

CAPABILITY

POLICY AND PROCEDURE

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1. INTRODUCTION

This procedure applies to all employees of School Partnership Trust Academies (SPTA) where there are serious concerns about their performance and which support plans and supervision have been unable to address.

Throughout this document, the term 'Principal' refers to the Principal or Head of Academy and 'Senior Leader' refers to the Department Head within the Core Team. Reference to 'SPTA' includes all Academies as well as the Core Team.

At all stages within this policy and procedure, and in accordance with the Equality Act 2010, provision will be made for any reasonable adjustments to accommodate the needs of individuals attending meetings/hearings.

Where performance concerns emerge, the nature and seriousness of those concerns should be discussed as soon as possible with the employee. Every effort should be made to resolve performance concerns through the provision of targeted additional support agreed in a discussion with the employee with regular feedback and review (see section 7).

Appropriate arrangements, from within the Academy / Core Team or through the Education Advisors, will ensure that an appropriate person is put in place to support the employee throughout the periods of review and monitoring.

Where concerns are such that the employee is not performing to the required standard, the line manager should ensure that the Principal / Senior Leader is informed of these discussions.

The decision to move into the formal capability procedure should not come as a surprise to the employee.

2. SCOPE

SPTA has an obligation to our learners to be rigorous in the maintenance of a competent and skilled workforce. SPTA has a legal duty to have procedures in place for dealing with performance issues for all employees.

This policy is in line with current employment legislation and takes into consideration guidance from the DfE and ACAS.

The procedure will be led and managed by the Principal / Senior Leader. The role of the Principal / Senior Leader may be delegated to a nominated person where appropriate. Where the Principal / Senior Leader is the subject of the capability process, a SPTA Director will undertake the monitoring and manage the process. SPTA expect the Principal / Senior Leader, or the SPTA Director, to consult and engage with SPTA HR to provide advice and support in the application of these procedures.

3. PRINCIPLES

The underpinning principles of this policy are:

- The capability policy and procedure will be applied fairly and consistently
- The employee will be provided with appropriate development and support. Their performance will be monitored through review periods as set out in this procedure.
- Employees have the right to be accompanied by a trade union representative or work colleague at all capability meetings within this policy.
- Employees will be provided with a clear understanding of their role, job purpose/job description and the standards expected of them.
- Principals / Senior Leaders, or nominated person, will support and enable employees to reach the required standard of performance through:
 - Effective induction to any new role
 - Access to professional development opportunities, including coaching and mentoring support where appropriate
 - Effective application of the support and supervision arrangements within the context of the relevant professional standards
 - A commitment to identify and address performance concerns at the earliest reasonable opportunity
- Principals / Senior Leaders should ensure that employees are made aware of this procedure and that they are able to access the intranet to obtain a copy if they wish
- Where an employee is successfully removed from the support programme or the formal capability procedure but concerns arise again within the following 12 month period, the employee will re-enter at the formal capability stage of this procedure

4. CONFIDENTIALITY

The capability procedure will be treated with confidentiality at all stages. This requirement does not impact on the quality assurance processes undertaken by the Principal / Senior Leader on the operation, effectiveness and fairness of these procedures.

5. ILL HEALTH

Where performance concerns are linked to ill health, the case should be discussed with SPTA HR at the earliest opportunity to consider the most appropriate action. Consideration should be given to referring the employee to Occupational Health to determine whether or not there are any adjustments required for the performance to improve.

Where sickness absence appears to be triggered by the start of the support or formal capability procedure, the support or formal capability process will be adjourned and the sickness absence will be dealt with in accordance with the SPTA Sickness Absence Policy and Procedure, and there will be an immediate referral to Occupational Health for advice on the employee's health and fitness for continued employment, the appropriateness of continuing with support or formal capability procedures, as well as the cause of the absence and timescale for recovery. Where

the absence is long term, advice should be sought on how SPTA can engage with the employee during their absence.

The support or formal capability procedure will be reconvened on the employee's return to work.

6. GRIEVANCES

Where an employee raises a grievance whilst they are in the formal capability procedure, the formal capability procedure may be temporarily suspended in order to deal with the grievance through the SPTA Grievance Policy and Procedure. Where the grievance and capability cases are related, it may be appropriate to deal with both issues concurrently.

7. SUPPORT PROGRAMME

Discussions regarding poor performance should not come as a surprise to the employee as concerns should have been raised appropriately and informally wherever possible during normal working hours.

SPTA recommends that prior to entering the formal capability procedure, a support programme is put in place in consultation with the employee. The support programme should be scheduled to take place over a six week period and followed with a review meeting to reflect on the programme.

The employee will be invited to a meeting, in writing, to discuss the concerns and to agree the appropriate support programme. The employee is entitled under this policy to be accompanied to this meeting by either a work colleague or trade union representative.

During the meeting, the Principal / Senior Leader, or nominated person, should:

- Discuss aspects of work performance that do not meet the required standard(s)
- Listen to the employee's responses
- Identify required support and training
- Identify and agree targets
- Identify the timetable for improvement
- Agree an action / support plan
- Agree record keeping and evidence gathering measures
- Set a date for the support programme review meeting (six weeks)

All of the above should be recorded in writing and made available to relevant parties.

Throughout the duration of the support programme, the employee should raise any concerns regarding the provision of support, training or other resources that have been identified during the support programme, at the earliest opportunity.

7a. SUPPORT PROGRAMME REVIEW

At the end of the six week support programme, a review meeting must take place with the employee to review their progress against the agreed targets and action plan.

At this meeting, the Principal / Senior Leader, or nominated person, will review all of the evidence gathered during the duration of the support programme and discuss the outcomes with the employee. The employee will also be given the opportunity to respond.

The Principal / Senior Leader has the following options to consider at the end of this meeting:

- Where sufficient improvement has been made and agreed targets have been achieved, the employee will be deemed as having completed the support programme and, other than normal procedures, no further action will be taken
- Where there is little or no improvement, the employee will be informed that they will be moved into the formal capability procedure

The outcome of this meeting will be confirmed in writing to the employee.

7b. EXCEPTIONAL CASES

This procedure aims to improve the performance of the employee within set timescales. It is recognised that delay may not be in the interests of all parties and in extreme cases, such as where the education of learners is jeopardised, the case will be reviewed and a decision based on the individual circumstances presented.

It is essential that clear evidence is available to demonstrate the exceptional circumstances and where the Principal / Senior Leader considers there to be an exceptional case, SPTA HR must be consulted in the first instance before any action is taken.

8. FORMAL CAPABILITY MEETING

Where the support programme has not resulted in the required improvement, the employee will be required to attend a formal capability meeting.

The employee will be invited to the formal capability meeting, in writing, ensuring ten working days' notice is provided. The written confirmation will contain the following information in order to enable the employee to prepare to answer the case at the meeting:

- The mutually agreed date and time of the meeting
- An outline of the performance concerns
- The possible consequences of the meeting
- Copies of any relevant supporting evidence
- Signpost to the location of the SPTA Capability Policy and Procedure on the intranet

- The employee's statutory right to accompaniment by either a work colleague or trade union representative
- The employee's ability to produce any documents in evidence or references/testimonials at least five working days prior to the meeting

The formal capability meeting is designed to establish the facts and allows the employee to respond to concerns about their performance and to make relevant representations. This may provide new information or a different context to the information/evidence already collected.

The formal capability meeting will be conducted by the Principal / Senior Leader, or nominated person. In cases where the Principal / Senior Leader is the subject of the meeting, the role of the Principal / Senior Leader will be carried out by a SPTA Director. In all cases, SPTA HR will also be present.

The person conducting the meeting is also responsible for ensuring that a suitable note taker is also present to formally minute the meeting.

During the meeting, the Principal / Senior Leader, or nominated person, will:

- Identify the professional shortcomings (e.g. which standard or elements of the role have not been met)
- Give clear guidance on the improved standard of performance required to ensure that the employee can be removed from formal capability procedures (e.g. setting new objectives focused on specific weaknesses, appropriate success criteria, evidence that will be used to assess whether or not the necessary improvement(s) has been made)
- Agree any support that will be provided to help the employee improve their performance
- Set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the employee and is dependent on the severity of the concerns (the standard review period should be between 6 and 12 weeks, but should be proportionate and reasonable, without being excessively long, and should provide sufficient opportunity for improvement to take place; an interim review should be scheduled half way through the monitoring period to ensure plans are still suitable)
- 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 is being jeopardised or undermined due to the serious performance concerns, the timetable for improvement in such cases may be reduced, or the matter may be dealt with under the SPTA Disciplinary Policy if appropriate.
- The Principal / Senior Leader, or nominated person, may also adjourn the meeting in certain instances, such as where further investigation is required or where more time is needed in order to consider any additional information.

Every effort should be made to reach an agreement. However, if the employee disagrees that they should be in the formal capability procedure, the Principal / Senior Leader has the right to impose the programme since it forms part of the employee's terms and conditions of employment. Any points of disagreement should be recorded.

A date and time for the formal capability review meeting to take place will also be agreed before this meeting is completed. This review meeting should be scheduled for the end of the monitoring and review period in accordance with the agreed timescales.

The outcome of the formal capability meeting will be confirmed in writing to the employee within five working days of the meeting date. This written confirmation will contain the following information:

- Details regarding the outcome of the meeting
- Confirmation of the required improvement(s)
- Confirmation of the support plan
- Details of the monitoring and review process and associated timescales, including confirmation of the date and time of the formal capability review meeting

A copy of the formal minutes from the meeting will also be enclosed with this letter.

8a. FORMAL CAPABILITY REVIEW MEETING

The employee will have been informed of the date and time of the formal capability review meeting during the formal capability meeting. The same arrangements for the right to accompaniment by either a work colleague or trade union representative will apply at this meeting.

The formal capability review meeting will be conducted by the Principal / Senior Leader, or nominated person. In cases where the Principal / Senior Leader is the subject of the meeting, the role of the Principal / Senior Leader will be carried out by a SPTA Director. In all cases, SPTA HR will also be present.

The person conducting the meeting is also responsible for ensuring that a suitable note taker is also present to formally minute the meeting.

The formal capability review meeting should review the outcomes and actions from the previous meeting and consider the evidence provided from the monitoring and review period.

The Principal / Senior Leader, or nominated person, has the following options to consider at the end of this meeting:

- Where sufficient improvement has been made and agreed targets have been achieved, the formal capability procedure will end
- Where there is some improvement and there is confidence that more is likely, it may be appropriate for the formal capability monitoring and review period to be extended for a further period which is proportionate and mutually agreed, after which a further review meeting would take place in accordance with section 8a
- Where there is little or no improvement, the employee will be informed that they will be moved to the capability decision hearing

The outcome of the formal capability review meeting will be confirmed in writing to the employee within five working days of the meeting date.

A copy of the formal minutes from the meeting will also be enclosed with this letter.

9. CAPABILITY DECISION HEARING

The employee will be invited to the formal capability decision hearing, in writing, ensuring ten working days' notice is provided. The written confirmation will contain the following information in order to enable the employee to prepare for the hearing:

- The mutually agreed date and time of the hearing
- An outline of the performance concerns
- The possible consequences of the hearing
- Copies of all relevant supporting evidence, including minutes from previous meetings within the formal capability procedure
- Signpost to the location of the SPTA Capability Policy and Procedure on the intranet
- The employee's statutory right to accompaniment by either a work colleague or trade union representative
- The employee's ability to produce any documents in evidence or references/testimonials at least five working days prior to the hearing

The capability decision hearing will be conducted by a SPTA Director and the Chair of the Education Advisory Body (EAB). SPTA HR will also be present. The Principal / Senior Leader, or nominated person, would also attend this hearing in order to explain the detail leading to the referral to a capability decision hearing.

The person conducting the hearing is also responsible for ensuring that a suitable note taker is also present to formally minute the hearing.

The formal capability decision hearing should review the outcomes and actions from the previous meeting and consider the evidence provided from the monitoring and review period.

Prior to any decision being verbally confirmed with the employee, the hearing will be adjourned to enable the evidence to be reviewed and discussed with SPTA HR before reconvening to deliver the outcome to the employee.

Possible outcomes of this hearing are:

- Extension to the formal capability monitoring and review period for a further period to be reviewed in accordance with section 8a.
- Dismissal on the grounds of capability

The outcome of the formal capability decision hearing will be confirmed in writing to the employee within five working days of the hearing date. This written confirmation will contain the following information:

- Details regarding the outcome of the hearing
- The reasons for the decision

- In the case of a dismissal, the letter will also confirm the date on which their employment will end and their appropriate notice period
- Details regarding their right of appeal against the outcome of the hearing

A copy of the formal minutes from the hearing will also be enclosed with this letter.

10. DECISION TO DISMISS

The decision to dismiss on the grounds of capability rests with the SPTA Director and the Chair of the EAB.

11. APPEAL

If an employee feels that a decision taken against them is wrong or unjust, the employee has the right to appeal against the decision. The appeal should be lodged in writing to SPTA HR within ten working days of the decision being made, clearly stating the grounds for the appeal.

The appeal hearing will only focus on the grounds of the appeal raised by the employee within the letter of appeal.

An appeal will be heard without unreasonable delay and, where possible, at an agreed time and place. The employee will be informed in writing providing ten working days' notice of the appeal hearing date.

The written notification will include the following information:

- The mutually agreed date and time of the appeal hearing
- A copy of the minutes and evidence from the formal capability meetings/hearing
- Any new evidence and/or new witnesses to be presented by the employee at the appeal hearing
- The employee's statutory right to accompaniment by either a work colleague or trade union representative
- The employee's ability to produce any documents in evidence or references/testimonials at least five working days prior to the meeting

Where new evidence is presented by the employee, the appeal panel may adjourn the meeting to allow them to properly consider the information presented. The appeal will be reconvened at the earliest convenience, which may be at an agreed alternative date.

The appeal will be dealt with impartially by a panel comprising of two SPTA Directors. The SPTA Director used at the capability decision hearing must not be involved in the appeal hearing. SPTA HR will also be present to support the panel.

The appeal panel has the following options to consider at the end of this hearing:

- Confirm and uphold the original decision
- Uphold the grounds of appeal

Wherever possible, but always following an adjournment, the appeal panel will convey their decision verbally to the employee before closing the hearing. This decision will be confirmed in writing to the employee within five working days of the hearing date. This letter will also confirm that this decision is final and there is no further right of internal appeal.

12. POLICY REVIEW

This policy will be reviewed every three years, or when there are changes to relevant legislation.