



Capability Policy

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Statement of Intent

Capability refers to an employee's ability to perform the work expected of them to the standard required. The primary aim of this procedure is to provide a framework within which the Trust can work positively with employees to maintain satisfactory performance standards and to encourage improvement where necessary.

This formal capability procedure is separate from the Absence Management Policy and Disciplinary Policy and will only be instigated when there are serious concerns about an employee's performance that informal guidance and support under the performance management procedure have been unable to address. Concerns over performance will be dealt with fairly and employees will be given the opportunity to respond at a hearing before any formal action is taken.

It is recognised that capability problems may result from underlying work problems or personal issues that may be outside the employee's direct control. Consequently, there is a need to treat all capability issues with care and sensitivity and to identify and (where appropriate) address the underlying causes.

This policy sets out the arrangements that will apply when an employee falls below the levels of competence and performance expected of them and there is serious underperformance which the Performance Management Policy has been unable to address.

This policy has been designed to comply with current legislation and the ACAS Code of Practice on Disciplinary and Grievance Procedures. It complies with the requirement for all schools including academy trusts to have a policy that deals with capability of staff.

This policy does not form part of any employee's contract of employment and may be amended at any time.

1. Legal Framework

1.1 This policy has due regard to all relevant legislation and statutory guidance including, but not limited to, the following:

- Equality Act 2010
- Employment Rights Act 1996
- Health and Safety at Work Act 1974
- The School Staffing (England) Regulations 2009 (as amended)
- The UK General Data Protection Regulation (UK GDPR)
- Data Protection Act 2018 (DPA)
- DfE (2020) 'Governance handbook'
- DfE (2019) 'Teacher appraisal and capability: A model policy for schools'
- ACAS (2015) 'Code of practice on disciplinary and grievance procedures'
- DfE (2021) 'Teachers' Standards'
- DfE (2021) 'Staffing and employment advice for schools'
- DfE (2014) 'The Equality Act 2010 and schools'

1.2 This policy operates in conjunction with the following school policies:

- Performance Management Policy
- Grievance Policy
- Disciplinary Policy
- Whistleblowing Policy
- Pay Policy
- Absence Management Policy
- Data Protection Policy

2. Scope of this Policy

2.1 The purpose of this policy is to provide a framework within which CIT can work with employees to improve and maintain satisfactory standards of performance where serious concerns have been raised.

2.2 This policy will be applied where there is underperformance, and informal support as set out in the Performance Management Policy has been provided and the required improvement has not been made. In exceptional circumstances where the level of performance is extremely serious this process may be initiated without any informal support.

2.3 This policy applies to all employees, including ECTs where there are serious concerns during the induction period, excluding those who are in their probationary period. On successful completion of the probationary period, employees' performance management will be covered by this policy. This policy does not apply to agency workers, contractors, consultants, or any self-employed individuals.

2.4 This policy does not apply to cases involving sickness absence or misconduct. In those cases, reference should be made to the appropriate policy or procedure.

3. Roles and Responsibilities

3.1 The Trust Board has overall responsibility for the effective operation of this policy and for ensuring compliance with the relevant statutory framework. The Board

delegates day-to-day responsibility for operating the policy and ensuring its maintenance and review to the Director of HR.

3.2 Employees are responsible for:

- Performing consistently to the required standards.
- Seeking help when difficulties arise.
- Responding positively to the performance improvement process if initiated.

3.3 Headteachers, ELT and Line Managers are responsible for:

- Recognising a decline in employees' performance and addressing poor performance as soon as it occurs.
- Developing their people to fulfil their maximum potential and perform, as a minimum, to the required standard.
- Working with the employee (with support from HR as required) in order to resolve performance issues informally where possible.
- Initiating an effective performance improvement process where informal approaches have not succeeded.
- Giving employees support and the opportunity to improve in a constructive and positive environment.

3.4 The HR Director is responsible for:

- Supporting Headteachers, ELT and line managers in their role as performance managers by providing training and giving advice when needed.
- Monitoring the application of the Performance Management Policy to ensure the consistent and equitable treatment of individuals not performing to the required standard.

4. Confidentiality, Retention and Data Protection

4.1 The Trust aims to deal with performance matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with this capability procedure. Employees and their companions must not make electronic recordings of any meetings or hearings conducted under this procedure.

4.2 All records of action taken under the capability procedure will be handled and retained in line with the Trust's Data Protection Policy.

5. Disability

5.1 Consideration will be given to whether poor performance may be related to a disability and, if so, whether there are reasonable adjustments that could be made to the employee's working arrangements, including changing duties or providing additional equipment or training. An employee who wishes to discuss or inform the Trust about any medical condition should contact their line manager or the headteacher.

6. Right to be Accompanied

- 6.1 Employees are entitled to be accompanied to formal meetings and hearings held under this procedure by an accredited trade union representative or appropriate work colleague. If the employee's chosen companion is unavailable at the time of the hearing, the employee can propose an alternative time within 5 working days of the originally scheduled date. If the companion is not available within 5 working days, the Trust may require the employee to choose an alternative companion.
- 6.2 At a formal meeting or hearing, the employee's companion can make representations, ask questions, sum up the employee's case, and request an adjournment to discuss the case privately with the employee. The companion does not, however, have the right to answer questions on the employee's behalf.

7. Identifying Performance Issues

- 7.1 The formal capability procedure should be used for more serious cases, or in any case where previous informal discussions under the performance management policy have not resulted in a satisfactory improvement.
- 7.2 Where evidence suggests the employee may have been grossly negligent, the case will be managed under the Trust's Disciplinary Policy.

8. Notification and Procedure for Formal Hearings

- 8.1 If the Trust considers there are grounds for taking formal action in relation to alleged poor performance, the employee will be required to attend a capability hearing. The Trust will notify the employee in writing of its decision to initiate the formal capability procedure giving 5 working days' notice and confirm:
- The nature of the performance concerns and their possible consequences detailed in writing (including the possibility of issuing a warning or dismissal) to enable the employee to prepare to answer the case at the formal meeting.
 - The time, date, and location of the capability meeting.
 - The employee's right to be accompanied at the meeting.
 - Copies of any supporting evidence or relevant documents that will be used at the capability meeting.
 - Copies of witness statements and details of witnesses attending (if appropriate).
- 8.2 Formal hearings will be conducted by a senior manager, a member of the Senior Leadership team, ELT, a member of a Local School Board or a member of the Trust Board. These meetings may be conducted by an individual from a different school or setting within the Trust.
- 8.3 For senior staff, including any members of ELT and the CEO, the Trust may appoint an external manager to hear the capability case.
- 8.4 Employees can waive their right to 5 working days' notice if they are happy to proceed with the hearing. In these circumstances, employees must confirm this to their line manager or HR in writing.
- 8.5 The employee must make every effort to attend the meeting and failure to attend without good reason may be treated as misconduct. If the employee fails to attend without good reason or is persistently unable to attend (for example because of

poor health), the Trust may make decisions based on the available evidence including any written representations made by the employee (if provided).

- 8.6 The employee's line manager may attend the meeting to present the management case. Relevant witnesses may be called by the person conducting the meeting. Such a request should be provided in writing [at least 2 days prior to the meeting] with details of why such a witness should be called. The person conducting the meeting shall determine who shall be called as a witness and may request a written statement is provided instead of attendance.
- 8.7 A formal hearing under this procedure will:
- Identify performance shortcomings, including which of the standards expected are not being met.
 - Allow the employee to respond to those concerns, ask questions and make any relevant representations which may provide new information or a different context to the evidence already collected.
 - Find out if there are any issues (both in and outside of work) affecting their performance that need to be considered.
 - Identify what action (including support provided) has been taken to date and what the outcome was.
 - Give clear guidance on the improved standard of performance needed to ensure the employee can be removed from the formal capability procedure.
 - Where appropriate, identify and explain any support that will be available to help the employee improve performance.
 - Where appropriate, warn the employee formally that failure to improve within the set period could lead to dismissal or other serious implications such as no pay progression.
 - Confirm the timescales for the monitoring and review period which will follow a formal hearing where a warning is issued. The timetable will depend on the circumstances of the individual case, but the period will be reasonable and proportionate ensuring the arrangements minimise the impact on workload for all parties involved and should provide sufficient opportunity for an improvement to be made. Formal monitoring, evaluation, guidance, and support will continue during this period.
- 8.8 The person conducting the hearing may adjourn the meeting, for example for further investigation or to consider if additional information is required.
- 8.9 If at any stage the person conducting the hearing is satisfied there are insufficient grounds for pursuing the capability issue or after a review period the employee has made sufficient improvement, the capability procedure will cease, and the performance management process will re-start.
- 8.10 Following a formal hearing, the matters covered in 8.7 and any other relevant points will be confirmed in writing. Where a warning has been issued the letter will set out the length of the monitoring and review period and the procedure and time limits for appealing against the warning.
- 8.11 If under performance occurs again shortly after the end of the live period of the warning, the Trust reserves the right to deal with the matter at the same stage of the procedure and not return to earlier stage (including not returning to the

Performance Management Policy).

- 8.12 Minutes will be taken of all formal hearings and employee will be sent a copy following the hearing.

9. Formal Capability Hearing Stage 1

- 9.1 If it is considered that there are serious performance concerns, the employee will be invited to a formal Capability Hearing to establish the facts and give them the opportunity to respond before formal action is taken.
- 9.2 Stage 1 Hearings will be held by a member of a Senior Leadership Team, a Senior Manager, a member of the Executive Leadership Team or a member of the Trust Board depending on the employees' position within the Trust. This Hearing will not normally be held by the employee's direct line manager although they can be present at the Hearing to present the case. The Hearing may be attended by an HR representative and/or a note taker.
- 9.3 At the Hearing the following points must be discussed:
- Identify the areas of concern, for example how the required standards are not being met by the employee.
 - Give clear guidance on what the required standard should be and offer guidance of how the standard can be achieved.
 - Agree on objectives and record on a performance improvement plan and set the success criteria.
 - Set reasonable timescales for the actions on the performance improvement plan to be achieved by.
 - Explain what support is available to help the employee improve their performance.
 - Agree frequency of future reviews.
 - Warn the employee formally that failure to improve within the set period could result in a final written warning and ultimately lead to their dismissal.
- 9.4 The outcome will be confirmed in writing within 5 working days. This outcome letter will include details of the matters discussed (set out in 8.7 above).
- 9.5 Where a warning is issued at Stage 1, this will usually be a first written warning. However, in very serious cases or in cases where performance issues have been dealt with previously under the formal capability procedure and there are still concerns, this could be a final written warning. Any implications in relation to pay progression will be set out in writing.
- 9.6 The warning will normally remain active for 6 months (first warning) or 12 months (final warning) from the date of issue. During this time, any further performance concerns will be considered at the next stage of the process (Stage 2). After the active period, the warning will remain on the employees personnel file but will be disregarded in deciding the outcome of any future capability proceedings,

10. Possible Outcome Stage 1

No Action	The evidence has been reviewed at the formal hearing and the manager finds there are no capability concerns and find no further action.
Monitoring and Warning	Monitoring period agreed and first/final written warning issued
Final Warning	See 12.4

- 10.1 Where applicable, a performance improvement plan will be agreed, and a formal monitoring and review period will follow the Stage 1 formal capability hearing. Formal monitoring, evaluation, guidance and support will continue during this period. The member of staff will be invited to a formal review meeting, unless they were issued with a final written warning, in which case they will be invited to a decision hearing (see below).

11. Monitoring and Review Period

- 11.1 The standard set length of the monitoring and review period following the formal capability meeting in this Trust is normally six weeks. However, in some cases it may be appropriate for a shorter period of four weeks to be set.
- 11.2 A review period should not exceed 8 weeks in total unless it is extended at a subsequent hearing.
- 11.3 At the end of the monitoring and review period, the staff member will be invited to an informal review meeting with their line manager to assess progress, unless you were issued with a final written warning, in which case you will be invited to a decision meeting. If the desired progress is met, this will be confirmed in writing and the employee returns to the normal performance management process.
- 11.4 If, following the review period, there are still concerns, the employee will be invited to a Stage 2 Hearing.

12. Formal Capability Hearing Stage 2

- 12.1 The procedure of the Stage 2 Hearing is the same as the Stage 1 Hearing.
- 12.2 If the person conducting the formal hearing decides some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period up to a maximum of half of the initially agreed monitoring and review period i.e. if 4 weeks had been agreed as a target then the agreed extension could be for a maximum of 2 weeks.
- 12.3 If no, or insufficient improvement has been made during the monitoring and review period, a final written warning will be issued. A further Monitoring and Review Period will follow.
- 12.4 A final warning will remain active for 12 months from the date of issue. During this time any further performance concerns will be addressed at the next stage of the process (Decision Hearing). After the active period the warning will remain on the employee's personnel file but will be disregarded in deciding the outcome of any

future capability proceedings.

13. Monitoring & Review Period Stage 2

- 13.1 The same process for monitoring and review will take place as set out in section 11 above.
- 13.2 If, following the review period, there are still concerns, the employee will be invited to a Decision Hearing.
- 13.3 At this stage and by agreement with the employee, instead of progressing to a Decision Hearing, it may be appropriate to consider whether there is an appropriate vacant post and if so whether this may be more suited to the employee's capabilities. If there is a vacant post which the Trust agrees the employee is suitable, this would be a permanent change in role and if the alternative post is at a lower salary level, the substantive lower salary would apply with no period of pay protection.
- 13.4 Confirmation of the new role would be confirmed in writing.
- 13.5 The capability procedure would cease on commencing in the new post and the appraisal process would re-start.

14. Decision Hearing Stage 3

- 14.1 The Decision Hearing will usually be held by a panel of three comprised of the staff detailed below and will also be attended by an HR representative and/or note taker. The panel must have had no previous involvement in the performance concerns. Dismissal is a possible outcome of a decision meeting.
- 14.2 The hearing will normally be chaired by either a Senior Manager, HR Manager, Headteacher, a member of the Executive Leadership Team (ELT), a member of the Local School Board or a member of the Trust Board.
- 14.3 If the performance concern is against a member of the ELT, it may be appropriate for an external Chair to be appointed.
- 14.4 If the performance concern is against the CEO an external, independent, Chair will be appointed.
- 14.5 Panels will normally comprise the Chair and individuals from the following roles, Senior Manager, Headteacher, member of the ELT, Local School Board member, Member of the Trust Board or a suitable external member.
- 14.6 A panel does not need to be made up of employees from the same school or setting as the employee under review.
- 14.7 If an acceptable standard of performance has been achieved during the Stage 2 monitoring period, the capability process will end.
- 14.8 If the person conducting the formal hearing decides some progress has been made and there is confidence more is likely, it may be appropriate to extend the monitoring and review period up to a maximum of half of the initially agreed

monitoring and review period.

- 14.9 If the performance remains unsatisfactory or of serious concern, the decision will be made that the employee will be dismissed.

15. Dismissal

- 15.1 Employees will not normally be dismissed for performance reasons without previous warnings. However, in serious cases, cases of gross negligence, or in any case involving a recently appointed employee who has not yet completed their probationary period, dismissal without previous warnings may be appropriate.
- 15.2 Dismissal will normally be with full notice or payment in lieu of notice unless the employee's performance has been negligent as to amount to gross misconduct, in which case the employee may be dismissed without notice or any pay in lieu.

Right of Appeal

16. Appeals

- 16.1 Where the employee has the right to appeal against the disciplinary action taken against them, this must be in writing, stating the full grounds of appeal and sent to the individual named in the formal outcome letter within 5 working days of the date on which the employee was informed of the decision.
- 16.2 If the employee is appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the appeal is successful, they will be reinstated with no loss of continuity or pay.
- 16.3 On receipt of a written appeal, an Appeals Manager who has had no previous involvement in the case, will be appointed and an Appeal Hearing convened. An Appeals Manager will be a more senior manager than the Capability Chair, where possible.
- 16.4 If the appeal is from a member of the ELT or the CEO the Trust will appoint an external, independent, Appeals Manager. In these cases, it may be appropriate for the entire appeals panel to be external to CIT.
- 16.5 The employee must be given written notice of the date, time and place of the Appeal Hearing. This will normally be no less than 5 working days.
- 16.6 All Appeal Hearings will take place during school term time and on a normal working day of the employee under investigation.
- 16.7 Employees who have been invited to attend an Appeal Hearing will have the right to be accompanied by a Trade Union Representative or a work colleague.
- 16.8 Appeal Hearings will require a panel of 3 and a note taker will also be in attendance. Panels should be made of the Appeals Manager and a senior manager, Headteacher, a member of the ELT, a member of the Local School Board, a member of the Trust Board or a suitable external member.
- 16.9 The Hearing will not normally be a complete re-hearing and will focus solely on the grounds for appeal or it may be a review of the fairness of the original decision in the light of the procedure followed and any new information that may have come

to light. This will be at the Appeals Manager's discretion depending on the circumstances of the case. In any event, the appeal will be dealt with as impartially as possible.

16.10 If any new matters are raised in the Appeal Hearing, further investigation may need to be carried out. The Appeals Manager may adjourn the Appeal Hearing if there is a need to carry out any further investigations such as re-interviewing witnesses in the light of any new points that have been raised at the hearing. If any new information comes to light, this will be provided to the employee with a summary including, where appropriate, copies of additional relevant documents and witness statements. The employee will have a reasonable opportunity to consider this information before the hearing is reconvened.

16.11 Following the Appeal Hearing, the Appeals Manager may:

- confirm the original decision; or
- revoke the original decision; or
- substitute a different penalty. Ordinarily a penalty will not be increased on appeal unless there is new information or evidence available that requires further investigation.

16.12 The employee will be informed in writing of the decision and the reasons for it, usually within 5 working days of the Appeal Hearing. Where possible, this information will also be explained to the employee in person. There is no further right to appeal.

17. Sickness

17.1 If long term sickness absence appears to have been triggered at any stage of this procedure, the case will be dealt with in accordance with the Trust's Absence Management Policy.

17.2 The employee will be referred immediately to the occupational health service to assess their health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

18. Grievance

18.1 Where a member of staff raises a grievance during the capability procedure, the procedure may be temporarily suspended in order to deal with the grievance. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently. Grievances should be handled in accordance with the Trust's Grievance Policy.

18.2 If the grievance is completely separate from the capability case, then both cases may run simultaneously.

19. Monitoring and Review

19.1 This policy will be reviewed every year by the CIT People Committee, or sooner if there is a change to ACAS guidance.