



THE HARMONY TRUST

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Capability Policy (Teachers) January 2020





Capability Policy (Teaching Staff)

1. Introduction

- 1.1 The Harmony Trust supports the principle that all employees should be assisted and encouraged to achieve optimum effective performance in their role within the Trust.
- 1.2 This procedure is designed to ensure consistent and fair treatment for all and to assist any employee experiencing difficulties performing satisfactorily the duties for which they have been appointed.
- 1.3 It is designed to provide managers and employees with an opportunity to improve their performance in the workplace. This policy is designed to support employees in improving their practice.

2. Scope

- 2.1 This procedure applies to all Teaching staff other than Newly Qualified Teachers.
- 2.2 This procedure extends to Senior Post Holders and where capability concerns arise meetings that are held will include the involvement of the Board.
- 2.3 This procedure excludes where a change or any changes in organisational needs, demands or resources impact on the workforce staffing levels, or skill requirements required of employees. In these circumstances such change will be addressed through other procedural arrangements such as in a Management of Change Policy and Procedure.
- 2.4 Amendments or updates of this policy, are subject to consultation with the recognised trade unions.

3. Definition of Capability Concerns

- 3.1 Capability concerns are when an employee is unable to maintain the standard of performance required to meet the requirements of the post.
- 3.2 This policy is not intended to be used where poor performance is the result of carelessness, wilful neglect of duty, deliberate failure to carry out reasonable directions or other such actions which can be considered under the Trust's Disciplinary Policy.

4. General Principles

- 4.1 The Trust will ensure that performance standards are clear to employees as defined in job descriptions, person specifications, individual performance targets, STPCD, the Teachers Standards and Trust policies and procedures.
- 4.2 The Trust will ensure the appropriate facilities and support is available to ensure an employee is assisted in their role.



- 4.3 Where an employee is experiencing personal or health difficulties the services provided by Occupational Health, which can include confidential counselling support, will be considered by HR, the employee and their manager.
- 4.4 An employee will have the right to be represented and accompanied by a representative of a trade union or workplace colleague at any stage of the capability procedure.
- 4.5 Notes of any informal and formal capability meetings will be issued to the employee within working 5 days.
- 4.6 A HR representative may accompany management at any stage of the capability procedure in order to provide HR advice and guidance.
- 4.7 The manager will need to establish that the correct policy and procedure is being used in relation to the employee, for eg:
 - Where an employee is assessed as being capable of undertaking the work but chooses not to, the disciplinary procedure should be used.
 - Where an employee has previously proven capable of undertaking the work, but for reasons to be explored are now experiencing difficulties in performing their duties, this capability concerns procedure should be used.
 - In exceptional circumstances, it may be necessary to temporarily redeploy an employee immediately from their normal job, e.g. employees against whom serious complaints of lack of capability and/or lack of competence have been made.

5. When Capability Concerns Arise

- 5.1 Concerns about capability may arise where there is evidence of:
 - lack of aptitude, skill or experience;
 - poor attendance at work, related to ill health.
- 5.2 Capability concerns may arise due to the following reasons:
 - Changes in the role
 - Internal promotion
 - Deterioration in the level of skills, ability and/or knowledge
 - A change in personal circumstances

6. Capability in relation to Disability

- 6.1 Concerns about capability should not be confused with disability. Where an employee becomes disabled during their employment it is important to ensure that every effort is made to retain them in their original job, or redeploy them to a suitable alternative post, in line with the requirements of the Equality Act 2010. Recourse to the capability guidelines should only take place when schemes to support with disability have been exhausted. In these circumstances, advice should be sought from HR.



7. Informal Procedure & Support for Capability Concerns

- 7.1 It is important to recognise that many issues of performance can be, and should be, resolved without recourse to the formal capability procedure. The following is intended as a framework and may need to be adapted to suit the needs of each situation.
- 7.2 If a concern is raised with a Teacher about the standards of performance as part of the appraisal process, this should be documented in writing and support provided to the member of staff. The capability procedure should only be invoked where there is clear, triangulated evidence of sustained underperformance that the appraisal process has failed to address, following coaching and development support.
- 7.3 As soon as a concern is identified by either the manager or the employee, the issue should be discussed between the employee and their manager. In these circumstances, both parties will have every opportunity to discuss the concern, to make any comments and to record them if desired and implement an agreed coaching and development programme. Most areas for concern can generally be dealt with through informal discussions and support before recourse to the informal stage of the capability process.
- 7.4 If, following the implementation of the coaching and development support, the concerns still exist, the manager should bring the matter to the employee's attention and a proper review should be conducted with structured information gathering, which should be systematically recorded. This should include difficulties of identified differences, agreed objectives to address difficulties and planned support.
- 7.5 Once the review has been undertaken an informal meeting should take place to discuss the outcome with a view to securing the improvement to the standards required. This meeting marks the start of the informal stage of the capability process.
- 7.6 The member of staff will be sent a letter inviting them to this meeting and explaining that this marks the start of the informal stage of the capability process. The letter will advise the employee of their right to contact their Union for advice and of their right to be accompanied by a Trade Union representative or work colleague at the meeting.
- 7.7 The meeting should be constructive and allow the employee an opportunity to express their opinion and for the line manager to determine whether there are any external factors which may be contributing to the performance issues. If the concern is one of poor health, then the matter needs to be dealt with under the procedure for sickness absence.
- 7.8 The employee's manager will meet and discuss the alleged poor performance with the employee, in order to:
- Make the employee aware of the issues and the effect on the organisation
 - Attempt to establish the cause/s
 - Obtain the employee's perspective on the matter
 - Clarify expected standards



- Identify and where possible agree solutions
- Identify realistic, measurable objectives and the period over which these should be achieved and sustained (normally between 6 and 12 weeks) to achieve a satisfactory improvement in the employee's performance and conclude the process at this stage.
- Allocate a mentor and diarise mentor meetings which will not be held in a Teacher's PPA time.
- Confirm what evidence will be used to assess the employee's performance
- Confirm when the performance standards will be reviewed and the fact that formal action could be taken if the required improvement is not satisfactorily achieved and sustained. The timescales agreed for monitoring should be documented.

7.9 During the meeting an agreed time scaled action plan (Appendix 1) should be set up to include:

- further training specifically directed to training needs which is identified to facilitate improvement;
- monitoring review and variance of workload as required and the impact on the member of staff's workload;
- setting realistic review and monitoring of standards of performance in respect of agreed objectives and the requirements of the job;
- review and monitoring of the amount of supervision which should be reasonable.

7.10 The outcome of the meeting will be confirmed in writing within five working days of the meeting, confirming that the employee is being supported through the informal stage of the capability procedure, enclosing a copy of the action plan which will contain a summary of the improvement(s) required, the objective(s) and the timescale(s) over which these are expected. The member of staff will be given an opportunity to comment on the action plan.

7.11 Regular review meetings should take place during the informal support period, depending on the requirements to improve performance. These meetings will not take place in a Teacher's PPA time. It is anticipated that in the vast majority of cases, no further action, other than normal follow-up, will be necessary.

7.12 At the end of the informal stage a final review meeting will be held to establish whether sufficient progress has been made. At this meeting there are a range of possible outcomes including extending the period of assessment, closing the period due to improvements made or progressing to first formal stage of this procedure if performance is still not satisfactory.

8. First Formal Meeting

8.1 Where the levels of improvement agreed are not met, then a formal meeting should take place to discuss performance. This meeting constitutes the date of entry into the formal procedure. The employee has the right to be accompanied at the meeting by a trade union representative or workplace colleague.



- 8.2 The employee should be given at least 10 working days' notice of the meeting. The notification letter should include:
- The time and place of the meeting
 - A statement of the concerns regarding their performance
 - The possible consequences of the meeting
 - Their right to be accompanied by either a work colleague or trade union representative
 - Copies of any written evidence that might be relied upon
- 8.3 The Principal/Head of Academy will clarify where the employee's performance is falling short of the Teachers Standards, and specify what the required standards are. This meeting should be used as an opportunity to explore further with the employee any reasons for their poor performance, as well as establishing appropriate training and support mechanisms that will assist in addressing the concerns.
- 8.4 The employee will be given the opportunity to respond, by explaining or refuting the performance issues, and as a result the meeting may provide new information or put a different slant on evidence collected. If it becomes clear that further investigation is needed, the meeting should be adjourned but this should not cause unreasonable delay to proceedings.
- 8.5 The Principal/Head of Academy's decision should be made after all the facts and any representations from the employee have been considered. The manager should adjourn the meeting briefly, to consider the appropriate action before delivering a decision to the employee.
- 8.6 There are three potential outcomes available;
- No further action;
 - Arrange additional informal support;
 - First written warning;
- 8.7 First written warnings issued as a result of this meeting will remain on the employee's file for a period of 6 months.
- 8.8 The member of staff will be offered the opportunity to appeal against the formal warning within ten days of receipt of the outcome letter.
- 8.9 Where further informal support is required or a formal warning is issued, the manager should use the remainder of the meeting to;
- Identify the continued performance shortcomings;
 - Give clear guidance on the improved standard of performance needed to be reached and maintained.
 - Ask the employee if there is any support that would be beneficial and agree the support that will be made available, how performance will be monitored over the following weeks, and how this will be evidenced.
 - Confirm that a first written warning has been issued (where relevant) and the employee's right of appeal.
 - Identify the timescale for improvement (normally no less than 12 weeks) and agree a date for the final review meeting.



- Make it clear that failure to improve may ultimately lead to dismissal.
- 8.10 The outcome of the meeting will be confirmed in writing within five working days of the meeting, detailing any objectives specified to include timescales. Where the outcome is a first written warning this will also be outlined in the letter with a clear indication that where there is a failure in achieving the objectives by the timescales set out this may lead to further warnings or even dismissal.
- 8.11 If a first written warning is issued the member of staff will no longer be subject to the performance appraisal process for the duration of the formal capability process.

9. Second Formal Meeting

- 9.1 Failure to improve after the review period should be followed by a repeat of 8.2 – 8.5 for a second time.
- 9.2 There are two potential outcomes available;
- No further action;
 - Further support under an extension of the first formal stage;
 - Final written warning
- 9.3 Final written warnings issued as a result of this meeting will remain on the employee's file for a period of 12 months.
- 9.4 The employee will be notified of their right to appeal this warning within ten days of receipt of the outcome letter.
- 9.5 Where a final written warning is issued, the manager should use the remainder of the meeting to;
- Identify the continued performance shortcomings;
 - Give clear guidance on the improved standard of performance needed to be reached and maintained.
 - Ask the employee if there is any support that would be beneficial and agree the support that will be made available, and how performance will be monitored over the following weeks.
 - Confirm that a final written warning has been issued (where relevant) and the employee's right of appeal.
 - Identify the timescale for improvement (normally no less than 12 weeks) and agree a date for the final review meeting.
 - Make it clear that failure to improve may ultimately lead to dismissal.
- 9.6 The outcome of the meeting will be confirmed in writing within five working days of the meeting, detailing any objectives specified to include timescales. Where the outcome is a final written warning this will also be outlined in the letter with a clear indication that where there is a failure in achieving the objectives by the timescales set out this may lead to dismissal.
- 9.7 If improvement is still insufficient, the manager should consider whether voluntary redeployment could be considered within the Trust. If redeployment



is identified, in line with section 15, by the employee to a post that is not on the same scale, the employee will be advised why the offer of redeployment has been made and the consequences of refusing it. The employee will be given time to consider the offer and be advised to discuss it with their representative.

10. Final Formal Meeting When Employment is at risk of Dismissal

- 10.1 Employees will be advised at appropriate stages of the formal arrangements above when their employment is considered at risk of termination.
- 10.2 For Senior Post Holders where dismissal is under consideration a member of the Board will be involved at all stages.
- 10.3 Employees will be informed in writing of the capability concerns that warrant consideration of dismissal, along with written confirmation of the process that will occur in order that fair and reasonable consideration is given on whether or not to dismiss.
- 10.4 A panel will be asked to consider the capability concerns and how they have been addressed under the informal and/or formal arrangements and the employee's response to the capability concerns prior to a decision of dismissal being considered.
- 10.5 The employee will have an opportunity to meet with the panel to put forward their case, which may include information relating to the circumstances they believe have affected their capability, to the panel prior to any decision being made.
- 10.6 The employee will be entitled to be accompanied at the meeting with the panel by a companion, who could be either a work based colleague or trade union representative.
- 10.7 If the chosen representative of the employee is unavailable on the date of the initial dismissal hearing, the employee may delay the date of that hearing once to enable the chosen representative to attend.
- 10.8 The panel will give full consideration to all the relevant information pertaining to the capability concerns and will make a decision based on this information.
- 10.9 Their decision will be either:
 - To retain the employee on a stage 2 formal warning of capability concerns, with a timescale by when improvements must be achieved as set out and agreed with the employee by the respective line manager. For teaching staff consideration will also be given to withholding further incremental pay progression during the period that the capability concerns continue.
 - To dismiss the employee, with contractual notice, on the grounds of establishing the employee is incapable of performing to the standards of performance or attendance required.
 - No further action.



10.10 The panel's decision will be confirmed in writing as soon as is reasonably practical and where possible within three working days.

10.11 The employee will also be advised in writing of the appeal arrangements that are available to them as identified in paragraph 11.2 below.

11. Appeal Process

11.1 An employee who wishes to appeal against a formal warning, dismissal or notice of dismissal on the grounds of capability should inform the Head of Operations in writing, providing the grounds of the appeal.

11.2 The appeal should be confirmed in writing within ten working days of the date of the decision which forms the subject of the appeal.

11.3 The appeal will take place as soon as reasonably practicable after the notice to appeal has been received by the Head of Operations. The employee will be given at least ten working days' notice of the date, time and place fixed for the appeal (unless an earlier date has been mutually agreed).

11.4 At the appeal, the employee will be given an opportunity to state his or her case and will be entitled to be accompanied and represented by a companion who may be either a work based colleague or a trade union representative.

11.5 The committee appointed to hear the appeal, shall take into account any representations of the employee and the decision to issue a formal warning or dismiss, and take such action as it considers appropriate. The decision will be notified to the employee in writing without unreasonable delay.

11.6 The decision confirmed through the appeal process will be final with no further internal proceedings applying.

12. Authority to Act under the Capability Procedure

12.1 The table below outlines the levels of authority in line with the Trust's Scheme of Delegation.

| Employee group being managed under this procedure | Responsible for First & Second Formal Meeting | Responsible for Final Formal Meeting | Responsible for Appeal |
|--|--|---|--|
| Executive Principal | Director of Infrastructure | Panel of three which may include members of the Trust Board and the CEO | Panel of three from the Trust Board |
| Principal | Director of Infrastructure or Executive Principal | Panel of three which may include Directors of the Trust and members of the Trust Board, and/or other senior colleagues appointed by the CEO | Panel of three which may include: 1 Board Member 1 Trust Senior Leader 1 Trust Representative |
| Head of Academy | Executive Principal | Panel of three which may include Directors of the Trust and | Panel of three which may include: 1 Board Member |



| | | | |
|----------------------|---------------------------|---|--|
| | | members of the Trust Board, and/or other senior colleagues appointed by the CEO | 1 Trust Senior Leader 1 Trust Representative |
| Other members of SLT | Principal/Head of Academy | Panel of three which may include Directors / Senior Leaders of the Trust and members of LMSG and/or other senior colleagues appointed by the CEO. | Panel of three which may include: 1 Board Member 1 Trust Senior Leader 1 Trust Representative |
| Teachers | Principal/Head of Academy | Panel of three which may include Directors / Senior Leaders of the Trust and members of LMSG and/or other senior colleagues appointed by the CEO. | Panel of three which may include: 1 Board Member 1 Trust Senior Leader 1 Trust Representative |

12.2 At the Final Formal Meeting and Appeal stage the panel members will have not previously been involved in the case.

13. Sickness

13.1 If long term sickness appears to have been triggered by the commencement of either the informal or formal stages of the Capability procedure, the case will be dealt with under the Trust’s Attendance Management procedure and will normally be referred to the occupational health service to assess the member of staff’s health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring. The views of the occupational health practitioner will always be taken into account before a decision is reached.

14. Grievances

14.1 Where an employee raises a grievance in accordance with the Trust’s grievance procedure during the course of the capability process, depending on the circumstances, it may be appropriate to suspend the capability procedure for a short period until the grievance can be considered.

15. Redeployment

- 15.1 Good practice requires that redeployment be properly considered prior to any decision to dismiss an employee for reasons of poor performance.
- 15.2 Redeployment may be discussed and considered at any formal stage of the process. Details of any discussions must be included in the Principal/Head of Academy’s written record.
- 15.3 It is recommended that the Principal/Head of Academy seek advice from HR prior to any discussions about redeployment.



- 15.4 If a suitable post is available and redeployment agreed as viable, the employee will have a trial period in the new post of 13 weeks. This period will allow the employee to decide whether the new role is suitable and the manager to assess the employee's performance in the new role.
- 15.5 There is no pay protection for employees who request and who are deployed to a lower graded post.
- 15.6 Further details regarding redeployment can be found within the Trust's Redeployment Policy.

16. Review

- 16.1 This policy will be reviewed every year in consultation with the recognised Trade Unions.
- 16.2 An Equality Impact Assessment will be carried out annually and shared with union representatives.



Appendix 1

INFORMAL/FORMAL CAPABILITY SUPPORT PLAN

| | | | | | | | |
|-----------------|--|---------------|--|---------------------------------|--|---------------------------|--|
| Teacher: | | Coach: | | Support Plan Start Date: | | Final Review Date: | |
|-----------------|--|---------------|--|---------------------------------|--|---------------------------|--|

| | | |
|--------------------------------|---|--|
| Objective: | | |
| Success Criteria | Date to be achieved by/Review Date | Action Steps and Support Required |
| | | |
| Monitoring Arrangements | Evidence to be used to assess progress | Evaluation of Progress |
| | | |

| | | | |
|--------------------------------------|--|------------------------------------|--|
| Teacher comments: | | | |
| | | | |
| Teacher Signature & Date: | | Coach Signature & Date: | |

For Completion at Final Review Meeting:

| | | | |
|---|----------------------------|------------------------------------|----------------------------|
| Teacher reflection: | | | |
| Overall Impact since coaching started: | Objective 1: | Objective 2: | Objective 3: |
| | | | |
| Objectives achieved: | Objective 1: Yes/No | Objective 2: Yes/No | Objective 3: Yes/No |
| | <Insert Details> | <Insert Details> | <Insert Details> |
| Final Outcome: No further action/Extension of informal support period/Referral to next stage | | | |
| Teacher Signature & Date: | | Coach Signature & Date: | |



Appendix 2

Procedure at a Final Formal Meeting when Employment is at risk of Dismissal

At a final formal meeting when employment is at risk of dismissal the following procedures shall be observed:

- The Chair of the panel will introduce those present, and explain why they are there. Someone who is not directly involved in the hearing should be appointed to take notes on the proceedings and Human Resources may be present throughout the hearing.
- The Chair will explain the purpose of the meeting i.e. to establish as fully as possible the facts, and to consider the case for dismissal in accordance with the Trust's Capability Policy.
- The Chair will explain how the meeting will be conducted
- The Principal/Head of Academy will be invited to present the management case in the presence of the employee and their representative and may call witnesses.
- The employee and/or their representative shall have the opportunity to ask questions of the Principal/Head of Academy and their witnesses.
- The members of the panel shall have the opportunity to ask questions of the Principal/Head of Academy and witnesses.
- The employee and/or their representative shall put their case forward in the presence of the Principal/Head of Academy and may call witnesses.
- The Principal/Head of Academy shall have the opportunity to ask questions of the employee, their representative and their witnesses.
- The members of the panel shall have the opportunity to ask questions of the employee, their representative or their witnesses.
- All parties shall have the opportunity to re-examine their witnesses on any matter referred to in their cross examination by members of the panel, the employee/their representative or the Principal/Head of Academy.
- The Principal/Head of Academy and the employee or their representative shall have the opportunity to sum up their cases if they so wish.
- The employee and/or their representative shall have the right to speak last. In their summing up neither party may introduce any new matter.



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- Nothing in the foregoing procedure shall prevent the panel from questioning witnesses, management and employee as appropriate to clarify issues or seek supplementary information, manage the conduct of the participants or to amend proceedings to ensure fairness, clarity and the ability to hear the matters appropriately.
- The panel may, at its discretion, adjourn the meeting in order that further evidence may be produced by either party or for any other reason.
- If further evidence is produced then both parties will have the opportunity to test the evidence put before the panel.
- The Principal/Head of Academy, the employee and their representative shall withdraw while the panel deliberates.
- Witnesses will only be present whilst giving their evidence and will leave the meeting immediately afterwards.
- The panel shall deliberate in private only recalling both parties to clear points of uncertainty on evidence already given. If recall is necessary, both parties shall return notwithstanding only one is concerned with the point giving rise to doubt.
- Unless a mutual agreement has been reached otherwise, the meeting will be reconvened and the employee be informed of the outcome of the hearing.
- The decision will be communicated in writing within 3 working days.
- The employee will also be advised of the appeal arrangements that are available to them.



Appendix 3

Procedure for Appeal Hearing

At the hearing of a review of the decision made following a performance review meeting, the following procedures should be observed:

- The Chair of the panel will introduce those present, and explain why they are there. Someone who is not directly involved in the hearing should be appointed to take notes on the proceedings and Human Resources may be present throughout the hearing.
- The Chair will explain the purpose of the meeting i.e. to establish as fully as possible the facts, and to consider the case for dismissal in accordance with the Trust's Capability Policy.
- The Chair will explain how the meeting will be conducted
- The appellant and/or their representative shall put their case forward in the presence of the Trust's representative.
- The Trust's representative and members of the Appeal Panel shall have the opportunity to ask questions of the appellant and/or their representative.
- The Trust's representative shall state the Trust's case in the presence of the appellant and their representative.
- The appellant and their representative and members of the Appeal Panel shall have the opportunity to ask questions of the Trust's representative.
- The Trust's representative and the appellant or their representative shall have the opportunity to sum up their cases. In their summing up neither party may introduce any new matter.
- Nothing in the foregoing procedure shall prevent members of the Appeal Panel from seeking to clarify any points from either party, managing the conduct of the case presenters or amending proceedings to ensure fairness, clarity and the ability to hear the matters appropriately.
- The panel may, at its discretion, adjourn the meeting in order that further evidence may be produced by either party or for any other reason.
- If further evidence is produced then both parties will have the opportunity to test the evidence put before the panel.
- The Principal/Head of Academy, the employee and their representative shall withdraw while the panel deliberates.
- Witnesses will only be present whilst giving their evidence and will leave the meeting immediately afterwards.



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- The panel shall deliberate in private only recalling both parties to clear points of uncertainty on evidence already given. If recall is necessary, both parties shall return notwithstanding only one is concerned with the point giving rise to doubt.
- Unless a mutual agreement has been reached otherwise, the meeting will be reconvened and the employee be informed of the outcome of the hearing.
- The decision will be communicated in writing within 3 working days.