



CAPABILITY PROCEDURE

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REVISIONS

Version	Page/ Item No.	Description of Change	Approved On
2.0		First approval of complete re-write, joining teaching and non-teaching staff into 1 procedure (based on EPM model – capability only)	19.01.2023
2.1	p4/section 2	Full addition of this section	25.01.2024
	P4/Section 3	Full addition of this section	
	P5/4.1	Additional reference to HT/CE and satisfactory standards wording.	
	P5/7.1 and various	Amendment of Performance 'Review' to Performance 'Development'	
	P6/8.2	Addition of 6 th bullet point referencing impact on pay	
	P7/10.1.1	Addition of process for invitation to formal meeting	
	P7/10.1.6	Addition of 9 th bullet point referencing impact on pay	
	P10/10.5	Amend 'final' to 'formal'	
	P10/10.5.1	Info added re appeal	
	P12/10.7.6	Addition of full bullet point re notification	
	P12/S11 & S12	Fill addition of Sections 11 & 12 re Trade Unions and Confidentiality	

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1. Introduction

- 1.1. This capability procedure must be read and applied in conjunction with OWN Trust's Staffing Policy Statement.
- 1.2. OWN Trust is committed to adopting policies and procedures to encourage a positive working environment and a health and safety culture to improve and maintain performance of all Teachers and Support staff working in the Trust.
- 1.3. This procedure is designed to support employees in improving their practice and the procedure aims to ensure that any capability issue is dealt with in a fair, prompt and supportive manner.
- 1.4. It is strongly recommended that the Headteacher/Head of School/CEO/Chair of the Trust Board seek advice and support from the Trust's HR Provider to determine the appropriate procedure before commencing any case under this procedure and to ensure attendance at relevant meetings/hearings/appeals.
- 1.5. Appeals constitute formal meetings, are part of each individual staffing procedure, and will be conducted in line with the Trust Staffing Policy Statement.
- 1.6. Appeals can be raised in line with the formal stages within each individual staffing procedure.
- 1.7. Failure to follow the adopted procedure could undermine the process.
- 1.8. This procedure has been adopted after consultation with the recognised trade unions and professional associations. OWN Trust is responsible for ensuring the effective implementation of this Procedure.

- 1.9. As part of equality monitoring OWN Trust will review and monitor the operation and impact of the Procedure on a regular basis and in line with the procedure review date. All future amendments to the procedure will be consulted on with the recognised trade unions.
- 1.10. Any documentation or evidence collected in conjunction with the application of this procedure will be treated as confidential and information will only be shared with parties on a need-to-know basis.
- 1.11. All data collected and stored will be in line with the Data Protection Act 2018 and the Trust's Data Protection Policy.
- 1.12. This procedure aims to set out the arrangements that will apply when employees fall below the levels of competence that are expected of them.

2. Definitions

- 2.1. "Headteacher" also refers, where appropriate, to any other title used to identify the Headteacher.
- 2.2. "Employee" refers to any member of the school staff employed to work solely at the School or Trust.
- 2.3. "Senior manager" refers to any member of the Leadership Group, as defined by the School Teachers' Pay and Conditions Document, or a senior support employee in cases involving support staff, delegated by the Headteacher, to deal with a capability matter under these procedures. A senior manager may only make a decision to issue a sanction up to and including a final written warning.
- 2.4. If the Headteacher, following consultation with the Trust, considers that there is no senior manager to whom they can reasonably delegate a specific capability matter, then the Headteacher will take the role of the senior manager for that specific case and the role of the "Headteacher", under this procedure, will be performed in line with the Trust Staffing Policy Statement.
- 2.5. "Lack of capability" is defined as a situation in which an employee fails to consistently perform their duties to a wholly satisfactory standard of performance over a period of time.

3. Purpose

- 3.1. This procedure sets out the framework for:
 - 3.1.1. The arrangements that will apply if employees fall below the levels of competence that are expected of them

- 3.2. This procedure does not form part of any employee's contract of employment, and it may be amended at any time following consultation. We may also vary any parts of this procedure, including any time limits, as appropriate in any case.

4. Application of the Procedure

- 4.1. This procedure, which sets out the formal capability procedure, applies to all employees of the Trust, including the Headteachers and CEO. Concerns about the employee's performance will have been identified under the performance development process (separate policy), but the employee has been unable to address these to a satisfactory standard.
- 4.2. 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.

5. Overall performance of teachers

- 5.1. Before or as soon as practicable after, the start of each review period, a teacher will be informed of the standards against which that teacher's performance in that review period will be assessed. Each teacher will be assessed against the set of standards contained in the document called "Teachers' Standards" published in July 2011 and any subsequent amendment thereof.
- 5.2. The CEO and Headteachers will need to consider whether certain teachers should also be assessed against other sets of standards published by the Secretary of State that are relevant to them.

6. Support staff

- 6.1. Support staff performance will focus on the job description of the employee and the expected standards of performance will be made clear by the reviewer.

7. Development and support

- 7.1. Performance Development is a supportive process which will be used to inform continuing professional development. The Trust wishes to encourage a culture in which all employees take responsibility for improving their performance through appropriate development.

8. Feedback

- 8.1. Employees will receive constructive feedback on their performance throughout the year and as soon as practicable after an observation has taken place or other evidence has come to light. Feedback will highlight particular areas of strength as well as any areas that need attention.
- 8.2. Where there are concerns about any aspects of the employee's performance the reviewer will meet with the employee to:
- Give clear feedback about the areas of concern
 - Give the employee the opportunity to comment and discuss the concerns and establish the likely causes of poor performance and identify any training needs/support needed (e.g. coaching, monitoring, structured observation)
 - Clarify the required standards and agree on any support (e.g. coaching, mentoring, structured observations), that will be provided to help address those specific concerns
 - Make clear how, and by when, the reviewer will review progress
 - If it is appropriate to revise objectives, it will be necessary to allow sufficient time for improvement
 - Explain the implications and process if no, or insufficient, improvement is made (e.g. that performance may be managed under the formal capability procedure and the impact on pay progression.
 - The amount of time will reflect the seriousness of the concerns; explain the implications and process if no, or insufficient improvement is made
- 8.3. When progress is reviewed, if the reviewer is satisfied that the employee has made, or is making, sufficient improvement, the review process will continue as normal, with any remaining issues continuing to be addressed through that process.
- 8.4. The reviewer will keep a note of any concerns, the support given and the review judgement. A copy of this note will be given to the employee. If required, this will inform any decision on transition to the capability procedure.

9. Transition to capability

- 9.1. If the reviewer, is not satisfied with the progress, the employee will be notified in writing that the performance development system will no longer apply and that their performance will be managed under the capability procedure. The employee will be invited to a formal capability meeting. The capability procedures will be conducted as set out within this procedure and in line with the Trust Staffing Policy Statement.

10. Capability

10.1. Stage 1 Formal capability meeting

10.1.1. This procedure applies only to employees about whose performance there are serious concerns that the performance development process has been unable to address. If under the Performance Development Policy, an employee's performance is not wholly satisfactory, the senior manager, or another person with line management responsibility for the employee will invite the employee to a formal capability meeting to discuss their identified poor performance as soon as possible.

10.1.2. A capability meeting constitutes a formal meeting and should be arranged in conjunction with OWN Trust's Staffing Policy Statement.

10.1.3. The capability meeting is intended to establish the facts. It will be conducted by a senior leader in the Trust who is not responsible for the employee's performance development. The meeting will allow the employee to respond to concerns about their performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected.

10.1.4. The Chair of the capability meeting may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the performance development process. In such cases, the capability procedure will come to an end.

10.1.5. The Chair of the capability meeting may also adjourn the meeting if it is decided that further investigation is needed, or that more time is needed in which to consider any additional information. In other cases, the meeting will continue.

10.1.6. During the meeting, or any other meeting which could lead to a formal warning being issued, the Chair will:

- In the case of a teacher, identify the poor performance, including which of the standards expected of the teacher are not being met
- For all employees identify performance shortcomings
- Ensure the employee is given an opportunity to ask questions, present evidence, call witnesses, respond to evidence and make representations. Witness confidentiality cannot be guaranteed should the case be presented to a tribunal.
- Establish the likely causes of poor performance including any reasons why any measures taken so far have not led to the required improvement.
- Give clear guidance on the improved standard of performance needed to ensure that the employee can be removed from formal capability procedures. This may include the

setting of new objectives that are focused on the specific area/s of poor performance that need to be addressed. It will include any success criteria that are appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made.

- Identify whether there are further measures which may improve performance and explain any support that will be considered and planned to help the employee, e.g. in-service training, visits to other Schools, discussion with appropriate colleagues or professionals
- Set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case but will be reasonable and proportionate, between four and ten weeks in normal circumstances, and will provide sufficient opportunity for improvement to take place. The length of time required will depend on the concerns raised with the employee, the nature of any support and training required, and sufficient time to establish whether performance has improved
- Warn the employee formally that failure to improve within the set period could lead to a final written warning which could then lead to their dismissal
- Warn the employee that failure to improve within the set period could have implications on pay progression
- Inform the employee of the right of appeal
- Agree with the employee and any companion on the date of the formal review meeting

10.1.7. Notes will be taken of formal meetings and a copy sent to the employee and any companion. Where a first warning is issued, the employee will be informed in writing of the matters discussed in 10.1.6 above. They will also be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale), may result in a final written warning, which could then lead to dismissal, if wholly satisfactory performance is not achieved, together with the time limit for appealing against the first written warning.

10.1.8. If the concerns relate to a lack of capability that poses a risk to the health, safety or wellbeing of children, or is likely to result in serious damage to pupils' education, the shorter timescale may be appropriate. In such cases, the senior leaders may exceptionally decide to issue a first and final written warning, if to do otherwise would expose pupils to serious risk in terms of their health, safety, wellbeing or educational prospects.

10.2. Sickness absence and the use of this procedure

10.2.1. It is important that sickness absence should not delay or avoid the use of formal capability procedures. It is in the interests of all parties to address concerns about performance without undue delay. Arrangements will normally be made to seek medical advice from an

occupational health adviser to assess the employee's health and fitness for continued employment at the Trust.

10.2.2. 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 the employee's duties or providing additional equipment or training. The Trust may consider making adjustments to this procedure in appropriate cases, e.g. moving from this procedure to procedures used by the Trust to terminate the employment of the employee on the grounds of ill health.

10.2.3. If an employee's medical condition is not serious enough to warrant consideration of termination of employment on the grounds of ill health, the occupational health adviser will normally be asked to assess whether an employee absent through sickness is fit enough to attend a meeting under this procedure. In the event that the employee is deemed not fit to attend a formal capability meeting, they may present a written submission for consideration and/or be represented by a companion in their absence.

10.3. Monitoring and review period following a formal capability meeting

10.3.1. A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. Following this monitoring and review period, the employee will be invited to a formal review meeting (see paragraph 10.4 below), unless they have been issued with a final written warning, in which case they will be invited to a decision meeting (see paragraph 10.6 below).

10.4. **Capability review meeting**

10.4.1. A capability review meeting constitutes a formal meeting and should be arranged in conjunction with OWN Trust's Staffing Policy Statement.

10.4.2. The capability review meeting will be conducted by the Headteacher.

10.4.3. The formal review meeting will follow a similar procedure to that identified for the formal capability meeting as set out in paragraph 8.1.6 above.

10.4.4. If the Chair is satisfied that the employee has made sufficient improvement, the formal capability procedure will cease, and the performance development process will re-start where the employee is subject to Performance Development as detailed above and within the Performance Development Policy.

10.4.5. In cases:

- where some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period;
- where no, or insufficient improvement has been made during the monitoring and review period, the employee will receive a final written warning.

10.4.6. Notes will be taken at the formal review meeting and a copy will be sent to the employee and any companion.

10.4.7. Where a final written warning is issued, the employee will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale), may result in dismissal and will be given information about the further monitoring and review period and the procedure and time limits for appealing against the final written warning. The date of the decision meeting will be agreed upon with the employee and any companion.

10.4.8. At this stage, rather than refer the matter to a decision meeting, consideration could be given to the employee being given a different range of duties or an alternative post. By agreement, this may include transfer to a post suited to the employee's capabilities. If this post is at a lower salary level, the substantive lower salary would apply.

10.5. Right of appeal against a formal written warning

10.5.1. The employee has a right of appeal against a decision to issue a warning. If an employee feels that a decision to issue a first and/or final written warning is wrong or unjust, they may appeal in writing against the decision.

10.5.2. An appeal hearing constitutes a formal meeting and should be arranged in conjunction with OWN Trust's Staffing Policy Statement.

10.5.3. Appeals against formal warnings should be submitted to the Headteacher. Appeals against a written warning shall be restricted to considering the reasonableness of the decision made, any relevant new evidence not previously available or any procedural irregularities.

10.5.4. An appeal against a formal warning will be heard by a panel formed in line with the Trust's Staffing Policy Statement.

10.5.5. The outcome may be to confirm the warning, reduce a final warning to a warning, or cancel the warning.

10.5.6. Pending any appeal, the employee will be expected to continue to work in accordance with targets set for the next stage of the procedure and their progress towards the achievement of these targets may be monitored during this period.

10.6. **Decision meeting**

10.6.1. A capability decision meeting constitutes a formal meeting and should be arranged in conjunction with OWN Trust's Staffing Policy Statement.

10.6.2. The meeting will be conducted by the Headteacher.

10.6.3. If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end, and the review process will re-start where the employee is subject to Performance Development as detailed above and within the Performance Development Policy.

10.6.4. If progress has been made and there is confidence that wholly satisfactory performance will be achieved by a short extension, it may be appropriate to extend the monitoring and review period rather than to dismiss. The final written warning will be extended for a short, specified assessment period.

10.6.5. If performance has remained unsatisfactory, a decision will be made that the employee will be dismissed. The employee will be informed in writing as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and whether the notice is to be served or there will be pay in lieu of notice and the right of appeal.

10.7. Right of appeal against a decision to dismiss

10.7.1. The employee has a right of appeal against a decision to dismiss.

10.7.2. An appeal hearing constitutes a formal meeting and should be arranged in conjunction with OWN Trust's Staffing Policy Statement.

10.7.3. An appeal against a dismissal should be submitted to the Governance and Compliance Manager. The appeal should set out the grounds of appeal.

10.7.4. An appeal against a dismissal will be heard by the Finance and HR Committee. The number on the appeals panel will not be less than three.

10.7.5. The outcome may be to confirm or revoke the dismissal.

10.7.6. In the event that the Appeal Committee decides not to uphold the decision to dismiss, the employee shall be informed immediately, and the notice of dismissal shall be immediately withdrawn.

10.8. Grievances arising during the procedure

10.8.1. Where an employee has a grievance against the way the senior leader has conducted the procedure, this will normally be dealt with under the appeals process set out above. However, in very exceptional circumstances, where the behaviour of the senior leader is the cause of the grievance, it may be appropriate to suspend this procedure for a short period until the grievance has been considered

11. Trade Union Officials

11.1. Although normal performance standards must apply to an employee who is a lay trade union official, no disciplinary action, beyond an informal oral warning will be taken until the circumstances of the case have been discussed with the relevant professional trade union officer.

12. Confidentiality

12.1. Our aim is 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 a matter which is subject to this capability procedure.

12.2. The employee, and anyone accompanying the employee (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure. Failure to observe confidentiality could be a reason for disciplinary action under the School's disciplinary procedure.