

*December 2018*



# *Capability Policy*

**Approved By:** The Trust Board

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**Review Frequency:** Annual

## 1. EMPLOYEES EXPERIENCING DIFFICULTIES:

- 1.1. When dealing with an employee experiencing difficulties, the objective is to provide support and guidance through the appraisal process in such a way that the employee's performance improves and the problem is, therefore, resolved. This is called informal support.
- 1.2. Where it is apparent that an employee's personal circumstances are leading to difficulties at school, support will be offered as soon as possible, without waiting for the formal annual assessment.
- 1.3. If an appraiser identifies through the appraisal process, or via other sources of information, for example parental complaints, that the difficulties experienced by an employee are such that, if not rectified, could lead to capability procedures the appraiser, Line Manager, Headteacher, CEO / CFO or a member of the leadership team, will, as part of the appraisal process meet the employee to:
  - give clear written feedback to the employee about the nature and seriousness of the concerns;
  - give the employee the opportunity to comment on and discuss the concerns;
  - give the employee at least 5 working days' notice that a meeting will be held to discuss targets for improvement alongside a programme of support;
  - in consultation with the employee at the above meeting, an action plan with support will be established (for example coaching, training, in-class support, mentoring, structured observations, visits to other classes, departments or school sites or discussions with advisory staff), that will help address those specific concerns;
  - make clear how progress will be monitored and when it will be reviewed;
  - explain the implications and process if no – or insufficient – improvement is made;
- 1.4. The employee's progress will continue to be monitored as part of the appraisal process and a reasonable time given for the employee's performance to improve. This will depend upon the circumstances but will be for a period of no more than 6 weeks, with appropriate support as agreed in the Action Plan, in order that the aim of recovering and improving performance can be achieved. During this monitoring period the employee will be given regular feedback on progress and arrangements will be made to modify the support programme if appropriate.
- 1.5. If sufficient progress is made such that the employee is performing at a level that indicates there is no longer a possibility of capability procedures being invoked the employee should be informed of this at a formal meeting with the appraiser, Line Manager or Headteacher. Following this meeting the appraisal process will continue as normal.
- 1.6. If no, or insufficient, improvement has been made over this period, the employee will be invited to a transition meeting to determine whether formal capability proceedings need to be commenced or the appraisal process remains in place. The employee may be assisted by a trade union representative or work colleague and will have at least 5 working days' notice of the meeting.

## 2. THE CAPABILITY PROCEDURE:

This procedure applies only to employees about whose performance there are serious concerns that the appraisal process has been unable to address.

### 2.1. Informal support (Stage 1)

The quality assurance procedures will identify any areas of underperformance and the SLT will be informed at the earliest possible opportunity of any employee who is experiencing difficulties. For teaching staff, the procedures set out in 'Teachers Experiencing Difficulties' will be followed. If no or insufficient progress has been made over a period of informal support, then the employee will be invited to a transition meeting to determine whether formal capability proceedings need to be commenced or the appraisal process remains in place. If the outcome of that meeting is that Formal Capability procedures need to be commenced the following steps will be followed:

### 2.2. Formal capability meeting (Stage 2)

2.2.1. 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 employee 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 employee of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

2.2.2. This meeting is intended to establish the facts. It will be conducted by the Chief Executive Officer with the Chair of Governors (for Headteacher capability meetings) or Headteacher in conjunction with the CEO (for other teachers). The meeting allows the employee, accompanied by a companion 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.

2.2.3. 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 come to an end. 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.*

2.2.4. 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:

- Identify the professional shortcomings, *for example for teachers which of the Teachers' Standards are not being met.*
- Give clear guidance on the improved standard of performance needed to ensure that the employee 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*);
- Explain any support that will be available to help the employee improve their performance;
- 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 some cases could be up to six weeks.
- Warn the employee formally that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning.
- Allow the employee to respond to concerns, ask questions and make any relevant representations which may provide new information or a different context to the evidence already collected.

Notes will be taken of formal meetings and a copy sent to the employee. Where a warning is issued, the employee 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.

### **2.3. Monitoring and review period following a formal capability meeting**

A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. The employee 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 final decision meeting (see below).

### **2.4. Formal review meeting (Stage 3)**

2.4.1. As with formal capability meetings, 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 employee of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

2.4.2. If the person conducting the meeting is satisfied that the employee has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start. In other cases:

- 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;
- If no, or insufficient improvement has been made during the monitoring and review period, the teacher will receive a final written warning.

2.4.3. As before, notes will be taken of formal meetings and a copy sent to the employee. The final written warning will mirror any previous warnings that have been issued. Where a final warning is issued, the employee 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 employee will be invited to a decision meeting.

### **2.5. Decision meeting (Stage 4)**

2.5.1. As with formal capability meetings and formal review meetings, 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 employee of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

2.5.2. 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. If performance remains unsatisfactory, a decision, or recommendation to the Trust Board, will be made that the employee should be dismissed or required to cease working for Horncastle Educational Trust.

2.5.3. The employee 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.

### **2.6. Decision to dismiss**

The power to dismiss staff at Horncastle Education Trust rests with the Trust Board.

### **2.7. Dismissal**

Once the decision to dismiss has been taken, Horncastle Education Trust will dismiss the employee with notice.

### **2.8. Appeal**

2.8.1. If an employee feels that a decision to dismiss them, or other action taken against them, is wrong or unjust, they may appeal in writing to the Clerk to the Trust Board against the decision within five 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 work colleague, a trade union official or a trade union representative who has been certified by their union as being competent, apply. As with other formal meetings, notes will be taken and a copy sent to the teacher.

2.8.2. The appeal will be dealt with impartially and, wherever possible, by Trustees or Members who have not previously been involved in the case. As set out in the Scheme of Delegation for the Trust.

2.8.3. The employee will be informed in writing of the results of the appeal hearing as soon as possible.

### **3. General Principles Underlying This policy**

ACAS Code of Practice on Disciplinary and Grievance Procedures

Part 2 of the policy will be implemented in accordance with the provisions of the ACAS Code of Practice.

#### **3.1. Confidentiality**

The appraisal and capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the Headteacher, local governing body and Trust Board to quality-assure the operation and effectiveness of the appraisal system.

#### **3.2. Consistency of Treatment and Fairness**

Horncastle Education Trust is 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 teachers. The Trust is aware of the guidance on the Equality Act issued by the Department for Education.

### **4. Definitions**

Unless indicated otherwise, all references to “teacher” include teachers, subject and other teaching middle leaders, Deputy Headteachers, Assistant Headteachers and the Headteacher. All references to employees refer to any member of staff who is employed by Horncastle Education Trust.

#### **4.1. Delegation**

The Trust’s Scheme of Delegation sets out the rules which apply in respect of the delegation of functions to the governing body and Headteacher by the Trust.

#### **4.2. Grievances**

Where an employee 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.

#### **4.3. Sickness**

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 Trust’s absence policy. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

#### **4.4. Monitoring and Evaluation**

The Trust will monitor the operation and effectiveness of the appraisal arrangements.

#### **4.5. Retention**

The governing body and Headteacher on behalf of the Trust will ensure that all written appraisal records are retained in a secure place for six years and then destroyed.