



**Transforming
Futures**
TRUST

Capability Policy

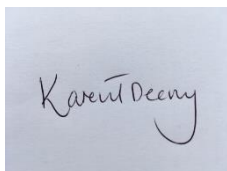
Policy Information	
Policy Owner	HR Manager
Issue Version	4
Approving Committee	People and Remuneration Committee
Adopted Date	October 2021
Review Cycle	Annual
Last Review Date	June 2025
Next Review Date	June 2026

Adoption of the Policy

This Policy has been adopted and reviewed by the Trustees of Transforming Futures Trust

Signed:

Date: 03.07.25



Chair of the People & Remuneration Committee



Version Control Amendments

Version No	Date	Summary of Changes
2	March 2023	Date and format amendments only
3	April 2024	Date and format amendments only
3.1	June 2024	General update
4	June 2025	Reviewed, no changes

1. Purpose

This policy sets out the framework for a clear and consistent assessment of the overall performance of all staff and for supporting their development within the context of the school's plan for improving educational provision and performance.

The purpose of the Capability Policy is to provide a fair and consistent framework to enable managers and staff to:

- Identify constructive agreed support with the aim of improving performance
- Enable staff to achieve and maintain an acceptable standard of work through constructive support
- Follow a fair and consistent process in managing and improving poor performance

This policy applies to staff whose performance is not at the requirement standard and, where applicable, the appraisal process has been unable to address. The purpose is to encourage and support improvement where a member of staff is failing to meet the relevant standards.

2. Policy Statement

The use of capability procedures in the Trust will be a supportive and developmental process which is designed to ensure that staff have the skills and support they need to carry out their role effectively. It will help to ensure that staff are able to continue to improve their professional practice and to develop in their professional roles. The Trust is committed to ensuring consistency of treatment and fairness in the operation of its capability processes.

Employees should be clear of the standards and expectations at the Trust and the potential consequences of failing to meet them. Staff have a contractual responsibility to perform to a satisfactory level and they should be given guidance, support and encouragement to do so, alongside honest and constructive feedback. Line Managers have a responsibility for setting realistic and measurable standards of performance and for explaining those standards carefully to employees.

The Capability Policy is a standalone policy that sits outside of the appraisal process. This differs from the approach taken by the Department for Education. This is to ensure that both capability and appraisal policies are used appropriately and fairly and encourage sustained good performance. However, the appraisal process may highlight concerns in performance which may lead to either a supportive and/or formal approach.

3. Principles

This policy is based on the following principles:

- We are committed to creating a workplace which our staff value and in which they enjoy working, one that encourages and supports productivity and engagement.

- Line managers and leadership will adopt a fair and consistent approach when supporting employees through performance management.
- The Trust will adopt an 'early intervention' approach where capability concerns are raised as soon as possible, and support is identified/offered; ensuring communication with the employee starts at the earliest opportunity.

The Trust also acknowledges its responsibility to give high priority to providing an exceptional education for every student in the Trust and will therefore take into account the likely impact on students when considering what progress must be made and in what timeframe.

This policy reflects the provisions of the ACAS Code of Practice on Disciplinary and Grievance Procedures.

3.1 Consistency of Treatment and Fairness

The Trust is committed to ensuring consistency of treatment and fairness and will be mindful of its obligations under the Equality Act 2010.

At all stages the Trust will give consideration as to whether the unsatisfactory performance is related to a disability or any other protected characteristic and if so, whether there are any reasonable adjustments that could be made to the employee's job or other aspects of the working arrangements.

4. Informal Stage

Issues of poor performance will be addressed initially by the line manager and employee and should be dealt with through open and constructive dialogue as a normal part of the performance management process. This could involve giving guidance, training, having a more in-depth one-to-one discussion, and a Performance Improvement Plan (PIP). Such support will not be regarded as part of the formal capability procedure. However, a note may be made and placed on the member of staff's file and a copy provided to the individual. As this is an informal stage and forms part of the ongoing working relationship between line manager and employee, formal representation at any meetings during the informal stage do not apply but we welcome and encourage you to bring along a representative if you wish.

If, after 13 weeks, informal action fails to achieve the required improvements in performance and there is clear, triangulated evidence of sustained underperformance, the formal capability procedure will be applied. The aim of the formal capability procedure will be to achieve sustained good performance and there are opportunities where the capability procedure can come to an end. However, there is also the possibility that should the sustained good performance not be met, formal warnings may be issued, and ongoing poor performance may result in dismissal.

The Trust will ensure that this informal process of support will have been followed prior to the Capability Policy being applied. Evidence of such support will be assessed before a formal capability process can begin.

Each case should be reviewed individually and in line with the needs of the Trust. The progression to formal capability may be necessary in some cases. However, in others, the situation may benefit from a further period of support.

5. Formal Stage

If the employee's performance does not improve through the informal stage of the process, then following a review/investigation they may be escalated to the formal stage of the process.

Another Manager will be appointed to review the informal stage and PIP plan at a formal Capability Hearing where following the review the employee will be given the opportunity to respond to concerns about their performance and to make any relevant representations. This meeting is intended to establish the facts and to decide on whether a formal sanction for poor or underperformance should be issued.

At least five working days' notice will be given of the formal capability hearing. The notification will contain sufficient information about the concerns about performance and the possible consequences to enable the member of staff to prepare to answer the case.

At all formal meetings held under this policy, the employee will be entitled to right to representation by either a work colleague or a recognised Trade Union representative, and where practicable will be given no less than three working days' notice of the meeting.

Where the chosen representative cannot attend on the date proposed by the Trust, the employee or their representative can offer an alternative time and date which is reasonable and within five working days.

The person conducting the meeting will:

- Identify the areas of concern and discuss with the employee and provide the employee with the opportunity to comment/respond.
- Give clear guidance on the improved standard of performance needed to ensure that the employee will no longer be subject to the formal capability procedure.
- Identify the action (including support) that has been taken to date and the outcomes.
- Outline a timeframe for improvement and the ways in which performance will be supported, monitored and reviewed during this time. The employee will be invited to a decision meeting at the end of the review period.
- Discuss with the employee how the performance objective will be measure for example weekly review.

- Warn the employee formally that failure to improve within the set period could lead to formal sanction being issued.

At the end of the formal capability hearing, the chair will review the evidence and discussion that took place and decide whether the concerns are founded and what appropriate course of action to take from the following options:

- No further formal action where concerns remain but there has been sufficient improvement in standards of performance that informal management action is now considered to be a more appropriate response.
- If some progress has been made, however performance is still not satisfactory, it may be appropriate to refer the member of staff back to the informal stage for continued performance monitoring and review (PIP) for not less than 13 weeks.
- If performance is found to be unsatisfactory despite further support or guidance provided, a formal sanction (employee warning) can be issued. The sanction issued may be:
 - a) First Written Warning (remains active on employee E-File/Personnel File for six months)
 - b) Final Written Warning (remains active on employee E-File for twelve months)
 - c) If the employee already has a written warning on file, the employee is dismissed (with contractual notice).

Before a decision is taken to terminate employment, consideration will be given to individual circumstances in line with the Equality Act (2010) and alternative roles/ deployment considered. Careful consideration will be given before issuing a sanction and in all instances the Trust will comply with its obligations under the relevant legislation.

Within ten working days of the formal capability hearing, the appointed Officer/Manager will provide the employee with:

- confirmation of the appropriate warning.
- a copy of the notes of the meeting for agreement.
- confirmation of any recommended next steps or further action to include referring the employee back onto the informal stage of the process for performance to be monitored through a second or third PIP. The informal stage after each sanction is issued will be reduced in time accordingly. As an example:
 - a) PIP 1 – 6 weeks (informal stage)
 - b) Capability Hearing held. First written warning issued (formal stage)
 - c) PIP 2 – 3 weeks (informal stage)
 - d) Capability Hearing held. Final written warning issued (formal stage)
 - e) PIP 3 – 1 week (informal stage)

f) Capability Hearing held. Employee dismissed with notice (formal stage)

If the recommendation from the formal capability hearing is to refer the employee back to the informal stage of the process, the PIP will clearly set out clearly:

- the targets/performance standards to be attained
- the support and resources to be made available
- details of how progress will be monitored and by whom, and
- the timescale for the review meeting

The Trust will decide on the most appropriate level of action and there may be occasions where the Trust will not go through each stage in order, or where conduct issues are identified, decide to escalate the matter under the Disciplinary policy. Any shortening of the process will only occur in the most extreme circumstances.

6. Dismissal

The employee will be informed in writing and as soon as is practical of the reasons for dismissal; the date on which the contract of employment will be terminated; any appropriate period of notice and their right of appeal.

Dismissal will only be considered where the member of staff has not been able to reach the required standards of performance.

7. Appeals

An employee may appeal against any warning given or on a decision to dismiss. Appeals at any stage should be made within five working days of the receipt of the warning or dismissal letter.

Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied will apply as with formal capability and review meetings.

7.1 Scheme of Delegation: MAT/Business Support Staff

Employee Level	Appeal
Teachers	2 Trustees
Teaching Assistants, School Based Business Support	2 Trustees
Other Business Support Staff	2 Trustees
Executive Leader	Chair of the Board/2 Trustees
CEO	Trust Members

8. Grievances

Where a member of staff raises a grievance during the capability procedure, the capability 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. However, in exceptional circumstances where the behaviour of the senior manager is the cause of the grievance, it may be appropriate to suspend the capability procedure for a short period until the grievance has been heard.

9. Sickness

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 Sickness Absence Policy and will be referred to the occupational health service to assess the employees' health and fitness and ability to continue with the capability process. It may be deemed appropriate for the capability process to continue where the reason for sickness is directly related to managing the employee's performance; particularly where the medical recommendation is to conclude the process as quickly as possible.

Where a period of sickness and an employee's health does warrant a 'pause', then either the informal or formal stage will be recommenced on their return to work. As part of the return-to-work discussion, an agreed settling in period will be discussed and confirmed before the capability procedure continues. This period will be dependent on the type and length of absence but should be no longer than 2 weeks.

10. Early Careers Teachers (ETC)

In some cases, it may become apparent that the education of the students being taught by an ECT is being seriously affected. In such instances the Head Teacher may have to consider instigating a capability procedure at any stage before the end of the induction period, which may lead to dismissal before the end of the induction period. If this is the case, the ECT induction framework covers Capability.

Before instigating a capability procedure, it is important that the Head Teacher is assured that the following has taken place:

- The ECT's performance has been monitored.
- The ECT has been clearly advised about the aspects of their practice which is causing concern and understands the improvements which are expected. The ECT will have the right to representation at any meetings which take place in relation to their capability.
- A reasonable and time-limited period of careful and structured support/ training, monitoring, evaluation and evidence gathering has taken place, giving the ECT an opportunity to improve.
- The ECT has been given an informal warning that failure to improve may lead to entry to the formal capability procedure and that this may lead to dismissal. If an NQT is

dismissed on grounds of capability before the end of the induction period, they may seek to complete induction at another school. The Headteacher will need to pass on any induction records and documentation to the new school and Appropriate Body.

11. Monitoring, Review, and Evaluation

The HR team will periodically monitor the use of this policy to consider its impact upon the Trust and will review it as necessary in line with changes to legislation. The Trust will review this policy each year to ensure that the policy reflects the latest position as determined by the Local Authority.

This policy will be reviewed considering feedback from:

- Human Resources
- The Board of Trustees
- Executive Leadership Team
- Trade Union Representatives

Following the review, any proposed changes made will be made in consultation with recognised Trade Unions and their representatives. Any proposed changes will be communicated, and we will endeavour to seek agreement with Trade Union representatives. Where proposed changes are disputed, the Trust will maintain final decision/authority on any changes recommended; however, in the first instance will seek to come to an agreement where reasonable and practicable.

12. Legal Considerations

- The Employment Rights Act (1996)
- The Employment Relations Act (1999)
- The Equality Act (2010)

13. Trust Policies and other references

- Probation Policy
- Maternity, Paternity, Adoption and Shared Parental Leave Policy
- Managing Sickness Absence Policy
- Staff Grievance Procedure
- Staff Disciplinary Procedure