



## Staff Capability Policy

Policy reviewed and adopted by the Board of Trustees	July 2018
Version	1
Review frequency	Triennially unless legislation or terms of employment change
Date of next review	July 2021
Responsible Committee	Finance and Personnel

### **MISSION STATEMENT**

YHCLT is a co-operative community of schools, working together to provide the best possible standards of education, enabling children to become responsible and articulate citizens, with a local, national and global perspective. We try to demonstrate co-operative ethical values in everything we do:

- we believe in being **open** with colleagues in our schools and beyond;
- we act with **honesty** and integrity, working in a professional and respectful manner in our dealings with everyone;
- we act with **social responsibility**;
- we treat everyone with **respect**, care and sensitivity;
- we support staff to develop their capacity for **self-help** and to take responsibility for their own actions.

**Date July 2018**

Please always check the latest e-version of this policy as small changes may be made.

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## **Policy for Dealing with Capability Issues**

1. The Yorkshire and the Humber Co-operative Learning Trust (YHCLT) Board of Trustees adopted this policy in January 2017 in consultation with the trade unions.
2. It will be reviewed annually and a report at high level of the number of cases will be considered to the Trust board (and copied to trade unions) in line with the Equality Act 2010, as part of routine monitoring.

### **Introduction**

3. Schools and local authorities must have a policy, covering all staff, which deals with lack of capability. This policy applies to all staff at Yorkshire and the Humber Co-operative Learning Trust (YHCLT) other than newly qualified teachers during their first year of teaching.
4. The policy sets out the formal capability procedure and reflects the ACAS Code of Practice on disciplinary and grievance procedures. For teachers, it replaces the statutory guidance "Capability Procedures for Teachers" that was issued in July 2000.

### **Purpose**

5. This policy sets out the arrangements that will apply when members of staff fall below the levels of competence that are expected of them.

### **Principles**

6. Prior to final approval by the YHCLT Board this policy has been the subject of consultation with unions and professional associations; their suggested amendments have been taken into consideration and changes made where they can be agreed.
7. The school is committed to ensuring equality of treatment and fairness in the operation of the capability procedure in line with the Equality Act 2010.

### **Application of the policy**

8. This policy sets out the formal capability procedure and applies only to members of staff (including the Head) about whose performance there are serious concerns that the appraisal process has been unable to address.

### **Start of Formal capability**

9. If during the course of the appraisal process, concerns have arisen with regard to a member of staff's performance that have not been addressed by the appraisal process, the member of staff will be informed in a review meeting and notified in writing that the appraisal system

will no longer apply and that their performance will be managed under the capability procedure. The member of staff will be invited to a formal capability meeting and recommended to bring a union representative or colleague. The capability procedure will be conducted in accordance with this policy.

### **The Capability Procedure**

10. At least five working days' notice will be given of the formal capability meeting. The notification will contain sufficient information about the concerns about performance and their possible consequences to enable the member of staff to prepare to answer the case at a formal capability meeting. It will also contain copies of any written evidence; the details of the time and place of the meeting; and will advise the member of staff of their right to be accompanied by a companion who may be a colleague, a trade union official, or an accredited trade union representative. If the trade union official is not available for the meeting an alternative date and time will be offered within 5 working days of the original date. In the event of the Trade Union representative still being unable to attend, the meeting will proceed on the second date offered and the member of staff will be encouraged to invite an alternative Trade Union representative or colleague.
11. Several types of meeting take place through out the capability process as follows:
  - a. The Formal Capability meeting – to determine at the beginning of the process whether to start a formal improvement programme of support and monitoring.
  - b. Formal Capability Review Meetings – at least two or three reviews take place throughout the improvement programme - to review progress and outcomes of the support offered to reach a 'good' standard of performance. If appropriate warnings may be issued if improvement is unsatisfactory.
  - c. The Capability Hearing – if improvement has not been evident or is not sustained then the end of the process could lead to a hearing to consider whether, in all the circumstances, dismissal maybe the outcome. Alternatively the next steps if dismissal is not decided.

### **Formal capability meeting**

12. This meeting is intended to establish the facts at the commencement of the process. It will be conducted by the CEO/Executive Head (for Head capability meetings) the Head or delegated manager (for other members of staff). The meeting allows the member of staff, accompanied by a trade union representative or workplace colleague if they wish, to respond to concerns about their performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected.

13. The person conducting the meeting may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases, the capability procedure will not commence. The person conducting the meeting may also adjourn the meeting for example if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.
14. In other cases, the meeting will continue. During the meeting, or any other meeting which could lead to a formal warning being issued, the person conducting the meeting will:
  - a. identify the professional shortcomings, for example for teachers, they may identify which of the standards expected of teachers are not being met;
  - b. give clear guidance on what the member of staff needs to do to reach the improved standard of performance so that they can be removed from formal capability procedures (this may include the setting of new objectives focused on the specific weaknesses that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made);
  - c. discuss training needs and any offer support that will be available to help the member of staff improve their performance, including the offer of external counselling;
  - d. set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case but in straightforward cases could be between eight and ten weeks. (NB The period of time allowed must be reasonable and proportionate, but not excessively long, and must provide sufficient opportunity for an improvement to take place, taking into account any seasonal work patterns);  
  
and
  - e. warn the member of staff formally that failure to improve within the set period could ultimately lead to dismissal. In very serious cases, this warning could be a final written warning.
15. Notes will be taken of formal meetings and a copy sent to the member of staff; a copy will also be sent to their companion or trade union representative, where the member of staff has requested this. Where a warning is issued, the member of staff will be informed in writing of the matters covered in the bullet points above and given information about the timing and handling of the review stage and the procedure and time limits for appealing against the warning.

### **Stage 1: Monitoring and review period following a formal capability meeting**

16. A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. Following this period, the member of staff will be invited to a formal review meeting, unless they were issued with a final written warning, in which case they will be invited to a decision meeting (see below).

### **Stage 2: Formal review meeting**

17. As with the formal capability meeting, at least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the member of staff of their right to be accompanied by a companion who may be a colleague, a trade union official, or an accredited trade union representative . The first formal review meeting will normally take place between four and six weeks after the formal capability meeting. If the trade union official is not available for the meeting an alternative date and time will be offered within 5 working days' of the original date. In the event of the Trade Union representative still being unable to attend, the meeting will proceed on the second date offered and the member of staff will be encouraged to invite an alternative Trade Union representative or colleague.
18. If the person conducting the meeting is satisfied that the member of staff has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start. In other cases:
19. If some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period;
20. If no, or insufficient improvement has been made during the monitoring and review period, the member of staff will receive a final written warning.
21. As before, notes will be taken of formal meetings and a copy sent to the member of staff and their companion or representative, where the member of staff has requested this. The final written warning will mirror any previous warnings that have been issued. Where a final warning is issued, the member of staff will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale), may result in dismissal and given information about the handling of the further monitoring and review period and the procedure and time limits for appealing against the final warning. The member of staff will be invited to a decision meeting. The further monitoring and review period will normally be between four and six weeks and a final decision meeting will take place at the end of this period.

### **Final Formal Review meeting (if applicable)**

22. As with previous formal meetings, at least five days' notice will be given. The notification will give details of the time and place of the meeting and will advise the member of staff of their right to be accompanied by a companion who may be a colleague, a trade union official, or an accredited trade union representative. If the trade union official is not available for the meeting an alternative date and time will be offered within 5 working days' of the original date. In the event of the Trade Union representative still being unable to attend, the meeting will proceed on the second date offered and the member of staff will be encouraged to invite an alternative Trade Union representative or colleague. If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end and the appraisal process will re-start.

### **Stage 3: Capability Hearing**

23. If performance remains unsatisfactory at the end of the improvement programme, a Capability Hearing will be convened with 5 working days' notice. The panel will consider the action to be taken, if any, following a full review of all the evidence and after hearing from the employee concerned or their representative. The outcomes could be:
- a. that the member of staff should be dismissed on the grounds of lack of capability.
  - b. that insufficient support and professional development has been provided and the improvement programme be extended by a limited time of up to 4 weeks.
  - c. that there is insufficient evidence of the employee's incapability to justify dismissal and further clarification is required. In this case the hearing will be postponed pending the receipt of further information.
24. If the trade union official is not available for the meeting an alternative date and time will be offered within 5 working days' of the original date. In the event of the Trade Union representative still being unable to attend, the meeting will proceed on the second date offered and the member of staff will be encouraged to invite an alternative Trade Union representative or bring a colleague.

### **Dismissal**

25. If the decision to dismiss has been taken, the (TBC) will dismiss the member of staff with notice. The member of staff will be informed as soon as possible of the reasons for the dismissal the date on which the employment contract will end, the appropriate period of notice and their right of appeal.

## Appeal

26. If a member of staff feels that a decision to dismiss them, or other action taken against them at earlier review meetings is wrong or unjust, they may appeal in writing against the decision within five working days of the decision, setting out at the same time the grounds for appeal. Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a union representative or workplace colleague will apply as with formal capability and review meetings and, as with other formal meetings, notes will be taken and a copy sent to the member of staff, with a copy to their representative if they request it.
27. The appeal will be dealt with impartially and, wherever possible, by a panel made up of 3 who are at least one management level higher than those on the panel who made the original decision. The panel will be made up of senior managers and/or the CEO or Trustees in line with the scheme of delegation who have not previously been involved in the case.
28. The member of staff and their companion or representative, where the member of staff has requested this, will be informed in writing of the results of the appeal hearing as soon as possible.



## **General Principles Underlying This policy**

### ACAS Code of Practice on Disciplinary and Grievance Procedures

29. The policy will be implemented in accordance with the provisions of the ACAS Code of Practice.

### Confidentiality

30. The capability process will be treated with confidentiality.

### Consistency of Treatment and Fairness

31. The Trust committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments for disabled members of staff. The Trust is aware of the guidance on the Equality Act 2010 issued by the Department for Education.

### Definitions

32. Unless indicated otherwise, all references to “member of staff” include Heads, CEO and centrally based staff.

### Delegation

33. Normal rules apply in respect of the delegation of functions by the Trustees, in line with the scheme of delegation.

### Grievances

34. Where a member of staff raises a grievance during the capability procedure the capability procedure may be temporarily suspended in order to deal with the grievance. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.

### Sickness

35. If long term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case will be dealt with in accordance with the School’s absence policy. It will be referred immediately to the occupational health service to assess the member of staff’s health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedure.

Appendix 1.

Capability Flow Chart

