



'Christ at the centre, children at the heart'

Our Lady of Walsingham Catholic Multi-Academy Trust will deliver outstanding educational, spiritual and moral outcomes for all children regardless of their faith or backgrounds within an ethos based on full inclusion, high expectations, innovation, outstanding teaching and learning, and a relentless focus on the needs and potential of every child. Our vision is that every Academy within the Trust has a reputation for excellence in their local communities and beyond.

Our Lady of Walsingham Catholic MAT

Company No: 08444133

Registered Office: Fordham Road, Newmarket, Suffolk, CB8 7AA

EMPLOYEE CAPABILITY POLICY AND PROCEDURE

This policy is based upon the model CES policy, which has been consulted upon with Unions at a National and Diocesan level. We recognise that full consultation with Unions has taken place but that not all Unions can agree with all aspects of the policy - for example, it may not comply with all points in the relevant NEU and NASUWT checklists. In implementing the policy we shall seek to keep its operation under review and to discuss at relevant Joint Consultative Committee meetings.

OLW CMAT (THE MAT, THE ACADEMY TRUST COMPANY): EMPLOYEE CAPABILITY POLICY AND PROCEDURE

DEFINITIONS

In this Employee 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. 'Chair' means the Chair of the Board or the Chair of the Local Governing Body of the Academy appointed from time to time, as appropriate.
- v. 'Clerk' means the Clerk to the Board or the Clerk to the Local Governing Body of the Academy appointed from time to time, as appropriate.
- vi. 'Companion' means a willing work colleague not involved in the substance of the employee's performance issues under review by this Capability Policy and Procedure, or an accredited trade union representative or other professional association of which the employee is a member who should be available for the periods of time necessary to meet timescales under this Capability Policy and Procedure.
- vii. 'Diocesan Schools Commission' means the education service provided by the diocese, which may also be known, or referred to, as the Diocesan Education Service.
- viii. 'Directors' means directors appointed to the Board of the Academy Trust Company.

- ix. 'Governing Board' means the body carrying out the employment functions of the Academy Trust Company and such term may include the Board of Directors and/or a Local Governing Body of the Academy.
- x. 'Governors' means the governors appointed and elected to the Local Governing Body of the Academy, from time to time.
- xi. 'Local Governing Body' means the group of governors appointed and elected to carry out specified functions in relation to the Academy as delegated by the Academy Trust Company.
- xii. 'Principal/Headteacher' means the teacher employed within each academy or across several academies in the role of CEO, Principal, Executive Headteacher, Headteacher or Head of Academy as appropriate.
- xiii. 'Vice-Chair' means the Vice-Chair of the Board or the Vice-Chair of the Local Governing Body of the Academy elected from time to time, as appropriate.
- xiv. 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.
- xv. 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 and the Capability Policy and Procedure may also apply.
- xvi. Capability due to ill-health means any inadequacy in health or any other physical or mental quality which results in unsatisfactory performance. In these cases the Sickness Absence Policy and Procedure will apply.

1. SCOPE OF PROCEDURE

- 1.1 This Capability Policy and Procedure applies to you if you are an employee at the Academy (hereinafter referred to as an “employee” or “you”).
- 1.2 **The Academy is committed to ensuring respect, objectivity, belief in the dignity of the individual, consistency of treatment and fairness in the operation of performance management as a Catholic academy. This commitment extends to promoting equality of opportunity and eliminating unlawful discrimination throughout the Academy community. This Capability Policy and Procedure offers opportunities to ensure justice for teachers, support staff and pupils alike and has the potential for the expression of Christian qualities such as honesty, self-knowledge, respect for others and their gifts, recognition of the needs and achievements of others, challenge of self and others, personal growth and openness.**
- 1.3 The purpose of this procedure is to establish a structure to improve performance to the standards expected and to take appropriate action to address this where there has not been sufficient improvement.
- 1.4 This Capability Policy and Procedure shall be invoked after ‘informal action’ as contained within the Appraisal Policy and Procedure (para 7), when there is an identified need to remedy a performance weakness and can be invoked by the Academy Trust Company or their delegate at any stage deemed appropriate.
- 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 Regulations (GDPR).
- 1.6 The Academy Trust Company 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’s Disciplinary Policy and Procedure may be used concurrently whilst the Academy 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 Academy’s Sickness Absence Policy and Procedure. In particular, if an employee is absent from work on sick leave following this Capability Policy and Procedure being invoked, the Academy may use its Sickness Absence Policy and Procedure. 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 This Capability Policy and Procedure can be invoked at any time during any Appraisal Period as determined in accordance with the Academy's Appraisal Policy and Procedure.
- 1.10 The Appraisal Policy does not form part of any other procedure but relevant information from the appraisal process, including the Appraisal Report, may be taken into account in this Capability Policy and Procedure and/or the Disciplinary Policy and Procedure.
- 1.11 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.
- 1.12 The Academy 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, where appropriate and where there is an applicable lawful basis under the provisions of the GDPR.
- 1.13 In this policy "working day" means any day on which you would ordinarily work if you were a full time employee. In other words it will be different for 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.
- 1.14 In this policy "working week" means any week that you would ordinarily work.

2. APPRAISAL POLICY AND PROCEDURE – TEACHERS EXPERIENCING DIFFICULTIES

This Capability Policy and Procedure should, except in exceptional circumstances, only be invoked:

- a) where the measures set out in Paragraphs 9 and 10 of the Academy's Appraisal Policy and Procedure for Teachers and/or Paragraphs 7.12 and 9 of the Academy's Appraisal Policy and Procedure for Support Staff have been exhausted; and
- b) i) the employee has made insufficient, or no, improvement as required under such Policy after feedback;
- b) ii) and/or is failing to respond to feedback in relation to unsatisfactory performance;

Academies - Capability Policy and Procedure – England – September 2013 (Updated May 2018)

THIS POLICY DOES NOT CREATE CONTRACTUAL OBLIGATIONS ON THE ACADEMY

- c) and a recommendation has been made under the relevant Appraisal Policy and Procedure that this Capability Policy and Procedure be invoked.

If a Principal/Headteacher is subject to this Capability Policy and Procedure he or she will normally continue to be responsible for the performance management process of the Academy.

3. CAPABILITY, FINAL CAPABILITY AND APPEAL MANAGER

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

Employee Level	First/Second Capability Meeting – the Capability Manager	Final Capability Meeting – the Final Capability Manager	Appeal Manager (re Written Warnings)	Appeal Manager (re Dismissal)
Principal/Headteacher	Chair or a non-staff Director/Governor	Directors/Governors Capability Panel	A non-staff Director/Governor	Directors/Governors Appeal Panel
Other Leadership Spine and Academy Business Manager	A more senior member of the leadership team	Another member of the leadership team more senior than the previous Capability Manager including Principal/Headteacher OR in cases where the Principal/Headteacher is potentially involved, Chair or a non-staff Director/Governor	Principal/Headteacher OR in cases where the Principal/Headteacher is potentially involved, Chair or non-staff Director/Governor	Directors/Governors Appeal Panel

Other Teaching Staff	(1) A member of the Leadership Team (other than the Principal/ Headteacher or, in the event that (1) above cannot be complied with, (2) a person appointed by the Principal/ Headteacher	Another member of the leadership team more senior than the previous Capability Manager including Principal/ Headteacher OR in cases where the Principal/ Headteacher is potentially involved, Chair or a non-staff Director/ Governor	Principal/ Headteacher OR in cases where the Principal/ Headteacher is potentially involved, Chair or non-staff Director/ Governor	Directors/ Governors Appeal Panel
Other Support Staff	A person appointed by the Principal/ Headteacher	Another member of the Academy staff more senior than the previous Capability Manager including Principal/ Headteacher OR in cases where the Principal/ Headteacher is potentially involved, the Chair or a non-staff Director/ Governor	Principal/ Headteacher OR in cases where the Principal/ Headteacher is potentially involved, Chair or non-staff Director/ Governor	Directors/ Governors Appeal Panel

NB: In law, only the Academy Trust Company, as the employer of staff, has the power to terminate employment, so the Academy Trust Company will need to ensure that it has delegated this power to the Final Capability Manager in accordance with the table above.

4. FIRST CAPABILITY MEETING

- 4.1 Where the Academy has fully exhausted the Appraisal Policy and Procedure in accordance with Paragraph 2 above, including the appeals process under that Policy, the Academy 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. At the same time as sending you the letter inviting you to the First Capability 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; and
 - 4.1.3 The support that has been provided to you so far.
- 4.2 The Capability Manager's written communication shall state that any documentation you wish to rely on must be submitted at least 3 working days ahead of the Capability Meeting.
- 4.3 At the First Capability Meeting you will have an opportunity to comment upon the Performance Report and to discuss the professional shortcomings, possible support and guidance and how performance should be monitored going forward.
- 4.4 If the Capability Manager concludes that your performance is satisfactory you will no longer be subject to this Capability Policy and Procedure and shall be notified in writing, As soon as reasonably practicable. The Academy's Appraisal Policy and Procedure shall resume.
- 4.5 If the Capability Manager concludes that your performance is unsatisfactory you will be given a First Written Warning and an improvement and support plan which will:
- 4.5.1 Identify the professional shortcomings
 - 4.5.2 Give clear guidance on the improved sustainable standard of performance needed to exit the capability procedure
 - 4.5.3 Explain the support that will be available, and how performance will be monitored over a period of time, referred to in this Capability Policy and Procedure as the Assessment Period
 - 4.5.4 Identify the timetable for improvement and agree a date for the Second Capability Meeting
 - 4.5.5 Make it clearly understood 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.

- 4.8 You may appeal against a First Written Warning by writing to the Clerk within 5 working days of being sent the First Written Warning.
- 4.9 The fact of the appeal does not delay the commencement of the Assessment Period.
- 4.10 In the case of a Principal/Headteacher, a First Written Warning will remain live for 12 months. In the case of all other employees a First Written Warning will remain live for 6 months. If within that 12 or 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.

5. SECOND CAPABILITY MEETING

- 5.1 The Capability Manager will write to you inviting you to a Second Capability Meeting. You will be given at least 5 working days notice of such meeting. At the same time as sending you the letter inviting you to the Second Capability Meeting, the Capability Manager will also send you a copy of the Updated Performance Report which they have prepared and which shall set out the assessments, support and evaluation of your performance during the Assessment Period.
- 5.2 At the Second Capability Meeting you will have an opportunity to comment upon the Updated Performance Report and to discuss the professional assessment and any continuing shortcomings, possible support and guidance and how performance should be monitored going forward.
- 5.3 The Capability Manager will confirm the outcome of the Second Capability Meeting in writing within 5 working days of such a meeting
- 5.4 Where the Capability Manager concludes that the standard of performance is satisfactory you will no longer be subject to this Capability Policy and Procedure and shall be notified in writing as soon as reasonably practicable. The Academy'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.
- 5.5 Where the Capability Manager concludes 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 consider extending the Assessment Period determined in accordance with paragraph 4.6 by up to an additional 4 weeks

- 5.6 Where the Capability Manager concludes that no, or insufficient, improvement has been made so that your performance remains unsatisfactory, you will be given a Final Written Warning setting a Further Assessment Period of a minimum of 4 working weeks and setting the date for the Final Capability Meeting. You will be informed that failure to make satisfactory sustainable improvement will result in your dismissal.
- 5.7 You may appeal against a Final Written Warning by writing to the Clerk within 5 working days of being sent the Final Written Warning.
- 5.8 The fact of the appeal does not delay the commencement of the Further Assessment Period.
- 5.9 A Final Written Warning for all employees will remain live for 12 months and if, within that 12 months, 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.

6. FINAL CAPABILITY MEETING

- 6.1 The Final Capability Manager will write to you inviting you to a Final Capability Meeting. You will be given at least 5 working days' notice of such meeting and up to a maximum of 10 working days' notice of such a meeting. At the same time as sending you the letter inviting you to the Final Capability Meeting, the Final Capability Manager will also send you a copy of the Final Performance Report which they have prepared and which shall set out the assessments, support and evaluation of your performance during the Further Assessment Period.
- 6.2 At the Final Capability Meeting you will have an opportunity to comment upon the Final Performance Report and to discuss the continued professional shortcomings, where appropriate.
- 6.3 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.
- 6.4 Where the final Capability Manager concludes that the standard of performance is satisfactory, you will no longer be subject to this Capability Policy and Procedure and shall be notified in writing. The Academy'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.

6.5 Where the Final Capability Manager concludes that your performance remains unsatisfactory and is not capable of sustainable improvement, the Final Capability Manager will recommend to the Academy Trust Company that your employment is terminated in accordance with your contract of employment and the Academy Trust Company will take the appropriate steps to terminate your employment with notice.

6.6 You may appeal against a dismissal with notice by writing to the Clerk within 10 working days of being sent the notice of termination.

6.7 The fact of the appeal does not delay the commencement of the notice period.

6.8 In the event that your employment is terminated in accordance with Paragraph 6.5 above:

- (a) If your contract of employment contains a garden leave clause the Governing Board may exercise that clause so that you are not required to attend the Academy during the notice period but remain employed and so bound by the terms of your contract of employment until the expiry of the notice period; or
- (b) If your contract of employment contains a payment in lieu of notice clause the Governing Board may exercise that clause to bring your 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 your appeal letter must set out the grounds of your appeal in detail.

7.3 Any appeal should normally be heard by the relevant Appeal Manager appointed in accordance with Paragraph 3 within 20 working days of the Clerk receiving your appeal letter.

7.4 The Appeal Manager is not required to hear oral evidence and may rely on written evidence.

7.5 If the Appeal Manager does decide to hear oral evidence, you will be given an opportunity to comment on it either by attending the meeting or by reviewing the notes of that oral evidence after the meeting (if you were not present at the meeting where such oral evidence was given).

7.6 The Appeal Manager will confirm the outcome of the Appeal Meeting in writing to you within 5 working days of the date of the Appeal Meeting. The decision of the Appeal Manager is final and there will be no further right of appeal. The outcomes of the Appeal Meeting are that:

Academies - Capability Policy and Procedure – England – September 2013 (Updated May 2018)

THIS POLICY DOES NOT CREATE CONTRACTUAL OBLIGATIONS ON THE ACADEMY

- (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.

8. DIRECTORS'/GOVERNORS' PANELS

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

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.
- 9.6 Your Companion has no right to:
 - (a) answer questions on your behalf;

- (b) address the meeting if you do not wish it; or
- (c) prevent you from explaining your case.

9.7 Where you have identified your Companion to the relevant Manager and they have confirmed in writing to the relevant Manager that they cannot attend the date or time set for the meeting, the relevant Manager will postpone the meeting for no more than five working days from the date set by the Academy, to a date or time agreed with your Companion provided that it is reasonable in all the circumstances. Should your Companion subsequently be unable to attend the rearranged date, the meeting may be held in their absence or written representations will be accepted.

10. TIMING OF MEETINGS

Meetings under this procedure will aim to:

- 10.1 be held at a mutually agreed time, usually during working hours;
- 10.2 not be held on days on which you would not ordinarily work.
- 10.3 be extended by agreement between the parties if the time limits cannot be met for any justifiable reason

11. ASSISTANCE

In all cases involving any sanction in relation to the Principal/Headteacher or to a person on the Leadership Spine, or to potential or actual dismissal of any other member of staff, the Diocesan Academics Commission and/or the Local Authority may send a representative to advise the Capability Manager, Final Capability Manager or Appeal Manager.

12. REVIEW OF THIS PROCEDURE

This procedure produced by the Catholic Education Service (CES) for use in Catholic Voluntary Academies in England, was amended in September 2013, updated in June 2016 and again in May 2018, following consultation with the national trade unions. It may be adapted, as appropriate, for use in joint Church academies subject to the approval of the CES on referral by the relevant Catholic diocese. This procedure will be reviewed by the CES in readiness for the academic year 2019/20.