



**Tudhoe Learning Trust**

# **Capability Policy**

**Approved by:** Trust Chief Executive Officer      **Date:** December 2019

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## Introduction

The purpose of the policy is to provide a fair and consistent framework for managing performance where an employee consistently fails to perform their duties to a professionally acceptable standard. The Policy applies to all Trust employees and will be applied when concerns regarding performance remain following the conclusion of management support that has been provided on an informal basis as part of the appraisal process.

The capability procedure will start when the employee is notified in writing that the appraisal procedure will no longer apply as the Head Teacher, Trust Chief Executive Officer or Chair of Board of Directors as appropriate, has judged that there are serious concerns about their performance that the appraisal process has been unable to address.

The procedure is not designed to be punitive and is intended to provide timely support and encouragement to enable the improvement of performance.

In this Trust, the responsibility for imposing any sanctions given as part of this procedure has been delegated by the Board of Directors to the Trust Chief Executive Officer. The Trust Chief Executive Officer may impose sanctions up to and including dismissal for all staff (excluding Head Teacher). In cases where the Head Teacher or Trust Chief Executive Officer's performance has not been acceptable this will be considered by representatives of the Board of Directors as appropriate.

Head Teachers of Trust schools are responsible for the operational management of this policy with support from the Trust HR Manager. Throughout the policy, 'Head Teacher' may be substituted for another nominated person.

The HR Manager is responsible for providing advice and guidance to the Head Teacher or other relevant managers, to ensure it is operated in a fair and effective manner. It is important that the HR Manager is involved throughout the capability process and must be in attendance at any meetings, hearings or an appeal. The Head Teacher, Trust Chief Executive Officer and Trust Directors have an obligation to seek advice and guidance from the Trust HR Manager when contemplating formal capability procedures.

In applying this policy, the Trust will not unlawfully discriminate in respect of any of the protected characteristics as defined under the Equality Act and specified below:

- Age
- Disability
- Gender reassignment
- Pregnancy and Maternity
- Race
- Religion or Belief
- Sex
- Sexual Orientation
- Marriage and civil partnership

The operation of this Policy will be kept under review and changes will be made as deemed appropriate.

It is recommended that employees who are involved in a capability process are advised to contact their Trade Union Representative at the earliest opportunity so that the union can offer them appropriate advice, guidance and support. Support can also be sought from the Trust's Employee Assistance Programme provider, Health Assured - telephone 0800716017 (24 hour personal support service)

## Procedure

### Capability Performance Meeting

Where an employee does not meet objectives set through the appraisal process they will then be invited to meet with the Head Teacher to discuss the concerns. The Trust HR Manager must attend the Capability Performance Meeting and any subsequent review meetings to provide advice and support.

The Head Teacher should arrange a capability performance meeting with the employee to discuss the concerns giving at least 5 working school days' notice in writing and the 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 Trade Union representative or work colleague. The employee must make all reasonable efforts to attend the meeting. If the employee's chosen representative is not available on the original date of the meeting, the employee has the right to one postponement. This should normally be within 5 school working days of the original date. This time limit can be extended but only in justifiable and exceptional circumstances with the agreement of all parties.

The following areas should be discussed with the employee during the meeting

- Explain which area(s) of their performance is causing concern.
- Ensure the employee is aware of the required level of performance.
- Identify if there are any reasons why the performance is causing concern e.g. domestic difficulties or health issues then it may be necessary to deal with this under the appropriate procedure.
- Explain and agree the improvements that need to be made.
- Set a reasonable period within which the employee should achieve the improved performance. Maximum timescale should be no more than 4 school weeks. However under justified exceptional circumstances and only with the agreement of both parties can the time scale be extended.
- Explain what remedial action needs to be taken and agree an action plan and timescale of support with clear and achievable success criteria.
- Set a date for the capability performance review meeting. This should take place as soon as possible after the end of the review period.
- Explain and clarify the implications for the employee if improvement is not achieved i.e. that the process may progress to a capability hearing.
- A written record of the meeting and the agreed outcomes and actions should be kept and a copy given to the employee.
- During the review period the employee's performance should be monitored and the employee should be supported and kept informed of their progress.

The Head Teacher should also consider the following areas of support where appropriate:

- In house training
- Help with planning and content of work and any follow up
- Observation of good practice
- Observation of the employee's work by someone not involved in the process (this could be someone from the school or where appropriate other external support and after the observation prompt constructive feedback given)
- Team teaching with an experienced teacher (where the employee is a teacher)
- Visits to other schools or workplaces.

A Supportive Action Plan will be drawn up to record the support that will be provided and the timescales for improvement. This will be monitored and referred to in subsequent meetings.

At the end of the capability performance review period (usual timescale of 4 school weeks from the first meeting) a review meeting will be held to consider the situation.

When the required improvement has been made, the employee should be told of this and encouraged to maintain the improvement. The employee's performance will once again be monitored via the appraisal process.

If the action plan has not been met satisfactorily, as an outcome to the meeting, the Head Teacher may decide to extend the monitoring period or progress the matter to a Capability Hearing and the employee will be advised as appropriate.

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 agree to deal with both issues concurrently.

Where an employee commences sickness absence during the capability procedure this will be dealt with in accordance with the Trust Sickness Absence Procedure.

### **Capability Performance Review Meeting**

At the end of the review period (maximum timescale of 6 weeks from capability performance meeting) a capability performance review meeting should be held to consider the situation.

If the required improvement has been made, the employee should be told of this and encouraged in writing to maintain the improvement. The employee's performance will once again be monitored via the appraisal process.

If the action plan has not been met satisfactorily, the Head Teacher will determine whether it is appropriate to extend the period of the capability performance review or to convene a capability performance hearing. Either decision must be confirmed in writing to the employee. The Head Teacher will prepare a report to be presented at the hearing.

If it becomes apparent at any stage of this procedure that the poor performance is caused, not by capability, but by a lack of willingness to carry out reasonable duties which is a conduct issue, then the Trust's disciplinary procedure will be invoked - the Trust's Disciplinary Procedure is available on the Trust Website [www.tudhoelearningtrust.co.uk](http://www.tudhoelearningtrust.co.uk).

### **Capability Performance Hearing (with Trust Chief Executive Officer**

At least 10 school working days' notice in writing of the time, date and place of the hearing shall be given to the employee. The Trust HR Manager must attend the Capability Performance Hearing to provide advice and support. The employee must make all reasonable efforts to attend the hearing. If the employee's chosen representative is not available on the original date for the hearing, the employee has the right to have one postponement. This should normally be within 5 school working days of the original date. This time limit can be extended by mutual agreement but only in exceptional circumstances and with the agreement of all parties. The employee should also be offered one alternative date if they are unable to attend due to unforeseen circumstances, such as illness.

If the employee fails to attend the hearing and a valid reason is not provided, then the Trust Chief Executive Officer will decide whether to proceed in their absence or provide an alternative date. If an alternative date is provided, the employee will be advised that if they fail to attend without a valid reason then the hearing will proceed and decisions taken in their absence.

The procedure to be followed at the Performance Hearing is included at Appendix 1.

At the same time as the notice of the hearing is sent, the employee shall be:

- Informed in writing of the nature of the concern(s) regarding their lack of capability and will be given copies of all documentation previously shared with the employee in the form of a report documenting the evidence gathered.
- Sent two copies of all documents to be considered at the hearing, the second copy being provided for the use of the employee's representative.
- Inform them that they have the right to submit a written statement prior to the hearing and that this will need to be received in sufficient time to allow the Head Teacher/Clerk to circulate to all parties.
- Asked to acknowledge receipt of the letter and say whether they will attend the hearing, accompanied or otherwise
- Advised of the potential outcomes of the hearing i.e. a further period of support and monitoring may be determined and/or a formal sanction may be imposed as appropriate e.g. a written warning
- Asked to acknowledge receipt of the letter and say whether they will attend the hearing, accompanied or otherwise.

Where possible, once a decision is reached at the Hearing, the employee will be given v e r b a l notification of the decision and the reasons for the conclusion of the hearing. This will then be confirmed in writing within 5 school working days.

An employee will not be dismissed at this stage of the procedure.

When a formal warning is issued the length of the review period will be no more than the duration of 1 term. In cases of particularly serious concern or in the case of a teacher; where the education of children is in jeopardy consideration needs to be given as to the appropriate level of warning i.e. final written warning and this will invoke a review period not exceeding 4 weeks. However under justified exceptional circumstances and only with the agreement of both parties the timescale can be extended.

A written record of the agreed outcomes and actions will be kept and a copy given to the employee.

Formal warnings will remain on record in accordance with the following timescale:

Written warning	12 months after the issue of the warning.
Final written warning	18 months after the issue of the warning.

Where a formal warning is issued, the employee will have the right of appeal against this decision to an Appeals Panel of the Board of Directors. Appeals should be lodged in writing to the Trust Chief Executive Officer at [office@tudhoelearningtrust.co.uk](mailto:office@tudhoelearningtrust.co.uk) within 10 school working days of the warning being issued.

Where the Trust Chief Executive Officer determines that it is appropriate to provide a further period of support and monitoring, the review period will not exceed 4 school working weeks and a final capability performance hearing review date will be agreed at the meeting. The date will be confirmed in writing as soon as possible after the meeting. The letter will advise the employee the possible outcomes of the Final Capability Performance Hearing.

If an employee's performance has improved leading to a return to the appraisal process, any subsequent poor performance within the live warning period will result in the capability process recommencing at the previous stage.

### **Final Capability Performance Hearing**

The employee must make all reasonable efforts to attend the hearing. If the employee's chosen representative is not available on the original date for the hearing, the employee has the right to have one postponement. This should normally be within 5 school working days of the original

date. This time limit can be extended but only in justifiable and exceptional circumstances with the agreement of all parties. The employee should also be offered one alternative date if they are unable to attend due to unforeseen circumstances, such as illness.

If the employee fails to attend the hearing and a valid reason is not provided, then the Trust Chief Executive Officer will decide whether to proceed in their absence or provide an alternative date. If an alternative date is provided, the employee should be advised that if they fail to attend without a valid reason then the hearing will proceed and decisions taken in their absence.

The procedure to be followed at the Final Capability Performance Hearing is at **Appendix 1**

The Trust HR Manager must attend the Final Capability Performance Hearing, Prior to the hearing, the employee shall be:

- given copies of all documentation previously shared with the employee during the review period in the form of a report documenting the evidence gathered.
- Sent two copies of all documents to be considered at the hearing, the second copy being provided for the use of the employee's representative.
- Informed them that they have the right to submit a written statement prior to the hearing and that this will need to be received in sufficient time to allow this to be circulated to all parties.
- Advised of the potential outcomes of the hearing i.e. the matter may be referred back to the Head Teacher to manage as part of the appraisal procedure, a further period of support and monitoring at this stage may be determined and/or a formal sanction may be imposed up to and including dismissal.
- Asked to acknowledge receipt of the letter and say whether they will attend the hearing, accompanied or otherwise.

At the hearing the Trust Chief Executive Officer may determine one or more of the following:

- The matter is referred back to the Head Teacher for further actions, together with any other recommendations the Trust Chief Executive Officer may wish to make.
- The employee is dismissed with contractual notice on grounds of poor performance
- Where possible, once a decision is reached at the Final Capability Performance Hearing, the employee will be given verbal notification of the decision and the reasons for the conclusion of the hearing. This will then be confirmed in writing within 5 school working days.

Appeals against any sanctions imposed as part of the procedure are heard by the Appeals Panel of the Board of Directors. The Appeals Panel has the power to uphold or overturn a dismissal decision. Appeals should be lodged in writing to the Trust Chief Executive Officer at [office@tudhoelearningtrust.co.uk](mailto:office@tudhoelearningtrust.co.uk) within 10 school working days of receipt of the letter confirming the dismissal and should clearly state the grounds for appeal.

## **Appeal Hearing**

At least 10 school working days' notice in writing of the time, date and place of the Appeal Hearing shall be given to the employee. The employee must make all reasonable efforts to attend the Appeal Hearing. If the employee's chosen representative is not available on the original date for the Appeal Hearing, the employee has the right to have one postponement. This should normally be within 5 school working days of the original date. This time limit can be extended by mutual agreement but only in exceptional circumstances. The teacher should also be offered one alternative date if they are unable to attend due to unforeseen circumstances, such as illness.

If the employee fails to attend the Appeal Hearing and a valid reason is not provided, then

the Panel will decide whether to proceed in their absence or provide an alternative date. If an alternative date is provided, the teacher should be advised that if they fail to attend without a valid reason then the hearing will proceed and decisions taken in their absence.

The procedure to be followed at the Appeal Hearing is at Appendix 2

The Trust HR Manager must attend the Appeal Hearing.

Where possible, once a decision is reached at the Appeal Hearing, the employee will be given v e r b a l notification of the decision and the reasons for the conclusion of the hearing. This will then be confirmed in writing within 5 school working days.

The decision made at this stage is final and concludes the T r u s t Capability Procedure.

## **Further Information**

If you would like any further information or advice in relation this Policy please contact the Trust HR Manager on 01388 811 765 or [office@tudhoelearningtrust.co.uk](mailto:office@tudhoelearningtrust.co.uk)

## Procedure to be followed at Capability and Final Capability Performance Hearing

### Introduction

The Chief Executive Officer will invite all parties to introduce themselves. The Trust HR Manager will be present at the hearing. The purpose of the hearing, how it will be conducted and the potential outcomes of the hearing will be explained to the employee.

### Statement of case by the Employer

The HEAD TEACHER will put the case in the presence of the EMPLOYEE and t h e i r representative.

The EMPLOYEE (or their representative) will have the opportunity to ask questions of the HEAD TEACHER on the evidence given by them.

The CHIEF EXECUTIVE OFFICER and the HR MANAGER will have the opportunity to ask questions of the HEAD TEACHER on the evidence given by them.

### Statement of case by the Employee

The EMPLOYEE (or their representative) will put the case in the presence of the HEAD TEACHER.

The HEAD TEACHER will have the opportunity to ask questions of the EMPLOYEE.

The CHIEF EXECUTIVE OFFICER and the HR MANAGER will have the opportunity to ask questions of the EMPLOYEE on the evidence given by them.

### Summing Up

The HEAD TEACHER and the EMPLOYEE (or their representative) will have the opportunity to sum up their cases if they so wish.

### Consideration by Trust Chief Executive Officer

The CHIEF EXECUTIVE OFFICER and the HR MANAGER will deliberate in private, only recalling the HEAD TEACHER AND THE EMPLOYEE (and t h e i r representative) to clear points of uncertainty on evidence already given. If recall is necessary, both parties are to return notwithstanding only one is concerned with the point giving rise to doubt.

### Decision

When the CHIEF EXECUTIVE OFFICER has reached a decision the HEAD TEACHER AND THE EMPLOYEE will be invited back in and informed of the decision verbally if requested. Written confirmation will be sent to the teacher EMPLOYEE within 5 school working days.

## Procedure to be followed at Appeal Hearing

### Introduction

The Chair of the APPEALS PANEL will invite all parties present to introduce themselves and their role in the hearing. The Trust HR Manager will be present at the hearing. The purpose of the hearing, how it will be conducted and the powers of the APPEALS P A N E L will be explained to the employee.

The PRESENTING OFFICER(S) at the appeal hearing will be the Head Teacher and/or Trust Chief Executive Officer.

It will depend on the extent of the grounds for appeal as to whether the appeal will require a re-hearing of the facts or whether it may be limited to particular issues such as the extent of the sanction imposed.

### Statement of case by the Employee

The EMPLOYEE (or their representative) will put the case in the presence of the PRESENTING OFFICER(S).

The PRESENTING OFFICER(S) will have the opportunity to ask questions of the EMPLOYEE.

The members of the APPEALS PANEL and HR MANAGER will have the opportunity to ask questions of the EMPLOYEE.

### Statement of case by the Employer

The PRESENTING OFFICER(S) will put the case in the presence of the EMPLOYEE and their representative.

The EMPLOYEE (or their representative) will have the opportunity to ask questions of the PRESENTING OFFICER(S).

The members of the APPEALS PANEL and HR MANAGER will have the opportunity to ask questions of the PRESENTING OFFICER(S).

### Summing Up

The PRESENTING OFFICER(S) and then the EMPLOYEE (or their representative) will have the opportunity to sum up their cases if they so wish.

### Parties to Withdraw

The PRESENTING OFFICER(S) and the EMPLOYEE (and their representative) withdraw from the hearing.

### Consideration by the APPEAL PANEL

The members of the APPEALS PANEL and HR MANAGER will deliberate in private, only recalling the PRESENTING OFFICER(S) and the EMPLOYEE (and their representative) to clear points of uncertainty on evidence already given. If recall is necessary, both parties are to return notwithstanding only one is concerned with the point giving rise to doubt.

### Decision

When the APPEALS PANEL has reached a decision the EMPLOYEE (and their representative) and the PRESENTING OFFICER(S) will be invited back in and informed of that decision if requested. Written confirmation will be sent to the employee in 5 school working days.