



Washwood Heath
Multi Academy Trust

Capability Policy

Prepared by:	WHMAT's Professional Growth Working Group in consultation with MAT-wide employees and recognised trade unions
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CONTENTS

	PAGE
1.0 Introduction	3
2.0 Scope of Policy	4
3.0 Representation	4
4.0 Capability – Informal Performance Improvement Plan (PIP)	4
5.0 Capability: Formal Procedure (Stage 1)	7
6.0 Capability Formal Procedure (Stage 2)	9
7.0 Capability: Formal Procedure (Stage 3 – Dismissal)	11
8.0 Formal meetings under this policy	12
9.0 Appeals	12
10.0 Special Situations	14
11.0 Policy Review & Storage of Paperwork	15
Appendix 1 Flowchart	16

1.0 Introduction

- 1.1 All employees are expected to maintain acceptable and agreed standards of performance and perform their jobs to the best of their ability. However, WHMAT recognises that there are times when intervention is required to provide support towards improvement.
- 1.2 Capability refers to an employee's ability to perform the work expected of them to the level required in line with agreed contractual duties. This may be assessed by reference to an employee's skill, aptitude or ability in relation to the job that they are employed to do, and this appears to be because the employee is not performing to the required standard, but hopefully that they will be able to so following support. Capability concerns may be about a single or number of aspects of an employee's performance.
- 1.3 WHMAT believes that employees do not generally choose to perform their work badly, to make mistakes or fail to complete tasks. Consequently, in the event that an employee is underperforming, a manager should examine the circumstances to identify underlying causes and provide additional support to the employee to help them to improve to the required standard of performance. Only once it is robustly established (with clear, triangulated evidence) that, despite informal support and the professional growth process, the employee is not performing their duties to the required professional standards will the capability procedure be used. Action under this policy may, as a last resort, lead to dismissal.
- 1.4 This policy is designed to ensure that cases of under-performance are dealt with consistently and fairly, with the prime objective of improving an individual's performance to the required level.
- 1.5 This policy should only be used where there is clear evidence of underperformance that has been unable to be addressed through coaching conversations during check-ins as part of the Professional Growth process for teachers and support staff – see policies at www.whmat.academy.com policies tab. In addition, the formal part of the capability policy should not be implemented unless the informal stage at 4 below has been attempted and the employee has not demonstrated sufficient improvement.
- 1.6 A representative from WHMAT's People Matters team will support the nominated manager throughout the process.
- 1.7 In order to facilitate the smooth implementation of this procedure, employees are encouraged, where relevant, to consider taking early advice from their Trade Union representative if concerns are being raised about their performance.

2.0 Scope of Policy

- 2.1 This procedure applies to all employees (teaching and support staff) employed by WHMAT where there are concerns about their performance. It excludes a) newly qualified teachers (NQTs) who are covered by separate guidelines on statutory induction (see NQT Induction Policy at www.whmat.academy policies tab) and b) agency staff, who are not directly employed by WHMAT.
- 2.2 Where there are concerns about performance as a result of an employee's negligence or wilful failure to carry out their duties and responsibilities, the matter should be dealt with under WHMAT's Disciplinary Policy – see www.whmat.academy.com policies tab.

3.0 Representation

- 3.1 At all formal stages of this capability policy, employees have the right to be accompanied by a trade union representative or a work place colleague. This individual may address the meetings/hearings and confer with the employee but may not answer questions on their behalf. There is no statutory right for employees to be accompanied at the informal stage. If, however, an employee perceives that they would benefit from further support at this stage of the policy, WHMAT will consider a request to be accompanied by either a work-place colleague or trade union representative, normally only denying this if it places an unreasonable delay on the process.
- 3.2 The employee should make their own arrangements to be represented or accompanied. Where the chosen representative or work place colleague is not available at the proposed time and date set for any formal meeting, the employee may propose an alternative date as long as this date is within 5 working days of the original date. Employees must let WHMAT's People Matters team know if they intend to be accompanied and who this representative will be at least 5 working days before any meeting under this policy.
- 3.3 If a process under this policy is being contemplated in respect of a work-place trade union representative, the relevant manager will notify the People Matters team at peoplematters@whmat.academy, so that they can make reasonable attempts to discuss this with a relevant union official in advance.

4.0 Capability – Informal Performance Improvement Plan (PIP)

- 4.1 Prior to commencing the formal capability process at 5.0 below, a bespoke informal Performance Improvement Plan (PIP) should be implemented, developed in conjunction with the employee. For the avoidance of doubt, this PIP is not classed as formal capability and is therefore not subject to being disclosed to a potential employer in a reference.
- 4.2 Generally it will be appropriate for an employee's line manager to raise concerns regarding their performance as part of their normal management processes in the

first instance. In such circumstances, the line manager should explain where the performance falls below standard, discuss this with the employee in order to identify the cause of the concerns and discuss with them and agree the appropriate means of support for improving performance. Concerns may also be raised during “check-ins” under the Professional Growth Policy. However, raising these concerns should not be unnecessarily delayed to coincide with scheduled “check-ins” and WHMAT’s ethos is that there should be “no surprises” for employees and that issues affecting WHMAT’s ability to provide a high-quality provision are addressed promptly and effectively.

- 4.3 The formal stages of this procedure should only be used when the options for support, help and assistance available under the Professional Growth Policy (including consideration of health issues) and the informal stage of this Policy have been exhausted. It should not come as a surprise to the employee that there are clear and documented legitimate concerns regarding their performance.
- 4.4 Informal concerns should have been documented and discussed between an employee and their manager as part of the check-in process under Professional Growth. However, it is at this stage of the Capability Policy that a bespoke informal PIP will be first put together. This will summarise the areas of concern, based on robust triangulated evidence (see 1.3), which is linked to relevant professional standards and/or job descriptions and illustrates the support that the employee will be provided with in order to get to the required standard (see templates in capability online toolkit).
- 4.5 Where inadequate performance persists, an appropriate senior leader/core team director should invite the employee to an informal capability discussion to discuss their performance in accordance with this policy (see suggested wording in toolkit).
- 4.6 Notes of this meeting will be kept using an informal Performance Improvement Plan (PIP) pro-forma (see template in capability online toolkit) that documents the following:
 - 4.6.1 The areas of performance needing improvement; and
 - 4.6.2 The level of improvement required; and
 - 4.6.3 The support that the employee will be provided with; and
 - 4.6.4 The target time frame for reaching the required standard.
- 4.7 If appropriate, other suggestions or support mechanisms will be agreed, which may include:
 - 4.7.1 Providing appropriate training or development opportunities; and/or

- 4.7.2 Reviewing the duties, responsibilities, reporting line or other aspects of the job; and/or
 - 4.7.3 Shadowing team members or peers across WHMAT; and/or
 - 4.7.4 Networking with comparable post-holders across WHMAT to gain experience/different perspectives on effective practice; and/or
 - 4.7.5 Transferring the employee to a suitable alternative post within the academy/department/WHMAT subject to their agreement.
- 4.8 Support will be provided for a clearly defined and reasonable timescale (usually and at least 6 working weeks). The exact timescale must allow sufficient time for concerns to be communicated and offer the employee the opportunity to achieve the required standards. The appropriate senior leader/core team director must explain the consequences of continued inadequate performance to the employee; namely the possibility of moving to the 1st formal stage of this policy or one of the other alternatives at 4.9 below.

Review Meeting

- 4.9 At the end of the agreed review period, (usually and at least 6 working weeks), the appropriate senior leader/core team director should review the bespoke informal PIP and progress made and a meeting should be held with the employee to decide if the necessary improvements have been made. The employee will still continue to receive support from the appropriate manager at this time. The manager has 3 options at this stage, which will depend on the individual circumstances:

4.9.1 No further action/Sufficient Progress Made – transition back to Professional Growth

If sufficient progress has been made such that the employee is performing at a level that indicates there is no longer a possibility of the formal capability stage being required currently, the employee should be informed of this at the meeting. The matter will be considered resolved and the employee will transfer back to the relevant cycle of check-ins under Professional Growth. If, however, similar performance concerns come up within 12 months of this meeting, WHMAT reserves the right to commence the process at Stage 1 – Formal Capability, rather than starting again at the informal PIP stage. This will be decided on a case-by-case basis in discussion with the employee.

4.9.2 Inadequate Improvement – Transition to Stage 1 Formal Capability and formal PIP Issued (see 5.0)

If no or insufficient improvement has been made through the bespoke informal PIP, then the manager will explain to the employee that they will now be moving to Stage

1 Formal Capability, which is the first formal stage of this policy (see 5.0 below). This process will not start at the review meeting where this decision is communicated to the employee. Instead, the employee will be invited to a new meeting, with the right to representation, during which this process will start and a formal PIP agreed (see letter in capability toolkit).

4.9.3 Some progress made – extension of informal PIP and monitoring period

If the evidence shows that some progress has been made but there are still some areas of performance that have not reached the required level of performance, then consideration may be given to extend the review period for a further reasonable period. This will usually be up to a maximum of 4 working weeks. However, this is subject to the line manager's discretion and will depend on the evidence and the individual circumstances of each case.

- 4.10 In cases of particularly serious concern, such as where the health and safety of others is being placed at risk or the education of children is in jeopardy because of the employee's action or lack of action, the formal stage may be commenced immediately without the need for referral to the informal stage. In these circumstances, the People Matters team will make a reasonable attempt to consult with the employee's Trade Union representative to make them aware of the circumstances in advance. This does not include one-off errors of judgment, which WHMAT acknowledges to be part of "being human".
- 4.11 Regardless of the outcome of this informal stage, the employee will be notified in writing of the outcome of the informal PIP process. The manager will ensure that this is sent within 5 working days of the review meeting, unless there are exceptional circumstances (see letter in capability toolkit). If the outcome of the review meeting is that the employee will be invited to Stage 1 of the formal procedure, they should be encouraged to obtain early support from a trade union representative or workplace colleague if they have not done so already. (see further at 5.0 below).
- 4.12 Consideration should be given before the formal meeting to whether an occupational health referral needs to be made or if any reasonable adjustments are required. Examples could include redeployment by agreement should there be a vacancy available in a suitable alternative role; the removal of some duties or relinquishing a TLR or leadership post for an agreed alternative.

5.0 Capability: Formal Procedure (Stage 1)

- 5.1 WHMAT expects all formal stages to be managed by a relevant and suitably trained member of SLT or a functional director (in the case of core team employees). In the case of core team employees, the manager leading on the formal and informal stages may be the same person.
- 5.2 If following the period of informal support and review meeting, the head of academy (or other designated manager) still has concerns about the employee's performance, they shall review the facts and information gathered to date, adding to it where

appropriate, and then write to the employee inviting them to a Stage 1 Formal capability meeting. **From this stage onwards, the employee may be accompanied by a trade union representative or work place colleague.** In addition, it is advisable for WHMAT to request an appropriate representative from the People Matters team to attend the meeting to provide technical advice to the manager.

5.3 The invite letter to this meeting shall explain to the employee that the meeting is being held in accordance with the provisions of this procedure. Copies of any documentation to be used at the meeting (including evidence of concerns raised to date, informal support and outcomes of that support), shall be sent with the written invite letter at least 10 working days before the meeting to ensure that the employee has enough time to prepare his or her response to the concern(s). A copy should be included for the employee's representative.

5.4 The format will be:

- (a) for the head of academy (or designated manager) to summarise the informal support that has been provided to the employee to date, the reasons for that support, and the outcome of that support/extent to which improvements have been made;
- (b) to define which areas of the employee's role and/or relevant standards are not being met (these could be new concerns identified or those which the employee has already received informal support for), and the effect this is having on pupils; staff and the provision of education or service in the academy or WHMAT;
- (c) to invite the employee and/or the employee's representative to comment and/or offer an explanation for the alleged shortfalls in performance identified. This may provide new information or a different context to the information/evidence already collected;
- (d) for the head of academy (or designated manager) to decide, following a brief adjournment, and, having regard to (a-c) above, either that:

5.4.1 some or all of their identified concern(s) about the employee's performance remain. In this situation, the designated manager will clarify what those concerns are, and reiterate the evidence on which they are based, discuss appropriate formal support/interventions **for a period of 6 working weeks from this meeting**, and set reasonable targets for the employee in a formal PIP, which they will need to demonstrate progress against by the end of this period of support (clarification should be given as to how employee will show that they have met the target by the end of the monitoring period). The head of academy should also arrange for the formal PIP to be reviewed at the end of the formal review period (6 working weeks after the first capability meeting), and set the date and time for that meeting in discussion with the employee and the employee's representative; or

5.4.2 no concerns remain, in which case the designated manager shall confirm in writing that no further action/formal monitoring will be taken at this stage under the capability procedure, and that the employee's performance will continue to be monitored under the Professional Growth policy. However, **the employee will be warned that if new or existing concerns are raised about their performance within 12 months of this meeting, the designated manager may continue with the formal capability monitoring from the stage that they reached previously under this procedure.**

5.5 Notes of the meeting, including the amended employee PIP shall be sent to the employee within five working days of the meeting, together with a copy for his or her representative.

Formal Review of Progress at Stage 1

5.6 A formal review meeting will be held at the end of the agreed formal PIP period to evaluate whether sufficient improvement in performance has occurred and to decide next steps. Depending on the progress made by the employee and consideration by the Chair of all relevant available evidence, the options will be a) no further formal action and transition back to the informal stage of this policy for a further reasonable period; b) extension of the formal PIP period for a further reasonable period because the employee has made some, but not all, of the necessary improvements; or c) transition to Stage 2 of the Formal Capability Procedure (Stage 2) and issue of a Stage 2 Formal PIP for In (see 6.0 below). The employee will receive a letter within 5 working days of the review meeting, unless there are exceptional circumstances, confirming the outcome of the review meeting. The format for the meeting appears in the capability toolkit.

6.0 Capability Formal Procedure (Stage 2)

6.1 In the event that the employee has been advised at the review meeting at 5.6 that they may be issued with a Stage 2 Formal PIP they will be invited to formal stage 2 meeting.

6.2 The employee should be informed in writing, giving at least 10 working days' notice of the meeting. The notification letter (see capability toolkit) should inform them of:

6.2.1 The time, date and place of the meeting, with confirmation of who will be chairing it; and

6.2.2 Confirmation of the performance concerns that are to be reviewed; and

6.2.3 The possible consequences of the meeting; and

6.2.4 Their right to be accompanied by either a work employee or trade union representative

6.2.5 Copies of any written evidence that might be relied upon

6.3 The format outlined at 5.4 above also applies to this meeting (see pro-forma in capability toolkit). The Chair and the employee will discuss the monitoring and review period and any support provided. The Chair will assess whether the employee's performance has improved sufficiently. The employee and their work place colleague or trade union representative will also have the opportunity in the meeting to comment on the employee's performance to date.

6.4 Following discussion at the meeting and consideration of all of the available evidence, the Chair will confirm the outcome:

6.4.1 No further formal action – transition back to informal support via PIP under capability policy

The employee's performance has improved sufficiently and no further formal action is required under this policy. The employee will be advised that satisfactory performance must be maintained and that if performance becomes unsatisfactory again under the Professional Growth policy, further action may be taken under the Capability Procedure. If this occurs within 12 months from the date of this meeting, it may take into account action taken previously and start the formal process from where it finished if the concerns are similar in nature.

6.4.2 Some progress & confidence that more likely – Stage 1 Formal PIP extended

That some progress has been made and there is confidence that more is likely, so the monitoring and review period and targets set in the Stage 1 Formal Capability PIP may be extended. This will normally be 4 working weeks and no less. The manager will confirm the continuing areas of concern and the improvement required. Consideration will be given to any further support that can be provided. At the end of this extended review period of no less than 4 working weeks, the manager will hold a review meeting with the employee to confirm next steps.

6.4.3 Insufficient Improvement following Stage 1 Formal Capability PIP and warning that if sufficient progress not made at the end the second formal PIP employee may transition to Stage 3 Dismissal Hearing (see 7.0 below)

6.5 The outcome of the meeting will be confirmed by the manager in writing within 5 working days of the meeting unless there are exceptional circumstances.

Formal Review of Progress at Stage 2

A formal review meeting will be held at the end of the agreed formal PIP period (4 weeks) to evaluate whether sufficient improvement in performance has occurred and to decide next steps. Depending on the progress made by the employee and consideration by the Chair of all relevant available evidence, the options will be a) no further formal action and transition back to the informal stage of this policy for a further reasonable period; b) extension of the formal second PIP period for a further reasonable period because the employee has made some, but not all, of the

necessary improvements; or c) invite to stage 3 dismissal hearing. The employee will receive a letter within 5 working days of the review meeting, unless there are exceptional circumstances, confirming the outcome of the review meeting. The format for the meeting appears in the capability toolkit.

Where it has been established at the review meeting that there has been no or insufficient improvement as a result of the Stage 2 Formal Capability PIP, and that the employee's performance remains unsatisfactory, they will be notified that they are transitioning to the 3rd and final stage of the capability policy, namely a formal hearing to consider the possibility of their contract being terminated on professional capability grounds (see 7.0 below)

7.0 Capability: Formal Procedure (Stage 3 – Dismissal Hearing)

7.1 A Stage 3 Dismissal Hearing will be arranged where a decision was taken at the Stage 2 Formal Capability review meeting that the employee had not made the expected progress at Stage 2 above in line with their agreed formal Stage 2 PIP.

7.2 The employee will be given 10 working days' notice in writing of the hearing (see letter in capability toolkit and format for the hearing). The letter will include:

7.2.1 The date, time and location of the hearing with clarification that, if the date/time is not convenient for any party, an alternative date will be agreed but that this will not normally be more than 5 working days after the date originally proposed.

7.2.2 The name of the person chairing the hearing, which in most cases will be either a panel of impartial Board Trustees (minimum of 3) and/or the CEO provided they have not previously been involved in the matter. If the CEO was at risk of dismissal, the matter would be chaired by an impartial panel of Board Trustees;

7.2.3 The right to be accompanied and/or represented by a trade union representative or work place colleague;

7.2.4 Copies of any written evidence that might be relied upon, including any previous informal and formal support plans with accompanying evidence and outcomes of review meetings as appropriate.

7.2.5 Confirmation that the hearing could result in their employment being terminated on the grounds of capability.

7.3 At the hearing both the management side and the employee will be given the opportunity to state their case, call witnesses and ask questions. A member of WHMAT's People Matters team will attend the hearing to provide procedural advice to

the employer/management and to ensure that the hearing is conducted fairly and reasonably (see format for hearing in capability toolkit).

7.4 The outcome of the hearing may be either dismissal on the grounds of lack of capability or alternative action in the light of evidence presented at the hearing. Where an employee is dismissed they should be dismissed with appropriate notice. The employee will be notified in writing of the outcome normally within 5 working days of the hearing, unless there are exceptional circumstances and be notified of their right of appeal.

7.5 Alternative actions might include:

7.5.1 A further and final extension of the Stage 2 Formal PIP of 4 working weeks. If the required level of performance is not achieved by the end of this period, the dismissal hearing will be reconvened as soon as reasonably possible after the final review meeting with the employee. To ensure consistency for all parties, this reconvened dismissal hearing should be heard, where possible, by the same panel or individual as appropriate; or

7.5.2 Transferring the employee, by mutual agreement, to a suitable alternative post within their team, base academy or wider WHMAT.

8.0 Formal meetings under this Policy

8.1 If an employee fails to attend any formal meeting under this policy, then it will be rearranged once. If the employee fails to attend the re-arranged meeting, the case will be heard in their absence, unless acceptable reasons have been presented in advance and it is therefore agreed to postpone the meeting to a later date.

9.0 Appeals

9.1 An employee may appeal against any formal action taken against them as a result of this policy if they perceive that action taken has been unjust or they perceive that the procedure has been flawed. This appeal must be made in writing within 5 working days of receipt of the written decision, setting out all of the grounds on which it is based. The appeal letter should be addressed to peoplematters@whmat.academy. The People Matters team will ensure that relevant employees are informed that an appeal has been received.

9.2 Appeals against capability outcomes will usually be considered in relation to one or more of the following grounds:

9.2.1 The procedure: the grounds of appeal should detail how procedural irregularities prejudiced any decision.

- 9.2.2 The facts:** the grounds of appeal should detail how the facts do not support the decision or were misinterpreted or disregarded. They should also detail any new evidence to be considered, where relevant.
- 9.2.3 The decision:** the grounds of the appeal should state how the level of action taken was unreasonable and unjustified.
- 9.3 The grounds for the appeal should be accompanied by any additional evidence to be presented in support of the appeal. There is no requirement to submit any documentation if the employee does not wish to, other than a statement from any witness who may be called by the employee. However, if the employee does not intend to submit any documentation there should be a positive statement from the employee and/or their representative to this effect and the employee will not be able to use at the appeal any evidence not previously circulated to the parties in advance.
- 9.4 On receipt of an appeal letter, the People Matters team will notify the Clerk to the Board of Trustees so that they can co-ordinate a date for the appeal. The People Matters team will support the original decision-maker at the Stage 3 Formal Dismissal Hearing Stage to prepare a witness statement clarifying the basis for the decision that they made and which responds to the grounds of appeal raised by the employee. The management response (including any relevant witness statements) will be shared with the employee at least 1 week before the appeal meeting.
- 9.5 The People Matters team will then arrange an appeal (via the Clerk to Trustees) in a reasonable timeframe. The purpose of the appeal is to review the decision to dismiss the employee on professional capability grounds at the Stage 3 Formal Capability stage at 7.0 above.
- 9.6 The appeal letter will be sent from the People Matters team and shall give all participants at least five working days' formal notice of the date, time and location of the appeal. All documents relevant to the appeal shall be enclosed with the letter. The employee/trade union representative may suggest an alternative time and date as long as it is reasonable and is not more than five working days after the original date. If an unreasonable suggestion is made, the appeals committee, having rejected it, may proceed to hear the appeal in the absence of the employee or their representative. Advice must be taken from the People Matters team beforehand if this is likely, so that they can advise on the reasonableness of approach, based on the circumstances of each case. It also has the discretion to defer the date of the meeting in order to reach mutual agreement on a convenient date.
- 9.7 The witnesses may include, as appropriate to the circumstances of the case, the head of academy, functional director, or chair of the committee who took the decision against which the employee is appealing i.e. at the Stage 2 Formal Capability Stage.

- 9.8 The format for the appeal is included in the capability toolkit.
- 9.9 The person or panel hearing the appeal may a) dismiss the appeal (dismissal still stands), b) uphold the appeal (dismissal no longer stands), or c) substitute the dismissal for a lesser penalty i.e. amend the period defined for further improvement. Where the reasonableness of the decision is being questioned the test that should apply for overturning a dismissal, is that the decision was so unreasonable that it was one that no other senior manager, acting with proper regard to his or her responsibilities, could have chosen to take.
- 9.10 The employee raising their appeal may choose whether to hear the appeal committee's decision in person, or receive it subsequently in writing, but this choice shall not prevent the committee or other person hearing the appeal from choosing to adjourn and reconvening before making a decision. An oral announcement shall be confirmed in writing by the People Matters team within five working days of the appeal unless there are exceptional circumstances (see outcome letter in toolkit). If an appeal against a dismissal is upheld, the outcome letter to the employee shall clarify that the employee will be reinstated without a break in service.

10.0 Special Situations

Grievances

- 10.1 Sometimes an employee may raise a grievance during the course of a capability case. Where this happens and depending on the circumstances, it may be appropriate to suspend the capability procedure for a short period until the grievance can be considered e.g. if the grievance relates directly to the ongoing capability process. If, however, it relates to separate matters, the 2 processes will usually run at the same time. The employee will need to raise the grievance in accordance with WHMAT's Grievance procedure (see www.whmat.academy policies tab).

Sickness

- 10.2 If long term or short-term sickness appears to have been triggered by the commencement of monitoring or the formal Capability Procedure, the case will be dealt with in accordance with WHMAT's Sickness Policy (see www.whmat.academy policies tab) and monitoring and/or formal procedures resumed on their successful return to work. This may require the monitoring period to be suspended temporarily pending a referral to Occupational Health. However, the purpose of the referral will be to: a) seek advice on the employee's fitness to attend a formal meeting under this procedure; b) to get advice on likelihood/timescales for their return to work; and c) to determine the most appropriate way for the employee to engage with this process going forward. It is recognised that, because of the nature of this process and their ill-

health concerns, that the member of staff may find it difficult to attend formal meetings required as part of this procedure. Opportunities may therefore be given for the member of staff to submit a written statement, as opposed to appearing in person at formal meetings, or to be represented by a colleague or trade union representative.

- 10.3 The capability procedure will not be suspended indefinitely due to sickness absence, other than in emergency circumstances, e.g. unforeseen hospitalisation, urgent medical treatment or significantly challenging personal circumstances, and at the discretion of the Board of Trustees. Decisions taken will take into account the impact of the continued absence on WHMAT.

11.0 Policy Review & Storage of Paperwork

- 11.1 This Policy will be reviewed every 24 months by a WHMAT Working Group in consultation with MAT-wide employees, recognised trade unions and affected staff to ensure that it is working effectively and that it is complying with employment legislation and good practice.
- 11.2 Supporting documents relating to this policy will be available on WHMAT's intranet and/or on its online system (Metamorphosis). However, any relevant paperwork should be filed confidentially in a secure place for up to 6 years and destroyed securely in line with WHMAT's Retention of Records Policy (see www.whmat.academy policies tab), GDPR regulations and the Data Protection Act 2018

Appendix 1 - Flowchart

