



HR Service

Diocese of Nottingham Catholic Multi-Academy Trusts

Capability Policy
and Procedure

2019/20



**DIOCESE OF NOTTINGHAM CATHOLIC MULTI ACADEMY TRUSTS
CAPABILITY POLICY AND PROCEDURE**

St Thérèse of Lisieux Catholic Multi Academy Trust

This Capability Policy and Procedure has been subject to consultation with the Recognised Trade Unions. It was approved and adopted by the St Thérèse of Lisieux Catholic Multi Academy Trust (“the Academy”) on 02/03/2020.

It will be reviewed after 12 months.

Signed by Chair of the St Thérèse of Lisieux Catholic Multi Academy Trust:



Signed by CEO of the Academy:



DEFINITIONS

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

- i. ‘Academy’ means the academy named at the beginning of this Capability Policy and Procedure and includes all sites upon which the Academy undertaking is, from time to time, being carried out.
- ii. ‘Academy Trust Company’ means the company responsible for the management of the Academy and, for all purposes, means the employer of staff at the Academy.
- iii. ‘Board’ means the board of Directors of the Academy Trust Company.
- iv. ‘Capability due to ill-health’ means any health condition or any other physical or mental quality which results in unsatisfactory performance. In these cases, the Sickness Absence Policy and Procedure will apply. ‘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.
- v. ‘Chair’ means the Chair of the Board as appointed from time to time.
- vi. ‘Companion’ means a work colleague or an accredited representative of a trade union.
- vii. “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.
- viii. Directors’ means directors appointed to the Board from time to time.
- ix. ‘Governing Board’ means the Board of Directors responsible for carrying out the employment functions of the academy (CMAT).
- x. ‘Headteacher’ means the most senior teacher in the Academy who is responsible for its management and administration. Such a teacher may also be referred to as executive Headteachers or head of School.

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- xi. 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 at the same time as the Capability Policy and Procedure is in operation in accordance with v above.
- xii. 'Performance Review Period' means the period as defined in accordance with the Academy's relevant Performance Review Policy and Procedure.
- xiii. 'Policy' means the Capability Policy and Procedure.

PURPOSE

This Policy sets out the process that will be followed where the Academy has concerns about capability due to a lack of competence, skill and/or aptitude and/or where an individual is not providing satisfactory performance.

I. SCOPE

- I.1 This Capability Policy and Procedure applies to employees at the CMAT (hereinafter referred to as an "employee" or "you"). For the avoidance of doubt, it does not apply to casual workers, volunteers, agency workers or contractors.
- I.2 For the avoidance of doubt, this Policy does not apply during any probation period.
- I.3 The purpose of this Capability Policy and Procedure is to establish a structure which will support employees in improving their performance to the standards required and to take appropriate action to address identified weaknesses where there has not been sufficient improvement under the Performance Review Policy and Procedure.
- I.4 This Capability Policy and Procedure shall be invoked when there is an identified need to address, with a view to remedying, capability due to lack of competence.
- I.5 This Capability Policy and Procedure can be invoked by the Board or its delegate at any stage deemed appropriate although the expectation is that it will only be invoked after the procedure set out in the Performance Review Policy and Procedure has been exhausted.
- I.6 An employee is entitled to have access, by arrangement, to their personnel file and to request the deletion of time-expired records in line with the provisions of the General Data Protection Regulation (GDPR) and the Data Protection Act 2018.
- I.7 The CMAT 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 CMAT community.
- I.8 This Policy is intended to provide 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.

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- 1.9 This Policy may be invoked at any time during any 'Performance Review Period' as defined in the CMAT's Capability Policy and procedure.
- 1.10 Relevant information from the Performance Review process, including the Performance Review Report, may be taken into account in the application of this Policy.
- 1.11 The Academy will maintain records of all data and evidence collated in connection with this Policy including, but not limited to, interviews and reviews for a period of at least 12 months. The Academy may, in certain circumstances, consider such records will be held for longer where it reasonably determines necessary and appropriate. Any such information will be held in accordance with the CMATs Privacy Policy.
- 1.12 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.
- 1.13 In this policy "working week" means any week that you would ordinarily work.

2. CAPABILITY POLICY AND PROCEDURE

- 2.1 This Policy should, except in exceptional circumstances only be invoked:

where the measures set out in Paragraph 9 and 10 (if an appeal is lodged) of the CMAT's Performance Review Policy and Procedure for Teachers or Paragraphs 9 and 10 of the CMAT's Performance Review Policy and Procedure for Support Staff have been exhausted (as appropriate); and

- a) the employee has made no improvement or no sufficient improvement as required under the relevant Performance review Policy and Procedure; and/or;
- b) the employee is failing to respond successfully to feedback in relation to unsatisfactory performance; and
- c) A recommendation has been made under the relevant Performance Management Policy and Procedure.

- 2.2 The Performance Review Policy and Procedure should provide an opportunity for performance to improve prior to action being taken under this Policy. However, the Academy reserves the right to invoke this Policy in exceptional circumstances.

- 2.3 If a Headteacher is subject to this Policy he or she will normally continue to be responsible for the performance management process of the Academy. The Academy, in its absolute discretion, reserves the right to remove such responsibilities from the Headteacher where it considers necessary and/or appropriate.

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2.4 The Diocesan Director of Education must be advised when the capability procedure is implemented for any of the following posts:

- CEO
- Headteacher (including acting and executive headteachers)
- Executive posts within the CMAT central teams.
- Any other reserved posts

2.5 The CEO must be informed where it is proposed to the implement capability procedure for any member of staff employed by the CMAT.

3. CAPABILITY, FINAL CAPABILITY AND APPEAL MANAGER

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

<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	Chair of the Board or a Director (other than the Vice-Chair) nominated by the Chair of the Board	Directors Capability Panel appointed by the Vice-Chair of the Board	A Director (other than the Chair or Vice Chair) nominated by the Vice Chair of the Board	Directors Appeal Panel appointed by the Vice Chair of the Board
CMAT Executive Team	CEO	Directors panel	Chair of the Board or a Director nominated by the Chair	Directors Appeal Panel
Principal/ Headteacher/Executive (Director) posts	CEO	Directors Panel	Chair of the Board or a Director nominated by the Chair	Directors Appeal Panel

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Other Leadership Spine and School Business Manager	Principal/ Headteacher	CEO*	Chair of the Board or a Director nominated by the Chair	Directors Appeal Panel
Other Teaching Staff	(1) A member of the Leadership Team (other than the Principal/ Headteacher) appointed by the Principal/ Headteacher or, in the event that (1) above cannot be complied with, (2) a person appointed by the Principal/ Headteacher	Principal/ Headteacher*	CEO	Directors' Appeal Panel
Other Support Staff	A person appointed by the Principal/ Headteacher	Principal/ Headteacher*	CEO	Directors Appeal Panel
Central Support Staff	Line Manager	CEO*	Chair of the Board or a Director nominated by the Chair	Directors Appeal Panel

- Where the Final Capability Manager recommends that the employment is terminated in accordance with paragraph 6.6, this will be determined by a Directors Panel.

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4. FIRST CAPABILITY MEETING

- 4.1 Where the CMAT have exhausted the Performance management policy and procedure, the CMAT will appoint a Capability Manager in accordance with Paragraph 3 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. In advance of the meeting, the Capability Manager will also send you a copy of the Performance Report which they have prepared and which shall set out:
- 4.1.1 what aspects of your performance are causing concern;
 - 4.1.2 what specific and achievable performance standards are expected of you; and
 - 4.1.3 the support that has been provided to you so far;
 - 4.1.4 If applicable, any agreed reasonable adjustments and an opportunity to reflect on their suitability; and
 - 4.1.5 your right to be accompanied.
- 4.2 Any documentation that you wish to rely on must be submitted at least 3 days ahead of the Capability Meeting. Failure to provide documentation within this timescale may mean that it will not be considered at the meeting.
- 4.3 At the First Capability Meeting you will have an opportunity to respond to the Performance Report and provide evidence to support your case against capability, to discuss any shortcomings, identify any possible support and/or guidance that may be required.
- 4.4 At the outcome of the First Capability Meeting the Capability Manager may:
- 4.4.1 Decide there is no case for the Capability Policy and Procedure to be invoked and performance will be managed under the Performance policy and Procedure.
 - 4.4.2 Issue you with a First Written Warning; or
 - 4.4.3 Determine that your performance should continue to be assessed over an "Assessment Period".
- 4.5 Where the Capability Manager determines that an Assessment Period should be implemented, they will explain how your performance will be monitored during that "Assessment Period" and confirm the improvements that are expected.
- 4.6 The length of the Assessment Period should normally be at least 6 working weeks and no more than 8 working weeks. However, the Assessment Period may, at the discretion of the Capability Manager, be extended at any time up to, but not exceeding, a total of 12 working weeks.
- 4.7 If, following the Assessment Period, the Capability Manager concludes that your performance is satisfactory you will no longer be subject to this Policy and you will be notified in writing, within 5 working days of the decision. In such circumstances you will be subject to the relevant Performance Review Policy and Procedure, as usual.
- 4.8 If, following the Assessment Period, the Capability Manager considers that your performance is unsatisfactory you will be invited to a Further Capability Meeting. You will receive a formal letter giving 5 working days' notice of the meeting and explaining your right to be accompanied by a companion. This letter will include the relevant evidence from the first assessment period.

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- 4.9 If, following the Assessment Period, the Capability Manager may determine that your performance should be monitored for a further Assessment Period (as per paragraphs 4.5 and 4.6 above). Where relevant, a further Capability Meeting will be held at the end of any further Assessment Period.
- 4.10 Where the Capability Manager determines that you should be issued with a First Written Warning, they will prepare an improvement and support plan which will:
- 4.10.1 Detail identify the professional shortcomings identified;
 - 4.10.2 Give clear guidance on the improved sustainable standard of performance needed to exit the Capability Policy and Procedure.;
 - 4.10.3 agree to arrange any support that will be available and agree how your performance will be monitored over a further Assessment Period;
 - 4.10.4 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.
 - 4.10.5 state that a failure to improve may lead to dismissal; and
 - 4.10.6 notify you of your right to appeal.
- 4.11 In the case of a Headteacher, a First Written Warning will usually remain on record for 12 months. In the case of all other employees a First Written Warning will usually remain on record for 6 months. If within that 12- or 6-month period respectively the required standard of performance is not sustained, the Capability Manager will recommence the Capability Procedure at the stage it was previously concluded.
- 4.12 The length of the Assessment Period following a First Written Warning should normally be at least 6 working weeks and no more than 8 working weeks.
- 4.13 You may appeal against a First Written Warning by submitting the CMAT Appeal Registration Form to the HR Manager within 5 working days of the date of the First Written Warning.
- 4.14 An appeal will not delay the commencement of the Assessment Period.

5. SECOND CAPABILITY MEETING

- 5.1 The Capability Manager will write to you at least 5 Working Days prior to the Second Capability Meeting, which you will have been invited to in accordance with paragraph 4.10 above. The Capability Manager will send you an Updated Performance Report which sets out the assessments, support and evaluation of your performance during the Assessment Period.
- 5.2 Any documentation you wish to rely on during the Second Capability Meeting must be submitted at least 3 Working Days prior to the Second Capability Meeting.
- 5.3 At the Second Capability Meeting you will have an opportunity to respond to the updated Performance Report to discuss any continuing shortcomings, support and guidance required and how performance will be monitored going forward.

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- 5.4 The Capability Manager will write to you to confirm the outcome of the Second Capability Meeting within 5 working days of the date of such meeting.
- 5.5 If the Capability Manager concludes that your performance is satisfactory you will no longer be subject to this Policy and will be notified in writing within 5 working days of the second capability meeting. In such circumstances you will be subject to the relevant Performance Review Policy and Procedure, as usual. If the required standard of performance is not sustained at any time during the life of the First Written Warning, the Capability Manager will recommence the Capability Procedure from the stage it was previously concluded.
- 5.6 Where the Capability Manager concludes at the end of the Second Capability Meeting that some progress has been made and that with a further period of monitoring an acceptable level of performance will be achieved, the Capability Manager may determine that you should be subject to an Additional Assessment Period determined in accordance with paragraph 4.12, however the total Assessment Period must not exceed 12 working weeks.
- 5.7 Where the Capability Manager concludes, at the end of the Second Capability Meeting, or at the end of the Additional Assessment Period referred to in Paragraph 5.6 above, that no, or in sufficient, 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 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.
- 5.8 You may appeal against a Final Written Warning by submitting the CMAT Appeal Registration Form to the HR Manager within 5 working days of the date of the Final Written Warning, setting out the full grounds of your appeal.
- 5.9 An appeal does not delay the commencement of the Further Assessment Period.
- 5.10 A Final Written Warning for all employees will usually remain on your record for 12 months from the date that it is issued.

6. FINAL CAPABILITY MEETING

- 6.1 The Final Capability Manager will write to you at least 5 working days prior to the Final Capability Meeting which you will have been invited to in accordance with paragraph 5.8 above. The Final Capability Manager will send you a copy of the Final Performance Report which shall contain an, evaluation of your performance and will detail any support provided during the Further Assessment Period.
- 6.2 Any documentation you wish to rely on during the Final Capability Meeting must be submitted at least 3 Working Days prior to the Final Capability Meeting
- 6.3 At the Final Capability Meeting you will have an opportunity to comment upon the Final Performance Report and to discuss any continued shortcomings.
- 6.4 The Final Capability Manager will confirm the outcome of the Final Capability Meeting in writing within 5 working days of the date of such meeting.

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- 6.5 Where the Final Capability Manager concludes that your performance is satisfactory you will no longer be subject to this Capability Policy and Procedure the CMATs Performance Review Policy and Procedure, will resume. However, if the required standard of performance is not sustained at any time 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.
- 6.6 Where the Final Capability Manager concludes that your performance remains unsatisfactory and is not capable of sustainable improvement the Final Capability Manager will recommend that you will be invited to a Directors Panel who will determine whether your employment should be terminated in accordance with your contract of employment. You will be given 10 working days' notice of the Directors Appeal meeting. In the event that the Directors panel determine that your employment should be terminated, the Academy will take the appropriate steps to terminate your employment on notice.
- 6.7 You may appeal against a decision to dismiss you on notice by writing, by completing the CMAT Appeal Registration Form and submitting this to the HR Manager within 10 working days of being sent the notice of termination, setting out the full grounds of your appeal.
- 6.8 An appeal will not delay the commencement of the notice period and/or the expiry of such notice.

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

- 7.1 An appeal against a decision of the Capability Manager or Final Capability Manager can be made at each stage of the procedure set out at Paragraphs 4, 5 and 6 above which will be dealt with in accordance with the CMATs Appeals Policy.
- 7.2 In all cases you must comply with the Academy's Appeals Policy and complete the appropriate Appeal Registration Form. Your appeal must be sent to the HR Manager and set out the full grounds of your appeal in detail. Any failure to provide sufficient grounds may result in your appeal being rejected.
- 7.3 An appeal will be heard by the relevant Appeal Manager appointed in accordance with Paragraph 3 within 20 working days of the HR Manager receiving your appeal letter.
- 7.4 The Appeal Manager will write to you giving 10 Working Days' notice of an Appeal Meeting. The Appeal Manager will confirm in this notice what evidence will be relied upon at the Appeal Meeting. If written evidence is to be relied upon 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.
- 7.5 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.
- 7.6 Any further documentation not submitted with the Appeal Registration Form, must be submitted at least 5 working days prior to the Appeal Meeting.

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- 7.7 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 potential outcomes of an appeal meeting are:
- (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. In such circumstances, the matter will usually be referred back to the Capability Manager or Final Capability Manager for further consideration under this Policy and/or the Appeal Manager may substitute a different warning, where it is considered appropriate.

8. DIRECTORS' PANELS

- 8.1 Directors' Capability and Appeal Panels shall, where possible, usually comprise of three Directors not previously involved in the matter. The Chair or Vice-Chair will not usually be on any such Panel unless there are insufficient numbers of Directors not previously involved in the matter.
- 8.2 In the event that there are insufficient numbers of Directors available to participate in a Directors' Capability or Appeal Panel, the Academy may appoint appropriate associate members solely for the purpose of participating in the relevant Directors' Capability or Appeal Panel.

9. COMPANION

- 9.1 If you are the subject of any Capability Meeting you may be accompanied by a Companion.
- 9.2 You must let the relevant Manager know who your Companion will be at least one working day before the relevant meeting.
- 9.3 If you have any particular reasonable need, for example, because you have a disability, you may also be accompanied by a suitable helper.
- 9.4 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.
- 9.5 Your Companion can also confer with you during the meeting.

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9.6 Your Companion has no right to:

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

9.7 Where you have identified your Companion and they have confirmed in writing that they cannot attend the date or time set for a meeting the meeting will be postponed for a period not in excess of five working days from the date set by the CMAT Should your Companion subsequently be unable to attend any rearranged date, the meeting may be held in their absence or written representations will be accepted.

10. TIMING OF MEETINGS

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

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

11. VENUE FOR MEETINGS

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

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