



Capability Policy & Procedure

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Statutory Policy	Yes
Required on Website	No
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DEFINITIONS

In this Capability Policy and Procedure, unless the context otherwise requires, the following expressions shall have the following meanings:

- i. 'Capability due to ill-health' means any health condition or any other physical or mental quality which results in unsatisfactory performance. In these cases, the Sickness Absence Policy and Procedure will apply.
- ii. 'Capability due to lack of competence' means a lack of skill or aptitude leading to unsatisfactory performance. In these cases, this Capability Policy and Procedure will apply.
- iii. 'Chair' means the Chair of the LGC as appointed from time to time.
- iv. 'Clerk' means the Clerk to the LGC as appointed from time to time.
- v. 'Companion' means a willing work colleague not involved in the substance of the employee's performance issues under review by this Capability Policy and Procedure, or a trade union official, an accredited representative of a trade union or other professional association of which the employee is a member, who should be available for the periods of time necessary to meet the timescales under this Capability Policy and Procedure.
- vi. 'Diocesan Schools Commission' means the education service provided by the diocese in which the School is situated, which may also be known, or referred to, as the Diocesan Education Service.
- vii. 'LGC' means the local governing committee of the School as constituted from time to time.
- viii. 'Governors' means the governors appointed and elected to the local governing committee of the School, from time to time.
- ix. 'Headteacher' means the most senior teacher in the School who is responsible for its management and administration.
- x. 'Misconduct' means any action or inaction which contravenes the provisions of the employee's contract of employment, the rules laid down by the LGC and/or any Professional Code of Conduct and Practice. In such cases the Disciplinary Policy and Procedure will apply and the Capability Policy and Procedure may also apply.
- xi. 'School' means the school or college named at the beginning of this Capability Policy and Procedure and includes all sites upon which the School undertaking is, from time to time, being carried out.
- xii. 'Vice-Chair' means the Vice-Chair of the LGC as elected from time to time.

xiii. 'Working Day' means any day on which the employee would ordinarily work if they were a full-time employee. In other words, 'Working Day' will apply differently to teaching and non-teaching staff. However, part-time and full-time staff will not be treated differently for the purposes of implementing this Capability Policy and Procedure.

xiv. 'Working Week' means any week that the employee would ordinarily work.

1. SCOPE

1.1 This Capability Policy and Procedure applies to you if you are an employee or worker at the School (hereinafter referred to as an "employee").

1.2 TUPE will be applied to an employee subject to a contractual appraisal policy with preferential terms who is transferring into the Trust.

1.3 The purpose of this Capability Policy and Procedure is to establish a structure to support employees in improving their performance to the standards expected and to take appropriate action to address identified performance weaknesses, where there has not been sufficient improvement, following support being provided pursuant to the Appraisal Policy and Procedure. Relevant standards include, where applicable, Teachers' Standards, the National Standards of Excellence for Headteachers and relevant Professional Codes of Practice.

1.4 This Capability Policy and Procedure does not apply to Early Careers Teachers, whose performance will be managed through the relevant statutory induction process.

1.5 This Capability Policy and Procedure shall be invoked when there is an identified need to address, with a view to remedying, capability due to lack of competence.

1.6 This Capability Policy and Procedure can be invoked by the Trust or their delegate at any point in the appraisal cycle deemed appropriate although the expectation is that it will only be invoked after the procedure set out in the Appraisal Policy and Procedure has been fully exhausted.

1.7 An employee is entitled to have access, by arrangement, to their personnel file and to request the deletion of time-expired records in line with the provisions of the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 and the Trusts Data Retention Policy and Schedule.

1.8 The Trust delegate their authority in the manner set out in this policy.

1.9 The School will ascertain at an early stage of the investigation if the issue is to be dealt with under the Capability or Disciplinary Policy. This Capability Policy and Procedure and the Disciplinary Policy and Procedure may be used concurrently where there are separate concerns both about an employee lack of competence and possible misconduct.

- 1.10 There may be some occasions where an employee's lack of capability could also be described as Misconduct. This Capability Policy and Procedure and the School's Disciplinary Policy and Procedure may be used concurrently whilst the School endeavors to ascertain if the employee's lack of capability is due to Misconduct or lack of competence.
- 1.11 There may be occasions where an employee's lack of capability could relate to their health. This Capability Policy and Procedure may be used concurrently with the Sickness Absence Policy and Procedure. In particular, if an employee is absent from School on sick leave following this Capability Policy and Procedure being invoked, the School may use its Sickness Absence Policy and Procedure. However, the process of managing unsatisfactory performance due to capability will not necessarily cease where the employee is absent on the grounds of sickness.
- 1.12 The School is committed to ensuring respect, objectivity, belief in the dignity of the individual, consistency of treatment and fairness in the operation of this Capability Policy and Procedure. This commitment extends to promoting equality of opportunity and eliminating unlawful discrimination throughout the School community.
- 1.13 The School is committed to implementing the policy in accordance with the Qualities Act 2010 and has undertaken an Equality Impact Assessment prior to implementation.
- 1.14 This Capability Policy and Procedure offers opportunities to ensure justice for teachers, support staff and pupils alike and has the potential for the expression of Christian qualities such as honesty, self-knowledge, respect for others and their gifts, recognition of the needs and achievements of others, challenge of self and others, personal growth and openness.
- 1.15 The Capability Policy and Procedure does not form part of any other procedure but relevant information on capability, including the reports referred to in this Capability Policy and Procedure, may be taken into account in relation to the operation of other applicable policies and procedures.
- 1.16 The management of unsatisfactory performance and related investigations will be treated in confidence as far as possible by all parties involved at all stages of this Capability Policy and Procedure.
- 1.17 The School will maintain records of all interviews and reviews which take place under this Capability Policy and Procedure for a period of up to 12 months or longer where necessary and where there is an applicable lawful basis under the GDPR for extending the retention period. All data and evidence collected is to be shared between all the relevant parties, including the employee, where there is an applicable lawful basis under the provisions of the GDPR.

2. CAPABILITY POLICY AND PROCEDURE – EMPLOYEES EXPERIENCING DIFFICULTIES

- 2.1 This Capability Policy and Procedure should, except in exceptional circumstances, only be invoked where the measures set out in the Appraisal Policy and Procedure for Teachers and Support staff have been exhausted; and
- the employee has made no improvement or no sufficient improvement as required under the relevant Appraisal Policy and Procedure; and/or
 - the employee is failing to improve despite feedback in relation to unsatisfactory performance; and
 - a Capability Manager has been appointed and, following a formal meeting (as detailed in section 4 below), the Capability Manager has determined that this Capability Policy and Procedure should be invoked.
- 2.2 If a Headteacher is subject to this Capability Policy and Procedure they will normally continue to be responsible for the appraisal of staff at the School unless the LGC determines that this is inappropriate.

3. CAPABILITY PROCESS

The table over the page sets out the persons to be appointed throughout the stages of this Capability Procedure depending on the person who is the subject of the capability proceedings.

Employee Level	Stage 1/ Stage 2 Capability Meeting – the Capability Manager	Final Capability Meeting – the Final Capability Manager	Appeal Manager (re Written Warnings)	Appeal Manager (re Dismissal)
School Support staff (other than School Business Manager)	Headteacher or person appointed by Headteacher	Directors' Capability Panel	CEO	Directors' Appeal Panel
Teaching Staff (other than Headteacher, staff on Leadership spine or reserved posts)	Headteacher or member of the Senior Leadership Team appointed by Headteacher	Directors' Capability Panel	CEO	Directors' Appeal Panel
Leadership spine – Non reserved post and School Business Manager	Headteacher	Directors' Capability Panel	Chair of the Board or a Director nominated by the Chair	Directors' Appeal Panel

Headteacher (and other reserved posts)	CEO	Directors' Capability Panel	Chair of the Board or a Director nominated by the Chair	Directors' Appeal Panel
Staff in Central Team (other than Executive Team)	Line Manager	Directors' Capability Panel	Chair of the Board or a Director nominated by the Chair	Directors' Appeal Panel
BWCET Executive Team (other than CEO)	CEO	Directors' Capability Panel	Chair of the Board or a Director nominated by the Chair	Directors' Appeal Panel
CEO	Chair of the Board or a Director (other than the Vice-Chair) nominated by the Chair of the Board	Directors' Capability Panel	A Director (other than the Chair or Vice Chair) nominated by the Vice Chair of the Board	Directors' Appeal Panel appointed by the Vice Chair of the Board

STAGE 1 CAPABILITY MEETING

3.1 The Capability Manager will write to the employee inviting them to a Stage 1 Capability Meeting. The employee will be given at least 5 working days' notice in writing of such a meeting and will be advised in the letter that they have the right to be accompanied by Companion/Trade Union Representative.

3.2 At least 5 working days' notice will be given of the formal meeting. The notification will contain a performance report with sufficient information about the concerns about performance and the possible consequences of ongoing under performance. The notification will contain the details of the time and place of the meeting.

The notice will also set out:

- a) what specific and achievable performance standards are expected; and
- b) the support that has been provided so far.
- c) that any documentation that the employee wishes to rely on during the Stage 1 Capability Meeting must be submitted at least 2 Working Days prior to the Stage 1 Capability Meeting.

3.3 The purpose of the meeting is to discuss;

- a) what aspects of the performance are causing concern;

- b) what specific and achievable performance standards are expected of the employee;
 - c) the support that has been provided so far;
 - d) how the performance will be monitored and supported going forward.
- 3.5 An Improvement and Support Plan will be drawn up in discussion with the employee. The Improvement and Support Plan will:
- a) detail the professional shortcomings identified;
 - b) give clear guidance on the improved sustainable standard of performance needed to exit the capability procedure;
 - c) explain the support that will be provided, and detail how the employees performance will be monitored and supported over a period of time, referred to in this Capability Policy and Procedure as the Assessment Period;
 - d) identify a reasonable timetable for improvement and provide a date for a review capability meeting to be held at the end of the assessment period; and
 - e) state that failure to improve may lead to dismissal.
- 3.6 The length of the assessment period following a Stage 1 Capability Meeting will be at least 4 working weeks and no more than 8 working weeks.
- 3.7 If the assessment period is less than 8 working weeks, at any time during the assessment period the timeframe may be extended to a maximum of 12 working weeks in total, if there is sufficient evidence that the employee is progressing towards achieving the standards required. The employee will be informed of any such extension in writing.

STAGE 1 REVIEW MEETING

- 3.8 A Stage 1 Assessment Period Review Meeting will be held at the end of the Stage 1 Assessment Period. The HR Team will write to the employee inviting them to the meeting. The employee will be given at least 5 working days' notice in writing of such a meeting and will be advised in the letter that they have the right to be accompanied by a Companion/Trade Union Representative.
- 3.9 Any documentation that the employee wishes to rely on must be submitted to the Capability Manager at least 2 working days ahead of the Stage 1 Assessment Period Review Meeting. Failure to provide documentation within this timescale may mean that it will not be considered at the meeting.
- 3.10 At the review meeting the employee will have an opportunity to comment upon, explain and/or refute the contents of the updated Performance Report, to discuss any continuing professional shortcomings, support and guidance required and how performance will be monitored and supported going forward.
- 3.11 The possible outcomes following the Stage 1 Assessment Period Review Meeting are either:

(a) the Capability Manager concludes that the employee's performance is satisfactory, the employee will no longer be subject to this Policy and they will be notified in writing, within 5 working days of the decision. In such circumstances, the employee will be subject to the Appraisal Policy and Procedure, as usual.

or

(b) the Capability Manager considers that the employee's performance continues to be unsatisfactory and the employee will be invited to a Stage 2 Capability Meeting. The employee will receive a formal letter giving 5 working days' notice of the meeting and explaining their right to be accompanied by a Companion/Trade Union Representative. This letter will include the relevant evidence from the Stage 1 Assessment Period.'

STAGE 2 CAPABILITY MEETING

3.12 The Capability Manager will write to the employee at least 5 working days prior to the Stage 2 Capability Meeting and will send the employee an Updated Performance Report prepared by the Capability Manager which sets out the assessments, support and evaluation of the employee's performance during the Stage 1 Assessment Period (and Further Review Period where applicable). The letter will advise the employee of their right to be accompanied by a Companion/Trade Union Representative.

3.13 'The Capability Manager will explain how the employee's performance will be monitored during that Stage 2 Assessment Period and confirm the improvements that are expected and the support that will be provided.

3.14 Employees will be informed that failure to make satisfactory sustainable improvement during such further assessment period may result in their dismissal.

3.15 If, within a 6 month period, the required standard of performance is not sustained, the Capability Manager will meet with the employee and advise them that the Capability Procedure will be recommencing at the stage it was previously concluded and, following the meeting, the employee will be notified of this decision in writing. The letter will advise the employee of their right to be accompanied by a Companion/Trade Union Representative.

4. FINAL CAPABILITY RECOMMENDATION MEETING

4.1 If insufficient improvement has been made, employees will be invited to attend a final recommendation meeting and provided with 5 days written notice of the meeting and will have the right to be accompanied by a Companion/Trade Union Representative. The final Performance Report shall contain an evaluation of performance and will detail any support provided during the further assessment period. See table in 3 for Charing and panel arrangements.

- 4.2 Any documentation employees wish to rely on during the final recommendation meeting must be submitted at least 2 Working Days prior to meeting.
- 4.3 Employees will have an opportunity to comment upon, explain and/or refute the contents of the final Performance Report and to discuss any continued professional shortcomings.
- 4.4 The Chair of the meeting will confirm the outcome of the final Capability Recommendation Meeting in writing within 5 Working Days of the date of such meeting.
- 4.5 Where the Chair of the meeting concludes that the standard of performance is satisfactory employees will no longer be subject to this Capability Policy and Procedure. The School's Appraisal Policy and Procedure shall resume.
- 4.6 Where the Chair concludes that performance remains unsatisfactory and the employee is not capable of sustainable improvement, they may recommend that the employees employment is terminated in accordance with their contract of employment and will take appropriate steps to terminate the employees employment with notice. Alternative sanctions may also be considered, for example, redeployment, or demotion to a lower graded role, by mutual agreement. Alternative employment in these circumstances, does not have to be equivalent in terms and conditions to the current post and protection of salary will not apply. A decision to dismiss will always be the last resort.
- 4.7 Employees may appeal against a decision to dismiss them with notice by writing to the Director of Governance (jry@bwcet.com) within 10 Working Days of the date of the notice of termination.
- 4.8 An appeal will not delay the commencement of the notice period.
- 4.9 In the event that employment is terminated in accordance with Paragraph 4.6 above:
 - (a) if the employees contract of employment contains a garden leave clause the Chair of the panel may exercise that clause so that the employee is not required to attend the School during the notice period but remain employed and so bound by the terms of the employees contract of employment until the expiry of the notice period; or
 - (b) if the employees contract of employment contains a payment in lieu of notice clause the Chair of the panel may exercise that clause to bring the contract to an end with immediate effect.

5 APPEAL

- 5.1 An appeal against a decision of the final recommendation meeting can be made.

- 5.2 In all cases, the employees appeal letter must set out the grounds of appeal in detail. When preparing the appeal letter, employees may wish to consider the following grounds:
- (a) That the action taken was unfair;
 - (b) That this Capability Policy and Procedure was applied defectively or unfairly;
 - (c) That new evidence has come to light which was not available when the relevant decision was made;
 - (d) That the sanction was overly harsh in all the circumstances.
- 5.3 Appeals will be heard by the Trust Board within 15 Working Days of the Clerk receiving the employees appeal letter.
- 5.4 Employees will be given 5 Working Days' written notice of an Appeal Meeting and this will confirm in this notice what evidence will be relied upon at the Appeal Meeting and whether the evidence will be written or oral. If written evidence is to be relied upon, the employee will be provided with copies of such evidence with notice of the meeting in order to enable them to prepare for the Appeal Meeting. If oral evidence is to be relied upon at the Appeal Meeting, the employee will be given details of who will be in attendance. Employees will be able to provide evidence prior to the Appeal Meeting provided that such evidence is submitted at least 2 Working Days prior to the Appeal Meeting.
- 5.5 Employees will be given an opportunity to comment on the evidence provided during the Appeal Meeting whether such evidence is given in writing or orally. The Trust Board will consider the evidence provided by the employee and by the Appraiser (as appropriate) in order to determine whether the relevant decision was fair and reasonable.
- 5.6 The Trust Board will confirm the outcome of the Appeal Meeting in writing to the employee within 5 Working Days of the date of the Appeal Meeting. The decision of the Appeal Panel is final and there will be no further right of appeal. The potential outcomes of an Appeal Meeting are that:
- (a) May uphold the decision of the recommendation meeting.
 - (b) May uphold the employee's appeal, overturn the decision of the Recommendation meeting and refer the matter back to the Headteacher for reconsideration.
- 5.7 Should an appeal against dismissal be successful, the employee will be reinstated with no break in continuous service.

6. COMPANION/TRADE UNION REPRESENTATIVE

- 6.1 If an employee is subject of any Capability Meeting they may be accompanied by a Companion/Trade Union Representative and will be advised to contact their Trade Union.

- 6.2 The employee must let the relevant Manager know who their Companion/ Trade Union Representative will be at least one Working Day before the relevant meeting.
- 6.3 If an employee has any particular reasonable need, for example, because they have a disability, they can also be accompanied by a suitable helper.
- 6.4 The employees Companion/Trade Union Representative can address the meeting in order to:
- (a) put the employees case;
 - (b) sum up the employees case;
 - (c) respond on the employees behalf to any view expressed at the meeting; and
 - (d) ask questions on the employees behalf.
- 6.5 The Companion/ Trade Union Representative can also confer with the employee during the meeting.
- 6.6 The Companion/ Trade Union Representative has no right to:
- (a) answer questions on the employees behalf;
 - (b) address the meeting if the employee does not wish it; or
 - (c) prevent the employee from explaining their case.
- 6.7 Where an employee has identified a Companion/ Trade Union Representative and they have confirmed in writing to the relevant Manager that they cannot attend the date or time set for the meeting, the meeting will be postponed for a period not in excess of 5 Working Days from the date set by the School to a date and time agreed with the Companion/ Trade Union Representative. Should the Companion/ Trade Union Representative subsequently be unable to attend the rearranged date, the meeting may be held in their absence or written representations will be accepted.

7. TIMING OF MEETINGS

- 7.1 The aim is that meetings under this Capability Policy and Procedure will be held at mutually convenient times but depending on the circumstances, meetings:
- a) may need to be held when the employee were timetabled to teach (if that is appropriate to the employees role);
 - b) will not be held during planning, preparation and administration time if this does not impact on lesson preparation (if that is appropriate to the employees role);
 - c) will not be held after the end of the School day;
 - d) will not be held on days on which the employee would not ordinarily work;
 - e) may be extended by agreement between the parties if the time limits cannot be met for any justifiable reason.

8. VENUE FOR MEETINGS

Any meeting may be held off the School site to minimise any distress to the employee.

9. ASSISTANCE

In all cases involving any sanction in relation to the Headteacher or to a person on the Leadership Spine, or to potential or actual dismissal of any other member of staff, the Diocesan Schools Commission and/or the Trust may send a representative to advise accordingly.