

The **co-operative** academies trust

Capability Procedure

Approved by Trust Board 22 April 2015
Applicable from 01 June 2015

Capability Procedure

Contents

Section	Content	Page
1	Purpose	3
2	Applicability	3
3	Roles and Responsibilities	3
4	Principles	4
5	Informal handling of under-performance	4
6	Formal Stage One – Capability Meeting	4
7	Formal Stage Two – Formal Review Meeting	6
8	Formal Stage Three – Dismissal Hearing	7
9	Formal Stage Four - Appeal	8
10	Authority to act under the Capability Procedure	8
11	Sickness	9
12	Review	9
Annex 1	Manager guidance on managing under-performance	10
Annex 2	Support plan template	11

Capability Procedure

1. Purpose

1.1. The purpose of this procedure is to encourage and ensure employees of the Co-operative Academies Trust (the Trust) achieve and maintain acceptable and agreed standards of performance and perform their jobs to the best of their ability, and is designed to ensure fairness & consistency and to provide support towards improvement, in the management of employee under-performance.

1.2. Capability refers to an employee's ability to perform the work expected of them to the level required in fulfilment of agreed contractual duties. This may be assessed by reference to an employee's skill, aptitude, or ability in relation to the job that they are employed to do, and this appears to be because the employee 'can't' (rather than 'won't') do something.

1.3 Very few employees choose to perform their work badly, make mistakes or fail to complete tasks. Consequently in the event that an employee is underperforming, a manager should examine the circumstances to identify underlying causes and provide additional support to the employee to help them to improve to the required standard of performance, including an agreed support programme under the CAT performance management policy.

2. Applicability

2.1. This procedure applies to all employees of the Trust with the exception of those staff within their probationary period. All employees are included, whether permanent or on a fixed term contract. It does not apply to agency workers, contractors or volunteers.

2.2. This procedure is used to manage under-performance, because of lack of aptitude, skill and/or ability, which the performance management process has been unable to address.

2.3. Where the employee's health is affecting their performance this may be dealt with under the Managing Attendance procedure.

2.4. This procedure is not intended to be used where poor performance is the result of carelessness, wilful neglect of duty, deliberate failure to carry out reasonable directions or other such actions which can be considered under the Trust's Disciplinary Policy.

2.4. Where after further investigation or discussion it is found that the issue is one of incapability due to ill health or disability, or to misconduct, action under the Capability Procedure may stop and further action will be considered under another appropriate procedure if required.

3. Roles and Responsibilities

3.1. The Trust is committed to ensuring consistency of treatment and fairness and will abide by all relevant legislation.

3.2 CAT academies will help employees career and professional development through education, training, information and other frameworks that support performance management.

3.3. Line managers are responsible for:

- Implementing this procedure within their areas of responsibility
- Ensuring that they agree realistic and measurable objectives
- Supporting staff to achieve the objectives agreed and required level of performance
- Seeking advice from HR at an early stage should concerns regarding an employee's performance arise.

3.4. Employees will take responsibility for and be accountable for their actions, in line with their contractual duties and co-operative values. They are responsible for complying with the requirements of this procedure and for

performing their duties in line with their conditions of service. Where an employee is suffering from an ill health condition that is affecting their performance at work they should speak to their manager as soon as possible.

4. Principles

4.1. The Trust needs the effective performance of all its staff in order to deliver the aims and vision of each academy, and the Trust as a whole. To achieve this, each academy aims to ensure that effective recruitment is undertaken and performance expectations are clearly defined through the performance management framework, performance is monitored and employees are given appropriate feedback, training and support.

4.2. Employees should be provided with appropriate information, support and advice during induction and probation to help them achieve the level of performance expected.

4.3. The Trust will try to resolve issues of under-performance informally through meetings between the employee and their line manager using the Performance Management (appraisal) Procedure (also see section five). However, where this approach has been ineffective or the performance concerns are more serious, formal action will be considered.

4.4. The employee will be advised of the concerns arising from his/her performance and given the opportunity to respond and present relevant information.

4.5. The employee will normally be given at least 5 working days' notice of all formal meetings under this procedure. Wherever possible, meetings will be held at a mutually agreed time, date and venue. All parties must ensure that there are no unreasonable delays to the process.

4.6. The employee will have the right to be accompanied by a work colleague or trade union representative during all stages of the formal process.

4.7. If there are any disability or language issues affecting the employee or his/her representative, these will be reasonably addressed so that proceedings can take place fairly.

4.8. Where underperformance is due to a disability the manager should contact HR in order to receive advice on reasonable adjustments in line with the Equality Act 2010.

4.9. The capability procedure will be managed with due regard to the need for individual confidentiality.

4.10. The time-scales within this procedure may be amended by mutual consent.

5. Informal handling of under-performance

5.1 Any concerns regarding an employee's performance should be discussed at the earliest opportunity, and Managers should try to resolve issues of minor incapability informally and in a supportive manner using the Performance Management Procedure. Further guidance for managers is given in Annex 1.

5.2. Where this approach has been tried and has not succeeded in improving performance or where the underperformance is more serious, formal action should be taken by organising a Stage One Capability Meeting (see section 6 below).

6. Formal Stage One – Capability Meeting

6.1. If an employee's performance continues to be unsatisfactory or where unsatisfactory performance is sufficient to warrant moving straight to formal action, the employee should be invited to a formal meeting to discuss the concerns.

6.2. Every effort should be made to reach agreement, however if the employee disagrees that they should be in the capability procedure or at a particular stage within the procedure, the Trust has the right to impose it since the capability procedure forms part of an employee's terms & conditions of employment. The points raised by the employee should be documented as part of the Stage One process. Equally, the employee has the right to raise a grievance under the grievance procedure, along with the right to trade union representation.

6.3. The employee should be given at least 5 working days' notice of the meeting. The notification letter should include:

- The time and place of the meeting
- A statement of the concerns regarding their performance
- The possible consequences of the meeting
- Their right to be accompanied by either a work colleague or trade union representative
- Copies of any written evidence that might be relied upon

6.4. The purpose of this meeting is to establish the facts. The employee should be given the opportunity to respond to the concerns about their performance and make any relevant representations. This may provide new information or a different context to that which has already been collected. The employee will be reminded of any informal discussions (where these have happened) and the steps taken to support an improvement in performance that have already been taken. Specific reference will be given to the performance management procedure along with the agreed objectives and any support agreed to meet those objectives.

6.5. A decision will be taken at the meeting regarding the required action from one of the following options:

- Where there are insufficient grounds for pursuing the capability issue, the concerns will be addressed informally and therefore formal action under the Capability Procedure will not proceed. In this instance, a note should be sent to confirm that the employee has not entered formal proceedings.
- Where it is found that the concerns are as a result of misconduct or ill health, action under the Capability Procedure may stop and further action will be taken under another appropriate procedure if required.
- Where further investigation proves necessary the meeting may be adjourned and then reconvened once the investigation is complete.
- Where there is evidence for the concerns, the meeting will continue and will address the points outlined in section 6.5 below.

6.6. Where the meeting continues, it should address the following:

- Identify the shortcomings
- Confirm the suspension of the performance management process
- Give clear guidance on the improved standard required, this may include setting objectives, identifying success criteria or the evidence that will be used to determine improved performance
- Set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on individual circumstances and should be agreed by both parties wherever possible. It should be reasonable and proportionate to allow the opportunity for improvement to take place but should not be excessively long. A guide for the monitoring and review period is four to ten weeks. *[Note: in serious cases where it can be demonstrated that the education of students and/or the efficient and effective running of the Trust or an academy is being jeopardised or undermined it is expected that the period for improvement would be no more than four working weeks at each stage]*
- Issue a Support Plan (Annex 2), setting out the concerns, the agreed actions and timescales, the support that will be provided, and making clear the consequences of a failure to improve within the set period.

6.7. At the meeting consideration should be given regarding any reasonable support or training that would assist the employee in achieving a satisfactory standard of performance.

6.8. The manager should propose reasonable measures to assist the employee to meet agreed objectives and perform at the level expected. The measures may include any or all of the following (provided they are available and do not adversely affect the efficiency of the academy):

- Changes to working practices within the terms of the employee's job description;
- Increased supervisory support for a specified period of time
- Work shadowing a competent employee
- Modified workload or tasks for a specified period of time
- Further training
- Other reasonable relevant support

6.9. An important part of the support offered to a teacher would be a clearly defined amount of classroom observation with structured oral and written feedback. The amount of classroom observation will be discussed with the teacher and their trade union representative.

6.10. The employee will receive a letter confirming the outcome of the meeting, including details of the Support Plan if issued, within 5 working days of the meeting. Notes of the meeting should be taken and a copy provided to the employee.

6.11. Following this meeting during the specified time period for improvement, monitoring, evaluation, guidance and support will continue, the frequency of such will be determined on an individual basis by mutual agreement.

6.12. A formal review meeting should be held at the end of the specified monitoring and review period (see section 7).

7. Formal Stage Two – Formal Review Meeting

7.1. A formal review meeting will be held at the end of the monitoring and review period in order to evaluate whether sufficient improvement in performance has occurred.

7.2. The employee should be informed in writing giving at least 5 working days' notice of the meeting. The notification letter should inform them of:

- The time and place of the meeting
- Confirmation of the performance concerns that are to be reviewed
- The possible consequences of the meeting
- Their right to be accompanied by either a work colleague or trade union representative
- Copies of any written evidence that might be relied upon

7.3. At the review meeting the manager and employee will discuss the monitoring and review period and any support provided. The manager will assess whether the employee's performance has improved sufficiently. The employee will have the opportunity to comment on their performance during this period.

7.4. Following discussion at the meeting, the manager may decide that:

- a) The employee's performance has improved sufficiently and no further action is required under the procedure. The employee will be advised that satisfactory performance must be maintained and that if performance becomes unsatisfactory again under the performance management procedure further action may be taken under the Capability Procedure. If this occurs within 12 months, it may take into account action taken previously.
- b) That some progress has been made and there is confidence that more is likely, so the monitoring and review period may be extended. The manager will confirm the continuing areas of concern and the improvement required. Consideration will be given to any further support that can be provided. A further period for monitoring and review will be given, normally of no more than four weeks. At the end of this period a further review meeting will be convened.
- c) That there has been no, or insufficient improvement made and performance remains unsatisfactory so a second Support Plan will be issued. The employee should be informed that failure to improve sufficiently within the set timescale, may result in dismissal. The manager will confirm the continuing areas of concern and the improvement required. Consideration will be given to any further support that can be

provided. A further monitoring and review period will be given, normally of no more than six weeks. At the end of this period a further review meeting will be convened.

7.5. The employee will be informed of the outcome of the review meeting in writing, including details of the Support Plan if issued, normally within five working days of the meeting. Notes of the meeting will be taken and the employee provided with a copy.

7.6. Where a second Support Plan is issued (7.4 c), a further review meeting will take place at the end of the second monitoring and review period, where the following decisions can be made:

- The employee has reached a satisfactory standard of performance and no further action is required under the procedure (see 7.4 a). There has been no, or insufficient improvement made and performance remains unsatisfactory the manager will arrange a dismissal hearing under stage three.

8. Formal Stage three - dismissal hearing

8.1. A dismissal hearing will be arranged where the employee did not make a sufficient improvement in performance or meet agreed objectives during the specified monitoring and review period(s).

8.2. The employee will normally be given 10 working days' notice in writing of a dismissal hearing. The chair of the hearing will confirm arrangements to the employee in writing, including:

- The deficiencies in the employee's performance and the reasons for contemplating dismissal
- The date, time and location of the hearing. If the date / time is not convenient for any party an alternative date will be agreed, this will not normally be more than 5 working days after the date originally proposed by the Chair.
- The name of the person (or panel) chairing the hearing
- The right to be accompanied and/or represented by a trade union representative or work colleague
- The requirement to provide the chair hearing the case with a copy of the documents that he/she will be relying upon and the names of any witnesses that he/she will be calling at the hearing at least 5 working days before the hearing
- Advise the employee that the hearing could result in his/her employment being terminated
- Copies of documents that the presenting manager will refer to at the hearing, and names of any witnesses that they will call.

8.3. At the hearing both the management side and the employee will be given the opportunity to state their case, call witnesses and ask questions. HR will attend the hearing to provide procedural advice.

8.4. The hearing will normally be adjourned whilst the chair/panel hearing the case reaches a decision.

8.5. The outcome of the hearing may be either dismissal on the grounds of lack of capability or alternative action in the light of evidence presented at the hearing (see 8.7). Where an employee is dismissed he/she should be dismissed with appropriate notice. The employee will be notified in writing of the outcome normally within 5 working days and of their right of appeal.

8.6. A postponement may be granted if the employee or their representative is unable to attend on the proposed date. A postponement should not be for more than 5 working days after the original date proposed, however, an extension to this time limit can be made by mutual agreement. Where a hearing is rearranged and the employee is unable to attend a second time, the hearing will normally convene, as arranged, and a decision taken in the employee's absence.

8.7. Alternative actions might include:

- a further period of monitoring and review. If the required level of performance is not achieved and this leads to a further dismissal hearing it should be heard, if possible, by the same person / panel.
- redeployment to a different post within the school if a vacant existing post is available as an alternative to dismissal; if the post is on a lower grade there will be no entitlement to protection of salary.

- reduction of responsibility; this may be linked to the redeployment option or could apply to the post currently held by the employee – again salary protection will not apply in such circumstances.

9. Formal Stage Four - Appeal

9.1. An employee is entitled to appeal against the decision to dismiss due to capability.

9.2 The appeal should be on the basis of one of the following grounds:

- The procedure - a failure to follow procedure had a material effect on the decision
- The decision - the evidence did not support the conclusion reached
- The penalty - was too severe given the circumstances of the case
- New evidence - which has genuinely come to light since the dismissal hearing.

9.3. The appeal must be made in writing, stating the grounds for the appeal, within five working days of receiving written notification of the decision to dismiss.

9.4. The appeal will be heard as soon as possible and not normally later than six weeks after being received.

9.5. The employee will normally be given 10 working days' notice, in writing, of the date of the appeal hearing. This notification will give the name of the person chairing the hearing (and the names of panel members - see section 10). It will remind the employee of his/her right to be accompanied at the hearing by either a trade union representative or work colleague. An HR representative who has not previously been involved will attend the hearing to provide procedural advice.

9.6. Both parties must indicate at least 5 working days in advance of the appeal hearing which, if any, witnesses they wish to call and provide copies of any documentation that will be relied upon at the hearing. In exceptional circumstances an alternative time-scale may be agreed.

9.7. The appeal hearing should consider the evidence presented in relation to the grounds for appeal put forward by the employee; it is not expected that the appeal will constitute a full re-hearing.

9.8. The chair of the dismissal hearing will attend the appeal to present the management case in relation to the grounds of the appeal, and may be accompanied by the person who acted at stages 1 and 2 in the procedure. Attendance by a management HR representative is optional.

9.9 The employee will be able to present evidence that is directly relevant to the grounds of the appeal. Management will have the opportunity to respond.

9.10 The appeal hearing may confirm or overturn the decision or may recommend some alternative action.

9.11 The employee will be informed of the appeal decision in writing, normally within 5 working days. The decision of the appeal hearing is final.

10. Authority to act under the Capability Procedure

These levels of authority are in line with the Trust's Scheme of Delegation (2014). LGB = Local Governing Body

	Stage 1 & 2 Meetings	Stage 3 Hearing	Stage 4 Appeal
All academy based employees except those listed below	Headteacher / Principal, or nominated delegate	Headteacher / Principals (if not previously involved and responsibility for this has been delegated by the LGB), or panel of three from the LGB	Panel of three from the LGB not previously involved

	Stage 1 & 2 Meetings	Stage 3 Hearing	Stage 4 Appeal
Headteacher / Principal	Chair of Governors and/or Director of the Trust	Panel of three from the Trust Board	Panel of three from the Trust Board, not previously involved
All central team employees except Director of the Trust	Line manager	Director of the Trust if not previously involved, or member of Trust Board	Panel of three from Trust Board
Director of the Trust	Chair of the Board, or nominated delegate	Panel of three from the Trust Board not previously involved	Panel of three from Trust Board not previously involved

11. Sickness

11.1. If long term sickness appears to have been triggered by the commencement of monitoring or the formal Capability Procedure, the case will be dealt with in accordance with the Managing Attendance Procedure and monitoring and/or formal procedures resumed on return to work. In some cases, it may be appropriate for formal procedures to continue during a period of sickness absence.

12. Review

12.1. This procedure will be reviewed to respond to any changes in employment legislation, and in any event at least every three years.

Manager guidance on managing under-performance

This guidance is intended to help support managers who are managing concerns around an employee's performance through usual performance management procedures. If subsequently entering a formal capability procedure it is important that the Manager can evidence the steps taken "pre-capability" to try and support the required improvement.

Any concerns regarding an employee's performance should be discussed at the earliest opportunity, and Managers should try to resolve issues of minor incapability informally and in a supportive manner.

Employees should receive constructive feedback on their performance throughout the year, as part of the Performance Management process, and as soon as practicable after agreed lesson observation has taken place. Feedback should highlight particular areas of strength as well as any areas that require support.

Appropriate action should be taken promptly as soon as it is noticed that an employee is not performing certain aspects of their job satisfactorily. Delaying or doing nothing may cause the performance problem to escalate and cause delay in providing the necessary support to the individual.

The employee should be advised to seek professional advice from their trade union representative; the Trust acknowledges that this may help to expedite resolution. However, there is no right to be accompanied to meetings taking place as part of the usual performance management process.

It should be recognised that capability problems may be related to issues outside the employee's direct control and may be symptomatic of underlying work problems or other personal issues. Particular care should be taken when disability or health issues are involved and advice should be sought from HR / Occupational Health Service as appropriate.

Where there are concerns about any aspects of an employee's performance, the manager should meet with them to:

- Give clear feedback about the nature and seriousness of the concerns
- Give the employee the opportunity to comment and discuss the concerns and provide information on any issues impacting on the situation
- Agree any support (e.g. coaching, mentoring, structured observations, training, professional courses) that will be provided to help address those specific concerns
- Make clear how, and by when, progress will be reviewed (it may be appropriate to revise objectives and/or agree other appropriate & clear targets, and it will be necessary to allow sufficient time for improvement. The amount of time will need to reflect the seriousness of the concerns)
- Explain the implications and process if no – or insufficient – improvement is made (i.e. entry in to the formal capability procedure).

It is recommended that a note of the discussion is confirmed in writing (e.g. by email).

If the discussion outlined above results in the required improvement, it would be helpful to 'draw a line under it' by confirming that the issue(s) have been addressed and the performance management process will continue as normal.

Where this informal approach has been tried and has not succeeded in improving performance, or where the underperformance is more serious, formal action should be taken by organising a Stage One Capability Meeting.

Support Plan

Employee name:	
Date of meeting:	

Concern / Area of performance for review	Level of improvement required*	Support to be provided (nature of support, who should make arrangements)	Timescales for improvement / review date(s)

**Actions agreed under this improvement note / support plan should be "SMART": specific, measurable, achievable, relevant, time-related, in other words it should be very clear what is required, by whom and by when, and clear how this will be evaluated and reviewed.*

I understand that the consequence of my performance not improving to the required level within the agreed time period will be the continuation of the capability procedure, which could include my dismissal.

Signed:
Employee

Date:

Signed:
Manager

Date: