



MacIntyre Academies

Capability Policy

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4	<ul style="list-style-type: none">- Employees on a live formal capability process during the appraisal period will not be eligible for any performance related pay increment.- Updated to include the management of both performance and health related capability issues. Flow chart added- Updated to refer to Academy ECT Policy under scope- Job title Change from CEO to Group Director and Head of Support Services to Head of Operations	Group Director	March 23

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Capability Policy

1. Purpose

This policy sets out the formal capability procedure that will apply when employees fall below the standards of competence that are expected of them; to ensure fairness and consistency in the management of employee under-performance. It also ensures a mechanism is in place to help employees achieve and maintain a high standard of performance. The processes and procedures outlined within the Policy have been developed in accordance with relevant employment legislation and best practice.

2. Scope

This policy applies to all employees of MacIntyre Academies Trust ('MAT' or 'MacIntyre Academies') in either a permanent, fixed term or temporary post with the following exceptions:

- Support Staff within their probationary periods where concerns should be dealt with as part of the probation procedure
- Agency workers, contractors or volunteers

The capability procedure outlined in this policy is used to manage performance that falls below the required standards because of a lack of aptitude, skill and/or ability that the performance management process has been unable to address.

Where an employee's health is affecting their performance, this may be dealt with under the MAT Sickness Absence Policy and Procedure.

Where there are concerns about performance as a result of an employee's negligence, attitudinal problems or wilful failure to carry out duties and responsibilities, the matter will be dealt with in accordance with the MAT Disciplinary Policy and Procedure.

If after further investigation, it is determined that the issue is one of incapability due to ill health or disability, or misconduct, action under the Capability Procedure may stop and further action may be undertaken under another appropriate procedure.

In the case of an Early Career Teacher (ECT) this policy will be used in parallel with the Academy ECT policy.

This policy doesn't form part of any contract of employment and may be amended from time to time.

3. Schedule of Responsibilities

The Group Director of MacIntyre Academies Trust takes overall responsibility for the implementation of policies and procedures and to provide reports as appropriate to Trustees in relation to this policy.

Principals of MacIntyre Academies and their Senior Leadership Teams will take active steps to promote good practice under this policy and review and monitor the management and implementation of this

policy and practice in their Academy. They will identify training needs, ensuring competence in those employees who are responsible for and involved in the operation of this policy and associated guidance.

Teachers and other supervisory roles will, where required, conduct capability meetings, undertake relevant training in relation to this policy and ensure effective and competent operation of this policy.

All employees are required to cooperate fully and positively with the requirements of the Capability Policy and to undertake any training recommended by their line manager.

MacIntyre Academies Human Resources are responsible for providing advice and training under this policy and reviewing and updating the policy as required; ensuring continuing relevance and effectiveness in line with any developments in employment legislation, good employment practice and other MacIntyre Academies policies. The HR Manager is responsible for collating data for regular Trust Board HR reports and where appropriate, providing confidential reports as required by the Group Director and MacIntyre Academies Trust Board on individual cases.

4. Introduction

MacIntyre Academies Trust recognises that its employees are the Academy's most important assets and that the aims and visions of MAT and individual Academies will only be achieved through high standards of performance from all employees. To achieve this, MAT aims to ensure that performance expectations and standards are defined and communicated, performance is monitored and that employees are given appropriate feedback, training and support to meet the required standards.

MacIntyre Academies recognises that during their employment an employee's capability to carry out their duties may deteriorate. This can be for a number of reasons, the most common ones being that either the job changes over a period of time and the employee fails to keep pace with the changes, or the employee has health issues which results in him/her no longer being able to cope with the work.

Performance should be discussed regularly as part of the employee's supervision and underperformance identified and tackled early to avoid use of formal capability procedures. MacIntyre Academies will therefore try to resolve issues of underperformance informally through meetings between the employee and their line manager, however, where this does not resolve issues, or the performance concerns are more serious, formal action will be considered.

5. Policy Principles

The essential principles of this policy are:

- The employee will be advised of areas of under-performance and given the opportunity to state their case and present relevant information before any decisions are made.
- The employee will normally be given at least 5 working days' notice of all formal meetings under this procedure.
- The employee will have the right to be accompanied by a colleague or Trade Union representative at all stages during the formal Capability Procedure.
- Information relating to formal proceedings will be kept as confidential as appropriate.
- The capability procedure will be applied fairly and consistently in accordance with the MAT Equal Opportunities Policy.

6. Types of Capability

6.1 Performance relating to job changes/general capability issues

If the nature of the job changes or if MacIntyre Academies has general concerns about an employee's ability to perform their job. MacIntyre Academies will try to ensure that the employee understands the level of performance expected and that the employee receives adequate training and supervision. Concerns regarding capability will normally first be discussed in an informal manner and the employee will be given time to improve as outlined in section 7 of this Policy.

6.2 Personal circumstances/health issues

Personal circumstances may arise which do not prevent an employee from attending for work, but which prevent him/her from carrying out their normal duties (e.g. a lack of dexterity or general ill health). If such a situation arises, MacIntyre Academies will normally need to have details of the employee's medical diagnosis and prognosis to understand the expert medical advice. In such situations MacIntyre Academies will seek permission to obtain a medical report from an Occupational Health provider. The employee's consent, in line with requirements under the Access to Medical Reports Act 1988, will be obtained prior to the Occupational Health provider obtaining a medical report, which the employee is entitled to see a copy of the documentation provided. In line with data protection legislation, the employee will also be given details on the reason for the examination, what MacIntyre Academy intends to do with the data obtained and the lawful basis for processing the data.

Should medical information be obtained MacIntyre Academies will meet with the employee to discuss it. There may be changes required to the employee's work in terms of reasonable adjustments in which case this will be discussed and agreed with the employee where business requirements allow. Any outcomes will subsequently be provided to the employee in writing.

MacIntyre Academies has a duty to make reasonable adjustments where an employee has a disability covered by the Equality Act 2010. If the absence is because of a disability or the illness leaves the employee in a mental or physical condition which falls within the definition of a disability, MacIntyre Academies will do whatever it can to make reasonable adjustments to their job to enable them to carry on working. If effective adjustments cannot be made, dismissal may have to take place.

The duty to make reasonable adjustments covers elements, such as making changes and adjustments to working hours, adjusting existing equipment, provision of different equipment and amending workplace practices, if the employee is placed at a substantial disadvantage. It may also involve physical changes, such as to the building entrance points, or alterations to the floor plan, furniture etc.

The duty to make the adjustments is 'reasonable' so if the suggested adjustment is not viable it will not be made. It may also be the case that no reasonable adjustments are possible to facilitate a return. There may be no alternative roles or employment available and if there is no prospect of the employee being able to return to work in the near future, it may be inevitable that a decision to dismiss is the last and only option.

If dismissal is a likely outcome, the Formal Absence Dismissal Hearing – Ill Health Capability Stage 3 of the Managing Long Term Absence section of the Sickness Absence policy will be followed.

The employee will be consulted fully on these.

7. Capability Procedure

7.1 Informal Procedure

Concerns regarding an employee's performance will usually be raised by their line manager on an informal basis in the first instance. In such circumstances the line manager should explain where the performance falls below the required standards, identify where possible the cause of the problem, and discuss with the employee appropriate means of support for improving performance.

Where inadequate performance continues, the employee should be invited to a meeting to discuss their performance with their line manager or a suitable alternative person. Informal support (such as coaching, appropriate development activities, additional supervision) will be provided for a clearly defined and reasonable period of time which allows the employee the opportunity to achieve the required standards. The manager should explain the consequences of continued under-performance to the employee and confirm the main points of the discussion in writing.

Where under-performance is of serious concern, such as where the education of children is ineffective or there are concerns around health and safety linked to the under-performance, the formal procedure may be commenced immediately without the informal stage being undertaken.

7.2 Formal Procedure

If an employee's performance continues to be unsatisfactory or where unsatisfactory performance is sufficient to move straight to formal action the employee should be invited to a formal meeting to discuss the concerns.

7.2.1 Stage 1 - Capability Meeting

At least five working days' notice will be given of the formal capability meeting. The notification will contain:

- The time and place of the meeting
- Outline the concerns regarding their performance
- The possible consequences of the meeting
- Copies of any written evidence that might be relied on
- An explanation of the right to be accompanied by a companion who may be a colleague or a trade union representative.

For all capability meetings a note taker will be present to take minutes of the proceedings and a HR representative may also be present as appropriate.

This meeting is intended to establish the facts. For support staff, the meeting will usually be held by their line manager or a member of the Senior Leadership Team. For Teachers, this will usually be conducted by the Principal and for the Principal this will usually be conducted by the Group Director of MacIntyre Academies. There may be occasions, such as due to ill health, where the meeting is held by a suitable alternative person. Where this is the case the employee will be informed of the reasons behind this.

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.

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 if they decide that further investigation is needed, or that more time is needed in which to consider any additional information. 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 and the standards that 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 is likely to include the setting of new objectives focused on the specific weaknesses that need to be addressed. The employee will also be provided with the success criteria that will 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 will usually be between four and eight weeks; and
- Issue a written warning that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning.

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.

Employees on a live formal capability process during the appraisal period will not be eligible for any performance related pay increment.

7.2.2 Stage 2 – Formal Review 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 decision meeting.

As with formal capability meetings, at least five working days' notice will be given and the notification letter will include:

- The time and place of the meeting
- Confirmation of the performance concerns that are to be reviewed
- The possible consequences of the meeting
- Copies of any written evidence that might be relied on
- An explanation of the right to be accompanied by a companion who may be a colleague or a trade union representative.

At the review meeting the manager and employee will discuss the monitoring and review period and any support provided. The manager will assess whether the employee's performance is now of an acceptable standard. The employee will have the opportunity to comment on their performance during this period.

Following discussion at the meeting, the manager may reach one of the following decisions:

- The employee has made sufficient improvement and no further action is required under the procedure. The capability procedure will cease and the employee will be advised that satisfactory performance must be maintained. If performance becomes unsatisfactory within 12 months of the review meeting then any further action taken under the Capability Procedure may take into account action taken previously.
- Some progress has been made and there is confidence that more is likely, so a decision is taken to extend the monitoring and review period. Consideration will be given to further support that can be provided. A further period for monitoring and review will be given, of usually no more than 4-6 weeks. At the end of this period a further review meeting will be held;
- That there has been no, or insufficient improvement has been made during the monitoring and review period, the employee will receive a final written warning.

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.

Employees on a live formal capability process during the appraisal period will not be eligible for any performance related pay increment.

7.2.3 Second Formal Review Meeting

As with formal capability meetings and formal review meetings, at least five working days' notice will be given and the notification letter will include:

- The time and place of the meeting
- Confirmation of the performance concerns that are to be reviewed
- The possible consequences of the meeting
- Copies of any written evidence that might be relied on
- An explanation of the right to be accompanied by a companion who may be a colleague or a trade union representative.

At the review meeting the manager and employee will discuss the monitoring and review period and any support provided. The manager will assess whether the employee's performance is now of an acceptable standard. The employee will have the opportunity to comment on their performance during this period.

Following discussion at the meeting, the manager may reach one of the following decisions:

- 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. The capability procedure will cease and the employee will be

advised that satisfactory performance must be maintained. If performance becomes unsatisfactory within 12 months of the review meeting then any further action taken under the Capability Procedure may take into account action taken previously.

- There has been no, or insufficient improvement made and performance remains unsatisfactory. The manager will arrange a capability hearing under stage 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.

Employees on a live formal capability process during the appraisal period will not be eligible for any performance related pay increment.

7.2.4 Stage 3 – Capability Hearing

A capability hearing will be arranged where the employee did not reach a satisfactory standard of performance during the specified monitoring and review period(s).

The hearing will usually be conducted by a panel consisting of a member of the SLT and a representative from MAT, usually the Group Director of MacIntyre Academies.

The employee will normally be given 10 working days' notice in writing of a capability hearing. The chair of the hearing will write to the employee to confirm:

- The deficiencies in the employee's performance and the reasons for contemplating dismissal
- The date, time and location of the hearing
- The name of the person (or panel) chairing the hearing
- The right to be accompanied by a work colleague or trade union representative
- The requirement to provide the chair hearing the case with any documents which they will be relying on and the names of any witnesses they will be calling at the hearing at least 5 working days before the hearing
- Advise the employee that the hearing could result in his/her employment being terminated.

Copies of any documents that the chair will refer to at the hearing and names of any witnesses that they will call will be included within the notification.

The purpose of the meeting will be for the panel to consider whether the employee's performance falls below the standard that is required, to satisfy themselves whether appropriate support mechanisms have been offered to the employee, and to ensure that all reasonable alternatives to dismissal, such as redeployment have been exhausted.

Where the panel is satisfied regarding the above, the hearing will be adjourned while the chair/panel hearing the case reaches a decision and one of the following decisions may be taken:

- to dismiss the employee on grounds of capability
- an alternative action in light of evidence presented at the hearing

The employee will be notified in writing of the outcome normally within 5 working days and their right of appeal.

Employees on a live formal capability process during the appraisal period will not be eligible for any performance related pay increment.

7.3 Dismissal

The power to dismiss employees in the school rests with the MacIntyre Academies Trust Board although in practice this will be delegated to the Group Director of the Trust Board who will work closely with the Principal or the Local Advisory body when concerning the Principal.

7.4 Appeal

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 HR Manager for the MAT against the decision within five days of receiving the outcome, setting out at the same time the grounds for appeal. The HR Manager will arrange for the appeal to be heard by an appropriate person with no previous involvement with the case.

The employee should set out the full grounds of appeal giving full details of why he/she believes the matter should be appealed. For example, the appeal could set out the reasons why the employee feels the capability process has been applied defectively or unfairly, or why an unreasonable/inappropriate outcome has been reached. It could also clarify that new information has come to light that was not considered at the original meeting, and that it would be likely to have led to a different outcome if considered.

The appeal will be acknowledged and the employee will be invited in writing to attend an appeal meeting; normally within 10 working days of the grounds for appeal being received and they should be reminded of their right to be accompanied by a colleague or trade union representative. A member of HR and/or a note taker may also be present at the meeting.

7.4.1 Appeal Meeting

At the Appeal meeting the employee will be given the opportunity to state the ground(s) on which the appeal is made. The person conducting the appeal will consider the merits of the appeal, in private, before reaching a decision.

The leader of the appeal meeting will, wherever possible, verbally inform the employee of the decision reached and confirm this in writing, normally within 5 working days of the meeting.

7.4.2 Appeal Outcome

Notification of the decision will confirm that:

- The appeal is upheld and note the actions to address this; the capability outcome may be reduced or removed in accordance with the outcomes specified within this policy;
- That the appeal is rejected and states the reasons why.

The employee will be advised that this is the final stage of the capability process and the decision made at the appeal meeting is final.

Where an appeal against dismissal fails, the effective date of termination shall be the date on which the employee was originally dismissed.

8. Extension of Time Limits

Capability Matters should normally be conducted within the timescales laid down in this procedure. There may be occasions where, for operational or other reasons, either party is unable to meet the process timescale or an extension of time limits will be accepted in such circumstances. Employees will be informed and given an explanation where this is the case.

9. Rearrangement of Meetings

A postponement may be granted if the employee or their representative is unable to attend on the proposed date. A postponement should not be for more than 5 working days after the original date proposed, however, an extension to this time limit can be made by mutual agreement. Where a meeting is rearranged and an employee is unable to attend a second time, the hearing will normally convene as arranged, and a decision taken in the employee's absence.

10. 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 MAT Sickness Absence Policy and will be referred immediately to the occupational health service to assess the employee's 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.

11. 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.

