



# Bishop Chadwick

## Catholic Education Trust

### Capability Policy and Procedure

September 2022

Policy Dated / Reviewed:	July 2022
Adopted / Reviewed by Directors:	11 July 2022
Date of Next Review:	September 2024

**BISHOP CHADWICK CATHOLIC EDUCATION TRUST**

**CAPABILITY POLICY AND PROCEDURE**

**Commitment to equality:**

We are committed to providing a positive working environment which is free from prejudice and unlawful discrimination and any form of harassment, bullying or victimisation. We have developed a number of key policies to ensure that the principles of Catholic Social Teaching in relation to human dignity and dignity in work become embedded into every aspect of school life and these policies are reviewed regularly in this regard.

This Capability Policy and Procedure has been approved and adopted by Bishop Chadwick Catholic Education Trust following consultation with employees and local Trade Union representatives on 11 July 2022 and will be reviewed in 2024.

Signed by Director of the Academy Trust Company:



Signed by CEO:



## DEFINITIONS

In this Capability Policy and Procedure, unless the context otherwise requires, the following expressions shall have the following meanings:

- i. 'Academy' means the academy named at the beginning of this Capability Policy and Procedure and includes all sites upon which the Academy undertaking is, from time to time, being carried out.
- ii. 'Academy Trust Company' means the company responsible for the management of the Academy and, for all purposes, means the employer of staff at the Academy.
- iii. 'Board' means the board of Directors of the Academy Trust Company.
- iv. 'Capability due to ill-health' means any health condition or any other physical or mental quality which results in unsatisfactory performance. In these cases, the Sickness Absence Policy and Procedure will apply.
- v. 'Capability due to lack of competence' means a lack of skill or aptitude leading to unsatisfactory performance. In these cases, this Capability Policy and Procedure will apply
- vi. 'Chair' means the Chair of the Board as appointed from time to time.
- vii. 'Clerk' means the Clerk to the Board as appointed from time to time.
- viii. 'Companion' means a willing work colleague not involved in the substance of the employee's performance issues under review by this Capability Policy and Procedure, a trade union official, or an accredited representative of a trade union or other professional association of which the employee is a member who should be available for the periods of time necessary to meet the timescales under this Capability Policy and Procedure.
- ix. 'Diocesan Schools Commission' means the education service provided by the diocese in which the Academy is situated, which may also be known, or referred to, as the Diocesan Education Service.
- x. 'Directors' means directors appointed to the Board from time to time.

- xi. 'Governing Board' means the body carrying out the employment functions of the Academy Trust Company in relation to the Academy and such term may include the Board and/or the Local Governing Body of the Academy.
- xii. 'Governors' means (if appropriate to the context), the governors appointed and elected to the Local Governing Body, from time to time.
- xiii. 'Headteacher' means the most senior teacher in the Academy who is responsible for its management and administration. Such teacher may also be referred to as the Head of School or Principal.
- xiv. 'Local Governing Body' means (if appropriate to the context), the Governors appointed to carry out specified functions in relation to the Academy as delegated by the Academy Trust Company. The 'Governing Board' in the Trust is referred to as 'Local Governing Committee (LGC).'
- xv. Misconduct means any action or inaction which contravenes the provisions of the employee's contract of employment, the rules laid down by the Academy Trust Company and/or any Professional Code of Conduct and Practice. In such cases the Disciplinary Policy and Procedure will apply and the Capability Policy and Procedure may also apply.
- xvi. 'Vice-Chair' means the Vice-Chair of the Board as elected from time to time.
- xvii. 'Working Day' means any day on which you would ordinarily work if you were a full-time employee. In other words, 'Working Day' will apply differently to teaching and non-teaching staff. However, part-time and full-time staff will not be treated differently for the purposes of implementing this Capability Policy and Procedure.
- xviii. 'Working Week' means any week that you would ordinarily work.

## 1. SCOPE

- 1.1 This Capability Policy and Procedure applies to you if you are an employee or worker at the Academy (hereinafter referred to as an “employee” or “you”). This policy and procedure also applies to those employed within the Central Team.
- 1.2 The purpose of this Capability Policy and Procedure is to establish a structure to support employees in improving their performance to the standards expected and to take appropriate action to address identified performance weaknesses, where there has not been sufficient improvement, following support being provided under the Appraisal Policy and Procedure.
- 1.3 This Capability Policy and Procedure shall be invoked when there is an identified need to address, with a view to remedying, capability due to lack of competence.
- 1.4 This Capability Policy and Procedure can be invoked by the Board or its delegate at any stage deemed appropriate although the expectation is that it will only be invoked after the procedure set out in the Appraisal Policy and Procedure has been fully exhausted.
- 1.5 An employee is entitled to have access, by arrangement, to their personnel file and to request the deletion of time-expired records in line with the provisions of the General Data Protection Regulation (GDPR) and the Data Protection Act 2018.
- 1.6 The Academy Trust Company delegates its authority in the manner set out in this policy.
- 1.7 There may be some occasions where an employee’s lack of capability could also be described as Misconduct. This Capability Policy and Procedure and the Academy Trust Company’s Disciplinary Policy and Procedure may be used concurrently whilst the Academy Trust Company endeavours to ascertain if the employee’s lack of capability is due to Misconduct or lack of competence.
- 1.8 There may be occasions where an employee’s lack of capability could relate to their health. This Capability Policy and Procedure may be used concurrently with the Academy Trust Company’s Sickness Absence Policy and Procedure. In particular, if an employee is absent from work on sick leave following this Capability Policy and Procedure being invoked, the Academy Trust Company may use its Sickness Absence Policy and Procedure. However, the process of managing unsatisfactory performance due to capability will not necessarily cease where the employee is absent on the grounds of sickness.
- 1.9 The Academy Trust Company is committed to ensuring respect, objectivity, belief in the dignity of the individual, consistency of treatment and fairness in the operation of this Capability Policy and Procedure. This commitment extends to promoting equality of opportunity and eliminating unlawful discrimination throughout the Academy community [which includes all of the academies in the Academy Trust Company’s group].
- 1.10 This Capability Policy and Procedure offers opportunities to ensure justice for teachers, support staff and pupils alike and has the potential for the expression of Christian qualities such as

honesty, self-knowledge, respect for others and their gifts, recognition of the needs and achievements of others, challenge of self and others, personal growth and openness.

- 1.11 This Capability Policy and Procedure can be invoked at any time during any Appraisal Period as defined in the Academy Trust Company's Appraisal Policy and Procedure. The expectation is that it will only be invoked after the procedure set out in the relevant Appraisal Policy and Procedure has been fully exhausted.
- 1.12 The Capability Policy and Procedure does not form part of any other procedure but relevant information on capability, including the reports referred to in this Capability Policy and Procedure, may be taken into account in relation to the operation of other applicable policies and procedures.
- 1.13 The management of unsatisfactory performance and related investigations will be treated in confidence as far as possible by all parties involved at all stages of this Capability Policy and Procedure.
- 1.14 The Academy Trust Company will maintain records of all interviews and reviews which take place under this Capability Policy and Procedure for a period of up to 12 months or longer where necessary and where there is an applicable lawful basis under the GDPR for extending the retention period. All data and evidence collected is to be shared between all the relevant parties, including the employee, and where there is an applicable lawful basis under the provisions of the GDPR.

## **2. CAPABILITY POLICY AND PROCEDURE – EMPLOYEES EXPERIENCING DIFFICULTIES**

- 2.1 This Capability Policy and Procedure should, except in exceptional circumstances, only be invoked where the measures set out in Paragraph 9 and Paragraph 10 (if an appeal is lodged) of the Academy Trust Company's Appraisal Policy and Procedure for Teachers and/or Paragraph 9 and Paragraph 10 (if an appeal is lodged) of the Academy Trust Company's Appraisal Policy and Procedure for Support Staff (as appropriate) have been exhausted; and
  - a) the employee has made no improvement, or no sufficient improvement as required under the relevant Appraisal Policy and Procedure; and/or
  - b) the employee is failing to improve despite feedback and support in relation to unsatisfactory performance; and
  - c) a recommendation has been made under the relevant Appraisal Policy and Procedure that this Capability Policy and Procedure be invoked.
- 2.2 If a the CEO/Headteacher is subject to this Capability Policy and Procedure they will normally continue to be responsible for the appraisal of staff at the Trust/Academy unless the Board determines that this is inappropriate.

### 3. CAPABILITY MANAGER, FINAL CAPABILITY MANAGER AND APPEAL MANAGER

The table below sets out the persons to be appointed throughout the stages of this Capability Procedure depending on the person who is the subject of the capability proceedings:

<b>Employee Level</b>	<b>First/Second Capability Meeting – the Capability Manager</b>	<b>Appeal Manager (re Written Warnings)</b>	<b>Final Capability Meeting – the Final Capability Manager</b>	<b>Appeal Manager (re Dismissal)</b>
CEO	Chair of the Board with 2 Directors	Directors' Appeal Panel	Directors' Capability Panel	Directors' Appeal Panel
Headteacher	CEO, or a sufficiently senior member of staff appointed by the CEO and 2 Directors/Governors	LGC Appeal Panel or Directors' Appeal Panel	Directors' Capability Panel	Directors' Appeal Panel
All other school staff	Headteacher or a sufficiently senior member of staff appointed by the Headteacher	Headteacher or LGC Appeal Panel	Directors' Capability Panel	Directors' Appeal Panel
All other Central Trust Staff	CEO or a sufficiently senior member of staff appointed by the CEO	CEO or Directors' Appeal Panel	Directors' Capability Panel	Directors' Appeal Panel

Please note, a sufficiently senior member of staff from an Academy within the Trust may be given the delegated responsibility to support in capability process where appropriate.

#### **4. FIRST CAPABILITY MEETING**

- 4.1 Where the Academy Trust Company has fully exhausted the Appraisal Policy and Procedure in accordance with Paragraph 2 above, including the appeals process under that Policy (if an appeal is lodged), the Academy Trust Company will appoint a Capability Manager in accordance with Paragraph 3 above. The Capability Manager will write to the employee inviting them to a First Capability Meeting. The employee will be given at least 5 Working Days' notice of such meeting. At the same time as sending the letter inviting the employee to the First Capability Meeting, the Capability Manager will also send a Performance Report which shall set out:
- a) what aspects of performance are causing concern;
  - b) what specific and achievable performance standards are expected; and
  - c) the support that has been provided so far.
- 4.2 The Capability Manager's letter shall state that any documentation that the employee wishes to rely on during the First Capability Meeting must be submitted at least 2 Working Days prior to the First Capability Meeting.
- 4.3 At the First Capability Meeting the employee will have an opportunity to comment upon, offer an explanation and/or refute the contents of the Performance Report and to discuss the professional shortcomings identified, support and guidance required and how performance will be monitored and supported going forward.
- 4.4 At the end of the First Capability Meeting, having considered the employees comments, if the Capability Manager concludes that performance is satisfactory the employee will no longer be subject to this Capability Policy and Procedure and shall be notified in writing of the Capability Manager's decision within five working days. The Academy Trust Company's Appraisal Policy and Procedure shall resume.
- 4.5 At the end of the First Capability Meeting, having considered the employees comments, if the Capability Manager concludes that performance is unsatisfactory the employee will be given a First Written Warning and an Improvement and Support Plan will be drawn up in discussion with the employee as soon as is reasonably practicable, but no later than 5 Working Days following the First Capability Meeting. The Improvement and Support Plan will:
- a) detail the professional shortcomings identified;
  - b) give clear guidance on the improved sustainable standard of performance needed to exit the capability procedure;
  - c) explain the support that will be provided, and detail how performance will be monitored and supported over a period of time, referred to in this Capability Policy and Procedure as the Assessment Period;
  - d) identify a reasonable timetable for improvement and provide a date for the Second Capability Meeting to be held at the end of the Assessment Period; and
  - e) state that failure to improve may lead to dismissal.

- 4.6 The length of the Assessment Period following a First Written Warning will be at least 4 Working Weeks and no more than 12 Working Weeks.
- 4.7 If the Assessment Period is less than 12 Working Weeks, at any time during the Assessment Period the timeframe may be extended by the Capability Manager to a maximum of 12 Working Weeks in total, if there is sufficient evidence that the employee is progressing towards achieving the standards required. They will be informed of any such extension in writing.
- 4.8 An employee may appeal against a First Written Warning by writing to the Clerk within 5 Working Days of the date of the First Written Warning.
- 4.9 An appeal will not delay the commencement of the Assessment Period.
- 4.10 In the case of a First Written Warning this will remain live for 6 months. If within that 6 month period the employee's required standard of performance is not sustained, the Capability Manager will recommence the Capability Procedure at the stage it was previously concluded, a first capability meeting will be arranged and you will be notified of this in writing.

## **5. SECOND CAPABILITY MEETING**

- 5.1 At least 5 Working Days prior to the Second Capability Meeting, the date of which will have been notified to the employee in accordance with Paragraph 4.5(d) above, the Capability Manager will send you an Updated Performance Report along with a letter reminding you of the date of the Second Capability Meeting. The Updated Performance Report will provide details of the assessments of the employee's performance that have taken place during the Assessment Period, the support that has been provided and an evaluation of your performance at the end of the Assessment Period.
- 5.2 Any documentation the employee wishes to rely on during the Second Capability Meeting must be submitted at least 3 Working Days prior to the Second Capability Meeting.
- 5.3 At the Second Capability Meeting the employee will have an opportunity to comment upon, explain and/or refute the contents of the Updated Performance Report, to discuss any continuing professional shortcomings, support and guidance required and how their performance will be monitored and supported going forward.
- 5.4 The Capability Manager will confirm the outcome of the Second Capability Meeting in writing within 5 Working Days of the date of such meeting.
- 5.5 Where the Capability Manager concludes, at the end of the Second Capability Meeting, that the standard of your performance is satisfactory the employee will no longer be subject to this Capability Policy and Procedure. The Academy Trust Company's Appraisal Policy and Procedure shall resume. However, if the required standard of performance is not sustained during the life of the First Written Warning, the Capability Manager will recommence the Capability Procedure at the stage it was previously concluded and the employee will be notified of this in writing.

- 5.6 Where the Capability Manager concludes, at the end of the Second Capability Meeting, that some progress has been made and that with a further period of monitoring an acceptable level of performance will be achieved, the Capability Manager may determine that the employee should be subject to an Additional Assessment Period of up to 4 Working Weeks. If at the end of this Additional Assessment Period, the Capability Manager concludes that performance is satisfactory, the employee will no longer be subject to this Capability Policy and Procedure. The Academy Trust Company's Appraisal Policy and Procedure shall resume. However, if the required standard of performance is not sustained during the life of the First Written Warning, the Capability Manager will recommence the Capability Procedure at the stage where it was previously concluded and the employee will be notified of this in writing.
- 5.7 Where the Capability Manager concludes, at the end of the Second Capability Meeting, or at the end of the Additional Assessment Period referred to in Paragraph 5.6 above, that no, or insufficient, improvement has been made so that the employees performance remains unsatisfactory, they will be given a Final Written Warning setting a Further Assessment Period of 4 Working Weeks and notifying them of the date for a Final Capability Meeting to be held at the end of the Further Assessment Period. The employee will be informed that failure to make satisfactory sustainable improvement during such Further Assessment Period may result in your dismissal.
- 5.8 The employee may appeal against a Final Written Warning by writing to the Clerk within 5 Working Days of the date of the Final Written Warning.
- 5.9 An appeal will not delay the commencement of the Further Assessment Period.
- 5.10 A Final Written Warning for all employees will remain live for 12 months and if, within that 12 months, the required standard of performance is not sustained the Capability Manager will recommence the Capability Procedure at the stage it was previously concluded, a second capability meeting will be arranged and you and you will be notified of this in writing.

## **6. FINAL CAPABILITY MEETING**

- 6.1 At least 5 Working Days prior to the Final Capability Meeting which the employee will have been invited to in accordance with Paragraph 5.7 above, the Final Capability Manager will send the employee a Final Performance Report along with a letter reminding them of the date of the Final Capability Meeting. The Final Performance Report shall contain an evaluation of the employees performance and will detail any support provided during the Further Assessment Period.
- 6.2 Any documentation the employee wishes to rely on during the Final Capability Meeting must be submitted at least 2 Working Days prior to the Final Capability Meeting.
- 6.3 At the Final Capability Meeting the employee will have an opportunity to respond to, comment upon, explain and/or refute the contents of the Final Performance Report and to discuss any continued professional shortcomings.

- 6.4 The Final Capability Manager will confirm the outcome of the Final Capability Meeting in writing within 5 Working Days of the date of such meeting.
- 6.5 Where the Final Capability Manager concludes that the standard of performance is satisfactory you will no longer be subject to this Capability Policy and Procedure. The Academy Trust Company's Appraisal Policy and Procedure shall resume. However, if the required standard of performance is not sustained during the life of the Final Written Warning, the Final Capability Manager will recommence the Capability Procedure at the stage where it was previously concluded and the employee will be informed of this in writing.
- 6.6 Where the Final Capability Manager concludes that the employees performance remains unsatisfactory and that they are not capable of sustainable improvement, the Final Capability Manager may recommend to the Academy Trust Company that the employees employment is terminated in accordance with their contract of employment and the Academy Trust Company will take appropriate steps to terminate the employees employment with notice. Alternative sanctions may also be considered, for example, redeployment, or demotion to a lower graded role, by mutual agreement. Alternative employment in these circumstances does not have to be in equivalent terms and conditions to the current post and protection of salary will not apply. A decision to dismiss will always be the last resort.
- 6.7 An employee may appeal against a decision to dismiss them with notice by writing to the Clerk within 10 Working Days of the date of the notice of termination.
- 6.8 An appeal will not delay the commencement of the notice period.
- 6.9 In the event that an employees employment is terminated in accordance with Paragraph 6.6 above:
- a) Garden leave may be considered where appropriate so that the employee is not required to attend the academy during their notice period but remain employed and so bound by the terms of their contract of employment until the expiry of the notice period;
  - b) Payment in lieu of notice may be considered to bring the employment contract to an end with immediate effect.

## **7. APPEALS AGAINST DECISIONS MADE BY CAPABILITY MANAGER AND/OR FINAL CAPABILITY MANAGER**

- 7.1 An appeal against a decision of the Capability Manager or Final Capability Manager can be made at each stage of the procedure set out at Paragraphs 4, 5 and 6 above.
- 7.2 In all cases, an employees appeal letter must set out the grounds of your appeal in detail. When preparing your appeal letter, they may wish to consider the following grounds:
- (a) That the action taken was unfair;
  - (b) That this Capability Policy and Procedure was applied defectively or unfairly;
  - (c) That new evidence has come to light which was not available when the relevant decision was made by the Capability Manager or Final Capability Manager;
  - (d) That the sanction was overly harsh in all the circumstances.

- 7.3 Appeals will be heard by the relevant Appeal Manager appointed in accordance with Paragraph 3 within 20 Working Days of the Clerk receiving your appeal letter. The appeal procedure can be found at appendix 1.
- 7.4 Employees will be given 5 Working Days written notice of an Appeal Meeting and the Appeal Manager will confirm in this notice what evidence will be relied upon at the Appeal Meeting. If written evidence is to be relied upon the employee will be provided with copies of such evidence with notice of the meeting in order to enable them to prepare for the Appeal Meeting. If oral evidence is to be relied upon at the Appeal Meeting, the employee will be given details of who will be in attendance. The employee will be able to provide evidence prior to the Appeal Meeting provided that such evidence is submitted at least 2 Working Days prior to the Appeal Meeting.
- 7.5 The employee will be given an opportunity to comment on the evidence provided during the Appeal Meeting whether such evidence is given in writing or orally. The Appeal Manager will consider the evidence provided by the employee and by the Capability Manager or Final Capability Manager (as appropriate) in order to determine whether the relevant decision was fair and reasonable.
- 7.6 The Appeal Manager will confirm the outcome of the Appeal Meeting in writing to the employee within 5 Working Days of the date of the Appeal Meeting. The decision of the Appeal Manager is final and there will be no further right of appeal. The potential outcomes of an Appeal Meeting are that:
- (a) the Appeal Manager may uphold the decision of the Capability Manager or Final Capability Manager; or
  - (b) the Appeal Manager may uphold the employee's appeal, overturn the decision of the Capability Manager or Final Capability Manager.
- 7.7 Should an appeal against dismissal be successful, the employee will be reinstated with no break in their continuous service.

## **8. DIRECTORS' PANELS**

- 8.1 Directors' Capability and Appeal Panels shall comprise three non-staff Directors not previously involved in the matter and shall not comprise the Chair or Vice-Chair unless there are insufficient numbers of non-staff Directors not previously involved in the matter, in which case the Chair and/or Vice-Chair may be appointed to a Directors' Capability or Appeal Panel.
- 8.2 In the event that there are insufficient numbers of Directors available to participate in a Directors' Capability or Appeal Panel, the Academy Trust Company may appoint associate members solely to participate in the appropriate Directors' Capability or Appeal Panel on the recommendation of the Diocesan Schools Commission.

## **9. COMPANION**

- 9.1 If the employee is the subject of any Capability Meeting they may be accompanied by a Companion.
- 9.2 The employee must let the relevant Manager know who their Companion will be at least one Working Day before the relevant meeting.
- 9.3 If the employee has any particular reasonable need, for example, because they have a disability, they can also be accompanied by a suitable helper.
- 9.4 Only a Trade Union representative can address the relevant interview or meeting in order to:
- (a) put forward the case;
  - (b) sum up the case;
  - (c) respond on behalf of the employee to any view expressed at the meeting; and
  - (d) ask questions on behalf of the employee.
- 9.5 The Companion can also confer with the employee during the meeting.
- 9.6 The employees Companion has no right to:
- (a) answer questions on the employees behalf;
  - (b) address the meeting if the employee do not wish it; or
  - (c) prevent the employee from explaining their case.
- 9.7 Where the employee has identified their Companion and they have confirmed in writing to the relevant Manager that they cannot attend the date or time set for the meeting, the meeting will be postponed for a period not in excess of five Working Days from the date set by the Academy Trust Company to a date and time agreed with the Companion. Should the Companion subsequently be unable to attend the rearranged date, the meeting may be held in their absence or written representations will be accepted.

## **10. TIMING OF MEETINGS**

The aim is that meetings under this Capability Policy and Procedure will be held at mutually convenient times but depending on the circumstances, meetings may:

- 10.1 need to be held when you were timetabled to teach (if that is appropriate to the employees role);
- 10.2 exceptionally be held during planning, preparation and administration time if this does not impact on lesson preparation (if this is appropriate to the employees role);
- 10.3 exceptionally, be held after the end of the Academy day or working day;
- 10.4 not be held on days on which the employees would not ordinarily work;
- 10.5 be extended by agreement between the parties if the time limits cannot be met for any justifiable reason.

## **11. VENUE FOR MEETINGS**

Any meeting held under Paragraphs 4, 5, 6 and 7 may be held off the Academy site to minimise any distress for the employee.

## **12. ASSISTANCE**

In all cases involving any sanction in relation to the Headteacher or to a person on the Leadership Spine, or to potential or actual dismissal of any other member of staff, the Diocesan Schools Commission and/or the Local Authority may send a representative to advise the Capability Manager, Final Capability Manager or Appeal Manager.

## **13. REVIEW OF THIS PROCEDURE**

This policy and procedure was produced in September 2013 and updated in May 2018 and June 2020 by the Catholic Education Service (CES) for use in Catholic Voluntary Academies in England, following consultation with the national trade unions. It may be adapted, as appropriate, for use in joint Church academies subject to the approval of the CES on referral by the relevant Catholic diocese.

## **APPENDIX 1**

### **Appeal Procedure**

1. The Chair of the Committee will explain the procedure to be followed.
2. The Manager presents the facts of the case.
3. The individual/trade union representative are given the opportunity to ask questions to the Manager regarding the case.
4. Members of the Appeals Committee are given the opportunity to ask questions to the Manager regarding the case.
5. The individual/trade union representative presents their case.
6. The Manager is given the opportunity to ask questions to the individual regarding the case.
7. Members of the Appeals Committee are given the opportunity to ask questions to the individual regarding the case.
8. The Manager will be given the opportunity to sum up their case.
9. The individual/trade union representative will be given the opportunity to sum up their case.
10. The Manager and the individual and their representative withdraw to allow the Appeals Committee to consider the case and make their decision.
11. The Manager and individual and their representative are recalled to be informed of the decision verbally where possible by the Chair of the Committee which will also be confirmed in writing. In the event that the decision is not delivered verbally, it will be confirmed in writing within 5 working days.