



**Shaw  
Education  
Trust**

# Capability Policy

Procedure Originator:	Jo Collingwood
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Approved By:	Trust Board
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Queries to:	HR
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Review Interval:	3 years
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## **1. Introduction to the Capability Policy**

This Capability Policy is designed to ensure consistent and fair treatment for all employees to assist those experiencing difficulties or barriers to perform their duties at a satisfactory level and to improve their performance in the workplace.

This procedure applies to all employees (including Senior Leadership or Executive Leadership Team) with the exclusion of any employee in their probationary period or Early Career Teachers (ECT's).

In the case of probationers, the probation policy should be used.

This policy does not apply to new ECT's whose appointment has been made subject to induction and the provisions of the probationary scheme for Teachers.

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 the SET Reorganisation & Redundancy policy & SET Flexible working policy.

If an employee believes that they are not being treated fairly in relation to this policy, the matter should be dealt with through the SET grievance procedure except where matters would be more appropriately dealt with through the appeals process.

This procedure, and the associated policy, will be subject to an Equality Impact Assessment (EIA) to ensure the provisions do not present any detriment to employees with regard to protected characteristics.

## **2. How does this link to other policies?**

This procedure excludes capability concerns in relation to sickness attendance or conduct. In these circumstances reference should be given to the SET Attendance Management Policy, SET Disciplinary Policy or SET Code of Conduct.

Capability concerns arise when an employee is unable to maintain the standard of performance required to meet the requirements of the post.

The Line Manager should establish whether this a capability or a conduct issue. For example, causing harm by not following trained instructions or H&S which has caused damage or refusal to carry out tasks.

This would be seen as a conduct issue. Matters should be kept separate and where appropriate, refer to Teacher's standards, code of conduct or the disciplinary policy.

The line manager will need to establish that the correct policy and procedure is being used in relation to the employee, for e.g.:

- 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, following initial investigations, 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 by learners or workplace colleagues, whilst essential training interventions are undertaken.

In very serious cases, such as those where it is clearly demonstrated that the education of learners and/or the efficient and effective functioning of the Academy/Trust is being jeopardised or undermined due to the serious performance concerns, the timescale for improvement in such cases may be reduced, or the matter may be dealt with under the Trust's disciplinary policy.

### **3. How will the Capability Policy be used?**

Shaw Education Trust will ensure that performance standards are clear to employees as defined in job descriptions, person specifications, individual performance targets and Trust policies and procedures.

All line managers have a duty to define, communicate and monitor the required standards of performance and provide regular feedback, support and recognition to employees on their performance.

Employees are expected to take ownership for their progression towards achieving and sustaining acceptable performance and any identified performance improvement.

Shaw Education Trust will endeavour to ensure the appropriate facilities and support are available to ensure an employee is assisted in their role.

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 the People Team, the employee and their line manager.

A HR representative will take part in all formal stages of the capability process.

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 **formal** capability procedure.

Although performance standards apply to Trade Union Officers as employees, no formal capability process should be undertaken until the circumstances of the case have been discussed with a regional official after consent to disclose the details of the issues has been granted by the employee. If consent is with-held then normal procedures will apply.

Notes of any formal capability meetings will be issued to the employee along with action points.

The Shaw Education Trust are required to disclose on employment references for teachers' details pertaining to formal capability procedures within the previous two years as at the date of the reference request.

#### **4. When can capability concerns arise?**

Concerns about capability may arise where there is triangulated evidence of underperformance.

Capability concerns may arise due to the following reasons:

- Ill Health (see sickness absence procedure)
- Changes in the role
- Internal promotion
- Lack of direction or clarity in the role
- Loss of skills, ability and/or knowledge
- A change in personal circumstances

## **5. Capability in relation to Disability**

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 should be 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 deal with disability have been exhausted, HR advice should be sought and this policy read in conjunction with the Shaw Education Trust Disability policy.

## **6. Informal Procedure & Support for Capability Concerns**

It is important to recognise that many issues of capability 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.

As soon as a concern is identified by either the line manager or the employee, the issue should be discussed between the employee and their line manager as part of the Agile Appraisal process. In these circumstances, both parties will have every opportunity to discuss the concern, to make any comments and to record them if desired. Most areas for concern can generally be dealt with through informal discussions and counselling.

If following on from the discussions the concerns still exist, the line manager should bring the matter to the employee's attention and conduct an informal review which will involve structured information gathering, which should be systematically recorded.

Once the informal 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. The meeting should be informal and constructive to 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 poor performance. This should include identified agreed objectives to address the performance concerns and planned support.

After the meeting an agreed time scaled informal performance improvement plan (PiP) 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.
- 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 required.

The informal performance improvement plan (PiP) should be given in writing to the employee and should contain a summary of the improvement(s) required, the target(s) and the timescale(s) over which these are expected to be achieved.

The timescale for improvement will depend on the circumstances of the employee and is dependent on the severity of the concerns. The standard review period should be around 4 weeks, but should be proportionate and reasonable, without being excessively long and should provide sufficient opportunity for improvement to take place.

Regular review meetings will take place during the informal period of support. It is anticipated that in the vast majority of cases, no further action, other than normal follow-up, will be necessary.

Where the levels of improvement agreed are not met, then an informal review meeting should be held. At this meeting, the employee should be reminded of the previous discussion and advised of the continuing shortcomings and that the matter is being referred to the formal stage of this procedure.

## **7. First Formal Meeting & First Warning**

Following the unsuccessful informal period, a formal meeting should take place to discuss performance. This meeting constitutes the start of the formal procedure.

The employee will be provided with written details of the performance concerns, the reasons for the concerns and the possible outcomes of the meeting, at least 7 working days before the meeting.

The employee has the right to be accompanied at the meeting by a trade union representative or workplace colleague.

If the employee or their companion is unable to attend a meeting, they may propose a new date of no more than 7 working days from the date of the original date.

At this meeting, the employee should be reminded of the previous discussion and advised of the continuing shortcomings. The employee should be given an opportunity to give their interpretation before the

chair decides what action should be taken. It is possible that circumstances outside the individual's control have caused, or at least contributed to, the reduced effectiveness of their performance over the period that has been monitored.

The potential outcomes of this meeting are:

- No formal sanction is necessary, and the management of the employee's performance will revert to the informal process.
- To issue a first formal warning and further formal capability procedure continues.

Where the outcome is a first formal warning, during the meeting an agreed time scaled formal performance improvement plan (PiP) 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
- 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 required
- For Teaching colleagues, ensure objectives conform with Teaching Standards.

The formal performance improvement plan (PiP) should be given in writing to the employee and should contain a summary of the improvement(s) required, the target(s) and the timescale(s) over which these are expected to be achieved.

The timescale for improvement will depend on the circumstances of the employee and is dependent on the severity of the concerns. The standard review period should be 4 weeks, but should be proportionate and reasonable, without being excessively long, and should provide sufficient opportunity for improvement to take place.

Where the outcome is that no formal sanction is necessary, the management of the employee's performance will revert to the informal process to ensure continued constructive support is provided.

Where the outcome is a first formal warning this will be outlined in writing with a clear indication that a failure in achieving the objectives by the timescales set out may lead to further warnings or even dismissal. A first warning will remain on the employee's record for 12 months.

The employee will be advised of suitable voluntary redeployment opportunities within The Trust which is deemed to be at the employee's true ability level.

The outcome of the meeting will be confirmed in writing, within 7 working days of the meeting, with any objectives specified to include timescales. Where the concerns are in relation to inadequate lesson observations then the lesson observation procedure should be referred to when determining objectives and timescales.

Should an employee wish to appeal against the decision to issue a first formal warning then they should write to the Academy Council Chair, or in the case of Head Office based staff the Chief People Officer, stating the reason for their appeal within 5 working days of the date of confirmation of the outcome.

In exceptional circumstances it may be that the seriousness of the poor performance is sufficient to warrant a final warning even though no previous warning has been issued. It is anticipated however, that in the vast majority of cases, a first formal warning will be the appropriate course of action.

## **8. Second Formal Meeting & Final Warning**

Failure to improve after the review period will be followed by a repeat of the first formal meeting & warning process. Where the outcome is a final written warning, this will remain on the employee's record for 12 months.

The employee will be advised of suitable voluntary redeployment opportunities within The Shaw Education Trust. If redeployment is identified for 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.

The outcome of the meeting will be confirmed in writing, within 7 working days of the meeting, with any objectives specified to include timescales. Again, this would typically be a timeframe of 4 weeks or whatever is deemed reasonable or proportionate. Where the concerns are in relation to inadequate lesson observations then the lesson observation procedure should be referred to when determining objectives and timescales.

Should an employee wish to appeal against the decision to issue a final warning then they should write to the Academy Council Chair, or in the case of Head Office based staff their Departmental Director, stating the



reason for their appeal within 5 working days of the date of confirmation of the outcome.

## **9. Final Formal Meeting When Employee is at risk of Dismissal**

Failure to improve after a final warning will lead to consideration of dismissal.

Employees will be advised at the appropriate stages of the formal arrangements above when their employment is considered at risk of termination.

A formal 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.

The Scheme of Delegation should be referred to when determine the appropriate level of authority of the panel for the Final Formal meeting. Support will be provided by the People Team.

Employees will be informed in writing of the capability concerns that warrant consideration of dismissal, at least 7 working days before the meeting, 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.

The employee will be entitled to be accompanied at the meeting with the formal panel by a companion, who could be either a work-based colleague or trade union representative.

If the employee or their companion is unable to attend the meeting, they may propose a new date of no more than 7 working days from the date of the original date.

The employee will have an opportunity to meet with the formal panel to put forward their case, which may include information relating to the circumstances they believe have affected their capability, to the formal panel prior to any decision being made.

The formal panel will give full consideration to all the relevant information pertaining to the capability concerns and will make a decision based on this information.

Their decision will be either:

- To retain the employee on a second 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
- To dismiss the employee, with contractual notice, on the grounds of establishing that the employee is incapable of performing to the standards of performance or attendance required

The formal panel's decision will be confirmed in writing, within 7 working days of the meeting.

The employee will also be advised in writing of the appeal arrangements that are available to them.

## **10. Appeal Against Capability Warning or Dismissal**

An employee who wishes to appeal against dismissal or notice of dismissal on the grounds of capability should inform the Academy Council Chair, or in the case of Head Office based staff their Departmental Director in writing, providing the grounds of the appeal.

The appeal should be confirmed in writing within 7 working days of the date of the decision which forms the subject of the appeal.

The Scheme of Delegation should be referred to when determine the appropriate level of authority of the panel for the Appeal hearing. Support will be provided by the People Team.

The appeal will take place as soon as reasonably practicable after the notice to appeal has been received by the Academy Council Chair, or in the case of Head Office based staff their Departmental Director. The employee will be given at least 7 working days' notice of the date, time and place fixed for the appeal.

At the appeal, the employee will be given an opportunity to state their 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.

If the employee or their companion is unable to attend the meeting, they may propose a new date of no more than 7 working days from the date of the original date.

The panel appointed to hear the appeal, shall take into account any representations of the employee and the formal panel's decision to dismiss, and take such action as it considers appropriate.

The decision will be notified to the employee (and, as appropriate to the panel who took the decision to dismiss) in writing without unreasonable delay.

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

## **11. Sickness Absence during the Capability Process**

Absence which is triggered by the capability procedure, and which management believe is likely to be long term, should be referred immediately to Occupational Health to assess whether the employee is fit for continued employment.

Short absences should not delay any part of the formal stage of the capability procedure. Reasonable steps should be made to enable the employee to attend evaluation meetings, but where the employee is unable to attend, these may proceed if the absence becomes longer than expected and the operation of this procedure is a substantial factor in the illness.

In such cases the failure to meet targets will not be discounted because of illness.

If the employee is absent from such meetings and the hearing continues, a full account of the evaluation of performance should be provided in the letter confirming the decision taken.

## **12. Sustaining Good Performance**

It is necessary that once an employee meets their performance standards that they maintain that performance level. Whilst a capability warning is in place, should performance standards revert to an unacceptable level, then the formal capability procedure will resume at the stage of the warning on the employee's record.



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