

# People Directorate

## Managing Performance Concerns and Capability Procedure



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### Revision Log (last 5 changes)

| Date     | Version No | Brief detail of change   |
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| 26.08.25 | 2          | <p><b>Additions</b></p> <ul style="list-style-type: none"> <li>• TUPE transferees: apply a no-detriment principle to transfer policy entitlements for performance or capability concerns.</li> <li>• Clause 1.9.3: formal written record of performance-related discussions shared within 5 working days; employee can append comments; record placed on file (see Appendix 2 template).</li> </ul> <p><b>Amendments</b></p> <ul style="list-style-type: none"> <li>• Performance-concern ownership (clause 1.3): may be raised by the reviewer, SMT member (TSFE), Headteacher or Principal; reviewer role can be re-delegated with staff agreement.</li> <li>• Disability adjustments (clause 1.7): reasonable workplace adjustments per the Equality Act 2010.</li> <li>• Expectation clarity (clause 1.8.3): underperformance defined by failure to meet formally communicated standards.</li> <li>• Structured support (clause 1.9.1): a 12-week (minimum) improvement plan meeting covering concerns, required standards, support, monitoring frequency and pay-progression implications.</li> <li>• HR &amp; senior sign-off: procedural steps to be undertaken in consultation with HR and Senior Leadership (Headteacher/SMT).</li> <li>• Health-related performance (clause 2.3): managed via the Trust Absence Management policy; capability may be paused or continue subject to Occupational Health input.</li> <li>• Capability invocation (clause 2.4): requires documented informal</li> </ul> |

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|  |  | <p>support evidence — or Headteacher/Principal/SMT approval in exceptional cases — before moving to formal capability.</p> <ul style="list-style-type: none"><li>• Grievance alignment (clause 2.10): grievances arising under this procedure follow the hearing and appeal process; capability can be paused during grievance.</li><li>• Warning &amp; review periods: review windows set at 6–12 weeks with mandatory interim check-ins; managers may escalate stages early if progress is insufficient.</li><li>• Appeals process: employees must clearly state grounds and may submit additional evidence before the appeal hearing.</li><li>• Removals</li><li>• The requirement for “engagement of the Employee in the programme.”</li><li>• Handling non-cooperation under capability via the Disciplinary Procedure has been deleted.</li></ul> |
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## Managing Performance Concerns and Capability Procedure

### Purpose

This document sets out the framework for a clear and consistent approach to managing performance concerns, including formal capability procedures, for all Trust staff including the Headteacher/Principal. Managing performance concerns through structured management support mechanisms, supporting the development of an employee's performance within the context of the Academy's plan for improving educational provision and performance, and the standards expected of all staff. It also sets out the arrangements that will apply when structured management support is not successful or where a performance concern is so serious, it warrants formal capability procedures to be initiated.

### Application

The Capability Procedure is for all Employees working within an Academy managed by the Trust. In most circumstances Early Career Teachers (ECT) will be supported through the Early Career Framework (ECF) induction process, which is detailed in the Trust's ECF induction policy, which can be found on the Trust website. However, the induction tutor or headteacher may determine that it is appropriate to move straight to the Capability Procedure when the ECT's performance is putting the health and safety of pupils and/or staff at risk or the ECT's performance is putting the education of pupils in serious jeopardy.

This policy will be applied and monitored in accordance with the Trust's Equality Policy which can be found on the Trust's website to ensure that no groups or individuals with protected characteristics are unintentionally disadvantaged by the policy or practice. For those employees who have transferred under TUPE Regulations 2006 the principle of no detriment will apply in respect of transferred policy entitlements in respect of managing performance concerns or capability procedure.

### Managing Performance Concerns

1.1 We will have honest, open conversations about staff performance to encourage discussion, accountability and ultimately improvement. We know that the majority of staff deliver their job well for the majority of the time, though sometimes performance may be viewed as below what's expected and support is needed to help return to and sustain the required level of performance to meet the standards or job description for their role.

1.2 Concerns about how an employee is performing in their role will be discussed at the time they are identified and not left to the next Professional Growth face-to-face meeting. This will help the employee to recognise issues at an earlier stage, put plans in place to address these and seek appropriate support. Appendix 1 gives an example template that can be used.

1.3 Performance concerns may be identified by the reviewer, SMT Member for TSFE staff, Headteacher or Principal. Where a concern is identified that is likely to require structured managerial support, the Headteacher/Principal or Senior Manager may re-delegate the reviewer role to a senior manager with the agreement of the member of staff or undertake the role themselves. A reviewer must notify the Headteacher/Principal where they identify performance concerns and confirm how the Headteacher/Principal intends to proceed, or



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undertake the role themselves. A reviewer must notify the Headteacher/Principal where they identify performance concerns and confirm how the Headteacher/Principal intends to proceed.

1.4 Concerns about the performance of the Headteacher/Principal may be identified by an individual or combination of sources. Where a concern is identified via the professional growth conversation (PGC), the Chair of the PGC must notify the Chair of Governors. Where the concern is notified to the Chair of Governors, the Chair of Governors must notify the CEO. In both circumstances, the Chair of the PGC will review the evidence available with the CEO to determine how to proceed.

1.5 Where it is necessary to take forward a performance concern in respect of the Headteacher / Principal, this will be undertaken by member of the Executive Team (usually a Director of Education or the Deputy CEO) or CEO. Performance concerns in respect of the CEO will be addressed by the Chair of the Board and or an appropriate Board member. An appointed external advisor will be considered if appropriate.

1.6 When raising performance concerns with an individual, the line manager will take into account any factors which may be having an impact on the Employee's ability to perform their duties. However, such factors in themselves do not negate the need to address performance concerns.

1.7 Where issues are identified relating to the performance of an Employee who is considered to have a disability (as defined by the Equality Act 2010) reasonable adjustments will be made to support the Employee in the workplace.

1.8 Whilst there are no formal rights of representation at this stage, the Trust encourages Employees to contact their Professional Association or Trade Union for advice. In support of staff wellbeing, the Trust allows employees to be accompanied at SMS (section 1.9.1) and formal meetings and will agree to postpone meetings for up to 5 working days to facilitate this.

### Identifying when performance is deemed to be below accepted standards

The line manager may consider a member of staff to be underperforming where:

- The standard of performance falls below that which is required to meet or make progress towards an agreed objective; and/or
- The standard of performance falls below that which is required to meet the expectations of a particular role in their Academy or Central function.
- the performance falls below the relevant standards/accountabilities for the role; and/or
- the overall Academy or Central Services Department performance falls below that which is required (in the case of the Headteacher/Principal / SMT Member).



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1.8.2 If the line manager has evidence to show that an Employee is not currently meeting the expectations of their role, these concerns will be addressed with the individual informally and promptly.

1.8.3 Where the Academy has formally communicated specific expectations, failure to meet these expectations may be considered underperformance by the employee's line manager and addressed through the appropriate performance management procedures.

### Determining possible initial courses of action

Depending on the severity of the underperformance, the line manager will need to take a view as to the proportionate response. This may include:

- an early conversation to confirm the expected standards of the role
- coaching/mentoring support
- structured managerial support
- possible application of formal action (section 2: Capability Procedure) in exceptional circumstances or concerns as detailed in section 1.10, bypassing structured managerial support

An early conversation and coaching/mentoring support will only be used on their own to support low level / early-stage concerns where these may be an effective measure. Where the concern is more significant or continues, structured managerial support will normally be put in place.

### 1.9.1 Structured managerial support

Where a performance concern has been identified that requires additional support, a meeting will be held between the line manager and the Employee. The purpose of the meeting will be to identify what steps will be taken to assist the Employee to improve their performance and move to the required standard. The discussion will include:

- what area(s) of performance is/are of concern
- what improvement is required/the standard the Employee needs to meet
- the timescales in which this is to be achieved (these will vary depending on issues identified and taking into consideration planned holidays, Long-term or short-term sickness which may pause the process) which should be no less than 12 weeks
- agreeing with the support that will be provided to assist the Employee
- agreeing how frequently the performance/progress will be monitored and reviewed
- the seriousness of the issue and potential consequences of improvement not being achieved, including potential impact on pay progression.

1.9.2 The Employee will be invited to attend a meeting with their Professional Association representative to provide their point of view on the shortfall in performance and whether they believe there is an underlying reason.



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The Employee will also be asked to identify what support they feel they need in order to achieve the required improvement, and the line manager will indicate what support they intend to put in place.

1.9.3 The key outcomes of the discussion will be recorded in writing and shared with the individual. The employee will be given the opportunity to add their comment. The written record of the discussion will be placed on the individual's personal file and a copy given to the Employee within 5 working days. See Appendix 2 for template that can be used.

1.9.4 Review meetings will be held to review progress towards targets set and the appropriateness of the support being given. At these meetings, any improvements will be communicated to the individual as well as the remaining gap between their current level of performance and the expectations set. The outcome of these meetings will also be recorded in writing and a copy shared with the individual within 5 working days.

1.9.5 The agreed timescales of review periods may vary depending on what is reasonable in the circumstances of the performance concern would usually be 12 weeks.

1.9.6 The purpose of any structured managerial support programme is to assist the Employee to achieve the necessary improvement within the agreed timescales. Where this is successful the line manager will confirm this at the relevant review meeting and record this in writing to the Employee. The Employee will be informed that the improvement in their performance must be sustained.

1.9.7 If the Employee is not making the necessary progress towards the required improvement, the Employee will be informed that failure to achieve this may lead to the Capability Procedure being applied (see Section 2) and that there may be an impact on their pay progression.

The line manager will make a judgement about when to communicate this given that it may not be appropriate to do so during the first discussion. However, if a move to the Capability Procedure is a likely outcome, the potential for this must be communicated to the members of staff in good time. It must be recorded in writing that the Employee has been informed of the potential consequences at a meeting should their performance not meet the required standard. If the necessary improvement is not achieved within the agreed timescales, the line manager, with the Head Teacher/Principal/SMT Leader agreement, will need to consider use of the Capability Procedure.

1.9.8 Where the Employee has initially made the required improvement, they will be advised that if they do not maintain consistent, independent performance over a six-month period, the line manager will need to consider re-entering the Capability Procedure at the appropriate stage.

### 1.10 [By-passing structured managerial support](#)

In most circumstances a structured managerial support programme will be put in place prior to the Capability Procedure being used. However, in exceptional circumstances the line manager may determine that it is appropriate to move straight to the Capability Procedure, this should be in consultation with HR and the Headteacher. Exceptional circumstances include:



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- the Employee's performance is putting the health and safety of pupils and/or staff at risk
- the Employee's performance is putting the education of pupils in serious jeopardy
- the Employee's performance has not been sustained independently for 6 months at an accepted level following an earlier managerial support programme.

### 1.10.1 [Transition to the Capability Procedure](#)

The line manager may consider a transition to the Capability Procedure with the Headteacher/Principal/SMT Leader's agreement (see section 2) in cases outlined in 1.9 above or on the exhaustion of the structured management support stage. The line manager will have specific regards to:

- the nature and severity of the underperformance
- the impact on pupils, customers and colleagues both in the short and longer term
- the likely and required timescale for improvements to be made

1.10.2 In a typical case, if a managerial support programme has been in place and the issues have not resolved after a period of time, usually 12 working weeks, then it would be appropriate to consider moving onto the Capability Procedure. However, when determining how long to wait before moving onto the Capability Procedure, the line manager will give consideration to the circumstances of the case, in particular the factors listed under paragraph 1.9.1 above. In such circumstances where the line manager determines a need to consider the application of the Capability Procedure, the Employee will be invited to attend a meeting at which such a consideration will be undertaken. The individual will be given the opportunity to be accompanied at the meeting by a Professional Association/Trade Union Representative or work colleague and be provided with a copy of the Capability Procedure in advance. The meeting will be arranged in accordance with Section 4 of the Capability Procedure (Stage 1 – Formal Meeting).

1.10.3 At this meeting, depending on the level of concern, the responses of the Employee, the progress so far, and whether the line manager feels improvement is likely to be seen in the necessary time frame, the line manager will decide either to continue to offer a further period of managerial support or to confirm that the Employee will now be moved onto the Capability Procedure.

1.10.4 Should the Capability Procedure commence, further activity under the Professional Growth Process will be suspended.

## 2 [Capability Procedure](#)

### 2.1 [Principles](#)

2.1 This procedure will apply in circumstances where poor performance is assessed to be as a result of an employee's lack of skill, ability, knowledge, experience or aptitude. Where poor work performance is assessed to be due to a deliberate or willful failure to fulfil the duties of



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an employee's role and/or a deliberate lack of care, the matter may be dealt with under the Trust's Disciplinary Procedure as this is a conduct concern.

2.2 Poor performance due to health problems and/or sickness absences will normally be dealt with via the Trust Absence Management policy which can be found on the Trust Website.

In the event of long-term sickness absence, the Capability Procedure may be postponed until the employee has returned to work. This is likely to lead to a referral to Occupational Health in order to assess the Employee's fitness for work and offer appropriate support.

2.3 Prior to the implementation of this procedure, the line manager will need to show that, through the performance review process, reasonable efforts have been made to identify any performance concerns, discuss them with the Employee and, as appropriate, provide support designed to facilitate improvement. The capability procedure will not be invoked unless evidence of informal support by an agreed plan is provided, or under exceptional circumstances it is determined by the line manager in the agreement of the Headteacher/Principal/SMT Leader that it is appropriate to move straight to Capability (Section 1.10)

2.4 This procedure aims, through advice and support, to improve to an acceptable level, as set by the Academy, the performance of an Employee who is causing concern. Such advice and support may be provided:

- from within the Academy
- through accessing expertise in another Academy
- via the local authority's advisory services
- from other expert sources external to the Academy
- through training courses or events.

2.5 The stages specified in this document must be dealt with on a professional and confidential basis. Governors will be notified in the event that the formal Capability Procedure is applied to a member of staff, but will not be provided with any other detail, as this may prejudice governors' involvement in a later stage if recourse to that stage eventually becomes necessary.

2.6 Employees are encouraged to be accompanied by a professional association or trade union representative or by a work colleague under any stage of the Capability Procedure and to seek advice at the earliest opportunity where they are subject to formal action. The companion is allowed to make representations on behalf of the Employee, submit papers, ask questions and address a meeting on behalf of the Employee but is not allowed to answer questions on behalf of the Employee. It is the Employee's responsibility to arrange their own companion and advise management of this. If the Employee, or their companion, is unable, for good reason, to attend a meeting, a postponement of up to 5 working days of the original meeting will be agreed.

2.7 When the Capability Procedure has commenced, the Employee will be provided with a copy of the procedure.



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2.8 All targets and support and review meetings will be recorded during the capability process.

2.9 The Employee will not normally be permitted to raise a grievance related to any action taken, or contemplated, under this procedure. Such grievances will normally be managed through a separate process. The capability process may be paused while the grievance procedure takes place.

2.10 The Employee will have the right of appeal against any formal action taken against them in accordance with section 9 of this document.

2.11 The Academy will have the right to request that an officer from the Trust's HR advisors attend any meetings under Stages 1 or 2 of the Capability procedure, in order to provide support to line manager. The Trust's HR advisors will have the right to attend a meeting held under Stage 3 of the Capability Procedure.

2.12 In the interests of fairness, both parties are expected to provide details of any significant issues and relevant papers in advance of meetings arranged under the formal procedure. Management documents will be supplied with the letter inviting the Employee to the formal meeting 5 days in advance. The Employee, or their representative/colleague, must submit their information to arrive at least 2 working days before the meeting.

2.13 Responsibility for decision-making within this procedure rests with the Headteacher/Principal/Senior Manager/PGC. If the governing body has delegated to the Headteacher/Principal the power to dismiss, the Headteacher/Principal will not normally be able to fulfil that role where they have had involvement in the earlier stages of the procedure.

2.14 Where this procedure is used in relation to Headteacher/Principal's poor performance, the PGC will undertake this role. In such cases, an additional professional adviser from the Academy's Academy Improvement provider will be present, at any stage, to provide governors with professional advice.

2.15 The time periods in this procedure will also apply to part-time Employees.

2.16 A first formal warning given as part of the application of this procedure will lapse at the point when the line manager decides that an acceptable level of performance has been reached. If performance concerns return within a time period, which will usually be 6 months, from the date of such a decision, the line manager, following consultation with the Trust's HR advisors, may re-enter the procedure at the appropriate point in Stage 1.

2.17 Where a final warning has been issued, this will lapse at the point when the line manager decides that an acceptable level of performance has been reached. If performance concerns return within a period of 12 months from the date of issue, the line manager, following consultation with the Trust's HR advisor, may re-enter the procedure at the appropriate point in Stage 2 at any time during this period.

2.18 Action involving use of a formal written warning and beyond will not be taken in respect of an accredited representative of a Trade Union unless the Headteacher/Principal or the Trusts HR advisors (as appropriate) has informed the relevant full-time official of the action that is being contemplated.



### 3 Stages of the Procedure

There are three stages in the Capability Procedure, as follows:

- Stage 1 - Formal Meeting
- Stage 2 – Formal Meeting
- Stage 3 – Headteacher/Principal/Exec/Governors' Committee hearing

3.1 At every stage of the procedure the Employee will be advised of the nature of the concern, be given an opportunity to provide their view, and have the right to be accompanied.

### 4 Stage 1 - Formal Meeting

#### 4.1 [Invitation to a Stage 1 Formal Meeting](#)

4.1.1 The line manager will write to the Employee to invite them to a Stage 1 Formal Meeting. The invitation letter will:

- inform the Employee of the stage of the procedure being followed
- provide the Employee with a minimum of 10 working days' notice of the meeting
- inform the Employee of the right to be accompanied at the meeting
- inform the Employee of the requirement to confirm before the meeting whether they intend to be accompanied at the meeting, and, if so, by whom
- inform the Employee that, if they wish to refer to any written information at the meeting, this must be submitted to arrive 3 working days before the meeting
- explain that if the Employee needs special support or assistance during the meeting, they should notify the line manager in advance of the meeting
- remind the Employee of their access to the Trust's Employee support line service
- enclose a copy of the Capability Procedure (if they have not already been provided with a copy) and all written information the line manager wishes to rely upon during the meeting.

#### 4.2 [Conduct of the Stage 1 Formal Meeting](#)

4.2.1 The Headteacher/ SMT Leader / Line manager will:

- Clearly set out the nature of the performance concerns, discuss the measures put in place during any period of structured managerial support and explain why progression to the Capability Procedure may be required
- refer to any documents or evidence (for example, evidence of support provided, monitoring and training records and examples of the Employee's work) and clarify the requirements of the Employee's role and the standards expected
- provide the Employee with an opportunity to discuss any relevant issues including any mitigation.



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- consider all the facts and, if necessary, adjourn the meeting to consider these further before making a decision about whether the Employee will move onto the Capability Procedure
- define success criteria and the evidence that will be used to assess whether or not the necessary improvement has been made
- agree the nature and frequency of any support to be provided, and of the monitoring process, and the dates of interim progress reports and formal reviews (noting section 9).

### 4.3 [Outcomes of the Stage 1 Formal Meeting](#)

#### 4.3.1 Possible outcomes include:

- No case to answer and formal monitoring ceases
- No formal action is required; however, support will be provided and performance monitoring will continue under Structured Management Support
- a Formal Warning is issued.

An Employee issued with a warning will be told the consequences of further performance concerns or failure to improve within the set review period. The length of the review period will depend on the circumstances of the individual case but in most cases will be between 6 - 12 weeks. Progress will be formally reviewed at the end of this period; however interim reviews will also be held to assess progress (noting section 9).

4.3.2 The outcome of the meeting will be confirmed in writing to the Employee. A copy of this letter will be placed on the Employee's personnel file within 5 working days.

## 5 Stage 2 - Formal Meeting

### 5.1 [Invitation to a Stage 2 Formal Meeting](#)

The line manager will write to the Employee to invite them to a Stage 2 Formal Meeting. The invitation letter will be in accordance with paragraph 4.1.1.

### 5.2 [Conduct of the Stage 2 Formal Meeting](#)

#### 5.2.1 The line manager will:

- clearly set out the nature of the performance concerns, discuss the measures put in place during any period of structured managerial support and explain why progression to the next stage of the Procedure may be required
- refer to any documents or evidence (for example, evidence of support provided, monitoring and training records and examples of the Employee's work) and clarify the requirements of the Employee's role and the standards expected
- provide the Employee with an opportunity to discuss any relevant issues including any mitigation



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- consider all the facts and, if necessary, adjourn the meeting to consider this further before making a decision about whether the next formal stage will be commenced or the current stage extended
- define success criteria and the evidence that will be used to assess whether or not the necessary improvement has been made
- define the nature and frequency of any support to be provided, and of the monitoring process, and the dates of interim progress reports and formal reviews.

### 5.3 [Outcomes of the Stage 2 Formal Meeting](#)

#### 5.3.1 Possible outcomes include:

- no further action, in which case the Capability Procedure will cease (see section 7)
- the Formal Warning remains in place for a further specified period of time under Stage 1
- A Final Warning is given.

The Employee will be told the consequences of further poor performance or failure to improve within the set review period (as defined in section 5.4 and 6, below). In most cases, a review period will be set for 6 - 12 weeks.

The outcome of the meeting will be confirmed in writing to the Employee. A copy of this letter will be placed on the Employee's personal file.

### 5.4 [Stage 2 Final Review Meeting](#)

5.4.1 At the end of the review period in Stage 2, the Employee will be invited to a Final Review Meeting. The invitation letter will be in accordance with paragraph 4.1.1. The conduct of the meeting will be in accordance with paragraph 5.2.

#### 5.4.2 Possible outcomes include:

- a decision to refer the matter to a Headteacher/Principal/Governors' Committee Hearing to consider dismissal on the grounds of Capability
- the Final Warning remains in place for a further specified period of time; usually no longer than 6 months
- no further action, in which case the Capability Procedure will cease (see section 7).

5.4.3 The Headteacher/Principal/Chair of the PGC (in the case of a Headteacher/Principal) will inform the Chair of the Governing Body and the Trusts HR advisors (if not already involved) of the outcome of the Stage 2 Final Review Meeting.

5.4.4 The outcome of the meeting will be confirmed in writing to the Employee and a copy placed on the Employee's file within 5 working days.

### 5.5 [Consideration of alternative options](#)

Before any meeting takes place under Stage 4 of this procedure a member from the Trusts HR advisors will meet with the Employee and the line manager separately to examine any available alternatives which would obviate the need for the application of Stage 3 or beyond.



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This will include consideration of whether or not it is feasible to make any offer of alternative employment to the Employee.

Such meeting will take place with 5 days' notice, and the employee can request to have the support of representation.

### 6 Stage 3 – Headteacher/Principal/Governors' Committee Hearing

#### 6.1 [Invitation to a Stage 3 Hearing](#)

6.1.1 The line manager will write to the Employee to invite them to a Stage 3 Hearing. The invitation letter will be in accordance with paragraph 4.1.1, and the Employee must be advised that dismissal is a potential outcome. The Employee must be advised of their right to be accompanied at the Hearing in accordance with paragraph 2.7

#### 6.2 [Conduct of a Stage 3 Hearing](#)

6.2.1 Where the Headteacher/Principal has formally delegated powers of dismissal and has not had substantial involvement in Stages 1 and/or 2 of the procedure, the Headteacher/Principal may hear the matter. Where this is not the case, the matter will be heard by the Governors' Committee.

6.2.2 In the case of the Headteacher/Principal, the Chair of the PGC will request the CEO to present the management case. The Chair of the PGC will normally be called as a witness.

#### 6.3 [Outcomes of the Stage 3 Hearing](#)

6.3.1 Possible outcomes include:

- no further action, in which case the Capability Procedure will cease (see section 7)
- the previous Final Warning should remain in place for further specified period of time; usually no longer than 12 months. (in which case the required improvement in performance will be identified as well as the support that will be provided to help the Employee achieve this and the period of time in which the necessary improvement must be made)
- the Employee is dismissed on grounds of capability with the appropriate contractual notice.

6.3.2 The outcome of the meeting will be confirmed by writing to the Employee. If the decision is to dismiss the Employee, the letter will:

- specify the reason for the decision to dismiss
- confirm that the dismissal will take place with notice
- confirm that the Employee has the right to appeal against the decision, and the mechanism for doing so.

### 7 Improvement in performance achieved

7.1 If the Employee's performance improves as required, the line manager will meet the Employee to tell them this. This will be confirmed in writing within 5 working days to the

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Employee and the letter will be placed on the Employee's file.

The Capability Procedure will cease at this point and Professional Growth will re-start. If the Employee was at Stage 1 of the Capability procedure, their improvement in performance will need to be sustained for at least 6 months, and at Stage 2 the improvement would need to be sustained for at least 6 months. If the Employee's performance declines during this period of time, the line manager will have the option to re-enter the procedure at the appropriate point.

### 8 Failure to make progress during a review period

The review periods set at each stage of the Procedure are the maximum number of weeks in which an Employee must make the necessary improvements in performance. If, at any point during that period, especially midway or later – there is clear, documented evidence of a serious issue, insufficient progress, or a low likelihood of meeting the improvement targets, the line manager may, at their discretion and with appropriate documentation, advance the employee to the next stage of the procedure before the review period concludes.

### 9 Right of Appeal

9.1 An Employee may appeal against any warning issued to them through the Capability Procedure and/or against a decision to dismiss them. The conduct of the meeting will be in accordance with the Procedure for Headteacher/Principal and Governors' Committee Hearings.

The Employee, or their companion, must lodge an appeal in writing to the Headteacher/Principal/Senior Manager within 10 working days of receipt of the letter confirming the decision they are appealing against.

The Employee must set out their grounds for appeal and may submit additional evidence before the appeal hearing.

### 10 Requirement for Academies to pass on information about a teacher's capability to a new employer

10.1 The Academy Staffing (England) (Amendment) Regulations 2012 require maintained Academies to pass on information to a prospective employer about any teacher or Headteacher/Principal who has been on the formal Capability Procedure in the last two years.

Specifically, they will need to provide details of the duration of capability and an explanation of the outcome. Whilst the Regulations do not apply to Academies, Academies can also ask for the information as part of their recruitment processes.

### 11 Support

11.1 All employees have access to the Trust Wellbeing portal at <https://www.tsatrust.org.uk/about/thinking/you/>, password: Th1nk1ngYOU, which offers unlimited access to information, advice and emotional support.



## Managing Performance Concerns and Capability Procedure

Employees can also access an external wellbeing service at [www.my-eap.com/login](http://www.my-eap.com/login), with username: TSATwell.

11.2 Employees can access the 24 hour a day 365 days a year counselling support phone line on 0800 1116 387. Via this hotline employees can be assessed for access to 4 face to face counselling session. The Employee support line is a confidential counselling and support service provided by trained, experienced counsellors, providing telephone and face-to-face counselling

11.3 Employees can also seek advice and support from their professional association or trade union.

### Equality Statement and Assessment

We are committed to being an inclusive employer enabling all staff to feel a sense of belonging. We commit to ensuring our policies are inclusive by nature, are of benefit, accessible and understood by all staff. As a minimum we ensure our policies and practices comply with the Equality Act 2010, but we are committed to go beyond our minimum requirement of equality legislation. Our policies aim to reduce and remove inequalities and barriers and create opportunities to maximise positive impacts on our staff, fostering greater social cohesion and greater participation in public life. Through our actions we recognise, appreciate and value differences treating everyone fairly and seeking to embed a culture of equality, diversity and inclusion across our Trust which delivers the best outcomes for the diverse society in which and for whom we work. We are committed to undertaking an equality impact assessment on all relevant policies. The outcomes of this policy will be monitored in line with equalities legislation and shared with the Trade Unions.

### Appendix 1:

Process flow chart/map of key steps

### Appendix 2:

Related checklist to support implementation and monitoring



### Appendix 1: Record of Performance Concerns

(NB. This document is used to record informal performance concerns and should be stored on an employee's personnel record)

|  |
|--|
| Line Manager:  |
| Employee:  |
| Date of Meeting:   |
| Brief description of concern(s):   |
| We discussed:  |
| We agreed to (with timescales):<br>(Examples would include coaching/mentoring, CPD, observation of good practice, visit to another Academy etc.) |
| We will meet again to review on (within 12 weeks):   |



### Appendix 2: Structured Managerial Support

(NB. This record should be stored on an employee's personnel record)

|  |
|--|
| SLT Line Manager   |
| Line Manager:  |
| Employee:  |
| Colleague or Professional Association Rep:                                   |
| Date of Meeting:   |
| Brief description of concern(s):   |
| We discussed:  |
| We agreed the following action plan:<br>(Please see over for detailed plan.) |
| We will meet again to review on:   |

# People Directorate

## Managing Performance Concerns and Capability Procedure



THINKING  
personnel

| Agreed Action Plan |                           |          |                  |
|--------------------|---------------------------|----------|------------------|
| What:              | Who: (to include support) | When by: | Agreed outcomes: |
|                    |                           |          |                  |