



# Capability Policy and Procedure

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**NB.** 'Trustees' means the Directors referred to in the Trust's Articles of Association

## History of most recent policy changes

Version	Date	Page	Change	Origin of Change e.g. TU request, Change in legislation
V1.0	January 2021		New policy introduced for the Tarka Learning Partnership Central Trust Team and Schools within the Trust	Requirement for central policy to explain the approach to managing performance and incapability of staff in the Trust and Schools within the Trust.
V2.0	March 2022		Reviewed	
V3.0	February 2023		Review in line with the policy schedule. Amended in line with the Scheme of Delegation and change to Governance.	

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## 1. Aims

Every job carries standards of performance that employees are expected to achieve, but occasionally an employee's performance may fall short of the standards expected.

The Tarka Learning Partnership and schools within the Trust seeks to provide each employee with the direction, development and support necessary to assure a productive and rewarding career. This procedure ensures that the Tarka Learning Partnership has a fair and consistent framework for dealing with capability matters effectively, consistently and in a timely manner to ensure that no individual is discriminated against.

The aim of this policy is to effect sustained improvement in an employee's performance to enable them to meet their contractual obligations.

This policy sets out the procedure that must apply in cases of capability. Its emphasis is one of support and it is important that the right procedure is used according to the situation under review.

The Capability Procedure is designed to:

- Encourage staff to meet agreed standards of behaviour, conduct and job performance
- Deal fairly and consistently with staff who do not improve to meet those standards and identify ways to help them improve
- Be applied in a consistent, fair, prompt and supportive way.

For a variety of reasons, the performance of an employee may give rise to concern because the evidence suggests that they are unable to carry out the duties and responsibilities of their post to a professionally acceptable standard, through lack of capability, aptitude, skill or ability and not through any lack of willingness or effort on their part. Where the employee concerned fails to carry out their duties and responsibilities to a reasonable and acceptable standard for reasons of their capability, the procedure set out in this document should be used. One important factor will be the impact of the employee's performance on pupils' achievement, progress and wellbeing.

Examples of lack of capability include but are not limited to:

- Failing to meet reasonable deadlines for tasks, projects, reports, etc.
- Regularly producing work which is sub-standard, inaccurate, badly presented or poorly organised
- Failing to carry out key areas of job responsibilities, effectively and consistently
- Failing to meet the relevant professional standards, e.g. Teachers' Standards
- Failing to provide effective leadership and management, where applicable
- Poor practice with regard to child safeguarding

Another reason for concerns about performance may be genuine but unacceptable absence due to ill-health. This may affect the long-term ability for employees to continue to carry out the requirements of the role and may have a detrimental effect upon the school and the Tarka Learning Partnership. In such circumstances, the issues should be addressed in accordance with the Tarka Learning Partnership Absence Management Policy.

Managers are required to ensure that each employee is aware of this policy, understands the performance standards that are required of them and the consequences of not meeting these. Action should be taken consistently to identify concerns and reinforce performance standards before it becomes necessary to take formal action. Managers are required to manage the process effectively, fairly and reasonably.

For specific advice and guidance, Head Teachers and managers should refer to the HR Manager in their school or the HR Leader for the Tarka Learning Partnership.

## 2. Scope

This procedure applies to all teaching and support staff in Tarka Learning Partnership schools. The application of this policy will be fair, equitable, objective and will not discriminate either directly or indirectly on the grounds of an employee's gender, age, disability, gender re-assignment, marital or civil partnership status, pregnancy, maternity status, race (including, nationality and ethnic or national origins), religion or belief and sexual orientation.

Where the concerns relate to the Head Teacher, the Chief Executive Officer (CEO) of the Tarka Learning Partnership, will manage the procedure and, where concerns persist, determine what action to be taken. The Chief Executive Officer, as outlined in the Scheme of Delegation, will make the final decision on the outcome on the procedure relating to a Head Teacher. A Head Teacher who is subject to this procedure will have all the rights accorded to other employees at the various stages.

This procedure also applies to the Tarka Learning Partnership central team.

Where any capability procedure is being considered in respect of a recognised Trade Union or Professional Association representative, no action shall be taken unless, and until, the matter has been discussed with the Head Teacher and the HR Leader for the Tarka Learning Partnership. The Head Teacher or HR Leader will inform a full-time officer at that Trade Union or Professional Association.

All decisions to instigate a Capability process will be made in consultation with the HR Leader for the Trust.

An employee working within a school but employed on another organisation's terms and conditions of employment should be managed under their appropriate policy/procedure.

This policy does not apply to casual workers, agency personnel or volunteers.

## 3. Exclusions

Disciplinary procedures exist to deal with misconduct, willfully deficient performance, refusal to follow instructions, negligence and other similar situations, and should be used where such considerations form a significant part of any complaints.

The assessment and treatment of employees undergoing an induction or probationary period (including Early Career Framework Teachers), or similar, will be dealt with according to the terms of their probationary period, unless the employee's performance falls so far below professionally acceptable standards as to require immediate action.

Separate supportive action will also be taken when dealing with problems arising from substance or alcohol dependence. However this procedure may be applied where substance abuse has a significant effect on

the employee's performance.

#### 4. Purpose

While it is important to deal with capability issues fairly and effectively, it is just as important to look at ways of preventing problems escalating in the first place, for example through:

- Careful recruitment, selection and training
- Clear standards, expectations and effective communication
- Regular supervision and performance development reviews
- Identification and, where appropriate, support in resolving underlying problems

Many factors can contribute to poor performance, including those which are not directly related to the workplace. Assistance with resolving underlying issues could include reference to:

- Referral to Occupational Health (where appropriate)
- Employee's own GP or other health professional (where appropriate)

Good performance management is an all-year process, with regular supervision and feedback. Concerns about performance should be addressed promptly and not left until formal review meetings.

In many cases, the right word at the right time and in the right way may be all that is needed to address poor performance. Head Teachers and/or managers must, in the first instance, seek improvement through normal performance management. This should include two-way discussion, with the objective of encouraging and helping the employee to improve and for the improvement to be sustained. Although there is no right for the employee to be accompanied at this stage, it might be helpful for the employee's Trade Union representative to be involved at an early stage; the Tarka Learning Partnership encourages early Trade Union/Professional Association engagement. Additional training, coaching or advice may be agreed.

The purpose of the capability procedure is to:

- 1) Ensure all pupils and customers receive services of the highest standard
- 2) Positively and constructively support employees to improve their performance through advice, guidance and support, when it is identified that they are not performing to the required standard
- 3) Ensure that all employees are treated in a fair, consistent, understanding and timely manner and in accordance with all relevant legal requirements
- 4) Contribute towards the improvement of the performance and effectiveness of the school and the Tarka Learning Partnership
- 5) Support Head Teachers and managers in carrying out their responsibilities for the maintenance of high standards of work performance by all employees
- 6) Ensure the employee is aware of each stage of the procedure and the possible outcomes.

## 5. Application of the procedure

### Normal Performance Management Arrangements

Informal feedback on performance does not form part of this procedure as this should be given through “normal performance management arrangements” i.e. performance review meetings, one to one meetings, Performance Improvement Plans etc.

Feedback through normal performance management arrangements must include positive, proactive feedback on performance and constructive feedback when performance is not at that required standard. This must include:

- confirmation of the required standards
- the standard the employee is currently performing at
- an agreement of how the required standard will be achieved
- the consequences if standards are not achieved
- an agreed timeframe for improvement and review

Consideration must be given to the cause(s) of any underperformance. It may be due to one or more of the following:

- The knowledge and technical skills required for the post are changing but the employee has not acquired these new skills and knowledge
- Circumstances outside of work are affecting the employee’s work performance, some of which may be temporary as a result of family/personal issues or short-term health problems
- Circumstances within the work environment, for example redeployment or new or additional responsibility or perceived inadequate management support or unreasonable demands are affecting the employee’s work performance.

Every effort should be made to resolve performance issues on an informal basis.

Where concerns continue, discussions should include clear advice about the improvements needed, support available and how and when the employee’s performance will be reviewed. This should be confirmed in writing. Use of SMART principles may assist in objective setting i.e.

- **Specific** – they are well defined
- **Measurable** – both quantitatively and qualitatively
- **Achievable** – they are not set too high to make it impossible to achieve them
- **Resourced** – the resources necessary are readily available
- **Time Bound** – the timescales set are reasonable

## 6. Timescales

Capability issues should normally be resolved within ten to twelve weeks, however, it is acknowledged that there may be circumstances when the process will take longer to complete in particular if the procedure reaches a Formal Stage 3 hearing. Other reasons for the process taking longer could be due to annual leave, working patterns or ill-health where reasonable adjustments need to be made under the Equality Act 2010. Where this is anticipated, advice must be obtained from the Tarka Learning Partnership HR Leader.

The period of monitoring under a first or final written warning will not normally exceed six weeks (excluding school closure periods where appropriate), according to the needs to the individual and the school. Whilst every effort should be made to agree the appropriate length of this period of monitoring, where agreement cannot be reached, it will be set by the Head Teacher or relevant manager.

## 7. Progressing to the next stage of the procedure

Before action under the formal stages of this procedure is taken, the employee should be informed verbally that formal action is being considered as there has been no improvement within the agreed review period at the informal stage. This is also likely to be the case where there is only limited progress being made against the objectives set and agreed at the informal stage.

The employee will be invited to a meeting to discuss the evidence in more detail (informal stage review meeting). It should be made clear to the employee that they are entitled to be supported by a Trade Union/Professional Association Representative or work colleague at the formal meeting.

In many circumstances, significant evidence will have already been gathered as part of pupil progress monitoring, normal performance management and the additional support provided, which the school will simply collate and summarise as evidence.

The collated evidence will clearly indicate the support and advice offered to date and make a recommendation for one of the following:

- No further action
- Further support as part of normal performance management
- Formal action under this procedure

In all cases, the outcome will be confirmed in writing to the employee.

Where the decision is made to take formal action under this procedure because the employee has made insufficient improvement despite the support and monitoring, the employee will be invited to a formal meeting under Formal Stage 1 of the procedure.

All employees should progress through each stage of the procedure, and in accordance with agreed timescales.

Exceptions can apply in the following circumstances and consequently, Head Teachers and managers can decide to progress them to the next stage of the procedure earlier than agreed:

1. Deterioration in performance
2. Not meeting the majority of the targets in the agreed Performance Improvement Plan.

### 7.1 Formal Stage 1 – Meeting (written warning)

#### a) Purpose

The purpose of Formal Stage 1 is to support the employee in improving their performance to meet the required standard against an agreed Performance Improvement Plan.



**b) Procedure**

At least five working days' notice will be given of the formal capability meeting. The notification will contain sufficient information about the performance concerns 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 their Trade Union/Professional Association representative, or a work colleague.

This meeting is intended to establish the facts. It will be chaired and conducted by the Head Teacher (or other senior school leader as the employee's line manager) for other employees. It will be conducted by the Deputy Chief Executive Officer/Chief Executive Officer of the Trust in the case of the matter relating to a Head Teacher.

The meeting allows the employee to respond to concerns about their performance and to make any relevant representations. This may provide new information or a different context to the to the information/evidence already collected.

This is the start of the performance monitoring and review period. Formal monitoring, evaluation, guidance and support will continue during this period. The employee will be invited to a formal review meeting, unless they have been previously issued with a final written warning which is "live", in which case they will be invited to a Decision Meeting (see below).

**At the meeting the meeting Chair will:**

- 1) Confirm that the employee has the right to representation;
- 2) Confirm that the meeting is being held under the Tarka Learning Partnership's Capability Procedure and explain the process that will be followed and the possible outcomes;
- 3) Confirm the expected standards of performance and the standard at which the employee is currently performing, i.e. identify the professional shortcomings, e.g. for teachers, which of the standards expected of teachers or pupil progress targets are not being met;
- 4) Ensure the employee has the opportunity to respond to and explain any factors affecting their current performance and consider this when determining the appropriate course of action (it is not anticipated that any information that was not shared during normal performance management arrangements will be disclosed);
- 5) Confirm the risks to the Trust, school and pupils of the underperformance;
- 6) Confirm the options available to support the employee in improving their performance (i.e. support, development, training etc.);
- 7) Ensure the employee is aware of what support is available to them (CPD, occupational health, Trade Union support, etc.);
- 8) Confirm that Formal Stage 1 constitutes a "written warning" which if no further action is taken, will remain active for 6 months from the end of Formal Stage 1.

On occasion, the Head Teacher and/or manager may adjourn the meeting if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.

**At the meeting the meeting Chair and employee will discuss and agree:**

- 1) The employee's current and expected levels of performance;
- 2) The objectives for the development plan, how they will be achieved, the timescales for achieving them and when progress against each objective will be reviewed;

- 3) The reasons the employee is not meeting the expected standards (which may be as a consequence of personal issues);
- 4) When review meetings will be held;
- 5) 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);
- 6) Write, agree and sign the development plan;
- 7) Any agreed reasonable adjustments to be made under the Equality Act 2010.

**At the end of the meeting the Chair will:**

- 1) Summarise the meeting;
- 2) Ensure the employee understands what is expected of them, the process that will be followed and the possible next stages of the procedure, including the right of appeal against the warning (any appeal must be lodged, in writing, within five days of the date of the letter issuing the warning. The grounds of appeal must also be detailed at this stage);
- 3) Agree what support, development and reasonable adjustments (if appropriate) will be put in place.

**After the meeting the Chair will:**

- 1) Confirm that outcome of the meeting in writing, including that a written warning has been issued;
- 2) Ensure that the employee receives the support agreed in the development plan;
- 3) Ensure that the agreed review meetings and any further review meetings deemed necessary take place;
- 4) Continue to monitor the employee's progress against the development plan and progress the employee through the procedure as appropriate and in line with this procedure;
- 5) Ensure that any agreed support, development or reasonable adjustments are put in place in a timely manner.

**After the meeting the employee will:**

- 1) Make every effort to meet the objectives agreed in the development plan;
- 2) Attend the agreed review meetings and any further review meetings deemed necessary;
- 3) Give honest feedback on their current performance and progress against the development plan and pupil progress targets.

**c) Formal Review Meeting**

The letter confirming the outcome of the first formal meeting and a copy of the development plan will be sent to the employee and will invite the employee to a formal review meeting at the end of the agreed review period (*this can be brought forward if necessary*).

At the formal review meeting the Head Teacher/manager and employee will review the employee's progress against the development plan and the Head Teacher/manager will confirm one of the outcomes stated below.

### **Possible Outcomes of the Formal Review Meeting following the Formal Stage 1 process**

The Head Teacher or manager will confirm one of the following outcomes:

**1) The required standard of performance has been met**

The employee's performance will be managed under normal performance management arrangements and the written warning will remain active for 6 months from the date of the Formal Review Meeting.

**2) The required standard of performance has or significant progress has not been made towards meeting the required standards**

The employee will be progressed to Formal Stage 2 of the procedure and a "final written warning" will be given. Until the hearing takes place, the employee will continue to be supported to meet the requirements of the development plan.

The outcome of the formal review meeting will be confirmed to the employee in writing. If the employee has been progressed to Formal Stage 2 of the procedure, the letter will include an invitation to a hearing and confirmation that a final written warning will be issued.

### **7.2 Formal Stage 2 – Meeting (Final Written Warning)**

The meeting will follow the format as described at the Formal Stage 1 of the process and the same Chair will hold the meeting.

A Formal Stage 2 meeting will be arranged where;

- An employee has recently had a Formal Review meeting but there has been insufficient, or no progress made, against the targets set to improve performance; or
- An employee has a "live" written warning which has previously been issued, but improvements in an employee's performance which had initially been made have not been maintained or there has been a subsequent relapse in standards and performance.

A Final Written Warning will be issued which if no further action is required, will remain active for 12 months from the end of Formal Stage 2. However the letter will warn the employee that failure to achieve an acceptable standard of performance (within the set timescale) may result in dismissal.

The letter will also give information about the handling of the further monitoring and review period and the procedure and time limits for appealing against the final warning.

**d) Second formal Review Meeting**

The letter confirming the outcome of the second formal meeting and a copy of the development plan will be sent to the employee and will invite the employee to a second formal review meeting at the end of the agreed review period (*this can be brought forward if necessary*).

At the second formal review meeting the Head Teacher/manager and employee will review the employee's progress against the development plan and the Head Teacher/manager will confirm one of the outcomes stated below.

**Possible Outcomes of the Second Formal Review Meeting following the Formal Stage 2 process**  
The Head Teacher or manager will confirm one of the following outcomes:

**1) The required standard of performance has been met**

The employee's performance will be managed under normal performance management arrangements and the final written warning will remain active for 12 months from the date of the Second Formal Review Meeting.

**2) The required standard of performance has or significant progress has not been made towards meeting the required standards**

The employee will be progressed to Formal Stage 3 of the procedure and a decision will be made about the continuation of the individual's employment. Until the hearing takes place, the employee will continue to be supported to meet the requirements of the development plan.

The outcome of the formal review meeting will be confirmed to the employee in writing. If the employee has been progressed to Formal Stage 3 (Decision Meeting) of the procedure, the letter will include an invitation to a hearing and confirmation that dismissal may be a possible outcome.

### 7.3 Formal Stage 3 – Decision Meeting

As with the 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.

**e) Purpose**

The purpose of Formal Stage 3 is to determine:

- If the Tarka Learning Partnership/school has exhausted all options in supporting the employee to improve their performance; or
- If the employee should be given a further chance to improve in line with the possible outcomes of Formal Stage 2.

A Formal Stage 3 meeting may also be arranged where an employee has a "live" final written warning which has previously been issued, but improvements in an employee's performance which had initially been made have not been maintained or there has been a subsequent relapse in standards and performance.

**f) Procedure**

The procedure for the hearing will follow the formal of the Formal Stage 2 meeting of this procedure but be Chaired by a person with delegated responsibility for dismissal and two other key personnel to make up a panel.

The outcome of the hearing will be one of the following:

**1) The required standard of performance has been met**

The employee is performing to the required standard and will be managed under normal performance management arrangements.

**2) The required standard of performance has not been met but it has been determined that the required standard can be met within a short period**

A further review period will be implemented (it is recommended this is no more than two working weeks from receipt of the development plan).

In these circumstances:

- i) The additional support to be given to the employee and duration of the extended review period will be explained to the employee verbally agreed at the meeting and a development plan detailing this will be forwarded to the employee with the letter confirming the outcome of the meeting.
- ii) A review meeting will take place at the end of the extended review period and a decision made as to whether the required standards have then been met.

In either case if the required standard is met, and the employee is performing to the required standard, they will be managed under normal performance management arrangements.

If this improvement is not realised the employee will be subject to the procedure from point 3 below.

**3) The required standard of performance has not been met and the panel has determined:**

The required standard has not and cannot be met.

At this stage the employee should be informed that they will be dismissed and required to cease working at the school. The employee will be dismissed with notice (unless their performance has been so negligent so as to amount to gross misconduct, in which case they could be dismissed without notice).

It may be agreed that the employee will not return to work at the school in a capacity which directly affects the education of pupils or running of the Tarka Learning Partnership or school, or they may be granted paid leave for the duration of their notice period.

The outcome of the hearing will be confirmed to the employee in writing within five days, and will include information about the employee's right to appeal.

## **8. Non attendance**

If an employee fails to attend a meeting or hearing through circumstances beyond their control, such as certified illness, an alternative time and date may be offered. Alternatively they may submit a written statement or nominate a representative to attend on their behalf.

Where an employee is persistently unable or unwilling to attend the meeting/hearing without good cause, it will proceed in their absence and a decision based on the evidence available will be made.

## **9. Returning to earlier warnings**

If there is evidence within six months of the procedure ceasing (for a first written warning or within twelve months for a final written warning) that the employee has not sustained the level of performance required, the procedure may be resumed at any stage up to and including that stage previously reached (as previously detailed).

## 10. Exceptional circumstances

In exceptional cases where the level of performance could have serious consequences, successive warnings may not be appropriate. For example;

- Where the employee's performance falls so far short of an acceptable standard, that improvement to an acceptable level may reasonably be deemed impossible; or
- Where a lack of competence has a serious detrimental effect on the education of pupils; or
- Where the employee's lack of competence could have other serious consequences e.g. safety considerations.

In such circumstances, the Tarka Learning Partnership and school may proceed directly to consideration of a final written warning or dismissal, as appropriate. Schools should seek advice from the Tarka Learning Partnership HR Leader before taking such a decision.

## 11. Appeals

Employees have the right to appeal against the written warning, final written warning and dismissal.

If an employee wishes to appeal against the decision, they must do so in writing, stating the grounds for their appeal, within five days of receiving the written outcome. This time limit will be strictly observed.

An employee may appeal on the following grounds:

1. the sanction given was too harsh given the circumstances
2. the procedure was not fairly or correctly applied
3. new information has come to light that would directly affect the decision made at the hearing.

The appeal should be sent to the Tarka Learning Partnership Chief Executive Officer, will then arrange for an Appeal Hearing to take place.

An Appeal Committee will be convened and will hear the appeal. This will be a member(s) of the Trust central team, Trustee(s) or a combination of both, the Chief Executive Officer (or his designated representative), or if the decision to dismiss was made by the CEO, then the appeal will be heard by a panel of Trustees. A minimum of five days' notice will be given to allow for preparation. No member of the Disciplinary Hearing panel shall be a member of the Appeal panel.

Evidence presented at the Appeal Hearing must relate to any of the three reasons given above and must enable the assessment of whether or not the actions taken against the employee were proportionate and justified. The appeal is not a re-hearing of the previous panel. It is a review of the process and/or policy that underpinned the previous decision or new evidence that could not be submitted during the initial hearing as it was not available at the time.

The outcome of an appeal hearing may be to:

- adjourn and refer the matter back to the Head Teacher if significant new information/evidence is provided, which was not available previously, and may change the original decision
- conclude a procedural irregularity occurred and determine whether this had an impact on the decision-making process and outcome. If so, determine an appropriate sanction and make a recommendation to rectify the situation
- uphold the appeal and determine an alternative sanction/appropriate course of action
- reject the appeal and confirm that the original decision stands.

The decision will be given verbally to all parties at the end of the appeal hearing unless valid reasons exist not to do so. The decision will be confirmed in writing to the employee within five days. The process ends with the decision of the Appeal Committee.

## 12. Confidentiality

The Capability procedure will be treated in strict confidence. However the desire for confidentiality does not override the need for the Head Teacher and Tarka Learning Partnership to quality assure the performance of individuals and the impact this has on the pupils.

Breaches of confidentiality will be taken seriously, especially if they hinder the application of the policy. Failure to maintain confidentiality may result in action being taken under the Disciplinary Policy.

## 13. Grievances

Where a member of staff raises a grievance during their involvement in the Capability procedure, the Capability procedure may be temporarily suspended in order to deal with the grievance. Where the grievance and capability cases are unrelated it may be possible to deal with both issues concurrently.

## 14. 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 Tarka Learning Partnership's Absence Management policy and the staff member will be referred to Occupational Health for their assessment about fitness to participate in the process.

## 15. Record keeping

A written record must be made of informal and formal meetings held during the application of this policy. Those involved in each meeting will be provided with a copy of any records made. Recording devices are not permitted in any of the informal or formal meetings.

The School Business Manager, Senior Administrator or HR will take the notes at the formal meetings.

All documents and records relating to the individual and this procedure will be kept confidentially and retained in accordance with the General Data Protection Regulations 2018.

## 16. Employment references

Where a member of staff leaves employment within two years of being managed under this policy, or where they are dismissed as a result of a this policy, managers providing references to prospective employers must communicate the duration in which the teacher was managed under formal capability and the outcome.



Appendix 1 – Flowchart of the Capability Procedure

