



Cheshire Academies Trust
Collaboration and Creativity

CAPABILITY POLICY AND PROCEDURE



Next review date: Spring 2022

1. Introduction

- 1.1 The aim of this policy is to establish the principles that Cheshire Academies Trust will follow in managing employees about whose performance there are serious concerns that the appraisal process has been unable to resolve
- 1.2 Capability issues are not part of the Disciplinary Procedure. However, if after careful investigation, poor performance is identified as an issue of misconduct, it may become necessary to use the Disciplinary Procedure

2. Policy

- 2.1 The Principal and the Local Governing Body (LGB) will support employees of the academy to reach the required level of performance. In the case of Principals and central Trust staff they are supported by the CEO. The CEO is supported by the Board.
- 2.2 The Capability Procedure should be followed to assist in the identification and investigation of a possible cause of incapability and where necessary in the drawing up of an action plan. The employee should fully understand the process and that if there is no improvement further action will be taken
- 2.4 A decision to dismiss someone will be taken only after a full and proper process has been followed with proper safeguards to the individual
- 2.5 Capability issues (non health related) must normally be resolved within a term
- 2.6 It is the Principal/CEO's responsibility to set appropriate performance standards for all employees. National standards for teachers and Principals, and standards set by other relevant professional organisations will form part of the standards for these groups of staff
- 2.7 It is the Principal/CEO's responsibility to ensure that employees are aware of their required performance level. Careful recruitment and selection and appraisal reviews will be used to help to clarify and quantify performance outcomes

Please note: Where the Principal/CEO have concerns about an employee's performance they must not wait until the appraisal discussion to initially raise their concerns. Performance issues should always be discussed at the earliest possible opportunity

3. Principles

- 3.1 The Trust recognises that when an employee cannot perform the duties required to an acceptable standard it does not necessarily constitute misconduct
- 3.2 The Capability Procedure should be followed where an employee is not able to perform his or her duties because they do not have the skills, knowledge, experience physical ability or aptitude they need to fully carry out their job. Mental health may also be an issue
- 3.3 There are six main principles underlying the operation of the capability procedure:
 - (a) Employees must know what is expected of them, have concerns raised as they occur and be given help, advice and the opportunity and time to improve their performance
 - (b) To enable, wherever possible, the employee with a capability problem to perform satisfactorily in the contractual job
 - (c) To confirm that the responsibility for resolving capability situations rests with the Principal/CEO's who may wish to take HR and/or Occupational Health advice
 - (d) To ensure that capability difficulties are dealt with efficiently, within agreed time periods and with clear outcomes resulting at all stages

(e) To recognise that whilst every effort will be made to help an individual with a capability problem, the academy cannot guarantee to maintain employment

(f) The procedures should be applied irrespective of the age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation of the person concerned. If the person has a health issue or a disability this will be taken into consideration, before formal capability procedures are started and at each subsequent stage

4. Scope/Application

This Policy and the associated Procedure applies to all staff who have completed their NQT Induction or probationary period as appropriate.

5. Definitions

Capability is in relation to aptitude and the inability or limited ability of someone to perform their full job description to the required standard of performance. It may be due to poor standards of work, even with training and close supervision, or low output of work – where the person can produce work to the right standard but not in the right quantity.

CAT Capability Procedure

Appraisal and Capability: Transition

- 1.1 Within the Trust any problems with an employee's performance will be identified and responded to at the earliest time within normal Appraisal arrangements and practices.
- 1.2 This procedure applies only to employees about whose performance there are serious concerns that the appraisal process has been unable to address after training and support.
- 1.2 At a final appraisal review meeting, the employee will be told by their Appraiser that their progress has not been satisfactory and that the appraisal system will no longer apply. The employee will then have up to 5 working days to consider and review their position.

Absence

- 2.1 Where application of this Procedure results in absence of the employee the advice of an Occupational Health service will be obtained immediately as to how long the absence could be expected to last.
- 2.2 The employee will be advised in writing that the performance issues which prompted the application of the Procedure will be addressed on their return to academy and that the Procedure will be applied at the point reached when the absence began.
- 2.3 The employee's absence will be managed under the academy's Managing Attendance Procedure.

Capability Meeting: Stage 1

- 3.1 The Principal/CEO will notify the employee in writing of a date for a formal capability meeting. At least five working days' notice will be given and the notification will contain sufficient information about the concerns about performance and their possible consequences to enable the employee to prepare to answer the case. 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 by a work colleague or a trade union official. A copy of this Capability Procedure will be enclosed.
- 3.2 This meeting is intended to establish the facts. It will be conducted by the Principal/CEO who may be supported by an HR Adviser from the Trust or the Trust's external HR provision. The Appraiser will attend to present the concerns which have prompted the move to formal capability.
- 3.3 The employee will have the opportunity 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.
- 3.4 The Principal/CEO will take full account of the employee's circumstances both at work and, if appropriate, outside work. In particular, s/he will be careful to explore fully the circumstances behind an apparent lack of capability, including any disability, and give the individual every opportunity to present his/her view or explanation of the situation.

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 concerns through the appraisal process. In such cases, the capability procedure will come to an end.

- 3.5 Alternatively, at the conclusion of the meeting the person conducting the meeting will instruct that an Action Plan be developed which will:
 - identify the professional/performance shortcomings, *for example which of the standards expected of teachers are not being met;*

- set out the standard of performance that will enable the employee to 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 standard has been reached*);
- list any support that will be provided to help the employee improve their performance;
- set out the timescale for improvement and explain how performance will be monitored and reviewed. The timescale will depend on the circumstances of the individual case but should be not less than half a term or equivalent and not exceed one term or equivalent;
- warn the employee formally that failure to improve within the set period could lead to dismissal. In very serious cases, this could be without a further review period.

3.6 The person who conducted the meeting will write to the employee within 5 working days confirming the details advised at 3.5.

3.7 A review period will follow the formal capability meeting. Guidance, support, monitoring and evaluation will continue during this period. Dates for review meetings with the appropriate appraiser/manager will be agreed. At the end of the period, the member of staff will be invited to a formal review meeting.

Review Meeting

4.1 The Principal/CEO will write to the employee to convene a formal Review Meeting. At least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the employee of their right to be accompanied by a work colleague or a trade union official.

4.2 The meeting will be conducted by the Principal/CEO who may be supported by an HR Adviser. If applicable, the appraiser/manager will attend to present the evidence of progress during the review period.

4.3 The employee will have the opportunity to make any relevant representations.

4.4 If the person conducting the meeting is satisfied that the employee has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start.

4.5.1 If the person conducting the meeting is satisfied that some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period but remain within the Capability Procedure. The employee will be advised of the additional progress required/ standards of performance to be met and the timescale of the further review period.

4.6 If no, or insufficient improvement has been made during the monitoring and review period, the employee will be advised that the management of their performance is now within Stage 2 of the Capability Procedure. In such cases the meeting will continue as a Stage 2 meeting.

Stage 2

5.1. The person conducting the meeting will where appropriate discuss:

- Alterations/adaptations to duties/working environment consistent with the needs of the academy and which do not change the general character of the job.
- Availability of alternative work.
- Mutual agreement to termination of contract.

5.2 At the conclusion of the meeting the person conducting the meeting will confirm the on-going professional / performance shortcomings and instruct that a further Action Plan be developed which will,

- set out the standard of performance that will enable the employee to 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 standard has been reached*);
 - list any support that will be available to help the employee improve their performance;
 - set out the timescale for improvement and/or Action Plan and explain how performance will be monitored and reviewed. The timescale will depend on the circumstances of the individual case but should be not less than 4 weeks and not exceed six weeks excluding academy closure periods;
 - warn the employee again that if (at the end of the period or at any review meeting during the period) sufficient progress has not been made then the employee may be called to a decision meeting at which it may be recommended that their employment be terminated on grounds of incapability.
- 5.3 The person who conducted the meeting will write to the employee within 5 working days confirming the details advised at 5.2.
- 5.4 A further review period will follow the formal Stage 2 meeting. Guidance, support, monitoring and evaluation will continue during this period. Dates for review meetings with the appropriate appraiser/line manager will be agreed.
- 5.5 At the end of the period, the Principal/CEO will advise the member of staff that they will be invited to a Decision Meeting. The Principal/CEO will present one of three recommendations,
- a) that an acceptable standard of performance has been reached and the Capability Procedure should come to an end
 - b) that some progress has been made and that more is likely and that Stage 2 should be extended, or
 - c) that performance remains unsatisfactory and that the employee should be dismissed.

Decision Meeting

- 6.1 Where a) or b) above applies, the employee will be called to a Decision Meeting chaired by the Principal/CEO (or Trustee in the case of the CEO) who will consider the recommendation.
- 6.2 Where a recommendation that the Capability Procedure should end is accepted, the outcome of the Decision Meeting will be confirmed by letter to the employee and appraisal will recommence
- 6.3 Where a recommendation that Stage 2 should be extended is accepted, the outcome of the Decision Meeting will be confirmed by letter to the employee giving details of the further progress required and timescale for improvement.
- 6.4 Where an acceptable level of performance has **not** been reached, the employee will be called to a Decision Meeting conducted by the Principal/CEO (or Trustee in the case of the CEO). The meeting will be conducted by the Principal/CEO unless they are the subject of the proceedings; as the Appraiser or appropriate manager does not have delegated power to dismiss. Alternatively the Decision Meeting will be conducted by a Panel of one or more governors to whom the LGB has delegated the power to take the initial decision to dismiss.
- 6.5 Where a Decision Meeting is to be convened to consider a recommendation for dismissal, the employee will be informed by letter. The letter will enclose a copy of this Procedure and advise him/her of:
- the place and time of the Meeting
 - the details of the alleged incapability
 - the right to be accompanied by a trade union official or work colleague
 - the right to call witnesses

The letter will either be handed to the employee, sent by recorded delivery or first class post. Additionally a copy may be sent electronically. Reasonable time (a minimum of ten working days) must be allowed between the receipt of the letter and the Meeting so as to allow the employee to prepare his/her case.

- 6.6 The conduct of the Decision Meeting (considering dismissal) will be as set out in Appendix 1 to this Procedure.
- 6.7 The Principal/CEO may be supported by an HR Adviser.
- 6.8 The Principal/CEO may dismiss the employee or may impose a lesser sanction.
- 6.9 The decision will be confirmed by letter, which will either be handed to the employee, sent by recorded delivery or first class post. Additionally a copy may be sent electronically.
- 6.10 In the case of a dismissal the letter will state:
- (i) the reasons for the dismissal
 - (ii) the date from which the dismissal will take effect, and
 - (iii) the employees right of appeal

In the case of alternative sanctions being agreed the letter will state:

- (i) the sanction being applied;
 - (ii) the reasons for this; and
 - (iii) the right of appeal.
- 6.11 The dismissal letter will be written on behalf of the Trust

Appeals

- 7.1 An employee has the right to appeal against any finding of and / or sanction imposed by a Decision meeting convened to consider dismissal.
- 7.2 Appeals must be made, in writing, within 10 working days of the Decision meeting and set out whether the employee is appealing the Panel's findings or the sanction imposed or both.
- 7.3 An Appeal against the Panel's findings will be conducted by way of a full re-hearing. The order of presentation will be in accordance with Appendix 1 to this Procedure, with additional provision for the trade union to present and management to respond to any grounds of appeal specific to the reasons for dismissal set out in the dismissal letter.
- 7.4 Appeals against the sanction only i.e. where the employee accepts that the allegation is upheld but believes the sanction is too harsh, will be conducted in accordance with Appendix 2.
- 7.5 At any appeal the employee has the right, if they so wish, to be accompanied by a trade union official or work colleague.
- 7.6 The Appeal Panel will either:
- (i) Confirm the decision to dismiss the employee; or
 - (ii) Withdraw the decision to dismiss the employee; or
 - (iii) Vary the decision and take alternative action(s) in accordance with the Procedure.

7.7 The decision of the Appeal Group will be final and binding.

7.8 If an appeal reverses the decision to dismiss the termination notice will be rescinded

Timescales

8.1 Where the capability procedure is applied, action over both Stages will normally be taken over no more than one term or the equivalent.

9. Use of the Grievance Procedure

9.1 An employee who has been advised at an appraisal meeting that their performance is to be managed under the Capability Procedure may only, from that point, raise concerns under the Grievance Procedure about matters unrelated to their performance or its management.

9.2 Any concerns/grievances an employee has about the application or progress of the Capability Procedure should be raised within that procedure. While consideration may be given to the suspension of capability proceedings to address these concerns, it is generally expected that they will be dealt with as part of or in parallel to the performance monitoring and review elements of the procedure and not lead to an extension of the timescale for improvement.

9.3 If an employee has a grievance about an unrelated matter, this may be pursued simultaneously to the Capability Procedure, but arrangements under this procedure e.g. dates for meetings will take precedence over those relating to that grievance. Every effort will be made to hear an unrelated grievance before a Decision meeting under this procedure is held.

Equality Act 2012

In accordance with its Public Sector Equality Duty, the Board of Trustees of Cheshire Academies Trust has given due regard to equality considerations in adopting this policy/procedure and is satisfied that its application will not impact adversely on members of staff who have a protected characteristic (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation) within the meaning of the Equality Act 2010.

APPENDIX 1

1. CONDUCT OF A DECISION MEETING OR APPEAL AGAINST DECISION

The procedure to be adopted at a Decision meeting/appeal will normally be:

1. The Meeting/Appeal will be conducted by either the Principal/CEO as appropriate.
2. The Principal/CEO conducting the Meeting/Appeal may be advised/supported by an HR Adviser.
3. The Principal/CEO conducting the Meeting/Appeal will satisfy himself/herself/themselves that the employee understands the purpose of the Meeting/Appeal.
4. The management case will be presented normally by the Appraiser or line manager who may also be supported by an HR Adviser, and who will describe the case. In the case of an Appeal, the management case will be presented by the Principal/CEO. The presentation may include witnesses, written statements or other documents where these are considered necessary.
5. The employee and/or representative will be given the opportunity to question the presenting officer as well as any witnesses who may have given evidence.
6. The employee or his/her representative will then be invited to respond to the case as presented. The employee may also produce witnesses, written statements or other documents in support of his/her case. (Where it is the intention to submit written Statements of Case these must be exchanged by both sides at least five working days prior to the hearing.).

Where witnesses are Trust employees they should be given reasonable time off with pay to attend.
7. The presenting officer will be given the opportunity to question the employee, his/her representative and any witnesses called in his/her defence.
8. At any stage during the Meeting/Appeal the Principal/CEO conducting the hearing and any adviser(s) may ask questions of the employee, the presenting officer or such other persons, as they may consider appropriate in order to ascertain the facts and arguments.
9. In the case of appeals, the employee may present additional arguments relating specifically to the reasons for dismissal set out in the dismissal letter. In such cases, the management representative will be given an opportunity to respond prior to closing statements being invited.
9. The presenting officer will then be invited to make a closing statement not introducing any new material.
10. Finally the employee or his/her representative will be given the opportunity to make a closing statement also without introducing any new material.
11. Both parties will withdraw to allow the person/group conducting the Meeting/Appeal to review and consider the evidence in conjunction with any advisers.
12. The Principal or Panel will then recall both parties to inform them of his/her/their decision. The decision should normally be announced personally to the parties as soon as it is possible on the day of the Meeting/Appeal. If it is not possible to make a decision immediately the parties should be informed of this. In any event a decision must be made and communicated to the employee within five working days of the hearing. The decision should be confirmed in writing and delivered to the employee either by hand or recorded delivery and first class post with a copy to the trade union representative or work colleague and the presenting officer. An additional copy may be sent electronically.

APPENDIX 2

2. APPEALS AGAINST THE SANCTION ONLY

1. The Appeal will be conducted by either the Principal/CEO as appropriate.
2. The Principal/CEO conducting the Appeal may be advised/supported by an HR Adviser.
3. The Principal/CEO conducting the Appeal will satisfy himself/herself/themselves that the all those present understand the purpose of the hearing which is to consider arguments as to the severity of the sanction imposed.
4. No witnesses will attend for either side.
5. The employee or his/her representative will be invited to present their case.
6. The management representative will be given the opportunity to question the employee or his/her representative.
7. The Principal/CEO, who may be supported by an HR Adviser, will be invited to respond to the employees case as presented.
8. The employee and/or representative will be given the opportunity to question the management representative.
9. At any stage during the appeal any member of the Panel conducting the hearing and any adviser(s) may ask questions of the employee or the management representative, as they may consider appropriate in order to ascertain the facts and arguments.
10. The employee or their representative will then be invited to make a closing statement not introducing any new material.
11. Finally the management representative will be given the opportunity to make a closing statement also without introducing any new material.
12. Both parties will withdraw to allow the Principal/CEO to review and consider the arguments in conjunction with any advisers.
13. The Principal/CEO will then recall both parties to inform them of the decision. The decision should normally be announced personally to the parties as soon as it is possible on the day of the hearing. If it is not possible to make a decision immediately the parties should be informed of this. In any event a decision must be made and communicated to the employee within five working days of the hearing. The decision should be confirmed in writing and delivered to the employee either by hand or recorded delivery and first class post with a copy to the trade union representative or work colleague and the management representative.