



The Bishop Konstant Catholic Academy Trust

Learning Communities, Inspired by Faith

Trust Capability Policy and Procedure 2022/2023



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The Policy has been consulted on with local Trade Union representatives and has not been fully agreed upon. The Trust commits to local consultation prior to adopting any future changes by the CES.

POLICY DOCUMENT	Trust Capability Policy and Procedure
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Lead Member of Staff:	Head of HR
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Mission Statement

All policies are written in line with our Trust Mission statement:

With Jesus Christ at the centre of the life of the Trust, we seek to provide learning communities offering the highest possible standards of education. We are committed to working in partnership and trust for the common good. We strive to encourage and empower children and young people to recognise and realise their God-given potential and to discern their vocation in life. As learning communities inspired by faith, we celebrate achievement, offering each other challenge and support, as together we follow Christ in self-giving love and service.

Change Control

Version	Date	Author	Changes
1.2			
1.1	10/08/22	HR Assistant	Changes following the CES updates
1.0	01/09/2019	Insert job title	Starting Document and Layout.



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TRUST CAPABILITY POLICY & PROCEDURE

DEFINITIONS

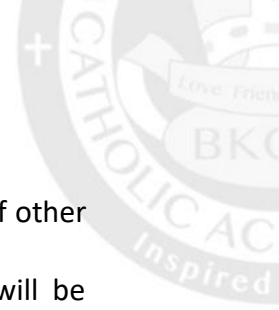
In this Capability Policy and Procedure, unless the context otherwise requires, the following expressions shall have the following meanings:

- i. 'Academy' means the school using this Capability Policy and Procedure and includes all sites upon which the school undertaking is, from time to time, being carried out.
- ii. 'Academy Trust Company' means the company responsible for the management of the School and, for all purposes, means the employer of staff at the School.
- iii. 'Board' means the Board of Directors of the Academy Trust Company.
- iv. 'Chair' means the Chair of the Board or the Chair of the Local Governing Body of the Academy appointed from time to time, as appropriate.
- v. 'Clerk' means the Clerk to the Board or the Clerk to the Local Governing Body of the Academy appointed from time to time, as appropriate.
- vi. 'Companion' means a willing work colleague not involved in the substance of the employee's performance issues under review by this Capability Policy and Procedure, or an accredited representative of a trade union or other professional association of which the employee is a member who should be available for the periods of time necessary to meet timescales under this Capability Policy and Procedure.
- vii. 'Diocesan Schools Commission' means the education service provided by the diocese, which may also be known, or referred to, as the Diocesan Education Service.
- viii. 'Directors' means directors/trustees appointed to the Board of the Academy Trust Company.
- ix. 'Governing Board' means the body carrying out the employment functions of the Academy Trust Company and such term may include the Board of Directors and/or a Local Governing Body of the Academy.
- x. 'Governors' means the governors appointed and elected to the Local Governing Body of the Academy, from time to time.
- xi. 'Local Governing Body' means the group of governors appointed and elected to carry out specified functions in relation to the School as delegated by the Academy Trust Company.
- xii. 'Vice-Chair' means the Vice-Chair of the Board or the Vice-Chair of the Local Governing Body of the School elected from time to time, as appropriate.
- xiii. Capability due to lack of competence means a lack of skill or aptitude leading to unsatisfactory performance. In these cases this Capability Policy and Procedure will apply.
- xiv. Misconduct means any action or inaction which contravenes the provisions of the employee's contract of employment, the rules laid down by the Academy Trust Company and/or any Professional Code of Conduct and Practice. In such cases the Disciplinary Policy and Procedure will apply and the Capability Policy and Procedure may also apply.
- xv. Capability due to ill-health means any inadequacy in health or any other physical or mental quality which results in unsatisfactory performance. In these cases the Sickness Absence Policy and Procedure will apply.



1. SCOPE

- 1.1 This Capability Policy and Procedure applies to you if you are an employee or worker at the School (hereinafter referred to as an “employee” or “you”).
- 1.2 The purpose of this Procedure is to establish a structure to support employees in improving their performance to the standards expected, and to take appropriate action to address this where there has not been sufficient improvement, following support being provided pursuant to the Appraisal Policy and Procedure.
- 1.3 This Capability Policy and Procedure shall be invoked when there is an identified need to address, with a view to remedying, capability due to lack of competence.
- 1.4 This Capability Policy and Procedure can be invoked by the Board or its delegate at any stage deemed appropriate although the expectation is that it will only be invoked after the procedure set out in the Appraisal Policy and Procedure has been fully exhausted.
- 1.5 An employee is entitled to have access, by arrangement, to their personnel file and to request the deletion of time-expired records in line with the provisions of the General Data Protection Regulation (GDPR) and the Data Protection Act 2018.
- 1.6 The Academy Trust Company delegates its authority in the manner set out in this policy.
- 1.7 There may be some occasions where an employee’s lack of capability could also be described as Misconduct. This Capability Policy and Procedure and the Trust Disciplinary Policy and Procedure may be used concurrently whilst the School endeavours to ascertain if the employee’s lack of capability is due to Misconduct or lack of competence.
- 1.8 There may be occasions where an employee’s lack of capability could relate to their health. This Capability Policy and Procedure may be used concurrently with the Trust Sickness Absence Policy and Procedure. In particular, if an employee is absent from work on sick leave following this Capability Policy and Procedure being invoked, the School may use its Sickness Absence Policy and Procedure. However, the process of managing unsatisfactory performance due to capability will not necessarily cease where the employee is absent on the grounds of sickness.
- 1.9 The Trust is committed to ensuring respect, objectivity, belief in the dignity of the individual, consistency of treatment and fairness in the operation of performance management as a Catholic school. This commitment extends to promoting equality of opportunity and eliminating unlawful discrimination throughout the School community.
- 1.10 This Capability Policy and Procedure offers opportunities to ensure justice for teachers, support staff and pupils alike and has the potential for the expression of Christian qualities such as honesty, self-knowledge, respect for others and their gifts, recognition of the needs and achievements of others, challenge of self and others, personal growth and openness.
- 1.11 This Capability Policy and Procedure can be invoked at any time during any Appraisal Period as defined in the Trust’s Appraisal Policy and Procedure. The expectation is that it will only be invoked after the procedure set out in the Appraisal Policy and Procedure has been fully exhausted.
- 1.12 The Capability Policy and Procedure does not form part of any other procedure but relevant information on capability, including the reports referred to in this Capability



Policy and Procedure, may be taken into account in relation to the operation of other applicable policies and procedures.

- 1.13 The management of unsatisfactory performance and related investigations will be treated in confidence as far as possible by all parties involved at all stages of this Capability Policy and Procedure.
- 1.14 The School will maintain records of all interviews and reviews which take place under this Capability Policy and Procedure for a period of up to 12 months or longer where necessary and where there is an applicable lawful basis under the GDPR for extending the retention period. All data and evidence collected is to be shared between all the relevant parties, where appropriate and where there is an applicable lawful basis under the provisions of the GDPR.

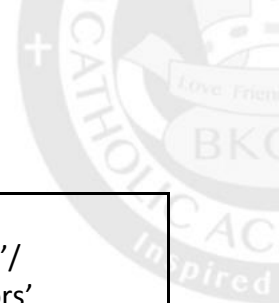
2. CAPABILITY POLICY AND PROCEDURE – TEACHERS EXPERIENCING DIFFICULTIES

- 2.1 This Capability Policy and Procedure should, except in exceptional circumstances, only be invoked where the measures of the Trust Appraisal Policy and Procedure for Teachers and/or of the Trust Appraisal Policy and Procedure for support staff have been exhausted; and
 - a) the employee has made no improvement or sufficient improvement as required under the relevant Appraisal Policy and Procedure; and/ or
 - b) and/or is failing to respond to feedback in relation to unsatisfactory performance;
 - c) and a recommendation has been made under the relevant Appraisal Policy and Procedure that this Capability Policy and Procedure be invoked.
- 2.2 If a Headteacher is subject to this Capability Policy and Procedure they will normally continue to be responsible for the appraisal of staff at the School unless the Governing Body determines that this is inappropriate.

3. CAPABILITY, FINAL CAPABILITY AND APPEAL MANAGER

The table below sets out the persons to be appointed throughout the stages of this Capability Procedure depending on the person who is the subject of the capability proceedings:

<i>Employee Level</i>	<i>First/Second Capability Meeting – the Capability Manager</i>	<i>Final Capability Meeting – the Final Capability Manager</i>	<i>Appeal Manager (re Written Warnings)</i>	<i>Appeal Manager (re Dismissal)</i>



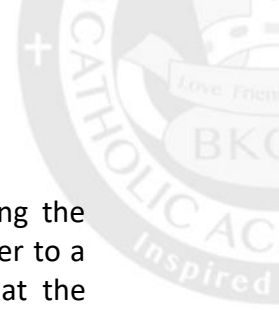
Headteacher	Chair or a non staff Trustee/Governor (other than the Vice-Chair) nominated by the Chair	Trustees'/ Governors' Capability Panel appointed by the Vice-Chair	A non-staff Trustee/ Governor (other than the Chair or Vice Chair) nominated by the Vice-Chair	Trustees'/ Governors' Appeal Panel appointed by the Vice-Chair
Other Leadership Spine and School Business Manager	Headteacher	Chair or a non-staff Trustee/ Governor nominated by the Chair	A non-staff Trustee/ Governor (other than the Chair or Vice Chair) nominated by the Vice-Chair	Trustees'/ Governors' Appeal Panel appointed by the Vice-Chair
Other Teaching Staff	(1)A member of the Leadership Team (other than the Headteacher) appointed by the Headteacher or, in the event that (1) above cannot be complied with, (2) a person appointed by the Headteacher	Headteacher	Chair or a non staff Trustee/ Governor (other than the Vice-Chair) nominated by the Chair	Trustees'/ Governors' Appeal Panel appointed by the Vice-Chair
Other Support Staff	A person appointed by the Headteacher	Headteacher	Chair or a non-staff Trustee/ Governor (other than the Vice Chair) nominated by the Chair	Trustees'/ Governors' Appeal Panel appointed by the Vice-Chair

NB: In law, only the Academy Trust Company, as the employer of staff, has the power to terminate employment, so the Academy Trust Company will need to ensure that it has delegated this power to the Final Capability Manager in accordance with the table above. Where the Academy Trust Company amends the table above, it will need to ensure that it has delegated its power to dismiss to the panel of persons and/or the individual that it appoints as the Final Capability Manager.



4. FIRST CAPABILITY MEETING

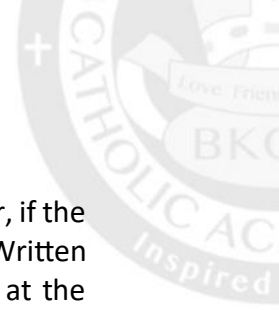
- 4.1 Where the School has fully exhausted the Appraisal Policy and Procedure in accordance with Paragraph 2 above, including the appeals process under that Policy, the School will appoint a Capability Manager in accordance with Paragraph 3 above. The Capability Manager will write to you inviting you to a First Capability Meeting. You will be given at least 5 working days' notice of such meeting. At the same time as sending you the letter inviting you to the First Capability Meeting, the Capability Manager will also send you a copy of the Performance Report which they have prepared and which shall set out:
- 4.1.1 What aspects of your performance are causing concern;
 - 4.1.2 What specific and achievable performance standards are expected of you; and
 - 4.1.3 The support that has been provided to you so far.
- 4.2 The Capability Manager's letter shall state that any documentation you wish to rely on during the First Capability Meeting must be submitted at least 2 working days prior to the First Capability Meeting.
- 4.3 At the First Capability Meeting you will have an opportunity to comment upon, offer an explanation and/or refute the contents of the Performance Report and to discuss the professional shortcomings identified, support and guidance required and how your performance should be monitored going forward.
- 4.4 At the end of the First Capability Meeting, having considered your comments, if the Capability Manager concludes that your performance is satisfactory, you will no longer be subject to this Capability Policy and Procedure and shall be notified in writing of the Capability Manager's decision, as soon as reasonably practicable. The Trust Appraisal Policy and Procedure shall resume.
- 4.5 At the end of the First Capability Meeting, having considered your comments, if the Capability Manager concludes that your performance is unsatisfactory you will be given a First Written Warning and an improvement and support plan which will be drawn up in discussion with you as soon as reasonably practicable, but no later than 5 working days following the First Capability Meeting. The Improvement and Support Plan will:
- 4.5.1 Identify the professional shortcomings.
 - 4.5.2 Give clear guidance on the improved sustainable standard of performance needed to exit the capability procedure.
 - 4.5.3 Explain the support that will be available, and how performance will be monitored over a period of time, referred to in this Capability Policy and Procedure as the Assessment Period.
 - 4.5.5 Identify a reasonable timetable for improvement and agree a date for the Second Capability Meeting, to be held at the end of the Assessment Period.
 - 4.5.6 Make it clearly understood that failure to improve may lead to dismissal.
- 4.6 The length of the Assessment Period following a First Written Warning will be at least 4 working weeks, and no more than 12 working weeks.



- 4.7 If the Assessment Period is less than 12 working weeks, at any time during the Assessment Period the timeframe may be extended by the Capability Manager to a maximum of 12 working weeks in total, if there is sufficient evidence that the employee is progressing towards achieving the standards required. You will be informed of any such extension in writing.
- 4.8 You may appeal against a First Written Warning by writing to the Clerk within 5 working days of being sent the First Written Warning.
- 4.9 The fact of the appeal does not delay the commencement of the Assessment Period.
- 4.10 In the case of a Headteacher, a First Written Warning will remain live for 12 months. In the case of all other employees a First Written Warning will remain live for 6 months. If within that 12 or 6 month period the employee's required standard of performance is not sustained, the Capability Manager will recommence the Capability Procedure at the stage it was previously concluded, and you will be notified of this in writing.

5. SECOND CAPABILITY MEETING

- 5.1 The Capability Manager will write to you inviting you to a Second Capability Meeting. You will be given at least 5 working days' notice of such meeting. At the same time as sending you the letter inviting you to the Second Capability Meeting, the Capability Manager will also send you a copy of the Updated Performance Report which they have prepared and which shall set out the assessments, support and evaluation of your performance during the Assessment Period.
- 5.2 Any documentation you wish to rely on during the Second Capability Meeting must be submitted at least 2 Working Days prior to the Second Capability Meeting.
- 5.3 At the Second Capability Meeting you will have an opportunity to comment upon, explain and/or refute the contents of the Updated Performance Report, to discuss any continuing professional shortcomings, support and guidance required and how your performance will be monitored and supported going forward.
- 5.4 The Capability Manager will confirm the outcome of the Second Capability Meeting in writing within 5 working days of the date of such meeting.
- 5.5 Where the Capability Manager concludes, at the end of the Second Capability Meeting, that the standard of performance is satisfactory you will no longer be subject to this Capability Policy & Procedure. The Trust Appraisal Policy & Procedure shall resume. However, if the required standard of performance is not sustained during the life of the First Written Warning, the Capability Manager will recommence the Capability Procedure at the stage it was previously concluded and you will be notified of this in writing.
- 5.6 Where the Capability Manager concludes, at the end of the Second Capability Meeting, that some progress has been made and that with a further period of monitoring an acceptable level of performance will be achieved, the Capability Manager may consider extending the Assessment Period determined in accordance with paragraph 4.6 by up to an additional 4 Working Weeks. If at the end of this Additional Assessment Period, the Capability Manager concludes that your performance is satisfactory you will no longer be subject to this Capability Policy and

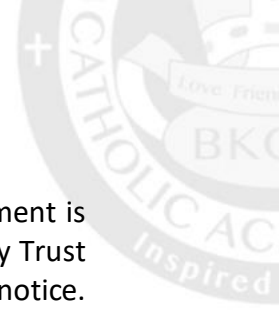


Procedure. The School's Appraisal Policy and Procedure shall resume. However, if the required standard of performance is not sustained during the life of the First Written Warning, the Capability Manager will recommence the Capability Procedure at the stage where it was previously concluded and you will be notified of this in writing.

- 5.7 Where the Capability Manager concludes, at the end of the Second Capability Meeting, or at the end of the Additional Assessment Period referred to in Paragraph 5.6 above that no, or no sufficient, improvement has been made so that your performance remains unsatisfactory, you will be given a Final Written Warning setting a Further Assessment Period of 4 working weeks and notifying you of the date for the Final Capability Meeting to be held at the end of the Further Assessment Period. You will be informed that failure to make satisfactory sustainable improvement will result in your dismissal.
- 5.8 You may appeal against a Final Written Warning by writing to the Clerk within 5 working days of being sent the Final Written Warning.
- 5.9 The fact of the appeal does not delay the commencement of the Further Assessment Period.
- 5.10 A Final Written Warning for all employees will remain live for 12 months and if, within that 12 months, the required standard of performance is not sustained, the Capability Manager will recommence the Capability Procedure at the stage it was previously concluded and you will be notified of this in writing.

6. FINAL CAPABILITY MEETING

- 6.1 The Final Capability Manager will write to you inviting you to a Final Capability Meeting, in accordance with Paragraph 5.7. You will be given at least 5 working days' notice of such meeting. At the same time as sending you the letter inviting you to the Final Capability Meeting, the Final Capability Manager will also send you a copy of the Final Performance Report which they have prepared and which shall set out the assessments, support and evaluation of your performance during the Further Assessment Period.
- 6.2 Any documentation you wish to rely on during the Final Capability Meeting must be submitted at least 2 Working Days prior to the Final Capability Meeting.
- 6.3 At the Final Capability Meeting you will have an opportunity to comment upon, explain and/or refute the contents of the Final Performance Report and to discuss any continued professional shortcomings, where appropriate.
- 6.4 The Final Capability Manager will confirm the outcome of the Final Capability Meeting in writing within 5 Working Days of the date of such meeting.
- 6.5 Where the Final Capability Manager concludes that the standard of performance is satisfactory you will no longer be subject to this Capability Policy & Procedure. The Trust's Appraisal Policy & Procedure shall resume. However, if the required standard of performance is not sustained during the life of the Final Written Warning, the Final Capability Manager will recommence the Capability Procedure at the stage where it was previously concluded and you will be informed in writing.
- 6.6 Where the Final Capability Manager concludes that your performance remains unsatisfactory and is not capable of sustainable improvement, the Final Capability



Manager will recommend to the Academy Trust Company that your employment is terminated in accordance with your contract of employment and the Academy Trust Company will take the appropriate steps to terminate your employment with notice. Alternative sanctions may also be considered, for example, redeployment, or demotion to a lower graded role, by mutual agreement. Alternative employment in these circumstances, does not have to be equivalent in terms of conditions to the current post and protection of salary will not apply. A decision to dismiss will always be the last resort. Please note that the Board will not review the Final capability Manager's decision in order to ensure that a Directors' Capability and Appeal Panel can be convened if necessary.

- 6.7 You may appeal against a dismissal with notice by writing to the Clerk within 10 working days of being sent the notice of termination.
- 6.8 The fact of the appeal does not delay the commencement of the notice period.
- 6.9 In the event that your employment is terminated in accordance with Paragraph 6.6 above:
 - (a) If your contract of employment contains a garden leave clause, the Governing Board may exercise that clause so that you are not required to attend the School during the notice period but remain employed and so bound by the terms of your contract of employment until the expiry of the notice period; or
 - (b) If your contract of employment contains a payment in lieu of notice clause the Governing Board may exercise that clause to bring your contract to an end with immediate effect.

7. APPEALS AGAINST DECISIONS MADE BY CAPABILITY MANAGER AND/OR FINAL CAPABILITY MANAGER

- 7.1 An appeal against a decision of the Capability Manager or Final Capability Manager can be made at each stage of the procedure set out at Paragraphs 4, 5 and 6 above.
- 7.2 In all cases your appeal letter must set out the grounds of your appeal in detail. When preparing your appeal letter, you may wish to consider the following grounds:
 - (a) That the action taken was unfair;
 - (b) That this Capability Policy and Procedure was applied defectively or unfairly;
 - (c) That new evidence has come to light which was not available when the relevant decision was made by the Capability Manager or Final Capability Manager;
 - (d) That the sanction was overly harsh in all the circumstances.
- 7.3 Appeals will be heard by the relevant Appeal Manager appointed in accordance with Paragraph 3 within 20 working days of the Clerk receiving your appeal letter.
- 7.4 You will be given 5 Working Days written notice of an Appeal Meeting and the Appeal Manager will confirm in this notice what evidence will be relied upon at the Appeal Meeting and whether the evidence will be written or oral. If written evidence is to be relied upon you will be provided with copies of such evidence with notice of the meeting in order to enable you to prepare for the Appeal Meeting. If oral evidence is to be relied upon at the Appeal Meeting, you will be given details of who will be in



attendance. You will be able to provide evidence prior to the Appeal Meeting provided that such evidence is submitted at least 2 Working Days prior to the Appeal Meeting.

- 7.5 You will be given an opportunity to comment on the evidence provided during the Appeal Meeting whether such evidence is given in writing or orally. The Appeal Manager will consider the evidence provided by you and by the Capability Manager or Final Capability Manager (as appropriate) in order to determine whether the relevant decision was fair or reasonable.
- 7.6 The Appeal Manager will confirm the outcome of the Appeal Meeting in writing to you within 5 Working Days of the date of the Appeal Meeting. The decision of the Appeal Manager is final and there will be no further right of appeal. The potential outcomes of the Appeal Meeting are that:
 - (a) the Appeal Manager may uphold the decision of the Capability Manager or Final Capability Manager; or
 - (b) the Appeal Manager may uphold the employee's appeal, overturn the decision of the Capability Manager or Final Capability Manager and refer the matter back to the Capability Manager or Final Capability Manager for reconsideration.
- 7.7 Should an appeal against dismissal be successful, you will be reinstated with no break in your continuous service.

8. TRUSTEES'/GOVERNORS' PANELS

- 8.1 Trustees'/Governors' Capability and Appeal Panels shall comprise three non-staff Trustees/Governors not previously involved in the matter and shall not comprise the Chair or Vice-Chair unless there are insufficient numbers of non-staff Trustees/Governors not previously involved in the matter, in which case the Chair and/or Vice-Chair may be appointed to a Trustees'/Governors' Capability or Appeal Panel.
- 8.2 In the event that there are insufficient numbers of Trustees/Governors available to participate in a Trustees'/Governors' Capability or Appeal Panel, the Academy Trust Company may appoint associate members solely to participate in the appropriate Trustees'/Governors' Capability or Appeal Panel on the recommendation of the Diocesan Schools Commission.

9. COMPANION

- 9.1 If you are the subject of any Capability Meeting you may be accompanied by a Companion.
- 9.2 You must let the relevant Manager know who your Companion will be at least one Working Day before the relevant meeting.
- 9.3 If you have any particular reasonable need, for example, because you have a disability, you may also be accompanied by a suitable helper.
- 9.4 Your Companion can address the meeting in order to:



- (a) put your case;
 - (b) sum up your case;
 - (c) respond on your behalf to any view expressed at the meeting; and
 - (d) ask questions on your behalf.
- 9.5 Your Companion can also confer with you during the meeting.
- 9.6 Your Companion has no right to:
- (a) answer questions on your behalf;
 - (b) address the meeting if you do not wish it; or
 - (c) prevent you from explaining your case.
- 9.7 Where you have identified your Companion to the relevant Manager and they have confirmed in writing to the relevant Manager that they cannot attend the date or time set for the meeting, the relevant Manager will not usually postpone the meeting for a period in excess of five Working Days from the date set by the School to a date or time agreed with your Companion provided that it is reasonable in all the circumstances. Should your Companion subsequently be unable to attend the rearranged date, the meeting may be held in their absence or written representations will be accepted.

10. TIMING OF MEETINGS

The aim is that meetings under this Capability Policy and Procedure will be held at mutually convenient times but depending on the circumstances, meeting may:

- 10.1 need to be held when you were timetabled to teach (if that is appropriate to your role);
- 10.2 exceptionally be held during planning, preparation and administration time if this does not impact on lesson preparation (if that is appropriate to your role);
- 10.3 exceptionally, be held after the end of the school day;
- 10.4 not be held on days on which you would not ordinarily work;
- 10.5 be extended by agreement between the parties if the time limits cannot be met for any justifiable reason

11. VENUE FOR MEETINGS

Any meeting held under paragraphs 4, 5, 6 and 7 may be held off the School site to minimise any distress to the employee.

12. ASSISTANCE

In all cases involving any sanction in relation to the Headteacher or to a person on the Leadership Spine, or to potential or actual dismissal of any other member of staff, the Diocesan Schools Commission and/or the Local Authority may send a representative to advise the Capability Manager, Final Capability Manager or Appeal Manager.



13. REVIEW OF THIS PROCEDURE

This policy and procedure was produced in September 2013 by the Catholic Education Service (CES) for the use in Catholic Voluntary Academies in England, following consultation with the national trade unions. It was updated in June 2016, May 2018 and June 2020. This procedure will be reviewed by the CES in readiness for the academic year 2023/2024.

The Bishop Konstant Catholic Academy Trust is an exempt charity regulated by the Secretary of State for Education. It is a company limited by guarantee registered in England and Wales, company number 08253770, whose registered office is at St Wilfrid's Catholic High School & Sixth Form College, Cutsyke Road, Featherstone WF7 6BD