



# RHT Capability Policy and Procedure

Trust Executive



---

<b>Lead reviewer</b>	Chief People Officer
<b>Approving board/ committee</b>	People & Performance Committee
<b>Date approved</b>	25 <sup>th</sup> September 2023
<b>Date implemented</b>	25 <sup>th</sup> September 2023
<b>Review period</b>	2 Years
<b>Next review due</b>	October 2025

# Contents

Statement of intent

1. Legal framework
2. Roles and responsibilities
3. General principles underlying this policy
4. Link to teacher's Appraisal
5. Capability procedure for teachers
6. Capability procedure for non-teaching staff
7. Decision to dismiss
8. Appeals
9. Monitoring and evaluation

## Statement of intent

This policy sets out the framework for a clear and consistent approach when there are concerns about a Huish Trust employees' competence, whether a member of support staff, or the arrangements that will apply when teachers fall below the expected levels of competence.

## 1. Legal framework

1.1. This policy has due regard to all relevant legislation and statutory guidance including, but not limited to, the following:

- Equality Act 2010
- The School Staffing (England) Regulations 2009 (as amended)
- The Education (School Teachers' Appraisal) (England) Regulations 2012
- DfE 'Academy Trust Handbook'
- DfE (Revised March 2019) 'Teacher appraisal and capability: A model policy for schools'
- ACAS (2015) 'Code of practice on disciplinary and grievance procedures'

1.2. This policy operates in conjunction with the following Trust documents:

- **Appraisal Policy (school based staff)**
- **Guides to Appraisal (RHC based staff)**
- **Grievance Policy**
- **Disciplinary Policy and Procedure**
- **Records Retention Schedule**
- **Trust Pay Policy**
- **Absence Policy**

## 2. Roles and responsibilities

2.1. The Local Governing Body (LGB) is responsible for:

- Ensuring that the capability process is managed in a way that avoids increased workload for all parties concerned.
- Ensuring that all staff have read and understand the policy.

- Once a decision to dismiss has been taken, dismissing the staff member in question with notice (devolved to Headteacher/Principal).
- Ensuring consistency of treatment and fairness and abiding by all relevant equality legislation.

2.2. The **Headteacher/Principal** is responsible for:

- The day-to-day implementation of this policy.
- Ensuring that the capability process is managed in a way that avoids increased workload for all parties concerned.
- Deciding who will manage the formal processes with regard to support staff
- Conducting formal capability meetings (or delegating to Deputies/Vice & Assistant Principals) where there are concerns about a teacher's performance.

### 3. General principles underlying this policy

#### **ACAS 'Code of Practice on Disciplinary and Grievance Procedures'**

3.1. The policy will be implemented in accordance with the provisions of the ACAS Code of Practice.

#### **Confidentiality**

3.2. The capability processes will be treated with confidentiality; however, the desire for confidentiality does not override the need for the **Headteacher/Principal** and **LGB** to quality-assure the operation of the capability procedure.

#### **Consistency of treatment and fairness**

3.3. The **LGB** is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments for staff with disabilities. The **LGB** is aware of the guidance on the Equality Act 2010 issued by the DfE.

#### **Definitions**

3.4. All references to "teacher" refer to teaching staff, full-time or part-time. All references to "member of staff" refer to staff other than teachers, full-time or part-time.

#### **Delegation**

3.5. Normal rules apply in respect of the delegation of functions by the **LGB** and the **Headteacher/Principal**.

#### **Grievances**

- 3.6. Where a grievance is raised during the capability procedure, the 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 deal with both issues concurrently.
- 3.7. Grievances should be handled in accordance with the Trust's **Grievance Policy**.

#### **Sickness**

- 3.8. If long-term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case will be dealt with in accordance with the Trust's **Absence Policies**. The case will be referred immediately to the occupational health service, to assess the teacher's or member of staff's health and fitness to engage in on-going formal processes, including attending formal meetings and for continued employment. Additionally, the suitability of continued monitoring or formal procedures will be evaluated in relation to the teacher's or member of staff's health. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

## **4. Link to Teachers Appraisal**

#### **Transition to capability**

- 4.1. At any stage of the appraisal process, if the appraiser is not satisfied with the teacher's progress, the teacher will receive written notification that their performance will be managed under the capability procedure instead of the appraisal system and will be invited to a formal capability meeting. The capability procedures will be conducted in accordance with section 5 of this policy.

## **5. Capability procedure for teachers**

- 5.1. This procedure applies only to teachers whose performance raises serious concerns that the appraisal process has been unable to address.
- 5.2. At least **five working days'** notice will be given of the formal capability meeting. The notification will contain sufficient information about performance-related concerns and their possible consequences to enable the teacher to prepare a response for the formal capability meeting.
- 5.3. Teachers are entitled to request an alternative date, which is within five days of the original date.
- 5.4. The notice will also contain copies of any written evidence, the details of the time and place of the meeting and will advise the teacher of their right to be accompanied by a companion, who may be a colleague, a trade union official,

or a trade union representative who has been certified by their union as being competent.

### **Formal capability meeting**

- 5.5. This meeting is intended to establish the facts. It will be conducted by the Headteacher/Principal. The meeting allows the teacher 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 or evidence already collected.
- 5.6. The Headteacher/Principal may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases, the capability procedure will come to an end.
- 5.7. The Headteacher/Principal may also adjourn the meeting if they decide that further investigation is needed, or more time is needed to consider additional information.
- 5.8. In other cases, the meeting will continue. During the meeting, or any other meeting which could lead to a formal warning being issued, the Headteacher/Principal will:
  - Identify the professional shortcomings of the teacher.
  - Give clear guidance on the improved standard of performance needed to ensure that the teacher can be removed from formal capability procedures.
  - Explain any support that will be available to help the teacher to improve their performance.
  - Outline the timetable for improvement and explain how performance will be monitored and reviewed.
  - Formally warn the teacher that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning.
- 5.9. Notes will be taken of formal meetings and a copy sent to the teacher. Where a warning is issued, they will be informed in writing of the matters covered in the bullet points above and given information about the timing and handling of the review stage, and the procedure and time limits for appeals.

### **Monitoring and review period following a formal capability meeting**

- 5.10. A performance monitoring and review period will follow the formal capability meeting.
- 5.11. Formal monitoring, evaluation, guidance and support will continue during this period.

- 5.12. The teacher will be invited to a formal review meeting, unless they were issued with a final written warning, in which case they will be invited to a decision meeting.

### **Formal review meeting**

- 5.13. As with formal capability meetings, at least **five working days'** notice will be given, and the notification will give details of the time and place of the meeting and will advise the teacher of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.
- 5.14. If the Headteacher/Principal is satisfied that the teacher has made sufficient improvement, the capability procedure will cease, and the appraisal process will restart. In other cases:
- If some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period.
  - If no or insufficient improvement has been made during the monitoring and review period, the staff member will receive a final written warning.
- 5.15. As before, notes will be taken of formal meetings and a copy sent to the teacher. The final written warning will mirror any previous warnings that have been issued. Where a final warning is issued, teacher will be informed in writing that failure to achieve an acceptable standard of performance within the set timescale may result in dismissal. They will also be given information about the handling of the further monitoring and review period, and the procedure and time limits for appealing against the final warning. The teacher will be invited to a decision meeting.

### **Decision meeting**

- 5.16. As with formal capability meetings and formal review meetings, at least **five working days'** notice will be provided, and the notification will give details of the time and location of the meeting. The notice will also advise the teacher of their right to be accompanied by a companion who may be a colleague, a trade union official or a trade union representative who has been certified by their union as being competent.
- 5.17. If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end, and the appraisal process will restart. If performance remains unsatisfactory, a decision or recommendation to the **LGB** will be made that the teacher should be dismissed or required to cease working at the school or college.
- 5.18. The teacher will be informed as soon as possible of the reasons for their dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.

## 6. Capability procedure for non-teaching staff

- 6.1. This procedure applies to all staff other than teachers; whose performance raises serious concerns that informal processes have been unable to address. It is anticipated that line managers or supervisory staff will successfully address most concerns early and informally using frequent, frank and honest conversations. It is only when informal strategies have proved ineffective in facilitating improved performance that the formal capability process will be instigated.
- 6.2. At least **five working days'** notice will be given of the formal capability meeting. The notification will contain sufficient information about performance-related concerns and their possible consequences to enable the staff member to prepare a response for the formal capability meeting.
- 6.3. Staff members are entitled to request an alternative date, which is within five days of the original date.
- 6.4. The notice will also contain copies of any written evidence, the details of the time and place of the meeting and will advise the teacher of their right to be accompanied by a companion, who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

### **Formal capability meeting**

- 6.5. This meeting is intended to establish the facts. It will be conducted by a manager on the leadership team which could include the Headteacher/Principal. The meeting allows the staff member 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 or evidence already collected.
- 6.6. The manager may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases, the capability procedure will come to an end.
- 6.7. The manager may also adjourn the meeting if they decide that further investigation is needed, or more time is needed to consider additional information.
- 6.8. In other cases, the meeting will continue. During the meeting, or any other meeting which could lead to a formal warning being issued, the manager will:
  - Identify the professional shortcomings of the staff member.
  - Give clear guidance on the improved standard of performance needed to ensure that the staff member can be removed from formal capability procedures.



- Explain any support that will be available to help the staff member to improve their performance.
- Outline the timetable for improvement and explain how performance will be monitored and reviewed.
- Formally warn the staff member that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning.

6.9. Notes will be taken of formal meetings and a copy sent to the staff member. Where a warning is issued, they will be informed in writing of the matters covered in the bullet points above and given information about the timing and handling of the review stage, and the procedure and time limits for appeals.

### **Monitoring and review period following a formal capability meeting**

- 6.10. A performance monitoring and review period will follow the formal capability meeting.
- 6.11. Formal monitoring, evaluation, guidance and support will continue during this period.
- 6.12. The staff member will be invited to a formal review meeting, unless they were issued with a final written warning, in which case they will be invited to a decision meeting.

### **Formal review meeting**

- 6.13. As with formal capability meetings, at least **five working days'** notice will be given, and the notification will give details of the time and place of the meeting and will advise the staff member of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.
- 6.14. If the Headteacher/Principal is satisfied that the staff member has made sufficient improvement, the capability procedure will cease. In other cases:
- If some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period.
  - If no or insufficient improvement has been made during the monitoring and review period, the staff member will receive a final written warning.
- 6.15. As before, notes will be taken of formal meetings and a copy sent to the staff member. The final written warning will mirror any previous warnings that have been issued. Where a final warning is issued, the staff member will be informed in writing that failure to achieve an acceptable standard of performance within the set timescale may result in dismissal. They will also be given information about the handling of the further monitoring and review period, and the procedure and time limits for appealing against the final warning. The staff member will be invited to a decision meeting.

## **Decision meeting**

- 6.16. As with formal capability meetings and formal review meetings, at least **five working days'** notice will be provided, and the notification will give details of the time and location of the meeting. The notice will also advise the staff member of their right to be accompanied by a companion who may be a colleague, a trade union official or a trade union representative who has been certified by their union as being competent.
- 6.17. If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end. If performance remains unsatisfactory, a decision or recommendation to the **LGB** will be made that the staff member should be dismissed or required to cease working at the school or college.
- 6.18. The staff member will be informed as soon as possible of the reasons for their dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.

## **7. Decision to dismiss**

- 7.1. The power to dismiss staff in this school or college rests with the LGB. The Board has delegated functions to Headteacher/Principals relating to processes for staff appointments, suspension and initial dismissal decisions. The HT must obtain prior HR advice in advance of any suspension/dismissal. A member of the Trust HR team will usually attend the Decision meeting to provide HR support and guidance.

### **Dismissal**

- 7.2. Once the decision to dismiss has been taken, the LGB or delegated authority will dismiss the teacher or member of staff with notice.

## **8. Appeals**

- 8.1. If a teacher or other member of staff feels that a decision to dismiss them, or another action taken against them, is wrong or unjust, they may appeal in writing to the Headteacher/Principal against the decision within **seven days**, setting out the grounds for appeal at the same time. Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place.
- 8.2. The same arrangements for notification and the right to be accompanied by a companion will apply as with formal capability and review meetings and, as with other formal meetings, notes will be taken, and a copy sent to the teacher or other member of staff.
- 8.3. Depending on who imposed the sanction, and the level of the sanction, the appeal will be heard by an Assistant Headteacher, Deputy Headteacher, Vice Principal, Headteacher/Principal or the Chair of the Governing Body.

- 8.4. Appeals specifically against dismissal will be heard by an Appeals Panel made up of two non-conflicted Governors (or Trustees) and the Trust CEO. They will be supported by the Trust CPO providing HR support and guidance. (Where the CEO believes they are conflicted, an alternative Trust Manager, or an alternative Head Teacher from within the Trust will join the panel in their place). A Trust Director may also be involved in the panel replacing a governor.
- 8.5. The teacher or other member of staff will be informed in writing of the results of the appeal hearing as soon as possible.

## **9. Monitoring and evaluation**

- 9.1. The **People and Performance Committee** will monitor the operation and effectiveness of the capability procedure across the Trust.
- 9.2. The **LGB/CGB** and **Headteacher/Principal** will monitor the operation and effectiveness of the capability procedure within the school or college.
- 9.3. The **LGB/CGB** and **Headteacher/Principal** will ensure that all written records are retained in a secure place for **six years** in line with the school or college's Records Retention Policy and in accordance with DfE guidance.
- 9.4. This policy will be reviewed on an 2 yearly basis. The next scheduled review date for this policy is **October 2024**