



## Capability Policy

### Churchdown School Mission Statement

Our mission is to be a school where student development and learning are at the centre of everything we do. Students are expected to strive for personal excellence and demonstrate a commitment to learning as they fulfil their potential. Our community is a nurturing and caring one, where students are encouraged to show compassion, friendship and support towards one another. We aim to provide an education which is fully inclusive, where every child is valued for who they are and who they can become.

At Churchdown School (the "School") the education we provide is guided by the values of integrity, resilience, respect, ambition and tolerance. These values are particularly important to us as we develop the students into lifelong learners and prepare them for a life beyond school.

### Definitions

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

- i. 'School' means the school named at the beginning of this Capability Policy and Procedure and includes all sites upon which its activity is being carried out.
- ii. 'Board' Governing Body of Churchdown School;
- iii. 'Chair' means the Chair of Governors;
- iv. 'Clerk' means the Clerk to the Board or the Clerk to the Governing Body of the School appointed from time to time, as appropriate;
- v. 'Companion' means a willing work colleague not involved in the substance of the employee's performance under review by this Capability Policy and Procedure; an accredited trade union representative; an official employed by a trade union who will be expected to make themselves available for the periods of time necessary to meet the timescales under this Capability Policy and Procedure;
- vi. 'External Adviser' means a suitably skilled and/or experienced person who is appointed by the Governing Board to support the Governing Board to appraise the Headteacher in accordance with this Capability Policy and Procedure. The External Adviser must be familiar with the particular needs and ethos of the School;
- vii. 'Governing Board or Governing Body' means the Local Governing Body of the School.
- viii. 'Governors' means the governors appointed and elected to the Local Governing Body of the School, from time to time;

- ix. 'Standards' means the relevant standards incorporated into the Teacher's contract of employment which may be the Teachers Standards published by the DfE in 2012 or any subsequent revisions thereof;
- x. 'Teacher' means a teacher employed by the School and, where the context so admits, includes the Headteacher;
- xi. 'Vice-Chair' means the Vice-Chair of the Governing Body elected from time to time, as appropriate.
- xii. "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 but will not be different based on whether an employee is full-time or part-time.
- xiii. "Working week" means any week that you would ordinarily work.

## **1. Scope**

1.1 This Capability Policy and Procedure applies to you if you are an employee or worker at the School (hereinafter referred to as an "employee" or "you").

1.2 This procedure applies where a member of staff is failing to carry out their responsibilities or duties in a satisfactory manner, due to a lack of ability, experience, qualifications or on health grounds. 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.

1.3 The School delegates its authority in the manner set out in this policy.

1.4 The School is committed to ensuring respect, objectivity, belief in the dignity of the individual, consistency of treatment and fairness in the operation of performance management. The primary aim of this procedure is to provide a framework within which managers can work with staff to maintain satisfactory performance standards and to encourage improvement where necessary and provides for warnings to be given for failure to meet the required standards of job performance.

1.5 It is our policy to ensure that concerns over performance are dealt with fairly and that steps are taken to establish the facts and to give employees the opportunity to respond before any formal action is taken.

1.6 The procedure is non-contractual in nature, but applies to all members of staff, and can be invoked at any time, except that this procedure will not apply during the first two years of employment. All members of staff should familiarise themselves with its provisions.

1.7 The Capability 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.

1.8 Most performance improvement procedures will follow the course set out below. However, we may vary the process to suit individual circumstances; such a variation will not amount to a breach of this procedure. The procedure will be invoked when performance issues arise or are identified either following an appraisal process or otherwise.

1.9 The School will normally first address performance informally, and offer appropriate training and support to an employee before progressing under this procedure.

1.10 The School will, as part of this procedure, consider what training and support it can give the employee to help him/her meet the performance requirements.

## **2. Confidentiality and Record Keeping**

2.1 The School aims to deal with performance matters sensitively and with due respect for the privacy of the individuals involved. All employees must treat as confidential any information communicated to them in connection with a matter which is subject to this Capability Procedure.

2.2 The School will maintain records of all interviews and reviews, which take place under this Capability Policy and Procedure. A record will be kept of the shortfall or failure, your defence or mitigation, minutes of the capability meeting, the action taken and reasons for it, whether an appeal was lodged, its outcome and any subsequent developments. These records are confidential and will be retained on your personnel file in accordance with the prevailing data protection legislation.

2.3 An employee, and anyone accompanying them (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure without prior permission of the Headteacher.

## **3. Capability, Final Capability and Appeal Manager**

The table in Appendix 1 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.

## **4. Suspension**

Where you are accused of an act of serious or gross negligence, you may be suspended from work on full pay and benefits, pending the outcome of the capability or disciplinary procedure. Such suspension is not a punishment, and does not imply that any decision has already been made in relation to this procedure or the Disciplinary Procedure.

## **5. Procedure**

### **First Capability Meeting**

5.1 Where the School considers it necessary to invoke this procedure, the School will appoint a Capability Manager in accordance with Paragraph 3.

5.2 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. The Capability Manager will also send you a copy of the Performance Report which they have prepared, and which shall set out:

- what aspects of your performance are causing concern;
- what specific and achievable performance standards are expected; and
- The support that has been provided to you so far.

5.3 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.

5.4 The Capability Manager will confirm the outcome of the First Capability Meeting in writing within five working days of the date of such meeting, during term time, or as soon as reasonably practicable in school holidays.

5.5 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 of this in writing.

5.6 If the Capability Manager concludes that your performance is unsatisfactory you will usually be given a First Written Warning and an improvement and support plan which will:

- identify the professional shortcomings;
- give clear guidance on the improved sustainable standard of performance needed to exit the capability procedure;
- 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;
- identify the timetable for improvement and agree a date for the Second Capability Meeting;
- make it clearly understood that failure to improve may lead to dismissal.

5.7 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**.

5.8 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.

5.9 You may appeal against the decision of the Capability Manager by writing to the Clerk within five working days of receiving the written decision of the Capability Manager.

5.10 The fact of the appeal does not delay the commencement of the Assessment Period.

5.11 In the case of the Headteacher, a First Written Warning will remain on the Headteacher's record for 12 months in accordance with the School's Data Protection policy [and Staff privacy Notice] after which time it will expire.

5.12 In the case of all other employees, a First Written Warning will remain on the employee's record for 6 months in accordance with the School's Data Protection policy [and Staff privacy Notice] after which time it will expire.

5.13 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.

## **6. Second Capability Meeting**

6.1 Following the Assessment Period, the Capability Manager will review your performance against the agreed targets and produce an Updated Performance Report which shall set out the assessments, support and evaluation of your performance during the Assessment Period. The Capability Manager will then write to you inviting you to a Second Capability Meeting and send you a copy of the Updated Performance Report. You will be given at least five working days' notice of such meeting. .

6.2 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.

6.3 The Capability Manager will confirm the outcome of the Second Capability Meeting in writing within 5 working days of the date of such meeting.

6.4 Where the Capability Manager concludes that the standard of performance is satisfactory you will no longer be subject to this Capability Policy & Procedure and shall be notified in writing. However, if the required standard of performance is not reached during the life of the First Written Warning, the Capability Manager will recommence the Capability Procedure at the stage it was previously concluded.

6.5 Where the Capability Manager concludes that sufficient 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 5.7 by up to an additional 4 weeks.

6.6 Where the Capability Manager concludes that no, or insufficient, improvement has been made and that your performance remains unsatisfactory, you will normally be given a Final Written Warning a Further Assessment Period of 4 working weeks and will set the date for the Final Capability Meeting.

You will be informed that failure to make satisfactory sustainable improvement may result in your dismissal. Your Head of Department should offer help with training and supervision as required during this Further Assessment Period. Your conduct and performance may also be appraised, at intervals to be determined by your Head of Department, at any time during this period.

6.7 You may appeal against the decision of the Capability Manager by writing to the Clerk within five working days of receiving the written decision of the Capability Manager.

6.8 The fact of an appeal does not delay the commencement of the Further Assessment Period.

6.9 A Final Written Warning for all employees will remain on the employee's record for 12 months in accordance with the School's Data Protection policy [and Staff Privacy Notice] but will be considered expired after 12 months. If, within that 12 months, the employee's required standard of performance is not reached the Capability Manager will recommence the Capability Procedure at the stage it was previously concluded.

6.10 Depending upon the seriousness of the matter and the circumstances, the First and/or Second Capability Meeting may be omitted at the Capability Manager/Headteacher's discretion, and the procedure may begin at the Final Capability meeting set out below.

## **7. Final Capability Meeting**

7.1 The Final Capability Manager will write to you inviting you to a Final Capability Meeting. You will be given at least five working days' notice of such 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.

7.2 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.

7.3 The Final Capability Manager will confirm the outcome of the Final Capability Meeting, in writing, within five working days of the date of such meeting.

7.4 Where the Final Capability Manager concludes that the standard of performance is satisfactory you will no longer be subject to this Capability Policy & Procedure and shall be notified in writing. However, if the required standard of performance is not reached 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.

7.5 Where the Final Capability Manager concludes that your performance remains unsatisfactory and is not capable of sustainable improvement, the Final Capability Manager will normally recommend to the Governing Body that your employment with the School be terminated in accordance with your contract of employment on the grounds of capability. We reserve the right to

consider other possible formal action, including (but without limitation): demotion or transfer; loss of seniority or salary increment; suspension (without pay). If you are dismissed, you will be provided with a written statement detailing the reasons for dismissal, the date on which your employment will terminate and the right of appeal.

7.6 You may appeal against the decision of the Final Capability Manager by writing to the Clerk within 10 working days of receiving the written decision of the Final Capability Manager.

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

7.8 In the event that your employment is terminated in accordance with Paragraph 7.5 above:

- a) if your contract of employment contains a garden leave clause the Governing Body may exercise that clause so that you are not required to attend the School 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 Body may exercise that clause to end your contract with immediate effect.

## **8. Appeals against decisions made by Capability Manager and/or/Final Capability Manager**

8.1 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 5, 6 and 7 above.

8.2 In all cases, your appeal letter must be received within five working days of receipt of the Capability Manager's decision and must set out the grounds of your appeal in detail.

8.3 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 during term time, or as soon as reasonably practicable in school holidays. You are entitled to bring a companion to the appeal as per paragraph 10 below.

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

8.5 If the Appeal Manager does decide to hear oral evidence, you will be given an opportunity to comment on it 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).

8.6 Where new evidence arises prior to or during the appeal the employee will be given access to any relevant information or evidence and will have the opportunity to make representations.

8.7 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 during term time, or as soon as reasonably

practicable in school holidays. 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:

- 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.

8.8 In the event of an unsuccessful appeal against a decision to dismiss the original dismissal date shall stand.

## **9. Governors' Panels**

9.1 Governors' Capability or Appeal Panels shall typically 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 Governors not previously involved in the matter, in which case the Chair and/or Vice-Chair may be appointed to a Governors' Capability or Appeal Panel.

## **10. Companion**

10.1 At all stages of the procedure, you will be allowed to attend a capability meeting with a Companion.

10.2 You must let the relevant Manager know who your Companion will be at least one working day before the relevant meeting.

10.3 If you have any particular reasonable need, for example, because you have a disability, please inform us of this as soon as possible and a suitable helper may also accompany you.

10.4 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.

10.5 Your Companion can also confer with you during the meeting.

10.6 Your Companion has no right to:

- a) answer questions on your behalf;
- b) address the meeting, without your permission to do so; or
- c) prevent you from explaining your case.

10.7 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 School 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, you will be entitled to bring an alternative Companion (provided you notify the Manager in line with this procedure) or the meeting may be held in their absence.

## **11. Timing of Meetings**

11.1 Meetings under this procedure may:

- need to be held when you were timetabled to teach;
- exceptionally be held during planning, preparation and administration time if this does not affect lesson preparation;
- need be held after the end of the School day;
- not be held on days on which you would not ordinarily work;
- be extended by agreement between the parties if the time limits cannot be met for any justifiable reason.

## **12. Assistance**

In all cases involving any sanction in relation to the Headteacher or to a person on the leadership spine, or to potential or actual dismissal of any other member of staff, the Local Authority may send a representative to advise the Capability Manager, Final Capability Manager or Appeal Manager.

## **13. Examples of insufficient performance**

13.1 The following are non-exhaustive and non-exclusive examples of the sort of performance shortfalls or failures, which will normally lead to action being taken.

### **13.1.1 Minor offences** (informal oral warning)

- Occasional poor job performance involving sub-standard work or application.

### **13.1.2 Serious offences** (written or final written warning)

- Consistent poor performance or application.
- Failure to improve performance following an appraisal meeting or performance review, within the timescale specified within such a meeting or review.
- Failure to perform duties or roles to an acceptable standard for reasons which it is within your power to rectify.

You should be made aware that if there is no adequate improvement following the issue of warnings, such issues may result in dismissal.

### **13.1.3 Capability and consistent performance offences** (dismissal with notice)

- Incapable and/or unsuitable of performing role or main job functions/duties as set out in job description and which could not be rectified by training or coaching.
- Consistent failure or unable to improve performance to required or reasonable standards or to the level of other members of staff carrying out the same, similar or equivalent work.
- You are unable satisfactorily to do or do not have the qualifications, aptitude and/or ability for the job.

#### **13.1.4 Gross negligence** (dismissal without notice)

- In the most serious cases of gross negligence, normally (but not necessarily) resulting in significant financial loss or loss of reputation to the School, where our continued trust and confidence in you has been destroyed as a result, dismissal may be without notice or payment in lieu of notice. ]

### **14. Relationship with Disciplinary Procedure**

14.1 The Capability Procedure is not intended to apply to cases where poor performance results directly from misconduct, in which case the Disciplinary Procedure should normally apply. It may not, however, always be immediately clear whether poor performance results from misconduct or capability and the procedures may, initially, be run in parallel whilst the concerns are being investigated.

14.2 You may be dismissed following exhaustion of the formal capability procedure and have no separate right to have the disciplinary procedure followed prior to dismissal, and vice versa.

14.3 Live warnings issued under the disciplinary procedure may, if appropriate, be taken into consideration when considering the level of warning to be given under the capability procedure, and vice versa.

### **15. Disabilities**

Consideration will be given to whether poor performance may be related to a disability and, if so, whether there are reasonable adjustments that could be made to an employee's working arrangements, including changing their duties or providing additional equipment or training. We may also consider making adjustments to this procedure in appropriate cases.

### **16. Long-term sickness absence**

Where an employee's underperformance is as a result of long term sickness absence then the School will always seek medical advice prior to making a decision about an employee's ongoing employment. The School will also consider whether there are any reasonable adjustments which can be made to assist the employee to perform their role. In cases where

the School has concerns about the employee's long term ability to perform their job as a result of health grounds the School will normally move to dismissal stage without prior warnings.

### **17. Relationship with Appraisal Procedure**

- 17.1 This Capability Policy and Procedure should, except in exceptional circumstances, only be invoked:
- a) if the employee has made insufficient, or no, improvement as required under such Policy after feedback;
  - b) and/or is failing to respond to feedback in relation to unsatisfactory performance;
  - c) in addition, where a recommendation has been made under the relevant Appraisal Policy and Procedure that this Capability Policy and Procedure should be invoked.
- 17.2 If a 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 School.

## APPENDIX 1

<b>Employee Level</b>	<b>First/Second Capability Meeting  The Capability Manager</b>	<b>Final Capability Meeting  The Final Capability Manager</b>	<b>Appeal Manager  (for First and Second Capability Meeting)</b>	<b>Appeal Manager  (for Final Capability Meeting)</b>
Headteacher	Chair or a non-staff Governor (other than the Vice-Chair) nominated by the Chair	Governors' Capability Panel appointed by the Vice-Chair	A non-staff Governor (other than the Chair or Vice Chair) nominated by the Vice-Chair	Governors' Appeal Panel appointed by the Vice-Chair
Other Leadership Spine and School Business Manager	Headteacher	Chair or a non-staff Director/ Governor nominated by the Chair	A non-staff Governor (other than the Chair or Vice Chair) nominated by the Vice-Chair	Governors' Appeal Panel appointed by the Vice-Chair
Other Teaching Staff	(1)A member of the Leadership Team (other than the Headteacher) appointed by the Headteacher or, in the event that (1) above cannot be complied with, (2) a person appointed by the Headteacher	Headteacher	Chair or a non-staff Governor (other than the Vice- Chair) nominated by the Chair	Governors' Appeal Panel appointed by the Vice-Chair
Other Support Staff	A person appointed by the Headteacher	Headteacher	Chair or a non-staff Governor (other than the Vice Chair) nominated by the Chair	Governors' Appeal Panel appointed by the Vice- Chair