



Capability Policy and Procedure

Responsible for policy:

Date of policy:

Date approved by CC2:

Date of review:

Policy Status:

Chair of Directors

CC2

September 2019

September 2019

September 2022

Statutory

Brandon Fawcett

Contents

Definitions	3
1. Scope of procedure	4
2. Capability, Final Capability and Appeal Manager	5
3. Appraisal Policy and Procedure – Teachers Experiencing Difficulties.....	6
4. Informal Meeting	6
5. First Capability Meeting	7
6. Second Capability Meeting.....	8
7. Final Capability Meeting.....	9
8. Appeals Against Decisions Made By Capability Manager And/Or Final Capability Manager.....	10
9. Directors’/Governors’ Panels	10
10. Companion	11
11. Timing Of Meetings	11
12. Assistance	11
13. Links to other policies	12
14. Monitoring and Review	12

Definitions

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

- I. **'The Romero Catholic Academy'** means the Company named at the beginning of this **Capability Policy** and Procedure and includes all sites upon which the Company is undertaking, from time to time, being carried out. The Romero Catholic Academy includes; **Corpus Christi, Good Shepherd, Sacred Heart, Blue Sky, SS Peter and Paul, St Gregory, St John Fisher, St Patrick, Cardinal Wiseman, Shared Services Term.**
- II. **'Romero Catholic Academy'** means the Company responsible for the management of the Academy and, for all purposes, means the employer of staff at the Company.
- III. **'Board'** means the board of Directors of the Romero Catholic Academy.
- IV. **'Chair'** means the Chair of the Board or the Chair of the Local Academy Committee of the Academy appointed from time to time, as appropriate.
- V. **'Clerk'** means the Clerk to the Board or the Clerk to the Local Academy Committee of the Academy appointed from time to time, as appropriate.
- VI. **'Catholic Senior Executive Leader'** means the person responsible for performance of all Academies and Staff within the Multi Academy Company and is accountable to the Board of Directors.
- VII. **'Companion'** means a willing work colleague (not family member) not involved in the substance of the employee's performance issues under review by this Appraisal Policy and Procedure, 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 Disciplinary Policy and Procedure.
- VIII. **'Diocesan Schools Commission'** means the education service provided by the diocese, which may also be known, or referred to, as the Birmingham Diocesan Education Service.
- IX. **'Local Academy Committee'** means the governing body of the School.
- X. **'Academy Committee Representatives'** means the governors appointed and elected to the Local Academy Committee of the School, from time to time.
- XI. **'Principal'** means the substantive Principal, who is the person with overall responsibility for the day to day management of the school.
- XII. **'School'** means the school or college within The Romero Catholic Academy and includes all sites upon which the school undertaking is, from time to time, being carried out.
- XIII. **'Shared Services Team'** means the staff who work in the central team across the Company (e.g. HR/ Finance)
- XIV. **'Vice-Chair'** means the Vice-Chair of the Governing Body elected from time to time.
- XV. **'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.
- XVI. **'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.
- XVII. **'Capability due to ill-health'** means any inadequacy in health or any other physical or mental quality which results in unsatisfactory performance. In these cases, the Sickness Absence Policy and Procedure will apply.

1. Scope of procedure

- 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”).
- 1.2 The purpose of this procedure is to establish a structure to support employees in improving their performance to the standards expected and to take appropriate action to address this where there has not been sufficient improvement.
- 1.3 This Capability Policy and Procedure shall be invoked when there is an identified need to remedy a performance weakness and can be invoked by the Academy Trust Company or their delegate at any stage deemed appropriate.
- 1.4 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).
- 1.5 The Academy Trust Company delegates its authority in the manner set out in this policy.
- 1.6 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’s Disciplinary Policy and Procedure may be used concurrently whilst the Academy endeavors to ascertain if the employee’s lack of capability is due to Misconduct or lack of competence.
- 1.7 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’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 may use its Sickness Absence Policy and Procedure. The process of managing unsatisfactory performance due to capability will not necessarily cease where the employee is absent on the grounds of sickness.
- 1.8 The Academy is committed to ensuring respect, objectivity, belief in the dignity of the individual, consistency of treatment and fairness in the operation of performance management as a Catholic academy. This commitment extends to promoting equality of opportunity and eliminating unlawful discrimination throughout the Academy community.
- 1.9 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.
- 1.10 This Capability Policy and Procedure can be invoked at any time during any Appraisal Period.
- 1.11 The Appraisal Policy does not form part of any other procedure but relevant information from the appraisal process, including the Appraisal Report, may be taken into account in this Capability Policy and Procedure and/or the Disciplinary Policy and Procedure.
- 1.12 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.
- 1.13 The Academy 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, where appropriate and where there is an applicable lawful basis under the provisions of the GDPR.
- 1.14 The management of unsatisfactory performance and related investigations will be treated in confidence as far as possible by all parties involved throughout all stages of this Capability Policy and Procedure.
- 1.15 In this policy “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 policy and procedure.
- 1.16 In this policy “working week” means any week that you would ordinarily work.

2. Capability, Final Capability 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:

<i>Employee Level</i>	<i>Informal Meeting</i>	<i>First/Second Capability Meeting – the Capability Manager</i>	<i>Final Capability Meeting – the Final Capability Manager</i>	<i>Appeal Manager (re Written Warnings)</i>	<i>Appeal Manager (re Dismissal)</i>
Principal/ Headteacher	Line Manager	Chair or a non-staff Director/LAC (other than the Vice-Chair) nominated by the Chair	Directors’/ LACs’ Capability Panel appointed by the Vice-Chair	A non-staff Director/LAC (other than the Chair or Vice Chair) nominated by the Vice-Chair	Directors’/ LACs’ Appeal Panel appointed by the Vice-Chair
Other Leadership Spine and School Business Manager	Line Manager	Principal	Chair or a non-staff Director/LAC nominated by the Chair	A non-staff Director/Governor (other than the Chair or Vice Chair) nominated by the Vice-Chair	Directors’/ Governors’ Appeal Panel appointed by the Vice-Chair
Other Teaching Staff	Line Manager	(1)A member of the Leadership Team (other than the Principal) appointed by the Principal or, in the event that <ul style="list-style-type: none"> above cannot be complied with, a person appointed by the Principal 	Principal	Chair or a non- staff Director/ LAC (other than the Vice- Chair) nominated by the Chair	Directors’/ LACs’ Appeal Panel appointed by the Vice-Chair
Other Support Staff	Line Manager	A person appointed by the Principal	Principal	Chair or a non- staff Director/ LAC (other than the Vice Chair) nominated by the Chair	Directors’/ LACs’ Appeal Panel appointed by the Vice- Chair

NB: In law, only the Academy Trust Company, as the employer of staff, has the power to terminate employment, so the Academy Trust Company will need to ensure that it has delegated this power to the Final Capability Manager in accordance with the table above.

Where the Academy Trust Company amends the table above, it will need to ensure that it has delegated its power to dismiss to the panel of persons and/or the individual that it appoints as the Final Capability Manager

3. Appraisal Policy and Procedure – Teachers Experiencing Difficulties

- 3.1 Where through the academy's appraisal process the appraiser has identified serious concerns in performance, that the appraisal process is unable to address, they will refer the matter to the Principal. (Where the case relates to the Principal the Governing Body will access advice from the HR team. In such circumstances should this procedure be used then the lead role will be carried out by a designated person). Based on the information received the Principal will either;
- 3.1.1 advise the appraiser of additional supportive actions that can be taken within the appraisal cycle; OR
 - 3.1.2 determine there is a cause for concern requiring the appraisal policy to be suspended and the capability policy and procedure to be invoked
- 3.2 Where 3.1.2 is proposed the Principal will seek guidance on the procedure from the HR team.
- 3.3 The Principal will meet with the employee where they will inform the employee that the appraisal system will be suspended and the implications of this action, confirming their performance will instead be managed under the capability procedure. In addition, the employee will be reminded of their ability to contact their Trade union/Professional Association for advice. This will also be put in writing and a letter provided to the employee.
- 3.4 It is expected that cases will enter this procedure at the informal stage.
- 3.5 It is recognised that in extreme circumstances it may be necessary to enter at the formal stage of this procedure. Examples of such circumstances are jeopardy of pupils education, risk to organisation or failure to comply with the procedure. This action should not take place without first seeking advice from the HR Team and giving full consideration to the circumstances.

4. Informal Meeting

- 4.1 The first steps in attempting to improve performance are to identify the reasons or causes of the problem and consider any positive support that can be provided. Where applicable, information relating to the problem identified may be obtained from the school appraisal arrangements.
- 4.2 Informal measures of providing additional management support can be beneficial in addressing concerns about an employee's performance; therefore this option should be explored before moving to Formal Measures. It is for the Principal to determine the time period of such measures. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place.
- 4.3 Additional management support could include the facility to observe good practice, advice from an experienced colleague or line manager, having a mentor or access to appropriate training or resources. The employee may be able to suggest other methods of support they feel would assist them. This list should not be seen as exhaustive or a requirement but gives an indication of the types of support a Principal may consider providing.
- 4.4 An initial meeting should be arranged to allow discussions between Principal and employee to take place in an open and constructive atmosphere and should be regarded as part of the normal working routine.
- 4.5 However, where the employee has requested, they may be accompanied by their Trade Union/Professional Association.
- 4.6 The specific aim of these discussions will be to identify ways in which the employee can be encouraged

and helped to improve performance. The employee should be provided with a copy of this Policy/Procedure document.

This meeting will provide an opportunity for:

- The Principal to clearly identify and illustrate the areas of concern;
- the employee to respond to the concerns outlined;
- the employee to acknowledge their own responsibility to fully engage with the procedure and improve their own performance;
- the Principal to outline the standards of performance required;
- identification of any difficulties which may be preventing satisfactory performance;
- confirmation of the level of support which will be provided during the informal period of review;
- agreement of a reasonable timescale for monitoring and date for a performance review.

5. First Capability Meeting

5.1 Where the Academy has fully exhausted the Appraisal Policy and Procedure in accordance with Paragraph 3 including the appeals process under that Policy, the Academy will appoint a Capability Manager in accordance with Paragraph 2 above. The Capability Manager will write to you inviting you to a First Capability Meeting. You will be given at least 5 working days notice of such meeting. At the same time as sending you the letter inviting you to the First Capability Meeting, the Capability Manager will also send you a copy of the Performance Report which they have prepared and which shall set out:

5.1.1 What aspects of your performance are causing concern;

5.1.2 What specific and achievable performance standards are expected; and

5.1.3 The support that has been provided to you so far.

5.2 The Capability Manager's written communication shall state that any documentation you wish to rely on must be submitted at least 3 days ahead of the Capability Meeting.

5.3 At the First Capability Meeting you will have an opportunity to comment upon the Performance Report and to discuss the professional shortcomings, possible support and guidance and how performance should be monitored going forward.

5.4 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 *for example if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.*

5.5 If the Capability Manager concludes that your performance is satisfactory you will no longer be subject to this Capability Policy and Procedure and shall be notified in writing, as soon as reasonably practicable. The Academy's Appraisal Policy and Procedure shall resume.

5.6 If the Capability Manager concludes that your performance is unsatisfactory you will be given a First Written Warning and an improvement and support plan which will:

5.6.1 Identify the professional shortcomings

- 5.6.2 Give clear guidance on the improved sustainable standard of performance needed to exit the capability procedure (*this may include the setting of new objectives focused on the specific weaknesses that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvements has been made*)
- 5.6.3 Explain the support that will be available, and how performance will be monitored over a period of time, referred to in this Capability Policy and Procedure as the Assessment Period
- 5.6.4 Identify a reasonable timetable for improvement and agree a date for the Second Capability Meeting
- 5.6.5 Make it clearly understood that failure to improve may lead to dismissal.
- 5.7 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.
- 5.8 The Assessment Period will consist of formal monitoring, evaluation, guidance and support.
- 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 not sufficient evidence that the employee is progressing towards achieving the standards required.
- 5.9 You may appeal against a First Written Warning by writing to the Clerk within 5 working days of being sent the First Written Warning.
- 5.10 The fact of the appeal does not delay the commencement of the Assessment Period.
- 5.11 In the case of a Principal, a First Written Warning will remain live for 12 months. In the case of all other employees a First Written Warning will remain live for 6 months. If within that 12 or 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.

6. Second Capability Meeting

- 6.1 The Capability Manager will write to you inviting you to a Second Capability Meeting. You will be given at least 5 working days notice of such meeting. At the same time as sending you the letter inviting you to the Second Capability Meeting, the Capability Manager will also send you a copy of the Updated Performance Report which they have prepared and which shall set out the assessments, support and evaluation of your performance during the Assessment Period.
- 6.2 At the Second Capability Meeting you will have an opportunity to comment upon the Updated Performance Report and to discuss the professional assessment and any continuing shortcomings, possible support and guidance and how performance should be monitored going forward.
- 6.3 The Capability Manager will confirm the outcome of the Second Capability Meeting in writing within 5 working days of the date of such meeting.
- 6.4 Where the Capability Manager concludes that the standard of performance is satisfactory you will no longer be subject to this Capability Policy & Procedure and shall be notified in writing. The Academy's Appraisal Policy & 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.
- 6.5 Where the Capability Manager concludes 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 consider extending the Assessment Period determined in accordance with paragraph 5.9 by up to an additional 4 weeks.

- 6.6 Where the Capability Manager concludes that no, or insufficient, improvement has been made so that your performance remains unsatisfactory, you will be given a Final Written Warning setting a Further Assessment Period of 4 working weeks and setting the date for the Final Capability Meeting. You will be informed that failure to make satisfactory sustainable improvement will result in your dismissal.
- 6.7 You may appeal against a Final Written Warning by writing to the Clerk within 5 working days of being sent the Final Written Warning.
- 6.8 The fact of the appeal does not delay the commencement of the Further Assessment Period.
- 6.9 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.

7. Final Capability Meeting

- 7.1 The Final Capability Manager will write to you inviting you to a Final Capability Meeting. You will be given at least 5 working days' notice of such meeting. At the same time as sending you the letter inviting you to the Final Capability Meeting, the Final Capability Manager will also send you a copy of the Final Performance Report which they have prepared and which shall set out the assessments, support and evaluation of your performance during the Further Assessment Period.
- 7.2 At the Final Capability Meeting you will have an opportunity to comment upon the Final Performance Report and to discuss the continued professional shortcomings, where appropriate.
- 7.3 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.
- 7.4 Where the Final Capability Manager concludes that the standard of performance is satisfactory you will no longer be subject to this Capability Policy & Procedure and shall be notified in writing. The Academy's Appraisal Policy & 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.
- 7.5 Where the Final Capability Manager concludes that your performance remains unsatisfactory and is not capable of sustainable improvement the Final Capability Manager will recommend to the Academy Trust Company that your employment is terminated in accordance with your contract of employment and the Academy Trust Company will take the appropriate steps to terminate your employment with notice.
- 7.6 You may appeal against a dismissal with notice by writing to the Clerk within 10 working days of being sent the notice of termination.
- 7.7 The fact of the appeal does not delay the commencement of the notice period.
- 7.8 In the event that your employment is terminated in accordance with Paragraph 7.5 above:
 - (a) If your contract of employment contains a garden leave clause the Governing Board may exercise that

clause so that you are not required to attend the Academy during the notice period but remain employed and so bound by the terms of your contract of employment until the expiry of the notice period; or

- (b) If your contract of employment contains a payment in lieu of notice clause the Governing Board may exercise that clause to bring your contract to an end with immediate effect.

8. Appeals Against Decisions Made By Capability Manager And/Or Final Capability Manager

- 8.1 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 5, 6 and 7 above.
- 8.2 In all cases your appeal letter must set out the grounds of your appeal in detail.
- 8.3 Any appeal should normally be heard by the relevant Appeal Manager appointed in accordance with Paragraph 2 within 20 working days of the Clerk receiving your appeal letter.
- 8.4 The Appeal Manager is not required to hear oral evidence and may rely on written evidence.
- 8.5 If the Appeal Manager does decide to hear oral evidence, you will be given an opportunity to comment on it either by attending the meeting or by reviewing the notes of that oral evidence after the meeting (if you were not present at the meeting where such oral evidence was given).
- 8.6 The Appeal Manager will confirm the outcome of the Appeal Meeting in writing to you 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 outcomes of the 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 and refer the matter back to the Capability Manager or Final Capability Manager for reconsideration.

9. Directors'/Governors' Panels

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

10. Companion

- 10.1 If you are the subject of any Capability Meeting you may be accompanied by a Companion.
- 10.2 You must let the relevant Manager know who your Companion will be at least one working day before the relevant meeting.
- 10.3 If you have any particular reasonable need, for example, because you have a disability, you may also be accompanied by a suitable helper.
- 10.4 Your Companion can address the meeting in order to:
- put your case;
 - sum up your case;
 - respond on your behalf to any view expressed at the meeting; and
 - Ask questions on your behalf.
- 10.5 Your Companion can also confer with you during the meeting.
- 10.6 Your Companion has no right to:
- answer questions on your behalf;
 - address the meeting if you do not wish it; or
 - prevent you from explaining your case.
- 10.7 Where you have identified your Companion to the relevant Manager and they have confirmed in writing to the relevant Manager that they cannot attend the date or time set for the meeting, the relevant Manager will not usually postpone the meeting for a period in excess of five working days from the date set by the Academy to a date or time agreed with your Companion provided that it is reasonable in all the circumstances. Should your Companion subsequently be unable to attend the rearranged date, the meeting may be held in their absence or written representations will be accepted.

11. Timing Of Meetings

Meetings under this procedure may:

- need to be held when you were timetabled to teach.
- exceptionally be held during planning, preparation and administration time if this does not impact on lesson preparation.
- be held after the end of the Academy day.
- not be held on days on which you would not ordinarily work.
- Be extended by agreement between the parties if the time limits cannot be met for any justifiable reason

12. Assistance

In all cases involving any sanction in relation to the Principal 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. Links to other policies

This Capability Policy is linked with our;

- Disciplinary Policy
- Appraisal Policy for Teachers
- Appraisal Policy for Support Staff
- Code of Conduct

14. Monitoring and Review

The Board of Directors delegate the implementation of this policy to the Academy Committee.
This policy will be reviewed by CC2 Strategy, People and Organisational Development.