

<b>Applicable to:</b>	Catch22 Multi Academies Trust		
<b>Policy:</b>	Capability Policy and Procedure		
<p><b><u>Notes</u></b></p> <p>This policy must not be changed without prior discussion, and agreement, with Catch22 Multi Academies Trust</p>			
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## **1. Purpose**

The aim of this Policy is to provide additional support to employees who are having difficulty in meeting the requirements of their role. These difficulties are not those that might be expected when an employee is new to his or her role and learning what is expected, but for those circumstances where, despite management support, the employee remains lacking in some important area of ability, skill, competence or knowledge and is consequently unable to perform their duties to the required standard.

## **2. Scope**

This policy applies to all Catch22 MAT employees who have successfully completed their probation period. It does not apply to employees who are in their probation period, contractors, consultants, agency workers or any self-employed individuals working for the Trust.

This policy relates to all schools and settings across Catch22 MAT and supersedes any local policies and procedures that have been in use prior to the academy conversion.

## **3. Principals of application**

The Trust is committed to high standards and the delivery of quality services. High value is placed on the contribution that each individual can make towards the achievement of the Trust's objectives. The Trust recognises the difference between:

- a deliberate failure on the part of the employee to perform to the standards of which s/he is capable, in which case the disciplinary procedure should be applied; and
- a case of incapability, where an employee is lacking in knowledge, skill or ability so cannot carry out his/her duties to the standard required, in which case this policy should be used in an attempt to improve performance.

If it becomes clear that an employee is not performing to the required standard due to a lack of knowledge, skill or ability, the Trust will through the employee's line management;

- make the employee aware that s/he is not performing to the required standard and inform him/her that insufficient improvement means that his/her on-going employment is at risk;
- provide a path for improvement by giving the employee a reasonable period of time to improve and undertake any training that is deemed necessary; and
- assess the need for and likely impact of any additional support and where appropriate put this in place.

If, ultimately the employee is unable to improve to the required standard, the line manager will consider whether or not the employee can be moved to alternative work more suited to his/her abilities. Once all reasonable and practical steps have been taken to assist the employee to improve or find him/her alternative work, it may become necessary to dismiss the employee.

## **4. Setting the standard**

All our employees are expected to deliver their day-to-day work as outlined in their job description, annual objectives and relevant professional standards. This should be done in a timely and professional manner.

Poor performance occurs where the quality of work deteriorates below the required standard due to lack of ability, skill or knowledge.

The Trust will aim to ensure that;

- employees understand what is expected of them in terms of performance;
- that performance is monitored via regular management meetings and the annual performance management process; and
- employees are given appropriate training and support to meet those standards.

Employees will not normally be dismissed for performance reasons without having first been issued previous warnings.

## **5. Informal procedure**

As part of the usual appraisal and management meeting arrangements, the employee's line manager will promptly assess the cause of the employee's poor performance and agree the actions/standards required for improvement. Causes could include: lack of skills, inadequate training, lack of support, lack of tools or other resources, lack of communication and/or problematic working relationships. The manager carrying out this initial assessment will give the employee factual examples of his/her unsatisfactory performance and the employee will be asked for his/her explanation, which will subsequently be followed up and checked where appropriate.

Evidence of this assessment, and the actions agreed in an attempt to remedy matters should be recorded in management meeting notes or in notes of meeting(s) which may be especially convened to discuss these issues.

As part of this process, the employee may be given an informal oral caution by the line manager but this will not be considered to be a formal sanction and will be disregarded for the purposes of any formal proceedings under this policy.

Where informal discussions have not resulted in a satisfactory improvement after a reasonable period of time, the manager may give the employee further informal oral cautions or may invoke the formal procedure set out below.

If poor performance is due to a domestic, personal or work-related problem, the employee should explain this to their line manager. These situations will be addressed with sensitivity.

## **6. Formal procedure**

If the employee has not responded to informal action, then the formal procedure should be invoked.

There are three main stages to the formal procedure:

- first formal review meeting;
- final formal review meeting; and
- dismissal/capability transfer.

### **6.1 Arrangements for formal meetings**

All meetings under the formal procedure will be subject to the following arrangements:

- the employee should be invited in writing and given at least 7 working days' notice;
- the letter should advise the employee who will be present at the meeting and that the employee can be accompanied (see below);
- the letter should explain the purpose of the meeting is to review the employee's unsatisfactory performance at work;
- the employee should be provided with copies of any documentation to be considered at the meeting;
- the outcome should be confirmed in writing within 7 working days;
- the outcome letter should confirm the consequences if performance does not reach a satisfactory level (i.e. formal warning, a capability transfer or dismissal).

## **6.2 Right to be accompanied**

Employees have the right to be accompanied by a Trade Union representative, LinkUp Partner or workplace colleague at all formal meetings under this policy.

It is the responsibility of the employee to arrange their own representation and to provide them with copies of all the relevant paperwork.

In advance of the meeting, the employee must notify the Chair who will be accompanying them

If the employee's chosen companion is unable to attend the meeting, the employee's line manager will rearrange the meeting at a time/date proposed by the employee provided the alternative time/date is both reasonable and, unless mutually agreed, not more than 5 working days after the date originally proposed.

## **6.3 Stage 1 – First formal review meeting**

Where informal action does not lead to a satisfactory improvement in the employee's performance, the employee will be invited to first formal review meeting.

The purpose of the first formal review meeting is to discuss the employee's performance and decide what measures should be taken, with a view to securing the required improvement in the employee's performance. The meeting will be conducted by the employee's line manager.

At the meeting, the line manager will:

- set out the standards of work performance expected of the employee in the areas under consideration;
- explain how the employee's performance has fallen short of what is required and the impact of this on service delivery;
- provide the employee with factual examples of his/her unsatisfactory performance;
- confirm that any informal measures have failed to improve performance to the level required and that the poor performance is due to a lack of skills, abilities or competencies;
- provide the employee with an opportunity to explain and/or give reasons for why his/her work has not met the required standards;
- discuss the way forward and ensure that a suitable performance improvement plan is drawn up (see below);
- explain that failure to reach the required standard during the review period may lead to further formal action, including possible termination of employment on the grounds of capability.

A first formal warning should be issued if the line manager concludes that reasonable steps have been taken by the line manager that should have allowed the employee to perform to an acceptable standard, but that these measures have not worked. The warning will explain the nature of the improvement that is required in the employee's performance and state that the improvement must be immediate and sustained. It will also explain that, if the necessary improvement does not take place, the employee may be referred to stage 2 of the policy.

Where an employee is issued with a first formal warning in accordance with this procedure, they will have a right of appeal (see below).

The outcome of the meeting should be confirmed in writing within 7 working days.

#### **6.4 Performance improvement plan (PIP)**

A performance improvement plan is a series of measures designed to help improve the employee's performance. The plan will ideally be agreed with the employee, although the Trust reserves the right to insist on any aspect of the performance improvement plan in the absence of such agreement.

Each plan will be tailored to the particular situation, but will contain the following elements:

- Timescale – the overall timescale in which the necessary improvement must be achieved will be set out, together with the timescale for reaching individual milestones where appropriate.
- Targets – the performance improvement plan will specify the particular areas in which improved performance is needed and set out how, and on what criteria, the employee's performance will be assessed. Where appropriate, specific targets will be set that will need to be achieved either by the end of the plan or at identifiable stages within it.
- Measures – the performance improvement plan will specify what measures will be taken by the Trust to support the employee in improving their performance. Such measures may include: training; additional supervision; the reallocation of other duties; or the provision of additional support from colleagues etc.
- Feedback – as part of the performance improvement plan, the employee will be given regular feedback from their line manager indicating the extent to which the employee is on track to deliver the improvements set out in the plan.
- Review – if, at any stage, the line manager feels that the performance improvement plan is not progressing in a satisfactory way, a further meeting may be held with the employee to discuss the issue. As a result of such a meeting, the line manager may amend or extend any part of the plan.

At the end of the monitoring period, the employee's performance will be reviewed by their line manager.

If satisfactory progress has been made, the employee will be notified of this fact in writing.

However, if the line manager feels that progress has been insufficient, they may:

- extend and/or amend the performance improvement programme to such extent as the manager considers appropriate;
- refer the matter to a meeting under stage 2 of this procedure.

## **6.5 Stage 2 – Final formal review meeting**

If the performance improvement plan has not led to sufficient improvement in the employee's performance, the employee will be invited to attend a final formal review meeting.

The meeting will be conducted by the employee's line manager. The procedure followed at this stage should mirror the procedure followed at the first formal review meeting (see above).

If the manager considers that there is reasonable further action that could be taken to improve the employee's performance then a further performance improvement plan should be drawn up and implemented.

A final formal warning should be issued if the line manager concludes that reasonable steps have been taken by the line manager that should have allowed the employee to perform to an acceptable standard, but that these measures have not worked. The warning will explain the nature of the improvement that is required in the employee's performance and state that the improvement must be immediate and sustained. It will also explain that, if the necessary improvement does not take place, the employee may be dismissed.

Where an employee is issued with a final formal warning in accordance with this procedure, they will have a right of appeal (see below).

The outcome of the meeting should be confirmed in writing within 7 working days.

At the end of the monitoring period, the employee's performance will be reviewed by their line manager.

If satisfactory progress has been made, the employee will be notified of this fact in writing.

However, if the line manager feels that progress has been insufficient, they may:

- extend and/or amend the performance improvement programme to such extent as the manager considers appropriate;
- refer the matter to a meeting under stage 3 of this procedure.

## **6.6 Stage 3 – Dismissal/Capability Transfer**

Before dismissing an employee on grounds of capability, the line manager should have followed the above formal stages of the capability procedure. If after a final formal warning there continues to be no improvement in the employee's performance, then a dismissal hearing should be held.

The meeting will be chaired by the Head Teacher (or Executive Vice Principal if the Head Teacher chaired the earlier stages), supported by a member of the People Team.

At the meeting, the Head Teacher/Executive Vice Principal will:

- explain to the employee that the purpose of the meeting is to discuss the employee's continued unsatisfactory performance;
- review all the evidence, including meeting notes performance improvement plans;
- provide the employee with an opportunity to explain and/or give reasons for why his/her work has not met the required standards;
- establish if there are any further steps or targets that can be put in place to help the employee to improve his/her performance;

- inform the employee of the possible outcomes of the meeting (see below) and that these will be confirmed in writing to him/her within 7 working days.

The outcome of the meeting may be:

- a decision to take no further action;
- the issuing of another performance management warning and a further performance improvement plan;
- an offer to redeploy the employee to alternative work; or
- a decision to dismiss the employee.

Any offer to redeploy the employee will be entirely at the Trust's discretion. Such an offer will be made only where the Trust is confident that the employee will be able to perform well in the redeployed role. It will normally be offered only as an alternative to dismissal in circumstances in which the organisation is satisfied that the employee should no longer be allowed to continue to work in their current role. Where such work is found, offered and accepted, the rate of pay, grade and other conditions are then applicable to the new post being offered. While the employee is free to refuse any offer of redeployment, the only alternative available will usually be dismissal.

If the Trust believes that there is no alternative role available and suitable for the employee, but that they have not met an acceptable standard of performance, the Trust may decide to dismiss. Any dismissal will be with full notice or payment in lieu of notice. The decision to dismiss together with the reasons for dismissal will be set out in writing and sent to the employee.

Where an employee is dismissed in accordance with this procedure, they will have a right of appeal (see below).

## **7. Appeal**

An employee who is given a formal warning or is dismissed under this procedure has the right of appeal. The appeal should be sent in writing to the Executive Principal and set out the grounds on which the employee believes that the decision was flawed or unfair.

The employee should lodge his/her appeal within 7 working days of receiving written confirmation of the sanction imposed on him/her by the Trust.

An appeal hearing will be acknowledged and if possible set up within at least 7 working days, but if for any reason this is not possible, within a reasonable period, after the appeal is lodged. The appeal hearing will be chaired by a more senior manager than the manager who made the decision which is being appealed, supported by a member of the People Team. The employee will be kept advised, in writing, of the progress of his/her appeal request.

The employee will be entitled to be accompanied by a workplace colleague, LinkUp Partner or trade union representative.

At the hearing, the decision to impose the sanction will be reviewed and the employee will be entitled to make representations about the appropriateness of that decision.

The outcome of the appeal will be confirmed to the employee in writing, within 7 working days, explaining the grounds on which the decision was reached. The outcome of the appeal will be final.

## **8. Gross incapability or incompetence and suspension**

In exceptional circumstances there may be cases of gross incapability or incompetence, the seriousness of which may make future employment impossible. One example might be action by an employee, which puts others at serious risk of injury to life and limb.

In all such cases, the Head Teacher must be satisfied that the situation is not one of gross misconduct that is a wilful act by the employee. If the circumstances do constitute gross misconduct any action should be taken in accordance with the Trust's Disciplinary procedure.

In some cases, it may be appropriate for the line manager to consider suspension. However, it should also be considered whether the alleged gross incapability or incompetence means that the employee cannot be allowed to work on any other duties. If it is possible to find alternative or reduced duties then this should be the preferred option (see Disciplinary procedure).

The seriousness of the lack of capability may require that a hearing be convened and this could lead to the employee's dismissal without prior formal warning.

## **9. Currency of decisions**

A first formal warning will normally have a time limit of six months, while the time limit for a final formal warning will normally be 12 months. After the relevant period of time and subject to the required standards being achieved, the Trust will disregard the warning, but retain it on the employee's personnel record. In each case, the Trust will specify the length of time that the warning will remain "live", but reserves the right to extend the time period in appropriate circumstances. Should further concerns about capability need to be considered, the procedure can be re-commenced either at the same or subsequent stage.

## **10. Related Policies & Documents**

This policy links to the following policies and procedures:

- Appraisals Policy
- Code of Conduct Policy