



The Queen Katherine School Multi Academy Trust

CAPABILITY PROCEDURE

This policy does not form part of any employee's contract of employment and we may amend it from time to time.

Committee	MAT Board
Date of adoption:	October 2020
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Document Control Sheet

The information in the table below details earlier versions of this document with a brief description of each review and how to distinguish amendments made since the previous version date (if any)

Version Number	Amended by	Purpose	Approved by Trustees (date)
1	THO	Original	October 2020

Capability Procedure

1. PROCEDURE

This procedure applies to all employees about whose performance there are serious concerns that the appraisal process has been unable to address. The Trust HR Manager will be kept informed of any pending capability issues.

This policy is compatible with the Department of Education arrangements for managing teacher performance.

It is recognised that a Headteacher/Manager may have occasion, as part of the normal day-to-day management function, to draw the attention of an employee to inadequacies in performance without having recourse to the formal procedure set out below. Such action may include the use of advice or admonition without giving rise to doubts as to the employee's capability. Good management, clear expectations and appropriate support will go a long way towards addressing weaknesses in performance. Early identification of problems through performance review will help to avoid the need for formal capability procedures. In some cases an improvement may be achieved informally with a minimum of support and attention. In others a more formal approach will be necessary.

2. MEETINGS

At least five working days' notice will be given of any formal meeting under this procedure. The notification will contain sufficient information on concerns about performance and possible consequences to enable the employee to prepare to answer the case at the meeting. It will also contain copies of any written evidence; the details of the time and place of the meeting; and will advise the employee of their right to be accompanied.

An employee must be afforded the opportunity to be accompanied by a trade union representative or work based companion at any formal review meeting, hearing or appeal. Employees are reminded that their companion will be best placed to support them given sufficient notice, and so are advised to make contact as soon as they have decided that they would like to be accompanied. If the employee's chosen companion is not available at the time proposed for the interview, meeting or hearing, and the employee proposes an alternative that is reasonable and falls within five working days of the day proposed for the interview, and other participants are available, the school should rearrange the event to the time proposed by the employee.

3. MANAGEMENT OF CAPABILITY PROCESS

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 proceedings:

Employee Level	Formal Capability Meeting	Decision Meeting	Appeal Manager (Warnings)	Appeal Manager (Dismissal)
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Headteacher	CEO	Chair of Local Governing Body	Panel of non-staff Governors	Panel of Trust Directors
Leadership Spine/School Business Manager	Headteacher	CEO	Chair of Governors of Local Governing Body	Panel of Governors including at least one Trust Director
Other Teaching Staff	Leadership Team Member	Headteacher	Chair of Governors of Local Governing Body	Governors Appeal Panel including at least one Trust Director
Other Support Staff	Person appointed by Headteacher	Headteacher	Chair of Governors of Local Governing Body	Governors Appeal Panel including at least one Trust Director

The Trust HR Manager or representative will attend and minute all formal meetings.

4. FORMAL CAPABILITY MEETING

In advance of this meeting, the employee will have received details of the concerns about their performance. The meeting allows the employee, accompanied by a work place companion or trade union representative if they wish, to respond to the 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.

The person conducting the 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 appraisal process. In such cases, the capability procedure will come to an end. The person conducting the meeting may also adjourn the meeting for example if they decide 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. The person conducting the meeting will:

- identify the professional shortcomings, for example, which of the standards expected of employees are not being met;
- 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 focused on the specific weaknesses that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made);
- explain any support that will be available to help the employee improve their performance;
- encourage the employee to engage in the process and suggest ideas which they feel may aid their improvement;
- 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 and the seriousness of the lack of capability of the employee, but in straightforward cases could be between four and ten weeks and not exceeding sixteen weeks; and
- Warn the employee formally that failure to improve within the set period could lead to a range of sanctions ranging from a first written warning, up to dismissal.

Notes will be taken of formal meetings by the Trust's HR Manager or nominated person, and a copy sent to the employee. Where a warning is issued, the employee will be informed in writing, in five working days, of the matters covered in the bullet points above and given information about the timing and handling of the review stage and the procedure and time limits for appealing against the warning.

Monitoring and review period following a formal capability meeting

A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. A mid-point review meeting should be scheduled to take place approximately half way through the review period. The mid-point review meeting will allow all concerned to assess progress and the effectiveness of support measures. The member of staff will be invited to a formal review meeting, unless they were previously issued with a final written warning, in which case they will be invited to a Decision meeting.

Formal review meeting

A review will take place at the end of the monitoring and review period, in line with the warning issued to the employee. The purpose of the review meeting is to assess the progress of improvement in performance. As with the formal capability meetings, at least 5 working days' notice will be given and the notification will give details of the time, place and the employee's right to be accompanied by a work based companion, Trade Union official or Trade Union representative. Employees are again reminded to contact their chosen companion as soon as they have decided that they would like to be accompanied.

If the person conducting the meeting is satisfied that the employee has made sufficient improvement, the capability procedure will cease and the performance management process will re-start. In other cases:

- 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 employee will receive a final written warning.

As before, notes will be taken of formal meetings and a copy sent to the employee.

Where a final 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 be given information about the handling of the further monitoring and review period and the procedure and time limits (ten working days) for appealing against the final warning.

Where the original monitoring and review period has been extended, the employee will be informed in writing of the terms of the extension (i.e. standards to be achieved and timescales). A further review meeting will be held at the end of that period.

5. DECISION MEETING

Where a final written warning has been issued, a Decision Meeting will be held at the end of the review period set at the time the final warning was given. If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end and the

appraisal process will re-start. If performance remains unsatisfactory, a decision may be made that the employee should be dismissed.

The employee will be informed in writing within three working days, of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal. In these circumstances the period of notice would be paid and there would be no requirement to work.

6. APPEAL

If an employee feels that a decision to dismiss them, or other action taken against them (such as a warning), is wrong or unjust, they may appeal to the person who chaired the meeting copying in the Trust HR Manager. All appeals must be submitted in writing within ten working days of the decision, setting out at the same time the grounds for appeal. Appeals will be heard without unreasonable delay with not less than five working days' notice being given of the date of the appeal hearing.

The same arrangements for notification and right to be accompanied by a work based companion, a trade union official, or a trade union representative will apply as with formal capability and review meetings and, as with other formal meetings, notes will be taken and a copy sent to the employee.

The appeal will be dealt with impartially and by officers who have not previously been involved in the case and, where appropriate, professional guidance will be available.

The employee will be informed in writing of the outcome of the appeal meeting as soon as possible.

The decision of the appeals panel is final and there are no further rights of appeal.

7. DOCUMENTS

Copies of all relevant documents relating to the capability case must be kept securely for at least six years. Records must be kept on the individual's personal file detailing the nature of the incapability, the employee's response or mitigation, the action taken and the reasons for it, whether an appeal was lodged, its outcome and any subsequent developments. Records held by the school (not on the employee's personal file) will include warnings that have expired and related documents as well as instances where the employee has been exonerated at either the initial hearing or any subsequent appeal. These records are to be kept confidential and retained in accordance with this procedure and the General Data Protection Regulations (GDPR) 2018.

8. CONFIDENTIALITY

The appraisal and capability processes will be treated with confidentiality. However confidentiality must be balanced with the need to quality-assure the operation and effectiveness of the appraisal system.

9. CONSISTENCY OF TREATMENT AND FAIRNESS

The Trust is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments for disabled employees.

10. GRIEVANCES

Where a member of staff raises a grievance during the capability procedure the capability procedure may be temporarily suspended in order to deal with the grievance. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.

II. SICKNESS

If long-term sickness absence appears to have been triggered by the commencement of monitoring performance at any stage of the procedure or a formal capability procedure, the case will be dealt with in accordance with the Trust's absence policy. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.