



## **Staff Capability Policy (Performance)**

This Procedure has been agreed by the Governing Body of St Hilary's. Our school is dedicated to preparing our children for their adult life beyond formal education and ensuring that it promotes and reinforces British Values to all our children. We actively promote democracy, the rule of the law, individual liberty and mutual respect of those with different faiths and beliefs. These are fundamental British Values which underpin all that we offer, as does our School Motto 'Not for oneself but for all.'

### **1. Introduction**

- 1.1. The Capability Procedure does not form part of your contract of employment or otherwise have contractual or legal effect. It is for guidance purposes only and may be amended from time to time. The procedure used by St Hilary's School (the School) is based on the ACAS Code of Practice and complies with statutory requirements.
- 1.2. The Capability Procedure may be instigated where an individual's performance consistently falls short of the required standard. The School's policy is to promote a constructive working environment and ensure the maintenance of required professional standards.
- 1.3. The School encourages prompt and fair resolution of the situation. In many cases, the issues can be resolved through informal discussions between the employee and his/her Head of Department/ Line Manager. This should be the first step and it is anticipated that most situations can be resolved at this stage. However, there are circumstances where attempts to find a satisfactory solution through informal procedures may fail and the School has a formal procedure to follow in these situations.

### **2. Capability Procedure**

- 2.1. Employees have a contractual and statutory responsibility to perform to a satisfactory level and will be given help and encouragement to do so. As an employer, the School has a responsibility for setting realistic and measurable standards of performance and for explaining these standards to employees.
- 2.2. The Capability Procedure will normally apply where an employee's level of performance has fallen below or consistently failed to meet the expected levels. It is expected that issues of competency, capability and performance will normally be addressed in accordance with the mentoring/coaching and appraisal systems.

However, in the event of persistent unsatisfactory performance or performance concerns that the School determine cannot be dealt with through mentoring/coaching or under the appraisal system, the following capability procedure will be used.

2.3. Normally, the employee will be given four opportunities to reach the required standard of performance before dismissal. These opportunities are detailed under the Informal Stage and Stages 1, 2 and 3 below. However, there may be instances where the worker commits a single error due to negligence and the actual or potential consequences of that error are or could be extremely serious where cautions are not appropriate. In such circumstances, summary dismissal action may be taken. No action will be taken under the Capability Procedure until the matter has been fully investigated.

2.4. Each stage will involve:

2.4.1. A meeting, to which the employee will be invited in writing and at which he/she may be accompanied by a fellow worker or trade union representative. The invitation letter will specify where and when the meeting will be held, the reasons for the meeting and will provide any supporting evidence. At the meeting, the problems and causes will be identified, the solutions and courses of action required will be discussed and the timescale for improvement and required level of performance will be specified.

2.4.2. A letter sent to the employee within 5 working days of the meeting (if reasonably practicable) with a written record of the decision taken.

2.4.3. A follow-up meeting to review progress and confirmation of next steps. The review period may be extended to allow further time for the required standard to be achieved.

2.5. Informal Stage

2.5.1. The employee will be invited to attend a meeting with the appropriate member of SLT. A plan will be given to the employee specifying the improvement required and the timescale for such improvement, and informing the employee that failure to improve may lead to formal capability action and a Verbal 'Caution'.

2.5.2. If the employee does not make a satisfactory improvement in their performance during the review period for the informal capability stage, they will be issued with a Verbal 'Caution' and will continue to Formal Stage 1. A copy of the Verbal 'Caution' will remain on the employee's personnel file for the period set out in the letter confirming the decision to issue the caution.

2.6. Formal Stage 1

2.6.1. The employee will be invited to attend a meeting with the Office Manager, their Head of Department, or relevant member of SLT, as required. The employee

will be informed of the improvement required and the timescale for such improvement, and that failure to improve may result in a First Written 'Caution'.

2.6.2. If the employee does not make a satisfactory improvement in their performance during the review period for Formal Stage 1, they will be issued with a First Written 'Caution'. A copy of the First Written 'Caution' will be kept on the employee's personnel file for the period set out in the letter confirming the decision to issue the caution.

## 2.7. Formal Stage 2

2.7.1. The employee will be invited to attend a meeting with the Office Manager, Head of Department or relevant member of SLT, as required. The employee will be informed of the improvement required and the timescale for such improvement, and that failure to improve may result in a Final Written 'Caution'.

2.7.2. If the employee does not make a satisfactory improvement in their performance during the review period for Formal Stage 2, they will be issued with a Final Written 'Caution' and will continue to Formal Stage 3. A copy of the Final Written 'Caution' will be kept on the employee's personnel file for the period set out in the letter confirming the decision to issue the caution.

## 2.8. Formal Stage 3

2.8.1. The employee will meet with the Office Manager, Head of Department, relevant member of SLT, or Headteacher as required. The employee will be informed of the improvement required and the timescale for such improvement, and that failure to improve may result in Dismissal.

2.8.2. If the employee does not make a satisfactory improvement in their performance during the review period for Formal Stage 3, they will be invited to attend a meeting at which they will be notified of the decision to either dismiss or be demoted from their current role. Dismissal or demotion will only be an outcome where the School believes that the individual is not able to meet the requirements of the role.

## 2.9. Dismissal

2.9.1. If employment is to be terminated, as confirmed above, the employee will be contacted by the Business Manager in writing and will be invited to attend a meeting within 5 days (if reasonably practicable) of the Formal Stage 3 review meeting with the Office Manager, Head of Department, appropriate member of SLT and the Headteacher. They will be entitled to be accompanied to this meeting by a fellow colleague or a Trade Union Representative.

## **3. Appeals**

3.1. The employee has the right to appeal to the Headteacher or the Chair of Governors in writing against any capability action taken against them, at any stage of the procedure

(dependent on the stage and level of involvement of the Headteacher in the stages of the Disciplinary process). They should submit their appeal within 5 working days of the capability decision specifying the main grounds of appeal. For the avoidance of doubt, any sanction will remain in place during the appeal process.

- 3.2. The employee will then be notified in writing of the date and place of the appeal hearing. The Headteacher / Chair of Governors may appoint a substitute. The employee has the right to be accompanied by a fellow worker or trade union representative at this hearing.
- 3.3. At the hearing the employee will be given an opportunity to state their case (and call any witnesses who may be relevant). The decision will be notified to them in writing within 5 working days (if reasonably practicable) of the Appeal Hearing.
- 3.4. Once an appeal is heard and a decision taken, this is final and there is no further right of review. If an appeal against dismissal is successful and the decision overturned, the employee will be reinstated and full payment will be made for the period between dismissal and reinstatement.

#### **4. Right to Accompaniment**

- 4.1. Employees may choose to be accompanied at a Capability Meeting by a fellow employee (who is not connected with the capability matter) and/or a trade union representative.
- 4.2. For the purposes of this policy, a trade union representative means either a full-time official employed by a trade union or a lay trade union official or workplace representative, i.e. employee representative, who can provide the School with a certificate from the trade union evidencing his/her competence to represent employees. Only in exceptional circumstances may an employee be accompanied by any individual who does not work for the School (such circumstances including, for example, the need to accommodate an employee's disability or employees whose first language is not English).
- 4.3. Where an employee wishes to be accompanied at a hearing/meeting, he/she must make the request to the Business Manager, including details of the person who it is proposed will accompany him/her. The letter inviting the employee to a Capability Meeting will inform the employee of the timescale for any such requests.
- 4.4. The School reserves the right to refuse an employee's chosen representative where it determines the employee's choice is not reasonable. For example, where the employee's representative has a conflict of interest, or where his/her presence might prejudice the Disciplinary Hearing.
- 4.5. The companion should be allowed to address the hearing in order to:
  - Put the employee's case

- Sum up the employee's case
  - Respond on the worker's behalf to any view expressed at the hearing
- 4.6. The companion can also confer with the employee during the hearing. It is good practice to allow the companion to participate as fully as possible in the hearing, including asking witnesses questions.
- 4.7. The companion has no right to answer questions on the employee's behalf, or to address the hearing if the employee does not wish it, or to prevent the employer from explaining their case.
- 4.8. Employee representatives are reminded of the confidential nature of the issues which may be discussed as a result of a Disciplinary Hearing or Capability Meeting. Matters should be kept confidential at all times. Failure to treat them as such may result in disciplinary action being taken against the employee representative (subject always to the provisions of the Public Interest Disclosure Act 1996).

Policy written: September 2021, June 2022, June 2023

Next review date: June 2024

Person responsible: Mrs Jane Whittingham (Headteacher) and Mrs Hannah Wynn (Business Manager)