

This policy specifically applies to central staff and the following academies only:

Churchwood Primary Academy
Dudley Infant Academy
Hollington Primary Academy
Robsack Wood Primary Academy
Silverdale Primary Academy
The Baird Primary Academy
The Hastings Academy
The St Leonards Academy
West St Leonards Primary Academy

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1. Introduction

- 1.1. Improving performance positively impacts on service delivery within the Trust. This procedure sets out a fair and systematic approach to address shortfalls in employees' performance. It applies to support staff with more than one year's service only. Employees with less than one year of service will be subject to the Probation and Appointment Policy.

2. Key points

- This is an agreed procedure for managing unacceptable performance.
- It is important to manage performance in a fair and consistent way.
- At all stages of the Capability Procedure the main aim will be to enable the employee to make the required improvements in performance through constructive feedback and support.
- The Trust's HR Department can support managers to implement the Capability Procedure within their academy / team / department and at an individual level.
- Unacceptable performance should be identified and dealt with as soon as possible. Where the required improvement has not been achieved as part of the appraisal process, the employee's performance will be managed using the Capability Procedure.
- Formal warnings will be issued as part of this procedure. Employees have a right of appeal against any warnings.
- At any stage of the formal procedure and as an alternative to appealing against a formal warning, an employee may request to have a statement placed on their personal file indicating their views and comments regarding the formal action taken.
- For employees who only work in term time, this procedure must be suspended over the Trust's holidays. There may be exceptions to this for any leadership group staff according to contractual terms.
- Incremental pay progression may be withheld when an employee's performance is being monitored under this procedure.
- The Principal (For support staff based in an academy) or member of the Trust's senior management team (for support staff based in one of the Trust's central teams), may choose to delegate the monitoring of support staff under the Capability Procedure to another manager.
- At any meeting held under this procedure, the Principal/manager/Trustees may be accompanied by a representative from the HR Department.

3. Definition

- 3.1. Performance is considered as unacceptable if it falls below the standards that have been set or that could reasonably be expected of a member of staff. Under the Employment Rights Act 1996 an employee's performance can be assessed by reference to skill, aptitude, ability and/or any other physical or mental capacity e.g. lack of skill or ability in achieving business objectives such as frequent errors in work.
- 3.2. In the beginning it may not be clear whether the problem is due to misconduct or unacceptable performance. If it is misconduct then the manager will need to refer to the Disciplinary Procedure. If a case is initially dealt with under the Disciplinary Procedure it should be transferred to the procedure for the Management of Unacceptable Performance as soon as it becomes clear that performance issues are involved.
- 3.3. The Academy Principal¹ (for support staff based in an academy) or a member of the Trust's senior management team or Service Director (for support staff based in one of the Trust's central teams) will be responsible for managing the process². Hereafter they will be referred

¹ The Principal may delegate this to a member of the academy's Senior Leadership Team

² Please refer to the Responsibility Matrix in Annex 1

to as the 'senior manager' in this document.

4. Health and absence considerations

- 4.1. If it is clear that an employee's health is affecting their attendance at work and / or their performance, the senior manager should contact the HR department and refer to the Attendance Management Procedure.
- 4.2. The senior manager may need to consider whether an employee is covered under the Equality Act (2010) and therefore whether reasonable adjustments need to be made. Guidance and advice must be taken from the HR department on this issue.
- 4.3. Where an employee's health is a factor in his/her poor performance at work, careful consideration should be given to any health related problems. Employees may become unwell during a period of performance monitoring and consideration would then be given to establish how matters should be taken forward. Odd days of absence should not delay any part of this procedure. In the case of long term absences, the procedure may be suspended and, in normal circumstances, it would be expected that the process would resume on the employee's return to duty.
- 4.4. If at any time during this process the employee wishes to seek counselling they can do so from the Trust's employee assistance programme. Further information is available from the Trust's HR Department.

5. Impact

- 5.1. It is important to manage unacceptable performance due to the impact on the individual, pupils/ students and the academy/trust as a whole. If unacceptable performance continues;
 - Pupils'/Students' education can suffer as a result of unacceptable performance
 - Team morale may dip when a member of staff is not performing
 - It can waste valuable time and energy for managers to rectify the situation.
- 5.2. All reviews should be uninterrupted and records should be kept of agreements reached. Training and development needs should also be reviewed in the context of achieving personal targets.

6. Grievances

- 6.1. In certain circumstances an employee may have a difficulty that is covered by two policies (for example, Capability and Grievance). In these circumstances the meetings required could be combined to ensure that the issue is dealt with in its entirety rather than viewed in isolation. The aim should be to focus on resolving the difficulty, ensuring that the essential elements from each procedure have been included in order to minimise the number of meetings and correspondence.
- 6.2. Grievances will not necessarily mean the Capability Policy is suspended; each individual case will be examined on its merits and timescales may be amended accordingly.
- 6.3. The Trust's HR department can provide advice in these circumstances.

7. Accredited trade union representatives

- 7.1. Formal action for alleged incompetence against an accredited union representative can lead to a dispute if it is seen as an attack on the functions of a trade union. Although normal standards shall apply to trade union representatives as employees, formal action under this procedure will not therefore be taken against accredited representatives without

the circumstances of the case first being discussed with a senior trade union representative or full-time official, with the agreement of the academy representative.

8. Representation

- 8.1. Employees may be accompanied by a recognised trade union representative or work place colleague (not acting in a professional capacity), at all formal stages of this procedure. There is no right to legal representation at any stage of this procedure.
- 8.2. The senior manager should inform the employee in writing that they may be accompanied if the formal stage of this procedure has commenced. It is the responsibility of each employee to arrange their own representation.

9. The informal process

- 9.1. Ordinarily all cases of poor performance should initially be dealt with informally and this part of the process should typically last 6 weeks.
- 9.2. In some circumstances however, it will be appropriate to move straight to one of the formal stages.
- 9.3. The decision to dispense with the informal stage of the process should be made by the senior manager having heard representations from the employee and in conjunction with advice from the HR Department.
- 9.4. Examples of the kind of behaviour that can lead to the process starting at one of the formal stages are as follows:
 - Where an employee's performance has already been reviewed as part of this procedure, only for it to deteriorate again in a relatively short period of time
 - If the health and safety of students or staff is put at risk
 - If issues come to light with evidence that the education of students is being put in jeopardy, then the procedure will automatically commence at stage three. In these circumstances the senior manager will provide evidence to support the decision including an explanation as to why the problem was not noticed at an earlier stage. This is not intended to be an exhaustive list.
- 9.5. It is essential that the senior manager ensures the employee is aware that they are being monitored informally under this policy.
- 9.6. If the senior manager, taking into account all the relevant information available concerning the employee's work, is concerned that an employee's performance is below a satisfactory level, then they must commence informal monitoring of the employee's performance.
- 9.7. Meetings need to be arranged in advance with the employee and sufficient time set aside for the purpose. Meetings need to be held in confidence in an appropriate area that avoids interruption and ensures sufficient privacy. Consideration should be given to holding the meeting at a neutral venue if appropriate. Notes of the meeting should be taken and shared with the employee concerned. The meetings should include:
 - Identifying areas of performance which are of concern
 - Allowing the employee to comment, express views or offer an explanation
 - Consideration of any professional, personal or domestic circumstances which may be affecting the employee's performance
 - Seeking to agree a programme of action designed to improve performance
 - Identifying an appropriate time scale. Normally a period for 6 weeks should be allowed with review meetings at 3 and 6 weeks. If at 6 weeks there are still issues, then formal monitoring should commence.

- Oral feedback from any observation of the employee undertaking his/her work should be given as soon as possible and confirmed in writing within a reasonable period of time
- 9.8. Review Meetings are normally held at 3 and 6 weeks respectively and should determine whether there has been an improvement in performance or not. They should also establish whether or not other areas of concern have emerged during the monitoring process. The programme for monitoring and support should be reviewed and a decision made as to whether or not:
- Informal monitoring and support should be discontinued because of the achievement of satisfactory performance
 - Informal monitoring and support should continue
 - The formal monitoring procedure should commence.
- 9.9. Arrangements for the support and monitoring programme might include one or more of the following:
- Direct supervision/support from an appropriate member of staff within the academy / team / department
 - Support and monitoring visits by an advisor (or other external support adviser) to undertake a range of support to be determined by the advisor concerned in consultation with the senior manager and the employee
 - An opportunity to observe other colleagues' practices within the academy / team / department
 - An opportunity to visit other education establishments identified as being appropriate centres of good practice
 - Attend training sessions
 - The provisions of written guidance and / or programmes of work.
- 9.10. For employees who only work in term time the proceedings must be suspended over the school holidays.

10. Formal procedure

- 10.1. When a senior manager considers that an employee is not performing to the appropriate standard and informal discussions have not resulted in any improvement or the matter is serious enough to miss out the informal stages, the senior manager should commence formal monitoring.
- 10.2. Full and detailed records should be kept by the senior manager at each stage of the procedure identifying the reasons for the employee's failure to meet the required standards of performance. The senior manager's response and any action should be logged and dated to ensure timescales are adhered to. Notes of all meetings should be kept and made available to the employee. The senior manager dealing with performance issues at the formal stages of this procedure should seek advice from the HR Department.
- 10.3. At all stages of the formal process the employee is entitled to three working days' notice of any meetings and has the right to be accompanied as stated earlier in the policy.
- 10.4. The process has three formal stages.

11. Formal procedure - Stage one: 6 weeks duration in total

- 11.1. The discussion should be full and wide ranging in an environment of support. The employee's poor performance must be identified clearly and openly. If documentary evidence is available, it must be discussed with the employee and copies made available. The employee's explanations must be considered and explored to determine precise reasons for unacceptable performance.

- 11.2. The senior manager needs to agree and then confirm in writing the standard of work expected, the improvement needed and the appropriate action and time scale for achieving this. Targets for both short term and long term improvements should be included and a timetable of regular monitoring sessions with the senior manager will be arranged. These sessions may coincide with or replace normal or existing supervision arrangements.
- 11.3. The concerns and arrangements should be confirmed in writing and the employee may respond in writing to any points made.
- 11.4. The timetable will include two formal review meetings (usually after 3 and 6 weeks) to discuss and recognise progress, identify any further concerns not previously identified, and review the support and monitoring programme.
- 11.5. *First review meeting at three weeks*
- (i) The employee has the right to be accompanied to this meeting. The support and monitoring in place should be reviewed and if there are any further concerns these must also be identified. Any progress made should be discussed and recognised with the employee.
 - (ii) The outcomes of the meeting should be confirmed in writing and the employee has the right to give a written response to any points raised.
- 11.6. *Second review meeting at six weeks*
- (i) The senior manager should consider any representations made by the employee and then, in conjunction with the results of the monitoring and support, determine whether satisfactory progress has been made or not.
 - (ii) If satisfactory progress has been made and the employee achieves the required improvement by the specified date, they will be informed in writing, the formal performance monitoring will cease and any on-going support through management supervision will be clarified. If the unacceptable performance reoccurs within 12 months, this procedure can be re-entered at stage two.
 - (iii) If satisfactory progress has not been achieved the senior manager can issue a first written warning to the employee and move to stage two of the formal process. The employee has the right to appeal which must be made in writing within three working days of the date on which the written warning was received. The appeal should be heard by an appeal body authorised for such a purpose. The formal warning issued at stage one will remain live for a period of 12 months.
 - (iv) Alternatively the senior manager may extend the period of monitoring and support at stage one, or return to informal monitoring and/or normal management supervision.
- 12. Formal procedure - Stage two : 6 weeks duration in total**
- 12.1. Stage two follows the same format as stage one, with review meetings at 3 and 6 weeks.
- 12.2. The results of stage one and the monitoring process will be fully discussed with the employee and reviewed objectively. The employee will give their assessment of the progress achieved and the support and training made available during stage one.
- 12.3. The senior manager will consider how far performance has improved, whether it has been sustained and the shortfall(s) against the target(s) set during stage one. A new action plan will be identified, agreed and confirmed in writing, clearly outlining targets to be achieved

during stage two in order to bring the level of performance up to an acceptable standard.

12.4. A timetable of regular monitoring sessions with the senior manager should be arranged to include a further two formal meetings (usually after 3 and 6 weeks) to discuss the progress and review the monitoring and support programme.

12.5. *First review meeting at 3 weeks*

(i) The process for the first review meeting under stage 2 follows the same format as stage one with the meeting being held at 3 weeks. The same outline structure of meeting should be followed as at stage one.

12.6. *Second review meeting at 6 weeks*

(i) The process for the second review meeting under stage two follows the same format as stage one with the meeting being held at six weeks. The same outline structure of meeting should be followed as at stage one.

(ii) If satisfactory progress has been made and the employee achieves the required improvement by the specified date, they will be informed in writing, the formal performance monitoring will cease and any on-going support through management supervision will be clarified. The formal warning issued at stage one will remain live for a period of 12 months. If there is a recurrence of the unacceptable performance within 12 months then it will be appropriate to re-enter this procedure at stage two.

(iii) If the employee is still underperforming the senior manager can issue a final written warning in writing, stating that performance continues to be unsatisfactory and that failure to improve could lead to the employee's dismissal. This warning will remain live for 18 months. If there is a recurrence of the unacceptable performance within 18 months then it will be appropriate to re-enter this procedure at stage three.

(iv) The employee has the right of appeal against this warning. Any appeal must be made in writing to the senior manager within three working days of the date on which the written warning was received. The appeal will be heard by an appeal body authorised for this purpose as detailed within the dismissal section of this policy.

(v) Alternatively the senior manager may extend the period of monitoring and support at stage two or return to informal monitoring and/or normal management supervision.

13. Formal procedure - Stage three : 4 weeks duration in total

13.1. A formal meeting should be convened to outline concerns and emphasise the seriousness of the situation. A final programme of support and monitoring should be discussed and agreed, emphasising that significant and rapid improvement in performance is required.

13.2. There will be a review meeting after two weeks. A final review meeting should be arranged, normally after 4 weeks.

13.3. The employee has the right to be accompanied at each meeting.

13.4. *Review meeting at 2 weeks*

(i) The process for the review meeting under stage 3 follows the same format as stage one with the meeting being held at 3 weeks. The same outline structure of meeting should be followed as at stage one.

13.5. Final Review at 4 weeks

- (i) The format is the same as at the review meetings at stage one and two.
- (ii) The purpose of the final formal review meeting will be to determine whether or not satisfactory progress has been made. If it has, the employee will be informed in writing and any on-going support through management supervision will be clarified. The formal warning issued at stage two will remain live for a period of 18 months. If there is a recurrence of the unacceptable performance within 18 months it will be appropriate to re-enter this procedure at stage three.
- (iii) If the employee's performance remains unacceptable, a decision may be taken to recommend the employee's dismissal on the grounds of capability. If this is the case the employee should be suspended (with pay) pending the dismissal hearing which should be arranged as soon as possible.

14. Dismissal hearing due to unacceptable performance

14.1. Introduction

- (i) Where it is decided to refer the case to a dismissal hearing, the employee will be given at least ten full working days' notice, or a shorter period as may be mutually agreed.
- (ii) At the same time (i.e. ten working days in advance) the employee is to be supplied with the management statement of case and any supporting information, including witness statement(s) that will be referred to at the meeting, and the details of any witness(es) that are to be called.
- (iii) The employee is required to submit their statement of case five full working days before the hearing. This should include any supporting information including witness statement(s), which will be referred to at the meeting and details of any witness(es) that are to be called.
- (iv) All paperwork will therefore be circulated to both parties involved at least five working days before the dismissal hearing. No additional written documentation will be accepted as evidence on the day.

14.2. Attendance at the dismissal hearing

- (i) Two senior managers, who have not been involved in the process, accompanied by a member of the HR department, will hear the case³. One of these will be appointed as the chair of the panel. Hereafter they will be referred to as the 'dismissal panel'.
- (ii) The employee will attend the hearing and is entitled to be accompanied by a trade union representative or workplace colleague. There is no right to legal representation at this hearing.
- (iii) If the employee is unable to attend the hearing an alternative date will be arranged, ideally within five working days of the first date. If the employee is still unable to attend that hearing it will be held in their absence, but a representative will be given the opportunity to present the employee's case on their behalf.

14.3. Witnesses

- (i) The identity of the witnesses must be disclosed to the other party in advance as detailed

³ Please refer to the Responsibility Matrix in Annex 1

above. It is preferable that witnesses who have made statements attend the hearing, although this cannot be mandatory if they are not Trust employees.

- (ii) Each witness will join the hearing to give evidence and leave after doing so, although they may need to be recalled if necessary.

14.4. Role of the dismissal panel

- (i) The role of the panel is to listen to the evidence and decide what action they wish to take. It is important that panel remember that the degree of proof is on the balance of probability that there is reasonable belief that the employee's performance is unacceptable and has not shown the required improvement.
- (ii) The employee's record with the Trust should be taken into consideration, including any disciplinary record. The employee's position in terms of status and length of service might be considered in mitigation and could influence the level of sanction. A consistent approach must be used.

14.5. The format of the meeting

- (i) The following stages would be followed at the hearing:
 - The chair of the panel hearing the case for dismissal makes introductions and outlines the process to be followed to ensure that everyone present understands what is going to happen. The chair will be advised throughout the hearing by professional member of HR. The HR professional will take notes of the meeting which will be available to all parties present.
 - The senior manager of the employee presents the case in the presence of the employee and his/her representative. This will include (as appropriate), referring to the written documents and other written evidence calling witnesses.
 - The employee or his/her representative has the opportunity to ask questions on the evidence given by the senior manager and of any witnesses as they are called.
 - The panel has the opportunity to ask questions on the evidence given by the senior manager of the employee and of any witnesses as they are called.
 - The employee or his/her representative puts forward his/her case in the presence of the senior manager of the employee. This will include (as appropriate), referring to the written documents and other written evidence calling witnesses.
 - The senior manager of the employee has the opportunity to ask questions on the evidence given by the employee or his/her representative and of any witnesses as they are called.
 - The panel hearing the case has the opportunity to ask questions on the evidence given by the employee or his/her representative and of any witnesses as they are called.
 - The senior manager of the employee sums up his/her case.
 - The employee sums up his/her case.
 - The senior manager of the employee and employee, plus representatives and all witnesses withdraw from the hearing.
 - The panel adjourns to consider their decision and deliberate in private with the HR professional. The panel may recall the senior manager or the employee to clarify uncertain points, however if recall is necessary both parties must return even if one is not required for clarification of points.
 - The decision of the panel will be notified to the employee at the meeting and then confirmed in writing within 5 working days of the meeting. The panel need to:
 - Confirm the decision made
 - Give reasons why this decision was reached
 - Give details of how the employee may appeal against the decision.

NB the panel can choose to adjourn at any point and can consider requests from either side to do likewise.

14.6. The decision of the panel

- (i) The panel may make one of the following decisions:
 - Determine that the employee should cease to work in his/her present post at the Trust and be dismissed
 - Determine that the employee should cease to work in his/her present post at the Trust but be offered employment in another post in the Trust. This might be at a lower salary level in which case the question of salary protection should be considered
 - Determine that the employee should continue to undergo formal performance monitoring for a defined period of time
 - Take no formal action.
- (ii) If the dismissal is confirmed then the employee will be given contractual notice on full pay, the employee should be told not to attend work during the notice period.

15. The appeal process

15.1. Introduction

- (i) An employee may appeal in writing against dismissal under this procedure within 5 working days of receipt of the written decision; the reason for the appeal must be clearly stated in the letter.
- (ii) The appeal panel will be comprised of three local board members (for support staff based in an academy) or three trust Trustees (for support staff based in one of the Trust's central teams) who have not been previously involved in the process⁴. Where this number is not reasonably practicable it can be reduced to two.
- (iii) Within 20 working days of receipt of the request for an appeal, arrangements will be made for the appeal to be heard. The employee must be given ten working days' notice of the date of the appeal hearing, unless a shorter period is mutually agreed.
- (iv) The format of the meeting follows the same as the dismissal hearing in terms of the deadlines for the sharing of paperwork and details of how witnesses may be called.

15.2. The decision of the appeal panel

- (i) The panel hearing the appeal can decide whether or not to uphold the decision from the original meeting. If the decision is overturned, the panel, in conjunction with advice from the HR Department, should then either:
 - Determine that the employee should continue to undergo formal performance monitoring for a defined period of time
 - Take no formal action.
- (ii) The appeal panel will consider the matter in private and decide whether or not the case against the employee has been substantiated. If further clarification or information is required in order for a decision to be reached, both parties will be recalled or the appeal can be adjourned until the required information is provided.
- (iii) The employee will normally be asked to wait for the panel's decision. If the case is a complex one, the employee will be given the opportunity to leave and be called back at a later time to receive the decision (accompanied wherever possible by their representative). In any event a decision will be made within 5 working days of the conclusion of the appeal

⁴ Please refer to the Responsibility Matrix in Annex 1

hearing.

- (iv) The decision of the appeals panel is final and there is no further right of appeal under this policy.

16. Policy status and review

Written by:	HR Manager
Owner:	HR Director
Status:	V1 = Approved V2 = Approved
Approval date:	V1 = 19/11/12 (Resources Committee) V2 = 26/1/17 (Audit and Resources Committee) Merger editorial changes 1 September 2017
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Annex 1 – Responsibility matrix

1. Responsibilities

Post	Informal and Formal Procedure	Dismissal Panel	Appeal Panel
Service Director	Director of Operational Services	2 x senior managers not previously involved (Chief Executive, Director of Policy and Governance, Director of School Improvement or an Academy Principal)	3 x Trustees
Member of Operational Services Team	Service Director	2 x senior managers not previously involved (Chief Executive, Director of Policy and Governance, Director of School Improvement or a Service Director of another operational service)	3 x Trustees
Member of Policy and Governance Team	Director of Policy and Governance	2 x senior managers not previously involved (Chief Executive, Director of Operational Services, Director of School Improvement or a Service Director)	3 x Trustees
Academy-based Support Staff	Principal or member of academy's Senior Leadership Team	2 x senior managers not previously involved (Chief Executive, Director of Policy and Governance, Director of Operational Services, Director of School Improvement, a Service Director or a Principal from another academy)	3 x Local Board members