



ST. MARY'S
ACADEMY TRUST

St Mary's Academy Trust

**Capability Procedure for Teachers
Policy**

Date agreed by HR Committee: October 2019

Date to be reviewed: October 2021

1. Introduction

- 1.1 This procedure applies to Teaching employees including those employed on the Leadership Scale i.e. Headteachers, Deputy Headteachers and Assistant Headteachers about whose performance there are serious concerns that the appraisal process has been unable to address. It applies to both qualified and unqualified Teachers.
- 1.2 Capability matters involving Newly Qualified Teachers in their statutory induction period will be dealt with following the Newly Qualified Teachers Induction Policy.
- 1.3 The term 'Teacher' throughout this procedure can mean any employee employed in accordance with Teachers Conditions of Service.
- 1.4 The term 'Manager' throughout the procedure is a generic term and refers to the most appropriate Manager to manage a capability issue. It could mean Chief Executive, Headteacher, Deputy Headteacher or Assistant Headteacher.
- 1.5 Where the capability of a Headteacher is causing concern the Manager in this procedure will be the Chief Executive.
- 1.6 Lack of capability is defined as a situation in which a Teacher fails consistently to perform their duties to a professionally acceptable standard.
- 1.7 The procedure seeks to encourage a constructive, fair and consistent approach. It also seeks to ensure that Teachers are given adequate opportunity for improvement and the performance standards required for improvement are made explicit.
- 1.8 The move from the normal/structured process for appraisal to capability procedure should occur when a judgment has been made regarding the quality of teaching of an individual and their potential capacity to improve.
- 1.9 As part of the normal management procedures there will already be systems in place for the general monitoring of performance. This is not dealt with as part of this procedure. This should be part of the normal system of monitoring, support and development which should take place. It is only when the normal appraisal process has been exhausted and is no longer appropriate that the Capability Procedure should be considered.

The purpose of any action taken under the procedure is threefold:

- a) To provide support to help a Teacher overcome any difficulties and identify areas required for improvement in performance.
- b) To monitor performance, record progress and, if performance does not improve to a satisfactory level, to take steps which could lead to dismissal.
- c) To consider whether there are any latent reasons for the difficulties (i.e. health, other personal reasons, the work environment) and to take mitigating action where appropriate.

- 1.10 Employees who are on maternity leave/adoption leave will have this process suspended during their absence and the process will recommence at the same stage on their return to work after a period of not less than 4 weeks after the date of return.
- 1.11 Sickness absence should be treated sympathetically and in accordance with the Trust's absence management policy, including referral to Occupational Health where appropriate. However, such absences should not impede unduly on the capability procedure. Where sufficient evidence in relation to unsatisfactory performance is available, meetings may proceed in the Teacher's absence. In such cases a full account of any evaluation of the Teacher's performance should be provided in a letter to the Teacher confirming the decisions taken. Full consideration must be given to any written submission made by or on behalf of the Teacher.
- 1.12 Reasonable steps should be taken to enable the Teacher to attend formal meetings and hearings. Any Teacher claiming inability to attend on health grounds will be assessed by Occupational Health in order to determine that; he/she is physically/mentally incapable of attending and/or that she is unable, on the grounds of physical/mental incapacity, to participate reasonably in the proceedings.

2. Links to Other Policies

- 2.1 Where poor performance is due to a failure to maintain acceptable standards of behaviour or misconduct then this should be dealt with through the **Training and Development Policy**.
- 2.2 Where poor performance is linked to health issues then reference should be made to the **Managing Attendance Policy**.
- 2.3 Where poor performance is related to a disability as defined under the Equalities Act then consideration must be given to any reasonable adjustments which can be made to the work place or job role. Further guidance is available in the **Supporting Disabled Employees at Work Policy**.
- 2.4 Where poor performance is linked to issues relating to bullying, harassment or victimisation then reference should be made to the **Dignity at Work (Bullying, Harassment and Victimisation) Policy**.

3. Performance Framework – Transition to Capability Procedure

- 3.1 The Performance Management for Leaders and Teachers Policy sets out a framework for a clear and consistent assessment of overall performance against the professional

standards expected of qualified Teachers within the context of the school improvement plan.

3.2 The process for the appraisal and management of Teacher performance will be the informal stage prior to moving onto the formal capability procedure for Teachers.

3.3 Performance management concerns addressed on an informal basis can include an annual appraisal system, regular one-to-one meetings or such other informal discussions as necessary.

These can be used to:

- Identify areas of concern at an early stage;
- Clarify the standards required;
- Establish and address any likely causes of poor performance;
- Identify any training needs or other support; and
- Set expectations for improvement.

3.4 In line with and using the methods mentioned above, the Manager must conduct an informal investigation, providing the employee with an opportunity to comment on any evidence which highlights performance concerns.

3.5 The investigation could reveal any underlying reasons for the performance concerns, which the Trust must consider before deciding whether it is appropriate to take any further steps to address those concerns i.e. issues which are caused by the Trust's failure to provide training or support may be resolved by the provision of such training or support. Similarly, any indications of ill-health/physical impairment must be investigated further in case the Trust needs to consider making any adjustments to enable the employee to achieve the required standard (see section 2).

3.6 It is advised that Manager retains a written log of performance appraisals or informal discussions to assist with this process.

3.7 Employees do not have the right to be accompanied during an informal/investigatory meeting, but we do welcome the involvement of Trade Unions at the earliest opportunity.

3.8 If the appraiser is not satisfied with progress, the Teacher will be notified in writing that the appraisal system will no longer apply and that their performance will be managed under the capability procedure, and will be invited to a formal capability meeting (as detailed at 4.1).

4. Capability Meeting

4.1 The CEO must be consulted before the capability procedure is started.

4.2 The first meeting initiates the formal stage of the capability procedure. It provides an opportunity to deal with more serious problems in a structured way. It allows the Teacher to prepare a response to allegations about performance.

4.2.1 The Manager should make the following arrangements for a meeting with the Teacher:

- Arrange for the HR Committee (panel of 3) to hear the case.
- Arrange a date for the meeting giving 5 working days' notice in writing informing the employee of their right to representation by a trade union or professional association representative or work colleague and to request that the Teacher submits any documents at least 3 days prior to the meeting date (See HR for template letter). Supporting documentation that the Manager intends to refer to at the meeting should be provided.
- Arrange suitable accommodation for the meeting.
- Provide a copy of the policy.

4.2.2 At the meeting, the HR Committee will lead the meeting and the procedure will be as follows:

- The Headteacher will present their case detailing concerns regarding performance shortcomings including supporting evidence (this may include input from other parties i.e. External Consultants, Bll Reports, Ofsted Reports).
- The Teacher and his/her representative will be given the opportunity to respond to the concerns and, where appropriate, may call for supporting evidence from other parties.
- The meeting may at any time be adjourned by the Chair of the Panel for example if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.

4.2.3 The outcome of the meeting, should be one of the following two options:

Option One

If the Chair of the panel concludes 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 then the capability procedure will come to an end and the Teacher will re-enter the normal cycle of performance monitoring. This should be confirmed in writing.

Option Two

If the HR Committee agree, based on the information presented that the Teacher's performance is not meeting the required standards then the remainder of the meeting should be used to:

- Identify the professional shortcomings, for example which of the standards expected of the Teacher is not being met;

- Give clear guidance on the improved standard of performance needed to ensure that the Teacher can be removed from the capability procedures (this may include the setting of new objectives focused on the specific weaknesses that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made);
- Explain any support that will be available to help the Teacher improve their performance including additional supervision and further resources;
- Set out the timetable for improvement (the assessment period) and explain how performance will be monitored and reviewed. Teacher's should come out of the meeting knowing what standards they are expected to achieve. The timetable must be realistic and reasonable.
- Diarise review dates for improvement.

The Chair of the panel will also inform the Teacher that they are issuing a **Written Warning** which will remain in place for the duration of the assessment period. **(See HR for template letter). In very serious cases where the education of pupils is in jeopardy this warning could be a Final Written Warning. An example of this might be where a Teacher's classroom control is so poor that no order can be established to enable teaching to take place.**

Notes will be taken of the formal meetings and a copy sent to the Teacher.

The Teacher will have a right of appeal against this decision (see section 8).

4.3 Assessment Period

Weeks 1 - 4 (minimum period)

- 4.3.1 During this period, which may be extended to allow further opportunity for improvement or to take account of individual circumstances, there should be regular observation, monitoring and evaluation of performance with guidance, training and support as agreed at the conclusion of the formal meeting.
- 4.3.2 Following the assessment period, a Capability Review Meeting should be arranged to coincide with the end of the assessment period as detailed in section 5.

5. Capability Review Meeting

- 5.1 The Teacher should be invited to a Capability Review Meeting, unless they were issued with a Final Written Warning, in which case they will be invited to a Final Capability Review Meeting (as detailed in Section 6).
- 5.2 The meeting should be led by the same members of the HR Committee. It is advisable that time frames be agreed in advance by all parties.
- 5.3 The Manager should make the following arrangements for a meeting with the Teacher:

- Arrange a date for the meeting giving 5 working days' notice in writing informing the employee of their right to representation by a trade union or professional association representative or work colleague (See HR for template letter). Supporting documentation that the manager intends to refer to at the meeting should be provided.
- Arrange suitable accommodation for the meeting.
- Provide a copy of the policy.

5.3.1 At the meeting, the HR Committee will lead the meeting and the procedure will be as detailed at 4.1.3.

5.3.2 The outcome of the review meeting should be one of the following:

- If all actions identified have been implemented and an acceptable standard of performance has been achieved, the capability procedure will end and no further action needs to be taken. This should be confirmed in writing
- If performance remains unsatisfactory, a **Final Written Warning** should be issued. Monitoring, evaluation, guidance, training and support should continue for a further assessment period. Arrangements for this should be explained at the meeting. The Teacher must be told clearly that failure to achieve an acceptable standard, with confidence that it can be maintained, may result in dismissal. The decision and main points of the meeting should be recorded in the letter (See HR for Template letter) and a revised Action Plan.

5.3.3 The Teacher will have a right of appeal against this decision (see section 8)

5.4 Assessment Period Two

Weeks 1 - 4 (minimum period)

5.4.1 During this period, which may be extended, to allow further opportunity for improvement or to take account of individual circumstances, there should be regular observation, monitoring and evaluation of performance with guidance, training and support as agreed at the conclusion of the formal meeting and as detailed in the revised Action Plan.

5.4.2 Following the assessment period a **Final Capability Review Meeting** should be arranged to coincide with the end of the assessment period as detailed in section 6 - Final Capability Review Meeting.

6. Final Capability Review Meeting

6.1 The meeting should be chaired by the same members of the HR Committee. It is advisable that time frames be agreed in advance by all parties.

6.1.2 The Manager should make the following arrangements for a meeting with the Teacher:

- Arrange a date for the meeting giving 5 working days' notice in writing informing the employee of their right to representation by a trade union or professional association representative or work colleague and to request the Teacher to submit any documents at least 3 days prior to the meeting date.
- Supporting information that the Manager intends to refer to at the meeting including details of any witnesses must be provided.
- Arrange suitable accommodation for the meeting.
- Provide a copy of the policy.

6.1.3 At the meeting, the HR Committee will lead the meeting and the procedure will be as detailed at 4.1.3.

6.1.4 The outcome of the review meeting should be one of the following:

- If all actions identified have been implemented and an acceptable standard of performance has been achieved, the capability procedure will end and no further action need be taken. This should be confirmed in writing.
- If performance remains unsatisfactory the employee should be told that the matter will be referred to an appropriate panel of Board Members. The Teacher should also be informed that they are suspended from work on full pay. The result of the assessment and main points of the meeting should also be recorded in a letter to the Teacher. (See HR for template letter).

6.1.5 There is no right of appeal at this stage as the matter has been referred to a panel.

7. Dismissal Meeting

7.1 The panel must consist of individuals who have had no prior involvement in the case.

7.1.1 The HR Committee must write to the Teacher giving at least 5 working days notice of the meeting. (See HR for template letter). The letter should include:

- Date, time and venue.
- Identify panel members.
- Inform them of their right to representation by a trade union or professional association representative or work colleague and to request the Teacher to submit any documents at least 3 days prior to the meeting date.
- An outline of the key concerns.
- Copies of any supporting documentation including supporting evidence/Action Plans (this may include input from other parties as witnesses i.e. Advisors/School Evaluation Officers).
- Copy of the procedure.
- Advise the employee that the meeting could result in their dismissal.

7.1.2 The HR Committee should arrange for the meeting to be recorded.

7.1.3 Both management and the Teacher will be entitled to call upon relevant witnesses, but the number of these will be kept to a minimum, consistent with a fair hearing of the case.

7.1.4 The panel will consider all the evidence and determine the course of action from the following possible outcomes:

- To recommend that no further action is required as the concerns are unsubstantiated.
- To lift the suspension, extend the Final Written Warning and timescale for improvement to allow a further period to monitor and review (not exceeding 4 further weeks).
- To recommend dismissal (with Statutory Notice up to 12 weeks paid).

7.1.5 The decision will normally be given verbally to the employee at the meeting and confirmed in writing, usually within 5 working days. Where the panel require a significant amount of time to give full consideration to all the evidence presented, it may be necessary for the outcome to be communicated in writing as soon as possible after the meeting. (See HR for template letter).

7.1.6 The employee will have a right of appeal against this decision (see section 8).

7.2 Post-Dismissal

7.2.1 The Trust will consider whether or not to refer to the Teaching Agency any Teacher it dismisses for serious misconduct and any Teacher it may have so dismissed if the Teacher had not resigned first.

8. The Appeals Process

8.1 Where a Teacher has been subject to a Capability Review (excluding final) Meeting or a Dismissal Meeting as outlined in section 4, 5, and 7 they have a right of appeal against the outcome. In order to appeal the Teacher must inform the Chair of the panel in writing of their wish to appeal within 14 days of receipt of the letter confirming the outcome of the meeting.

8.2 The process will continue until an appeal has been received, at which point an assessment period would be put on hold until the outcome of the appeal is known.

8.3 The HR Committee should make the following arrangements for the Appeal Meeting;

- Identify the Appeals Panel (from members of the Board).
- Arrange a suitable date for the Appeal, ensuring that the Chair of the previous Formal Performance Meeting/Dismissal Meeting is available to co-present the case with the Manager along with any witnesses.
- Arrange suitable accommodation.
- Arrange for the meeting to be recorded.

- Liaise with the Chair of the previous performance/dismissal meeting to collate the supporting documentation and to prepare management's case.

8.4 The Appeal shall be a full re-hearing of the case and can include new evidence which has come to light since the original meeting. Any new evidence should be included within the Managers/Teachers pack in order that it can be fully considered. The Appeal Panel should give full consideration of the evidence presented and determine whether to uphold the original decision.

8.5 The HR Committee must write to the Teacher giving at least 5 working days notice of the Appeal meeting. The letter should include:

- Date, time and venue.
- Identify panel members.
- Inform them of their right to representation by a trade union or professional association representative or work colleague.
- An outline of the key issues.
- Copies of any supporting documentation including supporting evidence (this may include input from other parties i.e. advisors/SIP).
- Copy of the procedure

8.6 The decision of the Appeals Panel is final.

8.7 Notification of the decision should be confirmed in writing within 5 working days (See HR for template letter).

9. Data Impact Assessment

9.1 At all stages of this procedure data obtained will be used only for the purpose for which it is intended and will be stored securely with restricted access to those involved in the process. Following the process data will be stored on the electronic personal file for the duration of the teacher's employment with the Trust and for 6 years thereafter. The data will be destroyed at this time using a confidential shredding service.

10. Equality and Diversity

10.1 This policy has been impact assessed by the HR Committee, if on reading this policy you feel there are any equality and diversity issues, please contact HR who will if necessary ensure the policy is reviewed.

11. Income Tax and National Insurance Contributions

11.1 There are no tax or national insurance implications arising from this report.