



CAPABILITY PROCEDURE

ALL STAFF

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1. Introduction, Purpose & Scope

1.0 INTRODUCTION

- 1.01 The Pontefract Academies Trust (“The Trust”) is committed to giving all employees the support and encouragement they need to raise aspirations, unlock potential and work to achieve excellence through encouraging a “can do” culture, which nurtures confident and competent people.
- 1.02 The Trust expects all its employees to recognise their employment obligations to the Trust, their school, the public, pupils and other employees. Employees must conduct themselves properly at all times in accordance with the Trust’s Code of Conduct and other policies and procedures.

1.1 PURPOSE

- 1.1.1 Capability is an employee’s ability or qualification to perform their role at a satisfactory level to meet appropriate standards.
- 1.1.2 The Trust recognises that the vast majority of its employees meet or exceed the demands of their respective roles, however, it is acknowledged that problems can and do arise. This procedure intends to:
- a) Provide a framework for dealing with capability issues in a fair, supportive, realistic and consistent manner.
 - b) Address concerns about performance through an appropriate programme of monitoring, support, guidance, training and feedback with a view to enabling the employee to reach and maintain an acceptable level of performance.

1.2 SCOPE

- 1.2.1 This procedure applies to all employees employed within The Trust who have a permanent/fixed term/temporary contract of employment. It does not apply to employees subject to probation as they are subject to separate procedures.
- 1.2.2 This procedure does not apply to disciplinary matters such as misconduct, unacceptable behaviour, wilful or serious negligence. These matters will be dealt with in accordance with The Trust disciplinary procedures.
- 1.2.3 Where competency issues arise due to medical reasons or disability further advice should be sought from the Human Resources Manager/Advisor.
- 1.2.4 Where competency issues arise in respect of Headteachers they shall be dealt with by the Chief Executive Officer in consultation with the Chair of the Local Governing Body. Where competency issues arise in respect of the Chief Executive Officer they shall be dealt with by the Chair of the Trust Board.
- 1.2.5 Where competency issues arise in respect of employees who are also trade union officials, no formal action will be taken until the circumstances of the case have been discussed with a full time official of the union concerned.

1. Introduction, Purpose & Scope

1.3 GRIEVANCES

- 1.3.1 Where an employee 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.

1.4 SICKNESS

- 1.4.1 If long term sickness absence appears to have been triggered by the commencement of monitoring and formal capability procedure, the case will be dealt with in accordance with The Trust's Sickness Absence Management Policy. This will involve an immediate referral to the Occupational Health Service to assess the employees' health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring and formal procedure.
- 1.4.2 In some cases, it may be appropriate for the formal procedures to continue during a period of sickness absence. In such circumstances, the employee would usually be referred to the Occupational Health Service for a medical prognosis and associated report. Subsequent decisions will then be based on the most recent performance information.

1.5 INCREMENTAL PROGRESSION

- 1.5.1 The Manager, in conjunction with the Human Resources Manager/Advisor, has the discretion to withhold a pay increment as part of any formal action taken against an employee. Any increments withheld may subsequently be paid from the date the employee's performance becomes satisfactory. They will not be eligible for a further increment until after six months of sustained performance. Employees have the right of appeal against any formal sanction given.

1.6 EQUAL OPPORTUNITIES

- 1.6.1 This Capability Procedure must always be applied fairly and in accordance with The Trust's Equality and Diversity Policy.

2. Roles and Responsibilities

2.0 CEO/EXECUTIVE HEADTEACHER/HEADTEACHER/NOMINATED MANAGER RESPONSIBILITIES

Throughout this procedure, the term “Manager” will refer to the CEO/Executive Headteacher/Headteacher or nominated Manager with the delegated authority to take action. The Manager should seek advice from the Human Resources Manager/Advisor before taking action under this procedure.

Managers are responsible for setting reasonable objectives and making their employees aware of the standards of performance expected of them. This should be through the use of the job description and objectives, by performance management meetings, informal feedback, policies, protocols, guidelines, appropriate coaching or training (e.g. statutory and induction training) or by notification and instruction from the line manager or supervisor.

Managers are also responsible for ensuring employees are competent to undertake the duties and tasks required of them. Any shortfall in performance should be pointed out to the employee concerned and consideration given as to whether this is due to inadequate instruction, training, supervision or some other failing outside the employee’s control.

2.1 EMPLOYEE RESPONSIBILITIES

Employees should accept any reasonable offers of support or additional training in an effort to improve their performance. Failure to do so may result in action being taken in accordance with The Trust’s Disciplinary Procedure or the formal stages of this procedure.

Employees are required to attend any meeting arranged in accordance with this procedure. If it is necessary to postpone any meeting then another will be arranged by the manager, normally within five working days of the original date.

2.2 HUMAN RESOURCES MANAGER/ADVISOR ROLE

The Human Resources Manager/Advisor or his/her nominee will provide advice and assistance to managers in regards to the commencement and operation of this procedure.

The Human Resources Manager/Advisor or his/her nominee may seek further advice and recommendation from the Trust appointed Occupational Health Professionals as appropriate.

The Human Resources Manager/Advisor or his/her nominee reserves the right to attend any meetings held in relation to any of the procedures set out in this document. They must also be in attendance at any hearings which may lead to dismissal. This will ensure that advice is available on procedural issues and any employment legislation matters.

2. Roles and Responsibilities

2.3 CONFIDENTIALITY

Confidentiality must be maintained at all times and the contents of interviews undertaken as part of this procedure must only be disclosed on a “need to know” basis.

2.4 RECORDS

A formal warning will remain effective during the period of time specified. This means that it will be taken into consideration, as part of the cumulative process, when determining the level of capability action warranted for any further performance concerns which may occur during the period.

At the end of the specified period the formal warning will expire. This does not mean that the warning will be removed from the employee’s personal record but that it will be disregarded when determining the level of further capability action. Previous warnings form part of the employee’s work history and will remain on file for reference purposes.

2.5 REFERRAL TO RELEVANT PROFESSIONAL BODIES

Where an employee is dismissed due to capability, The Trust will fulfil its obligations by informing the relevant professional body.

2.6 REFERENCES PROVIDED TO POTENTIAL EMPLOYERS

The Trust will provide a factual reference where requested to potential employers and which may include any appropriate information in regard to a formal capability process.

3. Transition from Appraisal to Capability

3.0 The Trust believes that good management, clear expectations and appropriate support can assist in improving performance, and, that early identification of problems through performance reviews, improvement plans, and support in accordance with the Appraisal Policy and Procedure will help to avoid the need for invoking the formal Capability Procedure.

3.1 Where the agreed support and monitoring plans (in accordance with the Appraisal Policy and Procedure) fail to bring about the necessary improvements, a meeting will be arranged with the employee for the Manager to determine if it is appropriate for the Capability Procedure to be invoked. A copy of the Capability Procedure will be provided to the employee, and following the meeting a summary record of the discussion agreed.

3.2 NEXT STEPS

3.2.1 Following the discussion, the following actions may be appropriate:

- If sufficient progress has been achieved, then improvement is acknowledged and future performance will be managed within the normal appraisal/performance management procedures;
- If sufficient progress has not been achieved then the Performance Improvement and Support Action Plan and review period may be extended with an increased level of monitoring within appraisal/performance management procedures;
- If the Appraisal Policy and Procedure has been exhausted and has not been successful in achieving the required improvement in performance then a meeting should be arranged within the Formal Capability Procedure – Stage 1.

3.2.2 The Human Resources Manager/Advisor or his/her nominee should be notified so that advice and guidance can be provided as appropriate. This would include appropriate verification that the Appraisal Policy and Procedure has been properly applied and documented prior to commencement of Formal Capability Procedures.

4. Formal Procedure – Stage 1

- 4.0 If the Appraisal Policy and Procedure has not been successful in achieving the required improvement in performance then the Manager should arrange a formal meeting with the employee. The purpose of this meeting should be to outline the performance standards required, to review the support given to the employee to date, and to determine what further provisions are required to resolve the situation.
- 4.1 The Manager should give the employee at least 5 working days' notice of the meeting in writing. This should include the details of:
- Date, time and venue
 - Copies of all relevant policies
 - The nature of the underperformance and any supporting documents enclosed for discussion
 - The right of the employee to be accompanied by a recognised trade union representative or work colleague.
- 4.2 At the meeting, the Manager will outline the performance issues identified through the informal procedure in clear and unambiguous terms. The following matters should be considered:
- Areas where there is failure in performance
 - Actions already taken by management to address these failings
 - Whether the employee acknowledges that there is a problem and shows a willingness to improve
 - The impact of the employee's poor performance on colleagues and pupils
 - Any other mitigating factors (including external or contributory factors)

The employee should be given the opportunity to respond to the issues raised and any matter which may have a bearing on his/her performance at work.

The discussion at the meeting should be conducted by the manager in a sympathetic, understanding and constructive atmosphere.

- 4.3 A Performance Improvement and Support Action Plan should be completed by the Manager in full consultation with the employee.
- 4.4 A First Written Warning will be issued within 5 working days followed by a monitoring and review period (between 2-10 weeks). The First Written Warning will remain on the employee's personal file for 12 months. In cases of particularly serious concern, for example where the education or welfare of children is in jeopardy, it may be appropriate to proceed directly to formal Stage 2 of this procedure and a Final Written Warning issued.
- 4.5 **NEXT STEPS**
- 4.5.1 Progress will be continuously reviewed throughout the duration of the monitoring and review period and modifications made if necessary. At the end of the review period and without delay, the Manager should determine which of the following actions are appropriate:

4. Formal Procedure – Stage 1

- If sufficient progress has been achieved, then improvement is acknowledged and the manager provides written confirmation to the employee that he/she has reached the required level of performance and that no further action will be taken provided the improvement is sustained for the duration of the First Written Warning period.
- If sufficient progress has not been achieved or improvement sustained for the duration of the First Written Warning period then the matter will proceed to the formal Stage 2 of this procedure.

4.5.2 The manager must confirm their decision without delay to the employee in writing along with the process for appeal (**see Right of Appeal Section 7.0**).

5. Formal Procedure – Stage 2

- 5.0** If the formal Stage 1 process has not been successful in achieving the required improvement in performance, or particular serious concerns have been identified through the appraisal/supervision/review process then the Manager should arrange a Stage 2 Formal Meeting with the employee. The purpose of this meeting should be to outline the performance standards required, to review the support given to the employee to date, and to determine what further provisions are required to resolve the situation.
- 5.1** The Manager should give the employee at least 5 working days' notice in writing of the meeting. This should include the details of:
- Date, time and venue of the meeting
 - The nature of the underperformance and any supporting documents enclosed for discussion
 - The right of the employee to be accompanied by a recognised trade union representative or work colleague.
- 5.2** At the meeting, the Manager will outline the performance issues identified through the informal and/or formal Stage 1 procedure in clear and unambiguous terms. The following matters should be considered:
- Areas where there is continued failure in performance
 - Actions already taken by management to address these failings
 - Whether the employee acknowledges that there continues to be a problem and shows a willingness to improve
 - The impact of the employee's continued poor performance on colleagues and pupils
 - Any other mitigating factors (including external or contributory factors)
- 5.3** A further Performance Improvement and Support Action Plan should be completed by the Manager in full consultation with the employee. This may include a trial period within an alternative role within the Trust.
- 5.4** A Final Written Warning to be issued within 5 working days. The Final Written Warning will remain on the employee's personal file for 18 months. This will invoke a continued monitoring and review period not exceeding 4 weeks.
- 5.5 NEXT STEPS**
- 5.5.1** Progress will be continuously reviewed throughout the duration of the monitoring and review period and modifications made if necessary. At the end of the review period and without delay the manager should determine which of the following actions are appropriate:
- If sufficient progress has been achieved, then improvement is acknowledged and the manager provides written confirmation to the employee that he/she has reached the required level of performance and that no further action will be taken provided the improvement is sustained for the duration of the Final Written Warning period;
 - If sufficient progress has not been achieved or improvement sustained for the duration of the Final Written notice period, then the matter will

5. Formal Procedure – Stage 2

proceed to the formal Stage 3 of this procedure.

- 5.5.2 The Manager must confirm their decision without delay to the employee in writing along with the process for appeal (see Right of Appeal Section 7.0).

6. Formal Procedure – Stage 3

6.0 If the formal Stage 2 process has not been successful in achieving the required improvement in performance then the Manager should arrange a Stage 3 formal meeting (potential Dismissal Meeting) involving the appropriate dismissal panel (see paragraph 6.4) with the employee.

6.1 The Manager should give the employee at least 5 working days' notice of the meeting in writing. This should include the details of:

- Date time and venue
- The nature of the underperformance and any supporting documents enclosed for discussion
- The right of the employee to be accompanied by a recognised trade union representative or work colleague.

6.2 The purpose of the meeting should be to outline the performance standards that are required, to review the support given to the employee to date and to determine whether the employee should be dismissed.

The employee should be given the opportunity to respond to the issues raised and any matter which may have a bearing on his/her performance at work.

6.3 The outcome of the Stage 3 Formal Meeting (dismissal meeting) must be confirmed in writing within 5 working days to the employee along with the process for appeal (**see Right of Appeal Section 7.0**). This may include one of the following outcomes:

- Ñ Notice of Dismissal - the employee will be given the full period of notice to which he/she is entitled but will not be required to attend work during the notice period. During this period, the normal salary will be paid and the termination date will be at the end of the notice period. Any outstanding holiday entitlement must be taken during the notice period if applicable according to the employees' terms and conditions of service. Where this is not possible the employee may be eligible to be paid for any accrued but untaken statutory leave entitlement.
- Ñ Extend the monitoring and review period for a period of no more than 4 weeks.

6.4 DISMISSAL PANEL

The dismissal panel must include the Headteacher (unless involved in a prior stage of the process) and the HR Manager/Advisor (who has not been involved in a prior stage of the process). A local governor may also be included in the panel if the Headteacher feels this is appropriate.

If the Headteacher has been involved in a prior stage of the process the panel must involve a minimum of two local governors (preferably three) and the HR Manager/Advisor.

7. Right of Appeal

- 7.0** An employee has the right of appeal against any formal action taken under this procedure within 5 days of a decision.

For Stages 1 – 3 the person identified to hear appeals should have had no previous involvement in the case at the relevant stages of the procedure. Where the appeal is against dismissal, a panel of three (including trustee or local governor representation and Human Resource Manager/Advisor support) should be formed who have had no previous involvement in the case.

The purpose of the appeal hearing is not usually to re-hear the case. It is to review the decision taken by the manager and to assess whether this was appropriate on the evidence presented. The appeal hearing will consider:

- Why the employee considers the decision unfair or unreasonable; and
- The rationale and justification for the decision of the manager who has progressed the capability procedure with the employee.

New evidence which was not initially available may be presented but should be made available to the appeal manager in advance of the appeal hearing.

APPENDIX A: Performance Improvement & Support Action Plan

Name of Employee Name of Manager

Job Title Job Title

Meeting Stage Attached: Current Job Descriptions Yes / No
 Date of Meeting Latest Appraisal Documentation
 Previous Meetings Documentation:

Details of Current Performance v Expected Performance	Actions taken to date to improve performance to expected performance	Further Actions Required by employee	Timescale to achieve expected performance	Training and Support to be provided

Detail the consequences of the employee not performing to acceptable levels within that timescale.	
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Manager Signature Employee Signature

Print Name Print Name

Date Date

APPENDIX B: Capability Flowchart

