

## **Capability Policy & Procedure**

<b>LAST REVIEW</b>	January 2026	<b>REVIEW PERIOD</b>	3 Years
<b>NEXT REVIEW DATE</b>	January 2029		
<b>TYPE OF POLICY</b>	Statutory	<b>APPROVAL LEVEL</b>	Board level

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## **Capability Policy**

### **Purpose**

The Capability Policy and procedure is designed to encourage all employees to achieve and maintain an acceptable standard of employment. The policy and procedure aims to ensure that cases of poor performance are dealt with fairly and consistently, by providing a framework for dealing with alleged failures to achieve the required standards in an equitable, supportive and consistent manner.

This policy and procedure applies to all employees about whose performance there are serious concerns that the appraisal process has been unable to address

### **Definitions**

For the purpose of this policy an individual's capability to do their job is assessed by reference to their skills, competence, applicable professional standards, qualifications and aptitude.

### **Responsibilities**

**Employees** are responsible for:

- performing their duties to an acceptable standard participating in appropriate training and development
- maintaining relevant professional standards

**Headteachers/Line Managers** are responsible for ensuring that:

- the standards of performance required and the arrangements for monitoring and review are clear to all employees
- employees receive appropriate training and development arrangements for dealing with incapability for work and poor performance are brought to the attention of all staff
- they take all reasonable measures to promote capability of all employees under their responsibility
- occupational health advice is sought, where relevant to a case of incapacity for work
- where disability related issues emerge, they are addressed in a positive way and, where necessary, the requirements to make reasonable
- adjustments are met
- full and accurate records are kept of all meetings

**Human Resources** is responsible for:

- providing advice and support throughout the process
- monitoring the application of the procedure, reporting trends and noncompliance to the relevant Chair of the Academy Council.

### **Introduction**

Capability procedures are designed around support mechanisms to assist employees to achieve the desired levels of performance.

Managers should be clear about objectives and targets they believe should be achieved by staff. Such targets and objectives should always be reasonable and realistic and employees need to understand what is required of them in terms of their work or attendance and the

standards to be met.

It is part of the normal day to day responsibilities of management to regularly discuss performance against targets and objectives with their employees, informing them of any concerns about standards of performance and identifying strategies for improvement. Where these are not speedily resolved they should be addressed via the appraisal process.

The formal stages should only be used where the manager can demonstrate that informal action has not achieved the desired objective.

The capability procedure applies to all employees about whose performance there are serious concerns that the appraisal process has been unable to address and may be applied only after support has been offered as part of that process.

Ideally, a “transition” meeting will have previously been held under the appraisal process when the member of staff is advised that progress in addressing concerns has not been sufficient and that performance will be managed under informal capability. Further details about the transition meeting may be found in the appraisal policy.

**The capability of executive and more senior staff – please also see the Scheme of Delegation**

<b>Staff member undergoing capability</b>	<b>Who is the lead in the capability process (line manager)</b>	<b>Anyone else advising</b>
CEO	Chair of Board of Directors	A suitably skilled and/or experienced external adviser, appointed by the Members
Directors	CEO	Members of the Board of Directors
Executive Headteachers	Directors and/or CEO	Members of the local academy council
Headteachers	Executive Headteachers	Members of the local academy council

When issues arise, it is important that the Headteacher/line manager identifies the performance gap and investigates the cause or causes. Once the reason for the gap has been discovered, actions can be agreed with the employee to assist them to bridge the gap or work towards other acceptable solutions. Headteachers/Line Managers and employees should regularly discuss performance against agreed objectives, identifying areas of concern, either to the employee, the Headteacher/line manager or both, and identifying strategies for improvement.

Headteachers/Line Managers need to be clear about the objectives they believe should be achieved by employees, such objectives should always be reasonable and realistic, and employees need to understand what is required of them in terms of their work or attendance and the standards to be met. Clarification of how the performance of a teaching member will be appraised is in the Appraisal Policy.

**Exceptional Circumstances**

In very limited and exceptional circumstances, the Headteacher/Line Manager may issue a final warning at the first formal capability meeting. Advice from HR should be sought at this stage. Circumstances where this may occur will only include instances of severe/gross incompetence which would have a serious and direct impact on the safeguarding or health and safety of clients, service users or colleagues or where the education of pupils is

at risk.

In exceptional circumstances, concerns about a senior leader may arise outside the normal appraisal process for example (LA monitoring of Academies causing concern, Ofsted). In these circumstances, the issues will be highlighted to the senior leader involved and may be addressed via the formal capability procedure.

### **Setting Standards**

Headteachers/line managers are responsible for establishing the required reasonable standards of work expected from employees, whilst employees are responsible for understanding and meeting those standards. Headteachers/line managers should support and assist employees to achieve these standards, providing appropriate training and support.

### **Investigation of Concerns**

If an employee is failing to achieve the expected standard of work, the Headteacher/line manager should investigate the problem in an attempt to identify the causes for the poor performance, and work with the employee to improve performance, providing appropriate support interventions.

### **Disability**

In circumstances where the employee may have a disability, the Headteacher/line manager will discuss with the employee any reasonable adjustments to support them in their work. Advice from Human Resources and other appropriate specialist advice should be sought and the employee informed of their right to seek advice and support from their trade union.

If it is an employee's opinion, that the capability proceedings being undertaken are unlawfully discriminatory or are motivated by reasons other than addressing poor performance, the employee can raise a complaint. If the employee raises this complaint in writing at any stage before the appeal stage of a dismissal, this can be dealt with as part of the capability procedure. If the teacher raises the complaint only after the capability procedure has ended and it is on substantial new grounds then it will be necessary for the teacher's complaint to be dealt with in accordance with the Parallel Learning Trust's Grievance Policy and Procedure.

The submission of a complaint by a teacher during capability proceedings will not normally prevent the continuation of the capability process. Where appropriate, a complaint related to the capability proceedings should be dealt with as part of the capability process and not pursued through the Grievance Policy and Procedure.

### **Ill Health**

An individual's capability to carry out their role to the expected standard may be affected by their health and their attendance at work. The process for managing long-term periods of sickness absence (4 weeks or more) and managing repeated short-term absence is set out in the **Parallel Learning Trust's Sickness Policy and Procedure**.

### **Policy Stages**

#### **Informal Stage (Stage 1)**

#### **Informal Capability Meeting (Structured Management Support)**

The Employee will be invited to attend a meeting with their Professional Association

representative to provide their point of view on the shortfall in performance and whether they believe there is an underlying reason.

Managers should hold regular one-to-one meetings with their employees. These meetings should primarily focus on the employee's progress against their agreed work plan and set objectives. The line manager should discuss any achievements and review any development that the employee has undertaken

When discussing issues of poor performance, the manager should discuss their concerns with the employee explaining how they are falling short of the required standards and seek to get more understanding of the reasons for this. Medical advice may also be sought if required.

The line manager and employee should discuss training and support provision and agree any further training and development requirements for the employee to have the required skills and experience to perform the duties of the post. The completion of any training/development must be treated as a work instruction. The manager and employee should also if appropriate, discuss making reasonable adjustments to the duties of the post where considered appropriate in cases of disability.

Following this, realistic targets and monitoring arrangements should be agreed and confirmed in writing to enable the employee to have the opportunity to achieve the required standard. This may include interim performance targets during training and more detailed targets after the completion of training. A letter to the employee must make it clear that the employee is in the informal stage of the capability procedure. A member of Human Resources and a work colleague or union representative are entitled to be part of the meeting setting the written performance improvement plan.

A written performance improvement plan should be shared with the employee, clearly stating what training/support will be provided and by whom, including review periods. The agreed plan should be signed by both the manager and the employee and kept on the employee's file.

The manager must advise the employee both verbally and in writing that their performance will be monitored over an agreed period of approximately 6-8 weeks, with a maximum of 8 weeks.

### **The Informal Stage Review Meeting**

The manager and the employee will review the outcome of the review meeting and discuss any progress the employee has made. The manager will have undertaken an objective evaluation of the employee's performance over the review period and feedback will be given to the employee during this informal review meeting.

At the informal review meeting, the manager will decide whether to:

- Take no further action as the employee has met the required standards and inform the employee accordingly
- Arrange for further monitoring and support to correct the situation if the employee's performance has improved and has almost met the standards. The date for the end of this period i.e. the informal stage outcome meeting should also be stated
- Start the formal capability procedure
- Arrange to hear the matter under the disciplinary procedure because the poor performance appears to be due to conduct rather than lack of skill or aptitude.

Notes of meetings must be kept by the manager and a copy given to the employee. If at the

end of this informal process, performance is not at the expected levels, the formal capability procedure should commence. A member of Human Resources and a work colleague or union representative are entitled to be present at the informal review meeting.

### **Informal stage outcome meeting**

At this outcome meeting, the line manager will discuss with the employee the overall progress against each of the agreed targets/objectives. This should be a wide-ranging discussion during which the employee will be given the opportunity to make any representations and put forward any concerns or mitigation. The manager will consider the employee's views prior to determining the outcome of the informal stage monitoring period.

Possible informal stage outcomes include:

- Progress has been made and the formal monitoring ceases
- No formal action required; some progress has been made however further support is required to meet the required standard. Performance monitoring will continue with an extension to the Structured Management support.
- Not enough progress has been made or it is considered unlikely the progress required will be made. If the informal has been extended then move to formal (stage 2)

If the conclusion of the informal stage is that the employee's performance has not sufficiently improved and there is still clear evidence of incapability, it should be made clear to the employee that the formal stage of the capability process will now be invoked.

A letter confirming the outcome of the informal stage will be issued to the employee by the line manager.

### **The Formal Stage (Stage 2)**

The formal capability process will be commenced if the employee has not achieved the required performance standards in the informal stage, or if the impact of poor performance is serious enough to warrant entry into the procedure at this stage. The formal process will follow a similar pattern to the informal process.

The employee will be given 5 working days' notice, of the formal capability meeting, unless it is agreed with the employee that the formal capability meeting will be a direct continuation from the informal outcome review meeting. At all stages the employee can be supported by a Trade Union representative or colleague.

As an essential part of the formal capability meeting, consideration will be given to the nature of any further support which may be appropriate for the employee in the circumstances including additional training, or access to other relevant Trust services including Occupational Health.

At the meeting the manager should:

- Identify clearly and fairly the ways in which the employee is under-performing providing examples as appropriate.
- Explore with the employee what may be the possible causes for the shortfall in performance.
- Give clear guidance on the improved standard of performance which are expected.
- Evaluate the training and support which has been provided to date and investigate what other support may be reasonably provided to the employee to improve their performance.
- Obtain the employee's commitment to reaching an effective level of performance

The manager will decide on an appropriate course of action which may include setting a further period (minimum of 4 weeks and a maximum of one term - 8 weeks' time) to review the employee's progress against the agreed performance improvement objectives/targets or any other reasonable action.

The manager will confirm to the employee the subsequent steps within the Capability Procedure if the required performance standards are not achieved within the set timescales. The timetable for improvement should be set out and explain how performance will be monitored and reviewed.

At the end of the meeting, both parties should have a clear, agreed understanding of the performance issues causing concern, the levels of support to be put in place, the targets set and the periods set for review.

A letter confirming that the employee is being managed under the formal capability procedure with a formal capability warning will be issued to the employee following the meeting advising the employee that their employment may be at risk if their performance does not improve. The employee will be informed of their right to appeal any formal decision made at this meeting.

The letter will include copies of the file note of the meeting; the agreed performance improvement plan, any support actions agreed and the potential for dismissal of failure to achieve a significant and sustained improvement within the agreed time period. The letter will include the details of the date and time for the formal outcome review meeting and relevant appeals procedure.

### **Formal Stage Monitoring Period**

The employee's subsequent performance should be monitored on a regular and open basis during the formal stage monitoring period. It is recommended that fortnightly meetings take place between the manager and the employee.

At each monitoring meeting, the employee must be given a clear indication of his/her progress to date, and any interim timescales for improvement must fit into the overall performance improvement targets agreed at the formal capability meeting. Positive feedback must be given where appropriate in writing.

### **Formal Stage Outcome Review Meeting**

Following the performance monitoring period, the employee will meet formally with the line manager to review progress against the performance improvement plan. If for any reason the date for the formal outcome meeting was not agreed during the previous formal capability meeting, then the manager will need to write to the employee, normally giving 5 working days' notice, of the requirement to attend a formal outcome meeting. This notice will include a reminder about the employee's right of representation.

At the formal outcome meeting, the line manager will discuss with the employee the overall progress against the agreed performance targets. This should be a wide-ranging discussion during which the employee will be given the opportunity to make any representations and put forward any concerns or mitigation. The manager will consider the employee's views prior to determining the outcome of the formal monitoring period. As before, notes will be taken of the formal meetings and a copy sent to the member of staff.

At the formal review meeting, the manager will decide whether to:

- Take no further action as the employee has met the required standards and inform the employee accordingly – the employee will then revert to the Appraisal policy
- If some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period;
- Invoke the stage 3 capability procedure (capability hearing)
- Arrange to hear the matter under the disciplinary procedure because the poor performance appears to be due to conduct rather than lack of skill or aptitude.

If at the end of the review period the required improvement has been made, this will be confirmed to the employee verbally at the meeting. The manager will also confirm that the improved level of performance must be maintained for at least 18 months and any subsequent lapse in performance may lead to action under the capability procedure being resumed without starting afresh. A letter will be issued by the manager confirming the outcome.

If the conclusion of the formal stage is that the employee's performance has not sufficiently improved and there is still clear evidence of incapability, the employee will be notified by the line manager that a Stage 3 capability hearing will now be convened, and that dismissal is one of the possible outcomes from this Stage 3 capability hearing.

A letter confirming the outcome of the formal stage process will be sent to the employee by the line manager. The letter will include a copy of the file note from the formal stage outcome meeting and any written warnings that may have been issued.

### **Capability Hearing (Stage 3)**

If the employee's performance has not reached the required standard during the formal stage of the capability process, or where serious performance issues arise, or gross negligence is alleged (and after such investigation as is appropriate in the circumstances), the employee shall be invited to a Stage 3 capability hearing).

The Stage 3 capability hearing will take the form of a formal hearing conducted by a panel of governors from the local academy council hub and / members of the executive leadership team where they have not been involved in the individual case up until this point. Someone from HR will support the panel of governors.

A letter will be sent to the employee, normally 10 working days before a Stage 3 capability hearing, or a shorter period as may be mutually agreed, detailing the purpose of the hearing, and the circumstances that have led the Academy to consider dismissing the employee on the grounds of incapability.

Any papers which either the employee or the presenting management intend to rely on as evidence at the hearing must be sent to the Academy (FAO the Panel of Governors/Clerk to Governors) at least 5 working days in advance of the hearing date or a date reached by mutual agreement.

### **Format of a Stage 3 Capability Hearing**

The purpose of the Stage 3 capability hearing is for the panel is to listen to the management case and to the employee case and to decide what action they wish to take. It is important to bear in mind that the degree of proof is on the balance of probability that there is reasonable belief that the performance of the employee is unacceptable and has not shown the required improvement to reach a satisfactory level.

The panel should consider any mitigating circumstances when considering the case.

At the hearing each side will be entitled to present their case and call witnesses (if appropriate). Each side will be able to ask questions and comment on the case presented by the other side. A procedure to be followed at a Stage 3 capability hearing can be found at Appendix 1.

Notes of the hearing will be taken by a note-taker provided by the Academy. A copy of the typed notes will be sent to the employee and his/her representative.

### **Outcome of Stage 3 Capability Hearing**

Having listened to both sides present their case, the panel will adjourn the capability hearing to consider the matter, the chair may decide to:

- Confirm that sufficient improvement has occurred which may include recommendations on further support or guidance required.
- Confirm an extension of the formal stage of the capability process with the option of moving to another Stage 3 capability hearing if no further improvement of performance is achieved within set timescales.
- Dismiss the employee with notice (except in an exceptional case, i.e. gross incompetence, which would be a summary dismissal without notice).

The outcome of the capability hearing will be confirmed to the employee in writing, within 5 working days, and will include the employee's right of appeal.

If the employee is dismissed and given contractual notice on full pay, the employee should be told not to attend work during the notice period.

### **Action against a Trade Union Official**

Although normal capability standards apply to the performance of trade union officials who are employees of the Academy, no action under the formal or informal procedure should be taken until the circumstances of the case have been discussed with a more senior trade union Representative or full time official.

In cases of alleged gross incompetence against a recognised trade union official and where a full-time union official cannot be quickly contacted, the recognised trade union official may be suspended on full pay until the full-time union official has been contacted and further action agreed.

### **Non-Attendance at a Stage 3 Capability Hearing**

If either the employee or their representative is unable to attend a meeting on the date of the capability hearing due to sickness or another substantial and valid reason, the meeting may be postponed and normally rearranged for within 10 working days of the original meeting date.

If the employee is unable to attend this second re-arranged meeting, the meeting may be held in the employee's absence. However, employees will have the option of requesting that their representative be allowed to present the case in their absence or to present any evidence in writing.

### **Appeals**

Academy employees are entitled to appeal to a Governor Appeal Panel against any formal

action taken under this procedure (including cases of dismissal). This panel will be Governors who have not been involved in any aspect of the case until this point and may be Governors from any of the Trust's Academy Council's.

The appeal must be made in writing, addressed to the Chair of the Appeals Panel at the Academy, stating the grounds for the appeal, within 5 working days of being advised in writing of the decision of the stage 3 Capability Hearing.

The grounds of an appeal will normally be based on one or more of the following:

- that the penalty is unfair / inconsistent under the circumstances (judgment);
- new evidence has arisen which was not considered at the original meeting and which may have a bearing on the outcome (facts);
- that the policy and procedure has not been followed correctly (process).

The appellant will be notified in writing of the time, date and venue of the appeal meeting, giving at least 10 working days' notice. Appeal hearings will take place as soon as reasonably possible upon receipt of the employee's written notice of appeal.

The Chairperson of the Stage 3 capability hearing and the HR person who advised the Chairperson will present their management's case at the appeal meeting.

A copy of the papers relevant to the capability appeal shall be made available to the appeals panel at least 3 working days in advance of the meeting. The circulation of the papers will be arranged by the Academy.

The format of the appeal meeting will be in accordance with the appeal hearing format outlined in Appendix 2.

As an appeal is against the decision reached by the Chairperson based upon evidence presented at the Stage 3 Capability Hearing, it is not normally permissible to include any new evidence. However, in exceptional circumstances new evidence that is material to the case may be submitted and must be clearly identified and each side must be given an opportunity to comment on it prior to the appeal meeting.

The Appeals Panel may:

- Uphold the original finding and the decision to dismiss;
- Not uphold the finding and therefore reinstate the employee.

The Trust HR Consultant will fully appraise the appeals panel of the merits of the options available to them.

The employee will be informed of the decision of the appeals panel in writing, the panel will set out the reasons for its decision within 5 working days. The decision of the appeals panel shall be final.

The appeal panel's decision is final. No further right of appeal exists within the Academy's procedure.

### **Monitoring and Review**

This procedure will be reviewed periodically to ensure compliance with changes in employment law and equality and diversity legislation.

## **Appendix 1: Stage 3 Capability Hearing - Format**

The Stage 3 Capability Hearing will be conducted by a panel of governors / and members of the executive leadership team who have not been involved in the individual case up until this point, who will be supported by the HR adviser.

The Chair of the panel will explain the procedure to be followed. The format of the hearing will be as follows:

- The Trust's management representative(s) will explain in detail all of the steps that have been taken so far, to help support the employee in achieving the required performance standards, bringing forward any witnesses to help support their case, if required.
- The employee and/or his/her representative may cross-question the Trust's representative and any witnesses and examine any documentary evidence submitted.
- The employee and/or his/her representative may present their evidence, including any mitigation, and call witnesses in support of their case.
- The Trust's representative may cross-question the employee, his/her representative and any witnesses.
- The panel of governors and the HR adviser may question management representative(s), the employee, his/her representative and any witnesses.
- Witnesses will remain in attendance whilst they are questioned and will withdraw thereafter.
- The Trust's representative and the employee or his/her representative will have the opportunity to sum up their cases if they so wish.
- When panel of governors and the HR adviser are satisfied that all the relevant facts have been obtained, they will, in private, consider this evidence, any mitigating circumstances prior to deciding what action is appropriate.
- An adjournment may be approved by the Chair of the panel, if necessary, to obtain further information.

Wherever possible the decision will be notified to the employee and their representative verbally on the day of the hearing and confirmed in writing within 5 working days.

## **Appendix 2: Appeals Procedure Hearing - Format**

The Chair of the appeals panel will conduct the appeal hearing and will explain the purpose of the hearing, outline the procedure to be followed and the powers vested in the appeals panel.

The appellant has the right to be represented by his/her Trade Union representative or workplace colleague and may call witnesses and refer to documents.

- The appellant (or representative) will put the appellant's case in the presence of the Trust's representative(s) and may call such witnesses as required.
- The Trust's representative(s) will have the opportunity to ask questions of the appellant and witnesses who have been called on the evidence.
- The members of the appeals panel will have the opportunity to ask questions of the appellant and witnesses and call such witnesses as required.
- The Trust's representative(s) will put the case in the presence of the appellant and representative and may call witnesses as required.
- The appellant or representative will have the opportunity to ask questions of the Trust's representative(s) and any witnesses who have been called on the evidence.
- The members of the Appeals Panel will have the opportunity to ask questions of the Trust's representative(s) and call such witnesses as required.
- Witnesses will remain in attendance whilst they are questioned and will withdraw thereafter.
- The appellant (or representative) and the Trust's representative(s) will have the opportunity to sum up their cases if they so wish.
- The Trust's representative(s) and the appellant (and representative) will then withdraw.
- The appeals panel will deliberate in private.

Wherever possible the decision will be notified to the employee and their representative verbally on the day of the hearing and confirmed in writing within 5 working days.