



Twyford
C of E
Academies Trust

Document Title	Capability & Managing Poor Performance Policy
Committee Responsible for Policy	Resources Committee
Review Frequency	Every 3 years
Last Reviewed	January 2023 (updated April 2024)
Next Review Due	January 2026
Policy Author	Director of Finance & Operations

Assessment of the Impact of a Policy on Equality & Diversity

Policy: Capability and Managing Poor Performance Policy	
Impact assessed by: R Lane	Date: 13/1/2023
1. What is the potential for this policy impacting a person or group with a protected characteristic differently (favourably or unfavourably) from everyone else? Staff from protected groups could receive harsher treatment under the policy than staff in general.	
2. How would this be evidenced? Through grievances or reviews of capability cases.	
3. Is there evidence that the operation of the current policy might impact a person or group with a protected characteristic differently from everyone else? No.	
4. If the answer to 3 is 'Yes', please provide details and evidence.	
5. How might the new policy change this?	
6. Are there any other changes to the policy which might impact a group with a protected characteristic differently from everyone else? No.	
7. If the answer to 6 is 'Yes', please provide details and evidence.	
8. Policies are required to reduce or eliminate inequality and disadvantage and promote diversity. Does this assessment indicate that the Policy passes or fails this test? PASS	

Capability and Managing Poor Performance Policy

1. INTRODUCTION

- 1.1. This document is based, with permission, on a model document published by the London Diocesan Board for Schools who have asserted their rights under copyright law.
- 1.2. Attached to the document are model letters to be used when applying this procedure.
- 1.3. The Trust Board aim to provide a consistently outstanding education for our pupils. This can only be achieved through the very highest standards of performance from all school staff.
- 1.4. For the purposes of this procedure, incapability will be defined as:
 - An employee's inadequate performance which can arise for various reasons and which may be due to an employee's lack of knowledge, skills or aptitude for the position to which they are appointed.
 - Incapability due to ill health will be managed through the Trust's Managing Sickness Absence Policy.
- 1.5. This procedure will be managed with care and attention, in order to allow employees the opportunity to improve, to avoid the need for dismissal in the event that they are unable to meet the required standards.
- 1.6. References to Chief Executive in this document shall include the CEO. References to Associate Headteacher shall include school Headteacher. Specific duties of the Chief Executive or an Associate Headteacher may be delegated to another appropriate senior manager with the approval of the Board of Directors.

2. PURPOSE

- 2.1. This Procedure provides a consistent and fair framework for dealing with issues of inadequate employee performance. It will also ensure that a mechanism is in place to help employees to achieve and maintain a high standard of performance.
- 2.2. This procedure will not be used as a substitute for other employment practices, such as the induction of new or newly promoted employees and well managed performance management. Performance should be discussed regularly as part of the employee's day to day supervision and under-performance should be identified and addressed as early as possible to avoid formal capability procedures being invoked. However, there will be occasions where a formal approach is necessary to address under-performance.

3. SCOPE

- 3.1. The procedure applies to all employees both teaching and support staff employed by the Trust who either have a permanent contract of employment, or are fixed term employees with more than two terms' continuous service. It does not apply to employees subject to probation who will be subject to the probation procedure. If there are concerns about performance as a result of the employee's negligence or wilful failure to carry out their duties and responsibilities following an investigation, the matter will be addressed in accordance with the disciplinary procedure.

4. EQUAL OPPORTUNITIES

4.1. This capability procedure will always be applied fairly and in accordance with the Equality Act 2010 and each review of the policy will include a reassessment of its impact (see impact assessment above).

5. DATA PROTECTION

5.1. The policy will be implemented in adherence to the Data Protection Act 2018 in relation to the distribution, sharing and storage of information pertaining to any individuals involved in this procedure.

6. PERFORMANCE MANAGEMENT: INFORMAL AND FORMAL SUPPORT

6.1. The employee's line manager will raise concerns regarding an employee's performance as part of normal management processes in the first instance. The line manager should explain very clearly where the performance falls below standard, identify possible causes of the problem and discuss with the employee how best to support them to improve and to reach the required standard.

An informal support plan, may be required to provide early and low-level support to a staff member who requires it, in order to help them to improve specific areas of their performance . The informal support plan is for a minimum period of 6 weeks and a maximum period of 12 weeks.

For support staff an informal procedure may be triggered by a performance management review which is described in the Support Staff Performance Management Policy.

For teaching staff the informal and formal support procedures set out in the Performance Management Policy (Teaching Staff) will be applied before the formal capability procedure is implemented.

6.2. Where inadequate performance persists, and an informal performance management process has been unsuccessful, the employee will be invited to a meeting with their line manager, Associate Headteacher or the Chief Executive to discuss their performance and initiate a formal support process . The employee will be advised in writing that they may be accompanied by a trade union representative or work colleague. The line manager, Associate Headteacher or the Chief Executive must explain the consequences of continued inadequate performance to the employee and confirm the main points of the discussion. The line manager, Associate Headteacher or the Chief Executive may be accompanied by the HR Manager. Support will be agreed by the parties and will be provided for a clearly defined and reasonable timescale which starts after the support plan has been drawn up. This timescale must allow sufficient time for concerns to be communicated and offer the employee the opportunity to achieve the required standards. (Targets should be measurable and achievable. Support should involve the line manager assessing progress and another member of staff supporting development. The frequency and timetabling of regular support meetings should be agreed, which would ordinarily be weekly. Support should include the opportunity to observe other staff and feedback from observations. For teaching staff the timescales and process will follow the formal support described in the Performance Management Policy (Teaching Staff).

6.3. In exceptional cases where there is particularly serious concern, such as the health and safety of others being placed at risk or the education of children is in jeopardy, the formal procedure can be commenced immediately without the need for referral to the informal stage.

6.4. If the Chief Executive or an Associate Headteacher becomes subject to a formal stage of this procedure the Chair of Directors will conduct all meetings or may nominate another Director to lead on the process. The Chair or their representative may request that an education adviser attend the meetings to provide professional expertise to assist the Chair or relevant director as well as the HR Manager. The Chief Executive or Associate Headteacher may be accompanied by a trade union representative or work colleague.

7. FORMAL CAPABILITY PROCEDURE

7.1. Stage 1

7.1.1. If, after the procedures described in section 6, performance continues to fall short of the required standard, the formal capability procedure will apply. The focus of the formal capability procedure remains enabling the employee to maintain a sustained improvement and to reach the required standards if possible. At least eight weeks should be allowed for Stage 1 of the formal procedure.

7.1.2. The Chief Executive, Associate Headteacher, or relevant senior manager will invite the employee to a meeting, called a 'preliminary stage meeting' in the Performance Management Policy (Teaching Staff), where they can be supported by a trade union representative or work colleague. The employee will be provided in writing with a:

- Summary of relevant information gathered as part of any investigation
- A copy of any relevant documents which will be used at the capability meeting
- A copy of any supporting statements which are relevant including those from professional advisers or consultants

7.1.3. At the meeting, a discussion will take place to:

- Set out the required standards that the school believes the employee may have failed to meet, and examining the evidence gathered
- Allow the employee to ask questions, present evidence, respond to evidence and make representations
- Establish the likely causes of poor performance including any reasons why any measures taken so far have not led to the required improvement
- Establish the best means of rectifying the grounds for concern, such as appropriate support being identified and agreed. If no agreement can be reached the Chief Executive, Associate Headteacher or relevant senior manager will decide what actions can be introduced to help to overcome the problem.

7.1.4. Such actions could include:

- A change in working practices within the terms of reference of the employee's responsibilities;
- Referral to OHU for medical advice;
- Relevant training;
- Advice and support from within the school and also external expert advisers if appropriate;
- Closer and supportive supervision for a fixed period;
- If dismissal is a possibility, deciding whether there is likely to be any significant improvement being made within a reasonable time and whether there is any practical alternative to dismissal, such as redeployment;

7.1.5. The employee will be informed in writing of the outcome of the meeting including any programmes of action that was agreed with review dates which will normally take place at least

every four weeks.

7.1.6. Following this meeting the employee may receive a first written warning (which will remain on file for 12 months), setting out:

- The areas in which the employee has not met the required performance standards
- Targets for improvement (targets may be adjusted throughout the process until the required standard has been achieved)
- Any measures which will be taken with a view to improving performance
- A period for review
- The consequences of failing to improve within the review period or further unsatisfactory performance

7.1.7. The employee's performance will be monitored during the review period and they will be informed in writing of the outcome:

- If the employee has performed to the required standards, no further action will be taken;
- If their performance has not been satisfactory, the case may be progressed to Stage 2 capability meeting;
- If the employee has made substantial but insufficient improvement the period of review may be extended

7.2. Stage 2

7.2.1. If the employee's performance does not improve within the review period set out in Stage 1 or if there is further evidence of poor performance while a first written warning is still active or if the poor performance is very serious in nature, the Chief Executive, Associate Headteacher or relevant senior manager may decide to hold a stage 2 capability meeting.

7.2.2. Following a stage 2 capability meeting, if it is decided that the employee's performance is unsatisfactory, the employee will receive a final written warning (which will remain on file for 12 months), setting out:

- The areas in which the employee has not met the required performance standards;
- Targets for improvement;
- Any measures which will be taken with a view to improving performance
- A period for review
- The consequences of failing to improve within the review period, or of further unsatisfactory performance

7.2.3. The employee's performance will be monitored during any review period and the Chief Executive, Associate Headteacher or relevant senior manager will write to inform them of the outcome:

- If the employee's performance is satisfactory, no further action will be taken;
- If the employee's performance is not satisfactory the matter may then progress to a stage 3 capability meeting
- If the employee has made substantial but insufficient improvement the period of review may be extended.

7.3. Stage 3

7.3.1. A stage 3 capability meeting will be held if:

- The employee's performance has not improved sufficiently within the review period set out in the final written warning;
- The employee's performance is unsatisfactory while a final written warning is still active;
- The employee's performance has been grossly negligent such as to warrant dismissal

without the need for a final written warning

7.3.2. If a senior manager has been managing the process then this meeting may be held with the Chief Executive or Associate Headteacher who will determine the outcome, if the informal and stage 1 capability meetings have been managed by the Chief Executive or Headteacher then the stage 2 meeting will be held in front of a Staffing Procedures Committee, to determine the outcome.

7.3.3. Following the meeting, if the employee's performance has been found to be unsatisfactory this could result in one of the following:

- Dismissal - where the panel are satisfied there has been insufficient progress and that all reasonable efforts to support the employee have been made;
- Redeployment to another suitable job within the Trust;
- Extending the final written warning and setting a further review period;
- Giving a final written warning (where no final written warning is currently active)

7.4. Appeal

7.4.1. An employee may appeal any sanction issued in accordance with this procedure. To do so the employee must set out in writing the grounds for their appeal within 5 working days of being notified of the outcome.

7.4.2. The Appeal will be heard by a Staffing Appeals Committee.

7.4.3. The Committee will review all the information available and determine whether the sanction was reasonable, whether further information is needed, or a further review period.

7.4.4. The employee will be given 10 working days' notice of the appeal hearing in writing and may be accompanied by a trade union representative or work colleague. The employee may submit any new information including statements from witnesses within 5 working days of the date of the hearing.

7.4.5. The appeal committee may decide to:

- Accept the appeal and remove the sanction;
- Accept the appeal and impose a lesser sanction or further review;
- Reject the appeal and confirm the penalty imposed;

7.4.6. The outcome of the hearing will be notified to the employee in writing within 5 working days.

7.4.7. The Capability Procedure may run concurrently with other procedures, such as grievance and disciplinary procedures.

Appendix A: Model Letters

- 1 Request to attend the first capability meeting (Stage 1)
- 2 Note of first capability meeting
- 3 Request to attend a review meeting (Stages 2 and 3)
- 4 Letter confirming outcome of meeting relating to capability (Stages 2 and 3)
- 5 Request to attend capability hearing
- 6 Letter stating outcome of capability hearing
- 7 Letter notifying an appeal hearing

1. Request to attend the first formal capability meeting

Sent by Chief Executive/Associate Headteacher or line manager

STRICTLY PRIVATE & CONFIDENTIAL

NAME

ADDRESS

ADDRESS

ADDRESS

POST CODE

Date

Dear

Re: Stage 1: First Formal Meeting Relating to Capability

You will be aware from our informal discussions over the past half term that I have a number of concerns about the standard of your performance as [ENTER ROLE HERE]. I need to meet with you to discuss the situation. The aim of the meeting is to agree strategies which will provide an opportunity for you, with appropriate counselling, support and training, to achieve the required standard of performance. You may be accompanied by your trade union representative or a work colleague.

The meeting will take place at [TIME] on [DATE] (*at least five clear school days' notice*) and be held in at [SCHOOL NAME]. This will be a formal meeting as set out in the Trust's capability procedure.

Yours sincerely

[TYPED NAME]

Chief Executive/Associate Headteacher or Line Manager

2. Note of first formal capability meeting

Sent by Chief Executive/ Associate Headteacher or line manager

STRICTLY PRIVATE & CONFIDENTIAL

NAME
ADDRESS
POST CODE

Date

Dear

Re: Stage 1: Note of First Formal Meeting

At the meeting held on [ENTER DATE] where we discussed issues relating to the Capability and Managing Poor Performance Procedure, I discussed issues relating to your work performance, in particular your [ENTER DETAILS HERE - *e.g. classroom management, behavioural management, effectiveness as curriculum co-ordinator/Head of Department, example of support staff ineffectiveness.*]*

As I discussed with you, I am concerned about the standard of your work and your ability to [ENTER DETAILS HERE *e.g. control and discipline the children in your class.*]* This is having a serious effect upon [*your pupils' work and the delivery of the National Curriculum or effectiveness of the school*]. As you are aware, I sent you on an INSET / course / support* to assist you [both] with your role as [ENTER ROLE] [and ENTER ROLE]. * I am therefore issuing you with a first written warning.

In order to help and support you in achieving improved performance we agreed some strategies. These are attached, together with details of the support you will be given. It was agreed at the meeting that your performance during the next four / six weeks would be monitored, during which time it was hoped that there would be a marked improvement in your work performance. I hope that any further action will not become necessary, and that your performance will improve. A meeting will be arranged at the end of this time to assess your performance and decide on future action. If you need any further advice or assistance, or if there are any particular matters which you would like to discuss, please do not hesitate to contact me.

Yours Sincerely,

(typed name)
Chief Executive/Associate Headteacher or Line Manager
encl.

* Please use appropriate wording

3. Request to attend a review meeting

Sent by Chief Executive/Associate Headteacher

STRICTLY PRIVATE & CONFIDENTIAL

NAME
ADDRESS
POST CODE

Date

Dear

Re: Stage 2/3: Review Meeting Relating to Capability

I write to remind you that on [ENTER DATE] we agreed to a further meeting to review your performance in relation to the agreed targets.

You will recall that, in our first formal capability meeting, I expressed my concern at your level of performance and we agreed that it would be monitored during a four / six* week period, during which time it was hoped that there would be a marked improvement in your work performance. However, my monitoring over the last four / six* weeks has indicated insufficient improvement in. [ENTER DETAILS HERE *about the area of work*] and I now need to move to the next stage of the formal capability procedure.

The meeting will take place at [TIME] on [DATE - *at least 5 clear school working days' notice*] and be held in at [SCHOOL NAME].

You may be accompanied to the meeting by a companion, who may be a member of a union or work colleague. Please notify me the day before the meeting of the name of any companion you may be bringing.

I shall be accompanied by [ENTER DETAILS HERE].

The meeting represents Stage 2 / 3 * of the Trust's formal Capability and Managing Poor Performance Procedure. A copy of the procedure is enclosed with this letter for your information.

Yours sincerely

(typed name)
Chief Executive
encl.

* Delete as appropriate

4. Letter confirming outcome of review meeting relating to capability

Sent in duplicate by Chief Executive or clerk to the Trust

STRICTLY PRIVATE & CONFIDENTIAL

NAME
ADDRESS
POST CODE

Date

Dear

Re: Stage 2/3: Confirmation of Improvement Plan/Final Warning* Relating to Capability

Following the review meeting held on [ENTER DATE] attended by [ENTER DETAILS HERE], I write to confirm that the Chief Executive gave you / you were given a performance improvement plan and a final written warning that your work must improve to a standard acceptable to the Chief Executive.

I attach details of targets set for improving your performance, together with dates by which these are to be met, additional assistance and support to be given, the arrangements for conducting interim reviews and monitoring of progress.

A formal meeting to review progress made and any subsequent appropriate action will be held on [ENTER DATE].

I have to advise you that failure to achieve required standards could result in your job being at risk.

[Final warning only If targets are not met by the agreed date, a Staffing Procedures Committee will meet to consider what action to take, including the possibility of dismissal.]

If you wish to comment on this letter or the formal meeting, written comments should reach me within ten school days of the date of the meeting. Any such comments will be placed with your records.

Yours sincerely

(typed name)
Chief Executive / Clerk to the Trust

* Please use appropriate wording

5. Request to attend capability hearing

Sent in duplicate by the Clerk to the Trust

STRICTLY PRIVATE & CONFIDENTIAL

NAME
ADDRESS
POST CODE

Date

Dear

Re: Capability Hearing

As a result of the outcome of earlier stages in the capability procedure and at the request of the Chair of Directors, I regret that it has become necessary for me to ask you to attend a formal capability hearing. The purpose of the hearing is to consider the progress you have made under the capability procedure and whether or not any action should be taken against you up to and including dismissal.

The hearing will take place on [DATE – AT LEAST 10 DAYS FROM THE DATE OF THE LETTER] at [PLACE] at [TIME]. A copy of the agenda for the hearing is enclosed, together with documents currently available.

During the meeting you may be accompanied by a companion, who may be a member of a union, or work colleague. The Chief Executive/Associate Headteacher will be accompanied by [NAME/DETAILS/ROLE HERE].

If you have any documents you wish to be considered at the hearing, please ensure that I receive copies as soon as possible and at least five clear school days before the hearing. Similarly, at least five clear school days before the hearing I will send you copies of the written documents which the Chief Executive/Associate Headteacher will be presenting to the hearing.

The following information should be supplied to me as soon as possible and no later than five school days before the date of the hearing:

- 1 name of any companion who will be with you during the hearing;
- 2 any documents you wish to be considered;
- 3 names of any witnesses and copies of written statements detailing their evidence.

The Chief Executive/Associate Headteacher will be calling the following witnesses to the hearing:

[ENTER NAMES HERE]

The members of the Staffing Procedures Committee are [ENTER NAMES OF GOVERNORS/DIRECTORS HERE].

Yours sincerely

(typed name)
Title

6. Letter stating outcome of capability hearing

Sent in duplicate by the clerk to the Staffing Procedures Committee

STRICTLY PRIVATE & CONFIDENTIAL

NAME
ADDRESS
ADDRESS
ADDRESS
POST CODE

Date

Dear

Re: Outcome of Capability Hearing

Following the hearing held by the Staffing Procedures Committee on [ENTER DATE] I write to tell you that the committee decided that:

[DELETE AS APPROPRIATE]

limited progress has been made and that a final set of targets should be agreed;

or

that you be dismissed. (LEGAL ADVICE MUST BE SOUGHT ON THE COMPOSITION OF THIS LETTER.)

On the evidence presented to the Committee, it was found that [ENTER DETAILED FINDINGS HERE].

The Committee had the following reasons for reaching its decision [ENTER REASONS HERE WITH DETAILS].

It was agreed that a final set of targets be met in the agreed timescale to avoid any further capability action / that you be dismissed. [DELETE AS APPROPRIATE] [*A copy of the targets with timescales is attached.*] [DELETE AS APPROPRIATE]

*[The consequence of failure to meet the agreed targets could be possible future dismissal.] * (If this is a final written warning, notice must be given of possible future dismissal.)* [DELETE AS APPROPRIATE].

If you wish to appeal against this decision / dismissal you may do so by writing to the clerk to the governing body stating the grounds of your appeal within ten, clear school days of the date of the hearing.

Yours sincerely

(typed name)

Title

7. Letter notifying an appeal hearing

Sent in duplicate by the Clerk to the Trust

STRICTLY PRIVATE & CONFIDENTIAL

NAME
ADDRESS
POST CODE

Date

Dear

Re: Staffing Appeals Committee Hearing

In response to your letter of [ENTER DATE] stating that you wish to appeal against the decision of the Staffing Procedures Committee notified to you on [ENTER DATE], I write to inform you that the appeal hearing will be held at [ENTER TIME] on [ENTER DATE] and be in [ENTER LOCATION]. (*The Staffing Appeals Committee shall meet within 15 school days of receipt of written notice of appeal.*) The procedures to be followed during the appeal hearing are the same as those used during the capability hearing.

During the meeting you may be accompanied by a companion, who may be a member of a union, or work colleague. The school will be represented by [ENTER NAME], Chair of the Staffing Procedures Committee and the Chief Executive accompanied by [ENTER NAME & ROLE].

I enclose an index of the documents to be presented to the Staffing Appeals Committee. This index lists all the documents which were considered by the Staffing Procedures Committee and new documents which the Trust intends to present to the Staffing Appeals Committee. I enclose copies of all the documents.

If you wish to submit any new papers, please send these to me as soon as possible.

The following information should be supplied to me as soon as possible and no later than five school days before the date of the hearing:

- 1 name of any companion who will be with you during the hearing;
- 2 any new written evidence or relevant documents you wish to be considered;
- 3 names of all witnesses you intend to call together with copies of any new statements.

The Trust will be calling the following witnesses to the hearing [ENTER NAMES HERE].

The members of the Staffing Appeals Committee are [ENTER NAMES HERE].

Yours sincerely

(typed name)
Title