

# Capability Policy and Procedure



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## Contents

1. Capability Policy Statement .....	3
2. Diversity Policy Statement .....	4
3. Scope.....	4
4. Overview of the Policy .....	4
5. Right to Trade Union Representation .....	5
6. Initial Support Programme (ISP) .....	6
7. Formal Capability Process .....	7
7.1 Formal Stage 1 - Formal capability meeting .....	7
7.2 Monitoring and review period following a formal capability meeting.....	8
7.3 Formal Stage 2 - Formal review meeting .....	8
7.4 Formal Stage 3 – Capability Hearing .....	8
8. Right of Appeal.....	9
9. Staff who are absent through illness during the procedure.....	10
10. References .....	10
11. Role of Human Resources .....	10

## **1. Capability Policy Statement**

1.1 The City of London Academies Trust Capability Procedure applies to all employees who have completed their probationary period and has been developed in accordance with the Trust's ethos and the ACAS code of Practice.

1.2 This policy does not apply to newly qualified teachers, who are subject to the 2012 Induction Arrangements for School Teachers regulations:  
<https://www.gov.uk/government/publications/induction-for-newly-qualified-teachers-nqts>

1.2 Our vision can only be achieved with effective performance from all our staff. We also believe that staff benefit from working in an environment where we can all rely on the competence of our colleagues.

1.3 Sometimes, for a variety of reasons, staff struggle to achieve a satisfactory level of performance. In responding to such situations, the following principles will apply:

- The responsible manager will acknowledge the situation with the staff member at an early stage. The problem is best addressed quickly and becomes harder to resolve the longer it is left.
- The line manager will ensure that the staff member will be treated with courtesy and dignity at all times in the process. Any judgements or discussions about performance will be framed objectively, based on evidence.
- Staff will be asked to engage with the process in an open and co-operative way.
- Staff will be offered support, assistance and encouragement as part of a structured process to reach the required standards.
- Staff will be entitled to be accompanied by a workplace colleague or trade union representative at all formal stages including any appeal hearing.
- However, where despite best efforts the staff member is unable to reach the required standards within the stages and timescales set out in this policy and procedure, and then the staff member's needs will not outweigh the Trust's wider responsibilities to our students and fellow colleagues.
- The decision to dismiss on grounds of capability will only be taken where all other actions short of dismissal have been exhausted. This procedure is designed to help and encourage employees to maintain relevant performance by setting out expected standard. It aims to clarify the rights and responsibilities of the Trust, and all employees and to promote fairness and order in any formal action as well as for this to be applied in a consistent, constructive and reasonable fashion.

## **2. Diversity Policy Statement**

- 2.1 The Trust willingly accepts not only its legal responsibilities but also wishes to embrace best practice in all areas of its work in order to secure equality of both treatment and outcome for all.
- 2.2 The Trust is committed to ensuring that no-one is treated in any way less favourably on the grounds of personal differences such as race; national, ethnic or social origin; gender (including reassigned gender); sexual orientation; religious belief; age; disability; marital status; caring responsibilities or political or other personal beliefs.
- 2.3 We will implement all necessary action and training to ensure that the commitment of the Trust with regards to equality of treatment and outcome are fulfilled and will regularly monitor and review progress made in this respect.
- 2.4 We will ensure that employment and development opportunities are available to those who are, or who become, disabled on an equal footing with those without a disability, adapting jobs wherever possible to make them accessible.

This procedure should therefore be applied in accordance with this policy.

## **3. Scope**

- 3.1 This policy is applicable to all employees of the Trust.
- 3.2 This policy and procedure addresses the situation where a staff member is failing to reach a satisfactory level of performance.
- 3.3 Where a staff member is unable to discharge their duties because of their health or mental or physical ability, then the Absence Management policy should be followed.
- 3.4 If a staff member can achieve a satisfactory level of performance but for some reason other than ability is not doing so, then the Disciplinary Policy may be followed.
- 3.5 Judgements about which policy to follow in uncertain cases must be referred for advice to the Trust's Human Resources Team.
- 3.6 The term 'line manager' is used as a generic term throughout the procedure. Relevant management structures apply and where applicable the Human Resources Scheme of Delegation.

## **4. Overview of the Policy**

- 4.1 Before the capability policy is invoked, staff are subject to the ordinary management processes surrounding their performance. This means that line managers are responsible for setting realistic and measurable standards of performance and for explaining these standards clearly to staff. The appraisal policy applies at this stage. Line managers may from time to time have discussions about performance with a teacher and these discussions do not form part of a capability process.

- 4.2 If there is evidence that the staff member is falling short of the required standards of work, they will be placed in the first instance on an initial support programme (ISP). Formal capability process should only be invoked where there is clear, triangulated evidence of sustained underperformance that the appraisal process has failed to address, following an informal process. Where formal capability is instigated, performance management processes will be suspended.
- 4.3 Staff will be placed on a **four to six working weeks initial support programme**. This stage is to enable the staff member to reach the required standards of work with a structured programme of support and training and development.
- 4.4 At the end of that initial support programme, if performance problems persist, a decision will be taken as to whether formal capability procedures will be introduced.

## 5. Right to Trade Union Representation

- 5.1 An employee has the right to be accompanied and supported, during all stages of the Capability procedure where action may be taken including appeal, by a fellow employee or an accredited Professional Association/Trade Union representative.
- 5.2 The role of the Professional Association/Trade Union representative or work colleague is to:
- Confer with the employee before and after the formal meeting, hearings and appeal
  - Assist the employee in preparing their mitigation
  - Respond on behalf of the employee to any views expressed during formal meeting, hearings and appeal
  - Present and sum up the employee's case, as agreed with the employee
  - Ask for adjournment if necessary

The Professional Association/Trade Union representative or work colleague is not permitted to:

- answer questions on behalf of the employee, unless the employee has expressed consent
  - address the meeting if the employee indicates that he/she does not wish them to prevent the case from being explained
  - prevent any other person at the meeting from making his/her contribution
- 5.3 The employee should provide the name of their representative in advance. If the chosen representative is unavailable at the time of the meeting/hearing, the employee may request a postponement (once) to a time that is convenient to all parties within a reasonable timescale not normally exceeding 5 working days or provide the name of an alternative representative.
- 5.4 An employee will not be subject to any detriment by the Trust for having acted as a companion in capability proceedings.
- 5.5 If an employee is disabled, the employer will also allow them to be also accompanied by someone else such as a disability support worker or partner for

extra support. Equally, the employer will make reasonable adjustments if the companion has a disability.

## **6. Initial Support Programme (ISP)**

- 6.1 At the start of any capability procedure there will be clear evidence that the staff member's performance will be falling short of the required standards.
- 6.2 The staff member will be invited to a meeting with the line manager to discuss their performance. The staff member should be given a minimum of one day's notice of the meeting. It is beneficial for the meeting to be held as quickly as possible, as this will be an anxious time for the staff member and there should be no undue delay. To prevent delays, it is advised that local Trade Union reps are contacted immediately by the employee for support and guidance. If the employee is not a member of a recognised Trade Union, they are to be advised that they are able to seek support from a workplace colleague. Any request for a delay to the meeting will be granted as long as the delay is no more than five working days.
- 6.3 The line manager will review the evidence of inadequate performance at the meeting and discuss reasons why this may have come about.
- 6.4 There are two possible outcomes of the meeting:
- No further action will be taken if there is insufficient evidence of poor performance, or
  - The staff member will be placed on an initial support programme to help raise their performance to the required level.
- 6.5 If the staff member will be placed on an ISP, the line manager will confirm the aspects of performance that need to be improved, how that improvement will be measured, what support will be put in place to help the staff member improve and how often progress will be reviewed.
- 6.6 The line manager will confirm the outcome of the support plan in writing to the employee by the next working day or within a week at the latest. The initial support programme starts when the staff member receives their written plan.
- 6.7 Progress against the plan will be regularly reviewed with the staff member, ideally in weekly meetings, at which a union representative or work colleague can also be present at the request of the staff member.
- 6.8 The ISP will normally last at least **four to six working weeks**, depending on circumstances.
- 6.9 The final, review meeting in this phase will be a review of the evidence of the staff member's progress. There are two possible outcomes of the meeting:
- No further action will be taken if there is evidence that the staff member's performance has now reached the required standard, or

- The staff member will be invited to a formal meeting and matters will be progressed to the next stage.

6.10 If action ends at this stage, this will be confirmed in writing to the staff member. A note will be placed in the employees personnel file. If performance declines within a two-year period after the meeting, the line manager has discretion to reinstate the capability procedure at the point the staff member would have been on if there had been no break in the procedure. After this point, all such paperwork will be disregarded.

6.11 If the decision is taken to proceed to the formal capability stage, this will be confirmed in writing.

## **7. Formal Capability Process**

### **7.1 Formal Stage 1 - Formal capability meeting**

The first meeting under the capability procedure, often referred to as the formal interview initiates the capability procedure. At least five working days' notice will be given of the meeting/interview. The notification will contain enough information about performance concerns and the possible consequences to enable the staff member to prepare to present their case at the meeting. The notification of a capability meeting will be accompanied by copies of written evidence, details of the date and time of the meeting and will confirm the teacher's entitlement to be accompanied by a companion who may be a work colleague or a trade union representative.

The chair of the formal capability meeting will aim to:

- a) identify the professional shortcomings;
- b) give clear guidance on the improved standard of performance needed;
- c) explain any support that will be available to help the staff member improve to a point where they can be removed from the capability procedure;
- d) set out the timetable for improvement and explain how performance will be monitored and reviewed; and
- e) formally warn the staff member that failure to improve within the set period which will be a minimum of 4 weeks in duration could lead to dismissal (in very serious cases, the warning could be a final written warning).

All formal meetings will be clerked, and a copy sent to the member of staff.

There are three possible outcomes from the formal capability meeting:

1. Where it is determined that there is insufficient evidence to progress the matter further within the capability procedure then there is an option to cease the process.
2. Return to the informal support programme.
2. A first written warning of 12 months.
3. A final written warning of 24 months.

Options two and three are relevant to any case where continued concern/s about the standards of performance is justified. The level of warning should be determined by the seriousness of the concerns that relate to the lack of performance. Lower level concerns are

likely to lead to a first written warning and a period of at least **4 – 6 weeks** may be agreed for improvement; conversely, higher level concerns would normally lead to a final written warning and a shorter monitoring period of no more than **four weeks**.

The employee will be notified of the decision arising from the meeting and of the timescales for monitoring and the anticipated next steps in the process.

An employee may appeal against the decision arising from the first formal meeting within five working days of receiving notification of the decision. The appeal will be heard by an independent party and in line with Trust's HR Scheme of Delegation, within a period of ten working days, unless alternative timescales are agreed between the parties. Action under the procedure will continue while an appeal is being heard.

## **7.2 Monitoring and review period following a formal capability meeting**

A performance monitoring and review period will follow the formal capability meeting of at least **4 – 6 weeks**. This period will include regular tasks, classroom observation, performance evaluation and monitoring, training, management support and guidance.

## **7.3 Formal Stage 2 - Formal review meeting**

Following the conclusion of a monitoring and review period, the member of staff will be invited to a formal review meeting. At the formal review meeting, if the person conducting the meeting is satisfied that the teacher has made enough improvement, the capability procedure will end with the relevant warning remaining on the file, and the appraisal process will re-start. 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. If no or insufficient improvement has been made during the monitoring and review period, the teacher will receive a final written warning.

An employee may appeal against the decision arising from the formal review meeting within five working days of receiving notification of the decision. The appeal will be heard by an independent party and in line with Trust's HR Scheme of Delegation, within a period of ten working days, unless alternative timescales are agreed between the parties. Action under the procedure will continue while an appeal is being heard.

A further monitoring period of no more than **4 weeks** will be set, and a subsequent and final review meeting will be scheduled. If, following a final written warning, performance does not improve to an acceptable standard; the case will be referred to a Capability Hearing with an appropriate panel in line with the Trust's HR Scheme of Delegation.

## **7.4 Formal Stage 3 – Capability Hearing**

At the end of **the review period**, the staff member will be given five working days' notice of a formal meeting, where progress will be assessed. If progress is adequate the formal capability process will end, and the appraisal process will re-start. The staff member will remain on a Final Written Warning for 24 months which will be disregarded after 24 months satisfactory performance. If performance remains unsatisfactory (i.e. where sufficient improvement cannot be achieved despite comprehensive support or where performance concerns are of particular gravity), a decision, will be made that the employee should be dismissed.

If the decision is made at the final formal meeting to dismiss the employee, the decision will be confirmed to the staff member in writing, along with the reason for it. The effective date of termination will be the date when the letter is written, if that is later than the date of the formal meeting. Dismissal will be with contractual notice, which will not normally be worked.

An employee may appeal against the decision arising from their dismissal within five working days of receiving notification of the decision. The appeal will be heard by an independent party and in line with Trust's HR Scheme of Delegation, within a period of ten working days, unless alternative timescales are agreed between the parties.

## **8. Right of Appeal**

- 8.1 Where an employee is dissatisfied with the outcome of a formal capability meeting or hearing the employee can appeal in writing against the decision within 10 working days of receiving written notification of the decision. The employee's appeal must clearly state their grounds for appealing.
- 8.2 An employee may appeal on the following grounds:
- They believe a finding or sanction is unreasonable
  - New evidence has come to light
  - They believe the capability process was procedurally flawed
- 8.3 The appeal hearing will not be in the nature of a re-hearing but will be before a new panel.
- 8.4 To be quorate the Appeal Panel must consist of at least the same number of members as at the original meeting or hearing, and where appropriate, relevant school leaders and Local Governing Body members not previously involved and who have no prior knowledge of the case.
- 8.5 The employee will be entitled to be accompanied by a workplace colleague or trade union representative to the appeal hearing.
- 8.6 If, having heard the relevant parties at the appeal, the Chair of the Appeal Panel decides to uphold the appeal, they may withdraw the warning or replace it with a different warning. The sanction must not be enhanced.
- 8.7 Where an appeal against dismissal is not upheld, the date of termination will be the date on which the employee was originally dismissed. During the appeal stage the employee will be treated as being continuously employed for the whole period, including the period between dismissal and reinstatement.
- 8.8 The decision of the appeal panel will be final. The employee must be notified in writing within five days of the appeals panel hearing.

## **9. Staff who are absent through illness during the procedure**

- 9.1 Absence which is triggered by the capability procedure, and which management believe is likely to be long term, is covered by the Absence Management Policy and referred immediately to Occupational Health to assess whether the staff member is fit for continued employment. Reasonable steps should be made to enable the staff member to attend formal meetings where his/her performance will be evaluated, but where the staff member is unable to attend, these may proceed in the staff member's absence if delay would otherwise compromise the maximum time set aside for the procedure. In such circumstances a full account of the evaluation should be provided in the letter confirming the decision taken. Advice should be sought from the Trust's Human Resources Team in such circumstances.

## **10. References**

- 10.1 When providing references or responding to reference requests, the Trust has a responsibility to comply with The School Staffing (England) Regulations 2012, paragraph 2, Regulation 8.
- 10.2 The Trust recognises that it has a duty to other employers to give truthful and balanced references and it is the policy of the Trust that any references provided will state, in accordance with the above regulation, if an employee had been subject to formal capability procedures in the preceding two-year period.
- 10.3 For the purposes of clarity, it will be deemed that an individual has entered the formal capability procedures once Formal Proceedings begin.

## **11. Role of Human Resources**

- 11.1 Prior to placing any employee on a capability procedure the advice of the relevant the Trust's Human Resources Team must be sought. They should be kept informed of the progress of all capability cases and must attend any formal meeting where dismissal is a possibility, to give advice to the panel.