

## Support and Capability

### 1 Introduction

**1.1** The Heart of Mercia Trust (HoM) is committed to the highest educational standards and understands that its employees play a significant role in achieving these. The Trust aims to encourage and ensure its employees achieve and maintain acceptable and agreed standards of performance and perform their jobs to the best of their ability.

**1.2** The purpose of this procedure is to seek to ensure that employees are assisted to achieve standards of performance.

This procedure is designed to ensure fairness and consistency and to provide support towards improvement, in management of employee under-performance. In line with ACAS guidance and recognition of duties placed upon the Trust by the Equality Act (2010), where an employee has a disability that is related to the capability issue, the Trust and its academies will take reasonable steps to support them.

HoM and its academies are committed to the avoidance of formal capability procedures wherever possible by addressing concerns as soon as they arise. At all stages of this procedure, expectations with regard to improvement in performance should be clearly set out and communicated to the employee concerned, together with an agreed timetable of meetings for further review of the employee's performance.

**1.3** HoM and its academies recognise that the majority of their employees meet or exceed the demands of their roles. Very few employees ever choose to perform their work badly, make mistakes or fail to complete tasks arising from their work for the Trust. In circumstances where performance is identified as not meeting the required standard, this procedure provides guidance on how to provide support and deal with this in a consistent, fair, and sympathetic way. Consequently, in the event that an employee is underperforming, a manager should examine the circumstances to identify underlying causes and provide additional support to the employee to help them to improve to the required standard of performance.

**1.4** The term 'capability' refers to an employee's ability to carry out their role to the required standard. There is a requirement for the employee to achieve professional objectives as set out to them in their job description and normal management targets. A lack of ability to do this may include,

- Inability to cope with reasonable workload;
- Inability to work to identified and agreed targets;
- Unacceptable level of success rates;
- Unacceptable outcome to lesson observation (as detailed in the Quality Assurance policies of individual HoM academies);
- Poor quality of work;

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- Complaints indicating a lack of ability (after investigation under the Trust or one of its academies Complaints Policy).

Each case will be considered individually, and all evidence considered in light of the context.

## 2 Statutory Guidance

- 2.1** Guidance from both the ACAS Code of Practice, (Disciplinary & Grievance) and Capability has been taken into consideration in drafting this procedure. Details of these can be found at:

[Disciplinary and grievance procedures | Acas](#)

<https://www.acas.org.uk/capability-procedures>

## 3 Exclusions

- 3.1** Separate procedures will apply to staff serving a probationary period. If an employee begins a period of long-term sickness absence whilst being considered under the informal support (6) or formal capability (7-9) sections of this procedure, the employee will also be considered under the relevant sickness absence procedure.

Sickness absence will not preclude any stages under either the informal support (6) or formal capability (7-9) sections of this procedure, but consideration should be given to temporarily suspend the procedure during the period of sickness absence.

- 3.2** Matters relating to employee conduct should be dealt with under the HoM Staff Disciplinary procedure. Matters relating to medical capability should be dealt with under the Absence Management Policy and the Ill Health Retirement Policy of the individual academy of the Trust.

## 4 Management Responsibilities

- 4.1** An employee's manager has a responsibility to:
- Communicate objectives clearly and to the expected standard required.
  - Address issues of unsatisfactory performance as soon as they arise.
  - Provide feedback on a regular basis, both formal and informal.
  - Provide guidance, encouragement, and support.
  - Apply this procedure with discretion, consistency, and equality of opportunity.

## 5 Employee Responsibility

- 5.1** An employee has a responsibility to:
- perform their contractual duties to the required standard at all times.

- Alert their line manager promptly to any work-related problems and changes of personal circumstances which may affect their work performance.

## 6 Informal Support, Help and Guidance

**6.1** It is the responsibility in the first instance of the immediate line manager to offer suitable help and advice to employees where alleged incompetence such as a lack of skill, aptitude and/or ability or unsatisfactory performance is suggested/identified. The nature of the alleged shortcoming will determine the nature of the support to be provided. The support will include agreed action and one or more of the following:

- (i) counselling;
- (ii) a review of commitments and responsibilities,
- (iii) availability of suitable materials and resources
- (iv) availability of training;
- (v) opportunities to see good practice within the academy or other appropriate establishments.

**6.2** The informal procedure can be dealt with in a regular review or keeping in touch meeting, where it may be normal practice to take notes of the meeting. The manager will inform the employee that support is being offered to enable performance to be raised to the required standard. The manager should, at this point, examine the circumstances to identify underlying causes and provide additional support as required.

Support should be arranged by mutual agreement with the employee fully contributing to the discussion. The manager should also make clear to the employee that initial support is being offered to improve performance and to avoid being considered on the formal capability procedure. The manager will agree with the employee, a suitable period of time for an agreed action plan with clear targets to be met. A meeting will also be arranged by the manager to review the action plan and set further targets, if needed. Managers are encouraged to seek support from HR to ensure that the informal process described above is followed appropriately and consistently.

## 7 Capability – Stage One

**7.1** If following support, help and guidance under the informal stage (Section 6), the employee's performance is still deemed to be unsatisfactory; the immediate manager in liaison with HR and a member of the academy's Senior Leadership Team, will notify the employee in writing that performance remains unsatisfactory. Where the member of staff is a senior postholder of the Trust, the Chief Executive, in consultation with the HoM HR Director will notify the senior post holder in writing that performance remains unsatisfactory.

The employee will be given 5 working days' notice that they will be required to attend a meeting under the formal stage one of the capability procedure. The employee will be entitled to bring to the meeting, a work colleague, or trade union representative. In exceptional circumstances, the Trust may allow a companion who is neither a workplace colleague nor trade union representative to accompany an employee. Any such exception must be approved in advance of the meeting by the Chair.

- 7.2** The meeting will be chaired by a manager (expected to be from the academy's Senior Leadership Team). Where the employee is a senior postholder of the Trust other than the Chief Executive, the meeting will be chaired by the Chief Executive. Where the employee is the Chief Executive of the Trust, the meeting will be chaired by the Chair of the Trust Board.

The employee will be reminded of the earlier informal discussions and the steps taken to support an improvement in their performance. They will be told as precisely as possible, the reasons for the manager's continued concerns about their performance. An opportunity will be provided at the meeting to explore the causes of unsatisfactory performance. The employee will have the opportunity to explain their unsatisfactory performance and to make any representation, which may include;

- new information,
- provide a different context to the information/ evidence already made available.

- 7.3** If, after careful consideration of the employee's explanation, concerns still exist, a first written warning will be issued to the employee for unsatisfactory performance. This will be issued to the employee in writing within 7 calendar days after the meeting. The letter will remain on the employees file for a period of 12 months and provide details of the unsatisfactory performance and expected improvements.

- 7.4** Further consideration should be given to any additional training or support that could reasonably be provided to the member of staff to enable them to reach the required standard of performance. The employee will be informed of the specific support that will be available to help them improve their performance. Support will include a timetable for improvement. It will also be made clear to the employee how performance will continue to be monitored and reviewed. The timetable should be reasonable and proportionate and set in order to achieve resolution of the issue(s). It should provide sufficient opportunity for an improvement to take place but not be excessively long. The length of the review period will depend on the circumstances of the individual case but, in cases where professional support is being provided, there should be no less than four weeks and up to thirteen weeks before the further review meeting.

- 7.5** 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.

- 7.6** If, after the reasonable time period agreed at the formal stage one meeting, performance has improved and set targets are met, the employee will be informed in writing that they are no longer being considered under the formal capability policy.

## **8 Capability Stage Two - Formal Review Meeting**

- 8.1** If there has been insufficient improvement in performance within the timescale following the first written warning, a further formal review meeting will be held with the employee.
- 8.2** The employee will be given 5 working days' notice that they will be required to attend a meeting under stage two of the capability procedure. The employee will be entitled to bring to the meeting, a work colleague, or trade union representative. In exceptional circumstances, the Trust may allow a companion who is neither a workplace colleague nor trade union representative to accompany an employee. Any such exception must be approved in advance of the meeting by the Chair.
- 8.3** At this meeting, previously set targets will be reviewed, the appropriate manager (from the academy Senior Leadership Team or in the case of senior postholders of the Trust, the Chief Executive) will review the history of the case, including the steps that have been taken to support the individual to achieve the required level of performance. If, having heard the explanation offered by the employee, concerns still exist, a final written warning will be issued for unsatisfactory performance. This will be confirmed in writing within 7 calendar days after the meeting. The warning will remain on the employees file for a period of 18 months and provide details of the unsatisfactory performance and expected improvements. The procedure in 7.4 above will again be followed. A review period will be set within which improvement is expected and a further meeting arranged at the end of this time to review the situation.
- 8.4** The member of staff will be informed that their job will be at risk if satisfactory performance levels cannot be achieved and subsequently maintained.

## **9 Capability Stage 3 – Decision Hearing**

- 9.1** If there has been insufficient improvement in performance within the timescale following the final written warning, the employee will be invited to a meeting to inform them of the next stage of the capability procedure. The purpose of this meeting is to verbally clarify the next stage of the procedure with the employee and to allow them the opportunity to ask any questions about the next stage. The employee will be entitled to bring a work colleague or trade union representative to the meeting. In exceptional circumstances, the Trust may allow a companion who is neither a workplace colleague nor trade union representative to accompany an employee. Any such exception must be approved in advance of the meeting by the Chair.

At the meeting, the employee will be informed that they will be required to attend a decision hearing. 5 working days' written notice will be given prior to the hearing taking

place. The employee will be informed that the purpose of the hearing is to consider their on-going unsatisfactory performance and to consider whether a sanction should be applied under stage three of the capability procedure.

- 9.2** Sanctions applied as a result of failing to meet satisfactory standards under the capability procedure can include redeployment, downgrading or dismissal.
- 9.3** A decision hearing will be held where there has been insufficient improvement. The Chief Executive/Chair of the Trust Board/ Academy Principal/Head or/ or academy Senior Leader (to whom the authority to apply a sanction under capability proceedings has been delegated by the Principal/Head) will chair the hearing or it will be heard by a panel comprising of Directors and/or Trustees/Governors of either the Trust or the Local Governing Body as appropriate.
- 9.4** A decision will then be taken at the hearing to either apply a sanction on the grounds of capability or to provide the employee with a period of extension to allow further time for improvement and maintenance of any improvement. The order to follow at the hearing is set out in Appendix 1.
- 9.5** The option of allowing further time for improvement may only be considered if there is persuasive evidence presented that further time is likely to lead to the required improvement in performance on the part of the employee.
- 9.6** The decision at the hearing will be confirmed in writing to the employee as soon as possible but no later than seven calendar days.
- 9.7** If the decision has been made to dismiss the employee, the dismissal letter will confirm the reason for dismissal and the date at which the employment terminates.

## **10 Appeals and grievances**

- 10.1** Employees are entitled to appeal against any formal sanction taken under the capability procedure by using the order of hearing below (Appendix 1).
- Where the appeal relates to the capability of an employee in a HoM Academy, it will be heard by a more Senior Leader or an appropriate panel of the Local Governing body.
  - Where the appeal relates to a senior postholder of the Trust, the appeal will be heard by the Appeals Committee of the Trust (see Appendix 2).
- 10.2** Where an employee raises a grievance during the capability procedure relating to the capability procedure, consideration may be given to suspend the procedure in order to expedite the concerns raised. The capability procedure will, however, continue or resume

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if the employee seeks unreasonably to delay the consideration of the grievance. Where the grievance and capability cases are unrelated, it may be appropriate to deal with both issues concurrently.

The appeal hearing cannot be a rerun of the original formal meetings or consider any new evidence but may address points which the member of staff considers were not properly considered at the original meetings.

### 11 Equality Impact

The Trust's responsibilities towards promoting equality, diversity and inclusion have been considered when drafting this policy.

Date of review	Date agreed	LGBs	MAT Board	Review date	Comments
08/06/23	08/06/23	Autumn 2023	22/06/23	March 2024	

**APPENDIX 1****DECISION HEARING – ACADEMY STAFF CAPABILITY****Order of hearing for a Decision Hearing - Capability**

1. The chair/ panel of the hearing can have an appropriate hr / note taker /other advisor present at the hearing.
2. The chair will introduce all parties present and confirm the order of hearing.
3. The management case will be put forward by an appropriate manager (expected to be from the academy Senior Leadership Team, designated alternative by the academy Principal/Head) who will outline the management case.
4. The manager will call any witnesses (if appropriate)
5. The employee has the opportunity to ask questions of the manager and any witnesses.
6. The chair /panel to ask questions of the manager and witnesses.
7. The managers' witnesses to withdraw from proceedings, (if applicable).
8. Employee to state their case (a statement may also be read by the employee's representative).
9. The employee will call any witnesses (if appropriate).
10. The manager can ask questions of the employees' witness (s).
11. The Chair / panel can ask questions of the employees' witness (All witnesses should leave the hearing at this stage).
12. The manager will summarise the case.
13. The employee or their representative will summarise their case.
14. The chair /committee may ask for an adjournment for deliberation.
15. If after a short period of deliberation, the chair/ panel are in agreement that a decision cannot be reached within a reasonable period of time immediately after the hearing, the employee will be informed, and the decision will then be communicated in writing within a 7-calendar day period.



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An adjournment may be called at any time by the chair/panel for the purposes of enabling further information/clarification to be obtained. The adjournment will be for a stated period.

NB - If the employee's chosen companion is unable to attend the date of any formal meeting, the meeting can be rescheduled once.

## **Appendix 2**

### **Appeals Committee - Terms of Reference for Senior Post Holder Appeals**

#### **Membership**

- 1.1 The Committee shall comprise at least three members of the Trust Board.
- 1.2 The Chief Executive and Clerk to the Trust may not sit on the Committee. In addition, no person may sit on the Committee who has any interest in its findings or who has been involved in any way in an investigation or other disciplinary action leading up to the reference of the particular matter to the Committee unless it is reasonably impracticable to avoid.
- 1.3 The Chair of the Committee will be the Chair of the Trust Board, unless they are unavailable, when the members of the committee who are present shall choose one of their number to act as Chair for that meeting.
- 1.4 The quorum for meetings of the Committee shall be three members.
- 1.5 The Committee shall convene a meeting as soon as practicable after a reference to it and shall give the appellant at least 5 working day's notice of the meeting.
- 1.6 The Clerk to the Trust shall act as Clerk to the Committee.

#### **2. Terms of Reference**

- 2.1 To consider and determine appeal(s) against:
  - grievance decisions;
  - disciplinary decisions;
  - dismissal decisions;
  - selection for redundancy or redeployment,

and to make recommendations to the Trust Board as the Committee considers fit.

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2.3 To give the appellant the right to make representations. The representations, which may be made in writing, may also be made orally, for which purpose the complainant may be accompanied by one other representative or friend.

2.4 The Committee will follow the procedures approved by the Trust Board.

### **3. Delegated Powers**

3.1 Authority to determine an appeal(s) against:

- grievance decisions;
- disciplinary decisions;
- dismissal decisions;
- selection for redundancy or redeployment.
- capability decisions for senior postholders of the Trust.

3.2 Authority to make recommendations to the Trust Board if appropriate.

### **4. Appeals Hearing Procedure**

4.1 Following receipt of the employment decision letter, the appellant or their representative shall notify the Trust in writing within ten working days if they wish to appeal the decision.

4.2 Appeals against an employment decision made in writing addressed to the Clerk to the Trust will be acknowledged within ten working days of receipt.

4.3 The Trust shall set a date and time for the appeal hearing within five working days of receipt of the written request for an appeal hearing.

4.4 The appellant or his/her representative will be given five working day's notice of the date and time when the appeal will be heard and where it will take place. With the agreement of the appellant or his/her representative the appeal can be held earlier. At their request it can be deferred by up to one week.

4.5 The names of those who are to present evidence to the Committee or represent either side shall be notified to the other party no later than three days before the hearing is held. The appellant must attend the hearing.

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4.6 The Chair shall determine which witnesses, if any, shall give evidence. If the presence of a witness is requested, then their attendance will be voluntary accepting that written evidence will always be admissible instead. Written evidence must be signed and dated by the person providing it.

4.7 All documentation to be considered by the Committee shall be made available to the other party no later than three working days before the hearing is held. The Chair shall determine the admissibility of papers presented at the hearing.

4.8 The Chair shall call in both parties, introduce them and state the purpose of the hearing. The Chair will remind both parties that the proceedings shall remain confidential until a final decision has been taken.

4.9 The Trust staff will present their case in the presence of the appellant. Trust staff will have the opportunity to ask questions of the appellant and their representatives. Members of the Committee may also ask questions of the appellant and their representatives.

4.10 The appeal case will be presented in the presence of the Trust staff. The appellant and their representatives will have the opportunity to ask questions of the Trust staff. Members of the Committee may also ask questions of the Trust staff.

4.11 Each side in turn will have the opportunity to sum up their cases if they so wish.

4.12 The Chair will then ask both the Trust staff and the appellant and their representatives to withdraw. The Committee will consider the case in private.

4.13 The Committee shall determine matters of fact 'on the balance of probabilities' based upon the information provided to them at the hearing.

4.14 The Committee may determine the appeal in whole or in part and make recommendations to the Trust Board as appropriate.

4.15 The Committee may confirm, vary, or dismiss the decision that has given rise to the

appeal.

4.16 The Committee will announce its decision to the parties in writing within five working days.

4.17 The Chair has the right to exclude from the proceedings any of those participating in the hearing if they behave unreasonably or disregard the instructions of the Chair.

4.18 The notification times identified in these procedures are for guidance. Where either party cannot adhere to the times identified, variations can be agreed with recourse to a ruling by the Chair if there is no agreement.

4.19 Legal representation will not usually be permitted at appeal hearings. It can be granted exceptionally at the discretion of the Chair, if the Chair feels that any of the following factors are compelling:

- the seriousness of the complaint;
- whether any points of law are likely to arise;
- the capacity of the complainant/appellant to present the case;
- procedural complexities, such as the need to interview and cross-examine witnesses;
- the need for reasonable speed in making the adjudication; and
- the need for fairness as between the parties.

## Appendix 3

### THE RIGHT TO BE ACCOMPANIED AND THE ROLE OF THE COMPANION

#### **(1) The right to be accompanied.**

Employees of the Heart of Mercia Multi Academy Trust (HoM) have the right to be accompanied by a colleague or a trade union representative under Sections 7-10 of this procedure.

The Trust also recognises its legal obligations under the Equality Act 2010 and will make reasonable adjustments here for disabled employees of the Trust.

In exceptional circumstances, the Trust may allow a companion who is neither a workplace colleague nor trade union representative to accompany an employee. Any such exception must be approved in advance of the meeting.

As the statutory right to be accompanied does not extend to legal representatives, friends, or family members, any decision to allow this remains at the discretion of the Trust.

If a HoM employee would like someone other than a trade union representative or workplace colleague to accompany them, they should make a request to the Trust in writing, explaining why this person is suitable and why it is reasonable for that person to accompany them. Please address any such request to the Heart of Mercia Trust HR Director at [a.meade@heartofmerciamultiacademytrust.org.uk](mailto:a.meade@heartofmerciamultiacademytrust.org.uk)

The person accompanying an employee is known as a companion.

If a HoM employee makes a request to be accompanied, he or she should do so reasonably. For example:

- it may not be reasonable to choose a companion who is in geographically remote location when a suitable person is available at the place of work.
- It would also not be reasonable to choose a companion whose presence would prejudice a hearing or who has a conflict of interest.

If the employee's chosen companion cannot attend on the meeting date proposed, the employee can propose an alternative time and date, so long as it is reasonable and is no more than five working days later than the date originally proposed by the Trust.

#### **(1) The role of the companion**

The role of the companion in a hearing is limited. Section 10, of the Employment Relations Act 1999, and the Employment Relations Act 2004 state that the companion can:

- put forward the employee's case;
- sum up the case;
- respond on the employee's behalf to any view expressed at the hearing;

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- and confer with the employee during the hearing.

However, the companion cannot:

- answer questions on the employee's behalf;
- address the hearing if the worker indicates at it that he does not wish his companion to do so;
- or act in a way that prevents the Trust explaining and addressing its case.