



St Joseph
Catholic Multi Academy Trust

Capability Management Policy

Reviewed By	Approved By	Date of Approval	Version Approved	Next Review Date
	SJCMAT Board	26.09.23	1.0	31.12.2024
Andrew Truby Gill Meeson	Trust Board	06.02.23	1.0	October 2023

Document Properties	
Document Owner	Andrew Truby
Organisation	St Joseph Catholic MAT
Title	CEO
Abstract	
Capability Policy for implementation in 2022-2023	

Version History			
Date	Version	Status	Summary of Changes
17.11.22	1.0	Draft	
4.11.22	1.0	Draft	Formatted into correct Policy Template
9.01.23	1.0	Draft	Reviewed by a Director
20.01.23	1.0	Draft	Addition to clause 3 as per JCNC agreement

For the purpose of this policy the following representatives need to sign off this document:	
Role & Responsibilities	Name
CEO	Andrew Truby
Chair of the Board	Ann Connor OBE
Head of People and Operations	Fay Callow

Website:	
No	Trust Sharepoint

Contents

1. Definitions.....	4
2. Scope	5
3. Employees Experiencing Difficulties	6
4. Capability, final capability and appeal manager	7
5. First formal capability meeting.....	9
6. Second formal capability meeting	10
7. Final capability meeting.....	12
8. Appeals against decisions made by capability manager and/or final capability manager	13
9. Directors' Panels.....	14
10. Companion	14
11. Time of meetings	15
12. Overlapping capability and grievance cases	15
13. Assistance	15
14. Monitoring - Across the Trust Estate.....	16
15. Links with other policies	16
16. Sign off	16

1. Definitions

In this Capability Policy, 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 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 Attendance Management Policy 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 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, a trade union official, or an accredited representative of a trade union who should be available for the periods of time necessary to meet the timescales under this Policy.
- 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.
- xv. 'Vice-Chair' means the Vice-Chair of the Board as elected from time to time.
- xvi. '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.
- xvii. 'Working Week' means any week that you would ordinarily work.

2. Scope

- 2.1 This Capability Policy applies to you, if you are an employee or worker at the Academy (hereinafter referred to as an "employee" or "you").
- 2.2 The purpose of this Capability Policy 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.
- 2.3 This Capability Policy shall be invoked when there is an identified need to address, with a view to remedying, capability due to lack of competence.

- 2.4 The Academy Trust Company delegates its authority in the manner set out in this policy.
- 2.5 If sickness absence appears to have been triggered by the commencement of the formal capability procedure, the case will be dealt with in accordance with the academy's Attendance Management Policy. Where appropriate a referral to occupational health will be instigated.
- 2.6 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 the academies in the Academy Trust Company's group.
- 2.7 This Capability Policy 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.
- 2.8 The management of unsatisfactory performance and related investigations will be treated in confidence by all parties involved at all stages of this Capability Policy.
- 2.9 The Academy Trust Company will maintain records of all interviews and reviews which take place under this Capability Policy 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.

3. Employees Experiencing Difficulties

- 3.1 This Capability Policy should, except in exceptional circumstances, only be invoked where there are serious concerns of under-performance in cases where:
 - a. the support stage in the appraisal policy has been concluded
 - b. the employee has made no improvement, or no sufficient improvement as required by the Academy; and/or
 - c. the employee is failing to improve despite feedback in relation to unsatisfactory performance
- 3.2 If the CEO or Headteacher is subject to this Capability Policy they will normally continue to be responsible for the appraisal of their staff unless the Board determines that this is inappropriate.

4. 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. Managers involved in this process should be trained and experienced, with each panel comprising up to 3 members:

<i>Employee Level</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>
CEO Central staff	Chair or a non-staff Director (other than the Vice-Chair) appointed by the Chair	Directors' Capability Panel appointed by the Vice-Chair As previous column	A non-staff Director (other than the Chair or Vice Chair) appointed by the Vice-Chair	Directors' Appeal Panel appointed by the Vice-Chair
Headteacher	Chair or a non-staff Director (other than the Vice-Chair) appointed by the Chair CEO	Directors' Capability Panel appointed by the Vice-Chair As previous column	A non-staff Director (other than the Chair or Vice Chair) appointed by the Vice-Chair	Directors' Appeal Panel appointed by the Vice-Chair
Other Leadership Spine and School Business Manager	Headteacher	LGB Capability Panel appointed by the Chair CEO	LGB member (other than the Chair or Vice-Chair) appointed by the Vice-Chair	Directors' Appeal Panel appointed by the Vice-Chair

Other Teaching Staff	Headteacher or a sufficiently senior member of staff appointed by the Headteacher	LGB Capability Panel appointed by the Chair CEO	LGB member (other than the Chair or Vice-Chair) appointed by the Chair	Directors' Appeal Panel appointed by the Vice-Chair
Other Support Staff	Headteacher or a sufficiently senior member of staff appointed by the Headteacher	LGB Capability Panel appointed by the Chair HT/CEO	LGB member (other than the Chair or Vice-Chair) appointed by the Chair	Directors' Appeal Panel appointed by the Vice- Chair

4.1 Informal support

Concerns may arise from normal monitoring, complaints, supervision sessions, work reviews or other sources. A meeting should be arranged to discuss the issues, at which you are entitled to be accompanied by a trade union representative or work colleague. This policy should not be invoked until the support plan under the Appraisal Policy has concluded and therefore concerns raised should not come as a surprise.

- 4.2 Relevant information to be taken into consideration during the meeting may include length of service, details of previous training and support plans, complaints about Your work etc. The meeting will also cover the following areas: an explanation of the standards of performance required, an outline of the shortcomings in reaching those standards, an opportunity for You to respond to the concerns and the provision of appropriate help and support (such as opportunities to observe good practice, training, etc).
- 4.3 Where improvement is thought possible outside the formal procedure a support plan will be agreed under a period of informal support. The informal support stage should last no longer than six working weeks.
- 4.4 The informal stage should include establishing the expectations of the Academy and what support will be given to you to help you meet those expectations e.g. what you are expected to undertake in your role and a support plan which will set out concerns and the support available.

- 4.5 Informal support will be recorded in writing and may be referred to at a later stage as evidence that an informal approach was initiated and it will confirm the success or failure of such an approach.
- 4.6 On completion of the assessment period outlined in the support plan a firm conclusion should be reached by the CEO/headteacher or the senior leader involved.
- 4.7 If the CEO/headteacher or senior leader is satisfied that you are now working to the required standards, you will be informed in writing that the informal capability procedure no longer applies.
- 4.8 If the CEO/headteacher or senior leader is not satisfied that You are now working to an acceptable standard a first capability meeting will be arranged to discuss the issue of capability with you.

5. First formal capability meeting

- 5.1 The Academy Trust Company will appoint a Capability Manager in accordance with the table in Paragraph 4 above. The Capability Manager will write to you inviting you to a First Capability Meeting. You will be given at least 10 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 Performance Report which shall set out:
 - a. what aspects of your performance are causing concern;
 - b. what specific and achievable performance standards are expected of you; and
 - c. the support that has been provided to you so far.
- 5.2 The Capability Manager's letter will state that any documentation you wish to rely on during the First Capability Meeting must be submitted at least 3 Working Days prior to the First Capability Meeting.
- 5.3 At the First Capability Meeting you will have an opportunity to respond to the contents of the Performance Report, the discussion will also include the professional shortcomings identified and the support and guidance required. The Capability Manager will also explain how your performance will be monitored and how you will be supported going forward including timescales as detailed above.
- 5.4 At the end of the First Capability Meeting, if after having considered your comments, the Capability Manager finds that your performance is satisfactory you will no longer be subject to this Capability Policy and will be notified in writing of the Capability Manager's decision, as soon as is reasonably practicable.

- 5.5 At the end of the First Capability Meeting, if after having considered your comments, the Capability Manager concludes that your performance is unsatisfactory you will be given a First Written Warning (which will remain current for 6 months) and an Improvement and Support Plan will be drawn up in discussion with you 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 your performance will be monitored and supported over a period of time, referred to in this Capability Policy 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.
- 5.6 The length of the Assessment Period following a First Written Warning will be at least 4 Working Weeks and no more than 6 Working Weeks. However, this is dependent upon the role and should be reasonable under the circumstances and this would apply to any period of support.
- 5.7 At any time during the Assessment Period if there is sufficient evidence that the employee is progressing towards achieving the standards required the timeframe may be extended by the Capability Manager. You will be informed of any such extension in writing.
- 5.8 You may appeal against a First Written Warning by writing to the Clerk within 5 Working Days of the date of the First Written Warning.
- 5.9 An appeal will not delay the commencement of the Assessment Period. Any appeal should normally be heard within 10 working days of the Clerk to the Board receiving your appeal.
- 5.10 If within that 6 month period of the First Written Warning, 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 and you will be notified of this in writing.

6. Second formal capability meeting

- 6.1 At least 10 Working Days prior to the Second Capability Meeting the Capability Manager will send you an Updated Performance Report. The Updated Performance Report will provide details of the assessments of your performance that have taken place during the Assessment Period, the support that has been provided to you and an evaluation of your performance at the end of the Assessment Period.

- 6.2 Any documentation you wish to rely on during the Second Capability Meeting must be submitted at least 2 Working Days prior to the Second Capability Meeting.
- 6.3 At the Second Capability Meeting you will have an opportunity to comment upon the contents of the Updated Performance Report, the discussion will also include the professional shortcomings identified and the support and guidance required. The Capability Manager will also explain how your performance will be monitored and how you will be supported going forward.
- 6.4 The Capability Manager will confirm the outcome of the Second Capability Meeting in writing within 5 Working Days of the date of such meeting.
- 6.5 Where the Capability Manager concludes, at the end of the Second Capability Meeting, that the standard of your performance is satisfactory you will no longer be subject to this Capability Policy. However, if the required standard of performance is not sustained during the currency of the First Written Warning, the Capability Manager will recommence the Capability Procedure at the stage it was previously concluded and you will be notified of this in writing.
- 6.6 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 you 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 your performance is satisfactory, you will no longer be subject to this Capability Policy. 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 you will be notified of this in writing.
- 6.7 Where the Capability Manager concludes, at the end of the Second Capability Meeting, or at the end of the Additional Assessment Period, 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 notifying you of the date for a Final Capability Meeting to be held at the end of the Further Assessment Period. You will be informed that failure to make satisfactory sustainable improvement during such Further Assessment Period may result in your dismissal.
- 6.8 You may appeal against a Final Written Warning by writing to the Clerk within 5 Working Days of the date of the Final Written Warning.
- 6.9 An appeal will not delay the commencement of the Further Assessment Period.

- 6.10 Any appeal should normally be heard within 10 working days of the Clerk to the Board receiving your appeal.
- 6.11 A Final Written Warning for all employees will remain current 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 and you will be notified of this in writing.

7. Final capability meeting

- 7.1 At least 10 Working Days prior to the Final Capability Meeting the Final Capability Manager will send you a Final Performance Report. The Final Performance Report shall contain an evaluation of your performance and will detail any support provided during the Further Assessment Period.
- 7.2 Any documentation you wish to rely on during the Final Capability Meeting must be submitted at least 2 Working Days prior to the Final Capability Meeting.
- 7.3 At the Final Capability Meeting you will have an opportunity to comment upon, the Final Performance Report and the discussion will also include the professional shortcomings identified and the support and guidance which was provided.
- 7.4 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.
- 7.5 Where the Final Capability Manager concludes that the standard of performance is satisfactory you will no longer be subject to this Capability Policy. 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 you will be informed of this in writing.
- 7.6 Where the Final Capability Manager concludes that your performance remains unsatisfactory and is not capable of sustainable improvement, the Final Capability Manager may 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 appropriate steps to terminate your employment with notice. This will be either a Directors' Panel in relation to the CEO/Headteacher or an LGB panel for leadership and other posts. 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.

- 7.7 You may appeal against a decision to dismiss you with notice by writing to the Clerk within 5 Working Days of the date of the notice of termination.
- 7.8 An appeal will not delay the commencement of the notice period.
- 7.9 Any appeal should normally be heard within 10 working days of the Clerk to the Board receiving your appeal.
- 7.10 In the event that your employment is terminated:
- a. if your contract of employment contains a garden leave clause the Academy Trust Company 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 Academy Trust Company 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.
- 8.2 In all cases, your appeal letter must set out the grounds of your appeal in detail. When preparing your appeal letter, you may wish to consider the following:
- a. That the action taken was unfair;
 - b. That this Capability Policy was applied incorrectly 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 unreasonable under the circumstances
- 8.3 Appeals will be heard by the relevant Appeal Manager appointed in accordance with table set out above.
- 8.4 You will be given 10 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 and whether the evidence will be written or oral. If written evidence is to be relied upon you will be provided with copies of such evidence with notice of the meeting in order to enable you to prepare for the Appeal Meeting. If oral evidence is to be relied upon at the Appeal Meeting, you will be given details of who will be in attendance. You 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.

- 8.5 You 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 you and by the Capability Manager or Final Capability Manager (as appropriate) in order to determine whether the relevant decision was fair and reasonable.
- 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.

9. Directors'/LGB Panels

- 9.1 Directors'/LGB Capability and Appeal Panels will comprise three non-staff Directors/LGB members not previously involved in the matter and shall not comprise the Chair or Vice-Chair unless there are insufficient numbers of non-staff Directors/LGB members not previously involved in the matter.
- 9.2 In the event that there are insufficient numbers of Directors/LGB members available to participate in an Appeal Panel, the Academy Trust Company may appoint associate members solely to participate in the appropriate Directors' Capability/LGB members 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 have the right to 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 can also be accompanied by a suitable helper.
- 10.4 Your Companion can address the meeting in order to:
- a. put your case;
 - b. sum up your case;
 - c. respond on your behalf to any view expressed at the meeting; and
 - d. 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:

- a. answer questions on your behalf;
- b. address the meeting if you do not wish it; or
- c. prevent you from explaining your case.

10.7 Where you have identified your 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 your Companion. 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. Time of meetings

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

- 11.1 need to be held when you were timetabled to teach (if that is appropriate to your role);
- 11.2 not be held on days on which you would not ordinarily work;
- 11.3 be extended by agreement between the parties if the time limits cannot be met for any justifiable reason.

12. Overlapping capability and grievance cases

If a grievance is raised by an employee after capability proceedings against them have commenced, and the grievance relates to the capability case (unrelated cases can proceed in parallel), a decision will be taken either to suspend the grievance until after the capability issue has been dealt with or to hear the grievance at the capability hearing. Only in exceptional circumstances will a capability hearing be suspended to deal with a grievance that has been raised after capability process has commenced. Depending upon the nature of the grievance, the CEO/headteacher may need to consider bringing in another manager to continue to hear the capability case.

13. Assistance

In all cases involving any sanction in relation to the Chief Executive Officer, a Headteacher or to a person on the Leadership Pay Range, or to potential or actual dismissal of any other member of staff, the Diocesan Schools Commission may send a representative to advise the Capability Manager, Final Capability Manager or Appeal Manager.

14. Monitoring - Across the Trust Estate

This policy will be reviewed annually.

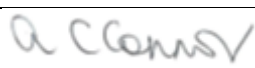
At every review, the policy will be approved by the Trust Board.

15. Links with other policies

This policy links to the following policies and documents:

- Appraisal Policy
- Attendance Management Policy

16. Sign off

Presented & Approved by Trust Board	26.09.23
Signed by Chair of Trust Board	
Name of Chair of Trust Board	Ann Connor
Date	26.09.23
Version	1.0
Date of Review	31.12.24