



Capability Policy & Procedure
Fairfax Multi-Academy Trust
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1. Introduction

- 1.1 Fairfax Multi-Academy Trust (FMAT) is committed to providing high quality teaching and learning for students in our academies. Our aim is for each academy to be a centre of excellent teaching and to provide opportunities for all of our students, whatever their ability, through our workforce. Employees will therefore be given support to help them continually improve their performance and develop to their full potential, which will in turn help improve outcomes for our young people.
- 1.2 FMAT recognises that action taken under this policy should, where appropriate, follow informal efforts by managers and employees to manage performance concerns through the use of the appraisal process.
- 1.3 This policy sets out the arrangements that will apply when an employee falls below the levels of competence and performance that are expected of them and serious concerns have been raised.
- 1.4 This policy does not form part of any employee's contract of employment and may be amended at any time following consultation.

2. Scope and purpose of this policy

- 2.1 The term 'capability' is often referred to in relation to the management of poor performance and refers to an employee's skills, ability, aptitude and knowledge in relation to their job.
- 2.2 The purpose of this policy is to provide a framework within which FMAT can work with employees to improve and maintain satisfactory standards of performance where serious concerns have been raised.
- 2.3 This policy applies to all employees of the Trust, including teachers and support staff, excluding those who are in the probationary period. It does not apply to agency workers.

3. The distinction between capability and misconduct

- 3.1 It can occasionally be difficult to establish whether an employee's poor performance is due to inherent incapability or other contributing factors which may result in a fall in performance. A neglect of duty, for example, is a potential misconduct issue as is a failure to carry out the duties of the post to an acceptable standard. However, a lack of skill or experience may impact upon the capability of an employee to carry out the requirements of the post.
- 3.2 In some cases, there may be an element of both and if there is doubt, it is advisable to liaise with the HR department to determine the appropriate procedure. Managers are advised to explore with the employee, if there are any contributory factors before the instigation of any form of performance management.

4. Informal capability procedure

- 4.1 Capability concerns should be dealt with in a timely fashion.
- 4.2 If any problems arise, the line manager should address these promptly and in accordance with this policy. However, the line manager should raise any concerns without delay. The employee should be made aware that some aspects of their performance or conduct are unsatisfactory. This will help prevent the problem from escalating and hopefully lead to sufficient improvements.
- 4.3 Should concerns persist, an informal capability meeting should be arranged to discuss the performance concerns, the standards required of the employee and how the shortfall in performance is to be rectified, e.g. SMART action plan and/or training, and what the possible consequences are, if a satisfactory outcome is not achieved.
- 4.4 The line manager is responsible for organising the meeting and will be required to invite the employee in writing to attend this informal capability meeting; the employee is entitled to be accompanied by a trade union representative or FMAT work colleague. A HR representative must also be present.
- 4.5 At this stage, a verbal warning may be given. This will remain on the employee's record for a period of six months. If there is no significant improvement of performance after the improvement period of at least four weeks, the formal capability procedure will be invoked.
- 4.6 Where marked progress in work performance is made for the duration of the improvement period, but then performance levels deteriorate again whilst the verbal warning is still live, the formal capability procedure will be invoked.
- 4.7 In exceptional circumstances, depending on the severity and/or impact of the capability concerns, formal capability proceedings can be invoked immediately, without exploring the informal route. In these circumstances, an employee may be suspended from work to allow a full investigation to take place. The decision to suspend an employee may only be made by the Head of Academy or the CEO in consultation with the HR Director.
- 4.8 It is important to gauge during the early stages of discussion, if the capability issue is linked to an underlying reason or medical condition, which the employee may not have previously disclosed. In such circumstances, the employee should be advised that it will be in their interest to notify the employer of any underlying reasons which could contribute to the poor performance. Similarly, it is important to determine, if personal issues are directly impacting on performance and, if this is the case, the employee should be referred to the confidential employee counselling helpline;

telephone number is 0808 169 1675. However, if the underperformance persists, the formal capability procedure might still be instigated in both cases.

5. Formal capability procedure

- 5.1 Prior to starting the formal procedure, the relevant senior manager must consult with the HR department.
- 5.2 The employee is entitled to be accompanied by a trade union representative or FMAT work colleague at any stage of the formal process. If the companion is a FMAT work colleague, they cannot be involved in this particular capability process.
- 5.3 Formal meetings should be carried out by the appropriate member of the SLT (or the CEO for Heads of Academy and the Central Team or the Chair of the Trust Board for the CEO), and a HR representative must also be present.
- 5.4 A formal meeting under this procedure will:
- Identify performance shortcomings;
 - Allow an employee to respond to those concerns, ask questions and make any relevant representations which may provide new information or a different context to the evidence already collected;
 - Identify what action (including support provided) has been taken to date and what the outcome was;
 - Where appropriate, identify and explain any support that will be available to help the employee improve performance;
 - Where appropriate, warn an employee formally that failure to improve within the set period could lead to dismissal; and
 - Confirm the timescales for the monitoring and review period which will be at least four weeks where a warning is issued. The timetable will depend on the circumstances of the individual case, but the period will be reasonable and proportionate and should provide sufficient opportunity for an improvement to be made. Formal monitoring, evaluation, guidance and support will continue during this period.
- 5.5 The person conducting the meeting may adjourn the meeting, for example for further investigation or to consider, if additional information is required.
- 5.6 If at any stage the person conducting the meeting is satisfied that the employee has made sufficient improvement, the capability procedure will cease. Where marked progress in work performance is made for the duration of the improvement period,

but then performance levels deteriorate again whilst the warning is still live, the formal capability procedure will restart at the stage when it ceased.

- 5.7 At any stage of the formal capability procedure, the employee might want to consider, instead of progressing to the next stage of the formal capability procedure, whether there is a vacant post and if so, whether this may be more suited to their capabilities. If there is a vacant post which FMAT agrees with the employee is suitable, this would be a permanent change in role. If the alternative post is at a lower salary level, the substantive lower salary would apply at the top of the lower salary scale. The capability procedure would cease on commencing in the new post.

5.8 Stage 1 – Formal capability meeting

- 5.8.1 At this stage, a first written warning may be given; this will be confirmed in writing within five working days of the meeting. This will remain on the employee's record for a period of twelve months.
- 5.8.2 At the end of the monitoring and review period of at least four weeks, a formal stage 2 review meeting will be convened.
- 5.8.3 Where marked progress is made for the duration of the improvement period, but then performance levels deteriorate again whilst the first written warning is still live, the formal capability procedure reopens at the same stage of the process, i.e. stage 1.

5.9 Stage 2 – Formal capability meeting

- 5.9.1 Where reasonable progress has been made and there is confidence that sufficient improvement is likely to be achieved within a short timeframe, an extension of the monitoring and review period of at least four weeks should be considered.
- 5.9.2 Where no or insufficient improvement has been made during the monitoring and review period, a final written warning will be issued; this will be confirmed in writing within five working days of the meeting. This will remain on the employee's record for a period of 18 months.
- 5.9.3 At the end of the monitoring and review period of at least four weeks, a formal stage 3 review meeting will be convened.
- 5.9.4 Where marked progress is made for the duration of the improvement period, but then performance levels deteriorate again whilst the first written warning is still live, the formal capability procedure reopens at the same stage of the process, i.e. stage 2.

5.10 **Stage 3 – Formal capability meeting**

- 5.10.1 The formal stage 3 meeting will be chaired by the Head of Academy or another appropriate senior manager not previously involved in the process depending on the seniority level of the employee (refer to paragraph 5.3). A HR representative will also be present, as will be the manager dealing with the capability process to date to present the management case.
- 5.10.2 Dismissal is a possible outcome of the stage 3 meeting.
- 5.10.3 Where reasonable progress has been made and there is confidence that sufficient improvement is likely to be achieved within a short timeframe, an extension of the monitoring and review period of at least four weeks should be considered. There will be a further formal stage 3 meeting at the end of the extended monitoring and review period.
- 5.10.4 Where no or insufficient improvement has been made during the monitoring and review period, a decision will be made to dismiss the employee.
- 5.10.5 The decision to dismiss will be confirmed in writing within five working days of the meeting advising the employee of their last day of employment and the right of appeal.

6. Appeal

- 6.1 If an employee wishes to appeal against dismissal, this must be in writing, stating the full grounds of appeal, and sent to the Chair/Panel who made the decision within 10 working days of the date on which the employee was informed of the decision.
- 6.2 An appeal meeting will be arranged with the CEO (if not involved in the original decision to dismiss) within 15 working days or as soon as reasonably practicable upon receipt of the grounds of appeal. The Chair responsible for the original decision to dismiss will also attend to present their case at the appeal hearing. The employee is entitled to be accompanied by a trade union representative or FMAT work colleague. A HR representative must also be present.
- 6.3 The outcome of the appeal meeting will be confirmed in writing within five working days. The decision is final and will mark the end of the internal process. If there is a delay for any reason, the employee must be notified in writing of the delay and the reason for the delay within 5 working days of the appeal meeting and be given a likely time scale for the decision to be reached.

7. Sickness

- 7.1 If at any stage long-term sickness absence appears to have been triggered by the commencement of this procedure, this will be dealt with in accordance with FMAT's Sickness Absence Management Policy and Procedure.
- 7.2 The employee will be referred immediately to the occupational health service to assess their health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

8. Confidentiality and data protection

- 8.1 It is the aim of the Trust to deal with capability matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat any information communicated to them in connection with capability matters as confidential.
- 8.2 Employees, and anyone accompanying them (including witnesses), must not make electronic recordings of any meetings conducted under this procedure.
- 8.3 Warning letters will be placed on employees' personnel file. These will be processed in line with paragraph 8.4.
- 8.4 During any action, including any decisions taken under this procedure, the Trust will collect, process and store personal data in accordance with the Data Protection policy. The data will be held securely and accessed by, and disclosed to, individuals only for the purposes of completing the grievance procedure. Records will be kept in accordance with FMAT's Data Protection Policy, the Workforce Privacy Notice, the Retention and Destruction schedule and in line with the requirements of (i) the General Data Protection Regulation ((EU) 2016/679) (unless and until it is no longer directly applicable in the UK) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 2018.

9. Review

- 9.1 This policy is reviewed at least every three years by the Trust. The Trust will monitor the application and outcomes of this policy to ensure it is working effectively.

APPENDIX 1 - CAPABILITY PROCEDURE FLOW CHART

