



The Circle Trust Document: **Staff Capability Policy**

Author:	Executive Headteacher
Approver:	Trustees
Owner:	Human Resources Trustees
Date:	April 2021
Next review:	April 2024

Changes History:

Version	Date	Amended by:	Substantive changes:	Purpose
1.0	05.18	Exec Head	New Document	First release
1.1	28.4.21	Exec Head	Policy refreshed in consultation and agreement with Unions	Review
1.2				
1.3				

Purpose of the Policy

The purpose of this procedure is to manage underperformance arising from lack of skill, aptitude or ability. It aims to encourage employees to achieve and maintain acceptable standards of performance and is designed to ensure fairness and consistency in the management of employee performance.

Where possible, the procedure should be used as a performance improvement tool.

This model procedure has been developed and complies with the principles set out in the model teacher appraisal and capability policy published by the Department for Education.

1. Introduction

- 1.1. This policy applies to all employees of a school, including Headteachers, with the following specific exceptions;
 - 1.1.1. Newly Qualified Teachers during the statutory Induction Period;
 - 1.1.2. School support staff under a probationary period, for whom alternative procedures apply
- 1.2. This procedure should be used where performance falls below the required standards for the job (including, in the case of teachers, the professional standards for teachers), and the underperformance is deemed to be due to lack of skill, aptitude or ability.
- 1.3. It should not be used to deal with underperformance where the lack of capability is due to ill health and becomes a sickness absence problem. Refer to [The Circle Trust's Staff Absence Management Policy](#) in this situation.
- 1.4. Some health problems may not cause absence but have an adverse effect on the ability of the employee to perform the job satisfactorily, where this is the case, the employee should be referred to Occupational Health for advice. Reasonable adaptations to the job should be considered where appropriate. Where performance at work is adversely affected, health issues will not itself prevent the Headteacher from continuing with the Performance Capability Procedure.
- 1.5. It should not be used to deal with misconduct, the disciplinary procedure should be used.

2. The Aims and Objectives of the Staff Capability Policy

- 2.1. Handling matters of capability fairly is important for the efficient management for employees' morale and for our Trust and a school's reputation.

3. The Management of the Staff Capability Policy

- 3.1. The Trustees have a fundamental role to:
 - 3.1.1. Review this policy to approve changes

- 3.1.2. Be satisfied that any capability procedure is followed as set out in this policy and understood by Headteachers/School leaders, Local Advisors and Employees
 - 3.1.3. If required in the case of Capability in respect of a Headteacher; form a Dismissal Panel and Dismissal Appeals Panel
 - 3.1.4. If required in the case of Capability in respect of the Executive Headteacher; hold a formal capability review meeting, Chair of Trustees to act as appeal against formal warning, form a Dismissal Committee and Dismissal Appeals Panel if required (made up of two Trustees and an Independent Person who have no previous knowledge of a case, one of whom will be appointed as Chair). The Independent Person will be identified by Trustees and may not be in the employment or involved in the governance of The Circle Trust. The Independent Person may be, for example, an Executive Headteacher (serving or retired) or a person experienced in governance such as a serving Trustee or governor
- 3.2. The Executive Headteacher will:
- 3.2.1. Implement this policy
 - 3.2.2. Promote and ensure that all Headteachers/School leaders and Employees understand and follow the capability procedures as set out in this policy
 - 3.2.3. In the case of Capability in respect of a Headteacher lead with the Chair of Local Advisors a formal capability review meeting
 - 3.2.4. Seek and follow advice from The Circle Trust HR providers at all stages of any capability process
- 3.3. The Local Advisors have a fundamental role to:
- 3.3.1. Be satisfied that any capability procedure is followed as set out in this policy and understood by the Headteacher/School leaders and Employees
 - 3.3.2. If required in the case of Capability in respect of a Teacher or Support Staff; form a Dismissal Panel and Dismissal Appeals Panel (made up of three Local Advisors who have no previous knowledge of a case, one of whom will be appointed as Chair)
 - 3.3.3. In the case of Capability in respect of a Headteacher support the Executive Headteacher in a formal capability review meeting
- 3.4. The Headteacher will:
- 3.4.1. Implement this policy
 - 3.4.2. Be responsible for ensuring staff receive appropriate training and support and receive adequate feedback on performance.
 - 3.4.3. In the case of Capability in respect of a Teacher or Support Staff lead the formal capability review meeting
 - 3.4.4. Seek and follow advice from The Circle Trust HR providers at all stages of any capability process
- 3.5. Employees will:

- 3.5.1. Be responsible for performing the duties of the post to the best of their abilities and in accordance with any specified regulations or performance standards. Employees are also responsible for complying with the requirements of this procedure.

The table below provides guidance on specific roles and responsibilities:

Capability procedure in respect of	Formal capability/ review meeting	Appeal against formal warning	Dismissal	Dismissal appeal
Executive Headteacher	Chair of HR Trustees and 2 other Trustees with HR Advisor	Chair of Trustees with HR Advisor	Panel of 2 Trustees and 1 Independent Person not previously involved in the case	Panel of 2 Trustees and 1 Independent Person not previously involved in the case
Headteacher	Chair of Local Advisory Board and Executive Headteacher	Panel of 3 Local Advisors	Panel of 3 Trustees not previously involved in the case	Panel of 3 Trustees not previously involved in the case.
Support Staff	Headteacher	Chair of Local Advisors	Panel of 3 Local Advisors not previously involved	Panel of 3 Trustees not previously involved in the case
Teacher	Headteacher	Chair of Local Advisors	Panel of 3 Local Advisors not previously involved	Panel of 3 Trustees not previously involved in the case

4. General Principles

- 4.1. Employees subject to this procedure have the right to be accompanied by a work colleague (from the Trust) or trade union representative during all stages of the formal process.
- 4.2. The representative should be identified to management in advance and should not be someone whose presence would prejudice the meeting or who might have a conflict of interest.
- 4.3. If the representative is a work colleague they will be entitled to take reasonable time off to prepare for and attend the hearing and confer with the employee following the hearing.

- 4.4. No formal action will be taken against a trade union representative until the circumstances of the case have been notified to a regional officer of the trade union concerned.
- 4.5. If the employee or his/her representative requires support (e.g. because of issues to do with language or disability) to take part in this procedure, these matters will be reasonably addressed so that any formal proceedings can take place fairly.
- 4.6. Information relating to formal proceedings will be kept confidential as appropriate.
- 4.7. Notes will be taken of formal meetings and a copy will be sent to the employee, if the employee agrees, and provides contact details, the notes may also be sent to the trade union representative.
- 4.8. The time-scales within this procedure may be amended by mutual consent. Whilst accommodation should be made to ensure proper representation at formal meetings, all efforts should be made to ensure that there are no unreasonable delays in arranging these meetings.
- 4.9. Should performance improve to an acceptable level during the formal process, this should be recorded formally, and the individual should be informed the procedure is discontinuing at this time. However, the employee should be made aware if performance deteriorates this may lead to re-entering the procedure and earlier stages may not be repeated if a live warning is on file.
- 4.10. The school / trust processes any personal data collected during the capability process in accordance with its data protection policy. Further details can be found in the Privacy Notice on the school's website. Any data collected is held securely and accessed by, and disclosed to, individuals only for the purposes of managing capability.

5. Informal support under the performance management process

- 5.1. All employees, with certain specific exceptions set out in [The Circle Trust's Staff Performance Management Policy](#), should have their performance managed routinely under the school's appraisal policies. Where the performance management reviewer/line manager has concerns about the performance of an employee they should initially manage these informally within the performance management process and/or normal day-to-day management processes.
- 5.2. If informal support within the performance management process does not produce the required improvements to performance within a reasonable timescale, the performance management reviewer/line manager will decide whether to recommend that the matter should be dealt with under the capability procedure.
- 5.3. The performance management reviewer/line manager will seek advice from the Headteacher who will decide whether to move to the capability procedure. In the case of the Headteacher, this will be the Executive Headteacher with the Chair of Local Advisors.
- 5.4. Notification of move to the capability procedure
 - 5.4.1. The employee will be notified in writing of the decision to cease use of the appraisal process/informal day to day management processes and that performance will be managed under the capability procedure.

5.4.2. The notification will include an invitation to attend a formal capability meeting. At least five school days' notice will be given of the date of the meeting, unless a shorter period is mutually agreed.

5.4.3. The notification will contain sufficient information about the concerns about performance and their possible consequences to enable the employee to prepare to answer the case at a formal capability meeting.

6. Formal capability meeting

6.1. The Headteacher, (or the Chair of Local Advisors in the case of a Headteacher or Chair of HR Trustees in the case of the Executive Headteacher) will chair the meeting. The intention of the meeting is to establish the facts – to detail the areas of the performance concerns and to discuss any factors relating to this.

6.2. The performance management reviewer/line manager will explain the nature of the performance concerns, and the steps that have been taken to address these informally. The employee will be allowed to respond to concerns about their performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected.

6.3. The Headteacher (or Chair of Local Advisors or Chair of HR Trustees) will consider the evidence presented and, after a brief adjournment to consider his/her decision, may decide either;

6.3.1. That there are insufficient grounds to pursue formal capability proceedings and that the matter should either be dropped or dealt with informally. In these circumstances the meeting will end and use of the formal procedure will cease; or

6.3.2. To adjourn the meeting to investigate further or to allow time for consideration of the evidence before reaching a decision.

6.3.3. Any adjournment should be for a period of normally no more than ten school days. The meeting will be reconvened to consider any further information and the Headteacher (or Chair of Local Advisors or Chair of HR Trustees) will make a decision under a) or c) of this paragraph; or

6.3.4. To issue a first written warning.

6.4. In very exceptional circumstances the decision may be to issue a final written warning and invite the employee to a decision meeting.

7. Issue of written warning

7.1. Where a written warning will be issued, the meeting will continue and the Headteacher (or Chair of Local Advisors or Chair of HR Trustees) will:

7.1.1. Identify the area(s) and nature of the underperformance (for teachers, this may include which of the standards expected of teachers are not being met);

- 7.1.2. Give clear guidance on the improved standard of performance needed to ensure that the employee can be removed from formal capability procedures (this may include the setting of new objectives focused on the specific weaknesses that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made);
- 7.1.3. Explain the support that will be available to help the employee improve his/her performance, including who will be involved in providing the support. These might include;
- Changes to working practices within the terms of the employee's job description;
 - Increased supervisory support or mentoring for a specified period of time
 - Feedback from classroom or other observation
 - Work shadowing a competent employee which could include visits to other schools/workplaces
 - Modified workload or tasks for a specified period of time
 - Further training in the area(s) of deficiency
- 7.1.4. Set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case but will not normally be for less than six weeks or more than ten weeks in straightforward cases. The period should be reasonable and proportionate, and should provide sufficient opportunity for an improvement to take place; and
- 7.1.5. Warn the employee formally that failure to improve within the monitoring and review period could lead to dismissal.

7.2. The issue of a written warning will be confirmed in writing. The notification will summarise the content of the formal capability meeting and include details of;

- 7.2.1. The areas and nature of the underperformance identified; and
- 7.2.2. The standard of performance to be achieved during the monitoring and review period and any success criteria; and
- 7.2.3. How progress towards achieving these standards will be monitored and assessed; and
- 7.2.4. The support that will be made available; and
- 7.2.5. The timescale for improvement; and
- 7.2.6. The procedure and time limits for appealing against the warning.
- 7.2.7. The written warning will remain on file for one year from the date of issue

8. Monitoring and review period

8.1. The period of formal monitoring, evaluation, guidance and support should start as soon as reasonably possible after the formal capability meeting.

- 8.2. During this period the Headteacher (or Chair of Local Advisors or Chair of HR Trustees), will ensure that the agreed support is provided and will monitor performance against the target improvements to be made. The format of the support and monitoring will depend on the job role and the nature and scale of the underperformance identified.
- 8.3. A formal review meeting will be convened at the end of the period of support to consider the outcome. The employee will be notified in writing at least five school days before of the date and time of the meeting unless a shorter period is mutually agreed (this date may be agreed at the formal capability meeting).

9. Formal review meeting

- 9.1. The Headteacher (or Chair of Local Advisors or Chair of HR Trustees) will chair the meeting.
- 9.2. The Headteacher (or Chair of Local Advisors or Chair of HR Trustees) will consider the evidence gathered during the monitoring and review period, and any evidence presented and other representations from the employee, before reaching a decision. The Headteacher (or Chair of Local Advisors or Chair of HR Trustees) may decide that;
 - 9.2.1. The employee has made sufficient improvement. In this case the capability procedure will cease, and the appraisal process will re-start. The written warning will however remain on file for one year from the date of issue.
 - 9.2.2. Some progress has been made and there is confidence that more is likely. In this case the monitoring and review *period* may be extended for a period of up to six school weeks;
 - 9.2.3. No, or insufficient improvement has been made during the monitoring and review period. In this case the employee will be issued with a final written warning. The employee will be invited to a decision meeting.
- 9.3. Where a final written warning is issued, the employee will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale), may result in dismissal and given information about the handling of the final monitoring and review period, including any support which will continue, and the procedure and time limits for appealing against the final warning.
- 9.4. The final written warning will remain on the employee's file for one year from the date of issue.
- 9.5. At least five school days' notice will be given of the date of the decision meeting (unless a shorter period is mutually agreed), which will be at least four weeks after the formal review meeting at which the final written warning was issued.

10. Decision meeting

- 10.1. The meeting will be held by a panel of three Local Advisors in the case of a Teacher or member of Support Staff. Or a panel of three Trustees in the case of the Executive Headteacher or a Headteacher.
- 10.2. The management case will be presented by the manager conducting the earlier stages of the process, or the Headteacher, the Executive Headteacher/Chair of Local Advisors or Chair of HR Trustees, as appropriate.

- 10.3. The panel will consider the evidence gathered during the monitoring and review period, and any evidence presented and other representations from the employee, before reaching a decision. They may decide that;
- 10.3.1. An acceptable standard of performance has been achieved during the final monitoring and review period. In this case, the capability procedure will end and the appraisal process will re-start. The final written warning will remain on file for one year from the date of issue.
- 10.3.2. That performance remains unsatisfactory. In this case, a decision will be made that the employee should be dismissed.
- 10.4. The employee will be informed as soon as possible of the reasons for the decision to dismiss, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.
- 10.5. The period of notice will be the statutory minimum or contractual notice (for teachers, this will be notice in accordance with the Burgundy Book), whichever is the longer.

11. Appeals

- 11.1. An employee may appeal against a decision to dismiss, or to issue a formal warning under this procedure.
- 11.2. The appeal should be made in writing, addressed the Headteacher or, if the Headteacher has issued the warning, or the employee is the Headteacher or Executive Headteacher, or the appeal is against dismissal, to the Company Secretary, within five days of the written notification of the decision, setting out the grounds for appeal.
- 11.3. An appeal meeting will be convened as soon as possible and the employee will be given at least five school days' notice of the time and date, unless a shorter period is mutually agreed.
- 11.4. Appeals will be dealt with impartially and, wherever possible, by Trustees who have not previously been involved in the case.
- 11.5. The employee will be informed in writing of the results of the appeal hearing as soon as possible.

12. Dealing with a grievance

- 12.1. Where a member of staff raises a grievance during the capability procedure, the procedure may be temporarily suspended in order to deal with the grievance.
- 12.2. Where the grievance is related to the capability case, it will be appropriate to deal with it under the terms of the capability procedure, either during formal meetings or as part of an appeal.
- 12.3. Where the grievance has no direct relevance to the capability procedures then the time table for the capability procedures will continue to apply and the grievance should be dealt with separately.

13. Sickness absence

- 13.1. Short term sickness absences will not normally interfere with monitoring or other formal procedures.
- 13.2. If long term sickness absence appears to be triggered by the start of monitoring or a formal capability procedure, this will be dealt with in accordance with the school's absence management policy. The employee will be referred to Occupational Health for an assessment of the employee's fitness for work and the appropriateness or otherwise of continuing with monitoring or formal procedures.

14. References

- 14.1. If a formal warning is issued under this procedure and is still 'live', it will be included on any employment reference requested.