



# Thinking Schools Academy Trust “Transforming Life Chances”

## Managing Performance Concerns and Capability Procedure

This policy was adopted on	September 2021
The policy is to be reviewed on	September 2025

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## **Purpose**

This document sets out the framework for a clear and consistent approach to managing performance concerns including formal capability procedures, for all Trust staff including the Headteacher/Principal. Managing performance concerns through structured management support mechanisms, supporting the development of an employee's performance within the context of the Academy's plan for improving educational provision and performance, and the standards expected of all staff. It also sets out the arrangements that will apply when structured management support is not successful or where a performance concern is so serious it warrants formal capability procedures to be initiated.

## **Application**

The Capability Procedure is for all Employees working within an Academy managed by the Trust with the exception of Early Career Teachers (ECT) where performance is supported through the Early Career Framework (ECF) induction process which is detailed in the Trust's ECF induction policy which can be found on the Trust website.

This policy will be applied and monitored in accordance with the Trust's Equality Policy which can be found on the Trust's website to ensure that no groups or individuals with protected characteristics are unintentionally disadvantaged by the policy or practice.

## **1 Managing Performance Concerns**

- 1.1 We will have honest, open conversations about staff performance to encourage discussion, accountability and ultimately improvement. We know that the majority of staff deliver their job well for the majority of the time, though sometimes performance may be viewed as below what's expected and support is needed to help return to and sustain the required level of performance to meet the standards or job description for their role.
- 1.2 Concerns about how an employee is performing in their role will be discussed at the time they are identified and not left to the next Professional Growth face to face meeting. This will help the employee to recognise issues at an earlier stage, put plans in place to address these and seek appropriate support. Appendix 1 gives an example template that can be used.
- 1.3 Performance concerns may be identified by the reviewer, SMT Member, Headteacher or Principal. Where a concern is identified that is likely to require structured managerial support, the Headteacher/Principal or Senior Manager may re-delegate the reviewer role to a senior manager or undertake the role themselves. A reviewer must notify the Headteacher/Principal where they identify performance concerns and confirm how the Headteacher/Principal intends to proceed.
- 1.4 Concerns about the performance of the Headteacher/Principal may be identified by an individual or combination of sources. Where a concern is identified via the professional growth conversation (PGC), the Chair of the PGC must notify the Chair of Governors. Where the concern is notified to the Chair of Governors, the Chair of Governors must notify the CEO. In both circumstances, the Chair of the PGC will review the evidence available with the CEO to determine how to proceed.
- 1.5 Where it is necessary to take forward a performance concern in respect of the Headteacher / Principal, this will be undertaken by member of the Executive Team (usually a Director of Education or the Deputy CEO) or CEO. Performance concerns in respect of the CEO will be addressed by the Chair of the Board and or an appropriate Board member. An appointed external advisor will be considered if appropriate.
- 1.6 When raising performance concerns with an individual, the line manager will take into account any factors which may be having an impact on the Employee's ability to perform their duties. However, such factors in themselves do not negate the need to address performance concerns.
- 1.7 Where issues are identified relating to the performance of an Employee who is considered to have a disability (as defined by the Equality Act 2010) due consideration will be given to reasonable adjustments to support the Employee in the workplace.
- 1.8 Whilst there are no formal rights of representation at this stage, the Trust encourages Employees to contact their Professional Association or Trade Union for advice. In support of staff wellbeing, the Trust allows employees to be accompanied at SMS (section 1.9.1) and formal meetings and will agree to postpone meetings for up to 5 working days to facilitate this.
- 1.8.1 **Identifying when performance is deemed to be below accepted standards**

The line manager may consider a member of staff to be underperforming where:

- The standard of performance falls below that which is required to meet or make progress towards an agreed target; and/or
- the standard of performance falls below that which is required to meet the expectations of a particular role in their Academy or Central function.
- the performance falls below the relevant standards/accountabilities for the role; and/or
- the overall Academy or Central Services Department performance falls below that which is required (in the case of the Headteacher/Principal / SMT Member).

1.8.2 If the line manager has evidence to show that an Employee is not currently meeting the expectations of their role, these concerns will be addressed with the individual informally and promptly.

1.8.3 Where the Academy has clearly communicated a level of expectation, the line manager may consider an employee to be underperforming if they are not reaching this level of expectation.

## 1.9 **Determining possible initial courses of action**

Depending on the severity of the underperformance, the line manager will need to take a view as to the proportionate response. This may include:

- an early conversation to confirm the expected standards of the role
- coaching/mentoring support
- structured managerial support
- possible application of formal action (section 2: Capability Procedure) in exceptional circumstances or concerns.

An early conversation and coaching/mentoring support will only be used on their own to support low level / early-stage concerns where these may be an effective measure. Where the concern is more significant or continues, structured managerial support will normally be put in place.

### 1.9.1 Structured managerial support

Where a performance concern has been identified that requires additional support, a discussion will be held between the line manager and the Employee. The outcome of the meeting will be to identify what steps will be taken to assist the Employee to improve their performance and move to the required standard. The discussion will include:

- what area(s) of performance is/are of concern
- what improvement is required/the standard the Employee needs to meet
- the timescales in which this is to be achieved (these will vary depending on issues identified)
- the support that will be provided to assist the Employee
- how frequently the performance/progress will be monitored and reviewed
- the seriousness of the issue and potential consequences of improvement not being achieved, including potential impact on pay progression.

1.9.2 The Employee will be invited to attend a meeting with their Professional Association representative to provide their point of view on the shortfall in performance and whether they believe there is an underlying reason. The Employee will also be asked to identify what support they feel they need in

order to achieve the required improvement, and the line manager will indicate what support they intend to put in place.

- 1.9.3 The key outcomes of the discussion will be recorded in writing and shared with the individual. The written record of the discussion will be placed on the individual's personal file and a copy given to the Employee within 5 working days. See Appendix 2 for template that can be used.
- 1.9.4 Review meetings will be held to review progress towards targets set and the appropriateness of the support being given. At these meetings, any improvements will be communicated to the individual as well as the remaining gap between their current level of performance and the expectations set. The outcome of these meetings will also be recorded in writing and a copy shared with the individual within 5 working days
- 1.9.5 The agreed timescales of review periods may vary depending on what is reasonable in the circumstances of the performance concern but would usually be between 4 to 8 weeks.
- 1.9.6 The purpose of any structured managerial support programme is to assist the Employee to achieve the necessary improvement within the agreed timescales. Where this is successful the line manager will confirm this at the relevant review meeting and record this in writing to the Employee. The Employee will be informed that the improvement in their performance must be sustained.
- 1.9.7 If the Employee is not making the necessary progress towards the required improvement, the Employee will be informed that failure to achieve this may lead to the Capability Procedure being applied (see Section 2) and that there may be an impact on their pay progression. The line manager will make a judgement about when to communicate this given that it may not be appropriate to do so during the first discussion. However, if a move to the Capability Procedure is a likely outcome, the potential for this must be communicated to the member of staff in good time. It must be recorded in writing that the Employee has been informed of the potential consequences should their performance not meet the required standard. If the necessary improvement is then not achieved within the agreed timescales, the line manager will need to consider use of the Capability Procedure.
- 1.9.8 Where the Employee has initially made the required improvement, they will be informed that where the improvement in performance is sustained independently over a 6-month period, the line manager will need to consider use of the Capability Procedure.
- 1.10 By-passing structured managerial support

In most circumstances a structured managerial support programme will be put in place prior to the Capability Procedure being used. However, the line manager may determine that it is appropriate to move straight to the Capability Procedure, in the following circumstances:

- the Employee's performance is putting the health and safety of pupils and/or staff at risk
- the Employee's performance is putting the education of pupils in serious jeopardy
- the Employee's performance has not been sustained independently for 6 months at an accepted level following an earlier managerial support programme.

1.10.1 Transition to the Capability Procedure

The line manager may consider a transition to the Capability Procedure (see section 2) in cases outlined in 1.9 above or on the exhaustion of the structured management support stage. The line manager will have specific regard to:

- the nature and severity of the under performance
- the impact on pupils, customers and colleagues both in the short and longer term
- the likely and required timescale for improvements to be made
- the engagement of the Employee in the programme.

- 1.10.2 In a typical case, if a managerial support programme has been in place and the issues have not resolved after a period of time, usually 6 working weeks, then it would be appropriate to consider moving onto the Capability Procedure. However, when determining how long to wait before moving onto the Capability Procedure, the line manager will give consideration to the circumstances of the case, in particular the factors listed under paragraph 1.9.1 above. In such circumstances where the line manager determines a need to consider the application of the Capability Procedure, the Employee will be invited to attend a meeting at which such a consideration will be undertaken. The individual will be given the opportunity to be accompanied at the meeting by a Professional Association/Trade Union Representative or work colleague and be provided with a copy of the Capability Procedure in advance. The meeting will be arranged in accordance with Section 4 of the Capability Procedure (Stage 1 – Formal Meeting).
- 1.10.3 At this meeting, depending on the level of concern, the responses of the Employee, the progress so far, and whether the line manager feels improvement is likely to be seen in the necessary time frame, the line manager will decide either to continue to offer a further period of managerial support or to confirm that the Employee will now be moved onto the Capability Procedure.
- 1.10.4 Should the Capability Procedure commence, further activity under the Professional Growth Process will be suspended.

## 2 **Capability Procedure**

### 2 Principles

- 2.1 This procedure will apply in circumstances where poor performance is assessed to be as a result of an Employee's lack of skill, ability, knowledge, experience or aptitude. Where poor work performance is assessed to be due to a deliberate or wilful failure to fulfil the duties of an Employee's role and/or a deliberate lack of care, the matter may be dealt with under the Trust's Disciplinary Procedure as this is a conduct concern.
- 2.2 Where an Employee wilfully and unreasonably refuses to co-operate with the application of the Capability Procedure, the matter may be dealt with under the Trust's Disciplinary Procedure.
- 2.3 Poor performance due to health problems and/or sickness absence will normally be dealt with via the Trust Absence Management policy which can be found on the Trust Website. This is likely to lead to a referral to Occupational Health in order to assess the Employee's fitness for work and offer appropriate support. In some cases, it may be appropriate for the Capability Procedure to continue during a period of sickness absence; however, the line manager will have regard to the views of Occupational Health.
- 2.4 Prior to the implementation of this procedure, the line manager will normally need to be able to show that, through the performance review process, reasonable efforts have been made to identify any performance concerns, discuss them with the Employee and, as appropriate, provide support designed to facilitate improvement.

- 2.5 This procedure aims, through advice and support, to improve to an acceptable level, as set by the Academy, the performance of an Employee who is causing concern. Such advice and support may be provided:
- from within the Academy
  - through accessing expertise in another Academy
  - via the local authority's advisory services
  - from other expert sources external to the Academy
  - through training courses or events.
- 2.6 The stages specified in this document must be dealt with on a professional and confidential basis. Governors will be notified in the event that the formal Capability Procedure is applied to a member of staff, but will not be provided with any other detail, as this may prejudice governors' involvement in a later stage if recourse to that stage eventually becomes necessary.
- 2.7 Employees are encouraged to be accompanied by a professional association or trade union representative or by a work colleague under any stages of the Capability Procedure and to seek advice at the earliest opportunity where they are subject to formal action. The companion is allowed to make representations on behalf of the Employee, submit papers, ask questions and address a meeting on behalf of the Employee but is not allowed to answer questions on behalf of the Employee. It is the Employee's responsibility to arrange their own companion and advise management of this. If the Employee, or their companion, is unable, for good reason, to attend a meeting, a postponement of up to 5 working days of the original meeting will be agreed.
- 2.8 When the Capability Procedure has commenced, the Employee will be provided with a copy of the Procedure.
- 2.9 All targets and support and review meetings will be recorded during the capability process.
- 2.10 The Employee will not normally be permitted to raise a grievance related to any action taken, or contemplated, under this procedure. Such grievances will normally be managed within the hearing and appeal process detailed below.
- 2.11 The Employee will have the right of appeal against any formal action taken against them in accordance with section 9 of this document.
- 2.12 The Academy will have the right to request that an officer from the Trust's HR advisors, attends any meetings under Stages 1 or 2 of the Capability procedure, in order to provide support to line manager. The Trust's HR advisors will have the right to attend a meeting held under Stage 3 of the Capability Procedure.
- 2.13 In the interests of fairness, both parties are expected to provide details of any significant issues and relevant papers in advance of meetings arranged under the formal procedure. Management documents will normally be supplied with the letter inviting the Employee to the formal meeting. The Employee, or their representative/colleague, must submit their information to arrive at least **3 working days** before the meeting.
- 2.14 Responsibility for decision-making within this procedure rests with the Headteacher/Principal/Senior Manager/PGC. If the governing body has delegated to the Headteacher/Principal the power to dismiss,



the Headteacher/Principal will not normally be able to fulfil that role where they have had substantial involvement in the earlier stages of the procedure.

- 2.15 Where this procedure is used in relation to Headteacher/Principal's poor performance, the PGC will undertake this role. In such cases, an additional professional adviser from the Academy's Academy Improvement provider will be present, at any stage, to provide governors with professional advice.
- 2.16 The time periods in this procedure will also apply to part-time Employees.
- 2.17 A first formal warning given as part of the application of this procedure will lapse at the point when the line manager decides that an acceptable level of performance has been reached. If performance concerns return within a time period, which will usually be 6 months but may be 12 months dependant on the circumstances, from the date of such a decision, the line manager, following consultation with the Trust's HR advisors, may re-enter the procedure at the appropriate point in Stage 1.
- 2.18 Where a final warning has been issued, this will lapse at the point when the line manager decides that an acceptable level of performance has been reached. If performance concerns return within a period of 12 months from the date of issue, the line manager, following consultation with the Trust's HR advisor), may re-enter the procedure at the appropriate point in Stage 2 at any time during this period.
- 2.19 Action involving use of a formal written warning and beyond will not be taken in respect of an accredited representative of a Trade Union unless the Headteacher/Principal or the Trusts HR advisors (as appropriate) has informed the relevant full-time official of the action that is being contemplated.

### **3 Stages of the Procedure**

There are three stages in the Capability Procedure, as follows:

- Stage 1 - Formal Meeting
- Stage 2 – Formal Meeting
- Stage 3 – Headteacher/Principal/Exec/Governors' Committee hearing

- 3.1 At every stage of the procedure the Employee will be advised of the nature of the concern, be given an opportunity to provide their view, and have the right to be accompanied.

### **4 Stage 1 - Formal Meeting**

#### **4.1 Invitation to a Stage 1 Formal Meeting**

- 4.1.1 The line manager will write to the Employee to invite them to a Stage 1 Formal Meeting. The invitation letter will:
- inform the Employee of the stage of the procedure being followed
  - provide the Employee with a minimum of 5 working days' notice of the meeting
  - inform the Employee of the right to be accompanied at the meeting
  - inform the Employee of the requirement to confirm before the meeting whether they intend to be accompanied at the meeting, and, if so, by whom
  - inform the Employee that, if they wish to refer to any written information at the meeting, this must be submitted to arrive 3 working days before the meeting
  - explain that if the Employee needs special support or assistance during the meeting, they should notify the line manager in advance of the meeting

- remind the Employee of their access to the Trust's Employee support line service
- enclose a copy of the Capability Procedure (if they have not already been provided with a copy) and all written information the line manager wishes to rely upon during the meeting

## 4.2 Conduct of the Stage 1 Formal Meeting

### 4.2.1 The line manager will:

- clearly set out the nature of the performance concerns, discuss the measures put in place during any period of structured managerial support and explain why progression to the Capability Procedure may be required
- refer to any documents or evidence (for example, evidence of support provided, monitoring and training records and examples of the Employee's work) and clarify the requirements of the Employee's role and the standards expected
- provide the Employee with an opportunity to discuss any relevant issues including any mitigation.
- consider all the facts and, if necessary, adjourn the meeting to consider these further before making a decision about whether the Employee will move onto the Capability Procedure
- define success criteria and the evidence that will be used to assess whether or not the necessary improvement has been made
- define the nature and frequency of any support to be provided, and of the monitoring process, and the dates of interim progress reports and formal reviews (noting section 9).

## 4.3 Outcomes of the Stage 1 Formal Meeting

### 4.3.1 Possible outcomes include:

- No case to answer and formal monitoring ceases
- No formal action required, however, support will be provided and performance monitoring will continue under Structured Management Support
- a Formal Warning is issued;

An Employee issued with a warning will be told the consequences of further performance concerns or failure to improve within the set review period. The length of the review period will depend on the circumstances of the individual case but in most cases will be between 4 to 8 weeks. Progress will be formally reviewed at the end of this period; however interim reviews will also be held to assess progress (noting section 9).

### 4.3.2 The outcome of the meeting will be confirmed in writing to the Employee. A copy of this letter will be placed on the Employee's personnel file within 5 working days.

## 5 Stage 2 - Formal Meeting

### 5.1 Invitation to a Stage 2 Formal Meeting

The line manager will write to the Employee to invite them to a Stage 2 Formal Meeting. The invitation letter will be in accordance with paragraph 4.1.1.

### 5.2 Conduct of the Stage 2 Formal Meeting

#### 5.2.1 The line manager will:

- clearly set out the nature of the performance concerns, discuss the measures put in place during any period of structured managerial support and explain why progression to the next stage of the Procedure may be required;
- refer to any documents or evidence (for example, evidence of support provided, monitoring and training records and examples of the Employee's work) and clarify the requirements of the Employee's role and the standards expected;
- provide the Employee with an opportunity to discuss any relevant issues including any mitigation;
- consider all the facts and, if necessary, adjourn the meeting to consider this further before making a decision about whether the next formal stage will be commenced or the current stage extended;
- define success criteria and the evidence that will be used to assess whether or not the necessary improvement has been made;
- define the nature and frequency of any support to be provided, and of the monitoring process, and the dates of interim progress reports and formal reviews.

### 5.3 Outcomes of the Stage 2 Formal Meeting

#### 5.3.1 Possible outcomes include:

- no further action, in which case the Capability Procedure will cease (see section 7);
- the Formal Warning remains in place for a further specified period of time under Stage 1;
- a Final Warning is given.

The Employee will be told the consequences of further poor performance or failure to improve within the set review period (as defined in section 5.4 and 6, below). In most cases, a review period will be set between 4 to 8 weeks.

The outcome of the meeting will be confirmed in writing to the Employee. A copy of this letter will be placed on the Employee's personal file.

### 5.4 Stage 2 Final Review Meeting

5.4.1 At the end of the review period in Stage 2, the Employee will be invited to a Final Review Meeting. The invitation letter will be in accordance with paragraph 4.1.1. The conduct of the meeting will be in accordance with paragraph 5.2.

5.4.2 Possible outcomes include:

- a decision to refer the matter to a Headteacher/Principal/Governors' Committee Hearing to consider dismissal on the grounds of Capability;
- the Final Warning remains in place for a further specified period of time; usually no longer than 12 months
- no further action, in which case the Capability Procedure will cease (see section 7).

5.4.3 The Headteacher/Principal/Chair of the PGC (in the case of a Headteacher/Principal) will inform the Chair of the Governing Body and the Trusts HR advisors (if not already involved) of the outcome of the Stage 2 Final Review Meeting.

5.4.4 The outcome of the meeting will be confirmed in writing to the Employee and a copy placed on the Employee's file within 5 working days.

#### 5.5 Consideration of alternative options

Before any meeting takes place under Stage 4 of this procedure a member from the Trusts HR advisors will meet with the Employee and the line manager separately to examine any available alternatives which would obviate the need for the application of Stage 3 or beyond. This will include consideration of whether or not it is feasible to make any offer of alternative employment to the Employee. Such meeting will take place with 5 days' notice and the employee can request to have the support of representation.

### 6 **Stage 3 – Headteacher/Principal/Governors' Committee Hearing**

#### 6.1 Invitation to a Stage 3 Hearing

6.1.1 The line manager will write to the Employee to invite them to a Stage 3 Hearing. The invitation letter will be in accordance with paragraph 4.1.1 and the Employee must be advised that dismissal is a potential outcome. The Employee must be advised of their right to be accompanied at the Hearing in accordance with paragraph 2.7.

#### 6.2 Conduct of a Stage 3 Hearing

6.2.1 Where the Headteacher/Principal has formally delegated powers of dismissal and has not had substantial involvement in Stages 1 and/or 2 of the procedure, the Headteacher/Principal may hear the matter. Where this is not the case, the matter will be heard by a Governors' Committee.

6.2.2 In the case of the Headteacher/Principal, the Chair of the PGC will request the CEO to present the management case. The Chair of the PGC will normally be called as a witness.

#### 6.3 Outcomes of the Stage 3 Hearing

6.3.1 Possible outcomes include:

- no further action, in which case the Capability Procedure will cease (see section 7)

- the previous Final Warning should remain in place for further specified period of time; usually no longer than 12 months.

(in which case the required improvement in performance will be identified as well as the support that will be provided to help the Employee achieve this and the period of time in which the necessary improvement must be made)

- the Employee is dismissed on the grounds of capability with the appropriate contractual notice;
- 6.3.2 The outcome of the meeting will be confirmed in writing to the Employee. If the decision is to dismiss the Employee, the letter will:

- specify the reason for the decision to dismiss
- confirm that the dismissal will take place with notice
- confirm that the Employee has the right of appeal against the decision, and the mechanism for doing so.

## **7 Improvement in performance achieved**

- 7.1 If the Employee's performance improves as required, the line manager will meet the Employee to tell them this. This will be confirmed in writing within 5 working days to the Employee and the letter will be placed on the Employee's file.

The Capability Procedure will cease at this point and Professional Growth will re-start. If the Employee was at Stage 1 of the Capability procedure, their improvement in performance will need to be sustained for at least 6 months, at Stage 2 the improvement would need to be sustained for at least 12 months. If the Employee's performance declines during this period of time, the line manager will have the option to re-enter the procedure at the appropriate point.

## **8 Failure to make progress during a review period**

The review periods set at each stage of the Procedure are the maximum number of weeks in which an Employee must make the necessary improvements in performance. However, where during a stage there is evidence to suggest a more serious problem or that progress is insufficient or the individual is unlikely to make the required improvements, the line manager may decide to move to the next Stage of the Procedure.

## **9 Right of Appeal**

- 9.1 An Employee may appeal against any warning issued to them through the Capability Procedure and/or against a decision to dismiss them. The conduct of the meeting will be in accordance with the Procedure for Headteacher/Principal and Governors' Committee Hearings.

The Employee, or their companion, must lodge an appeal in writing to the Headteacher/Principal/Senior Manager within 10 working days of receipt of the letter confirming the decision they are appealing against. The Employee must state in full the reasons for their appeal.

- 10 **Requirement for Academies to pass on information about a teacher's capability to a new employer**

- 10.1 The Academy Staffing (England) (Amendment) Regulations 2012 require maintained Academies to pass on information to a prospective employer about any teacher or Headteacher/Principal who has been on the formal Capability Procedure in the last two years.

Specifically, they will need to provide details of the duration of capability and an explanation of the outcome. Whilst the Regulations do not apply to Academies, Academies can also ask for the information as part of their recruitment processes.

## **11 Support**

- 11.1 All employees have access to the Trust Wellbeing portal at <https://www.tsatrust.org.uk/about/thinking-you/>, password: Th1nk1ngYOU, which offers unlimited access to information, advice and emotional support. Employees can also access an external wellbeing service at [www.my-eap.com/login](http://www.my-eap.com/login), with username: TSATwell
- 11.2 Employees can access the 24 hour a day 365 days a year counselling support phone line on 0800 1116 387. Via this hotline employees can be assessed for access to 4 face to face counselling session. The Employee support line is a confidential counselling and support service provided by trained, experienced counsellors, providing telephone and face-to-face counselling
- 11.3 Employees can also seek advice and support from their professional association or trade union.

## Appendix 1: Record of Performance Concerns

*(NB. This document is used to record informal performance concerns and should be stored on an employee's personnel record)*

Line Manager:
Employee:
Date of Meeting:
Brief description of concern(s):
We discussed:
We agreed to (with timescales): (examples would include coaching/mentoring, CPD, observation of good practice, visit to another Academy etc.)
We will meet again to review on (within 4 to 6 weeks):

## Appendix 2: Structured Managerial Support

(NB. This record should be stored on an employee's personnel record)

SLT Line Manager
Line Manager:
Employee:
Colleague or Professional Association Rep:
Date of Meeting:
Brief description of concern(s):
We discussed:
We agreed the following action plan: (please see over for detailed plan.)
We will meet again to review on:



**Agreed Action Plan**

What:	Who: (to include support)	When by:	Agreed outcomes: