



# Capability Policy

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## **1. Introduction**

- 1.1 The trust is committed to providing high quality teaching and learning. Through our workforce we aim to provide opportunities for all of our pupils, whatever their ability. Each employee will therefore be given support to help them continually improve their performance and develop to their full potential, which will in turn help improve outcomes for our young people.
- 1.2 Having an effective performance management process in place is one of the ways we can support our employees and deal with performance matters as they arise; this is set out in our Professional Development and Review Policy.
- 1.3 This policy sets out the arrangements that will apply when an employee falls below expectations / standards and performance that are expected of them and continued concerns have been raised despite support provided as part of the review cycle detailed within the Professional Development and Review Policy.
- 1.4 This policy has been designed to comply with current legislation and the ACAS Code of Practice on Disciplinary and Grievance Procedures.
- 1.5 The policy has been implemented following consultation with recognised trade unions. This policy applies to all trust employees irrespective of their base.

## **2. Scope**

- 2.1 The purpose of this policy is to provide a framework within which the trust can work with employees to help them to improve whilst maintaining satisfactory standards of performance where serious concerns have been raised.
- 2.2 This policy will be applied when informal support as set out in the Professional Development and Review Policy, paragraph 6, has been provided and the required improvement has not been made.
- 2.3 This policy applies to all employees, excluding those who are in the probationary period and NQT's, where DfE inductions arrangements will be applied. It does not apply to agency workers.

## **3. Notification and procedure for formal capability meetings**

- 3.1 An employee will be given at least 7 days written notice if required to attend any formal meeting under this procedure.
- 3.2 The written notification will also contain:
  - (a) Sufficient information about the performance concerns and their possible consequences (including either issuing a warning or dismissal) to enable the employee to prepare to respond to the case
  - (b) Copies of any written evidence
  - (c) Details of the time and place of the meeting
  - (d) The right to be accompanied (see 3.4)

- 3.3 Formal meetings will be conducted by the Principal or line manager delegated this responsibility at stage 1. Where a final written warning is being considered the Principal will conduct the meeting. Dismissal decisions are made by the CEO.
- 3.4 An employee has the right to be accompanied to any formal meeting under this procedure by a work colleague or a trade union representative.
- 3.5 A formal meeting under this procedure will:
- (a) identify performance shortcomings;
  - (b) allow an employee to respond to those concerns, ask questions and make any relevant representations which may provide new information or a different context to the evidence already collected;
  - (c) identify what action (including support provided) has been taken to date and what the outcome was;
  - (d) where appropriate, identify and explain any support that will be available to help the employee improve performance and meet expectations / standards;
  - (e) where appropriate, warn an employee formally that failure to improve within the set period could lead to dismissal; and
  - (f) confirm the timescales for the monitoring and review period which will follow a formal meeting where a warning is issued. The timetable will depend on the circumstances of the individual case but the period will be reasonable and proportionate and should provide sufficient opportunity for an improvement to be made. Formal monitoring, evaluation, guidance and support will continue during this period.
- 3.6 The person conducting the meeting may adjourn the meeting, for example for further investigation or to consider if additional information is required.
- 3.7 If at any stage the person conducting the meeting is satisfied that the employee has made sufficient improvement, the capability procedure will cease and the review cycle described in the trust's Professional Development and Review Policy will restart. This decision will be confirmed in writing to the employee.
- 3.8 The person conducting the meeting may also determine that the employee should be provided with informal counselling support / advice, written guidance or instruction or additional support under the Equality Act. Where it is not possible to make adjustments, further advice should be sought from HR and / or the trust's occupational health provider
- 3.9 Following a formal meeting, the matters covered in 3.5 and any other relevant points will be confirmed in a Performance Improvement Plan which will clearly state the required improvement and standards of performance required, support to be provided, including any requests from the employee for such support and timescales for monitoring and review. A copy of the plan will be provided to the employee. Where a warning has been issued the letter will set out the length of the monitoring and review period, usually between 4 and 8 weeks depending on the seriousness of concerns and the procedure and time limits for appealing against the warning.

- 3.10 Where a warning is issued, the employee will be advised that failure to improve within the agreed timescale could lead to a final warning or dismissal, depending on the stage of the process.
- 3.11 Minutes will be taken of all formal meetings and the employee will be provided with a copy following the meeting.

#### **4. Formal capability meeting (Stage 1)**

- 4.1 If we consider that there are serious performance concerns the employee concerned will be invited to a formal capability meeting to establish the facts.
- 4.2 Where a warning is issued, this will usually be a first written warning. However, in very serious cases or in cases where performance issues have been dealt with previously under the formal capability procedure, this could be a final written warning.
- 4.3 The warning will normally remain active for 6 months (first written) and 12 months (final written) from the end of the monitoring and review period. During this time any further performance concerns will be considered at the next stage of the process (stage 2). After the active period the warning will remain on the employee's personal file but will be disregarded in deciding the outcome of any future capability proceedings.

##### Monitoring & Review Period (1):

- 4.4 The standard set length of the monitoring and review period following the formal capability meeting is normally between 4 to 8 weeks. However, in some cases it may be appropriate for a shorter period of four weeks to be set.
- 4.5 It is good practice to arrange an interim review to determine progress / improvement including whether any additional support is required
- 4.6 At the end of the monitoring and review period the employee will be invited to a formal review meeting, unless a final written warning is issued, in which case, the employee will be invited to a decision meeting.

#### **5. Formal review meeting (Stage 2)**

- 5.1 If the person conducting the formal review meeting decides that some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period up to a maximum of 4 additional weeks.
- 5.2 If no, or insufficient improvement has been made during the monitoring and review period, the employee will receive a final written warning. A further Monitoring and Review Period will follow in accordance with 4.4.
- 5.3 The warning will normally remain active for 12 months from the end of the further monitoring and review period. During this time any further performance concerns will be addressed at the next stage of the process (stage 3). After the active period the warning will remain on the employee's personal file but will be disregarded in deciding the outcome of any future capability proceedings.

#### Monitoring & Review Period (2):

- 5.4 At the end of the further monitoring and review period, the employee will be invited to a decision meeting.
- 5.5 At this stage and by agreement with the employee, instead of progressing to a decision meeting it may be appropriate to consider whether there is a vacant post and if so whether this may be more suited to the employee's capabilities. If there is a vacant post which we agree with the employee is suitable, this would be a permanent change in role and if the alternative post is at a lower salary level, the substantive lower salary would apply. The capability procedure would cease on commencing in the new post and the Professional Development and Review cycle would re-start.

#### **6. Decision meeting (Stage 3)**

- 6.1 The decision meeting will usually be conducted by the Principal / line manager.
- 6.2 At least 7 days notice will be provided for the decision meeting and will include the time and place of the meeting and that the employee has the right to be accompanied by a trade union representative or a work colleague.
- 6.3 If an acceptable standard of improvement / performance has been achieved, the capability procedure will end and the PDR cycle will recommence.
- 6.4 If the employee's performance does not improve to a sufficient standard, a decision will be made to refer the matter to a Capability Hearing, with a recommendation that the employee should be dismissed from their role within the school.

#### **7. Capability hearing (Stage 4)**

- 7.1 The capability hearing will usually be conducted by the CEO who has not previously been involved in the case.
- 7.2 At least 7 days written notice of a capability hearing will be provided and the notification will contain details of the time, date and place of the meeting and will advise the employee of their right to be accompanied by a trade union representative or a work colleague. At the same time as the notification, the employee will also be provided with a copy of the report that is to be presented by the line manager or a senior manager.
- 7.3 The employee has the right to present evidence to the hearing and this should normally be provided in at least 3 days in advance of the meeting. Requests to present additional evidence during the hearing will be considered by the chair of the panel.
- 7.4 Employees may request witnesses of fact (i.e. not character references) to attend on their behalf where there is a discrepancy over the evidence. They should provide the chair of the panel with a minimum of 3 days advance notice of their intention.

- 7.5 In the event that a decision to dismiss is determined, the employee will be informed in writing within 5 days of the dismissal, the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and the right of appeal.

## **8. Appeal**

- 8.1 If the employee feels that the decision to dismiss or other action taken (including warnings) is wrong or unjust, the employee may appeal. The appeal should be made in writing to the Principal / CEO, setting out the grounds for appeal within 5 working days of the decision.
- 8.2 Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a Trade Union representative or work colleague will apply as set out in paragraph 4.
- 8.3 The appeal will be dealt with impartially and will be heard in accordance with the Trust's Scheme of Delegation, comprising a panel, all of whom have not previously been involved in the case.
- 8.4 The employee will be informed in writing, within 5 working days of the hearing, of the results of the appeal hearing.
- 8.5 There is no further right of appeal against the sanction or dismissal within the Trust.

## **9. Sickness**

- 9.1 If at any stage long term sickness absence is triggered, the case will be dealt with in accordance with the Trust's sickness absence policy.

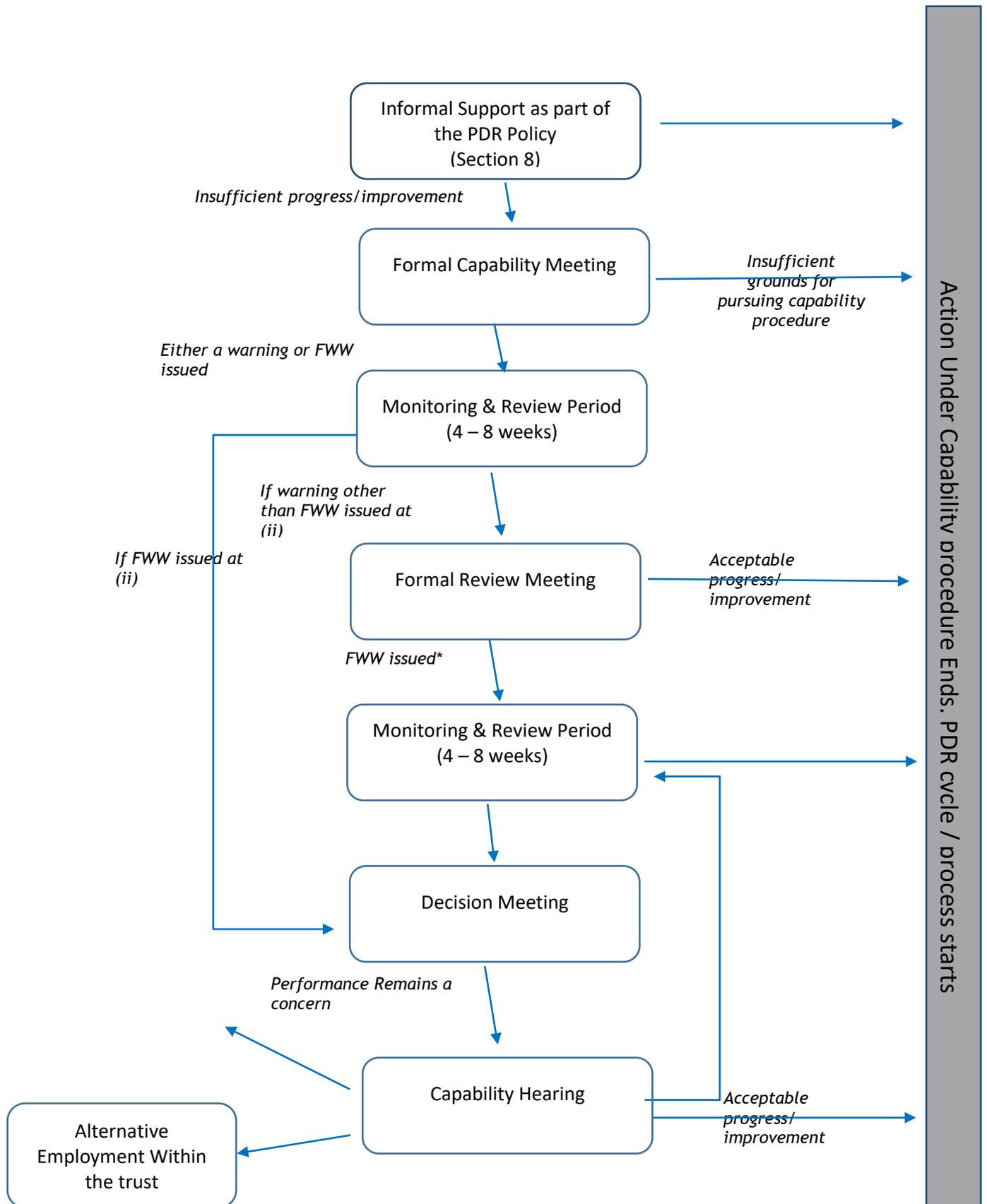
## **10. Grievances**

- 10.1 Any disagreements or grievances about the interpretation of the policy, or the application of any related matters not covered in the policy, must not delay any of the stages of the capability procedure or the overall timetable determined, as appropriate, for handling any particular case.
- 10.2 In exceptional circumstances an employee may raise a grievance about the behaviour of a Principal / line manager during the course of a capability procedure. Exceptionally, it may be appropriate to suspend the procedure until the grievance can be considered. Such a delay should only be considered where there is a strong indication that the employee has been mistreated.

## **11. Review of policy**

- 11.1 This policy is reviewed as required in consultation with the recognised trade unions. We will monitor the application and outcomes of this policy to ensure it is working effectively.

**Appendix 1 – Overview of the capability process**



## Appendix 2 – Capability improvement plan

This template can be used as part of the process of supporting an employee who is underperforming. It records the outcomes of the initial formal capability meeting, where targets and timescales are set and agreed.

Where possible, objectives should be linked to the relevant professional standards, appropriate to the career experience of the employee concerned.

Name of staff member	Name of Reviewer	Date of meeting

<b>Objective 1:</b>		
Professional standard(s) that the objective relates to	Success criteria	Evidence to be used to assess progress

**Support/resources to be provided**

**Monitoring arrangements**

**Review date**

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**Objective 2:**

**Professional standard(s)  
that the objective relates to**

**Success criteria**

**Evidence to be used to  
assess progress**

**Support/resources to be provided**

**Monitoring arrangements**

**Review date**

**Objective 3:**

Professional standard(s) that the objective relates to	Success criteria	Evidence to be used to assess progress
Support/resources to be provided	Monitoring arrangements	Review date

**Other support provided**

<b>Mentor/coach allocated</b>	Yes/No (If yes give name)
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<b>Counselling to be provided</b>	Yes/No
<b>Occupational health referral to be made</b>	Yes/No
<b>[Insert any other support provided]</b>	
<b>Formal review date</b>	

<b>Signed by member of staff</b>	<b>Signed by reviewer</b>	<b>Date</b>