

Capability Policy

This policy is prescribed by The Good Shepherd Trust and all reference to 'the Trust' includes all Trust schools, the central team and subsidiary organisations.

Date adopted:	01/03/2020	Last reviewed:	11/04/2024
Review cycle:	Annually	Is this policy statutory?	Yes
Approval:	Board via PARC	Author:	Head of HR
Next Review Date:	04/2025		

Revision record

Minor revisions should be recorded here when the policy is amended in light of changes to legislation or to correct errors. Significant changes or at the point of review should be recorded below and approved at the level indicated above.

Revision No.	Date	Revised by	Approved date	Comments
1	23/01/24	D Bird	11/04/2024	Re-write of policy. ECTs removed from the policy. Policy split into informal / formal support. Simplification of process.

1. Aim

The aim of our capability of staff policy is to set out a clear and consistent process for when a member of staff falls below the levels of competence expected of them, as set out in the relevant professional standards, job descriptions and overall performance expectations.

The primary objective of a capability procedure is to ensure additional support is provided through guidance, counselling and training in order that the employee's performance improves, and any problems are resolved.

This policy is split into 2 sections:

- A - informal support
- B - formal support

The formal capability procedure will be instigated when there are either very serious concerns about an employee's performance or there are ongoing concerns that informal management guidance and support have been unable to address. Concerns over performance will be dealt with fairly, and employees will be given the opportunity to respond at a hearing before any formal action is taken.

This procedure applies to all employees apart from recently appointed employees who have not yet successfully completed a probationary period and Early Career Teachers who have separate support and assessment arrangements in place.

This procedure does not form part of any employee's contract of employment and it may be amended at any time. Employees will be informed when the policy is updated.

2. Legislation and Guidance

This policy is based on the [Department for Education's model policy and guidance](#), and the [Acas code of practice on disciplinary and grievance procedures](#).

When carrying out capability procedures, we will ensure we abide by the [Equality Act 2010](#). By law, an employer must make adjustments for someone who is disabled if the adjustments are reasonable. What is considered 'reasonable' depends on the circumstances.

This policy also complies with our funding agreement and articles of association.

3. Definitions

Lack of capability is defined as:

- A staff member failing to perform their role at the level of competence expected of them and that their job requires

References to 'staff' include the headteacher, teachers and support staff, unless indicated otherwise.

4. Roles and responsibilities

Where the member of staff subject to the procedure is the headteacher, the Chief Education Officer will be responsible for coordinating the procedure.

Where the member of staff subject to the procedure is not the headteacher, the headteacher or a nominated member of senior staff will be responsible for coordinating the procedure. For Central staff, the line manager will be responsible for coordinating the procedure.

Where appropriate, other senior members of staff may be asked to provide additional support to the individual subject to the capability procedure or to assist in monitoring the effectiveness of the policy. Where this happens, responsibilities will be made clear in advance and with the aim of helping the individual to make the required improvements.

5. Ongoing performance review and support

Performance of all staff is monitored on a day-to-day basis by line managers. Local arrangements in Trust schools may vary but the Trust would expect this to be via regular one-to-ones, learning walks and appraisals.

Formal capability procedures will begin when line management support and or the appraisal process have been unable to bring about satisfactory performance or improvements in the staff member's work. An informal period of support, put in place and monitored by the line manager, will usually have been in place before formal capability procedures are triggered.

In the event of very serious capability concerns being identified, the formal capability process may be followed without a period of informal support.

6. Confidentiality

The Trust aims 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 which is communicated to them in connection with this capability procedure.

7. Monitoring the impact of this policy

The HR team will report to the People, appointment and remuneration committee (PARC) annually data on the number of capability cases supported (under both informal and formal support) and the demographics of those staff including age, ethnicity, sex, length of service and roles.

The Trust HR team are responsible for monitoring of the operation of the capability procedure, including feedback from line managers, employees and their representatives which will contribute to future policy improvements.

Section A - Informal support

In the first instance, performance issues should normally be dealt with informally between the employee and their line manager as part of day-to-day management and the appraisal process. It is expected that notes of any such informal discussions will be sent to the employee and added to their HR file.

The formal procedure should be used for more serious cases, or in any case where earlier informal support has not resulted in a satisfactory improvement.

Informal discussions under this procedure may help to:

- clarify the required standards;
- identify areas of concern;
- establish the likely causes of poor performance and identify any training needs; and/or
- set targets for improvement and a timescale for review.

The Trust is committed to the following principles at all stages of the policy:

- Employers and employees should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions;
- The Trust will act consistently;
- The Trust will carry out any necessary investigations, to establish the facts of the case;
- Line Managers will inform employees of the basis of the problem and give them an opportunity to put their case in response before any decisions are made.

There is no right to be accompanied at Informal Support meetings.

Section B – Formal Capability Process

The Formal Capability Process will be used where informal support under this procedure has not helped to achieve the required levels of performance or where the Trust has very serious performance concerns about an employee's performance.

B1. Stages of the Formal Capability Procedure

There are 3 stages of the Formal Capability Process.

The Formal Capability Process will usually start at Stage 1. However, the Trust may decide to proceed straight to a Stage 3 hearing only where the evidence suggests that the employee may have been grossly negligent such as to potentially warrant dismissal without the need for a final written warning.

B2. Right to be accompanied

Employees are entitled to be accompanied to formal capability meetings held under this procedure by a trade union representative or appropriate work colleague. If the employee's chosen companion is unavailable at the time of the hearing the employee can propose an alternative time within five working days of the originally scheduled date. If the companion is not available within five working days, the Trust may require the employee to choose an alternative companion. At a formal hearing the employee's companion can make representations, ask questions, sum up the employee's case, and request an adjournment in order to discuss the case privately with the employee.

B3. Formal capability hearings – Stage 1, 2 or 3

Formal capability hearings will usually follow the same format at each stage of the procedure. Dismissal may be a potential outcome at a Stage 3 Formal Capability hearing only.

If the Trust considers that there are grounds for taking formal action in relation to alleged poor performance, the employee will be required to attend a formal capability hearing. The Trust will notify the employee in writing of its decision to initiate the formal capability procedure and confirm:

- the nature of the performance concerns;
- the purpose of the hearing and who will decide the outcome;
- the time, date and location of the capability hearing;
- the employee's right to be accompanied at the hearing;
- copies of any supporting evidence or relevant documents that will be used at the capability hearing;
- the stage of the capability procedure that has been reached;
- the potential outcome of the hearing if the Trust decides after the hearing that performance has been unsatisfactory.

The employee may also choose to submit any additional evidence in advance of the hearing.

The hearing will be held as soon as reasonably practicable, but the employee will be given a reasonable amount of time, usually a minimum of 2 working days, to consider the information provided and prepare for the hearing.

The purpose of the meeting is to establish the facts, and to allow the staff member to respond to the concerns and make relevant representations.

The employee must make every effort to attend the hearing, and failure to attend without good reason may be treated as misconduct. If the employee fails to attend without good reason or is persistently unable to attend (for example because of poor health), the Trust may make decisions based on the available evidence including any written representations made by the employee. The Trust understands that this procedure may cause employees some stress and anxiety and will endeavour to provide appropriate support; however an indefinite or lengthy delay is likely to prolong the uncertainty and is therefore unlikely to be in the best interests of employees, pupils or the Trust.

The hearing will normally be held by the Headteacher or another member of the Senior Leadership Team, and may also be attended by a member of the HR team or a note taker. A Stage 3 hearing must be held by a Headteacher or other Trust Senior Leader. For Central Team members a hearing may be held by a Trust Senior Leader or Trustee Director.

The format of each stage of the formal capability process hearing may include:

- Setting out the required standards that the Trust believes the employee may have failed to meet, and going through any relevant evidence that has been gathered;
- Explaining the expected standards that are not being met based on the Teachers' Standards or other relevant standards, career stage expectations and/or job description;
- Giving clear guidance on the standard of performance needed to end the procedures;
- Explaining the support available to help the staff member improve their performance;
- Setting out the timetable for improvement and explain how performance will be monitored and reviewed;
- Allowing the employee to ask questions, present evidence, respond to evidence and make representations;
- Establishing the likely causes of poor performance including any reasons why previous actions have not led to the required improvement;
- Identifying whether there are further measures, such as additional training or supervision, which may improve performance;
- Discussing targets for improvement and a time-scale for review;
- If dismissal is a possibility, establishing whether there is any likelihood of a significant improvement being made within a reasonable time and whether there is any practical alternative to dismissal, such as redeployment.

A hearing may be adjourned if the Trust needs to gather any further information or give consideration to matters discussed at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

The employee will be informed in writing of the Trust's decision and the reasons for it, usually within five school working days of the capability hearing. Where possible this will also be explained to the employee in person.

B4. Possible outcomes – Stage 1, 2 or 3 Formal Capability hearing

The following sanctions may be issued at a Formal Capability hearing. Lesser sanctions, extensions of existing sanctions or no sanctions are other possible hearing outcomes.

Stage 1 - Written Warning

Stage 2 - Final Written Warning

Stage 3 - Dismissal

The meeting may establish that there are no grounds to pursue the capability issue. In this case, the procedure will come to an end and the issues will continue to be addressed through the informal capability process.

B5. After the meeting

The staff member will be sent formal meeting notes. If a formal warning has been issued, the staff member will also receive:

- A letter explaining the outcome of the hearing and the reasons for the decision;
- Information about the timing and handling of the review stage;
- Information about the procedure and time limits for appealing against the warning.

B6. Monitoring and review period

A further period of performance monitoring and a review period consisting of formal monitoring guidance and support will follow any formal capability meeting where a sanction has been issued.

Where the employee is able to meet the standards of performance expected of them at any review meetings throughout the period which the sanction is active (usually 12 months), then no further formal meetings will follow under this procedure.

Any warning will normally remain active for 12 months from the end of the review period. Whilst the warning is active, the capability process can be resumed at the same stage if the employee's performance declines. After the active period the warning will remain permanently on the employee's personnel file. An expired warning may be considered as relevant where there is evidence of an individual's fluctuating levels of performance in moving to an appropriate stage of the formal capability procedure in relation to future capability matters.

During the review period informal meetings will be held between the employee and the line manager to discuss progress and offer further support.

The employee's performance will be monitored during the review period and they will be informed in writing of the outcome:

- if the line manager is satisfied with the employee's performance, no further action will be taken other than to inform the employee in writing that they have demonstrated the necessary improvement, and to remind them that the capability process may be resumed if their performance declines whilst the written warning is active;
- if the line manager is not satisfied, the employee will be invited to a capability hearing at the next stage of the procedure;
- if the manager feels that there has been a substantial but insufficient improvement, the review period may be extended.

B7. Dismissal

Dismissal will normally be with full contractual notice or payment in lieu of notice where this is permitted by the employment contract. This is unless the employee's performance has been so negligent as to amount to gross misconduct, in which case the employee may be dismissed without notice or any pay in lieu.

B8. Right of appeal

An employee who feels that a formal decision (first/final written warning or dismissal) about poor performance under this procedure is wrong or unjust can appeal in writing to the named senior person in the outcome letter, stating full reasons and grounds for appeal, within one week of the decision being communicated in writing. The appeal hearing will be conducted by a Trust senior manager who has not been previously involved in the case. The original decision maker will usually be present. Where the original decision was made by the Headteacher, the appeal will be heard by a single Trust leader (for a written warning) or a panel of two or three Trust leaders which may include a Trustee Director (for a dismissal decision).

In the event of an appeal made by a Headteacher, the appeal will be heard by a single senior Trust leader (for a written warning) or a panel of two or three senior Trust leaders which may include a Trustee Director(s) (for a dismissal decision).

If an employee appeals against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal and the dismissal date will be the day that the decision is communicated. However, if the appeal is successful the employee will be reinstated with no loss of continuity or pay.

The appeal hearing will be a review of the fairness of the original decision in light of the procedure that was followed and any new information that may have become available. The employee will be given a full and fair opportunity to put forward their grounds for appeal together with any supporting evidence.

The hearing may be adjourned if the Trust needs to gather any further information or give consideration to matters discussed at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

The outcome of the appeal hearing may be to:

- confirm the original decision;
- revoke the original decision; or
- substitute a different (but not a higher) penalty.

The employee will be informed in writing of the final decision including reasons for the decision as soon as possible, and usually within 5 school working days of the appeal hearing. There will be no further right of appeal.