



Diocese of Norwich  
Education and  
Academies Trust

# Unity Federation of Church of England Academies

## Policy and Procedures for Dealing with Capability of All Academy Staff

In the development of this policy consideration has been given to the impact on protected characteristics under the Equality Act and the work life balance of employees.

<b>Policy Type:</b>	<b>Trust Core Policy</b>
<b>Approved By:</b>	<b>DNEAT Board of Trustees</b>
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<b>Person Responsible:</b>	<b>Academies Executive Officer</b>

*Clive G. Wyke*

30<sup>th</sup> August 2017 (Chair of Governors)

## **Roles and responsibilities**

The Diocese of Norwich Education and Academies Trust are accountable for all policies across its Academies. All policies whether relating to an individual academy or the whole Trust will be written and implemented in line with our ethos and values as articulated in our prospectus. We are committed to the provision of high quality education in the context of the Christian values of service, thankfulness and humility where individuals are valued, aspirations are high, hope is nurtured and talents released.

A Scheme of Delegation for each academy sets out the responsibilities of the Local Governing Body and Principal / Headteacher. The Principal / Headteacher of each academy are responsible for the implementation of all policies of the Academy Trust.

All employees of the Academy Trust are subject to the Trust's policies.

### **1. Purpose**

Our Academy aims to deliver high quality teaching and learning for the benefit of all our pupils. In order to achieve this aim, we need to engage the talents, commitment, skills and energies of all members of the academy community. The Academy values its employees and recognises their competence, effectiveness and ability to perform to expected standards. This policy will apply where, for reasons other than ill health, the performance of a member of staff falls below an acceptable standard over a sustained period.

This procedure provides a recognised process for dealing with capability (work performance) issues, i.e. where an employee's skills, ability and/or knowledge do not meet those required to carry out his/her job to the expected standard. Capability issues will include cases where a performance problem may have existed for some time or has arisen due to changing job content or individual personal factors.

The capability policy and procedures are separate from the disciplinary procedure which deals with conduct, and are designed to deal with employees who are unable to perform to the required standards rather than those who choose not to do so, i.e. if a manager believes that the poor performance is due to misconduct, e.g. carelessness, negligence or lack of effort, the issue will be dealt with in accordance with the disciplinary procedure.

### **2. Application of the policy**

The formal capability policy and procedure applies to all employees of the academy including the Headteacher. Concerns about the employee's performance will have been identified by the appraisal process and the policy will apply where it has not been possible to address the concerns through the use of the appraisal policy on an informal basis. The appraisal process will be suspended when the capability procedure is invoked.

This policy should not be used in cases of alleged misconduct or lack of capability due to persistent ill-health. These should be dealt with separately through the disciplinary procedure and staff absence policy respectively.

This policy is not applicable to Newly Qualified Teachers (NQTs) for whom separate induction procedures apply.

### **3. General Principles**

This procedure has been drawn up in accordance with ACAS Codes of Practice, good management practice and to comply with the concept of natural justice. The following general principles apply:

- all employees must be capable of performing the job for which s/he is employed to acceptable standards;
- the overall aim will be to support the employee to restore him/her to a sustained and effective standard of performance;
- Headteachers must set clear standards of work performance and communicate these to all their employees through the annual appraisal process;
- where an employee's work performance is believed to have fallen below standard the headteacher is responsible for exploring and identifying the cause and taking appropriate supportive action without delay;
- where there is a concern regarding poor performance this will be tackled initially by the line manager and employee jointly. After this discussion has taken place, the manager may decide that:
  - the matter is groundless and should be dropped;
  - the matter is of a relatively trivial or 'one-off' nature and that informal discussion is sufficient to resolve the matter without further action;
  - the matter is not a matter of capability but is one which should be dealt with under separate procedures; or
  - the matter is one where informal support should be provided in relation to performance through the appraisal process
- where the matter does require informal support the employee will be advised and an appropriate Support Plan will be put in place (see Appraisal Policy for proforma) whilst Trade Union representative attendance is only provided for at formal meetings the employee may wish to discuss the fact that they are on an informal support plan at an early stage;
- where the support plan does not succeed, the formal Capability procedure will be applied;
- the academy will seek advice from our HR provider before applying the formal procedure
- It is recommended that the employee seeks the support and guidance from their Trade Union representative if appropriate. at each stage of the procedure the employee will be given full details of how his/her work performance is considered to have fallen below the standards required and will be given every opportunity to respond to this;
- the employee has the right to be accompanied and/or represented at any

stage during the formal procedure by their Trade Union representative or a work place colleague;

- reasonable management support, guidance and training will be given to the employee with the aim of helping and encouraging him/her to achieve improved work performance;
- employees will be treated with dignity and sensitivity at all times;
- review periods will be set based on the nature of the duties of the job and the improvements required and will allow sufficient time for the employee to meet and sustain an acceptable standard of work performance;
- where the employee is unable to sustain an acceptable standard of work performance and is dismissed on grounds of incapability, s/he has the right to appeal against the dismissal to the Academy's Staff Appeals Committee;
- strict confidentiality will be maintained at all stages of the process and information will only be shared with the relevant parties; and
- Lack of capability due to ill health will be dealt with under the School's Absence Management Policy.

#### **4. Definitions**

The following definitions will apply throughout the policy and procedures:

- 4.1 The term "headteacher" also refers, where appropriate, to any other title used to identify the leader of the Academy
- 4.2 The term 'employee' refers to any employee employed to work at the Academy. Where the employee works at more than one school, the capability policy and procedures will only apply to work undertaken at this academy.
- 4.3 The term 'senior manager' refers to any member of the Leadership Group, as defined by the School employees Pay and Conditions Document, delegated by the headteacher to deal with an appraisal and/or 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.
- 4.4 If, following consultation with the Chair of Governors, the headteacher determines that there is no senior manager to whom s/he can reasonably delegate a specific capability matter then the headteacher will take the role of the senior manager for that specific case. Where this happens, the role of the 'headteacher' under this procedure will be performed by a 'Disciplinary Committee' of the Governing Body consisting of not less than 3 governors, none of whom will have had previous involvement in the case.
- 4.5 The role of the headteacher will be taken by appropriate governors as indicated where the Headteacher's capability is subject to review. The appropriate governors must seek advice and support from the designated officer within the Trust and the academies HR provider.
- 4.6 'Lack of capability' is defined as a situation in which an employee fails consistently over a period of time to perform his/her duties to a wholly satisfactory standard of performance. This will be identified as set out in the Academy's appraisal policy. If the appraiser is not satisfied with the employee's progress, s/he will consult the headteacher, who will determine whether or not

to use the capability procedure. The employee will be notified in person and in writing that the appraisal system has been suspended and that his/her performance will be managed under the capability procedure.

- 4.7 The aim is to restore the employee to the point where s/he is capable of sustaining effective standard of performance. Employees will not normally be dismissed for performance reasons without previous warnings. However, in serious cases of gross negligence dismissal without previous warnings may be appropriate under the Academy's disciplinary procedure

## **5. Capability Procedure**

### **Informal Process**

Issues of poor performance will be addressed initially by the line manager and employee jointly, on an informal basis, through day to day line management and the appraisal process. If, after a reasonable period of time, informal action fails to achieve the required improvements in performance the formal capability procedure will be applied. This will usually be a maximum of six weeks.

### **Formal Process**

The formal capability procedure only applies to employees where the support plan developed as part of the appraisal process has been unable to address the serious concerns identified. The process comprises the following stages.

#### **Stage 1: Formal Capability Meeting**

If an employee's performance raises serious concerns, the senior manager, or other person delegated by the headteacher (or the Chair of Governors if the Headteacher's performance is under review) to hold the meeting, will invite him/her to a formal capability meeting to discuss the identified poor performance. In every case, the employee will receive a minimum of five working days written notice of the meeting in order to give him/her time to prepare and/or arrange for a workplace colleague or trade union representative to attend.

The notice of the meeting will include the following:

- a) The date, time and place of the meeting;
- b) The basic details of the concerns about the employee's performance;
- c) The employee's right to be accompanied by a representative of his/her trade union or a workplace colleague of his/her choice;
- d) The documents that will be used at the meeting;
- e) The name of any other people, including advisers who will be attending the meeting.

An extra copy of the letter, together with any enclosures, will be provided for the employee's representative.

The purpose of the meeting is intended to establish the facts and review any

evidence. The line manager will present the case, explaining how the employee's performance has been assessed as unsatisfactory and explain what support/actions have been taken at the informal stage of the work performance procedure.

The meeting will give the employee and/or his/her representative an opportunity to respond to concerns about his/her performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected.

The employee or line manager can request a short adjournment during the meeting should something unexpected arise or a particular development require private discussion. The expectation being that the meeting would continue thereafter.

The senior manager (Chair of Governors for the Headteacher) 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 and the employee will receive a letter confirming that the appraisal process will resume.

The senior manager (Chair of Governors for the Headteacher) 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.

During the meeting, or any other meeting which could lead to a formal warning being issued, the senior manager (Chair of Governors for the Headteacher) will:

- identify the aspects of poor performance and the evidence on which this is based, including which of the employee standards set out in the School Employees' Pay and Conditions Document is not being met;
- ensure the employee is given an opportunity to ask questions, present evidence, call witnesses, respond to evidence and make representations;
- establish the likely causes of poor performance including any external reasons and consider 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 setting new objectives 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 could improve performance and explain any support that can be provided to help the employee, e.g. in-service training, visits to other schools, discussion with appropriate colleagues or professionals;

- set out the timescale for improvement and explain how performance will be monitored and reviewed;
- Clearly the timetable will depend on the circumstances of each individual case but will be reasonable and proportionate. Under normal circumstances, improvement will be expected between four and ten weeks but this may be increased at the senior manager's discretion as the intention is to 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 his/her dismissal. This constitutes a **first warning** under the procedure; in exceptional circumstances where the employee's performance warrants accelerated action a final warning may be issued.
- agree with the employee and any representative the date of the formal review meeting; and
- Inform the employee of the right of appeal.

Notes will be taken at the meeting and a copy sent to the employee and any representative. If the notes of the meeting cannot be agreed, the employee's comments will be added to the notes as a separate appendix.

Where a first warning is issued, the employee will receive a letter setting out:

- the areas of concern
- the standards of performance s/he is expected to achieve
- the support and development to be made available
- the arrangements for reviewing performance and the timescale for improvement
- The length of time the warning will remain current.

S/he will also be advised that failure to achieve an acceptable standard of performance within the set time scale may result in a final written warning which could then lead to dismissal if wholly satisfactory performance is not achieved. The letter will also confirm the time limit for appealing against the first written warning.

### ***Monitoring and review period following a formal capability meeting***

As indicated above, a performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period.

### **Stage 2: Formal review meeting**

Following the monitoring and review period, the employee will be invited to a formal review meeting (unless a final written warning was issued on an exceptional basis as described above, in which case s/he will be invited to a decision meeting).

At least 5 working days before the date for the formal review meeting a written reminder will be given to the employee together with details of the meeting as set out above. The formal review meeting will follow a similar process to that identified for the formal capability meeting.

If the senior manager (Chair of Governors for the headteacher) is satisfied that the employee has made sufficient improvement, the formal capability procedure will cease and where the employee is subject to a school appraisal process, the appraisal process will re-start. The employee will receive a letter acknowledging their efforts to improve; confirming their performance has been assessed as satisfactory; and confirming that the capability procedure no longer applies in their case.

In cases where some progress has been made and there is confidence that wholly satisfactory performance can be achieved within a further short period, it may be appropriate to extend the monitoring and review period. The employee will receive a letter confirming the details of the improvements still required; any further support to be provided; and the time scale for the extended review period. Review periods must not continue indefinitely.

Where no, or insufficient improvement has been made during the monitoring and review period, the employee will receive a **final written warning**. The senior manager will set a further timescale for improvement following which a decision will be made on whether or not the employee should be dismissed.

As before, notes will be taken at the formal review meeting and a copy will be sent to the employee and any representative. The employee or representative will have the opportunity to make factual amendment requests. If these are not agreed their comments can be appended to the minutes.

Where a final warning is issued, the employee will receive a letter confirming the warning and reminding him/her that failure to achieve an acceptable standard of performance within the set time scale will result in a recommendation for his/her dismissal. The employee 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 with the employee and any representative.

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 with the headteacher, employee and Trade Union representative where appropriate, this may include transfer to a post suited to the employee's capabilities, which may be at a lower salary level. In such cases, salary safeguarding will not apply.

### ***Appeal against a formal written warning***

If the employee feels that a decision to issue a first and/or final written warning is wrong or unjust, s/he may appeal in writing against the decision. Appeals against a written warning will be restricted to considering the reasonableness of the decision



made by the senior manager, any relevant new evidence not previously available to the senior manager or any procedural irregularities. A statement giving the reasons for the appeal should be submitted to the Clerk to the Governors within 10 working days of the formal written warning having been received.

The same arrangements for notification and the right to be accompanied by a representative or work place colleague will apply for an appeal hearing as for the formal capability and review meetings and, as with those meetings, notes will be taken and a copy sent to the employee and any representative. The employee or representative will have the opportunity to make factual amendment requests. If these are not agreed their comments can be appended to the minutes.

Pending any appeal hearing the employee will be expected to continue to work in accordance with the targets set for his/her improvement. His/her progress towards the achievement of these targets will continue to be monitored during this period.

All appeal hearings will be held as soon as possible after receipt of the appeal at an agreed time and place. The appeal will be heard by the Governing Body Appeals Panel. The number of governors on the Appeals Panel of Governors will not be less than two and not more than four. The panel may be advised by a person engaged for the purpose by the Academies Trust.

The Appeals Panel may confirm the warning, reduce a final warning to a warning, or cancel the warning. The Panel does not have the power to award any other sanction. The employee will be informed in writing of the results of the appeal hearing as soon as possible.

### **Stage 3: Decision meeting**

In circumstances where the employee's performance has been issued a final, or a first and final warning but continues to show insufficient improvement, s/he will be invited to a decision meeting. As before, the employee will be given at least five working days' notice that the decision meeting will take place.

The meeting will be conducted by the headteacher, unless the headteacher chaired the review meeting, in which case the Governing Body's Personnel Committee will be convened. (In respect of the Headteacher's capability, a Governor Panel will be convened advised and supported by DNEAT staff and / or the Trust's HR provider.) The headteacher will be accompanied by a professional adviser, from the Academy's HR provider. The employee can be accompanied by a Trade Union representative or work place colleague.

At the decision meeting, the headteacher (or Staff Dismissal Committee) will consider submissions from the manager who issued the final warning and from the employee or his/her representative. If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end and where the employee is subject to a school appraisal process the appraisal process will re-start.

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 again rather than to dismiss. In those circumstances, the final written warning will be extended for a short specified assessment period (not more than four weeks).

However, if performance has remained unsatisfactory, a decision will be made that the employee will be dismissed. The employee will be informed in writing within 5 days of the decision meeting. The letter will set out 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 whether s/he will be paid in lieu of notice, and the right of appeal.

### **Appeal against a decision to dismiss**

If the employee feels that the decision to dismiss them is wrong or unjust, s/he has the right to appeal to the Appeals Committee of the Governing Body. The employee's notice of appeal should be sent to the Clerk to the Governors within 10 working days of receipt of the written decision to dismiss, setting out the grounds of appeal.

The Appeals Committee will consist of three governors, none of whom have had previous involvement in the case. The Committee will have the option to overturn or confirm the dismissal. If the dismissal is confirmed the original date of dismissal is unchanged.

Appeal hearings will be held as soon as possible after receipt of the appeal and will be conducted in the same way as appeals against formal warnings referred to above.

## **6. Links to other procedures**

### **6.1 Sickness absence and the use of this procedure**

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 be made to seek medical advice from an occupational health adviser to assess the employee's health and fitness for continued employment at the academy.

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. This may include changing the employee's duties or providing additional equipment or training. The Academy may also consider making adjustments to this procedure in appropriate cases e.g. moving from this procedure to the absence management policy to terminate the employee's service on the grounds of ill health.

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 be asked to assess whether an employee absent through sickness is fit enough to attend a meeting under the capability procedure. In the event that the employee is deemed not fit to attend a formal capability meeting s/he may present a written submission for consideration and/or be represented by a representative in her/his absence.

## **6.2 Grievances arising during the procedure**

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

## **6.3 Gross Incapability/Suspension**

In exceptional circumstances the actions and/or omissions of an employee may be considered gross incapability/incompetence e.g. where the health and safety of children are at risk, or where there are issues relating to child safeguarding. Where the actual/potential consequences of any action/omission are considered so serious as to render the continued employment of the employee impossible, the employee may be suspended from duty, on full pay pending further investigation. The matter will be dealt with under the Academy's disciplinary procedure.

## **6.4 Disciplinary procedure**

Where it is deemed the unsatisfactory performance is not related to capability but related to an issue of discipline i.e. an employee wilfully choosing not to comply then the Disciplinary Procedure will be invoked.

## **7. Other issues**

### **7.1 Trade Union Officials**

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.

### **7.2 Confidentiality**

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.

No one involved in this procedure, whether manager, employee, witness or representative may make electronic recordings of any meetings or hearings conducted under this procedure. Failure to observe confidentiality could result in disciplinary action under the Academy's disciplinary procedure.

### **7.3 Records**

The headteacher will retain a copy of the papers relating to any action under the capability process on the employee's personal file.