



## **CAPABILITY POLICY**

### **About this policy**

This procedure is non-contractual and applies to all teaching, non-teaching and support staff within the School.

The aims of this policy are to:

- Provide a framework within which the School can work with staff to maintain satisfactory performance standards and to encourage improvement where necessary.
- Ensure fairness and consistency throughout the School.
- Provide for warnings to be given for failure to meet our standards of job performance.

This policy does not apply to sickness absence (see our Sickness Absence Procedures (A-Z Staff Handbook)) or misconduct issues (see our Disciplinary Policy).

### **Approach to performance issues**

The School will normally work with individuals to address performance informally first and offer appropriate training and support to you before progressing under this procedure. A note of any informal discussions may be placed on the relevant personnel file but will be ignored for the purposes of any future capability hearings.

If the School decides that formal performance improvement is required, the procedure below will be followed in most cases. However, the School may vary the process to suit individual circumstances at its discretion; such a variation will not amount to a breach of this procedure. Performance issues may arise or be identified following an appraisal process or otherwise. The procedures set out in this document aim to ensure that there is:

- Openness and awareness for staff when they are not meeting the required levels of performance.
- A means of monitoring performance and establishing performance criteria.
- A degree of consistency in how staff are given opportunities to attain satisfactory levels of performance.

- Assistance in identifying the most appropriate form(s) of support and providing that support.

The School will consider what training and support it can give to staff to help them meet the performance requirements.

## **Confidentiality**

The aim is to deal with performance matters sensitively and with due respect for the privacy of the individuals involved. All employees must treat as confidential any information communicated to them in connection with a matter which is subject to this Capability Procedure.

An employee, and anyone accompanying them (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure.

## **Formal Meeting**

If it is considered that it is necessary to invoke the formal capability procedure, the School will inform the member of staff in writing. In so doing, the School will give them reasonable notice of a capability meeting and set out details of the alleged shortfall or failure in performance, together with any evidence relied upon if practicable and available.

The member of staff is entitled to be accompanied by a colleague or trade union representative at any meeting called under this policy where they may face a formal warning or dismissal as a result of that meeting. This right does not extend to any informal discussions or assessment meetings leading up to a formal capability meeting. The companion may make representations, ask questions, and sum up the case, but will not be allowed to answer questions on the member of staff's behalf. The member of staff must tell the manager conducting the meeting who their chosen companion is, in good time before the meeting. If they choose a work colleague, the School will not prevent them from attending, but may rearrange the meeting if their absence from work causes operational problems.

The member of staff must take all reasonable steps to attend the meeting. If they fail to attend the meeting this will usually be rearranged once, but should they fail to attend the rearranged meeting then a decision may be reached in their absence. The member of staff must let the School know as soon as possible if they have documents or other evidence they want to present at the meeting.

At the meeting, the School will set out its concerns with the member of staff's performance and the standards of performance the School needs them to meet and go through any relevant evidence that it has gathered. The member of staff will be given an opportunity to state their case.

The School will discuss with the member of staff the targets for improvement that it needs them to meet and the timescale for that improvement. The School will also let the member of staff know of any support the School will provide (such as training or supervision) to help them.

A meeting may be adjourned if there is a need to gather any further information or give consideration to matters discussed at the meeting. The member of staff will be given a reasonable opportunity to consider any new information obtained before the meeting is reconvened.

If the member of staff considers that a medical condition or personal issues are affecting their performance, inform the School so that specialist advice can be arranged where necessary and consider any reasonable adjustments.

If it is decided at any point during the process that no further action will be taken, the member of staff will be informed.

### **Performance Improvement Notice**

If the School considers that further improvement is required, the member of staff will be sent a performance improvement notice following the capability meeting. The aim is to achieve this within 10 working days of the meeting. It will include:

- A description of the areas where the member of staff needs to improve.
- Targets and timescales for improvement.
- The monitoring to be put in place and training, supervision or other help the School will provide.
- The date when the School will review the member of staff's performance.
- The possible consequences of a failure to improve during the relevant timescale, or of additional poor performance in other areas.

If the member of staff's performance problem stems from insufficient skills, the performance improvement notice may include a plan of training, mentoring or other development activities to help them develop and apply the skills necessary to perform at the required standard. 'Skills' includes the technical skills, soft skills (such as interpersonal and communication) and other characteristics they are required to demonstrate in their job to be effective at the required standard.

Each performance improvement notice will normally remain active for 6 months. After the active period the warning will remain permanently on the member of staff's personnel file but will be disregarded in deciding the outcome of any future capability proceedings. The School will sometimes keep a performance improvement notice active for longer, for example, if the member of staff already has an active notice relating to poor performance or it is assessed that there is a pattern developing of the member of staff improving performance while on an improvement notice and then their performance going down again when the notice ends.

## **Performance improvement stages**

Employees will not normally be dismissed for performance reasons without previous warnings. However, in serious cases of gross negligence, or in any case involving an employee who has not yet completed their probationary period, dismissal without previous warnings may be appropriate.

There are usually two stages of our capability policy before we consider dismissal for capability reasons:

**Stage 1** - First capability meeting, followed by the issue of a first performance improvement notice (see above).

**Stage 2** - Final performance improvement meeting, followed by the issue of a final performance improvement notice.

Performance will be monitored at each stage of the process and assessed at the end of the review period. If the member of staff's performance has improved to a satisfactory standard, no further action will be taken. If substantial improvement has been made, but it still falls short of the required standard, then the review period may be extended. If their performance has not improved to a satisfactory level, then they will be invited to another performance improvement meeting at the next stage of this policy.

## **Dismissal for poor performance**

If there is an active final performance improvement notice in place and their performance has not improved to the required standard during the review period, or their performance has been grossly negligent, the member of staff may be invited to a meeting at which they could be dismissed for capability reasons.

Before dismissing a member of staff, the School will consider whether the member of staff is likely to improve significantly within a reasonable time. The School may also explore other actions short of dismissal, including redeploying them to a different role, demoting them, and/or extending their final performance improvement review period.

The School will send its decision to the member of staff in writing following this meeting. The aim will be to do this within 10 working days of the meeting.

## **Appeal**

The member of staff may appeal against formal action taken in accordance with this policy, including any performance improvement notice given to them, dismissal, or other action such as redeployment or demotion. To do this, the member of staff needs to write to the Chairman of Governors within 10 working days of the decision being taken. Such appeals are to be made in writing via the Clerk to the Governors, as indicated in our letter confirming any such formal decision.

The appeal meeting will be convened as soon as is reasonably practicable. The appeal meeting will be held by a panel of Governors (who have had no prior involvement) to hear the appeal. Where new evidence arises prior to or during the appeal, the member of staff will be given access to any relevant information or evidence and will have the opportunity to make representations. They will have the right to be accompanied at any appeal meeting by a colleague or trade union representative. They will be informed in writing of the decision of the appeal meeting following the conclusion of the meeting. Such decision will be final and there will be no further right of appeal. In the event of an unsuccessful appeal against a decision to dismiss the original dismissal date shall stand.

## **Examples**

The following are non-exhaustive and non-exclusive examples of the sort of performance shortfalls or failures, which will normally lead to action being taken.

### **Minor offences** (informal oral warning)

- Occasional poor job performance involving sub-standard work or application.

### **Serious offences** (Stage 1 or 2 Performance Improvement Notice)

- Consistent poor performance or application.
- Failure to improve performance following an appraisal meeting or performance review, within the timescale specified within such a meeting or review.
- Failure to perform duties or roles to an acceptable standard for reasons which it is within your power to rectify.

Staff should be made aware that if there is no adequate improvement following the issue of warnings, such issues may result in dismissal.

### **Consistent performance offences** (dismissal with notice)

- Incapable and/or unsuitable of performing role or main job functions/duties as set out in job description and which could not be rectified by training or coaching.
- Consistent failure or unable to improve performance to required or reasonable standards or to the level of other members of staff carrying out the same, similar or equivalent work.
- The member of staff is unable satisfactorily to do or does not have the qualifications, aptitude and/or ability for the job.

### **Gross negligence** (dismissal without notice)

- In the most serious cases of gross negligence, normally (but not necessarily) resulting in significant financial loss or loss of reputation to the School, where its continued

trust and confidence in the member of staff has been destroyed as a result, dismissal may be without notice or payment in lieu of notice.

## **Disabilities**

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 member of staff's working arrangements, including changing their duties or providing additional equipment or training. The School may also consider making adjustments to this procedure in appropriate cases.

If the member of staff wishes to discuss this or inform the School of any medical condition they consider relevant, they should contact their line manager.

## **Relationship with Disciplinary Procedure**

The Capability Procedure is not intended to apply to cases where poor performance results directly from misconduct, in which case the Disciplinary Procedure should normally apply. It may not, however, always be immediately clear whether poor performance results from misconduct or capability and the procedures may, initially, be run in parallel whilst the concerns are being investigated.

In these circumstances, if a member of staff is dismissed following exhaustion of either the Capability Procedure or the Disciplinary Procedure, they will not have a right to the continuation of the other procedure.

Live warnings issued under the disciplinary procedure may, if appropriate, be taken into consideration when considering the level of warning to be given under the capability procedure, and vice versa.

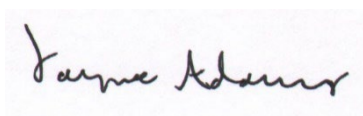
## **Record Keeping**

If a member of staff's performance shortfall or failure is dealt with under the formal capability procedure, a record will be kept of the shortfall or failure, their defence or mitigation, minutes of the capability meeting, the action taken and reasons for it, whether an appeal was lodged, its outcome and any subsequent developments. These records are confidential and will be retained on the member of staff's personnel file in accordance with the prevailing data protection legislation, the School's Staff Privacy Notice and Records, Retention and Storage Policy.

Reviewed: November 2023

Date of next review: November 2024

Signed:



Date: 17 November 2023

Mrs J Adams  
Chairman of the Governing Body