

Statement of Intent

Capability refers to an employee's ability to perform the work expected of them to the standard required. The primary aim of this procedure is to provide a framework within which the Trust can work positively with employees to maintain satisfactory performance standards and to encourage improvement where necessary.

This formal capability procedure is separate from the Absence Management Policy and Disciplinary Policy and will only be instigated when there are serious concerns about an employee's performance that informal guidance and support under the performance management procedure have been unable to address. Concerns over performance will be dealt with fairly and employees will be given the opportunity to respond at a hearing before any formal action is taken.

3.3 Headteachers, ELT and Line Managers are responsible for:

Recognising a decline in employees' performance and addressing poor performance as soon as it occurs.

Developing their people to fulfil their maximum potential and perform, as a minimum, to the required standard.

Working with the employee (with support from HR as required) in order to resolve performance issues informally where possible.

Initiating an effective performance improvement process where informal approaches have not succeeded.

Giving employees support and the opportunity to improve in a constructive and positive environment.

3.4 The HR Director is responsible for:

Supporting Headteachers, ELT and line managers in their role as performance managers by providing training and giving advice when needed.

Monitoring the application of the Performance Management Policy to ensure the consistent and equitable treatment of individuals not performing to the required standard.

4. Confidentiality, Retention and Data Protection

4.1 The Trust aims to deal with performance matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with this capability procedure. Employees and their companions must not make electronic recordings of any meetings or hearings conducted under this procedure.

4.2 All records of action taken under the capability procedure will be handled and retained in line with the Trust's Data Protection Policy.

5. Disability

5.1 Consideration will be given to whether poor performance may be related to a disability and, if so, whether there are reasonable adjustments that could be made to the employee's working arrangements, including changing duties or providing additional equipment or training. An employee who wishes to discuss or inform the Trust about any medical condition should contact their line manager or the headteacher.

6. Right to be Accompanied

6.1 Employees are entitled to be accompanied to formal meetings and hearings held under this procedure by an accredited trade union representative or appropriate work colleague. If the employee's chosen companion is unavailable at the time of the hearing, the employee can propose an alternative time within 5 working days of the originally scheduled date. If the companion is not available within 5 working days, the Trust may not be able to proceed with the hearing. If the companion is not available within 5 working days, the Trust may not be able to proceed with the hearing.

8.7 A formal hearing under this procedure will:

Identify performance shortcomings, including which of the standards expected are not being met.

Allow the 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.

Find out if there are any issues (both in and outside of work) affecting their performance that need to be considered.

Identify what action (including support provided) has been taken to date and what the outcome was.

Give clear guidance on the improved standard of performance needed to ensure the employee can be removed from the formal capability procedure.

Where appropriate, identify and explain any support that will be available to help the employee improve performance.

Where appropriate, warn the employee formally that failure to improve within the set period could lead to dismissal or other serious implications such as no pay progression.

Confirm the timescales for the monitoring and review period which will follow a formal hearing where a warning is issued. The timetable will depend on the circumstances of the individual case, but the period will be reasonable and proportionate ensuring the arrangements minimise the impact on workload for all parties involved and should provide sufficient opportunity for an improvement to be made. Formal monitoring, evaluation, guidance, and support will continue during this period.

8.8 The person conducting the hearing may adjourn the meeting, for example for further investigation or to consider if additional information is required.

8.9 If at any stage the person conducting the hearing is satisfied there are insufficient grounds for perusing the capability issue or after a review period the employee has made sufficient improvement, the capability procedure will

establish the facts and give them the opportunity to respond before formal action is taken.

9.2 Stage 1 Hearings will be held by a member of a Senior Leadership Team, a Senior Manager, a member of the Executive Leadership Team or a member of the Trust Board depending on the employees' position within the Trust. This Hearing will not normally be held by the employee's direct line manager although they can be present at the Hearing to present the case. The Hearing may be attended by an HR representative and/or a note taker.

9.3 At the Hearing the following points must be discussed:

Identify the areas of concern, for example how the required standards are not being met by the employee.

Give clear guidance on what the required standard should be and offer guidance of how the standard can be achieved.

Agree on objectives and record on a performance improvement plan and set the success criteria.

Set reasonable timescales for the actions on the performance improvement plan to be achieved by.

Explain what support is available to help the employee improve their performance.

Agree frequency of future reviews.

Warn the employee formally that failure to improve within the set period could result in a final written warning and ultimately lead to their dismissal.

9.4 Where a warning is issued at Stage 1, 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 and there are still concerns, this could be a final written warning. Any implications in relation to pay progression will be set out in writing.

9.5 The warning will normally remain active for 9 months (first warning) or 12 months (final warning) from the date of issue. 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 employees personnel file but will be disregarded in deciding the outcome of any future capability proceedings,

10. Possible Outcome Stage 1

No Action	The evidence has been reviewed
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Right of Appeal

16. Appeals

- 16.1 Where the employee has the right to appeal against the disciplinary action taken against them, this must be in writing, stating the full grounds of appeal and sent to the individual named in the formal outcome letter within 5 working days of the date on which the employee was informed of the decision.
- 16.2 If the employee is appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the appeal is successful, they will be reinstated with no loss of continuity or pay.
- 16.3 On receipt of a written appeal, an Appeals Manager who has had no previous involvement in the case, will be appointed and an Appeal Hearing convened. An Appeals Manager will be a more senior manager than the Capability Chair, where possible.
- 16.4 If the appeal is from a member of the ELT or the CEO the Trust will appoint an external, independent, Appeals Manager. In these cases, it may be appropriate for the entire appeals panel to be external to CIT.
- 16.5 The employee must be given written notice of the date, time and place of the Appeal Hearing. This will normally be no less than 5 working days.
- 16.6 All Appeal Hearings will take place during school term time and on a normal working day of the employee under investigation.
- 16.7 Employees who have been invited to attend an Appeal Hearing will have the right to be accompanied by a Trade Union Representative or a work colleague.
- 16.8 Appeal Hearings will require a panel of 3 and a note taker will also be in attendance. Panels should be made of the Appeals Manager and a senior manager, Headteacher, a member of the ELT, a member of the Local School Board, a member of the Trust Board or a suitable external member.
- 16.9 The Hearing will not normally be a complete re-hearing and will focus solely on the grounds for appeal or it may be a review of the fairness of the original decision

confirm the original decision; or
revoke the original decision; or
substitute a different penalty. Ordinarily a penalty will not be increased on appeal unless there is new information or evidence available that requires further investigation.

16.12 The employee will be informed in writing of the decision and the reasons for it, usually within 5 working days of the Appeal Hearing. Where possible, this information will also be explained to the employee in person. There is no further right to appeal.

17. Sickness

17.1 If long term sickness absence appears to have been triggered at any stage of this procedure, the case will be dealt with in accordance with the Trust's Absence Management Policy.

17.2 The employee will be referred immediately to the occupational health service to assess their health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

18. Grievance

18.1 Where a member of staff raises a grievance during the capability procedure, the procedure may be temporarily suspended in order to deal with the grievance. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently. Grievances should be handled in accordance with the Trust's Grievance Policy.

18.2 If the grievance is completely separate from the capability case, then both cases may run simultaneously.

19. Monitoring and Review

19.1 This policy will be reviewed every year by the CIT People Committee, or sooner if there is a change to ACAS guidance.