



# **Capability Policy**

## **(including Capability and Ill Health)**

### **2022-2023**

The Policy has been reviewed and supersedes all previous issues.

Date: August 2022

## Capability Policy (including Capability and Ill Health)

### 1. Introduction

The term 'capability' refers to an employee's ability to perform the work expected of them to the standard required. The University of Chichester Academy Trust ('the Trust') delegates responsibility for setting realistic standards of performance for all staff which meet relevant professional standards frameworks and are detailed in an individual's Performance and Development Plan (PDP) to the Headteacher of each academy.

The PDP forms part of the Trust's Performance and Development Review (PDR) process, although the term 'appraisal' may be more familiar. The Trust's PDR guidance and process is detailed in the Trust's Pay and Reward Policy which all academies must adhere to.

Reference to the Trust is also reference to the academies that comprise the Trust.

The primary focus of this Policy is to set-out how individuals falling short of the expected standards will be supported and measured. Where instances of poor performance are identified, the Trust will provide the employee with an opportunity to make improvements and put in place appropriate support. The Trust advocates an informal approach initially to allow concerns to be brought to the attention of the employee, exploring causes, identifying responsibilities and agreeing actions to be taken before entering formal capability procedures.

### 2. Scope

This policy applies to employees who have successfully completed their probationary period, except for newly qualified teachers who are in their induction year. In such cases concerns about performance will be managed through the NQT statutory induction programme, unless the extent of the capability problems warrants the capability procedure to be instigated in parallel with the induction process.

The Capability Policy is not intended for use in situations where there is a deliberate failure by the employee to perform to the standards of which he/she is capable. Failure to perform to the required standards through negligence, lack of effort, or insubordination would be viewed as misconduct and would likely be dealt with under the Disciplinary Policy.

A serious matter of misconduct by a teacher must be dealt with in accordance with the Teaching Regulation Agency, operating on behalf of the Secretary of State for Education. In such cases the academy will inform the HR Manager of any proposed referrals.

This policy does not form part of an employee's contract of employment and may be amended at any time.

### 3. General Principles

- To provide consistency in how staff with widely differing responsibilities and duties are given opportunities to attain satisfactory levels of performance.
- Assist in identifying the most appropriate form(s) of support for the employee.
- The application of the procedure will be without discrimination. Action will be taken which is reasonable, necessary, and clear of ambiguity.
- All parties involved have the right to be heard with courtesy and respect and to state their case.
- At all formal stages of the Capability Policy, an employee is entitled to be accompanied by a trade union representative or by a work colleague.
- Requests to be accompanied by a trade union representative or by a work colleague at the informal stage will be at the discretion of the Headteacher and will be sympathetically considered, but must not unreasonably delay the process.
- All statements, letters and other communications should be regarded as confidential to those involved in the process.
- Any further instances of capability during the period the individual has a formal warning on file, as an outcome of action taken under a formal stage of this policy, and which has not yet expired, must be dealt with under the formal process.

## 4. Responsibilities

### 4.1. Headteachers are responsible for:

- Allocating line management responsibilities
- Informing Central HR when considering whether to use this procedure to support the performance of a member of staff;
- ensuring the manager has the expertise to manage the performance of another member of staff;
- considering whether they, or a member of the senior management team, would be better placed to lead on the support process, to ensure the employee receives clear direction and support to address the performance issues at an informal stage and
- determining whether the informal support has been reasonable and appropriate, and whether this has had an impact on resolving the performance issues, or whether the employee should be advised that a formal process will be entered in to.

### 4.2. Managers are responsible for:

- ensuring they identify underperformance and seek to address this at the earliest opportunity;
- considering whether there are any issues in or outside of work which may be impacting on the employee's ability to undertake the work to a satisfactory standard;
- setting SMART objectives and standards for performance in consultation with employees;
- ensuring employees are aware of their duties and responsibilities including awareness of the standards set out in professional frameworks to which employees are obliged to conform, the Performance and Development Review (PDR) process and on-going dialogue;
- providing honest and constructive feedback on performance. Managers should ensure they have regular review meetings with those they manage, and there is opportunity for discussion and offering advice and direction which is supportive and enabling rather than destructive and negative. Any problems that occur should be brought to the attention of the employee promptly.

### 4.3. Employees are responsible for:

- performing their duties and responsibilities to an acceptable standard;
- advising their managers at the earliest opportunity of any issues, in or out of work, affecting or likely to affect their performance;
- raising with their manager any concerns they might have relating to the completion of tasks or objectives and/or responsibilities;
- fully engaging with their managers when dealing with issues relating to their own performance;
- ensuring their performance meets the requirements of the required standards, their role and targets set;
- maintaining and developing their skills and expertise in order to accommodate change and adapt to new working requirements;
- participating in the PDR process, one-to-one meetings and on-going dialogue with their manager.

## 5. Capability Process

Capability problems may result from underlying work problems or personal issues that may be outside the employee's direct control. Consequently, there is a need to treat all capability issues with care and sensitivity and to identify and (where appropriate) address the underlying causes. Incapacity due to ill health or long-term sickness absence which affects the employee's capability to fulfil the requirements of their role should be addressed under 'Capability and Ill Health' in **Appendix A**.

## 6. Levels of the Capability Process

There are four levels of the capability process:

1. **Informal stage** – Involving informal meetings between the line manager and/or headteacher and the employee to explore ways in which improvements can be made and to agree any additional support required
2. **Formal Stage 1** – First capability hearing
3. **Formal Stage 2** – Second capability hearing
4. **Formal Stage 3** – Dismissal or redeployment

### 6.1. Informal Stage

In most cases, where employees are experiencing difficulties and their performance falls below expectations, the problem should be addressed when it first becomes apparent. The reason for doing this is to

understand why the employee is experiencing difficulties so as to support them to achieve the standard of performance expected.

Where there are concerns about an employee's performance and it has been determined to manage this under the informal stage, the line manager and Headteacher will agree who would be best to support the employee. Central HR should be informed in order to provide any support and ensure the process is applied appropriately. The nominated person will meet with the employee to discuss the concerns and help them to reflect and explore ways of addressing them. This may be in the form of advice, guidance, coaching, mentoring, internal or external training, or some other form of support or activity.

To ensure an individual is clear of what is expected, a Performance Improvement Plan (PIP) – similar to an action plan - will be produced and agreed. The PIP should be clear with SMART (specific, measurable, achievable, realistic and time-bound) objectives.

The purpose of the PIP is to support the employee so that the improvement is sustainable in the long term. Depending on the issue, this means the review period and timeline will vary. For example, if the action is to ensure homework is policy compliant and handed out weekly, the change should be immediate, whereas improving the standard of teaching and planning will require a longer period of support and evidence of sustained improvement at the standard required. However, the timeframe should be such that the employee can demonstrate sustained improvement. This may mean the period is extended rather than moving to Formal Stage 1.

**Appendix B** provides guidance and a template for the PIP which may be tailored for the staff member.

A member of the academy's senior leadership team or central Trust team may be consulted on the PIP and may meet the employee to ensure they are given every reasonable support to improve unsatisfactory work performance. The employee will receive a copy of the PIP, together with any further outcomes, in writing, following discussions. A copy of the notes of these informal discussions or meetings will be retained by the academy.

Following a satisfactory outcome using the informal procedure the matter will be considered resolved. It is expected with support and through drawing attention to the fact that there is a problem, performance will in most cases return to expected standards.

Where managers have taken informal steps to improve performance, and these have not led to the required improvements within an agreed review period, the manager should advise the Headteacher to determine whether a further PIP should be agreed, or if the employee should be informed that they will move to the next level of the capability process.

The employee should be clear about the expectations arising from informal discussions relating to capability.

Any further instances of capability during the period the individual has a formal warning on file, as an outcome of action taken under a formal stage of this policy, and which has not yet expired, must be dealt with under the formal process.

## **6.2. Exceptions**

Where there is serious concern about the performance of an employee, the Headteacher may request the Trust's permission to move straight to the Formal Stage of the Capability Policy. This would be in exceptional cases where:

- The employee's performance is putting the health and safety of pupils and/or staff at risk.
- The employee's performance is putting the education of pupils in serious jeopardy.
- Within a six-month period from the point a PIP was considered resolved, excluding term breaks, the employee's unsatisfactory work performance, for which the support was put in place, recurs.

The Trust will liaise with the Headteacher, and may contact the employee, to determine whether there are also any extenuating circumstances to be taken in to account which would suggest the concern should be dealt with at the informal stage in the first instance and not move directly to the formal stage.

## **6.3. Formal Stage**

The formal stage should only be initiated when an informal approach has not achieved the level of performance expected, or in exceptional cases as detailed in 6.2.

Employees should be encouraged and are entitled to be accompanied by a trade union representative or workplace colleague to any formal capability meeting. It is the employee's responsibility to notify their chosen companion of any meeting arrangements, and to notify the chair of the companion's name within three days of the meeting.

The companion can make representations on behalf of the employee, sum up the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee during the meeting. The companion does not, however, have the right to answer questions on the employee's behalf, address the meeting if the employee does not wish it or prevent the employer from explaining their case.

If the employee or their companion, is unable, for good reason, to attend a meeting, an alternative date will be arranged, once only, normally within five working days of the original meeting. Failure to attend a hearing without good reason may be treated as misconduct.

A hearing may be adjourned if the employee's manager or Headteacher needs to gather any further information or give consideration to matters discussed at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

Where formal action is being considered in respect of capability, the academy must inform the central HR team at the earliest opportunity. The line manager will assemble as much factually based information and evidence as is practicable about the shortfall in the employee's performance and the impact on the department/team/area of work.

Outcomes of all meetings will be confirmed in writing to the employee and a copy placed on the employee's personal file.

## **7. Formal Process**

A capability hearing is a formal hearing to discuss concerns regarding performance or capability, at or following which a sanction may be issued, which could include a warning or dismissal. A capability hearing will be held at each stage of the formal procedure.

### **7.1 Level 2 - Formal Stage 1: First Capability Hearing**

The employee will be invited to a capability hearing, in writing, usually allowing at least five working days' notice, unless another acceptable timeframe is agreed. If the employee is a member of a trade union they will be encouraged to speak to them, and the academy will be sympathetic to the availability of a trade union representative or work colleague to attend to support the employee, where it can be reasonably accommodated. The employee will receive a copy of the Capability Policy and will be advised:

- that the Headteacher intends to address the employee's performance through the formal capability procedure as the informal process failed to bring about the required improvements, or providing reasons why the performance has moved straight to the formal stage;
- that they are expected to attend a formal capability hearing at a specified place and time;
- of details supporting the fact that the individual's performance has fallen below the level required in the job and any documentation that is to be relied upon during the meeting, if applicable;
- that the member of staff has the right to be accompanied at the meeting by a trade union representative or a workplace colleague and
- that following the meeting a decision will be made on what action should be taken which could include issuing a written warning.

The individual who supported the employee may be invited to attend the hearing to provide evidence.

A member of Central HR will be present to support the process.

In the event the employee's line manager is the Headteacher, then the matter will be referred to the Trust to determine who will conduct the hearing.

The purposes of the first capability hearing include:

- a) setting out the required standards that are considered not to have been met;

- b) establishing the likely causes of poor performance;
- c) allowing the employee, the opportunity to explain the poor performance and ask any relevant questions;
- d) discussing measures, such as additional training or supervision, which may improve performance;
- e) setting targets for improvement; and
- f) setting a timescale for review.

The Headteacher should confirm the outcome of the hearing to the employee as soon as possible after the hearing, orally and in writing (normally within five days unless another timeframe is agreed). The employee should also be warned that failure to reach the required standards may result in the employee being taken through to Level 3 of the capability process.

Where the employee's performance is found to be below the expected level it is usual to give the employee a written warning setting out:

- a) the areas in which the employee has not met the required performance standards;
- b) targets for improvement;
- c) any measures, such as additional training or supervision, which will be taken with a view to improving performance;
- d) a timescale for review and
- e) the consequences of failing to improve within the review period, or of further unsatisfactory performance.

The first written warning will be issued by the Headteacher, in writing. An agreed Performance Action Plan (PAP) should be enclosed with the first written warning, outlining the improvement required within the agreed time period, and a date for review specified. Appendix B provides guidance and a template for the PAP which is to be tailored for the staff member.

The Headteacher will monitor and review the employee's performance. At the end of the review period the Headteacher will inform the employee of the next step and confirm:

- a) no further action is required because the required improvement has been achieved and there is reasonable confidence that this will be sustained; OR
- b) give further time (under the formal procedure) for the employee to make improvements and to review and adapt the performance improvement plan and/or extend the period for improvement if there is a legitimate and genuine reason; OR
- c) progress to level 3 of the capability process (Stage 2 – second capability hearing), usually in cases where there has been no improvement or due to progress falling short of expected standards.

Where b) is confirmed and it is decided to review and adapt the PAP and/or extend the period of improvement, the employee should be informed in writing of the areas where the employee's performance is still below the required standard; the proposed actions needed to secure a satisfactory level of performance, and a time-scale for improvement.

The first written warning will remain active on the employee's personnel file for an agreed period. In normal circumstances this will be after six months satisfactory performance from the date of the written warning. Once a warning has expired, it will be disregarded but not removed from the individual's personal file.

If the employee's unsatisfactory performance is sufficiently serious, the decision may be to move directly to a final written warning. This might occur where the employee's actions have had, or in all reasonable probability will have a serious or harmful impact on the pupils and academy e.g. where a teacher's classroom control is so poor that no order can be established to enable teaching to take place.

## **7.2 Level 3 - Formal Stage 2: Second Capability Hearing**

If performance does not improve within the review period, or if there are further instances of unsatisfactory work performance while the employee's first written warning is still active, a second capability hearing will be held.

The Headteacher will write to the employee to invite them to a Stage 2 Capability hearing. The content of the letter should be in-line with the letter issued at Formal Stage 1, relevant to Formal Stage 2.

The purposes of the second capability hearing include:

- a) setting out the required standards that are considered not to have been met;
- b) establishing the likely causes of poor performance including any reasons why the measures taken so far have not led to the required improvement;
- c) allowing the employee the opportunity to explain the poor performance and ask any relevant questions;
- d) identifying further measures, such as additional training or supervision, which may improve performance;
- e) setting targets for improvement; and
- f) setting a timescale for review.

The Headteacher should confirm the outcome of the hearing to the employee as soon as possible after the hearing, orally and in writing (normally within five days unless another timeframe is agreed). The employee should also be warned that failure to reach the required standards may result in the employee being taken through to Level 4 of the capability process which could lead to dismissal.

Where the employee's performance is found to be below the expected level the Headteacher will issue a Final Written Warning, setting out:

- a) the areas in which the employee has not met the required performance standards;
- b) targets for improvement;
- c) any measures, such as additional training or supervision, which will be taken with a view to improving performance;
- d) a further timescale for review.
- e) the consequences of failing to improve within the timescale or of further unsatisfactory performance.

The final written warning will remain active on the employee's personnel file for an agreed period. In normal circumstances this will be after one year's satisfactory performance from the date of the final written warning. Once a warning has expired, it will be disregarded but not removed from the individual's personal file.

If there is a continued decline in the employee's performance which means performance falls substantially below expectations set during the review period at Level 3 - Formal Stage 2, or the employee's performance has not been sustained during the warning period, despite further support having been provided, the manager may move to Level 4 - Formal Stage 3 of the procedure without waiting for the review period to end.

The Headteacher will monitor and review the employee's performance. At the end of the review period the Headteacher will inform the employee of the next step, as follows:

- a) no further action is required because the required improvement has been achieved and there is reasonable confidence that this will be sustained; OR
- b) to review and adapt the action plan and/or extend the period for improvement if there is a legitimate and genuine reason, and to set a further review date; OR
- c) to progress to Level 4 of the Capability Policy, usually because there has been no improvement or because progress falls short of what was required.

Where it is decided to review and adapt the PAP and/or extend the period of improvement, the employee should be informed in writing of the areas where the employee's performance is still below the required standard; the proposed actions needed to secure a satisfactory level of performance, and a time-scale for improvement. The timescale for improvement will depend on the circumstances of each case and must be reasonable to demonstrate an improvement which is sustainable,

The purpose of the PAP is to support the employee so that the improvement is sustainable in the long term. Depending on the issue, this means the review period and timeline will vary. For example, if the action is to ensure homework is policy compliant and handed out weekly, the change should be immediate, whereas improving the standard of teaching and planning will require a longer period of support and evidence of sustained improvement at the standard required. The timeframe should normally be no shorter than one week and no longer than three months and be such that the employee can demonstrate sustained improvement, however this may mean the period is extended rather than moving to Level 4 – Formal Stage 3. The employee

should also be warned that failure to reach the required standards may result in the employee being taken through to Level 4 - Formal Stage 3 of the procedure.

The final written warning will remain active on the employee's personnel file for an agreed period. This would normally be after one year's satisfactory performance from the date of issue. Once a warning has expired, it will be disregarded but not removed from the file.

### **7.3 Consideration of alternative options**

Except for serious incapability cases, before any meeting takes place under Stage 3 of this procedure, the employee will be invited to meet with the Headteacher, line manager where appropriate, and a member of central HR to examine any available alternatives which would obviate the need for the application of Stage 3 or beyond. This will include consideration of whether it is feasible to make any offer of alternative employment to the employee. The employee may invite a trade union representative or work colleague to the meeting. The purpose of inviting the employee is to explore all potential avenues in a participative and transparent manner. If the employee prefers not to attend this will not prejudice any consideration, and the employee can choose to submit a written statement instead.

### **7.4 Formal Stage 3: Dismissal or Redeployment**

If performance does not improve within the review period set out in the final written warning, or if there are further instances of poor performance while the final written warning is still active, the Headteacher will refer the matter to the Trust, who will arrange for a senior member of the Trust or a Governor of the Local Governing Body to be present at the Formal Stage 3 capability hearing. This final stage parallels the previous stage, but now includes the possibility of employment being terminated on the grounds of capability, should the required improvements not be achieved and sustained.

The purposes of the Formal Stage 3 hearing include:

- a) setting out the required standards that are considered not to have been met;
- b) identifying areas in which performance is still unsatisfactory;
- c) allowing the employee, the opportunity to explain the poor performance and ask any relevant questions;
- d) establishing whether there are any further steps that could reasonably be taken to rectify the poor performance;
- e) establishing whether there is any reasonable likelihood of the required standard of performance being met within a reasonable time; and
- f) considering whether there is any practical alternative to dismissal, such as redeployment to any suitable job that is available at the same or lower grade.

In exceptional cases where it is believed there is a reasonable likelihood of the necessary improvement being made within a reasonable time, a further review period will be set and the final written warning extended.

If performance remains unsatisfactory and there is to no further review period, consideration will be given to:

- a) redeploying the employee to alternative employment at the same or a lower grade; OR
- b) dismissal of the employee.

In the event it is not possible to offer appropriate alternative employment, or the employee has not accepted it where offered, or it is believed there is no realistic alternative but to dismiss the employee, a recommendation will be made to a Trust panel, comprising two members of the Trust's Executive within two working days of the hearing. If the hearing is within two days of the end of a school term, members of the Trust panel will be agreed by the Trust's Executive and the Panel will convene as soon as possible and within fifteen days of the hearing, so as not to create undue anxiety on the individual.

Prior to the decision to terminate employment, the Trust panel must satisfy themselves of the following:

- the Capability Policy has been properly followed;
- the employee has been given a reasonable and fair opportunity to improve;
- relevant support and training have been offered where appropriate;
- options short of dismissal such as redeployment have been considered, with clear justification as to why they were rejected or were not feasible;



- there is no underlying medical condition/reason affecting performance of the employee.

The Trust panel will consult with the Headteacher and Trust HR and will invite the employee to a meeting to confirm the outcome and if appropriate, the terms of the dismissal. The employee will have the right to be accompanied to the meeting by a trade union representative or work colleague (who is not personally related to the employee).

Whilst the Trust advocates an employee attends the meeting to allow them to present their case in person, it is recognised the employee may not wish to attend, without detriment.

If a decision is made to dismiss the employee, this will be put in writing and the letter will confirm:

- the nature of the unsatisfactory performance;
- the process followed before reaching this stage;
- the fact that the employee is to be dismissed, outlining the relevant notice period and related contractual matters;
- the employee's right to appeal.

Dismissal will normally be with full notice or payment in lieu of notice, unless the employee is guilty of gross misconduct within the meaning of the Trust or Academy's Disciplinary Policy, in which case they may be dismissed without notice or any pay in lieu.

## **8. Retaining records of formal warnings**

Written warnings will be retained on the personal file retained in Human Resources. They will remain as live warnings for the period of time stipulated by the Capability panel, and will be taken in to account during their active period where further formal action is to be taken.

After the warning period has expired, records will be kept as part of an employee's history, but will not be taken in to account when considering any new matter warranting further formal action.

## **9. Appeals**

Employees may appeal against any formal action taken under the capability policy. An appeal should be lodged in writing to the Trust's HR Manager within five working days of the date on which they were informed of the decision. The appeal should include the reason for the appeal, and grounds of the appeal, and within ten working days a written statement providing the full grounds of the appeal. The employee will be given written notice of the date, time and place of the appeal hearing. The appeal hearing will be held as soon as practicable and the employee should set out the grounds on which they wish to appeal.

The appeal hearing will be held by a panel of three drawn from the Trust's Executive or Board, member of the Trust's Advisory Group, or the Local Governing Body who have not been involved in any formal stages of the process. Details of which will be confirmed in writing by the HR Manager not less than five working days prior to the date of the hearing.

The employee may submit to the Trust HR Manager any relevant written documents at least five working days before the appeal hearing. The employee may also invite witnesses to attend (where appropriate) provided the HR Manager is informed of the names and information regarding any witnesses at least five working days before the appeal hearing.

Additional information will not be permitted at late notice, unless agreed by all relevant parties.

Documentation will be distributed to all relevant parties as soon as possible after the deadline for the employee's documents to be submitted has passed.

In the case of dismissal, the Headteacher involved in the decision to dismiss the employee will be asked to attend the hearing to provide the reasons for recommending dismissal.

The employee may be accompanied at the appeal by a trade union representative or a workplace colleague (who is not personally related to the employee).

The appeal hearing may be a complete re-hearing of the matter or it may be a review of the fairness of the original decision. This will be at the Appeal Panel's discretion depending on the circumstances of the case.

A hearing may be adjourned if the Appeal Panel needs to gather any further information.

Following the appeal hearing, the Panel may:

- a) confirm the original decision;
- b) revoke the original decision; or
- c) substitute a different outcome, however the outcome cannot be at a greater level than the original decision.

The employee will be notified of the outcome of the appeal hearing by the HR Manager in writing, as soon as possible after the hearing (normally within five working days unless another timescale has been agreed).

A copy of any formal minutes will be sent to the employee and a copy, together with a copy of the outcome letter will be held on the employee's personal file.

The decision of the Appeal Panel will be final and binding and there will be no further right of appeal. Where the decision to dismiss is upheld, appropriate notice and outstanding holiday entitlement, if applicable, will be paid. Where the decision to dismiss is not upheld, the employee may be reinstated to their post or to an agreed alternative post.

Where an employee is successful at appeal, any previous records relating to the matter on which the appeal was successful will be removed from the employee's personal file. This does not include any allegations in connection with the safeguarding of children which must always be kept on the employee's personal file (unless they have been determined to be malicious).

The date that any dismissal takes effect will not be delayed pending the outcome of an appeal. However, if the appeal is successful, the decision to dismiss may be revoked with no loss of continuity or pay, and the employee will be reinstated to their post or to an agreed alternative.

**CAPABILITY AND ILL HEALTH****1. Introduction**

This section of the Capability Policy outlines the procedure to be used in relation to ill health which, in this context, is defined as 'incapacity which affects the employee's capability to fulfil the requirements of their role'. Ill health can either be considered to be persistent and frequent short-term absences, or long-term absence. Occupational Health may be consulted before action is taken, to seek medical guidance on the nature of the employee's condition and the question of whether it amounts to a disability within the meaning of the Equality Act 2010.

**2. On-going medical conditions**

There may be occasions where an employee's performance does not reach the required standard due to an on-going medical condition or disability. In this case, where the employee can attend work but there are capability and performance issues, the Trust may refer the case to the Academy or Trust's Occupational Health Physician, the employee's GP or an appropriate external professional organisation for advice, and will confirm to the employee the reasons for making this referral. The line manager, in conjunction with the Business Manager or central HR, will normally provide the following information when making the referral:

- details of the employee's performance issues;
- a copy of the employee's job profile;
- brief details of the medical condition or disability.

The manager will seek to establish the employee's ability to perform their job at the required level bearing in mind their medical condition or disability. Specific questions should always be agreed which will enable the manager and central HR to make informed decisions about the employee's performance and ability, and this may include:

- whether the employee's medical condition or disability would have an effect on their ability to carry out their duties effectively;
- whether the employee is able to satisfactorily carry out all the tasks listed in their job profile;
- if their condition is classed as a disability under the Equality Act 2010;
- whether there are any reasonable adjustments that could be made to enable the employee to perform their job to the required level;
- how long it might take for the employee to make necessary improvements once the reasonable adjustments are in place;
- what type of work the employee might be able to undertake if their condition prevents them from carrying out some or all of their current duties.

A member of the Senior Leadership team (SLT) may support the process, to ensure the manager is able to effectively discuss with the employee the professional advice received and consider any recommended adjustments to individual objectives and/or role. The outcome of this meeting will be confirmed to the employee in writing. Central HR may attend to advise on process.

Once any reasonable adjustments have been made, it would be expected that performance will improve. If, however, performance does not reach the required standard within a specified period, the manager will liaise with the member of the SLT that has supported the process to confirm whether to continue to move through the formal stages of the capability procedure.

**3. Persistent and short-term absence**

Recognition is given that such absences can be an indication of an individual's mental wellbeing or other factors such as personal difficulties. In such circumstances, relevant support will be identified and given wherever appropriate.

Where persistent short-term absence or prolonged absence is due to medically certificated sickness, the issue usually becomes one of capability and should be dealt with under the procedure outlined below,

modified appropriately to the circumstances. In deciding what action to take in these cases a sympathetic and considerate approach should be taken, and the following should be considered, in consultation with central HR:

- the likelihood of an improvement in health, and subsequent attendance (based on professional occupational health medical advice);
- the possibility of adapting the current duties;
- the availability of suitable alternative work and/or consideration of the type of work the employee might be able to undertake if their condition prevents them from carrying out some or all of their current duties;
- the effect of past and future absences on the academy;
- whether there are any reasonable adjustments that could be made to enable the employee to perform their job to the required level;
- how long it might take for the employee to make the necessary improvements once the reasonable adjustments are in place.

### **3. Long-term ill health**

Cases of long-term ill health will be referred to the Trust's or Academy's Occupational Health Physician for a professional medical prognosis. It is recognised some conditions may result in this long-term absence, and therefore every case will be treated individually. Every reasonable effort will be made by the Trust and academy to provide appropriate support to an employee diagnosed with a serious illness or condition.

It is important to stress that action taken under this policy is taken because the illness may create an untenable employment situation, and render the person incapable of performing their contractual duties.

There may be occasions where an employee is unable to continue to perform effectively in their role due to their health, and the impact a condition may have on their physical or mental capabilities. In these circumstances, where reasonable adjustments cannot be made, or where they have been made but failed to enable improved performance, the employee and their manager may discuss the possibility of ill health retirement rather than following the formal procedure to Stage 3. In all such cases, managers should refer to their Headteacher and seek advice from central HR.

If an employee has a high level of absence due to intermittent sickness or is absent due to sickness for a continuous period of at least eight weeks (depending on the circumstances), then he/she should be referred to the Trust's or academy's Occupational Health Physician for review. The purpose of such a review is to:

- take a positive and pro-active approach to supporting the employee at a time of ill health which will include considering reasonable adjustments that could be put in to place;
- confirm the nature of the illness/absence;
- seek a prognosis of the likely duration and some estimation of a return to work;
- establish any contributory factors, including work related issues, and secure advice on addressing these;
- consider if the Trust or academy can assist a return to work in whatever form;
- enable informed decisions to be made about re-distribution of duties in the medium term and in respect of consequential temporary staff cover; and
- where there is no reasonable prospect of a return in a reasonable timeframe, or a likelihood that a return to work will be viable, consider the appropriate procedures to be followed. In particular, where there is a known diagnosis, which is serious or sensitive, all the circumstances and options (including ill-health retirement) will have to be considered in reaching any conclusion.

The information provided by the Occupational Health Physician will be reviewed by the manager, Headteacher, central HR and the employee to a) ascertain the nature of the problem and b) identify any action which needs to be taken to support the employee (e.g. counselling support or a phased return to work).

Factors which will be taken into account include:

- the length of the employee's absence;
- the degree of disruption caused to their team and the academy;
- the level of seniority or degree of specialism of the employee's job;
- the feasibility of employing a temporary replacement either in the academy or Trust;
- the urgency of having the work done;
- the prospects of recovery from the illness;
- the availability of any suitable alternative employment.

The line manager and/or member of the SLT will discuss with the employee the professional advice received and consider any recommended adjustments to individual objectives and/or role. HR may attend to support the process.

#### **4. Procedure for dealing with long-term absences**

##### **4.1 Stage 1 – Review Meeting**

The academy will write to the employee inviting them to a meeting with their line manager or appropriate member of the Senior Leadership Team (SLT) or central Trust to discuss their current state of health and capacity for work. A minimum of five working days' notice should be given.

It may be necessary in cases of serious illness and after taking advice and consulting with the employee, to arrange a home visit, or other mutually agreed venue. In the case of a home visit, two members of staff with the appropriate level of seniority must attend the home visit and obtain express consent to a home visit from the employee. The employee will be given a copy of the Capability Policy.

The employee will be asked to attend an appointment with the Occupational Health Physician, which may involve a medical examination by the physician or a relevant third party i.e. specialist or consultant. Occupational Health will provide a written report to the Trust, subject to the terms of the Access to Medical Reports Act 1988. Consent is required for all referrals, and whilst the employee is entitled to refuse a request, it is believed attendance is in their best interests. (e.g. GP or Consultant). This information is crucial to the discussion, as it will set out any likely improvement in the health of the employee. If consent is withheld, management will base any decisions on the information available at that time.

When the Occupational Physician's report has been received, the manager and/or member of SLT will invite the employee to attend a meeting to discuss their current state of health and capacity for work. A minimum of five working days' notice should be given. The employee may be accompanied at the meeting by a trade union representative or a workplace colleague. A relative or friend may attend instead if the employee requests this. The purpose of the meeting is to:

- jointly review the content of the medical opinion/prognosis and advice received from the Occupational Health Adviser;
- discuss the employee's own feelings about the content of the report and of any recommendations made (a second opinion may be sought, for example from the employee's own GP or Consultant if there is disagreement over the prognosis – costs to be borne by the academy);
- establish the employees' own assessment of his/her condition, whether there has been any improvement and how any treatment is going;
- discuss any possible return to work, if this has been confirmed as an option by the Occupational Health Physician;
- look at any possible adaptation of duties or suitable alternative work which may enable return to work for the employee;
- draw up, in agreement with the employee, a return to work programme with review dates in order to discuss progress and amend if necessary; and
- consider and if possible agree the next steps including setting another review date if further improvement is likely.

If the prognosis is that the employee can return to work within a reasonable period, arrangements will be made accordingly, including appropriate workplace adjustments where identified and agreed. A phased return to work may be agreed with the employee within an established timescale where appropriate (e.g.

a period of part-time working). More permanent changes may be made to the role where necessary and feasible, including redeployment where possible. Any permanent change would be subject to consideration and approval by the Headteacher or CEO of the Trust.

Physical changes to the workplace may be required and these will be implemented before the employee's return. The employee's terms and conditions will be protected while the necessary adjustments are made.

If a return to work is not an option for the near future, according to professional medical advice obtained, then another review meeting should be arranged, to determine if there is to be any future improvement through either further treatment or recuperation.

#### **4.2 Stage 2 – Review Meeting**

Progression to Stage 2 shall usually occur when the Academy does not realistically believe, having followed the previous stages of the procedure, that the employee's health will improve sufficiently in order to resume work and maintain a satisfactory level of attendance.

Stage 2 involves the Headteacher or a member of the Trust's Executive's Team; they will Chair the meeting. Also present at the meeting will be the individual who managed Stage 1 meeting, the employee, his or her representative or companion if he/she so chooses, and a Human Resources representative.

The discussion that takes place during a Stage 2 meeting should involve:

- matters of concern about the employee's attendance/ability to perform/health;
- The professional medical report regarding the employee's state of health and advice given to the employer;
- Any review period set and any improvement in the health of the employee; and
- The employee's feelings regarding his/her own state of health and how he/she feels about the future.

The possible outcomes of this meeting at Stage 2 are:

- To re-initiate a review programme between the employee and his/her manager, if it is felt appropriate;
- To reach agreement that an application for ill health retirement would be appropriate (note that this decision is ultimately made by the Pension provider, not the Trust or Academy);
- To review actions taken on exploring options to adapt duties or to redeploy to other duties and whether any further action can reasonably be taken;
- Discuss any possible return to work, if this has been confirmed as an option by the Occupational Health Adviser;
- Look at any possible adaptation of duties or suitable alternative work which may enable return to work for the employee;
- To decide to progress to Stage 3: Dismissal on the grounds of capability. This means that, having given full consideration to Stages 1 and 2, the employee's employment will be terminated on capability/health grounds.

Should there be conflicting medical opinion, an independent medical opinion may be sought at the academy's expense, depending on the circumstances. The final decision taking in to careful consideration advice and opinion sought will be the Academy or Trust.

#### **4.3 Stage 3 – Dismissal on the grounds of capability**

Where the prognosis is that the employee is unlikely to return to work within an acceptable period, and ill-health retirement is not feasible, the contract of employment will be terminated. In this event, appropriate notice in accordance with the employee's terms and conditions of employment, and outstanding holiday entitlement, will be paid at full salary.

If the employee's employment is terminated they will have the right to appeal this decision in accordance with the Capability Policy. In these circumstances, if an employee decides to make an appeal against a dismissal, he/she must specify the clear grounds on which he/she is appealing. Where an employee has been dismissed on the grounds of capability and has decided to appeal against the decision to dismiss,

the dismissal takes effect irrespective of the appeal. If the appeal is upheld, the individual will be reinstated with no loss of continuity of service.

## **5. Early retirement on medical grounds**

There may be occasions where an employee is unable to continue to perform effectively in their role due to their health, and the impact a condition may have on their physical or mental capabilities.

In these circumstances, where reasonable adjustments cannot be made, or where they have been made but have failed to enable improved performance, the employee and their manager may discuss the possibility of ill health retirement through the Pensions Scheme (LGPS or TPS) rather than following the formal procedure to Stage 3.

The manager must consult central HR and where the employee, academy and central HR consider an application for ill health retirement would be appropriate, it should be noted that this decision is ultimately made by the pension provider, not the Trust or academy; each pension scheme may have different rules and regulations.

If an application for ill-health retirement is supported by the pension provider, the academy or central HR will write to the employee to confirm their last date of service and confirm details with Finance and/or Payroll.

**PERFORMANCE IMPROVEMENT PLAN OR PERFORMANCE ACTION PLAN**

Where any of the stages of the Capability Policy require a Performance Improvement Plan (PIP) or Performance Action Plan (PAP) the academy must work with the employee to take in to account all relevant information, appropriate review period/s, and any recommendations made as a consequence of the capability hearing. Information contained in the PIP/PAP must include:

- the specific performance objectives where improvements are required;
- the method of improving performance i.e. how the improvement be made or supported;
- review dates, including how often and by whom performance will be regularly reviewed within the overall period, as well as the overall target date set by the warning (where a warning has been issued as part of the formal capability procedure).

**PERFORMANCE IMPROVEMENT PLAN TEMPLATE**

**Name:**

**Date**

What is the concern	What is the expected standard	How will the improvement be achieved	What will be the measurement to confirm performance is to standard expected	By When (Timeline should be realistic and ensure improvement can be sustained).	State date of progress review and who will conduct review	Detail Support and Resource to be given	Comments following a Review