



Windsor Academy Trust

## Capability Policy

<b>Responsible Committee:</b>	Windsor Academy Trust, Board of Directors
<b>Date revised by Board of Directors:</b>	15 July 2021
<b>Implementation date:</b>	1 September 2021
<b>Next review date:</b>	September 2022

## **1. Introduction**

- 1.1 This policy sets out the arrangements that will apply when employees fall below the levels of competence that are expected of them, as set out in the relevant professional standards, job descriptions and overall performance expectations.
- 1.2 This procedure applies to all employees (excluding Early Career Teachers and individuals within their probation period) whose performance are of serious concerns and the appraisal process has been unable to address these within an acceptable period of time; and sets out the arrangements that will apply when employees fall below the levels of competence that are expected of them.
- 1.3 This policy does not form part of any employee's contract of employment and it may be amended at any time following consultation.

### 1.4 Definitions:

Chief Executive means the Chief Executive of WAT.

Headteacher refers to all or any of the Headteachers at all or any of the academies within WAT.

Leadership Team refers to any member of the Leadership Group as defined by the School Teachers' Pay and Conditions Document, or a senior member of staff with responsibility for support staff.

Trust Board of Directors/Directors means the Directors of WAT.

Companion refers to a person chosen by the employee to accompany them, who shall be a trade union representative or workplace colleague.

### 1.5 Roles and Responsibilities:

Capability Review Officer means either: the Chief Executive, a member of the Leadership Team, or a member of Executive and Central Team, or a Director (for the Chief Executive).

Determining Officer means the Chief Executive, a member of the Executive Team, the Headteacher or a Director.

Appeals panel (against formal/final written warning) means a member of the Leadership Team, or a member of Executive and Central Team, or a Director (for the Chief Executive).

Appeals panel (against dismissal) means the Chief Executive, a Director or panel of not less than two Directors.

## **2. Formal Capability Procedure**

- 2.1 If under the Appraisal Policy, an employee's performance, is not wholly satisfactory, the Headteacher, or other person with line management responsibility for the employee, will invite the employee to a formal capability meeting to discuss with the employee the identified poor performance as specifically as possible.

### **3. Formal Capability Meeting**

- 3.1 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 the formal capability meeting. It will also contain copies of any written evidence including the outcome of the feedback received as per paragraph 7.2 of the Trust's Appraisal Policy; the details of the time and place of the meeting; and will advise the employee of their right to be accompanied by a companion.
- 3.2 This meeting is intended to establish the facts. It will be conducted by the Capability Review Officer. 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.
- 3.3 The Capability Review Officer 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 formal capability procedure will come to an end. The Capability Review Officer 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.
- 3.4 In other cases, the meeting will continue. During the meeting, or any other meeting which could lead to a formal warning being issued or ultimately dismissal, the Capability Review Officer will;
- identify the professional shortcomings, for example which of the standards expected of employee 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 review and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case but could be between four and ten 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.
- 3.5 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.

### **4. Sickness absence and use of this procedure**

- 4.1 It is important that sickness absence should not delay or avoid the use of formal capability procedures. It is in the interests of all parties to address concerns about performance without undue delay.

4.2 Where sickness absence appears to have been triggered by the commencement of monitoring performance, the case will be dealt with in accordance with WAT's Sickness Absence Policy, including being referred to the occupational health service to assess the individual's health and fitness for continued employment and the appropriateness or otherwise of continuing under this procedure. In some cases, it may be appropriate for this formal procedure to continue during a period of sickness absence.

4.3 In the event that the employee is deemed not fit to attend a formal capability meeting s/he may present a written submission for consideration and/or be represented by a companion in his/her absence. The meeting may also be held in their absence.

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

5.1 A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during 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.

## **6. Formal Review Meeting**

6.1 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.

6.2 If the Capability Review Officer is satisfied that the employee has made sufficient improvement, the formal 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 employee will receive a final written warning.

6.3 Notes will be taken of formal meetings and a copy sent to the member of staff. The final written warning will mirror any previous warnings that have been issued.

6.4 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.

## **6.5 Right of Appeal against a formal/final written warning**

6.5.1 If an employee feels that a decision to issue a formal/final written warning, is wrong or unjust, s/he may appeal in writing against the decision

6.5.2 Appeals against a formal/final written warning shall be restricted to considering the reasonableness of the decision made by the Capability Review Officer, any relevant new evidence not previously available to the Capability Review Officer or any procedural irregularities. A statement giving the reasons for the appeal should be

submitted within 5 working days of the formal/final written warning having been received.

6.5.3 The appeal will be heard by the Appeal Panel. The hearing will be held as soon as practicably possible after receipt of the appeal at an agreed time and place.

6.5.4 The outcome of the appeal hearing will be confirmed in writing as soon as possible and usually within 5 working days of the hearing.

6.5.5 Pending the appeal the employee will be expected to continue to work in accordance with targets set for the next stage of the procedure and his/her progress towards the achievement of these targets may be monitored during this period.

## **7. Decision Meeting**

7.1 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.

7.2 The Determining Officer may be accompanied by a HR representative.

7.3 If an acceptable standard of performance has been achieved during the further monitoring and review period, the formal capability procedure will end and the appraisal process will re-start. If performance remains unsatisfactory, a decision, may be made that the employee should be dismissed and required to cease working at the academy.

7.4 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 whether the notice is to be served or there will be pay in lieu of notice, and their right of appeal.

## **7.5 Right of Appeal against Dismissal**

7.5.1 The employee has a right of appeal against a decision to dismiss.

7.5.2 Appeals against dismissal should be made in writing within 5 working days of the receipt of the written decision, setting out at the same time the grounds for the appeal.

7.5.3 The appeal hearing will be held as soon as practicably possible after receipt of the appeal at an agreed time and place.

7.5.4 The outcome of the appeal will be confirmed in writing as soon as possible and usually within 5 working days of the appeal hearing. There is no right of further appeal against such a decision of the Appeal Panel.

7.5.5 In the event that the Appeal Panel decides not to uphold the decision to dismiss, the notice of dismissal shall be immediately withdrawn and the employee reinstated without loss of pay.

## **8. Grievances**

- 8.1 Where an employee has a grievance against the way the Capability Review Officer or Determining Officer has conducted the procedure, this will normally be dealt with under the appeals process set out above. However, in very exceptional circumstances, where the behaviour of the Capability Review Officer is the cause of the grievance, it may be appropriate to suspend this procedure for a short period until the grievance has been considered.

## **9. Employment References to Prospective Employers**

- 9.1 Teaching Staff – under the School Staffing (England) (Amendment) Regulations 2012, WAT must pass on to a prospective employer information about whether a teacher is or has been subject to capability in the preceding two years. The information provided should include written details of the concerns which gave rise to this, the duration of the proceedings and their outcome.
- 9.2 Professional Services Staff – the reference should only disclose details of capability issues if the employee is undergoing capability procedures at the time of writing the reference. Where the employee has previously undergone capability procedures but the issue has been resolved at the time of writing the reference, this should not be disclosed in the reference unless there is an unspent warning on the employee's file which has been issued relating to capability.