

# **Capability Procedure For Academy Support Staff**

## **Woodard Academies Trust**

### **Capability Procedure for Academy Support Staff**

This procedure applies to all Support Staff working in Woodard Academies about whose performance there is a serious cause for concern and where line management and informal measures to provide additional focussed support, guidance and training has not led to required improvements.

Capability may be in relation to skills, aptitudes, health or any other mental or physical condition. In cases where capability may be affected by health or any other mental or physical condition, such health concerns will be managed under the Management of Sickness Absence policy and taking into account any occupational health advice.

This policy has been developed in accordance with the provisions of the ACAS Code of Practice. It is intended to be supportive and provides a structured framework to support staff in improving their performance and to achieve the standard required to effectively fulfil the requirements of the job they hold.

The outcome of the procedure can lead to a return to operational line management and usual performance appraisal arrangements or in cases where performance fails to improve to the required standard, the procedure leads to dismissal.

#### **1. Introduction**

##### **1.1 Definitions**

Unless indicated otherwise, reference to “staff” and “employee” refers to any member of Academy Support Staff.

##### **1.2 Delegation**

The responsibility for hearing Appeals has been delegated to the Academy Council.

##### **1.3 Grievances**

Where a member of staff raises a grievance during the capability procedure the capability procedure may be temporarily suspended in order to deal with the

grievance. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.

#### 1.4 **Sickness**

It is recognised that capability procedures can be distressing and may sometimes lead to a member of staff feeling unwell. Woodard Academies Trust believes that it is in everyone's best interest to conclude matters as quickly as possible and will work with the employee to achieve this.

If long term sickness absence appears to have been triggered by the commencement of monitoring through the formal capability procedure, the case will be dealt with in accordance with the Academy's Policy and Procedure for Managing Sickness Absence and the case will be referred immediately to the Occupational Health Adviser to assess the employee's fitness for participation in the capability procedure.

#### 1.5 **Misconduct**

Where poor performance is due to misconduct the Disciplinary Policy and Procedure will apply.

## 2. **Scope of the Procedure**

This procedure applies to all the Academy's support staff, and does not apply to Teachers.

The procedure does not apply to:

- Unsatisfactory performance during a probationary period
- Unsatisfactory performance resulting wholly or mainly from wilful disregard for performance standards which will be dealt with under the Academy's Disciplinary Procedures
- Lack of capability due to long term or permanent ill-health
- Informal support and monitoring, which would usually precede any move to management of performance under the Capability Procedure.

#### 2.1 **Line Management**

Nothing in this procedure is intended to prevent a manager ensuring that those employees for whom they are responsible are clear about the tasks and responsibilities which form their job and that they are clear about the standard of performance required. Line management should include, 1-1 meetings with

staff, team meetings, day to day direction and guidance as well as performance appraisal under the Trust's Academy Support Staff Appraisal Policy. Wherever possible feedback about staff performance is best undertaken close to the

event and in the course of day to day interactions. This may be thanking a member of staff for a good piece of work or providing some developmental guidance.

## 2.2 Guidance regarding Informal Support

This section summarises good practice with respect to informal support and monitoring. This is not part of this Capability Procedure. In accordance with ACAS advice, a quiet word may be all that is required to resolve an issue.

Where a line manager identifies that a member of staff is not working to the standard required they should initially take steps to discuss the short comings with the employee and assist the employee through, guidance, training and support to undertake their job to the required level of performance.

Informal support should not be treated casually. The manager should arrange a meeting with the employee to discuss in detail the shortcomings and areas of concern. They should also seek to identify whether or not there are any mitigating factors that are contributing to the problem and how these may be addressed. The manager should set out clearly, in writing, the areas of concern, the standard expected and describe the support, training and guidance that will be provided. The manager should also set a reasonable timescale for monitoring and review of progress, allowing time for the employee to demonstrate the expected improvements.

With good support and clear guidance, it is hoped that the employee will respond positively and make the improvements to their performance that are necessary. Where the review identifies that this is not the case and after a reasonable period of informal support, the manager will advise the employee in writing that their performance will be managed under the Capability Procedure.

Note: Managers are encouraged to seek HR Advice when managing informal support and to follow the Management Guidance available to them.

### 2.3 Exceptionally serious performance concerns

Usually a Formal Capability Meeting will have been preceded by a period of informal support. However where an exceptionally serious performance concern arises, which has significant risks for the Academy operations or the health, safety and wellbeing of pupils and the matter is not a matter of conduct, and it has proved impossible to rectify the problem through line management, then action under this procedure may be commenced without delay.

### 3. Accredited Trade Union Officials

Normal performance standards apply to officials' conduct as employees but action under this procedure should not be taken without inviting the involvement of a Regional Official.

### 4. Right to be Accompanied

Employees have the right to be accompanied by a certified Trade Union official or a work colleague at all formal meetings of this procedure. Employees are responsible for arranging their own representation. It is suggested that employees who are members of a recognised trade union contact their union representative if subject to action under this procedure.

In accordance with the ACAS Code, employee representatives can address formal meetings and assist employees in presenting their case. They may respond on behalf of the employee to any views expressed at the meeting and confer with the employee during the meeting. However, they may not respond to questions directed to employees. These should be answered by the employee concerned.

### 5. Timescales and Definition of a Working Day

For the purposes of the operation of this Academy Support Staff Capability Procedure, timescales are expressed in working days. For term time only support staff, a working day should be reckoned as a day that the Academy is open for pupils. For all year round staff, a working day is defined as Monday to Friday calendar days. The following timescales (in working days) should be adhered to:

- Written notice of Formal Capability Meeting – at least 5 working days' notice given.
- Written notice of Formal Review Meeting – at least 5 working days' notice given.
- Written notice of subsequent review meetings – at least 5 working days' notice
- Written notice of Formal Decision Meeting – at least 5 working days' notice.

## **6. Delegation of responsibility for the Formal Capability Procedure**

The responsibility for operating this policy and Chairing meetings under the formal process until the Decision Meeting may be undertaken by a Principal, or another senior manager such as the Director of Resources or Vice Principal.

The Board of Trustees have delegated Dismissal decisions to Principals or members of the Academy Council. The Decision Meeting, which can include a decision to give notice of dismissal should usually be chaired by the Principal (or in cases where the Principal is the direct line manager of the member of staff whose performance is subject of concern, this role can be undertaken by an appropriate member of the Academy Council. Staff members of the council may not undertake this role.

All Appeals are heard by an Appeals Panel of the Academy Council

## **7. Formal Capability Meeting**

### **7.1 Arranging the Meeting**

At least 5 working days before a formal meeting, the employee will be provided with a letter inviting them to a Formal Capability Meeting. The letter will set out

- The time date and venue of the meeting
- The reason for the meeting, including an outline of the concerns and a summary of any informal support and action taken to date
- Who is invited to attend and the role they will take
- Copies of any documentation to be relied on at the meeting
- A copy of the Capability Procedure
- Notification of his/her right to be accompanied at the meeting.
- The opportunity to submit any relevant documents that the employee intends to rely on these should be submitted no later than 2 working days prior to the formal meeting

Where an employee's representative cannot attend at the time proposed for a formal meeting, management will be obliged to postpone the meeting to an alternative date and time suggested by the employee, provided that (a) the alternative time is reasonable and (b) it takes place without undue delay (usually within 5 working days following the day originally proposed in the letter of invitation). If the employee fails to

attend a formal meeting without good reason, the manager may proceed in the employee's absence.

## 7.2 Conducting the Meeting

At the meeting, the Manager will establish the facts. The meeting allows the employee, accompanied by a work colleague or trade union representative if they wish, to respond to concerns about their performance and to make any relevant representations. This may be to provide new information or a different context to the information/evidence already available.

The Manager conducting the meeting may conclude that there are insufficient grounds for pursuing the capability issue and decide it would be more appropriate to continue to address the concerns "informally" outside this policy. In such cases the capability procedure will come to an end. The Manager conducting the meeting may also adjourn the meeting for example if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.

In other cases the meeting will continue. During the meeting, which could lead to a formal warning being issued, the Manager conducting the meeting will:

- a. Identify the performance shortcomings (it is important that it is made clear to the employee exactly what competencies, behaviours, technical skills, or responsibilities are not being met).
- b. Give clear guidance on the improved standard of performance needed to enable the employee to be removed from the Formal Capability procedure. (This may include the setting of targets relevant to the specific weaknesses that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made). Any new targets set should be reasonable, realistic and achievable.
- c. Discuss and agree the support and training to be provided to help the employee improve their performance.
- d. Set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case but in straight forward cases this could be between four and ten weeks. It is for the Manager to determine the set period. It

should be reasonable and proportionate but not excessively long and should provide sufficient opportunity for improvement to take place.

- e. They may warn the employee formally (first formal warning) that failure to improve within the set period could ultimately lead to dismissal.
- f. Write to the employee setting out the points discussed in the meeting.
- g. Make the employee aware of the right of appeal against any formal warning.
- h. Notes will be taken of formal meetings and a copy sent to the member of staff.

#### 7.4 Meeting Outcome

After the meeting the Manager will confirm the outcome in writing and provide a copy of the Improvement Plan. It is important that the line manager or other appointed supporting manager ensures that the arrangements set out in the Improvement Plan for training, support and monitoring are put in place. At the end of the period the employee will be invited to a Review meeting.

Where in extremely serious cases, a final written warning is issued, the employee should have a period of support and monitoring before moving to a Decision Meeting.

### 8. Review Meeting

At least 5 days before the Review Meeting, the employee will be provided with a letter inviting them to a Formal Review Meeting. The letter will include:

- The time date and venue of the meeting
- The reason for the meeting
- Who is invited to attend the meeting and their role
- Include a copy of the Improvement Plan
- Any evidence or reports of progress made
- Notification of his/her right to be accompanied at the meeting.
- Invite the employee to submit any further relevant evidence that they believe supports their case (this should be submitted to management no later than 2 days before the meeting).

#### 8.1 Conducting the Review Meeting



At the Review Meeting, the Manager will remind the parties present of the standard of performance expected. He/she will then go through the Improvement Plan and review the progress made.

The Manager will invite the employee to describe the progress they have made and share any relevant evidence to demonstrate progress. The line manager will also be invited to describe the training and support provided and the progress that the employee has made.

Where the Manager is satisfied that the employee has made sufficient improvement, the capability procedure will cease. The employee will return to management under usual line management and appraisal arrangements.

If some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period. An updated Improvement Plan will be prepared amending the short-term targets, identifying any further training and support and setting a reasonable period before final review.

If the required standard of performance has not been met during the monitoring and review period, and it does not appear likely that the required standard could be met within any further extension, the employee will be given a Final Written Warning and be invited to a Decision Meeting.

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

## 9. Final Written Warning

Where a final warning is issued, the employee will be informed in writing that failure to achieve an acceptable standard of performance, within the set timescale may result in dismissal. Employee will be advised of their right of appeal against the warning.

The employee will be given information about the handling of a final period of monitoring and support which will be no longer than 4 - 6 weeks. They will also be advised of their right of appeal against the final warning.

Following the issue of the final written warning, the employee will be invited to a Decision Meeting.

## 10. Decision Meeting

The Decision Meeting should be conducted by the Principal, unless the Principal has determined that the case should be heard by a member of the Academy Council.

Where the Principal has delegated the formal meetings leading to the Decision Meeting to another senior manager, then that person should also attend the final decision meeting to ensure continuity.

As with formal capability meetings and formal review meetings, at least 5 working days' notice will be given and the written 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, a trade union official.

The outcome of the Decision Meeting will be one of the following:

- Performance has improved, the capability procedure will end and there will be a return to operational management and performance appraisal
- Performance remains unsatisfactory and the employee will be dismissed or cease to work at the Academy

## 11. Notice of Dismissal

Employees should only be dismissed, if despite warning, their capability has not improved within the specified timescale.

The letter of notice of dismissal must contain:

- The reasons for dismissal
- The date on which employment will end
- The appropriate contractual period of notice
- The right of appeal against dismissal, including the timescales

## 12. Formal Warnings

Where a First Written warning is issued, this will remain on the employee's file for 12 months.

Where a Final Written warning is issued, this will remain on the employee's file for 24 months.

On appeal, the possible outcomes are:

- The warnings are removed
- The length of the warning is reduced to a minimum of 6 months
- The warning is upheld

## 13. Right of Appeal

If an employee feels that a decision to dismiss them, or other action taken against them during this process is wrong or unjust, they may appeal in writing against the decision. The appeal should be made within 5 working days of the decision, setting out the grounds for their appeal.

### 13.1 Appeal to the Clerk of the Academy Council.

The appeal letter should be sent to the Clerk of the Academy Council. Appeals will be heard without unreasonable delay and where possible at an agreed time and place. The same arrangements for notification and right to be accompanied by a work colleague or trade union representative apply as with formal capability and formal review meetings. As with other formal meetings, notes will be taken and a copy sent to the employee.

### 13.2 Appeal Hearing

The Clerk to the Academy Council will arrange a meeting of the Appeals Panel of the Academy Council without unreasonable delay and ideally within 15 working days of receiving the letter of appeal. Wherever possible, no Academy Councillor who has prior involvement in the case which is the subject of the appeal may be included on the Appeal panel. Academy Councillors who are members of staff, should not serve on the panel at any time.

### 13.3 Outcome of the Appeal

The employee will be informed, in writing of the outcome of the appeal hearing as soon as possible. If the outcome of the appeal is to reinstate the employee who had been dismissed they will receive payment of salary for the period from the date of dismissal to the date of reinstatement.

There is no further right of appeal and the decision of the Appeal Panel will be final.

Policy adopted by Board of Trustees:	14 <sup>th</sup> May 2015
Review date:	May 2017

**Start**

The Chair of the appeal panel ensures introductions are made and explains how the appeal hearing will be conducted. The Chair may ask questions at any time.

The employee is invited to set out his/her grounds for Appeal. The employee may bring evidence and/or a witness to support his/her Appeal evidence. The employee may be accompanied by a TU representative or work colleague

The Principal is invited to explain why they reached the decision to dismiss on the grounds of Capability

Both parties present evidence, calling witnesses where necessary and may ask questions of the other party. The employee will present first as they are appealing the outcome.

The Chair of the Appeals Panel invites both parties to summarise their case. The Appellant should be invited to summarise first, followed by the Management respondent.

The Chair of the appeal panel adjourns the hearing and the panel consider the evidence and makes a decision. The Chair may agree to advise the employee of the outcome of the Appeal Panel's decision at the end of the Appeal Hearing, after the adjournment. Or the Chairman can communicate the outcome in writing within 5 working days.

Following the decision the Chair of the Panel must write to the employee setting out the decision of the Appeal Panel and why the Appeals Panel has come to that decision.

The decision of the Appeals Panel is final.