



Managing Capability

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1. Introduction

The Trust expects excellent standards of performance and is committed to supporting employees to fulfil the requirements of their role. The Trust acknowledges that there may be circumstances when an employee does not perform to the required standards. This may happen because the employee does not have the necessary skills, knowledge and/ or experience. The employee may not demonstrate the appropriate behaviours that are required.

This policy defines how the Trust will manage an employee if they are unable to perform to the required standards. Where poor work performance is assessed to be due to a deliberate or wilful failure to fulfil the duties of an employee's role and/or a deliberate lack of care, the matter will be dealt with under the school's Disciplinary Procedure as this is a conduct concern.

The aim of our Managing Capability Policy is to set out a clear and consistent process for when any member of staff falls below the levels of competence expected of them, as set out in the relevant professional standards, job descriptions and overall performance expectations.

This procedure aims, through advice and support, to improve to an acceptable level, as set by the school, the performance of an employee who is causing concern. Such advice and support may be provided:

- from within the Trust;
- from other expert sources external to the Trust;
- through training courses or events.

The aims of the policy are to:

- Improve and maintain performance
- Manage capability in a positive way
- Provide a framework for managing capability
- Ensure employees are made aware of performance concerns in a timely manner
- Support employee to perform successfully in their role
- Support a culture of high performance across the Trust to facilitate school improvement

2. Scope

This policy applies to:	<ul style="list-style-type: none">• Teachers including leadership, upper pay range, main pay range and unqualified• Support staff
This policy does not apply to:	<ul style="list-style-type: none">• Employees who are in their probationary period• Teachers in their statutory induction period• Volunteers• Contractors• Agency workers

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This policy is non contractual and does not form part of any employee's terms and conditions.

Employees that have been subject to a TUPE transfer into the Trust may be excluded from this policy where they have transferred under a contractual policy. In such cases, the employee should refer to their own contractual policies and procedures.

Employees with less than two years' service may be subject to a shortened procedure. A copy of the shortened procedure can be found in Appendix One.

Employees are actively encouraged to contact their professional association/ trade union representative at the earliest opportunity to obtain advice and support at any point during this procedure.

The Trust expects all parties to maintain confidentiality throughout the application of the policy.

3. Key Principles and Definitions

Performance Management – the annual cycle of managing performance which all employees are subject to and which is linked to pay progression. There is a separate Performance Management Policy.

Structured Management Support (SMS) – a support plan which may be put in place where there are concerns regarding an individual's performance. SMS should also be implemented prior to starting the formal process of managing capability in order to provide the individual to improve.

Capability – a formal process of addressing performance concerns where improvement has not been achieved following a period of informal support (SMS). A 'lack of capability' is where a member of staff is failing to perform their role at the level of competence expected of them and that their job requires

- The manager must consider whether to start the capability process if an employee does not perform the duties of their role to the required standards. This may happen because the employee does not have the necessary skills, knowledge and/ or experience. The employee may not demonstrate the appropriate behaviours that are required.
- There may be other reasons to explain why an employee is unable to perform to the required standards. This may happen due to a physical, cognitive, mental, sensory, emotional, or developmental disability, impairment, condition or illness which may be temporary or permanent.
- There may be exceptional circumstances when the manager and/ or employee anticipate a long-term capability concern. This may happen due to the employee's health or a disability. In these circumstances, it is anticipated it is unlikely that the employee can achieve the required level of performance. Consideration must be given to whether reasonable adjustments are appropriate. The line manager must seek advice from HR in such cases.
- Poor performance due to health problems and/or sickness absence will normally be dealt with via the Trust's Managing Attendance Policy. This is likely to lead to a referral to Occupational Health in order to assess the employee's fitness for work.

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- Where an employee wilfully and unreasonably refuses to co-operate with the application of the Capability Policy, the matter will be dealt with under the Disciplinary Policy.
- Prior to the implementation of this policy, the Manager will need to be able to show that, through the performance review process, reasonable efforts have been made to identify any performance concerns, discuss them with the employee and, as appropriate, provide structured managerial support designed to facilitate improvement.

Right of representation – Any member of staff who is the subject of this capability procedure may, if he/she so wishes, be advised and/or represented by a trade union representative or accompanied by a colleague who is an employee of the school at every stage of the formal procedure.

While there is no statutory right to be accompanied at informal meetings (eg informal review meetings) by a Trade Union representative or a colleague employed at the school, this will not be unreasonably refused if the employee requests it.

In cases there is a statutory right of accompaniment, and his/her chosen companion cannot attend on the date proposed for meeting, the employee can offer an alternative time and date. Any alternative time and date must be reasonable and fall within five working days, beginning with the first working day after the date originally proposed by management .

Policy stages – The possible stages are:

1. Structured Management Support
2. Formal Stage 1
3. Formal Stage 2
4. Formal Stage 3 - may result in dismissal
5. Right of appeal after each stage.

[Refer to the shortened procedure for employees with less than two years service in Appendix One].

- As a general principle the manager will seek to use implement a period of structured management support (SMS) prior to progressing to the formal stages. This would normally last between 4 – 6 weeks and should be subject to regular review with support adjusted where necessary. (See Appendix Two for a template pro forma to record a structured management support meeting)
- The employee must be given a reasonable period of time to achieve the required improvement before moving to the next stage of the policy.
- In exceptional circumstances, it may be appropriate to move into the Capability Policy without having provided a period of structured managerial support. The manager must seek advice from HR in such cases.

The employee will not normally be permitted to raise a grievance related to any action taken, or contemplated, under this procedure. Such grievances will normally be managed within the hearing and appeal process detailed below.

The time periods in this procedure will also apply to part-time employees.

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3.1. Structured Management Support (SMS)

3.1.1. Where concerns about an employee's performance are identified, in the first instance it will be appropriate to deal with these issues informally, as part of normal day to day management arrangements or in accordance with normal ongoing performance management/appraisal processes if these are applicable. Application of the formal capability procedure would then only be necessary if informal focused support to address the concerns were not successful.

3.1.2. However, if the concerns about performance are more serious it may be appropriate to implement the formal procedure without having addressed the issues informally, depending on the circumstances.

3.1.3. A meeting should be arranged with the employee as soon as any performance concerns are identified and following discussion with the individual an action plan would be put in place outlining areas of concern, targets for improvement, sources of support and review dates. A period of SMS would normally last between 4-6 weeks and following the final review there are 3 possible outcomes:

- Where the targets have been met and performance has improved sufficiently the SMS will cease. However the individual must be made aware that the improvements must be sustained without the need for further support.
- Where the targets have been partially met and there is evidence to suggest that there is further capacity to improve the manager may decide to extend the period of SMS up to a further 4 weeks. This will be followed by a further review meeting.
- The targets have not been met and there is insufficient evidence to indicate that there is little or no capacity for improvement. In this case a further meeting must be arranged to consider whether the employee should move to Stage One of the formal capability process.

Although there is no automatic right for the individual to be accompanied by a trade union representative or colleague at any informal meetings any request to be accompanied should not be unreasonably refused.

A template pro forma for an SMS action plan is included at Appendix Two.

3.2. Formal Stage One

Where any action is being considered under the formal stages of the Managing Capability Policy advice must be sought from HR at the earliest opportunity.

3.2.1. At each stage of the policy, the employee must be invited to attend a meeting. The meeting will be chaired by a senior manager/school leader who has not had any previous involvement in the case.

3.2.2. The employee must receive the invitation in writing at least 5 working days before the meeting and the date should be set in consultation with the employee's representative and HR, where applicable.

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- 3.2.3. The invitation should include copies of any documents which will be discussed at the meeting including records of any structured management support which has been in place.
- 3.2.4. At the meeting the line manager will outline the reasons why they believe transition to the formal capability process is appropriate and provide evidence to support this view. This will be drawn from previous the SMS action plan and review documents as well as any other relevant evidence – e.g lesson observations, feedback.
- 3.2.5. The employee will be able to respond to the 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.
- 3.2.6. The Chair of 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 or other informal means. In such cases, the capability procedure will come to an end and this should be confirmed in writing.
- 3.2.7. Where the CEO/Executive Team/Executive Headteacher/Head of School/SLT concludes that formal action under the capability procedure is appropriate, the meeting will continue, and the CEO/Executive Team/Executive Headteacher/Head of School/SLT will:
- Identify the shortcomings in the employee's performance and where appropriate, refer to any relevant frameworks or documented expectations, for example job description, or which of the standards expected of teachers are not being met;
 - Give clear guidance on the improved standard of performance required to ensure that the employee can be removed from formal 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 and discuss any support that will be available to help the employee improve their performance; (eg coaching, mentoring, training, structured observations)
 - 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. It is for the school to determine the length of the period set however it should be reasonable and proportionate in the circumstances, a minimum of four weeks but not excessively long (usually no more than ten weeks) and should provide sufficient opportunity for an improvement to take place. Relevant factors to consider include the impact of the unsatisfactory performance on the school, the support being put in place and the seriousness of the shortcomings.
- 3.2.8. Where possible, the plan for support, monitoring and review should be agreed with the employee, however where agreement is not possible, the headteacher/senior manager will determine the plan to be implemented. Sufficient time should be allowed to enable the employee to reflect and respond to feedback (eg for teaching staff sufficient time between lesson observations).

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- 3.2.9. The CEO/Executive Team/Executive Headteacher/Head of School/SLT must inform the employee that they are being issued with a formal Notice to improve and that failure to improve within the set period could lead to dismissal.
- 3.2.10. Notes will be taken during this interview and a copy sent to the employee. Where a warning is issued, the employee will be informed in writing of the matters covered in the bullet points above and given information about the timing and handling of the review stage and the procedure. The employee should be informed they have the right to appeal against the issuing of a Notice to improve and the process for doing this (detailed in paragraph 14 of this procedure).
- 3.2.11. A performance monitoring and review period will follow the formal capability interview. Formal monitoring, evaluation, guidance and support will continue during this period.
- 3.2.12. During the review period, informal monitoring meetings will take place at agreed intervals to review progress against the identified objectives/ improvements required and monitor the implementation of support plan. Feedback should be given promptly to the employee, so they are aware of how well they are progressing and what (if any) concerns remain.
- 3.2.13. If, at any time the CEO/Executive Team/Executive Headteacher/Head of School/SLT considers that performance has improved to a satisfactory level and that this is likely to be sustained, then they can choose to cease the application of the formal capability procedure without a further formal meeting and normal appraisal processes/informal management arrangements will recommence. This should be confirmed in writing, with details of the standards of performance to be maintained and the implications if further concerns about performance arise in the future. The member of staff should be informed that the warning will remain on their file for 12 months and will be disregarded for capability purposes after that time, unless their performance lapses below the required standard before the end of this period. In these instances, the procedure may be re-entered at the stage previously applied.
- 3.2.14. If the performance has not improved at the end of the formal review period, the employee will be invited to a Stage 2 Capability Interview.
- 3.2.15. A formal record must be taken during the meeting and It is the school's responsibility to make the appropriate arrangements.
- 3.2.16. The notes and documents shared within the formal meeting/ hearing are confidential to those present in that meeting.

3.3. Formal Stage Two

- 3.3.1. As with the Stage 1 Capability Interview, at least five working days' notice will be given of this meeting in writing and the notification will give details of the date, time and place of the meeting. It will advise their right to be accompanied by a colleague employed by MAT or a Trade Union representative and that this meeting could result in a Final Written Warning.

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- 3.3.2. At this meeting the CEO/head of School/Principal headteacher/SLT will review the action taken to date, the outcome of any support and monitoring period put in place and outline the continuing concerns about performance. The employee will be able to respond to the concerns presented by the CEO/head of School/Principal headteacher/SLT.
- 3.3.3. If the CEO/Executive Team/Executive Headteacher/Head of School/SLT conducting the meeting is satisfied with the explanation and/or that the employee has made sufficient improvement, the capability procedure will cease, and normal appraisal processes/informal management arrangements will re-commence. This should be confirmed in writing, with details of the standards of performance to be maintained and the implications if further concerns about performance arise in the future. The employee should be informed that the warning will remain on their file for 12 months and will be disregarded for capability purposes after that time, unless the employee's performance lapses below the required standard before the end of this period. In these instances, the procedure may be re-entered at the stage previously applied.
- 3.3.4. 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 under Stage 1 without issuing a Final Written Warning. A further Stage 2 Capability Interview will be convened at the end of the extended period. In these circumstances a further plan for support monitoring and review should be implemented.
- 3.3.5. If no, or insufficient improvement has been made during the monitoring and review period, the CEO/Executive Team/Executive Headteacher/Head of School/SLT will issue a Final Written Warning. The employee should be informed they have the right to appeal against the issuing of a Final Written Warning and the process for doing this (detailed in paragraph 14 of this procedure).
- 3.3.6. Notes will be taken of the Capability Interview and a copy sent to the member of staff.
- 3.3.7. Where a Final Written Warning is issued, the employee will be informed in writing that failure to achieve an acceptable standard of performance within the set timescale, may result in dismissal and they should be given information about the handling of the further monitoring and review period.
- 3.3.8. During the review period, informal monitoring meetings will take place at agreed intervals to review progress against the identified objectives/improvements required and monitor the implementation of support plan. Feedback should be given to the employee, so they are aware of how they are progressing and what concerns remain.
- 3.3.9. If, at any time, the CEO/Executive Team/Executive Headteacher/Head of School/SLT considers that performance has improved to a satisfactory level and that this will be sustained, then they can choose to cease the application of the formal capability procedure without a further formal meeting and normal appraisal processes/informal management arrangements will recommence. This should be confirmed in writing with details of the standards of performance to be maintained and the implications if further concerns about performance arise in the future. The employee should be informed that the warning will remain on their file for 12 months and will be disregarded for capability purposes after that time unless their performance lapses below the required standard before the end of this period. In these instances, the procedure may be re-entered at the stage previously applied.

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- 3.3.10. At the end of the monitoring and review period, a review meeting must be held to consider whether sufficient progress has been made and what further action may be appropriate.
- 3.3.11. 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.
- 3.3.12. If no, or insufficient improvement has been made during the monitoring and review period, the CEO/Executive Team/Executive Headteacher/Head of School/SLT will advise the employee that a Stage 3 Capability Hearing will be convened where the employee's dismissal on the grounds of capability will be considered.

3.4. Formal Stage Three

- 3.4.1. As with the formal capability interviews at Stages 1 and 2, at least five working days' notice will be given in writing and the notification will provide details of the date, time and place of the meeting and will advise the employee of their right to be accompanied by a colleague employed at the MAT or a Trade Union representative.
- 3.4.2. If the Trustees/Governing Body has delegated the authority to dismiss to the CEO/Executive Team/Executive Headteacher/Head of School/SLT, the Capability Hearing will be conducted by the CEO/Executive Team/Executive Headteacher/Head of School/SLT. Alternatively, a properly constituted panel of governors (who have been delegated the authority to dismiss) will conduct the hearing and consider the recommendations of the CEO/Head of School/Principal Headteacher/SLT. Any Governor who has been involved in any support or monitoring should not be a member of the panel.

Where dismissal is being considered only the Chief Executive Officer, Deputy Chief Executive Officer and the Chief Finance Officer have delegated authority to dismiss.

- 3.4.3. The options available to the CEO/Executive Team/Executive Headteacher/Head of School/SLT of governors at this hearing are:
- To determine that the employee should cease to work in his/her present post at the MAT;
 - To determine that the employee should cease to work in his/her present post at the MAT offer employment in another post within the MAT;
 - To determine that the monitoring and support programme should be continued for a defined timescale;
 - To determine that the employee should continue to work at the MAT that no further formal action under these procedures is required.
- 3.4.4. The panel will adjourn after the hearing to consider the case carefully before deciding. The employee will normally be informed of the decision orally at the conclusion of the hearing which will then be confirmed in writing within five working days.

4. Right of Appeal

- 4.1. The employee has the right to appeal against the outcome of a formal meeting and any stage of the procedure.

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- 4.2. The employee must submit their appeal in writing within 10 working days following receipt of the written outcome of the formal meeting. This must include the full reasons for the appeal.
- 4.3. Appeals will be heard without unreasonable delay and at an agreed time and place. The same arrangements for notification and statutory right to be accompanied will apply as with formal capability and review meetings. Notes will be taken, and a copy sent to the individual.
- 4.4. The employee must be invited to attend a meeting. The letter must give the employee 7 working days' notice of the meeting.
- 4.5. The appeal will be dealt with impartially and by senior leaders or trustees who have not previously been involved in the case.
- 4.6. The options open to the Appeal Panel in considering an appeal will be to either:
 - Uphold the appeal and substitute an alternative decision as provided for under the relevant part of this procedure depending on which stage of the procedure the original decision was made or
 - Reject the appeal and reconfirm the decision that is being appealed.
- 4.7. The panel will adjourn after the appeal hearing to consider the case carefully before deciding. The employee will normally be informed of the decision verbally at the conclusion of the hearing unless otherwise agreed and this will be confirmed in writing within five working days.
- 4.8. Following an appeal of a formal stage three hearing, there is no further right of internal appeal.

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Appendix 1: Managing capability for employees with less than two years' service

As a general principle the manager will seek to provide structured managerial support under the Performance Management policy, before using the Capability Policy.

The employee must be given a reasonable period of time to achieve the required improvement before moving to the next stage of the policy.

Policy stages

The possible stages are:

- **Formal meeting** – the principles of the main policy will apply and may result in a final notice to improve or dismissal.
- **Appeal stage** - the principles of the appeal stage of the main policy will apply. An employee only has the right of appeal against a dismissal decision. There is no right of appeal against a warning.

In exceptional circumstances, it may be appropriate to move into the Formal Managing Capability Policy without having provided a period of structured managerial support. The manager must seek advice from HR in such cases.

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Appendix 2: Structured management support – action plan

Conducting the meeting

1. Prepare background /evidence referring to other sources of information as appropriate, e.g. performance objectives, observations, feedback, etc.
2. Link to Teachers' Standards or Support Staff accountabilities where relevant.
3. Conduct the meeting in confidence with the employee and listen to their viewpoint. If the employee becomes distressed, use an adjournment to allow time for them to compose themselves. This should normally mean the discussion can continue after a short break.
4. Take into account any mitigating circumstances.
5. If the employee needs time to prepare a response, e.g. if the employee needs to gather information, allow them time for this and continue the meeting as soon as possible afterwards.
6. Clearly explain what improvements are required and/or what action is to be taken. The required improvements must be measurable and a timescale must be agreed for when improvements are to be made.
7. Arrange any necessary training and/or any help or support you have agreed to put in place.
8. Diary to review the actions taken and/or monitor the employee's performance (e.g., weekly, fortnightly, monthly) as discussed with the employee.
9. Explain possible outcomes at the end of the SMS review period (refer to section 3.1 of the policy)
10. Complete the action plan and agree a review date.

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Action Plan

EMPLOYEE:

LINE MANAGER:

DATE OF MEETING:

REASON FOR DISCUSSION (define/clarify where performance is below what is required - e.g. managing behaviour, pupil progress, assessment, planning, whole school contribution, poor communication, time keeping, organisation)

EVIDENCE/OBSERVATIONS

EMPLOYEE'S EXPLANATION/MITIGATING FACTORS

WHAT ACTION HAS BEEN AGREED ?

(e.g. what improvements the employee must make and what evidence will need to be provided)

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WHAT SUPPORT WILL BE PROVIDED? (e.g training/coaching, peer support, external support)

ANY OTHER COMMENTS?

DATE OF REVIEW