



**South East Cornwall Multi Academy Regional Trust**

# **Staff Capability Policy**

<b>Date</b>	<b>Changes</b>
3/9/17	Original draft circulated to LGCs and Trust Board
26/3/18	All SMART Trust policies which unions requested further consultation on were removed from sites and previous policies reinstated to enable establishment of a JCNC and a fresh round of consultation
14/12/18	Updated draft circulated
13/03/19	Copy sent to senior staff, unions, LGC, legal and Trust Board inviting comments
	Consultation with unions in JCNC meeting at Liskeard
17/06/19	Recommended by People Committee for approval by Trust Board
22/07/19	Approved by Trust Board
13/09/23	Trust Board approved extension of review date
09/12/25	Updated version approved by Trust Board

Adopted Date: 9<sup>th</sup> December 2025

Status: Approved by Trust Board

Review Date: 1<sup>st</sup> March 2028

# Contents

1.	Introduction	3
2.	Capability procedure	3
3.	Informal support procedure	3
4.	Formal capability procedure	4
5.	Stage 1 Formal capability meeting	4
	Monitoring and review period	6
6.	Stage 2 Formal review meeting	6
7.	Stage 3 Capability decision hearing	7
8.	Appeal	7
9.	Improvement in performance	8
10.	Confidentiality and record-keeping	8
11.	Monitoring arrangements	8
12.	Related policies	8
	Appendix 1 – Flowchart for Capability Procedure	10

## **1. Introduction**

- 1.1 This policy is based on the ACAS code of practice on disciplinary and grievance procedures and applies to teaching and support staff. We are committed to ensuring consistency of treatment and fairness when carrying out capability procedures and we will ensure we abide by the Equality Act 2010 including the duty to make reasonable adjustments where these are deemed either necessary or appropriate.
- 1.2 There is an extremely strong commitment throughout SMART to ongoing training and development for everyone to provide you with the skills and support you need to carry out your role effectively. This will involve regular reviews and support based on clear objectives.
- 1.3 As part of day-to-day management, line managers may from time to time have discussions about performance with you and these discussions do not form part of the capability process.

## **2. Capability procedure**

- 2.1 This procedure will be used if, despite appropriate development and clear objectives agreed through the appraisal process, serious concerns emerge regarding your performance which the appraisal and staff management process has been unable to address and/or usual appraisal processes with a frequency of between one and two points of feedback per term is deemed insufficient to correctly support you.
- 2.2 The procedure will also apply when serious concerns have arisen independently of the appraisal process. It provides a framework to support you to improve.
- 2.3 Capability for Early Career Teachers (ECTs) will be managed in accordance with the Trust's Early Career Teachers policy. In the event of serious capability concerns, the Headteacher/Head of School can instigate this capability procedure.
- 2.4 It is strongly recommended that this procedure is only implemented where the appraisal process and appropriate support provided have failed to improve your performance to the required standards. Only after sufficient, recorded evidence exists from triangulated sources should the capability procedure be implemented.

## **3. Informal support procedure**

- 3.1 Being subject to a capability procedure should not be a surprise because any concerns should have been raised with you in advance as part of the appraisal process. If it becomes apparent during or at the end of the appraisal period, that your overall performance is below acceptable standards the appraiser will ensure the Headteacher/Head of School/Nursery Lead is informed (this may be via their line manager).

- 3.2 The Headteacher/Head of School/Nursery Lead will appoint a manager to conduct an informal support process. This may be your current appraiser where appropriate. This appointee will meet with you to discuss the nature and level of the concerns, confirm the content of the discussion in writing and give you the opportunity to reflect on it before another meeting.
- 3.3 A second meeting, arranged with adequate notice, will be held to determine what increased support should/will be given to you, the kind of improvement required, the period for improvement, how improvement would be assessed and when the situation would be reviewed. The review period will be no less than six weeks. The appointee should explain to you what would happen in the event of you not meeting the required standards.
- 3.4 During the appraisal process consideration should have been given to any known mitigating or personal circumstances (including a health condition) which might explain a dip in performance and similar consideration should continue to be given to such circumstances in relation to this procedure.

## 4. Formal capability procedure

- 4.1 If, following a programme of informal support within the appraisal process of no less than six weeks, the Headteacher/Head of School/Nursery Lead continues to be concerned about your performance, then they will appoint a manager to conduct a formal capability process. This appointee will arrange a formal capability meeting which is the first step of a process that will either result in you addressing any concerns and returning to the normal appraisal process or can ultimately result in your dismissal. When the formal capability process is instigated, the performance management/appraisal process will be suspended. This policy sets out these stages and the processes surrounding them.
- 4.2 Capability is a process which is designed primarily to support you in improving your practice.

## 5. Stage 1 Formal capability meeting

- 5.1 This meeting is intended to establish the facts. It will be conducted by:

<b>Your role</b>	<b>Attendees of the formal capability meeting</b>
Chief Executive Officer (CEO)	Chair of the Trust Board (chair) HR link Trustee Clerk to the Governors - notetaker
Headteachers Trust Shared Services staff	CEO (chair) Manager who has conducted the formal capability process – if relevant Clerk to the Governors or administrator - notetaker.
Teaching staff in schools	Headteacher/Head of School (chair) Manager who has conducted the formal capability process – if relevant

	PA/administrator - notetaker
Support staff in schools	Headteacher/Head of School/Nursery Lead or senior officer to whom this responsibility has been delegated (chair) Manager who has conducted the formal capability process – if relevant PA/administrator - notetaker

- 5.2 You may be accompanied to any formal capability meetings by a work colleague or trade union representative and should tell the manager conducting the hearing who your chosen companion is in good time before the hearing. Neither you, nor anyone accompanying you, may record the meeting.
- 5.3 You will be given at least five school days' notice of the meeting; and will be informed by letter of the date, time and venue, and of your right to be accompanied. The letter will contain information about the performance concerns, the possible consequences and copies of any written evidence.
- 5.4 You should prepare your response and will have an opportunity to present this at the formal capability meeting and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected.
- 5.5 During the meeting the Chair will:
- identify the professional shortcomings that have led to this meeting, e.g. which of the Teachers' Standards have not been met
  - listen to your response, including any new information you provide
  - identify the action (including support) that has been taken to date and the outcomes
  - give clear guidance on the improved standard of performance needed for the formal capability procedure to end, and the timescale and success criteria for current or new objectives
  - outline a timeframe for improvement and explain how performance will be supported, monitored and reviewed during this time. The timetable will depend on the circumstances of the case but should be no less than six weeks
  - explain the support that will be available to help you improve your performance
  - identify the appropriate outcome.

### **Possible outcomes**

- 5.6 The Chair of the meeting may decide that:
- there are insufficient grounds to use the capability procedure 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 come to an end.
  - further investigation is required or more time to consider additional information in which case they may adjourn the meeting and schedule a date to reconvene it.
  - the capability procedure should continue and to issue you with a written warning that failure to improve performance within the timeframe could lead to your dismissal. In exceptional and very serious cases, or where further capability

concerns have arisen after a previous formal capability process, this warning could move straight to a final written warning.

- 5.7 Notes of this meeting, including arrangements for monitoring and review, will be taken and sent to you with the outcome letter and the formal performance improvement plan within five school days of the meeting.
- 5.8 Where a warning is issued, the outcome letter will provide you with a right of appeal (please refer to the appeals section of this policy below).

### **Monitoring and review period**

- 5.9 Following the formal capability meeting and throughout the timeframe of the formal performance improvement plan, your performance will be monitored, and you will be provided with written evaluations, guidance and support to help you to achieve the required outcomes.
- 5.10 At the end of the monitoring and review period, you will be invited to a stage 2 formal review meeting.
- 5.11 If, however, you were issued with a final written warning at your stage 1 formal capability meeting, you will be invited to a stage 3 decision hearing.

## **6. Stage 2 Formal review meeting**

- 6.1 The arrangements for notification of this meeting are the same as those outlined above for the formal capability meeting (see paragraph 5.3).
- 6.2 As before, the meeting will be conducted by the chair indicated in 5.1.
- 6.3 The person conducting the meeting has three options which are:
  - a) to end the capability procedure - if they are satisfied that you have made sufficient improvement, and the appraisal process will resume.
  - b) an extension of the monitoring and review period - if they think that you are making some improvement and are confident that more is likely.
  - c) issue a final written warning - if there has been insufficient or no improvement during the monitoring and review period.
- 6.4 As before, notes will be taken and a letter will be sent to you within five school days of the meeting.
- 6.5 Where there is a final written warning, you will be informed:
  - a) that failure to achieve an acceptable standard of performance within a six week timeframe may result in dismissal
  - b) of arrangements for monitoring and review
  - c) of the time limits to appeal against the warning.
- 6.6 You will be invited to a decision meeting at the end of the review period.

## **7. Stage 3 Capability decision hearing**

- 7.1 A decision hearing will be convened before a Governor's staffing panel that will be made up of no less than three governors, none of whom will have had any prior direct involvement with the case.
- 7.2 You will be given at least five school days' notice of the meeting; and will be informed by letter of the date, time and venue, and of your right to be accompanied.
- 7.3 The invitation to the meeting should include all the evidence and documentation collected during the process. You will be able to submit further evidence and should notify the Clerk to the Governors ahead of the meeting. During the hearing, the manager will be able to provide their evidence, and you will be able to respond or provide further evidence. Notes will be taken of the meeting.
- 7.4 There are two possible outcomes:
- a) If the governor panel is satisfied that there has been sufficient improvement and an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedures will end, and the appraisal process will resume. The outcome letter will confirm that the improvement in performance will need to be sustained.
  - b) If performance remains unsatisfactory, you will be dismissed on the grounds of capability with the appropriate contractual notice.
- 7.5 The panel's decision will be communicated to you in writing within five school days. If the decision is to dismiss you, the letter will include the reasons for the dismissal, the date on which the employment contract will end, and the appropriate period of notice. You will be informed of your right of appeal to an independent panel of governors.

## **8. Appeal**

- 8.1 You can appeal against any decision to issue you a warning or to dismiss you. Appeals should be made in writing to the Clerk to the Governors, within five school days of receipt of written notification of the decision, setting out the grounds for appeal. All appeals will be taken to the appeals panel of the Governing Body.
- 8.2 As the decision may be the result of a number of previous meetings and assessments, including the appraisal process, it will generally not be practicable to reconsider all of the factual conclusions which led to the decision to dismiss you. The appeal will be a review of the process followed, to consider whether the decision taken was a reasonable one in the circumstances. You may therefore wish to appeal on the grounds that you think the action being taken against you was disproportionate, or that it would have been reasonable to allow you longer to improve, or that the process or decision was otherwise flawed or unfair.

- 8.3 Appeals will be heard without unreasonable delay. You will be given at least five school days' notice of the meeting; and will be informed by letter of the date, time and venue, and of your right to be accompanied. Notes will be taken of the meeting.
- 8.4 The appeal will be dealt with impartially by a panel of governors who have had no involvement in the case.
- 8.5 You will be informed in writing of the outcome of the appeal hearing within 5 school days.

## **9. Improvement in performance**

- 9.1 Any improvement in performance needs to be sustained and should your performance decline following the use of the informal or formal capability procedure, we will consider where to re-enter the process. For example, if you were at stage 1 of the capability procedure, your improvement in performance will need to be sustained for at least 6 months after you resume the appraisal process. If you were at stage 2 of the capability procedure, your improvement would need to be sustained for at least 12 months. If your performance declines during this period of time, the line manager will have the option to re-enter the formal capability procedure at the appropriate point, which would usually be the stage you were on when the last process ended.

## **10. Confidentiality and record-keeping**

- 10.1 Confidentiality is an important part of the procedures provided under this policy. Our aim is to deal with performance matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with a matter which is subject to this capability procedure. Breach of confidentiality may give rise to disciplinary action under our Disciplinary Policy.
- 10.2 Information about a capability procedure will be placed on your personnel file, along with a record of the outcome and of any notes or other documents compiled during the process. These will be processed in accordance with our Data Protection Policy.

## **11. Monitoring arrangements**

- 11.1 The Local Governing Committee and Headteacher will monitor the operation and effectiveness of the school's capability arrangements. The Trust Board and CEO will monitor the system of checks and balances in place at each school for ensuring policies are enacted.

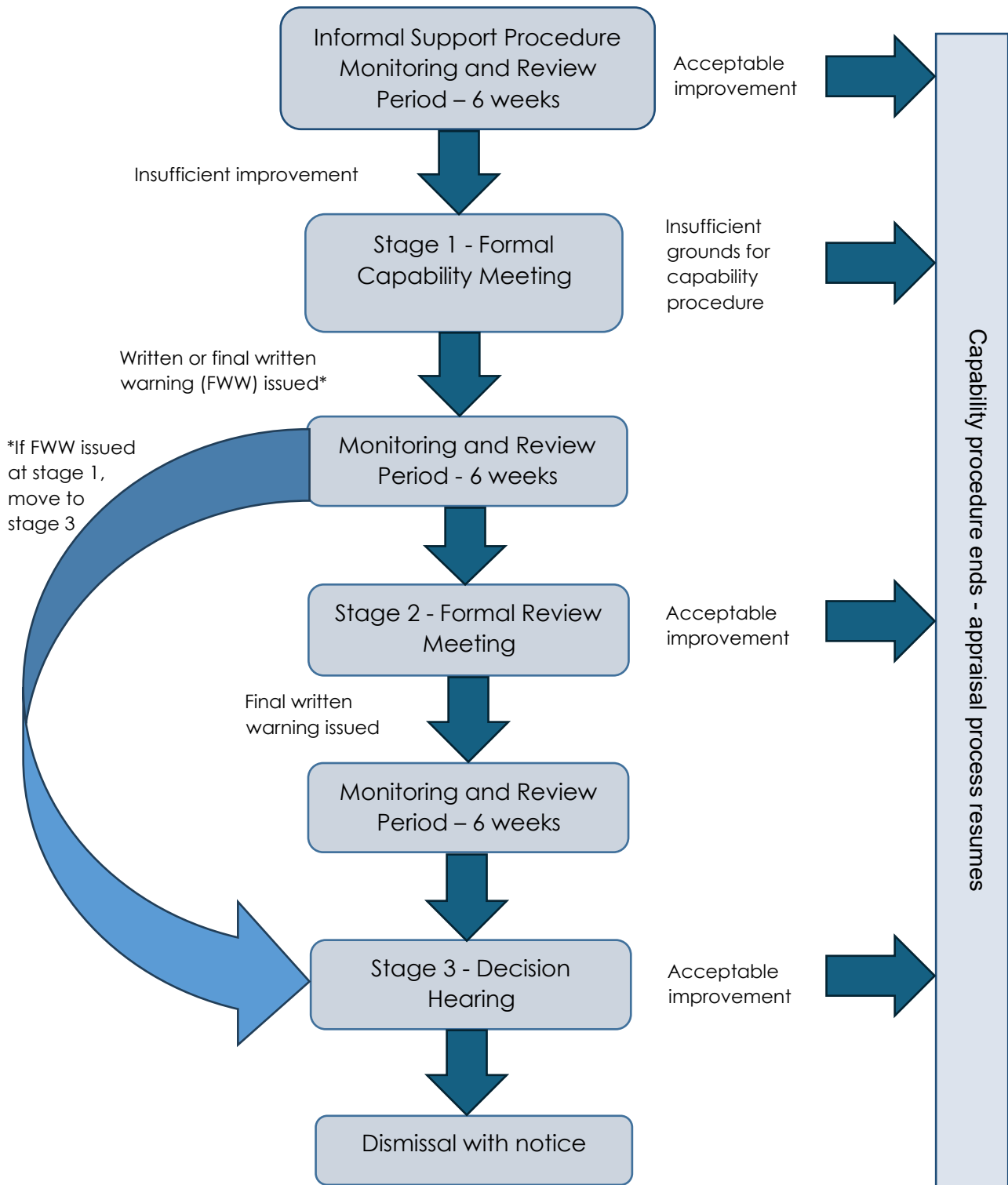
## **12. Related policies**

- 12.1 SMART policies can be found at:

<https://www.smart-trust.net/information/policies/all-policies>

- Appraisal
- Attendance policy - Staff
- Code of Conduct – Staff
- Disciplinary policy
- Grievance policy
- Early career teachers policy
- Equality information and objectives

# Appendix 1 – Flowchart for Capability Procedure



Right of appeal applies to formal warnings and dismissal