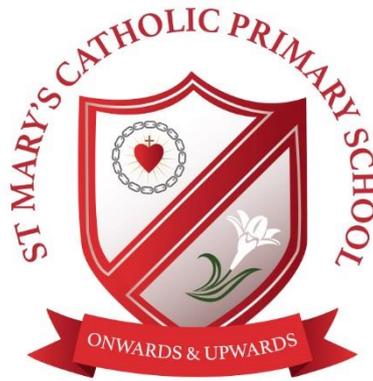


St Mary's Catholic Primary School
Capability Procedure for Teaching Staff



Date adopted: Autumn 2021

Review date: Autumn 2022

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1 Purpose and scope

This procedure is designed to help and encourage all staff achieve and maintain good standards of job performance.

Throughout the operation of this procedure, the Headteacher/Chair of Governors and/or Governors' Committee will have due regard to the requirements of the ACAS Code of Practice on Disciplinary and Grievance Procedures, and the Equality Act 2010 to ensure consistency of treatment and fairness.

- 1.1 This procedure applies only to teachers or Headteachers about whose performance there are serious concerns that the appraisal process has been unable to address. The Line Manager must make it clear to the employee when the formal procedure is being used.
- 1.2 This procedure does not cover the normal day-to-day supervision where a Line Manager may have to counsel, train or otherwise discuss with an employee instances of poor performance. It is intended to cover those cases where an employee's work performance is below the required standard through lack of capability. It does not cover instances of misconduct or incapability due to ill-health, both of which are dealt with under separate procedures.
- 1.3 If an employee commences sick leave whilst subject to the capability procedure, the capability procedure should continue unless medical advice sought from an Occupational Health Adviser reveals an underlying medical condition, in which case the situation will be considered in the light of the facts and circumstances of the particular case.
- 1.4 Concerns about a Headteacher's performance may be identified by the Governors at an early stage through their normal involvement in the management of the school.
- 1.5 An Ofsted inspection or similar formal review of the school might also reveal deficiencies in performance which need to be addressed.
- 1.6 The procedure is designed to provide assistance and encouragement to staff to achieve and maintain good standards of performance in their duties. With this objective in mind, the procedure provides for the employee to receive guidance, support and feedback over a reasonable period of time to meet realistic targets and standards. The employee must also accept responsibility for meeting any standards and targets set. These procedures are therefore aimed at achieving the required improvement, not punishment, but if all else fails, they will help ensure a fair dismissal.
- 1.7 The procedure applies to all teachers, including Headteachers, employed under the School Teachers' Pay and Conditions Act 1991 and any successor Act, and the Conditions of Service for School Teachers in England and Wales with the exception of staff employed on a casual day-to-day basis.

- 1.8 In the circumstances where an Early Career Teacher is significantly failing to meet the requirements of his/her statutory induction period, the formal capability procedure will be used including the fast track, where appropriate, to resolve the matter.
- 1.9 During the course of the capability procedure an employee might raise a grievance against the actions of the manager handling the case or against other Senior Managers. Normally this will be dealt with as part of consideration of the facts of the case under this procedure. However, the manager investigating the case will seek advice from the appropriate professional adviser and, depending on the circumstances, it may be appropriate to suspend the formal capability procedure for a short period until the grievance can be considered.
- 1.10 The Governing Body and Headteacher will monitor the operation and effectiveness of this procedure.

2 RIGHTS OF REPRESENTATION

- 2.1 Employees have the right to be accompanied at all stages of the formal capability procedure. They may be accompanied by a companion who may be a work colleague, a friend of their choice or a trade union representative who has been certified by their union as being competent.
- 2.2 Employers also have the right to be accompanied at all stages of the formal capability procedure.
- 2.3 It is also possible for the Chair of Governors or Headteacher to request that a professional adviser either conducts or assists in the conduct of the investigation, and the operation of this procedure.
- 2.4 If the employee is a trade union official, no formal action under the procedure should be taken until the circumstances of the case have been discussed with the appropriate branch secretary or full-time official.

3 DEFINITIONS AND AUTHORITY TO INITIATE ACTION

3.1 The following definitions will apply throughout this procedure:

Level of Authority	Definition
Line Manager	Anyone who has been delegated supervisory responsibilities by the Headteacher for the operation of this procedure.
Headteacher	Headteacher of the school. Where the person subject to the procedure is the Headteacher, the Senior Manager should be the Chair of Governors.
Committee and Appeal Committees	Committees established by the Governing Body to deal with capability matters. The Governing Body may establish the committees it thinks necessary to deal with a particular function. However, the Regulations provide for Governing Bodies to establish a Staff Dismissal Committee and a Staff Dismissal Appeal Committee to deal with staff dismissals. The Capability Committee and the Staff Dismissal Committee may be the same Committee. An Appeal Committee should consist only of Governors who have taken no part in the decision against which the appeal is made. All committees should comprise a minimum of three Governors unless exceptional circumstances apply.

3.2 The Governing Body may delegate its power to dismiss any member of staff to the Headteacher, an individual Governor or group of Governors with or without the Headteacher.

3.3 The Headteacher is normally expected to lead in all initial staff dismissal decisions. The Headteacher may involve other Governors in dismissal processes (e.g. investigations) but where responsibility for staff dismissal has been delegated to the Headteacher, the final decision on whether to terminate an individual's employment rests with the Headteacher. However, if the Headteacher has been extensively involved in the individual case, he/she should consider whether to refer the dismissal to a relevant committee.

3.4 Where the Governing Body has delegated responsibility for staff dismissal to a relevant committee, the provisions above regarding the constitution of such a committee shall apply.

3.5 Reference throughout this procedure to the Line Manager, Headteacher, Chair of Governors and employee shall include their personal representatives as appropriate. In some cases the Line Manager and the Headteacher may be the same person.

3.6 The following table details the maximum action which can be imposed at various levels of authority, and the various stages of the formal capability procedure applicable to these levels:

Level of Authority	Authorised to:
Line Manager	<ul style="list-style-type: none"> • carry out investigations and assessment and decide what action is required in consultation with the Headteacher and any other professional adviser • initiate action under the formal capability procedure in consultation with the Headteacher if s/he is not the Headteacher • issue formal oral and written warnings in consultation with the Headteacher if s/he is not the Headteacher.
Headteacher	<ul style="list-style-type: none"> • carry out investigations and assessment and decide what action is required. • initiate action under the formal capability procedure • issue formal and oral warnings including a final written warning • withhold an incremental rise • suspend (in consultation with the Chair of Governors) • refer a case to the Governors' Committee for consideration • dismiss
Committee	<ul style="list-style-type: none"> • hear appeals against a final written warning issued by a Headteacher • suspend or order a Headteacher to end a suspension • issue formal or final written warnings or some other penalty if appropriate • hear appeals against a decision not to remove a warning from the personal file
Level of Authority	Level of Authority
Staff Dismissal Committee	<ul style="list-style-type: none"> • conduct formal capability hearings where dismissal is under consideration where authority has not been delegated to the Headteacher or where the Headteacher has been involved in the preparation of the case and also issue formal or final written warnings or some other penalty if appropriate • dismiss
Appeal Committee	<ul style="list-style-type: none"> • hear appeals against any penalty imposed by a Committee except termination of employment.

	<ul style="list-style-type: none"> • order an end to a suspension
Staff Dismissal Appeal Committee	<ul style="list-style-type: none"> • hear appeals against the Staff Dismissal Committee or Headteacher's decision to dismiss.

3.7 To ensure fairness throughout the procedure, different people must participate at the original committee and appeal committee hearings. However, where the case concerns a continuing or related matter, the same Committee can hear the case on subsequent occasions.

4 STAGES IN THE FORMAL CAPABILITY PROCEDURE

This procedure applies where there are serious concerns regarding performance which the appraisal process has been unable to address. The period set for improvement will be reasonable and proportionate providing sufficient opportunity for improvement to take place. This period will normally be between four and ten weeks. Where the education of pupils is jeopardised, the period given for improvement under the formal procedure is to be not more than four weeks (in which case a final written warning will be issued). The stages are as follows:

4.1 Formal Capability Meeting

4.1.1 At least five days' notice will be given of the formal capability meeting. The notification will contain sufficient information about the concerns about performance and their possible consequences to enable the teacher to prepare to answer the case at a formal capability meeting. It will also contain copies of any written evidence; the details of the time and place of the meeting; and will advise the teacher of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

4.1.2 This meeting is intended to establish the facts. It will be conducted by the Chair of Governors (for Headteacher capability meetings) or Headteacher or Line Manager (for other teachers). The meeting allows the teacher, accompanied by a companion if they wish, to respond to concerns about their performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected.

4.1.3 The person conducting the meeting may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases, the capability procedure will come to an end. The person conducting the meeting may also adjourn the meeting. In other cases, the meeting will continue. During the meeting, or any other meeting which could lead to a formal warning being issued, the person conducting the meeting will:

- i. identify the performance professional shortcomings;
- ii. consider any factors contributing to the poor performance including those submitted by the Teacher/Headteacher and his/her representative;

- iii. give clear guidance on the improved standard of performance needed to ensure that the Teacher/Headteacher can be removed from formal capability procedures;
- iv. explain any support that will be available to help the teacher improve his/her performance;
- v. set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case, and will be in accordance with the seriousness of the lack of capability of the employee. Should the teacher be absent due to ill health, this may need to be reviewed accordingly in the timescale allowed for improvement. In such circumstances, the employee must be referred immediately to the Occupational Health Physician to enable an assessment to take place of his/her health and fitness for continued employment.
- vi. **Normally, the period given for improvement will be no more than ten weeks after the date of entry into the formal procedure.** The period set for improvement will however be reasonable and proportionate providing sufficient opportunity for improvement to take place and may be longer dependent on the circumstances. **In extreme cases, where the education of pupils is jeopardised, the period given for improvement after the date of a final written warning will be no more than four weeks;**
- vii. warn the teacher formally of the consequences of a failure to improve within the set period and that this could lead to dismissal. In very serious cases, this warning could be a final written warning;
- viii. notes will be taken of formal meetings and a copy sent to the member of staff. Where a warning is issued, the Teacher/Headteacher will be informed in writing of the matters covered in the points above and given information about the timing and handling of the review stage and the procedure and time limits for appealing against the warning.

4.2 Formal Capability Review Meeting

Following this structured period of assessment, support, monitoring and evaluation, the next stage will be to arrange a formal capability review meeting to provide feedback and review progress and outcomes.

- 4.2.1 At least five days' notice of the meeting will be given and the notification will include the time and place of the meeting and will advise the Teacher/Headteacher of their right to be accompanied.
- 4.2.2 Where in the opinion of the person/committee conducting the meeting a **satisfactory and sustained** level of performance has been achieved there will be no further action under the formal procedure except to monitor the situation as part of normal management meetings in accordance with the appraisal process which will re-start. Any formal warning issued will remain on file until the Headteacher/Committee is of the view that this can be removed.
- 4.2.3 Where in the opinion of the person/committee conducting the meeting the employee has **failed adequately to satisfy or maintain targets and/or performance standards set**, one of the following will apply:
 - a) A further formal written warning (which may be a final written warning) and a further period of support, monitoring and evaluation. The teacher must be told clearly that failure to achieve

an acceptable and sustained standard of performance may result in dismissal. This letter must also record the main points of this meeting and improvements required.

- b) A different balance of duties, if possible and appropriate;
- c) An alternative suitable post in the school, if possible and appropriate;

NB: (b) and (c) would not normally be appropriate for Headteachers

- d) Referral of the matter to a Governors' Committee for consideration of dismissal due to failure to improve, in which case consideration will also need to be given to suspension of the teacher and/or alternative teaching arrangements. This Committee must be convened as a 'Staff Dismissal Committee';
- e) Referral of the matter to the Headteacher where responsibility for consideration of dismissal has been delegated by the Governing Body and the Headteacher has not been directly involved in the procedures leading to capability action and instigated the proposal to dismiss in question.

Whatever the outcome under 4.2.2 or 4.2.3 above the decision will be confirmed in writing to the employee within 5 days of the review meeting.

5 FORMAL CAPABILITY HEARINGS

If the decision is to deal with the matter at a capability hearing under (d) or (e) above, the letter to the employee must be received not less than **5 working or 7 consecutive days** before the hearing itself and must:

- Instruct the employee to attend a formal hearing;
- Contain a written statement of the specific concerns against the employee (confirming the seriousness and that dismissal could be a possible outcome);
- Advise the employee that the hearing forms part of the formal capability procedure (including a copy of the procedure if this has not already been provided);
- Advise the employee of his/her rights of representation;
- Contain copies of any relevant documents to be submitted to the hearing;
- Request details of any documents to be submitted and witnesses to be called by the employee.

A duplicate copy of the letter and all documentation must be included for his/her representative.

5.1 Preparing for the Hearing

- 5.1.1 It is good practice to agree a mutually convenient date for the capability hearing with the employee and their representative. This is to ensure that the hearing does not have to be delayed or postponed at the last minute. Where the chosen representative cannot attend the date proposed, the employee can offer an alternative date and time so long as it is reasonable

and falls before the period of 5 working or 7 consecutive days beginning with the first day after the day proposed by management.

5.1.2 The employee must have regard to the availability of the managers involved in the case. The location and timing of any alternative hearing should be convenient to both the employee and management.

The Headteacher/Governing Body must arrange for a clerk to be available to take note of the key points during the hearing.

5.1.3 The Headteacher/Committee will decide at the hearing whether the case for further formal action has been established after considering all the evidence presented by both sides.

5.1.4 If an employee is dismissed as a result of this procedure (serious professional incompetence) or resigns before the formal capability process is completed, the Headteacher will inform him/her of their statutory duty to report the case to the National College of Teaching & Leadership.

5.2 Penalties

The possible penalties available to the Headteacher/Staff Dismissal Committee are:

Level of Performance	Possible Capability Penalty
Continued failure to work to required standards after previous formal written warning(s)	Final written warning Withholding of an increment Transfer or relegation to another post Dismissal with notice

5.3 Decision Letters

5.3.1 The decision on the outcome of the formal capability hearing will be confirmed in writing, within 5 working or 7 consecutive days of the hearing. At the same time as the employee is informed of the outcome of the hearing, he/she will be advised of any right of appeal.

5.3.2 If a penalty is to be imposed, the employee must be informed in writing, as appropriate, of:-

- Details of the specific concerns;
- A brief summary of the findings as to the facts presented at the capability hearing;
- The nature of the penalty imposed or alternative course of action decided upon;

- the opportunity to ask for clarification of the action to be taken and from whom.

5.3.3 Where dismissal is not the outcome, the decision letter must state:

- The level of performance required in the future;
- The time scale within which the performance will be monitored and improvement assessed and who will be responsible for carrying this out;
- Arrangements for guidance, feedback, supervision or training, where appropriate;
- What will happen if work performance fails to meet the required standards;
- The specified period of time after which he/she may request removal of a warning from file and to whom;
- The employee's right of appeal and how and to whom this should be presented.

5.3.4 A copy of this letter should be sent to the employee and his/her representative and a copy retained on file. As indicated in the letter an employee may request the Committee or Headteacher, after a specified period of time, to have any warning letter on file removed for the purpose of future capability proceedings. Such a request shall be fully considered and not unreasonably refused and the Committee or Headteacher will respond in writing to this request normally **within 5 working or 7 consecutive days**, giving reasons if this request is refused.

6 APPEALS

6.1 Under this procedure an employee has the right to appeal against:

- a) A final written warning
- b) A decision not to remove a warning from the employee's file
- c) Dismissal
- d) Lesser penalties

In all other cases the employee is entitled to register his/her dissent against a formal warning and to have his/her reason(s) for this recorded as part of the decision letter.

The appeal will be heard by an Appeal Committee as appropriate but there will be no further right of appeal beyond a hearing by one such Committee. In the case of an appeal against dismissal the Appeal Committee must be convened as the Staff Dismissal Appeal Committee.

The Appeal hearing provides an opportunity for a rehearing of the case to determine whether the original decision was reasonable in the circumstances.

Appeal against:	Right of appeal
Final written warning issued by Headteacher	Committee
Headteacher's decision not to remove a warning from the personal file	Committee
Any decision of the Committee except a decision arising from an earlier appeal stage	Appeal Committee or Staff Dismissal Appeal Committee

A request for an appeal must be made to the Headteacher within **5 working or 7 consecutive days** of the receipt of the letter detailing the decision.

7 DISMISSAL

- 7.1 A Staff Dismissal Committee or Headteacher (where in receipt of delegated powers) is authorised to determine the dismissal with notice of an employee the Capability Committee and the Staff Dismissal Committee may be the same Committee
- 7.2 The decision to dismiss will be confirmed in writing to the employee, his/her representative. The letter will also contain the reasons for the dismissal and the right of appeal to the Staff Dismissal Appeal Committee within 5 working or 7 consecutive days of receipt of the letter.
- 7.3 Where the Staff Dismissal Appeal Committee decides to uphold the decision of the Staff Dismissal Committee to dismiss there will be no further internal right of appeal. This decision may be communicated verbally to the employee at the conclusion of the hearing and will give notice to terminate the employee's contract of employment at the school. This will be confirmed in writing to the employee, his/her representative within 5 working or 7 consecutive days.
- 7.4 If the appeal to the Staff Dismissal Appeals Committee overturns the decision of the Staff Dismissal Committee to dismiss, the termination notice may be rescinded.

APPENDIX 1

PROCEDURE FOR CONDUCTING FORMAL HEARINGS BEFORE A GOVERNOR COMMITTEE/THE STAFF DISMISSAL COMMITTEE/HEADTEACHER

Once a decision has been made to hold a formal hearing the employee will be sent a letter notifying him/her of the hearing (with a duplicate copy for his/her representative) to be received not less than **five working or seven consecutive days** before the hearing itself.

Reference to the Supervisor, the employee, shall include their personal representative as appropriate. In certain circumstances (eg small schools), the Supervisor and Senior Manager will be the same person.

Order of procedure:

1. The Senior Manager's report shall be submitted to the hearing setting out the specific concerns, together with any written statement made by the employee. Copies of the written statement(s) and any other relevant documents shall be sent to the employee and members of the panel/Headteacher at the same time as the notice of the date and time of the meeting. The employee shall be entitled to attend the hearing and to be represented by his/her Trade Union or a fellow employee/friend of his/her choice and to call witnesses and produce documents relevant to his/her case.
2. The Chair of the Committee/Headteacher hearing the case will introduce those present, explain the purpose of the hearing and the procedure to be followed.
3. The Chair/Headteacher will establish whether witnesses are to be called by either side.
4. The evidence will be presented by the Senior Manager ensuring that the employee and his/her representative are made aware of the content of any witnesses statements or relevant records and documents. In presenting the case, witnesses may be called as appropriate. Each witness will leave the room after giving evidence.
5. The employee may question the evidence and witnesses called by the Senior Manager.
6. The employee will present his/her evidence and call any witnesses.
7. The Senior Manager may question the evidence presented by the employee and witnesses.

8. The Headteacher/ Committee and any advisory officer(s) present will have the opportunity to ask questions of both sides and witnesses at any time during the proceedings. Late evidence can only be admitted with the agreement of the Committee/Headteacher.
9. After questioning, each witness will be asked to leave the room but possibly not the venue, in case further evidence is required.
10. The Committee/Headteacher may request an adjournment at any stage in order to seek clarification.
11. The Senior Manager will then sum up his/her case.
12. The employee or his/her representative will then sum up his/her case.
13. The Senior Manager, the employee and their representatives will then withdraw.
14. The Headteacher/Committee will then deliberate in private together with the Clerk and any advisory officer(s) present to give advice as to law and procedure as required. If it is necessary to clear any points of uncertainty on the evidence already given both sides are to be recalled together even if only one is concerned with the point giving rise to doubt. If further investigations are necessary it may be appropriate to adjourn the hearing at this stage, in which case both parties are to return and be advised accordingly by the Chair.
15. The Chair/Headteacher will give the Committee's/his/her decision and/or recommendation to the Senior Manager and employee and/or representative personally and/or in writing as appropriate. The employee will be informed of any action which will be taken and of his/her rights of appeal as appropriate. The findings shall in any case be confirmed in writing within five working or seven consecutive days together with the employee's right of appeal.

APPENDIX 2

PROCEDURE FOR CONDUCTING FORMAL APPEAL HEARINGS BEFORE A GOVERNOR APPEAL COMMITTEE/STAFF DISMISSAL APPEAL COMMITTEE

Reference to the Senior Manager, employee shall include their personal representatives as appropriate.

1. The employee should write to the Senior Manager requesting an appeal within five working or seven consecutive days of receiving a formal letter notifying the decision of the Staff Dismissal Committee/Headteacher and any action to be taken under the Procedure.
 - The Appeal/Staff Dismissal Appeal Committee will consist of members appointed by the full Governing Body excluding those Governors who have been part of a Committee which has already heard the case.
2. The Hearing will be arranged as soon as practicable. The employee will be sent a letter (with a copy for his/her representative) to be received at least five working or seven consecutive days before the date of the appeal hearing itself.
 - The employee may be represented by his/her trade union/friend or a work colleague. Witnesses may be called and documents produced at the hearing by both sides.
3. The Chair of the Committee hearing the case will introduce those present, explain the purpose of the hearing and the procedure to be followed.
4. The Chair will establish whether witnesses are to be called by either side.
5. The employee will put his/her case in the presence of the Senior Manager and will call any witnesses.
6. The Senior Manager may then ask questions of the employee and witnesses.
7. The Senior Manager will put the management's case in the presence (if any) of the employee and will call any witnesses.

8. The employee may ask questions of the Senior Manager and witnesses (if any).

9. The Appeal/Staff Dismissal Appeal Committee and any advisory officer(s) will be entitled to ask questions of the Senior Manager, the employee and the witnesses at any time during the proceedings.

10. After questioning, each witness will be asked to leave the room but possibly not the venue, in case further evidence is required.

11. The Appeal/Staff Dismissal Appeal Committee may request an adjournment at any stage in order to seek clarification.

12. The employee or his/her representative will then sum up his/her case.

13. The Senior Manager and the employee and their representatives will then withdraw.

14. The Appeal/Staff Dismissal Appeal Committee, with a Clerk in attendance and any advisory officer(s) present, will consider the evidence in private. They may recall either party to clear points of uncertainty on the evidence already given. If recall is necessary, both parties are to return even if only one is concerned with the point giving rise to doubt.

15. The Appeal/Staff Dismissal Appeal Committee will give their decision to the Senior Manager and employee and/or representative personally and/or in writing as appropriate. Their findings will in any event be confirmed in writing, together with reasons for any formal action taken within five working or seven consecutive days. Where notice of termination has been given the Appeal/ Staff Dismissal Appeal Committee may request that the LA rescinds the notice as appropriate.