



# Capability Policy & Procedure

Last Update: September 2022 (version 4.0)

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## Document Control

### Changes History

Version	Date	Amended by	Recipients	Purpose
1.0	2018	New Policy	All Plymouth CAST staff	New Policy
1.1	March 2019	Human Resources	JCC Union review	Changes to Scheme of Delegation/SHBM roles
2.0	March 2019	Human Resources	CAST Board	Changes to Scheme of Delegation/SHBM roles
3.0	March 2020	Human Resources	JCC Union review	Changes to Scheme of Delegation/SHBM roles
4.0	July 2022	Human Resources	JCC Union review	Policy Review

### Approvals

This policy requires the following approvals:

Board	Chair	CEO	Date Approved	Version	Date for Review
✓	✓	✓	29 <sup>th</sup> March 2019	2.0	March 2020
✓	✓	✓	March 2020	3.0	March 2022
✓	✓	✓	22nd July 2022	4.0	September 2025

### National/Local Policy

This policy must be localised by Academies

This policy must not be changed, it is a CAST/National Policy (only change logo, contact details and any yellow highlights)

### Position with the Unions

Does the policy require consultation with the National Unions under our recognition agreement?  Yes  No  
 If yes, the policy status is:  Consulted and Approved  Consulted and Not Approved  Awaiting Consultation

### Distribution

This draft document has been distributed to:

Position	Date	Version
All Plymouth CAST Employees	September 2022	4.0

## **1. Vision and Values**

- 1.1. Plymouth CAST is a multi-academy trust of Catholic schools which is part of the mission of the Catholic Church dedicated to human flourishing and the building of a kingdom of peace, truth and justice. The Trust is to be conducted in all aspects in accordance with canon law and the teachings of the Roman Catholic Church and at all times to serve as a witness to the Catholic faith in Our Lord Jesus Christ.
- 1.2. Our vision and values are derived from our identity as a Catholic Trust. Central to our vision is the dignity of the human person, especially the most vulnerable. Our academies are dedicated to providing an education and formation where all our pupils and young people flourish in a safe, nurturing, enriching environment. All governors in our academies are expected to be familiar with the vision, mission, values and principles of the Trust and not in any way to undermine them. They should support and promote the vision and conduct themselves at all times in school and on school business according to the vision and principles of the Trust
- 1.3. Plymouth CAST expects all its employees to recognise their obligations to each school within the Multi-Academy Trust, the public, pupils and other employees and to provide consistently high standards of education and performance at all times and in accordance with Plymouth CAST's vision, mission and principles.

## **2. Purpose**

- 2.1. To achieve high quality and effective education and good employee relations this policy aims to:
  - 2.1.1. This procedure sets out how employees will be managed when their performance falls below the standards required.

## **3. Scope**

- 3.1. This policy applies to all Plymouth CAST employees.
- 3.2. This policy applies to employees whose performance has raised serious concerns that have not been resolved using the appraisal procedure.
- 3.3. This policy does not apply to instances of misconduct or ill-health to which separate policies are in place.
- 3.4. The capability procedure will be implemented in accordance with the provisions of the ACAS Code of Practice on Disciplinary and Grievance Procedures.

#### **4. Equal Opportunities**

- 4.1. The capability policy must always be applied fairly and in accordance with employment law and Plymouth CAST Equal Opportunities Policy including the duty to make reasonable adjustments for disabled employees.

#### **5. Responsibilities**

- 5.1. The day to day operation of each Plymouth CAST school is the responsibility of the Head teacher/Executive Headteacher, with support and challenge being provided by the Education and Standards Manager and this is discharged through each school's Senior Management Team. It is important that pupils, staff, parents and local stakeholders recognise and support this. However, ultimate accountability for Plymouth CAST as a whole multi-Academy Trust rests with the Plymouth CAST Board. Therefore any decisions that have an impact on resources, such as staffing, structures, or compliance must be referred to the Plymouth CAST Board if they exceed delegated authority. This is essential to ensure that the legal obligations of Plymouth CAST are met and that the Trust maintains robust systems and processes that deliver effective governance.
- 5.2. It is the school Education and Standards Manager's (ESM's) responsibility to work closely with the Head teacher and management team to ensure everyone concerned has a full and accurate picture of each school's strengths and any areas for improvement. ESMs will work with schools to identify strategies for improvement, with support, where appropriate, from within the Plymouth CAST network.
- 5.3. It is the role of Plymouth CAST HR (and where appropriate, the School Business Manager) to provide clear HR policies and procedures and guidance, to support schools in the delivery of consistent and high standards of performance within a dignified working environment, in which all employees can take pride and enjoyment in their work.
- 5.4. Appendix 1 provides examples of Delegated Responsibilities and Panel Formations.
- 5.5. Management and employee representatives who may be involved in capability matters should be trained and competent for the task. They should be familiar with the provisions of the Capability Policy, and know how to conduct or represent at appraisal or formal capability hearings.
- 5.6. ESMs and HR should be informed about matters which might lead to a formal procedure and ultimately capability proceedings. For any panel hearing the school must ensure an HR representative is aware of the process and in attendance, or have delegated attendance to a suitably qualified staff member.

## **6. Capability Hearings**

- 6.1. Where there are reasonable grounds to suggest that after informal support through the appraisal procedure, performance continues to fall short of the required standard, a capability hearing should be arranged. When progress is reviewed, if the appraiser is satisfied that the employee has made, or is making, sufficient improvement, the appraisal procedure will continue as normal.
- 6.2. Employees are encouraged to consult with their trade union/professional association early, where they may be subject to capability proceedings.
- 6.3. Copies of the manager's appraisal report and all relevant documentation such as notes of all meetings should be sent to the employee and their representative with a letter specifying the date, time and place for the hearing, giving at least five working days' notice (notice periods cover working days either side of holidays). The notification letter will contain sufficient information about the performance concerns and their possible consequences, to enable the employee to respond to identified concerns. It will also contain copies of any written evidence. The letter will inform the employee of their right to be accompanied by a trade union representative or work colleague. If an employee's companion cannot attend on a proposed date, the employee can suggest another date so long as it is reasonable.
- 6.4. Working days refers to actual school days for term-time only staff.

## **7. Composition of the Panel**

- 7.1. A capability panel will be appointed to hear the allegations of inadequate performance that the appraisal procedure has been unable to resolve through a support plan.
- 7.2. The panel will comprise of three members who will appoint one of their number as Chair to lead the capability hearing. Appendix 1, 3.3 gives examples of the composition of a panel.
- 7.3. For all meetings a note taker will attend. It is their role to minute the significant points of the hearing and the decision of the panel but not to produce a verbatim record. Notes will be made available to all parties within 5 working days.
- 7.4. Neither an employee nor their representative should audio or video record the meeting without consent, as this suggests an explicit lack of trust in Plymouth CAST's procedure or the managers who are conducting it. If the employee has misgivings about either the procedure or the managers leading it he/she should raise their concerns with the Head teacher, ESM or Plymouth CAST CEO so the concerns can be resolved.
- 7.5. Where hearings are conducted virtually, all parties will have the opportunity to provide consent to the recording of the session for note taking purposes. All recordings will be stored securely and confidentially disposed of once the minutes are finalised.

- 7.6. Plymouth CAST provides professional support and advice on the effective implementation of any procedure through the ESMs and HR, who should be informed of all cases requiring a formal procedure. An HR representative will be in attendance for all panel hearings.

## **8. Conducting the Hearing**

- 8.1. This meeting is intended to establish the facts. This may provide new information or a different context to the information/evidence already collected. It will be conducted by the appointed Chair of the capability panel. The employee may be accompanied by a trade union representative or work colleague.
- 8.2. The Chair of the capability panel may conclude that there are insufficient grounds for implementing formal capability proceedings and that it would be more appropriate to resolve the remaining concerns through the appraisal procedure. In such cases, the capability procedure will come to an end. The Chair of the capability panel 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.
- 8.3. In other cases, the meeting will continue. During the meeting, or any other meeting which could lead to a formal warning being issued, the Chair of the capability panel will:
  - 8.3.1. identify specifically where the employee's performance is lacking, for example which of the standards expected of the employee's role are not being met;
  - 8.3.2. give clear guidance on the improvement required to enable the capability procedure to come to an end. (this may include the setting of new objectives focused on the specific weaknesses that need to be resolved and the evidence that will be needed to determine whether or not the necessary improvement has been made);
  - 8.3.3. what support will be available to help the employee improve their performance;
  - 8.3.4. set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case, but in straightforward cases could be between four and ten weeks. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place); and
  - 8.3.5. advise the employee formally that failure to improve within the set period may lead to further action being taken, which may result in dismissal.
- 8.4. Notes will be taken of formal meetings and a copy sent to the employee. Where a warning is issued, the employee will be informed in writing of the matters covered above, given information about the timing and handling of the review stage and the procedure and time limits for appealing against the warning.

## **9. Monitoring and review period**

- 9.1. A performance monitoring and review period will follow the formal capability meeting. The review period will be determined by the panel according to the circumstances. Formal monitoring, evaluation, guidance and support will continue during this period. The employee will be invited to a formal review meeting, unless they were issued with a final written warning, in which case they will be invited to a decision meeting (see 12 below).

## **10. Formal Review Meeting**

- 10.1. As with formal capability meetings, at least five working days' notice will be given. The notification will give details of the time and place of the meeting and will advise the employee of their right to be accompanied by a trade union representative or work colleague.
- 10.2. If the Chair of the capability panel is satisfied that the employee has made sufficient improvement, the capability procedure will cease and the appraisal procedure will re-start. In other cases:
  - 10.2.1. 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;
  - 10.2.2. If no, or insufficient improvement has been made during the monitoring and review period, the employee will receive a final written warning.
- 10.3. As before, notes will be taken of formal meetings and a copy sent to the employee. Where a final warning is issued, the employee will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale), may result in dismissal. They will be given information about further monitoring and review period, procedure and time limits for appealing against the final warning and the employee will be invited to a decision meeting.

## **11. Decision Meeting**

- 11.1. As with formal capability meetings and formal review meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the employee of their right to be accompanied by a trade union representative or work colleague.
- 11.2. If the Chair of the capability panel is satisfied that an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will cease and the appraisal procedure will re-start. If performance remains unsatisfactory, a decision may be made that the employee should be dismissed.
- 11.3. An HR representative will be present at capability decision meetings.

- 11.4. The employee will be informed in writing as soon as possible of the reasons for dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.

## 12. Appeals Procedure

- 12.1. Employees have the right of appeal against all formal capability action. In submitting an appeal, employees are asking the appeal panel to consider the fairness and reasonableness of any capability measures taken.
- 12.2. Appeals must be registered in writing with the appropriate person within ten working days of the date of the letter (which should be sent recorded delivery) confirming the capability decision. In appeal cases relating to the Head teacher, the appeal should be registered with the Chair of Governors. Appeals received after this period will not normally be heard unless granted because of extenuating circumstances.
- 12.3. Appeals against decisions made by the capability panel must be considered by an appeals panel, who have had no prior involvement in the case. Where the case involves the Head teacher, the Director of Education and Standards or other suitable senior representative will normally Chair the appeal panel. However, consideration may be given to appointing a member(s) from Plymouth CAST's Board of Directors – see Appendix 1 panel formation.
- 12.4. Employees must present any new evidence, which was unavailable at the time of submission of the appeal documentation, at least five working days prior to the appeal hearing.
- 12.5. Appeals against capability action will be considered by the panel in relation to one or more of the following grounds:
  - 12.5.1. The PROCEDURE, – the grounds of appeal should detail how procedural irregularities prejudiced the capability decision.
  - 12.5.2. The FACTS, – the grounds of appeal should detail how the facts do not support the decision or were misinterpreted or disregarded. They should also detail any new evidence to be considered.
  - 12.5.3. The DECISION, – the grounds of the appeal should state how the performance concerns did not justify the level of capability action taken.
- 12.6. Appeal hearings will be convened as soon as is reasonably practicable. The employee will be given ten working days' notice of the time and place of the appeal hearing with the right to be accompanied by a trade union representative or work colleague.
- 12.7. The appeal will concentrate on the area(s) of dispute only and will not be a re-run of the capability hearing. Accordingly, it is important that the employee is explicit about the grounds for appeal and must provide clear and specific reasons in writing.

- 12.8. The result of the appeal and the reasons for the decision will be conveyed to the employee immediately after the hearing and will be confirmed in writing to the employee and his/her representative within five working days by the Chair of the appeal panel.
- 13. Confidentiality**
- 13.1. The capability procedure will be treated confidentially. However, the desire for confidentiality does not override the need for Head teachers, Executive Headteachers and Plymouth CAST to quality-assure the operation and effectiveness of the capability policy and procedure. This might be achieved for example by the Head teacher or an appropriate manager reviewing capability improvement plans to ensure consistency of approach.
- 14. Grievances**
- 14.1. Sometimes an employee may raise a grievance during the course of a capability case. Where this happens and depending on the circumstances, it may be appropriate to suspend the capability procedure for a short period until the grievance can be considered. The employee, will however, have to raise the grievance in accordance with Plymouth CAST's Grievance Policy.
- 14.2. Depending on the nature of the grievance, consideration may be given to bringing in another manager to continue to hear the capability case.
- 15. Sickness**
- 15.1. If long term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case will be dealt with in accordance with the Plymouth CAST's Absence Policy. The employee may be referred to the Occupational Health provider to assess their health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.
- 16. Monitoring and Evaluation**
- 16.1. The Head teacher and school's ESM will monitor the operation and effectiveness of the local capability arrangements in their school.
- 16.2. Plymouth CAST will monitor the operation and effectiveness of the capability arrangements for the central team and across the network of schools.
- 17. Record Keeping**
- 17.1. Full notes must be kept of the capability procedure and any subsequent proceedings given that there may be a need to produce the documentation used in arriving at the decision, both at any subsequent internal appeal and in the event of a claim to an Employment Tribunal.

- 17.2. A written record must be made of all interviews and meetings held during the application of this policy. Those involved in each meeting will be provided with a copy of any records made.
- 17.3. The Chair of the panel will ensure there is a full and comprehensive file of the procedure which should include all statements, records and evidence. At the end of the procedure the file should be passed to the Head teacher / school Business Manager who should ensure that it is stored confidentially. Files for Head teachers and the central support team must be returned to HR for filing.
- 17.4. All records will be kept confidentially and retained in accordance with the General Data Protection Regulation (2018).
- 17.5. Employees may also wish to keep records of events to support their case.

## 18. Review

- 18.1. The content of this procedure may be subject to revision from time to time following consultation with the recognised trade unions.
- 18.2. History of policy changes

Date	Page	Details of the change	Agreed by
19.07.2017	All	Board Approval for adoption	CAST Board
11.03.2019	Various	Re-definition of responsibilities in line with the new Scheme of Delegation. School Improvement Officers changed to Education and Standards Managers. Introduction of school Business Manager. Change to timescale in providing notice of meetings.	JCC
29.03.2019	All	Board Approval	CAST Board
22/07/22	Various	Reference to HR Advisor replaced with HR Representative.	SELT/JCC/Board of Directors
22/07/22	13	Appendix 1 3.2- Clearer instructions on panel formation and addition of cases involving Senior employees.	SELT/JCC/Board of Directors

Policy to be reviewed by the Plymouth CAST Board in consultation with the JCC in March 2024 or when legislation changes or operational reasons arise.

## Appendix 1. Responsibilities and Panel Formation

### 1. Responsibilities

- 1.1. It is the responsibility of the school's management team and ESM to manage their school within the framework of Plymouth CAST's policies and procedures.
- 1.2. In schools the Head teacher, or most senior member of the school, has overall responsibility for the management of employees in their school. They should ensure that staff with line management responsibilities are equipped with the relevant knowledge and training to manage staff effectively and appropriately.
- 1.3. The CEO has overall responsibility for the management of Plymouth CAST's central support staff through the management structure in place.

### 2. Support

- 2.1. Plymouth CAST provides professional support and advice on the effective implementation of any procedure through HR who should be informed of all cases requiring a formal procedure. An HR representative will be in attendance for all panel hearings.

### 3. Panel Formation

- 3.1. An appropriate panel will be formed for any formal hearing, at which the employee will have the right to be accompanied by a trade union representative or work colleague.
- 3.2. The panel will consist of 3 panel members. One of the panel members will be appointed as the Chair of the Panel, this individual must be an employee of the Trust. For cases involving Senior Leaders of the Trust, the Chair of the Panel could be the Chair of the Board of Directors. The panel **could** comprise of a combination of the following:
  - 3.2.1. School Senior Leaders (Headteacher, Deputy Headteacher, Key Stage leaders etc). This can include Senior Leaders from other Plymouth CAST schools.
  - 3.2.2. A member of the Plymouth CAST central team
  - 3.2.3. A member of the Plymouth CAST HR team
  - 3.2.4. Member of a Local Governing Board (this can be from another Plymouth CAST School).
  - 3.2.5. Member of the Board of Directors

4. Consideration should also be given to appointing investigating officers and panel members from across Plymouth CAST's network.