



# **CAPABILITY POLICY & PROCEDURE**

## **DEFINITIONS**

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

- i. 'Diocesan Schools Commission' means the education service provided by the diocese, which may also be known, or referred to, as the Diocesan Education Service.
- ii. 'Chair' means the Chair of the Governing Body appointed from time to time.
- iii. 'Clerk' means the Clerk of the Governing Body appointed from time to time.
- iv. '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 an accredited Trade Union representative.
- v. 'Governing Body' means the governing body of the School and, in the case of an academy, means the academy trust/company and/or its governing body/board of directors/local governing body.
- vi. 'Governors' means the governors appointed to the Governing Body of the School, from time to time.
- vii. 'School' means the school or college, and also includes academies, 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.
- viii. 'Vice-Chair' means the Vice-Chair of the Governing Body appointed from time to time.

### **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" or "you").
- 1.2 The purpose of this procedure is to establish a structure to improve performance to the standards expected and to take appropriate action against those who have not improved.
- 1.3 The Governors delegate their authority in the manner set out in this procedure.
- 1.4 There may be some occasions where an employee's behaviour 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 endeavours to ascertain if the behaviour is due to misconduct or incapability.

- 1.5 There may be occasions where an employee's capability could relate to their health. This Capability Policy and Procedure may be used concurrently with the School's 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.
- 1.6 This Capability Policy and Procedure can be invoked at any time during any Appraisal Period as determined in accordance with the School's Appraisal Policy and Procedure.
- 1.7 In this policy "working day" means any day on which you would ordinarily work if you were a full time employee. In other words it will be different for teaching and non-teaching staff but will not be different on the basis of whether an employee is full-time or part-time.
- 1.8 In this policy "working week" means any week that you would ordinarily work.

## **2. APPRAISAL POLICY AND PROCEDURE – TEACHERS EXPERIENCING DIFFICULTIES**

This Capability Policy and Procedure should, except in exceptional circumstances, only be invoked where the measures set out in Paragraphs 9 and 10 of the School's Appraisal Policy and Procedure for Teachers and/or Paragraphs 7.14 and 9 of the School's Appraisal Policy and Procedure for Support Staff have been exhausted and the employee has made insufficient, or no, improvement as required under such Policy and a recommendation has been made under the Appraisal Policy and Procedure that this Policy be invoked.

## **3. CAPABILITY, FINAL CAPABILITY AND APPEAL MANAGER**

The table below sets out the persons to be appointed throughout the stages of the capability procedure depending on the person who is the subject of the capability proceedings:

<i>Employee Level</i>	<i>First/Second Capability Meeting – the Capability Manager</i>	<i>Final Capability Meeting – the Final Capability Manager</i>	<i>Appeal Manager (re Written Warnings)</i>	<i>Appeal Manager (re Dismissal)</i>
Headteacher	Chair of Governors or a non-staff Governor (other than the Vice-Chair of Governors) nominated by the Chair of Governors	Governors' Capability Panel appointed by the Vice-Chair of Governors	A non-staff Governor (other than the Chair of Governors or Vice Chair of Governors) nominated by the Vice-Chair of Governors	Governors' Appeal Panel appointed by the Vice-Chair of Governors
Other Leadership Spine and School Business Manager	Headteacher	Chair of Governors or a non-staff Governor nominated by the Chair of Governors	A non-staff Governor (other than the Chair of Governors or Vice Chair of Governors) nominated by the Vice-Chair of Governors	Governors' Appeal Panel appointed by the Vice-Chair of Governors
Other Teaching Staff	(1)A member of the Leadership Team (other than the Headteacher) appointed by the Headteacher or, in the event that (1) above cannot be complied with, (2) a person appointed by the Headteacher	Headteacher	Chair of Governors or a non-staff Governor (other than the Vice-Chair of Governors) nominated by the Chair of Governors	Governors' Appeal Panel appointed by the Vice-Chair of Governors

Other Support Staff	A person appointed by the Headteacher	Headteacher	Chair of Governors or a non-staff Governor (other than the Vice Chair of Governors) nominated by the Chair of Governors	Governors' Appeal Panel appointed by the Vice- Chair of Governors
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#### 4. FIRST CAPABILITY MEETING

4.1 Where the School has fully exhausted the Appraisal Policy and Procedure in accordance with Paragraph 2 above, including the appeals process under that Policy, the School will appoint a Capability Manager in accordance with Paragraph 3 above. The Capability Manager will write to you inviting you to a First Capability Meeting. You will be given at least 5 working days notice of such meeting. At the same time as sending you the letter inviting you to the First Capability Meeting, the Capability Manager will also send you a copy of the Performance Report which they have prepared and which shall set out:

- 4.1.1 What aspects of your performance are causing concern;
- 4.1.2 What specific performance standards are expected; and
- 4.1.3 The support that has been provided to you so far.

4.2 At the First Capability Meeting you will have an opportunity to comment upon the Performance Report and to discuss the professional shortcomings, possible support and guidance and how performance should be monitored going forward.

4.3 If the Capability Manager concludes that your performance is satisfactory you will no longer be subject to this Capability Policy and Procedure and shall be notified in writing.

4.4 If the Capability Manager concludes that performance is unsatisfactory you will be given a First Written Warning which will:

- 4.4.1 Identify the professional shortcomings
- 4.4.2 Give clear guidance on the improved sustainable standard of performance needed to exit the capability procedure
- 4.4.3 Explain the support that will be available, and how performance will be monitored over the Assessment Period
- 4.4.4 Identify the timetable for improvement and agree a date for the Second Capability Meeting
- 4.4.5 Make it clearly understood that failure to improve may lead to dismissal.

4.5 The length of the Assessment Period following a First Written Warning will be at least 4 working weeks and no more than 12 working weeks.

4.6 If the Assessment Period is less than 12 working weeks, at any time during the Assessment Period the timeframe may be extended by the Capability Manager to a

maximum of 12 working weeks in total, if there is sufficient evidence that the employee is progressing towards achieving the standards required.

4.7 You may appeal against a First Written Warning by writing to the Clerk within 5 working days of being sent the First Written Warning.

4.8 The fact of the appeal does not delay the commencement of the Assessment Period.

## **5. SECOND CAPABILITY MEETING**

5.1 The Capability Manager will write to you inviting you to a Second Capability Meeting. You will be given at least 5 working days notice of such meeting. At the same time as sending you the letter inviting you to the Second Capability Meeting, the Capability Manager will also send you a copy of the Updated Performance Report which they have prepared and which shall set out the assessments, support and evaluation of your performance during the Assessment Period.

5.2 At the Second Capability Meeting you will have an opportunity to comment upon the Updated Performance Report and to discuss the professional assessment and any continuing shortcomings, possible support and guidance and how performance should be monitored going forward.

5.3 The Capability Manager will confirm the outcome of the Second Capability Meeting in writing within 5 working days of the date of such meeting.

5.4 Where the Capability Manager considers that some progress has been made and that with a further period of monitoring an acceptable level of performance will be achieved, the Capability Manager may consider extending the Assessment Period determined in accordance with paragraph 4.5 by up to an additional 4 weeks.

5.5 Where the Capability Manager considers that your performance remains unsatisfactory, you will be given a Final Written Warning setting a Further Assessment Period of 4 working weeks and setting the date for the Final Capability Meeting. You will be informed that failure to make satisfactory sustainable improvement will result in your dismissal.

5.6 You may appeal against a Final Written Warning by writing to the Clerk within 5 working days of being sent the Final Written Warning.

5.7 The fact of the appeal does not delay the commencement of the Further Assessment Period.

## **6. FINAL CAPABILITY MEETING**

6.1 The Final Capability Manager will write to you inviting you to a Final Capability Meeting. You will be given at least 5 working days notice of such meeting. At the same time as sending you the letter inviting you to the Final Capability Meeting, the Final Capability Manager will

also send you a copy of the Final Performance Report which they have prepared and which shall set out the assessments, support and evaluation of your performance during the Further Assessment Period.

6.2 At the Final Capability Meeting you will have an opportunity to comment upon the Final Performance Report and to discuss the continued professional shortcomings.

6.3 The Final Capability Manager will confirm the outcome of the Final Capability Meeting in writing within 5 working days of the date of such meeting.

6.4 Where the Final Capability Manager concludes that your performance remains unsatisfactory and is not capable of sustainable improvement the Final Capability Manager will terminate your employment with notice.

6.5 You may appeal against a dismissal with notice by writing to the Clerk within 10 working days of being sent the notification of termination.

6.6 The fact of the appeal does not delay the commencement of the notice period.

6.7 In the event that your employment is terminated in accordance with Paragraph 6.4 above:

- (a) If your contract of employment contains a garden leave clause the School may exercise that clause so that you are not required to attend the School during the notice period but remain employed and so bound by the terms of your contract of employment until the expiry of the notice period; or
- (b) If your contract of employment contains a payment in lieu of notice clause the School may exercise that clause to bring your contract to an end with immediate effect.

## **7. APPEALS AGAINST DECISIONS MADE BY CAPABILITY MANAGER AND/OR FINAL CAPABILITY MANAGER**

7.1 An appeal against a decision of the Capability Manager or Final Capability Manager can be made at each stage of the procedure set out at Paragraphs 4, 5 and 6 above.

7.3 In all cases your appeal letter must set out the grounds of your appeal in detail.

7.3 Any appeal should normally be heard by the relevant Appeal Manager in accordance with Paragraph 3 within 20 working days of the Clerk receiving your appeal letter.

7.4 The Appeal Manager is not required to hear oral evidence and may rely on written evidence.

7.5 If the Appeal Manager does decide to hear oral evidence, you will be given an opportunity to comment on it either by attending the meeting or by reviewing the notes of that oral evidence after the meeting (if you were not present at the meeting where such oral evidence was given).

7.6 The Appeal Manager will confirm the outcome of the Appeal Meeting in writing to you within 5 working days of the date of the Appeal Meeting. The decision of the Appeal Manager is final and there will be no further right of appeal. The outcomes of the Appeal Meeting are that:

(a) the Appeal Manager may uphold the decision of the Capability Manager or Final Capability Manager; or

(b) the Appeal Manager may uphold the employee's appeal, overturn the decision of the Capability Manager or Final Capability Manager and refer the matter back to the Capability Manager or Final Capability Manager for reconsideration.

## **8. GOVERNORS' PANELS**

8.1 Governors' Capability and Appeal Panels shall comprise three non-staff governors not previously involved in the matter and shall not comprise the Chair or Vice-Chair unless there are insufficient numbers of non-staff governors not previously involved in the matter, in which case the Chair and/or Vice-Chair may be appointed to a Governors' Capability or Appeal Panel.

8.2 In the event that there are insufficient numbers of Governors available to participate in a Governors' Capability or Appeal Panel, the Governing Body may appoint associate members to solely participate in the appropriate Governors' Capability or Appeal Panel on the recommendation of the Diocesan Schools Commission.

## **9. COMPANION**

9.1 If you are the subject of any Capability Meeting you may be accompanied by a Companion.

9.2 You must let the relevant Manager know who your Companion will be at least one working day before the relevant meeting.

9.3 If you have any particular reasonable need, for example, because you have a disability, you may also be accompanied by a suitable helper.

9.4 Your Companion can address the meeting in order to:

- (a) put your case;
- (b) sum up your case; and
- (c) respond on your behalf to any view expressed at the meeting.

9.5 Your Companion can also confer with you during the meeting.

9.6 Your Companion has no right to:

(a) answer questions on your behalf;

(b) address the meeting if you do not wish it; or

(c) prevent you from explaining your case.



- 9.7 Where you have identified your Companion to the relevant Manager and they have confirmed in writing to the relevant Manager that they cannot attend the date or time set for the meeting, the relevant Manager will postpone the meeting for no more than five working days from the date set by the School to a date or time agreed with your Companion provided that it is reasonable in all the circumstances.

## **10. TIMING OF MEETINGS**

Meetings under this procedure may:

- 10.1 need to be held when you were timetabled to teach.
- 10.2 exceptionally be held during planning, preparation and administration time if this did not impact on lesson preparation.
- 10.3 be held after the end of the School day.
- 10.4 not be held on days on which you would not ordinarily work.

## **11. 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 for maintained Schools, the Local Authority) may send a representative to advise the Capability Manager, Final Capability Manager or Appeal Manager.

## **12. REVIEW OF THIS PROCEDURE**

This procedure produced by the Catholic Education Service (CES) for use in Catholic Voluntary Aided Schools and Academies in England, was amended in September 2013 following consultation with the national trade unions. This procedure will be reviewed in September 2015.