

Capability Policy and Procedure

This policy should be read alongside the 'Common Principles' at the beginning of the policy suite. These 'Common Principles' outline the need for confidentiality, the right to representation by a Trade Union representative or workplace colleague, the procedures for and management of Formal Meetings, and the procedures for appeals against formal warnings and dismissal decisions.

5.1. Introduction

The performance of our employees is key to ensuring the high standards we expect to deliver and Managers are expected to proactively performance manage employees to maintain these high standards.

At all stages the aim should be to provide support to enable the employee to improve their performance so that continuation with the Capability Procedure is no longer necessary.

5.2. Our approach

Employees are expected to perform their duties and responsibilities to the standards set by the Academy Trust, and to be supported and assisted in achieving these standards by Managers who set, communicate and monitor performance of individuals.

This policy and procedure provides a fair and coherent approach to addressing performance issues, with guidance on best management practice and how to achieve equitable solutions when performance falls below the school's required standards. Performance improvement should be achieved through regular support, one to one meetings, coaching, mentoring, training and development. Concerns about performance should initially be addressed as part of the informal one-to-one performance management process and in line with the annual assessment forming the individual's appraisal. This policy should normally be used where there are concerns that the appraisal process has been unable to address. Where the issues causing concern fall outside of the annual appraisal process and/or cannot wait until the individual's formal annual assessment, the informal one-to-one performance management process should be sufficiently robust to demonstrate there has been support and regular feedback, addressing under-performance quickly and setting clear goals and targets.

This policy outlines the approach that managers should adopt if informal action has been unsuccessful in achieving performance improvement.

Where this policy is instigated, the appraisal process will no longer apply and the individual's performance will be managed under this policy.

5.3. Policy statement

This policy and procedure forms part of the Academy Trust's performance management framework.

Where informal action does not achieve improvement formal action must be taken.

The policy is designed to work in conjunction with other Academy Trust policies such as those relating to appraisal, disciplinary, grievance, and supporting attendance. Where there are capability issues which are impacted on by any other policy the Academy Trust will seek to use the most appropriate policy.

The Academy Trust will ensure that the policy is applied fairly to all employees and does not impact negatively regardless of protected characteristics under the Equality Act 2010.

The Academy Trust reserves the right to amend this policy from time to time, after consultation with trade unions.

Managers should take primary responsibility for the effective implementation of this policy across the Academy Trust. They are also responsible for managing the equality impact of the policy and preventing adverse impact on any particular groups of employees wherever possible.

5.4. Definitions and general information

Employees

The policy applies to all employees of the Academy Trust with the exception of:

- Employees in their probationary period. Issues of under-performance during the probationary period should be handled under the Academy Trust's Probationary Procedure.
- NQT, trainee teachers, and those employed on contracts of less than one term.
- Agency workers, who are not employees of the Academy Trust. Any capability issues should be addressed with the employing agency.

Managing capability policy

Capability is concerned with an employee's inability to undertake and perform tasks to the required standard. This is different to misconduct where the employee is capable of carrying out the tasks but chooses not to.

Any disagreement between management and the employee concerning the interpretation of the policy should be referred to the Chair of the Local Governing Body where they are based (or Chair of Trustees for any employees who work

across the Academy Trust), or their delegated representative whose decision will be final within this process.

Contractual notice

An employee who is dismissed from the Academy Trust will normally be entitled to contractual notice or pay in lieu. During the notice period if the employee has not attended work without good cause or has failed to co-operate whilst at work, they will not be paid for any period of non-attendance or lack of co-operation.

Confidentiality

Confidentiality and privacy will be maintained at all times during the managing capability process. This applies to all correspondence, reports and other documentation. Notwithstanding, employees have the right to involve their union representative on such matters and circulation of information will be that which is necessary to ensure a fair process.

Records retention

Records must be kept detailing action taken in relation to this policy and procedures and will be retained on the employee's personnel file. These will include:

- The nature of the under-performance
- Action taken and the reasons for it
- Whether an appeal was lodged, and its outcome
- Any subsequent developments.

Correspondence

All correspondence with employees in relation to management of capability (including letters convening meetings/hearings, documentary evidence and decisions of hearings) should be delivered either by hand on behalf of the Academy Trust, by post or by email.

Qualifications and compliance issues

For certain roles there is a requirement for an employee to hold a specific regulatory classification and/or to maintain a certain standard in order to carry out their duties, (e.g. registration with a professional organisation). Formal action under this policy may have implications for such an employee's membership of a professional organisation and/or their ability to carry out the job.

In such circumstances, formal action may have implications for an employee's ability to continue to undertake the duties/responsibilities of the post. If the employee's continued fulfilment of their job would be compromised, the Manager must seek advice from HR Advisors either before the meeting is held or during an adjournment.

If a statutory body is involved (for compliance/regulated posts), serious under-performance issues may need to be reported whilst steps are being taken to improve

performance. This will not preclude matters from being dealt with internally as normal. However, if registration is withdrawn by external regulators, the case will need to be reviewed in order to assess the impact on the individual's ability to continue to do their job.

Where qualification and/or compliance issues may be involved, advice should be sought before formal action commences.

Prompt action

If an employee refuses to co-operate with attempts to achieve an improvement, a decision may be made to proceed directly to Stage Two of the policy without taking action under Stage One. In such circumstances advice should be sought before any further action is taken.

Alternative employment

When managing capability, management and the employee, as an alternative to dismissal, may discuss and consider alternative employment within the Academy Trust. This option should only be considered at Stage 2 of this procedure. The process may include looking for jobs requiring different skills which are compatible with those possessed by the employee, or for roles that involve less responsibility. This will not normally involve creating a new post, and there will need to be a vacancy for this to be considered in the first place. If the manager believes that this is an appropriate measure but the employee is reluctant to consider this option, the Manager should seek advice. It should however be noted that where an employee chooses not to consider an alternative role, it may ultimately lead to their dismissal. Please note it is not currently possible for a teacher to request to move from the Upper Pay Scale to the Main Pay Scale.

Any offer of alternative employment will be made in writing, setting out why the offer is being made and the consequences of refusing the offer which may include the continuation of the formal capability process and the possibility of their employment being at risk. The employee should be given at least seven working days' notice to consider the offer and discuss it with their representative.

Any offer of alternative employment will be made on a salary equivalent to the rate for the new job. Normally, where the grade of the job being offered is lower, the starting salary will be the minimum spinal column point on the new scale and no period of pay protection will apply. However in exceptional circumstances there will be discretion to place the employee on the appropriate salary point within the pay range of the new role subject to consideration of the individual's skills and aptitude relevant to the new role. In such circumstances, advice should be sought.

Review meetings

Capability Review meetings provide the opportunity to set and revise targets, review progress, provide feedback and consider any other action that may be required.

Where early intervention and good management practice through the normal channels does not achieve the required improvement in performance, or the under-performance is more serious, the manager must proceed to the next stage (i.e. first formal stage or first formal stage to second formal stage).

5.5. Action involving trades union representatives

Where concerns about performance involve an employee who is an official of a recognised trade union, the matter should be discussed at an early stage with an official employed by the relevant trades union. This should not delay managers taking the appropriate steps in the normal way under this policy.

5.6. Roles and responsibilities

Employees

Employees must have an understanding of the requirements set out in this policy and ensure that they achieve and maintain satisfactory performance levels. If they have any concerns about their ability to fulfil their duties, employees should inform their manager and co-operate with any strategies implemented to improve the standard of their work.

Managers

Managers are required to implement the capability management procedures fairly and consistently within the Academy Trust and ensure that any concerns about performance are addressed promptly and within the timeframes outlined in the procedure. Headteachers may make the decision to dismiss where they have the necessary authority under the Scheme of Delegation.

Management of a Headteachers' capability also falls within this policy, and the Executive Headteacher will be required to take action as appropriate in this instance. (For the Executive Headteacher the Chair of Trustees would fulfil this role).

Trustees / Governors

Trustees / Governors have the authority to dismiss employees if permitted in accordance with the

Scheme of Delegation. Trustees / Governors also have authority to hear appeals against dismissal.

Representation

Employees have the right to advice and guidance at any stage in this procedure. Employees also have the right to be represented and/or accompanied by either:

- A trade union representative.
- A work colleague (a person who is an employee of the Academy Trust).

It is the employee's responsibility to organise representation on the relevant date. Where a trade union representative or work colleague chosen by the employee to accompany him/her at a capability or appeal hearing cannot attend on the date proposed and they are unable to source another suitable person, then an alternative time and date will be arranged within 5 working days. One postponement on these grounds will be allowed.

The representative can put forward a case on behalf of the employee and can give advice and support during the process. The representative cannot, however, answer questions for the employee. The employee must at all stages respond to questions asked during a meeting held under this procedure.

Monitoring and review

Application of the policy and decisions taken on capability matters will be monitored to ensure consistency and fairness.

This policy will be reviewed as necessary to take account of legislative changes, operational experience and best practice. Should any changes be required, following a review of the policy, the relevant trade unions will be consulted appropriately.

Timescales

All parties involved in the proceedings have an obligation to co-operate in ensuring that processes and timescales set out in this policy are followed. The only exception to this is where the outcome of a case would otherwise be prejudiced. Managers are advised to discuss any variations to the timescales with Human Resources.

Records of interviews, meetings and hearings

A written record of all interviews and hearings must be made. It will not be a verbatim record but will accurately reflect all of the issues raised at the interview/hearing and the actions required to rectify performance in line with the requirements and standards for the job.

The Manager is responsible for producing the record and, if necessary, may arrange for a separate suitable note taker. Any dispute about the accuracy of the summary will be resolved by the Manager with the individual employee. If the employee disagrees with the record of the meeting, they can ask for their comments to be noted for future reference.

5.7. Informal Management Action

When working with an employee experiencing difficulties, the objective is to provide support and guidance in such a way that performance improves. This will include:

- Giving clear feedback to the employee about the nature and seriousness of the concerns illustrating those concerns with specific examples of where performance falls short of the required standard
- Giving the employee the opportunity to comment and discuss the concerns
- Considering any extenuating circumstances and any support that could be provided to mitigate these or support the employee
- Clarifying the standards of performance required
- Considering any temporary adjustments to normal duties to aid improvement
- Putting in place an action plan that includes:
 - Any agreed support (e.g. coaching, mentoring, structured observations) that will be provided to help address those specific concerns
 - Clear and reasonable targets and how these will be monitored and assessed
 - The time period for review (generally between 4 weeks and 1 term)
 - Explaining the implications and process if no or insufficient improvement is made.
- Setting review meeting(s), at which progress should be reviewed against the targets in the action plan and confirmed in writing

The following are examples of support mechanisms that can be put in place to enable the employee achieve the objectives. This is not an exhaustive list. The programme of support is not intended to be an indefinite arrangement and should be time limited, with focus on phasing out the support and the employee being able to perform independently of any support:

- In-school training
- External training
- Directed self-managed study
- Mentoring
- Targeted support with specific tasks
- Opportunity to observe good practice
- Opportunity to shadow / work with an experienced member of staff
- Observation of work by an experienced professional
- Modified workload or timetable for a specified period
- Re-organisation of work
- Re-organisation of working area / room

An employee will be supported for a review period of between 4 and 6 weeks, with 6 weeks being the maximum review period.

5.8. Formal Action

Stage One

A meeting between the employee and the Manager will be held, in accordance with the procedure for Formal Meetings set out in the Common Principles (with the exception that only five working days' notice of the meeting is required to be given, and the Manager and employee must provide their supporting evidence at least three working days' before the meeting).

The aims of the meeting are to:

- Specify where performance falls short of the standard
- Set targets for improvement
- Identify measures against which performance will be assessed
- Put in place an action plan setting out the support to be provided
- Warn the employee of the consequences if their performance does not improve
- Set a date for a further meeting to review progress against the performance targets set for improvement. The length of the review period will be between 4 to 6 weeks for support staff; and between 4 to 10 weeks for teaching staff depending on individual circumstances.

Stage One outcomes

There are three possible outcomes at the end of the review period.

1. Performance has improved to the required standard and no further action is required, other than to inform the employee of the need to sustain the level of improvement and the consequences of not doing so. The appraisal process will re-start at this point, where appropriate.
2. Where an employee's performance has not met the standard but there is evidence to show that a further period of monitoring and review is likely to achieve the standard, a decision may be taken to extend the initial review period for a further period between 4 to 6 weeks. For Teaching Staff, pay progression will be unlikely at the next pay review if underperformance results in a failure to achieve appraisal objectives.
3. The employee's performance has not met the standard and a decision is taken to proceed to Stage Two. As in 2 above the employee will not be entitled to an annual increment / pay progression will be unlikely.

Where a decision is taken to extend the review period, the Manager and employee will revise the action plan based on progress made, and the arrangements set out in the plan for monitoring and reviewing performance will be followed.

Where the required level of improvement has been achieved, performance will be monitored and managed in line with the appraisal process, and should it not be sustained in the following 12 month period, action may be reinstated at Stage Two of the procedure which could ultimately lead to dismissal.

The Manager will confirm the outcome of the meeting in writing within five working days of the verbal notification of the decision, noting any particular areas of disagreement that the individual has raised where appropriate

There is no right of appeal against a Stage One outcome.

Stage Two Formal Meeting

The Formal Meeting will be conducted by a Headteacher or Executive Headteacher who are authorised to dismiss, who have had no previous involvement in the case, and are appropriately advised. The Manager who managed the previous Stage One process will also attend the meeting to present the findings of the Stage one process and what actions have been taken to support the employee to improve their performance.

The Formal Meeting will be held in accordance with the procedure for Formal Meetings set out in the Common Principles (with the exception that only seven working days' notice of the meeting is required to be given, and the Manager and employee must provide their supporting evidence at least three working days' before the meeting)

The aims of the meeting are to:

- Review performance and the action taken to achieve the required improvement
- Where improvement has been unacceptable consider whether to dismiss or recommend dismissal
- Where it is decided the employee has demonstrated that with further support they are likely to achieve the required level of improvement, review and as appropriate revise the targets and action plan designed to support the required improvement in performance and allow between 4 to 6 weeks for support staff to improve; and between 4 to 10 weeks for teaching staff depending on individual circumstances to improve
- Monitor progress
- Set a date for a formal review meeting.

Stage Two outcomes

There are four possible outcomes:

1. At the end of a Stage Two review period, performance has improved to the required standard and no further action is required. The employee will be informed of the need to sustain the level of improvement and the consequences of not doing so. For support staff, any increments due will become applicable from the date of the decision letter. The appraisal process will re-start at this point.

2. At the end of a Stage Two review period, the required standard has not been reached. A decision may be taken to further extend the review period, by between 4 to 6 weeks where there is evidence to show that a further review period will lead to the required improvement. The employee will be warned that failure to reach the required standard is likely to lead to dismissal.

3. At the end of a Stage Two review period where the employee's performance has not met the required standard and it is considered unlikely that the required standards will be met, then the manager will take a decision to dismiss or recommend dismissal. Subject to there being an established vacancy within the Academy Trust, consideration can be given to an option of demotion/alternative employment at this point in the process. This can only be through mutual agreement which should be documented, and advice should be sought. If mutual agreement is reached, the employee has no right to salary safeguarding/protection since the individual has voluntarily accepted the demoted role/alternative employment. The demoted role/alternative employment position will become the individual's substantive role.

4. On completion of a Stage Two meeting the employee's performance has not met the required standard and they have not demonstrated that they are likely to achieve the desired improvement within a reasonable period of time. A decision is taken to dismiss or to recommend dismissal.

The Headteacher / Executive Headteacher will confirm the outcome of the meeting in writing within five working days.

Where the required level of improvement is achieved the employee's performance will be monitored and should it not be sustained in the following 24 month period, action may be reinstated at the Stage Two of the Policy which could lead to dismissal. Following a period of sustained improvement but where there is another decline in performance, this will automatically trigger withholding of increment for support staff, effective from the date of notification that the Stage Two has been re-activated.

5.9. Appeals

All employees have a right to appeal against dismissal. An appeal lodged against dismissal does not require the employee to be reinstated pending appeal.

An appeal may be lodged on one or more of the following grounds:

1. Procedure – where failure to follow the correct procedure had a material effect on the decision
2. The facts of the case – where the Headteacher or Executive Headteacher came to the conclusion on a material point of fact which no reasonable person could have reached

3. Sanction – where the decision to opt for dismissal rather than an alternative option was one that would not have been reached by any reasonable Hearing Manager
4. New evidence is available that could not have reasonably been raised at the Stage Two performance meeting and the absence of which had a material effect on the decision.

Appeals must be lodged in accordance with the 'Appeals against dismissal' process set out in the

Common Principles. The appeal notification must set out clearly:

- The grounds for the appeal (i.e. one or more of the four listed above)
- The detailed basis, as far as possible, for each ground of appeal to be relied on
- In the case of new evidence, details of the evidence must be included when lodging the appeal.

The Appeal Hearing would be conducted in accordance with the 'Appeals against dismissal' process set out in the Common Principles (with the exception that only seven working days' notice of the meeting is required to be given, and the Manager and employee must provide their supporting evidence and names of any witnesses at least three working days' before the meeting).

Provided the employee has been given the appropriate notice of the date of the appeal hearing, the appeal may be considered on the basis of the available evidence in the absence of the individual, unless there are acceptable reasons to defer the hearing.

The possible outcomes of an appeal hearing are as follows:

1. Uphold the appeal in full
2. Uphold the appeal in part
3. Not uphold the appeal.

There is no further right of appeal.

Where the Appeal Panel decides to uphold the appeal on the grounds of procedure or new evidence, they will have the discretion to either:

- Refer the case back to the Headteacher / Executive Headteacher with appropriate advice;
- Refer the case back to a new individual / Panel to re-hear Stage Two;
- Hear the case themselves.