



Bishop Wilkinson
Catholic Education Trust
Through Christ, in Partnership

Trust Capability Policy

Date Approved by Trust	October 2024
Statutory Policy	No
Required on Website	No
Review Period	3 Years
Next Review Date	October 2027
Reviewed by	HR

The Trust will apply this policy in line with its vision and values as set out below.

Our Vision

We nurture each person through loving relationships and rich daily experiences centered on the teachings of Christ.

We believe that humanity is a gift that we receive through others and that our relationships unlock the unique potential in each person. As such, we affirm the dignity of each individual and our values underpin everything we do across the Trust, with and for each student and member of staff.

Through Christ, in partnership and with service and witness at the core of all we do, our schools will be centres of excellence. We will educate the whole person so that everyone fulfils their academic potential, aspires highly and is optimistically ambitious. We will unlock ability and talents so that all can live fully and make a valued contribution to the world.

Our Values

Develop spirituality.

Act with justice, respect, and dignity.

Foster a sense of vocation.

Promote educational excellence.

Form high aspirations.

Celebrate community.

Support exceptional leadership.

INTRODUCTION

This policy was designed to help the Trust maintain performance standards across its workforce and is intended to help and encourage all employees to maintain and achieve the required standards. This procedure will promote fair and consistent treatment of all employees to make improvements where performance falls below acceptable levels.

All Managers within the Trust are responsible for communicating clearly with employees so that they are aware of the standards expected of them and the policies, procedures, and guidelines they should follow. Employees are responsible for maintaining those standards and complying with the Trust's policies, procedures, and guidelines. Both managers and employees should promptly raise any issues or concerns.

Minor performance issues are usually best dealt with informally and promptly, however, where matters are more serious or are not resolved through an informal approach then this procedure should be used.

SCOPE

- 1.1 This Capability Policy and Procedure applies to all employees or workers at the Trust.
- 1.2 The purpose of this Capability Policy and Procedure 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, where there has not been sufficient improvement, following support being provided pursuant to the Appraisal Policy and Procedure.
- 1.3 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.
- 1.4 This Capability Policy and Procedure can be invoked by the Trust 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 Appraisal Policy and Procedure has been fully exhausted.
- 1.5 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.
- 1.6 The Trust delegates its authority in the manner set out in this policy.
- 1.7 There may be some occasions where an employee's lack of capability could also be described as Misconduct. This Capability Policy and Procedure and the Academy/Trust's Disciplinary Policy and Procedure may be used concurrently

whilst the Trust endeavours to ascertain if the employee's lack of capability is due to misconduct or lack of competence.

- 1.8 There may be occasions where an employee's lack of capability could relate to their health. This Capability Policy and Procedure may be used concurrently with the Trust's Sickness Absence Policy and Procedure. If an employee is absent from work on sick leave following this Capability Policy and Procedure being invoked, the Trust may use its Sickness Absence Policy and Procedure. However, the process of managing unsatisfactory performance due to capability will not necessarily cease where the employee is absent on the grounds of sickness.
- 1.9 The Trust 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 Trust community.
- 1.10 This Capability Policy and Procedure can be invoked at any time during the Appraisal Period as defined in the Trust's Appraisal Policy and Procedure. The expectation is that it will only be invoked after the procedure set out in the Appraisal Policy and Procedure has been fully exhausted.
- 1.11 The Capability Policy and Procedure does not form part of any other procedure but relevant information on capability, including the reports referred to in this Capability Policy and Procedure, may be considered in relation to the operation of other applicable policies and procedures.
- 1.12 The management of unsatisfactory performance and related investigations will be treated in confidence as far as possible by all parties involved at all stages of this Capability Policy and Procedure.
- 1.13 The Trust will maintain records of all interviews and reviews which take place under this Capability Policy and Procedure for a period of up to 12 months or longer where necessary and where there is an applicable lawful basis under the GDPR for extending the retention period. All data and evidence collected is to be shared between all the relevant parties, including the employee, and where there is an applicable lawful basis under the provisions of the GDPR.

2 CAPABILITY POLICY AND PROCEDURE – EMPLOYEES EXPERIENCING DIFFICULTIES

- 2.1 This Capability Policy and Procedure should, except in exceptional circumstances, only be invoked where the Trust's Appraisal Policy and Procedure for employees has been exhausted.

- a) the employee has made no improvement, or insufficient improvement as required under the Appraisal Policy and Procedure; and/or
- b) the employee is failing to improve despite feedback in relation to unsatisfactory performance; and
- c) a recommendation has been made under the relevant Appraisal Policy and Procedure that this Capability Policy and Procedure be invoked.

2.2 If a Headteacher is subject to this Capability Policy and Procedure they will normally continue to be responsible for the appraisal of staff at their school unless the Chief Executive Officer (CEO)/Deputy Chief Executive Officer (DCEO) or Senior Director of Performance and Standards (SDPS) determines that this is inappropriate.

2.3 If a Line Manager is subject to this Capability Policy and Procedure, they will normally continue to be responsible for the appraisal of staff unless the CEO/DCEO/SDPS/Chief Operating Officer (COO) determines this is inappropriate.

2.4 If the CEO/DCEO/SDPS/COO is subject to this Capability Policy and Procedure, they will normally continue to be responsible for the appraisal of staff unless the Board determines this is inappropriate.

3. CAPABILITY, FINAL CAPABILITY AND APPEAL MANAGER/S

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.

Employee Level	Stage 1/ Stage 2 Capability Meeting – the Capability Manager	Final Capability Meeting – the Final Capability Manager	Appeal Manager (re Written Warnings)	Appeal Manager (re Dismissal)
School Support staff (other than School Business Manager)	SLT/School Business Manager.	Executive Headteacher/Headteacher	CEO/DCEO/COO	Directors' Appeal Panel
Teaching Staff (other than Headteacher, staff on Leadership spine or reserved posts)	Executive Head Teacher/Headteacher or member of the Senior Leadership Team appointed by Executive Head/Head Teacher	DCEO/SDPS	CEO/DCEO	Directors' Appeal Panel
Leadership spine – Non reserved post and School Business Manager	Executive Head Teacher/Headteacher	DCEO/COO/SDPS	CEO/DCEO	Directors' Appeal Panel
Executive Head Teacher/Head Teacher (and other reserved posts)	DCEO/SDPS/ Chair of the LGC	CEO/DCEO	CEO/DCEO	Directors' Appeal Panel

Staff in Central Team (other than Executive Team)	Director of Service	DCEO/COO	CEO/DCEO/COO	Directors' Appeal Panel
BWCET Executive Team (other than CEO)	CEO	A Director (other than the Chair or Vice Chair) nominated by the Vice Chair of the Board.	Directors' Capability Panel	Directors' Appeal Panel
CEO	Chair of the Board or a Director (other than the Vice-Chair) nominated by the Chair of the Board	A Director (other than the Chair or Vice Chair) nominated by the Vice Chair of the Board.	Directors' Capability Panel	Directors' Appeal Panel

4 FIRST CAPABILITY MEETING

Where the Trust has fully exhausted the relevant Appraisal Policy and Procedure in accordance with Paragraph 2 above the Trust will appoint a Capability Manager in accordance with Paragraph 3 above. The Capability Manager will write to the employee inviting them to a First Capability Meeting. The employee will be given at least 5 Working Days' notice of such meeting and will be entitled to bring a trade union representative or a colleague without a conflict of interest. At the same time as sending the letter inviting the employee to the First Capability Meeting, the Capability Manager will also send a Performance Report which shall set out:

- a) what aspects of the employee's performance are causing concern.
- b) what specific and achievable performance standards are expected of the employee; and
- c) the support that has been provided so far.

4.2 The Capability Manager's letter shall state that any documentation the employee wishes to rely on during the First Capability Meeting must be submitted at least 2 Working Days prior to the First Capability Meeting.

4.3 At the First Capability Meeting the employee will have an opportunity to comment upon, offer an explanation and/or refute the contents of the Performance Report and to discuss the professional shortcomings identified, support and guidance required and how performance will be monitored and supported going forward.

4.4 At the end of the First Capability Meeting, having considered the employee's comments, if the Capability Manager concludes that performance is satisfactory the employee will no longer be subject to this Capability Policy and Procedure and shall be notified in writing of the Capability Manager's decision, as soon as is reasonably practicable. The Trust Appraisal Policy and Procedure shall resume.

4.5 At the end of the First Capability Meeting, having considered the employee's comments, if the Capability Manager concludes that performance is

unsatisfactory the employee will be given a First Written Warning and an Improvement and Support Plan will be drawn up in discussion with the employee 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 performance will be monitored and supported over a period, referred to in this Capability Policy and Procedure 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.
- 4.6 The length of the Assessment Period following a First Written Warning will be at least 4 Working Weeks and no more than 12 Working Weeks.
- 4.7 If the Assessment Period is less than 12 Working Weeks, at any time during the Assessment Period the timeframe may be extended by the Capability Manager to a maximum of 12 Working Weeks in total, if there is sufficient evidence that the employee is progressing towards achieving the standards required. The employee will be informed of any such extension in writing.
- 4.8 The employee may appeal against a First Written Warning by writing to the Clerk to the Board of Directors within 5 Working Days of the date of the First Written Warning.
- 4.9 An appeal will not delay the commencement of the Assessment Period.
- 4.10 A First Written Warning will remain live for 6- months. If within that 6-month period the employee's required standard of performance is not sustained, the Capability Manager will recommence the Capability Procedure at the stage it was previously concluded, and the employee will be notified of this in writing.

5 SECOND CAPABILITY MEETING

- 5.1 At least 5 Working Days prior to the Second Capability Meeting, the date of which will have been notified in accordance with Paragraph 4.5(d) above, the Capability Manager will send an Updated Performance Report along with a letter reminding the employee of the date of the Second Capability Meeting. The Updated Performance Report will provide details of the assessments of the employee's performance that have taken place during the Assessment Period, the support that has been provided and an evaluation of performance at the end of the Assessment Period.

- 5.2 Any documentation the employee wishes to rely on during the Second Capability Meeting must be submitted at least 2 Working Days prior to the Second Capability Meeting.
- 5.3 At the Second Capability Meeting the employee will have an opportunity to comment upon, explain and/or refute the contents of the Updated Performance Report, to discuss any continuing professional shortcomings, support and guidance required and how performance will be monitored and supported going forward.
- 5.4 The Capability Manager will confirm the outcome of the Second Capability Meeting in writing within 5 Working Days of the date of such meeting.
- 5.5 Where the Capability Manager concludes, at the end of the Second Capability Meeting, that the standard of performance is satisfactory the employee will no longer be subject to this Capability Policy and Procedure. The Trust's Appraisal Policy and Procedure shall resume. However, if the required standard of performance is not sustained during the life of the First Written Warning, the Capability Manager will recommence the Capability Procedure at the stage it was previously concluded, and the employee will be notified of this in writing.
- 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 the employee 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 performance is satisfactory, the employee will no longer be subject to this Capability Policy and Procedure. The Trust's Appraisal Policy and Procedure shall resume. However, if the required standard of performance is not sustained during the life of the First Written Warning, the Capability Manager will recommence the Capability Procedure at the stage where it was previously concluded, and the employee will be notified of this in writing.
- 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 insufficient, improvement has been made so that performance remains unsatisfactory, the employee will be given a Final Written Warning setting a Further Assessment Period of 4 Working Weeks and notifying the employee of the date for a Final Capability Meeting to be held at the end of the Further Assessment Period. The employee will be informed that failure to make satisfactory sustainable improvement during such further Assessment Period may result in dismissal.
- 5.8 The employee may appeal against a Final Written Warning by writing to the Clerk to the Board of Directors within 5 Working Days of the date of the Final Written Warning.

5.9 An appeal will not delay the commencement of the further Assessment Period.

5.10 A Final Written Warning for all employees will remain live for 12 months and if, within that 12- months, the required standard of performance is not sustained the Capability Manager will recommence the Capability Procedure at the stage it was previously concluded, and the employee will be notified of this in writing.

6 FINAL CAPABILITY MEETING

6.1 At least 5 Working Days prior to the Final Capability Meeting which the employee will have been invited to in accordance with Paragraph 5.7 above, the Final Capability Manager will send the employee a final Performance Report along with a letter reminding them of the date of the Final Capability Meeting. The final Performance Report shall contain an evaluation of the employee's performance and will detail any support provided during the further Assessment Period.

6.2 Any documentation the employee wishes to rely on during the Final Capability Meeting must be submitted at least 2 Working Days prior to the Final Capability Meeting.

6.3 At the Final Capability Meeting the employee will have an opportunity to comment upon, explain and/or refute the contents of the Final Performance Report and to discuss any continued professional 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.

6.5 Where the Final Capability Manager concludes that the standard of performance is satisfactory the employee will no longer be subject to this Capability Policy and Procedure. The Trust's Appraisal Policy and Procedure shall resume. However, if the required standard of performance is not sustained during the life of the Final Written Warning, the Final Capability Manager will recommence the Capability Procedure at the stage where it was previously concluded, and the employee will be informed of this in writing.

6.6 Where the Final Capability Manager concludes that the employee's performance remains unsatisfactory and is not capable of sustainable improvement, the Final Capability Manager may recommend to the Trust that their employment is terminated in accordance with their contract of employment and the Trust will take appropriate steps to terminate employment with notice. 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.

- 6.7 An employee may appeal against a decision to dismiss with notice by writing to the Clerk to the Board of Directors within 10 Working Days of the date of the notice of termination.
- 6.8 An appeal will not delay the commencement of the notice period.
- 6.9 If the employee's employment is terminated in accordance with Paragraph 6.6 above, then:
- (a) if the contract of employment contains a garden leave clause the Trust may exercise that clause so that an employee is not required to attend their place of work during the notice period but remain employed and so bound by the terms of their contract of employment until the expiry of the notice period; or
 - (b) if the contract of employment contains a payment in lieu of notice clause the Trust may exercise that clause to bring the contract to an end with immediate effect.

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.
- 7.2 In all cases, the appeal letter must set out the grounds of the appeal in detail. When preparing the appeal letter, the employee may wish to consider the following grounds:
- (a) That the action taken was unfair.
 - (b) That the Policy and Procedure was applied defectively 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 overly harsh in all the circumstances.
- 7.3 Appeals will be heard by the relevant Appeal Manager appointed in accordance with Paragraph 3 within 20 Working Days of the Clerk receiving the employee's appeal letter.
- 7.4 The employee will be given 5 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 the employee will be provided with copies of such evidence with notice of the meeting to enable them to prepare for the Appeal Meeting. If oral evidence is to be relied upon at the Appeal Meeting, the employee will be given details of who will be in attendance. The employee 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.

- 7.5 The employee 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 the employee and by the Capability Manager or Final Capability Manager (as appropriate) to determine whether the relevant decision was fair and reasonable.
- 7.6 The Appeal Manager will confirm the outcome of the Appeal Meeting in writing 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 that:
- (a) the Appeal Manager may uphold the decision of the Capability Manager or Final Capability Manager; or
 - (b) the Appeal Manager may uphold the employee's appeal, overturn the decision of the Capability Manager or Final Capability Manager, and refer the matter back to the Capability Manager or Final Capability Manager for reconsideration.
- 7.7 Should an appeal against dismissal be successful, the employee will be reinstated with no break in continuous service.

8 DIRECTORS' PANELS

- 8.1 Directors' Capability and Appeal Panels shall comprise three non-staff Directors not previously involved in the matter and shall not comprise the Chair or Vice-Chair unless there are insufficient numbers of non-staff Directors not previously involved in the matter, in which case the Chair and/or Vice-Chair may be appointed to a Directors' Capability or Appeal Panel.
- 8.2 In the event that there are insufficient numbers of Directors available to participate in a Directors' Capability or Appeal Panel, the Trust may appoint associate members from the LGC to participate in the appropriate Directors' Capability or Appeal Panel.

9 COMPANION

- 9.1 An employee subject to any Capability Meeting may be accompanied by a Trade Union representative or Companion.
- 9.2 The employee must let the relevant Manager know who their representative will be at least one Working Day before the relevant meeting.
- 9.3 If the employee has any reasonable need, for example, because they have a disability, they can also be accompanied by a suitable helper.
- 9.4 An employee's representative can address the meeting to:

- (a) put the employee's case.
- (b) sum up the employee's case.
- (c) respond on the employee's behalf to any view expressed at the meeting; and
- (d) ask questions on the employee's behalf.

9.5 A representative can also confer with the employee during the meeting.

9.6 A representative has no right to.

- (a) answer questions on the employee's behalf.
- (b) address the meeting if an employee does not wish it; or
- (c) prevent an employee from explaining their case.

9.7 Where an employee has identified their representative 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 more than five working days from the date set by the Trust to a date and time agreed with the representative. Should the representative subsequently be unable to attend the rearranged date, the meeting may be held in the employee's absence or written representations will be accepted.

10 TIMING OF MEETINGS

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:

- 10.1 need to be held when an employee is timetabled to teach (if that is appropriate to their role).
- 10.2 exceptionally, be held after the end of the working day.
- 10.3 not be held on days on which the employee would not ordinarily work.
- 10.4 be extended by agreement between the parties if the time limits cannot be met for any justifiable reason.