



**Unity Schools Trust**  
*'Excellence through collaboration'*

# Capability Policy

Policy Reviewed:	July 2020
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Approved by Trust	July 2020

## **Introduction & Purpose of Policy**

- 1.1 The purpose of this policy is to provide a framework to manage unsatisfactory performance caused by an employee's lack of ability to achieve or maintain the required standards of work.
- 1.2 It is the Unity School Trust's ("the Trust") principal aim to ensure that, where concerns about individual work performance arise all the circumstances are appropriately investigated and the individual given support, relevant training and an opportunity to improve through the operation of informal performance management before any formal sanctions are applied under this policy.
- 1.3 The policy is applicable to all members of staff employed by the Trust with the exception of employees serving a probationary period. Newly Qualified Teachers serving a statutory induction period are provided with a support and feedback structure as part of their induction programme and will therefore be subject to capability procedures only in cases of persistent or serious underperformance. Employees on temporary or fixed-term contracts will be subject to this procedure with adjustments made, where appropriate, to reflect the likely duration of the contract.
- 1.4 The Trust is mindful of its obligations under the Equality Act 2010 and, with the exception of the exclusions noted above, this procedure will be applied fairly and consistently to all staff employed by the school.

## **Policy Statement**

- 2.1 The Trust is committed to ensuring that high levels of performance are aspired to and recognises that the majority of staff members meet or exceed the standards required of them. In pursuit of this commitment, the Trust expects managers to lead by example, demonstrating a high level of competence, integrity and sound judgement, promoting effective working practices and supporting and encouraging school staff when difficulties arise. In return, the Trust expects all employees to strive for high personal standards of performance and to participate in a culture of continuous improvement by identifying and acknowledging areas for development or where training may be required, and seeking guidance and support from their performance manager when necessary and at an early stage.
- 2.2 The Trust acknowledges that minor issues relating to standards of performance can, and should, be dealt with through open, constructive dialogue between manager and employee as a normal part of the performance management process. In addressing circumstances where a member of staff's performance fails to reach an acceptable level, or where there is a sudden and serious deterioration in these standards, the Trust will seek to ensure through the application of this policy that a focus is placed first and foremost on support and improvement. In so doing, the Trust also acknowledges its duty to give high priority to the education of young people and will therefore take into account the likely impact on pupils when considering what progress must be made and in what timeframe.

## **Roles & Responsibilities**

- 3.1 The employee's line manager is responsible for ensuring that minor issues relating to capability are dealt with promptly and without recourse to this procedure, as part of the usual process of performance management.
- 3.2 Formal meetings held as part of this process which could result in the issuing of a formal warning will be conducted by either the head of school or, where the head of school has chosen to delegate this responsibility, by another appropriate senior manager. In the case of central Trust employees, these will be conducted by the Chief Executive Officer or his delegate. In the case of the Chief Executive Officer the meeting will be conducted by the Chair of Trustees or his delegate. The employee's performance manager, if different, will continue to be central to ongoing monitoring and support.
- 3.3 Formal meetings which may result in a decision to dismiss will be heard by the Head of School in the first instance. Approval of recommendations to dismiss will be made by the Local Governing Body for all staff excepting the Head of School, where approval will be given by the Trust as delegated to one or more of its members.
- 3.4 In cases where the head of school's capability is under review, the role of the manager at stages one and two will be delegated to the Chief Executive Officer, or other suitably qualified person, as determined by the Trust.
- 3.5 Consideration will be given to whether poor performance may be related to a disability and, if so, whether there are reasonable adjustments that could be made to the member of staff's working arrangements, including changing their duties or providing additional equipment or training. The Trust may also consider making adjustments to this policy in appropriate cases.

## **Addressing Initial Concerns**

- 4.1 The Trust recognises that, in many cases involving minor or early-stage concerns about work performance the matter is best addressed and resolved discreetly through discussion between the manager and the employee concerned. Such concerns might include, for example, minor inaccuracies in work undertaken or an unexplained deterioration in standard of work. These initial discussions, aimed at understanding any underlying causes for the concerns about performance or behaviour and what corrective action might resolve the issue, will take place within the context of performance management and are therefore outside the scope of this procedure. Managers have both a right and a responsibility to bring such concerns to an employee's attention to allow them the opportunity to respond and to rectify the situation with the appropriate provision of guidance, support and any relevant training.

## **Stage One**

- 5.1 Where the support provided through strategies employed to address initial concerns (see 4.1 above) has failed to bring about a sufficient improvement, this process will be instigated, in the majority of cases commencing at Stage One. The Chair of Trustees, Chief Executive Officer, head of school or other senior manager, as nominated, will arrange a formal meeting, giving at least five

working days' notice in writing to the employee (see 'Scheduling Formal Meetings', section 10.1). The employee has the right to be accompanied at this meeting, and any subsequent formal meetings, by a work colleague or trade union representative and should be provided with a copy of the policy in order to understand the context of the meeting.

5.2 At a formal meeting held under Stage One of the policy, the Chair of Trustees, Chief Executive Officer, head of school or manager will be able to consider a range of possible outcomes short of dismissal.

5.3 At the formal meeting under Stage One, the Chair of Trustees, Chief Executive Officer, head of school or manager will:

- Identify the shortcomings in performance;
- Allow the employee and/or their companion the opportunity to state their case;
- Allow the employee to respond to the concerns raised.
- Allow the employee and/or their companion to sum up the employee's case;
- Give clear guidance on the improved standard of performance required to enable the member of staff to avoid being subject to further stages of the procedure;
- Explain, where relevant to the circumstances, what support will be available to help the member of staff improve their standards of performance;
- Outline the timetable for improvement and how progress will be monitored;
- Explain the consequences of a failure to improve.

5.4 The meeting will be adjourned if new facts come to light which the Chair of Trustees, Chief Executive Officer, head of school or manager decide to refer for further investigation.

5.5 After the meeting, the Chair of Trustees, Chief Executive Officer, head of school or manager will review the evidence and discussion which took place and decide, on balance of probability, whether the concerns are founded and what appropriate course of action to take from the following options:

- No formal action: this may be applicable where concerns are determined to be unfounded or unsubstantiated or where informal management action is deemed to be a more appropriate response to the concerns about performance.
- First written warning: this will be issued where there is serious concern about the standard of performance and informal management action alone is deemed to be an insufficient response.
- Final written warning: this will be appropriate in cases of very serious concern about performance where the employee's actions have had, or are liable to have by their continuation, a harmful impact on the school, such as on the education of pupils or the safety or welfare of others.

5.6 The employee will be notified of the decision as soon as possible following the meeting and, in any event, in writing within five working days. They will be informed, either at the same time or as soon as possible thereafter, of any

arrangements for assessment and monitoring. The employee will be reminded that their pay progression (except in respect of cost of living increases) will be suspended until such a time as the required standard of performance has been reached. The letter to the employee will also confirm the period during which any written warning issued will remain live (see also 'Warnings', section 10.3) and the employee's right to appeal the decision in writing within five working days of receipt. The appeal may be heard by the head of school, if they were not involved in the initial decision, otherwise it will be directed to the Clerk to the Trust who will convene a governors' hearing for the purpose (see also 'Appeals', section 9).

- 5.7 Stage Two of the process will not be instigated unless and until a formal warning has been issued under Stage One and therefore more than one formal meeting may be held under Stage One if appropriate to the circumstances.

### **Assessment & Monitoring Period**

- 6.1 An assessment and monitoring period will follow a formal meeting held at any stage of the policy at which the employee's level of performance has been discussed and after which a decision was made either to take informal management action or to issue a written warning. The length of this stage will depend on the circumstances of the individual case but, in straightforward cases, it will last for between four and six weeks. Monitoring, evaluation, guidance and support will continue during this stage.
- 6.2 At, or towards, the end of the assessment period, the manager tasked with monitoring the employee will be expected to reach a judgement on the level of progress made:

Performance Reaches Required Standard: Where performance has reached the required standard by the end of the assessment period, a meeting will be convened at which the employee is informed that the formal process is now ending and confirming any ongoing arrangements for informal monitoring and support. Pay progression, where previously suspended, will be reinstated at this stage, to be effective from the date of the meeting terminating the process.

Performance Fails to Reach Required Standard: Where acceptable progress has not been made by the end of the assessment period, or at any time during the assessment period if there is a serious deterioration in performance, the member of staff will be invited to another formal meeting in accordance with the next appropriate stage of the procedure.

Where progress has been partially made then there may be scope for further extension of the process.

### **Stage Two**

- 7.1 If, following the Stage One meeting and any resulting assessment and monitoring period:
- a) the required standard of performance has not been reached, or
  - b) the standard of performance has deteriorated further

another formal meeting will be convened, giving the employee at least five working days' notice in writing. If dismissal is a potential outcome, either as a result of a final written warning being issued at Stage One or because of the seriousness of the concerns, the matter should instead be referred directly to Stage Three for consideration by governors.

- 7.2 The meeting will usually be conducted by the same person (Chair of Trustees, Chief Executive Officer, head of school or manager) responsible for conducting the formal meeting(s) held under Stage One of the procedure and the substance of the meeting will be similar, whilst recognising the increased level of concern and the implications for the employee of a failure to improve.
- 7.3 After the meeting, the Chair of Trustees, Chief Executive Officer, head of school or manager will review the evidence and discussion which took place and decide, on balance of probability, whether the concerns or allegations are founded and what appropriate course of action to take from the following options:
- No formal action: this may be applicable where allegations are determined to be unfounded or unsubstantiated or where some concerns remain but there has been sufficient improvement in standards of performance that informal management action is now deemed to be a more appropriate response.
  - Final written warning: this will be appropriate where serious concerns about the standard of performance remain, in spite of any further support or guidance provided.
- 7.4 The employee will be notified of the decision as soon as possible following the meeting and, in any event, in writing within five working days. They will be informed, either at the same time or as soon as possible thereafter, of any arrangements in place for assessment and monitoring. The letter to the employee will also confirm the period during which any written warning issued will remain live (see also 'Warnings', section 10.6) and the employee's right to appeal the decision in writing within 5 working days of receipt. The appeal may be heard by the head of school, if they were not involved in the initial decision, otherwise it will be directed to the Clerk to the Trust who will convene a governors' hearing for the purpose (see also 'Appeals', section 9).
- 7.5 More than one formal meeting may be held under Stage Two if appropriate to the circumstances.

### **Stage Three**

- 8.1 If, following the Stage Two meeting and any resulting assessment and monitoring period:
- a) the required standard of performance has still not been reached,
  - b) the standard of performance has deteriorated further, or
  - c) there are further concerns,

or at any stage where the matter has been referred for further consideration, the Clerk will convene a governors' hearing, providing at least ten working days'

notice in writing to the employee (see 'Scheduling Formal Meetings', section 10.1).

- 8.3 The meeting may be adjourned if, in the view of the chairperson of the hearing, the meeting cannot continue until either new evidence is investigated or a witness who is absent is called.
- 8.4 As with all formal meetings held in accordance with the policy, the employee will be entitled to be accompanied by a trade union representative or workplace colleague and will have the opportunity to challenge evidence, question relevant witnesses and state their case.
- 8.5 After the meeting, the governor(s) will consider all the evidence presented to them and reach a decision. As part of the decision-making process the governor(s) will determine whether, on the balance of probabilities, the concerns about the individual's performance are justified and, if so, what outcome is most appropriate in all the circumstances of the case.
- 8.6 Where dismissal is being considered, the governor(s) will first discount options which could be put forward as an alternative to dismissal, such as demotion or transfer to another post which more closely matches the employee's capabilities.
- 8.7 The employee will be notified of the decision as soon as possible and, in any event, in writing within five working days. The letter will include confirmation of what, if any, formal action is being taken.
- 8.8 Where the outcome is not dismissal but where there are still concerns, the letter will outline what actions and improvements are needed to obviate the need for a further formal meeting and the employee will subsequently be notified of any further arrangements for assessment and monitoring. The letter to the employee will also confirm the period during which any written warning issued will remain live (see also 'Warnings', section 10.3) and the employee's right to appeal the decision in writing within five working days of receipt. An appeal against a decision made by governors will be referred to the Clerk who will convene a hearing by different governors, uninvolved in the previous decision (see also 'Appeals', section 9). A decision to dismiss a head of school must be confirmed by Trustees.
- 8.9 Following a decision to dismiss the Trust will issue notice of termination in accordance with the employee's contractual or statutory notice period (whichever is greater). As a general rule, the employee will not be expected to attend work during the notice period.

## **Appeals**

- 9.1 There shall be a right of appeal against any decision made as a result of action taken by the employee's manager, the head of school or by governors. In exercising this right, the employee must confirm the grounds on which they are making the appeal. The process of assessing and reviewing capability in accordance with this process will continue pending the outcome of any appeal.

- 9.2 Appeals against warnings issued during Stage One or Stage Two will be heard by the Chair of the Trust, Chief Executive Officer, head of school or one or more governors, in accordance with the scheme of delegation in place and bearing in mind the need to secure impartiality at every stage of the process. No person will hear an appeal against their own decision. Appeals against dismissal, or against formal warnings or sanctions determined by governors, will always be heard by one or more governors with delegated powers. References to the appeals panel hereafter may therefore be interpreted accordingly, although the 'panel' could in some cases consist of one person.
- 9.4 The appeal hearing will be arranged to take place as soon as is reasonably practicable, allowing the employee at least five working days' notice of the date (or ten working days where the appeal is against a dismissal decision).
- 9.5 The purpose of the meeting is for the appeals panel to consider the grounds for appeal and to review the fairness of the outcome of the original meeting. New evidence may be considered at the appeals stage but no additional grounds for action against the employee may be introduced.
- 9.6 Within five working days of the appeal hearing taking place, the employee will be notified in writing of the outcome and any actions which have been determined. There is no further right of appeal.
- 9.8 If a dismissed employee is reinstated on appeal, their salary will be back-paid to the date of the original termination, minus any monies already paid in respect of notice.

## **Procedural Points & Specific Circumstances**

### **10.1 Scheduling Formal Meetings**

Meetings should be held during the employee's usual working day. Other arrangements can be made by mutual agreement. School closure periods will generally result in a temporary suspension of the process.

The employee is expected to make every effort to attend meetings at the required time. The Trust will, where reasonably practicable, seek to liaise with the employee regarding the availability of their chosen work colleague or trade union representative to ensure that postponements are not necessary. If the employee's work colleague or trade union representative is unable to attend, an alternative date may be suggested by the employee. This will not be unreasonably declined provided it can be accommodated by those conducting the hearing and does not result in an unacceptable delay. As a general rule, a delay of up to five working days will be acceptable but the Trust will consider each request on its own merits. Any subsequent postponements, or a failure of the employee to turn up to a scheduled meeting without good reason, is likely to result in the formal meeting proceeding as planned and being decided on the basis of other available evidence.

### **10.2 Formal Action Against Trade Union Representatives**

Where a formal investigation or formal meeting is being arranged in accordance with this process in relation to a trade union representative employed by the

Trust, the case must first be discussed with a full-time official from the appropriate union after obtaining the employee's agreement.

### **10.3 Warnings**

The period during which a warning will remain 'live' for the purposes of this process is not definitive and may be varied according to the circumstances of the case. As a general rule, written warnings will remain live for a period of twelve months after which point they will be disregarded. A longer warning period may be appropriate in certain cases, for example where there has been a history of variable performance or where a longer warning period was determined as an alternative to dismissal. The head of school may exercise discretion to disregard the warning prior to its documented expiry date in circumstances where the employee has reached and maintained an acceptable standard, confirming this in writing to the employee. Where governors have issued a warning as a result of a formal meeting held during Stage Three, the Trust will usually delegate the discretion to review the warning to the head of school.

### **10.4 Ill-Health Absence**

Absence which appears to have been triggered by the instigation of the procedure or which occurs during an assessment and monitoring period will usually be referred immediately to the Trust's occupational health provider to obtain advice. If the absence becomes long term then this will be dealt with in accordance with the Trust's Absence Management Policy.

### **10.5 Grievances**

Grievances which relate directly to the instigation or operation of this policy will be addressed in accordance with the existing rights under this policy to state a case and to appeal against any formal action taken. Grievances which are not directly related to capability proceedings will be dealt with separately, without delay to the progress of this policy.

### **10.6 Overlapping Conduct & Capability Issues**

On occasion, an employee may not be meeting the required standards of work either in terms of their performance or their conduct. In such cases, issues of conduct may be considered alongside performance issues in a joint formal meeting to avoid the complexity of instigating parallel procedures with similar stages and potential outcomes.

### **10.7 Confidentiality**

The Chair of the Trust, Chief Executive Officer, head of school, governors and any other manager involved with the operation of this procedure will ensure that any information relating to concerns about an employee's capability are disclosed only to those who have a direct involvement in dealing with, or advising on, those concerns, emphasising the need for strict confidentiality.

## **10.8 Referrals to Professional Bodies & Other Agencies**

The Trust adheres to all procedures in relation to the requirement to make referrals to the relevant regulatory bodies in respect of matters of concern regarding the safeguarding of children and, in respect of teaching staff, other matters of misconduct which resulted in, or would have been likely to have resulted in, dismissal.