

Capability Policy and Procedure

Owner:		Trust Director of People	
Date:		August 2026	
Approved by:	CEO	Date:	August 2026
Next Review Date:		August 2029	

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1 Scope

This policy applies to all staff employed at The Charter Schools Educational Trust (the 'Trust'), i.e. teaching staff, support staff, Central Services staff, including those on fixed-term, part-time, permanent and temporary contracts, except those who have a contractual probationary period as stated in their contract of employment). The key difference here is that timescales for improvement will be shortened during the probationary period. Please see the Trust probationary period policy.

2 Rationale

It is the Trust's mission to give all children in our care the best possible educational experience, which clearly relies on our staff performing at their best. There will be times however when some staff will fall below the levels of competence and standards of performance expected of them, raising concerns about their ability to perform their role. This may be putting children's education at risk and may also be impacting on the morale of staff working alongside those individuals. It is important therefore that decisive action is taken to address these performance issues and raise standards as rapidly as possible.

3 Aim

It is the aim of this capability procedure to support individuals and line managers in addressing shortfalls in performance in a way that maintains dignity and is handled by line managers in a consistent and fair manner. Training and guidance will be given to managers who are involved in staff capability procedures.

The primary aim is to improve performance in a supportive way, however if this cannot be achieved through informal support and formal meetings and warnings, it may in some circumstances lead to the dismissal of the individual with notice (or pay in lieu of notice), although every measure should be taken within this policy before this is ultimately considered.

4 Definition of Capability and Ill Health

Capability is described in terms of aptitude and skills to perform the role but also health, which can be either a mental or physical condition. Where health is determined to be a factor contributing to the under-performance, then the Trust Sickness Absence Procedure should be followed in the first instance, and advice should be sought from the school's HR Business Partner.

When making decisions about health, then account will be taken of any disability that falls within the requirements of the Equality Act 2010. This includes any mutual decision taken

to terminate employment on ill health grounds, where the individual may be eligible to apply for an Ill Health pension, subject to the criteria set by the pension provider.

5 Misconduct

In cases, where it is identified that an individual is deliberately failing to try and improve their performance or cooperate with their manager and these capability procedures, their actions may amount to misconduct and therefore it may be necessary to instigate the Trust disciplinary procedures. This will also apply to any behaviour deemed to be relating to professional conduct.

6 Support

Both individuals and line managers will be supported through these capability procedures. Line managers will receive training and ongoing advice and guidance from an HR representative and individuals will be encouraged to speak to their union representative or official or bring a work colleague to any formal meeting. Staff are also encouraged to use the 24-hour Employee Assistance service offered to all staff.

The Trust has a duty of care to all employees and where it is suspected that an individual's health and safety may be at risk, at any stage of this procedure, managers should seek urgent advice from their school HR Business Partner.

7 Capability concerns about a Headteacher/other senior executive who reports to the CEO

Where the capability concern involves a Headteacher, an Executive Headteacher, or a member of the Trust executive team, then the matter will be dealt with by the CEO, who may appoint a senior and appropriate person to carry out the investigation.

Any panel convened to consider formal action will be chaired by the CEO alongside another senior person, governor, or trustee (except for the person who carried out the investigation).

Any subsequent appeal against a warning or dismissal will be heard by the Chair of the Trust Board with at least one other trustee on the panel. Their decision will be final.

In this situation, where the wording in this policy refers to Headteacher, CEO should be substituted.

8 Informal monitoring and support

Any concerns regarding your capability will normally first be discussed in routine 1-2-1 line

management meetings and you will be given a reasonable amount of time to improve. Your line manager will ensure that you understand the level of performance and standards expected of you and that through regular supervision, you receive adequate training and supervision to achieve this.

Where concerns continue, your manager will set clear and defined targets and timescales for improvement. This is generally known as a “support plan”. This should be agreed by both parties, although the line manager may have to be firm in determining the plan in order to achieve the aim of improving performance and may ultimately even have to impose it if agreement cannot be gained.

As part of the plan, you may be given the opportunity to observe good practice and work alongside colleagues demonstrating the required skills (without you being undermined in anyway). Your support plan may also involve coaching and mentoring interventions with somebody (internal or external) who is not in your line management chain, and you may be encouraged to use the 24-hour employee assistance service. Your line manager may also arrange other kinds of support for you, and you are also encouraged to suggest what support would help you to improve.

When deciding what is a reasonable amount of time to give, it is paramount that the needs of our children’s education is at the forefront of the decision and the impact that poor teaching, for example, will be having on their outcomes. The impact on other colleagues of having a member of the team whose performance is below the expected standard should also be considered. Managers should consider the length of time in post and whether the individual is in their probationary period.

The length of time to see improvement would not normally be less than four working weeks.

These informal meetings and support plans should be recorded and held by the line manager for a period of up to six months from the date of issue but are not formal warnings., It is important that the notes are clear and concise as they may be required at a later stage for any formal process.

Your normal performance management meetings/reviews will continue to take place and will run alongside any informal/formal capability process being conducted. It will however be appropriate for your performance management to focus on the objectives set to improve your performance in the support plan put in place alongside this.

It may, through these informal discussions become apparent that an individual is in the

wrong role for their skills set and it could be mutually agreed to change their job description or areas/levels of responsibility. Staff are encouraged to speak to their union representative before agreeing to do this and will not in any way be coerced into agreeing to any changes they are not comfortable with.

It is during the informal stage where concerns are being raised, that staff should be open to discussing issues facing them that may be affecting their performance, including health, disability, emotional and personal difficulties (including home situation), and whilst this is not obligatory, it is likely to lead to the best possible support plan in place. Getting to the root cause of the performance issues is key to improving the outcome.

When a reasonable level of time (continually balanced against the educational needs of our children) has been given, and if sufficient improvement has not been made, it will be necessary to move into a formal capability procedure. There may be some circumstances when the agreed time period needs to be extended due to the absence of the individual, including sickness, and in these cases the line manager should take advice from HR.

9 Moving to a Formal Hearing

At the point of moving into a formal capability procedure, it is important to focus on the ultimate aim in supporting an individual in raising their level of performance and to fully explore what training and support can reasonably be given in order to achieve this.

It is acknowledged that formal procedures can feel uncomfortable and stressful for both parties, who probably work very closely together in a school or department. Once again individuals are encouraged to get support from their professional associations if they chose to do so. HR assistance and guidance will be available to line managers throughout the formal process.

Moving to a formal hearing should not come as a surprise to an individual, following the period of informal support and monitoring.

A formal hearing can only be initiated and chaired by a Headteacher or an experienced member of their Senior Leadership Team. For central team staff, this may be conducted by a senior manager.

The individual should be told of the intention to hold a formal hearing, and a further investigation may be required to prepare for that hearing by the line manager. This may include preparing witness statements and other documentation, appraisal/performance management documents, notes of 1-2-1 meetings and follow up letters and anything

directly relevant to the case being presented. If witness statements are prepared, it may be necessary for those individuals to be called at the formal hearing. Their role in this formal process should be clearly explained to them.

In most instances, the line manager would present the case to the Headteacher and/or a SLT member at a formal hearing (known as the panel).

10 Formal Hearings

Where a formal hearing has been arranged, you will be given:

- a) Not less than five working days' notice in writing of the hearing and you will be informed in writing of the issues and given copies of all relevant documents and any supporting evidence. In addition, both you and the manager should provide the other with details of any witnesses that you intend to call and witness statements, at least two working days before the hearing.
- b) Not less than five working days' notice in writing of the hearing of an appeal against a warning.
- c) Not less than ten working days in writing of the hearing of an appeal against dismissal.

Where it is envisaged that the potential outcome of a hearing may lead to a final warning or to a dismissal, you will be informed of that possibility in writing prior to the hearing, although this may not always be possible to anticipate in advance of the hearing.

Unless otherwise agreed by all parties, any hearing or appeal will take place during a working day. For the purposes of this clause, working days are those days when you are required to be available to perform your duties in accordance with the terms of your contract of employment.

At any hearing or appeal the manager will present the case against you and you will be given an opportunity to ask questions of the manager and any witnesses in attendance, present your case and call any previously notified witnesses or present witness statements before any decisions are reached.

At any hearing or appeal you will have the right to be accompanied by a colleague from the Trust or your trade union representative/official. Your chosen companion may:

- address the hearing to put/sum up your case
- respond on your behalf to any views expressed

- or confer with you.

However, they may not answer questions on your behalf.

The chair of the panel will arrange for someone to take notes to create a written record of the meeting.

A copy of these notes will be provided to you and your trade union representative (if you have chosen to be so represented) within at least seven working days. Meetings may be recorded only with the express permission of the individual.

In arranging a date for a meeting under this procedure, every effort will be made to find a mutually convenient date including taking account of the availability of your chosen representative. Where you are persistently unable or unwilling to attend a meeting without good cause the capability panel may decide on the available evidence.

You will be informed in writing of the decision of any capability hearing or appeal within seven working days and this letter will clearly set out the rationale behind the decision taken and your rights of appeal.

As part of the decision-making process, the panel will consider as much of the underlying issues affecting performance as they have been given. Their decision will factor in whether the individual is making every effort to improve and is open about their own challenges and situation as possible. In cases where it is deemed there is a lack of effort and engagement this will impact on the decision and is likely to escalate the formal process.

11 Performance Improvement

It may be, following a formal hearing, that the panel considers that your under performance does not warrant a written warning, but still considers it to be of sufficient concern that a further plan of appropriate support and assistance will be established, during which your performance will be monitored. This monitoring will include a written outline of your performance targets, with time scales for improvement and regular meetings to give supportive advice and feedback.

If following this period of assistance and support your performance fails to improve to a satisfactory level, you may be given a first written warning.

You will be sent a letter confirming this and a copy provided to you and your trade union representative. This letter will be retained in your personnel file for a period of six months from the date of issue, subject to no further formal action being taken against you during this period.

Where your line manager considers that your under performance is sufficiently serious to warrant a written warning, without a further period of support and assistance, you may be given a first written warning by the Headteacher or SLT member.

A first written warning may be a final warning if the shortfalls in your performance are of sufficient gravity.

If following a first written warning your performance fails to improve to a satisfactory level, you will be given a final written warning. A final written warning will say so and will mention specifically the possibility of dismissal if there is no, or insufficient, improvement to a satisfactory level of performance.

All written warnings will explain the standards that are expected, the shortfalls in your performance and specify a reasonable time within which you must improve to a wholly satisfactory level of performance. They will confirm what reasonable and appropriate support you will be given during this time to assist you to improve your performance and explain that you have the right of appeal.

12 Dismissal

If, following a final warning against which no appeal has been upheld, there is gross negligence or a failure to improve or maintain performance to a wholly satisfactory level during the existence of a final warning, the Headteacher may terminate your employment with notice. The decision to terminate your employment may only be made after a capability hearing by a Headteacher (or other appropriate senior manager).

In appropriate cases, as an alternative to dismissal, consideration may be given (where the circumstances may otherwise warrant dismissal), to redeploying you, with your agreement, to another position as a temporary or permanent measure. In this case your salary and benefits will be adjusted to reflect any reduction in your responsibilities.

13 Appeals against warnings and dismissal

You have the right to appeal against all written warnings or dismissal by sending written notice to the Trust Director of People (HRappeals@tcset.org.uk) within ten working days of notification of the decision, setting out the specific grounds for your appeal. The Trust Director of People will arrange for a suitable panel to hear the matter. The appeal will be heard by an appropriate panel of senior managers who will not have been involved with the original decision. Where the original decision has been taken by the CEO, the panel may include Trust Board members. Their decision will be final.

At the appeal hearing a HR representative may be present to advise the panel on matters of employment law.

The appeal decision shall be final. If a dismissal is upheld, the date of the dismissal shall be the original date of dismissal.

During any appeal stage against a warning, any formal monitoring in place must continue and the individual will be expected to fully engage with this.

14 Monitoring and evaluation

All formal capability hearings and outcomes should be recorded and retained on personnel records for a period of 12 months unless this is different to the decision made at the formal hearing.

It is good practise for the Trust Central Services team to record all formal capability hearings and the outcomes for Equal Opportunities monitoring.

15 Related documents

This policy should be read in conjunction with the following Trust policies:

- Performance Management
- Sickness Absence
- Probationary periods
- Apprenticeships
- Disciplinary procedures
- Equality, Diversity, and Inclusion

This policy should be read in conjunction with the following external regulations and guidance:

- Employment Act 2008
- ACAS Code of Practice – Disciplinary and Grievance procedures
- ACAS guidelines: How to manage performance
- Equality Act 2010