

# C9 Staff Capability Policy

Contents	Page
1. Introduction	1
2. Roles and Responsibilities	2
3. Principles	2
4. Informal Procedure	3
5. Formal Procedure: Stage One	4
6. Formal Procedure: Stage Two	5
7. Formal Procedure: Stage Three	6
8. Appeal	6
9. Policy Status and Review	7
10. Appendix a: Flowchart	8
Appendix b: Delegation of Responsibility Matrix	9
Appendix c: Personal Improvement Plan Template	10

## 1. Introduction

- 1.1 The Trust is committed to delivering excellence for its pupils and their families, staff and the local communities it serves. It seeks to deliver against this commitment by ensuring there is a highly knowledgeable, skilled and competent workforce.
- 1.2 The Trust encourages open communication between employees and their managers, enabling potential capability issues to be dealt with through supervisory support.
- 1.3 This policy aims to provide a framework for a fair, consistent and supportive approach to managing capability situations that cannot be resolved through other performance management mechanisms.
- 1.4 The capability policy and procedure apply where an employee is unable to carry out the work to the required standard due to skill, aptitude, ability and/or any other physical or mental capacity. This may include:
  - Lack of qualification or knowledge
  - Lack of aptitude, skill or experience
  - Lack of training and development
  - Lack of proficiency or professionalism
  - Short or long-term health conditions, including absence arising from ill health
  - Changes to the role and associated responsibilities
  - Changes in the nature and allocation of work
  - Personal/family difficulties

This list is not exhaustive.

- 1.5 This policy does not apply where unacceptable performance is due to lack of care or willful refusal by the employee. These situations are dealt with under the disciplinary policy.
- 1.6 This policy applies to all employees of the Trust except for those within their probation period. Capability issues for those within their probation period should be managed in accordance with the Probation and Appointment Support Policy giving due consideration to the principles contained herewith.
- 1.7 This policy does not apply to self-employed workers or workers contracted by other organisations (including employment agencies) who are covered by their own employer's policies.
- 1.8 The provisions of this policy reflect the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015; within which disciplinary procedures encompass the management of poor performance.

## **2. Roles and Responsibilities**

- 2.1 All employees and managers have a personal responsibility to provide efficient, professional and courteous services at all times in accordance with:
  - Their job role, job description and terms of employment
  - The Staff Code of Conduct
  - Professional Standards appropriate to their role
  - Trust policies and procedures
  - Statutory requirements
- 2.2 Managers are responsible for performance managing and appraising their staff in line with Trust policies. This ensures staff understand the expectations of them and are set realistic and measurable standards of performance. Where concerns emerge regarding the standard of performance, managers are responsible for:
  - Ensuring staff are aware that their performance falls below the required standard
  - Intervening promptly where minor capability concerns are identified
  - Implementing the informal and formal capability procedure as outlined within this policy
- 2.3 The People Department is responsible for developing and updating this policy in accordance with statutory and Trust requirements, as well as providing fair and consistent advice to managers and employees regarding the application of this policy and associated procedures.

## **3. Principles**

- 3.1 Minor capability concerns are often effectively addressed through an informal discussion between an employee and their line manager. Where possible, this should be resolved outside the scope of this procedure.
- 3.2 In applying this procedure, managers will have due regard to the principles and requirements of the Equality Act 2010 and the Trust's Equality and Diversity policy. This may include considering reasonable adjustments and/or seeking an occupational health assessment as appropriate.
- 3.3 Managers are responsible for addressing performance issues as early as possible and for taking appropriate action. Where possible and appropriate, every effort will be sought to resolve issues on an informal basis.
- 3.4 Meetings held under the provisions of this policy will be held in an appropriate environment that is free from distractions and interruptions.

- 3.5 All parties involved in the procedures must ensure they maintain confidentiality. Disclosure of information may occur if there is a legal requirement or duty of care to do so; in all other cases a disclosure may be considered gross misconduct and lead to disciplinary action.
- 3.6 The Trust reserves the right to suspend an employee on full pay at any stage of the capability procedure.
- 3.9 Any employee who is subject to formal proceedings will be offered a named contact who will provide appropriate support for them. They will also be encouraged to liaise with their Trade Union Representative if they have one, to receive any additional support which may be available.
- 3.10 Any employee who is subject to this policy will be reminded of the Trust's Employee Assistance Programme available through Birmingham Hospital Saturday Fund (BHSF). This is a free and confidential service offering information, support and counselling. Their freephone number (0800 015 7287) is accessible 24 hours a day, 7 days a week, or they can be contacted online via [www.colleaguesupport.co.uk](http://www.colleaguesupport.co.uk) (username/password: 72160).
- 3.11 The Trust is committed to ensuring that employees and their representatives do not experience any disadvantage due to a disability or any special requirement. Employees are encouraged to raise any queries relating to disability or other needs with the People department at the earliest opportunity. This will enable the Trust to consider and accommodate any reasonable request(s).
- 3.8 Employees have the right to be accompanied at all formal stages of the capability procedure by a trade union representative or workplace colleague. Employees must provide the name and role of their companion no less than 3 calendar days before any meeting.
- 3.9 If the capability issue relates to a trade union representative, the Trust will seek the employee's permission to discuss the matter with a full-time trade union official before initiating the capability procedure.
- 3.10 If an employee raises a grievance during the capability process, a decision will be made, informed by the Trust's People Department, as to whether this runs concurrently or subsequently to the capability process. This is determined by the nature and potential relationship between the two processes and will be decided on a case-by-case basis.
- 3.11 The employee or any person acting on their behalf will not normally be permitted to electronically record any meeting held under the capability procedure. Any breach of this provision may be considered gross misconduct and lead to disciplinary action.
- 3.12 Occasional days of absence arising from ill health will not usually delay the timescale or review period for any stage of the procedure. However, in the case of long term sickness absences, the procedure may be suspended whilst absence management procedures are applied. In this instance, the capability procedure will resume upon the employee's return to work.
- 3.13 The expectation is that the formal meetings will take place at the date and time stipulated by the Trust giving appropriate notice. In exceptional circumstances where the time is not suitable for either the employee or their companion, there may be one postponement of up to 7 calendar days. If the employee is unable to attend the rescheduled meeting, this will continue in their absence. The employee may provide a written submission for consideration.
- 3.14 In exceptional cases, where employees fail to cooperate with the procedure and makes it impracticable, action may be taken through the equivalent stage of the Staff Disciplinary Policy.
- 3.15 Employees may be referred to the formal or informal stages of this policy following an investigation or hearing under the Disciplinary Policy, where it is established that there are issues of capability rather than conduct.

- 3.16 There is an expectation that line managers consult the People department during all stages of the capability procedure. A member of the People department will be present to advise and assist at all formal review and appeal meetings.
- 3.17 Timescales and procedures referred to in this policy should be followed wherever possible, however there may be circumstances where they can be varied subject to agreement by all parties.
- 3.18 All documentation relating to a capability procedure must be treated on a confidential basis. Copies of warnings will be kept on the employee's personnel file until it has been spent.
- 3.19 Any formal warning issued to a member of staff previously will be taken into consideration at all stages of this procedure.
- 3.20 Personal data obtained during the implementation of this policy will be used, stored and disposed in accordance with GDPR.

#### **4. Informal Procedure**

- 4.1 To invoke the informal procedure, a manager will arrange to meet with the employee to conduct an informal review meeting. This should be arranged promptly without unreasonable delay. Where practicable, the informal meeting will take place within 7 calendar days of the capability concern being identified or escalated from insufficient improvement.
- 4.2 There is no legal right to representation at this stage, however employees are able to be accompanied on the basis that there is no delay to convening a meeting. Where employees are unable to be accompanied, they are encouraged to seek advice from their trade union prior to the informal meeting and during the review period as necessary.
- 4.3 The informal review meeting will include the following points:
- The expectations of the employee
  - How the employee is falling short of the expectations
  - Required improvement to performance
  - The duration of the review period
  - The employee's explanation and any mitigating factors
  - Actions agreed to address mitigating factors where possible
  - Potential consequence of not achieving the required improvement within the timescale
- 4.4 During the review meeting, the employee and manager will develop a performance improvement plan (PIP) that outlines the measures that will be put in place to support improvement. This may include some or all of the following:
- Further instruction or training
  - Schedule of one to ones, coaching or mentoring
  - Providing equipment or resources
  - Reviewing working arrangements and targets
  - Timescales and monitoring arrangements
- This list is not exhaustive.
- 4.5 A review date should be set following the informal capability meeting in line with the review period. This will usually be 4 to 6 weeks after the date of the meeting, however will be determined on a case-by-case basis. Informal monitoring and assessment will take place during this period.
- 4.6 If there is satisfactory progress within the agreed timescale, the matter will be considered resolved. Records of the informal process will remain on the employee's file for a six-month period and form part of a formal procedure if further capability issues arise during this period. If no further issues arise during this timescale, records will be removed from the employee's file.

- 4.7 If there is insufficient progress within the review period, the matter will progress to the formal procedure.
- 5. Formal Procedure: Stage One**
- 5.1 Stage one of the formal procedure will be invoked where there is insufficient improvement during the informal stage or the concern is considered sufficiently serious.
- 5.2 A stage one meeting will be held by the employee's manager with a note-taker present. Where applicable, they will refer to all documentation collated during the informal procedure and any other supporting evidence.
- 5.3 The employee will receive 7 calendar days' notice to attend a stage one formal review meeting along with copies of documentation that will be referred to. This meeting constitutes the date of entry into the formal procedure.
- 5.4 The employee is entitled to be accompanied by a trade union representative or workplace colleague. Where the meeting time is not suitable for the employee or their companion, there may be one postponement of up to 7 calendar days. If the employee is unable to attend the rescheduled date the appeal will continue in their absence, and the employee may provide a written submission for consideration.
- 5.5 A stage one formal review meeting will be a full and explorative discussion where the manager seeks to establish the facts relating to the capability concern. The meeting will include the points referred to in 4.3.
- 5.6 Where possible an outcome will be decided during the meeting and confirmed to the employee verbally. However, a manager may adjourn the decision to allow for further investigation and/or deliberation if required. The decision will be made and confirmed in writing within 7 calendar days of the meeting.
- 5.7 If the capability concerns are satisfied during or following the meeting, the matter will be considered resolved. Records of the formal process will remain in the employee's file.
- 5.8 If the concerns are sufficiently serious and are not satisfied during the meeting:
- A written warning will be issued and live for a period of 6 months, after which time it is considered spent. This will state the employee's shortcomings and make it clear that further action may be taken if improvement is not achieved within a defined timescale, up to and including dismissal.
  - The employee and their manager will agree a PIP that outlines the measures that will be put in place to support improvement.
  - A review date will be put in place. This will usually be between 4-6 weeks from the date of the meeting, however will be determined on a case-by-case basis.
- 5.9 At the end of the review timeframe identified on the PIP, the manager will arrange a formal review meeting to review and assess progress. If the intended improvement has been achieved, the employee should be notified, and the procedure concluded. Any further capability issues will immediately invoke stage two of the formal capability process during the period that the first written warning is live.
- 5.10 If insufficient progress has been made the employee should be notified accordingly and the matter referred to stage two of the formal procedure.

## **6. Formal Procedure: Stage Two**

- 6.1 Stage two of the formal procedure will be invoked where there is insufficient improvement during stage one of the formal procedure.
- 6.2 A stage two meeting will be chaired by a Manager/Principal or Trustee in accordance with the delegation of responsibility matrix (appendix b). They will receive and refer to all documentation collated during the informal procedure and stage one of the formal procedure, as well as any other supporting evidence.
- 6.3 The employee will receive 7 calendar days' notice to attend a stage two formal review meeting along with copies of documentation that will be referred to.
- 6.4 The employee is entitled to be accompanied by a trade union representative or workplace colleague. Where the meeting time is not suitable for the employee or their companion, there may be one postponement of up to 7 calendar days. If the employee is unable to attend the rescheduled date the appeal will continue in their absence, and the employee may provide a written submission for consideration.
- 6.5 A stage two formal review meeting will be a full and explorative discussion where the manager seeks to establish the facts relating to the unresolved capability concern. The meeting will include the points referred to in 4.3 and will seek to ascertain the reason for insufficient progress at the previous stages.
- 6.6 Where possible an outcome will be decided during the meeting and confirmed to the employee verbally. However, a chair may adjourn the decision to allow for further investigation and/or deliberation if required. The decision will be made and confirmed in writing within 7 calendar days of the meeting.
- 6.7 If the capability concerns are satisfied during or following the meeting, the matter will be considered resolved. Records of the formal process will remain in the employee's file.
- 6.8 If the concerns are sufficiently serious and are not satisfied during the meeting:
- A final written warning will be issued and live for a period of 12 months, after which time it is considered spent. This will state the employee's shortcomings and make it clear that further action may be taken if improvement is not achieved within a defined timescale, up to and including dismissal.
  - The employee and their manager will agree a final PIP that outlines the measures that will be put in place to support improvement.
  - A review date will be put in place. This will usually be between 4-6 weeks from the date of the meeting, however will be determined on a case-by-case basis.
- 6.9 At the end of the review timeframe identified on the PIP, the chair will arrange a formal review meeting to review and assess progress. If the intended improvement has been achieved, the employee should be notified, and the procedure concluded. Any further capability issues will immediately invoke stage three of the formal capability process during the period that the final written warning is live.
- 6.10 If insufficient progress has been made the employee should be notified accordingly and the matter referred to stage three of the formal procedure.

## **7. Formal Procedure: Stage Three**

- 7.1 Stage three is the final stage of the formal procedure. This will be invoked if there is insufficient progress arising from the stage two process.



- 7.2 A stage three meeting will be chaired by an Executive Director or Trustee in accordance with the delegation of responsibility matrix (appendix b). They will receive and refer to all documentation collated during the informal procedure and stage one and two of the formal procedure, as well as any other supporting evidence.
- 7.3 The employee will receive 7 calendar days' notice to attend a final formal review meeting along with copies of documentation that will be referred to. This notice must state that there are a number of possible outcomes arising from the meeting up to and including dismissal.
- 7.4 A stage three formal review meeting will be a full and explorative discussion where the chair seeks to establish the facts relating to the unresolved capability concern. The meeting will include the points referred to in 4.3 and will seek to ascertain the reason for continued insufficient progress at the previous stages.
- 7.5 Where possible an outcome will be decided during the meeting and confirmed to the employee verbally. However, a chair may adjourn the decision to allow for further investigation and/or deliberation if required.
- 7.6 The possible outcomes are:
- The employee is deemed to have made sufficient progress and the matter is closed. The final warning will be live for the timeframe referred to above.
  - Extension to the review period – this may be appropriate where the chair is confident that the progress is likely within a reasonable timeframe
  - Redeployment – an offer of redeployment does not need to be at the same level, salary or hours of work. In making an offer, the manager should stipulate a timeframe for consideration and inform the employee of the consequences of refusing it. Pay protection would not apply in any instance of redeployment for this reason.
  - Dismissal – the employee will be given notice of the termination of their employment on the grounds of capability, with appropriate contractual notice
- 7.6 In all cases, the decision will be confirmed in writing within 7 calendar days.

## **8. Appeal Process**

- 8.1 The employee may appeal against the outcome of stage three of the capability procedure. This should be sent to the Head of People in writing within 7 calendar days of receiving the written outcome of the sanction.
- 8.2 The appeal should state the grounds of the appeal.
- 8.3 The Head of People will arrange for the appeal to be chaired in accordance with delegation of responsibility matrix (appendix b). Where practicable, this will be heard within 14 calendar days of receipt.
- 8.4 Following the appeal hearing, the chair will call a short adjournment to deliberate the employee's arguments. They will invite the employee back into the meeting to confirm the outcome. The possible outcomes are:
- Uphold the appeal – The sanction is fully revoked
  - Partially uphold the appeal – Where there are multiple points to the appeal, it is possible that some may be upheld and some rejected. This may result in an amendment to the sanction which is no more severe than the initial decision.
  - Reject the appeal – The sanction will remain in place

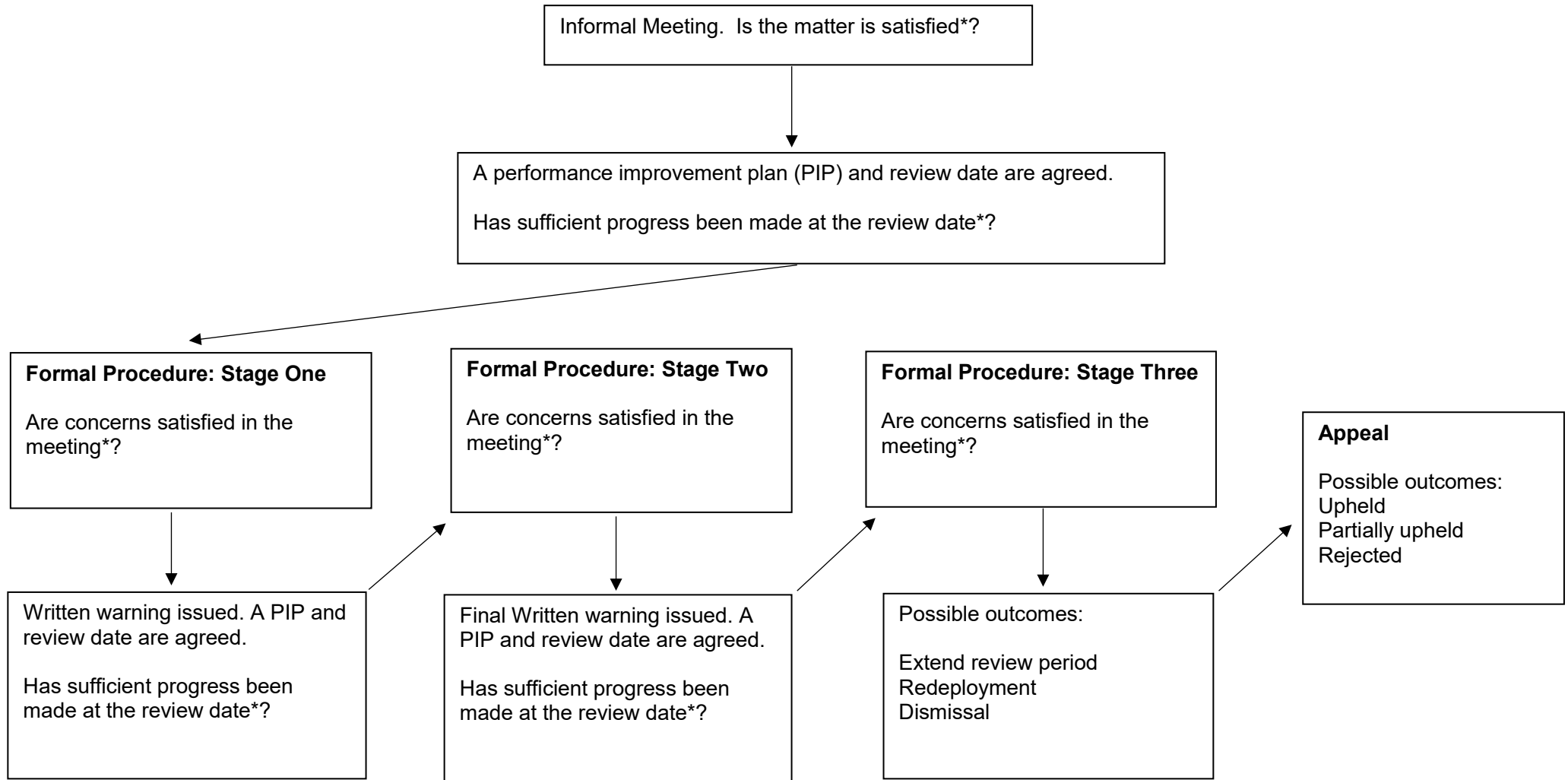
The appeal outcome is final.

## 9. Policy Status and Review

Written by	Senior People Partner
Owner	Head of People
Status	Approved
Equality Impact Assessment	Initial Impact Assessment    Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Full Impact Assessment        Yes <input type="checkbox"/> N/A <input checked="" type="checkbox"/>
JCC Consultation date	September 2021
Approval date	28 <sup>th</sup> February 2019 14 June 2021 (RHR Committee)
Review date	June 2024
Comments	



## Appendix a: Capability Process Flowchart



\*Is the matter **is satisfied** and/or **sufficient progress** has been made at any stage, the capability procedure will be concluded.

## Appendix b: Capability - Delegation of Responsibility Matrix

Post	Informal	Formal Stage 1	Formal Stage 2*	Formal Stage 3*	Appeal*
Academy based support staff	Line Manager	Line Manager	Principal	Executive Director of School Improvement	Chief Executive
Teaching staff	Line Manager	Line Manager	Principal	Executive Director of School Improvement	Chief Executive
Academy Leadership (excluding Principal)	Line Manager	Line Manager	Principal	Executive Director of School Improvement	Chief Executive
Principal	Line Manager	Line Manager	Executive Director of School Improvement	Chief Executive	Trustee
Finance, Facilities and ICT Staff	Line Manager	Line Manager	Head of Service / Service Director	Executive Director of Finance and Operations	Chief Executive
The People Department, Governance and Marketing Staff	Line Manager	Line Manager	Head of Department	Executive Director of Strategy	Chief Executive
Professional Services Directors/Heads of Service	Line Manager	Line Manager	Executive Director of Strategy or Executive Director of Finance and Operations	Chief Executive	Trustee
Executive Director	Chief Executive	Chief Executive	Trustee**	Trustee**	Chair or Vice Chair of the Board

\*Preferred positions based on reporting channels. The exact personal/role is subject to change; however the minimal level of hierarchy will apply in accordance with the Trust's Scheme of Delegation.

\*\*Wherever possible, a different Trustee will lead each stage of the process.

# Personal Improvement Plan

Employee Name		Role	
Academy/Department		Manager	

Performance Concern	Required Improvement	Agreed Improvement Actions	Agreed Support	Timescale/Person Responsible

Meeting Date		Review Date	
Signed Employee		Date	
Signed Manager		Date	

Version	V2/2021	Date Updated	3/06/2021
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