result in convening a further formal capability hearing (meeting 2) which could lead to a final written warning or dismissal. Unless specified otherwise, a formal written warning will cease to be live for further formal capability purposes after six months.

Where the employee's unsatisfactory performance is sufficiently serious, to move directly to issuing a final written warning, outlining the shortcomings in performance, the improvement required and the timescale for achievement. The employee will be informed of who will undertake the monitoring, a review date and any support, including any training that will be provided. The employee will be informed that failure to improve within the timeframe set would normally result in convening a further capability hearing which could lead to dismissal. Unless specified otherwise, a final written warning will cease to be live for further formal capability purposes after twelve months.

Where the inadequacy of the employee's performance is so extreme, to issue dismissal with notice as they are incapable of performing the job for which they have been employed.

Where the decision is taken to dismiss the employee, the Committee will ensure that any previous warnings are not out of time.

The decision will be confirmed verbally unless valid reasons exist not to do so. The decision communicated will be confirmed in writing withing five working days.

If the decision is to dismiss the employee, the appropriate period of notice will be issued in accordance with the employee's contract of employment. The Chair of Trustees will issue notice of dismissal. Where a warning/final written warning or dismissal is the outcome, employees will be informed of their right of appeal.

6. Appeal

If an employee wishes to appeal against the decision from the formal capability hearing (meeting 2), they must do so in writing, stating the grounds for their appeal, within five days of receiving the written outcome.

An employee may appeal on the following grounds:

- the sanction given was too harsh given the circumstances
- the procedure was not fairly or correctly applied
- new information has come to light that would directly affect the decision made at the capability hearing.

The written appeal should be sent to the Trust Governance Officer and a Trustees' Appeal Committee will be convened to hear the appeal. The Trust Governance Officer will make the arrangements for the appeal to take place.

The appeal will be heard without unreasonable delay. A minimum of five days' notice will be given to allow for preparation.

The outcome of an appeal hearing may be:

- to refer the matter back to the panel who held the Formal capability hearing if significant new information/evidence is provided, which was not available previously, and may change the original decision
- conclude a procedural irregularity occurred and determine whether this had an impact on the decision-making process and outcome. If so, decide an appropriate sanction and make a recommendation to rectify the situation
- uphold the appeal and determine an alternative sanction/appropriate course of action
- reject the appeal and confirm that the original decision stands.

The decision will be given verbally to all parties at the end of the appeal hearing unless a valid reason exists not to do so, and it will be confirmed in writing to the employee within

five working days. An appeal is not a re-hearing of all of the facts but to determine if the original decision was reasonable given the circumstances. The process ends with the decision of the Appeal Committee.

7 Monitoring, review and evaluation

This policy will be reviewed periodically, and the Trade Unions will be consulted about any proposed changes.

This policy has been adopted by the Trust Board on 22 July 2025.

This policy supersedes all previous capability policies.

Appendix A: Additional information

Reporting obligations

Professional bodies

Where there are performance concerns about an employee which could potentially call into question their professional registration Ivy Education Trust (IET) will ensure that it follows the appropriate procedure for reporting concerns to the relevant Registered Body. This will ensure that the body can investigate the individual's ability to carry out their professional duties or take other appropriate action in the circumstances.

In addition, employees are responsible for ensuring that they adhere to the individual reporting requirements of their professional body, where they are subject to formal capability procedures.

Disclosure and Barring Service (DBS)

The primary role of the Disclosure and Barring Service (DBS) is to help employers make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups, including children.

The Safeguarding Vulnerable Groups Act (SVGA) 2006 places a duty on employers of people working with children or vulnerable adults to make a referral to the DBS where an employer has dismissed or removed a person from working with children or vulnerable adults (or would or may have if the person had not left or resigned etc) because the person has:

- been cautioned or convicted for a relevant offence; or
- engaged in relevant conduct in relation to children and/or vulnerable adults, i.e., an action or inaction (neglect) that has harmed a child or vulnerable adult or put them at risk of harm; or
- satisfied the Harm Test in relation to children and/or vulnerable adults i.e., there has been no relevant conduct (i.e., no action or inaction) but a risk of harm to a child or vulnerable adult still exists.

The referral will enable the DBS to consider whether or not the individual should be barred from working with children and/or vulnerable adults and will be made as soon as possible after an employee has been dismissed or removed from working with children or vulnerable adults (or would have been if they had not resigned). Further information about making a referral can be found in the Disclosure and Barring Service (DBS) Referral Process and Guidance.

The Trust may need to consider a referral to the Disclosure and Barring Service (DBS) in cases where an employee has been dismissed or removed from working with children or vulnerable adults (or would or may have if the person had not left or resigned etc) because that employee has:

- been cautioned or convicted for a relevant offence; or
- engaged in relevant conduct in relation to children and/or vulnerable adults, i.e., an action or inaction (neglect) that has harmed a child or vulnerable adult or put them at risk of harm; or
- satisfied the Harm Test in relation to children and/or vulnerable adults i.e., there has been no relevant conduct (i.e., no action or inaction) but a risk of harm to a child or vulnerable adult still exists.

Suspension and other alternative arrangements

In cases of serious or irredeemable incompetence, the manager will determine whether it is necessary to temporarily remove some of the employee's duties, or whether an individual with delegated authority to dismiss or suspend should consider if suspension from duty is necessary. This may be necessary where there is a potential risk to children; to the reputation of the school and/or because of a need to protect all parties, including the employee.

Suspension will be on normal pay, should be as brief as possible and kept under review. The reasons for the suspension must be stated clearly to the employee and confirmed in writing. Where an employee has been suspended, this can only be retracted by the full Board of Trustees.

In certain circumstances, where an appropriate person is not available to make a decision regarding suspension, or where it is necessary to gather further information regarding an employee's performance, it may be necessary for the immediate line manager to send an employee home. In such circumstances a decision about whether or not to suspend should then be made by an appropriate person as soon as possible.

Management responsibilities

Managers are required to ensure that each employee is aware of this policy, understands the performance standards that are required of them and the consequences of not meeting these. Action will be taken consistently to identify concerns and reinforce performance standards before it becomes necessary to take formal action. Managers are required to manage the process effectively, fairly and reasonably.

Employee responsibilities

Employees have a contractual responsibility to carry out the requirements of their job to a satisfactory standard and in line with any standards set by their appropriate professional body. Employees have a responsibility, where necessary, to take any steps required to improve their performance. Employees must take all reasonable steps to attend meetings as required and adhere to this policy.

Raising a grievance during the application of the capability policy/procedure

If an employee is currently being managed under the capability policy/ procedure and has a complaint related to either the person applying it and/or its application, the employee will raise a complaint under this policy which will be investigated. It may be necessary to suspend the application of the policy while the complaint is being looked into. Any delay to the application of this policy to deal with an employee's complaint should not exceed 10 days.

If an employee has an unrelated concern, problem or complaint, then the employee should use the Grievance Policy. As the matter is unrelated, there will be no need to put any process currently being applied on hold as the complaint can be dealt with in parallel.

POLICY HISTORY AND AMENDMENT RECORD

Date	Reviewed by	Summary of change	Next review date
February 2017	HR ONE	Revised policy for academy schools based on LA policy previously consulted upon with trade unions	
May 2020	JN	Osprey V1	
Dec 2020	HR Direct	Additional accessibility information added under contents on page 2	
Dec 2021	JN	Osprey V2 updated terminology and update to section 4.	29.11.21
July 2022	HR Direct	General review. Minor language changes and removal of any corporate DCC references.	
Nov 2022	GHD	Change of name of Trust to Ivy Education Trust.	No later than Nov 2023
March 2025	EW	Reordered policy to aid user journey. Period for formal Review period after formal capability meeting changed from 6-12 weeks to 6-8 weeks. Added expectations for UPS teachers	May 2026
July 2026	EW	Reviewed as part of IET cycle. No changes at this time.	May 2027