



*Achieving together in faith*

**Holy Cross Catholic  
Multi Academy Company**

### **CAPABILITY POLICY AND PROCEDURE**

Responsible for Policy	Marina Kelly
Board Approval Date	11 September 2024
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Date of Policy Review	September 2027 (or as updated and advised by CES)

## Document control

### Version History

Version	Status	Date	Author	Department	Summary of Changes
1.0	<b>Approved</b>	2 Sept 2020	JP	HCCMAC, Central Team	CES Model Policy presented to Board for approval
2.0	Draft	11 Sept 2024	JP	HCCMAC, Central Team	MAC policy checked to ensure compliance with latest CES document and model letters added to appendices. No CES policy update since 2022 – no update to letters since 2020. Draft presented to Board for adoption.
2.0	<b>Approved</b>	11 Sept 2024		Board of Directors	Policy Approved

**Commitment to equality:**

**We are committed to providing a positive working environment which is free from prejudice and unlawful discrimination and any form of harassment, bullying or victimisation. We have developed a number of key policies to ensure that the principles of Catholic Social Teaching in relation to human dignity and dignity in work become embedded into every aspect of school life and these policies are reviewed regularly in this regard.**

**Signed by Chair of the Multi Academy Company Board : John Teahan**

**Signed by Catholic Senior Executive Leader: Marina Kelly**

## DEFINITIONS

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

- i. **'Holy Cross Catholic Multi Academy Company'** means the Multi Academy Company (MAC) named at the beginning of this Capability Policy and Procedure and includes all sites upon which the MAC undertaking is, from time to time, being carried out.
- ii. **'Holy Cross Catholic Multi Academy Company'** means the company responsible for the management of the Academy and, for all purposes, means the employer of staff at the MAC.
- iii. **'Board'** means the board of Directors of the Multi Academy Company (and includes, where applicable, a Committee of the Board, other than a Local Governing Body).
- iv. **'Chair'** means the Chair of the Board or, where applicable, Chair of the Local Governing Body of the relevant school.
- v. **'Catholic Senior Executive Leader'** (CSEL) means the person appointed to carry out the function of the Academy's chief executive office at any relevant time and has responsibility for performance of all Holy Cross Catholic MAC schools and staff within the MAC and is accountable to the Board of Directors.
- vi. **'Central Management Team'** means the CSEL and other employees of the MAC who are not employed to work in any specified School.
- vii. **'Clerk'** means the Clerk to the Board or the Clerk to the applicable Local Governing Body, as the case may be.

- viii. **‘Companion’** means a willing work colleague, or a trade union official, an accredited representative of a trade union or other professional association of which the employee is a member, who should be available for the periods of time necessary to meet the timescales under this Sickness Absence Policy and Procedure.
- ix. **‘Diocesan Schools Commission’** means the education service provided by the Archdiocese of Birmingham in which the Academy is situated, which may also be known, or referred to, as the Diocesan Education Service.
- x. **‘Directors’** means directors appointed to the Board from time to time.
- xi. **‘External Adviser’** means a suitably skilled and/or experienced person who is appointed by the Governing Board\* Board to support the MAC Board in the appraisal of the CSEL and Headteachers in accordance with this Appraisal Policy and Procedure. The External Adviser must be familiar with the particular needs of a Catholic voluntary academy e.g. in relation to the development of a Catholic academy’s ethos and should be independent of the Headteacher.
- xii. **‘\*Governing Board’** means the body carrying out the employment functions of the Multi Academy Company. In this instance, the Governing Board is Holy Cross Catholic MAC Board of Directors, the employer for all MAC staff.
- xiii. **‘Headteacher’** means the most senior Teacher in the Academy who is responsible for its management and administration. Such Teacher may also be referred to as the Head of School or Principal.
- xiv. **‘Link Director’** means, in relation any School, a Director appointed by the Board to attend meetings of, and liaise with that School’s Local Governing Body, its head teacher and provide Director-level support to that school.

- xv. **‘Local Governing Body’** (LGB) means the Governing Body of a school who are Governors appointed and elected to carry out specified functions in relation to the school as delegated by the Governing Board.
- xvi. **‘Local Governing Body Members’** means the governors appointed or elected to the Local Governing Body from time to time.
- xvii. **‘Misconduct’** means any action or inaction which contravenes the provisions of the employee’s contract of employment, the rules laid down by the Multi Academy 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.
- xviii. **‘School’** means a school comprised in the Academy.
- xix. **‘Standards’** means the Teachers’ Standards published by the DfE in July 2011 as amended from time to time and, as appropriate, the National Standards of Excellence for Headteachers published by the DfE in January 2015 as amended from time to time.
- xx. **‘Teacher’** means a teacher employed by the Multi Academy Company to work at the Academy and, where the context so admits, includes the Headteacher.
- xxi. **‘Working Day’** means any day on which you would ordinarily work if you were a full-time employee. In other words, ‘Working Day’ may apply differently to teaching and non-teaching staff. However, part-time and full-time staff will not be treated differently for the purposes of implementing this Appraisal Policy and Procedure.
- xxii. **‘Working Week’** means any week that you would ordinarily work.
- xxiii. **‘Vice-Chair’** means the Vice-Chair of the Board as elected from time to time.

xxiv. **'Working Day'** means any day on which you would ordinarily work if you were a full-time employee. In other words, 'Working Day' will apply differently to teaching and non-teaching staff. However, part-time and full-time staff will not be treated differently for the purposes of implementing this Appraisal Policy and Procedure.

xxv. **'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 Academy (hereinafter referred to as an “employee” or “you”).
- 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 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 Multi Academy 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 Multi Academy Company’s Disciplinary Policy and Procedure may be used concurrently whilst the Multi Academy Company 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 Multi Academy Company’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 Multi Academy Company 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 Multi Academy Company 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 MAC community [which includes all of the Schools in the Multi Academy Company].
- 1.10 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.
- 1.11 This Capability Policy and Procedure can be invoked at any time during any Appraisal Period as defined in the Multi Academy Company'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.
- 1.12 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 taken into account in relation to the operation of other applicable policies and procedures.
- 1.13 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.
- 1.14 The Multi Academy Company 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 measures set out in Paragraph 9 and Paragraph 10 (if an appeal is lodged) of the Multi Academy Company's Appraisal Policy and Procedure for Teachers and/or Paragraph 9 and Paragraph 10 (if an

appeal is lodged) of the Multi Academy Company's Appraisal Policy and Procedure for Support Staff (as appropriate) have been exhausted; and

- a) the employee has made no improvement, or no sufficient improvement as required under the relevant 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 the Academy unless the Board determines that this is inappropriate.

### 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:

<b><i>Employee Level</i></b>	<b><i>First/Second Capability Meeting – the Capability Manager</i></b>	<b><i>Final Capability Meeting – the Final Capability Manager</i></b>	<b><i>Appeal Manager (re Written Warnings)</i></b>	<b><i>Appeal Manager (re Dismissal)</i></b>
Catholic Senior Executive Leader	Chair of the Board or a non-staff Director (other than the Vice-Chair) appointed by the Chair	Directors' Capability Panel appointed by the Vice-Chair	A non-staff Director (other than the Chair or Vice Chair) appointed by the Vice-Chair	Directors' Appeal Panel appointed by the Vice-Chair
A member of the MAC Central Management Team	The CSEL	Directors' Capability Panel appointed by the Chair of the Board	A non-staff Director (other than the Chair or Vice-Chair) appointed by the Vice-Chair	Directors' Appeal Panel appointed by the Vice-Chair

<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 (re Written Warnings)</b>	<b>Appeal Manager (re Dismissal)</b>
Headteacher	Chair or a non-staff Director (other than the Vice-Chair) appointed by the Chair	Directors' Capability Panel appointed by the Vice-Chair	A non-staff Director (other than the Chair or Vice Chair) appointed by the Vice-Chair	Directors' Appeal Panel appointed by the Vice-Chair
Other School Leadership Spine and School Business Manager	Headteacher	Directors' Capability Panel appointed by the Chair	A non-staff Director (other than the Chair or Vice-Chair) appointed by the Vice-Chair	Directors' Appeal Panel appointed by the Vice-Chair
Other Teaching Staff	Headteacher or a sufficiently senior member of staff appointed by the Headteacher	Directors' Capability Panel appointed by the Chair	A non-staff Director (other than the Chair or Vice- Chair) appointed by the Chair	Directors' Appeal Panel appointed by the Vice-Chair
Other Support Staff	Headteacher or a sufficiently senior member of staff appointed by the Headteacher	Directors' Capability Panel appointed by the Chair	A non-staff Director (other than the Chair or Vice-Chair) appointed by the Chair	Directors' Appeal Panel appointed by the Vice- Chair

#### **4. FIRST CAPABILITY MEETING**

4.1 Where the Multi Academy Company has fully exhausted the Appraisal Policy and Procedure in accordance with Paragraph 2 above, including the appeals process under that Policy (if an appeal is lodged), the Multi Academy Company 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 Performance Report which shall set out:

- a) what aspects of your performance are causing concern;
  - b) what specific and achievable performance standards are expected of you; and
  - c) the support that has been provided to you so far.
- 4.2 The Capability Manager's letter shall state that any documentation you wish 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 you 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 your performance will be monitored and supported going forward.
- 4.4 At the end of the First Capability Meeting, having considered your comments, 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 of the Capability Manager's decision, as soon as is reasonably practicable. The Multi Academy Company's Appraisal Policy and Procedure shall resume.
- 4.5 At the end of the First Capability Meeting, having considered your comments, if the Capability Manager concludes that your performance is unsatisfactory you will be given a First Written Warning and an Improvement and Support Plan will be drawn up in discussion with you 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 your performance will be monitored and supported over a period of time, 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. You will be informed of any such extension in writing.
- 4.8 You may appeal against a First Written Warning by writing to the Clerk 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 In the case of a CSEL or 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 and you 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 to you in accordance with Paragraph 4.5(d) above, the Capability Manager will send you an Updated Performance Report along with a letter reminding you of the date of the Second Capability Meeting. The Updated Performance Report will provide details of the assessments of your performance that have taken place during the Assessment Period, the support that has been provided to you and an evaluation of your performance at the end of the Assessment Period.
- 5.2 Any documentation you wish 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 you 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 your 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 your performance is satisfactory you will no longer be subject to this Capability Policy and Procedure. The Multi Academy

Company'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 you 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 you 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 your performance is satisfactory, you will no longer be subject to this Capability Policy and Procedure. The Multi Academy Company'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 you 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 no sufficient, improvement has been made so that your performance remains unsatisfactory, you will be given a Final Written Warning setting a Further Assessment Period of 4 Working Weeks and notifying you of the date for a Final Capability Meeting to be held at the end of the Further Assessment Period. You will be informed that failure to make satisfactory sustainable improvement during such Further Assessment Period may result in your dismissal.
- 5.8 You may appeal against a Final Written Warning by writing to the Clerk 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 you 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 you will have been invited to in accordance with Paragraph 5.7 above, the Final Capability

Manager will send you a Final Performance Report along with a letter reminding you of the date of the Final Capability Meeting. The Final Performance Report shall contain an evaluation of your performance and will detail any support provided during the Further Assessment Period.

- 6.2 Any documentation you wish to rely on during the Final Capability Meeting must be submitted at least 2 Working Days prior to the Final Capability Meeting.
- 6.3 At the Final Capability Meeting you 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 you will no longer be subject to this Capability Policy and Procedure. The Multi Academy Company'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 you will be informed of this in writing.
- 6.6 Where the Final Capability Manager concludes that your performance remains unsatisfactory and is not capable of sustainable improvement, the Final Capability Manager may recommend to the Multi Academy Company that your employment is terminated in accordance with your contract of employment and the Multi Academy Company will take appropriate steps to terminate your 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 You may appeal against a decision to dismiss you with notice by writing to the Clerk 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 In the event that your employment is terminated in accordance with Paragraph 6.6 above:
  - (a) if your contract of employment contains a garden leave clause the Multi Academy Company may exercise that clause so that you are not required to attend work

- 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 Multi Academy Company 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. When preparing your appeal letter, you may wish to consider the following grounds:
- (a) That the action taken was unfair;
  - (b) That this Capability 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 your appeal letter.
- 7.4 You 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 you will be provided with copies of such evidence with notice of the meeting in order to enable you to prepare for the Appeal Meeting. If oral evidence is to be relied upon at the Appeal Meeting, you will be given details of who will be in attendance. You 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 You will be given an opportunity to comment on the evidence provided during the Appeal Meeting whether such evidence is given in writing or orally. The Appeal Manager will consider the evidence provided by you and by the Capability Manager or Final Capability Manager (as appropriate) in order 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 to you within 5 Working Days of the date of the Appeal Meeting. The decision of the Appeal Manager is final and there will be no further right of appeal. The potential outcomes of an Appeal Meeting are 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, you will be reinstated with no break in your 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 Multi Academy Company may appoint associate members solely to participate in the appropriate Directors' 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 can 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 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 in excess of five Working Days from the date set by the Multi Academy Company to a date and time agreed with your Companion. 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**

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 you were timetabled to teach (if that is appropriate to your role);
- 10.2 exceptionally be held during planning, preparation and administration time if this does not impact on lesson preparation (if this is appropriate to your role);
- 10.3 exceptionally, be held after the end of the school/working day;
- 10.4 not be held on days on which you would not ordinarily work;
- 10.5 be extended by agreement between the parties if the time limits cannot be met for any justifiable reason.

## **11. VENUE FOR MEETINGS**

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

## **12. ASSISTANCE**

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

### **13. REVIEW OF THIS PROCEDURE**

This policy and procedure was produced in September 2013 and updated in May 2018 and June 2020 by the Catholic Education Service (CES) for use in Catholic Voluntary Academies in England, 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 2022/2023.

**CATHOLIC MULTI ACADEMY TRUST CAPABILITY POLICY AND PROCEDURE  
TEMPLATE LETTERS**

1. LETTER – INVITATION TO FIRST CAPABILITY MEETING
2. LETTER – OUTCOME OF FIRST CAPABILITY MEETING
3. LETTER – SECOND CAPABILITY MEETING – UPDATED PERFORMANCE REPORT
4. LETTER – OUTCOME OF SECOND CAPABILITY MEETING
5. LETTER – OUTCOME OF FURTHER ASSESSMENT PERIOD
6. LETTER – FINAL PERFORMANCE REPORT
7. LETTER – OUTCOME OF FINAL CAPABILITY MEETING
8. LETTER FROM CLERK TO THE BOARD OF DIRECTORS OF THE MULTI ACADEMY TRUST – RECEIPT OF APPEAL
9. LETTER FROM APPEAL MANAGER – OUTCOME OF APPEAL - REJECTION OF APPEAL
10. LETTER FROM DIRECTORS – OUTCOME OF APPEAL - FURTHER ASSESSMENT PERIOD.....
11. LETTER FROM APPEAL MANAGER – OUTCOME OF APPEAL – APPEAL UPHeld

**NOTES TO USERS:**

You must either complete or delete the information which is highlighted in yellow in these template letters before sending them to the employee.

Please pay specific attention to who is sending each letter and ensure that it fits with your governance structure and the table in Section 3 of this Capability Policy and Procedure.

# CATHOLIC MULTI ACADEMY TRUST CAPABILITY POLICY AND PROCEDURE

## TEMPLATE LETTERS

### 1. LETTER – INVITATION TO FIRST CAPABILITY MEETING

Dear [NAME]

#### First Capability Meeting

I am initiating a First Capability Meeting under the Multi Academy Trust's Capability Policy and Procedure. Therefore, please find enclosed:

1. A copy of the Multi Academy Trust's Capability Policy and Procedure;
2. Performance Report dated [INSERT DATE].

You are required to attend a First Capability Meeting with me on [DATE] at [TIME] at [VENUE] (which is at least 5 working days from today's date). The enclosed Performance Report sets out the aspects of your performance causing concern, the specific and achievable standards that are expected of you and the support provided to you so far.

The purpose of the meeting is for you to have an opportunity to comment upon, offer an explanation and/or refute the Performance Report and to discuss the professional shortcomings identified, support and guidance required and how your performance will be monitored and supported going forward.

Any evidence you intend to present at the meeting must be provided to me at least 2 working days in advance of the First Capability Meeting. This is in order to ensure efficiency and operational smoothness and to provide me with enough time to fully consider any evidence you provide.

You may be accompanied by a Companion who can be a trade union official, an accredited representative of a trade union or other professional association of which you are a member, or a willing work colleague who is not involved in your performance issues. Note that your Companion cannot answer questions for you and you must notify me of their name at least the working day before the meeting, therefore, by [INSERT DATE].

If you consider yourself to be a person with a disability and there are reasonable adjustments you believe I can make to accommodate your disability in relation to the operation of the Capability Policy and Procedure, please do let me know as soon as possible.

You may be able to obtain support from [INSERT DETAILS OF ANY LOCAL COUNSELLING OR SUPPORT SERVICES AVAILABLE TO ACADEMY STAFF].

Yours sincerely

**CATHOLIC MULTI ACADEMY TRUST CAPABILITY POLICY AND PROCEDURE  
TEMPLATE LETTERS**

**[NAME]**

**Capability Manager**

Enc. Capability Policy and Procedure and Performance Report.

**CATHOLIC MULTI ACADEMY TRUST CAPABILITY POLICY AND PROCEDURE  
TEMPLATE LETTERS**

**2. LETTER – OUTCOME OF FIRST CAPABILITY MEETING**

Dear [NAME]

**Outcome of First Capability Meeting**

**OPTION A:**

Following our First Capability Meeting on [INSERT DATE], having considered your comments, I have concluded that your performance is satisfactory and, therefore, you are no longer subject to the Multi Academy Trust's Capability Policy and Procedure. The Multi Academy Trust's Appraisal Policy and Procedure will resume with immediate effect.

Yours sincerely

[NAME]  
Capability Manager

**OPTION B:**

Following our First Capability Meeting on [INSERT DATE], having considered your comments, I have concluded that your performance is unsatisfactory, and I am issuing a First Written Warning in accordance with the Multi Academy Trust's Capability Policy and Procedure.

We will now draw up an Improvement and Support Plan which will focus on the points listed below:

Professional shortcomings

[INSERT]

Sustainable standard of performance needed to exit capability procedure

[INSERT]

Support to be provided during Assessment Period

[INSERT]

Timetable for improvement

[INSERT]

## CATHOLIC MULTI ACADEMY TRUST CAPABILITY POLICY AND PROCEDURE

### TEMPLATE LETTERS

Your performance will be subject to assessment and I have set an Assessment Period of [INSERT] working weeks commencing today and ending on [INSERT DATE].

There will be a Second Capability Meeting on [DATE] at [TIME] at [VENUE] to formally assess whether your performance has improved sustainably to the required standard. I will be submitting an Updated Performance Report to you at least 5 working days before the Second Capability Meeting is scheduled to take place, therefore by [INSERT DATE]. It should be noted that failure to improve may lead to your dismissal.

You may be accompanied by a Companion who can be a trade union official, an accredited representative of a trade union or other professional association of which you are a member, or a willing work colleague who is not involved in your performance issues. Note that your Companion cannot answer questions for you and you must notify me of their name at least the working day before the meeting, therefore, by [INSERT DATE].

If you consider yourself to be a person with a disability and there are reasonable adjustments you believe I can make to accommodate your disability in relation to the operation of the Capability Policy and Procedure, please do let me know as soon as possible.

You have the right to appeal against my decision. If you wish to appeal, you should notify the Clerk to the Board of Directors within 5 working days of the date of this letter, therefore by [INSERT DATE]. Please note that an appeal will not delay the commencement of the Assessment Period.

You may be able to obtain support from [INSERT DETAILS OF ANY LOCAL COUNSELLING OR SUPPORT SERVICES AVAILABLE TO ACADEMY STAFF].

Yours sincerely

**[NAME]**  
**Capability Manager**

Note to users: If the Assessment Period is extended pursuant to paragraph 4.7 of the Capability Policy and Procedure please ensure that this is confirmed in writing.



**CATHOLIC MULTI ACADEMY TRUST CAPABILITY POLICY AND PROCEDURE  
TEMPLATE LETTERS**

**3. LETTER – SECOND CAPABILITY MEETING – UPDATED PERFORMANCE REPORT**

Dear **[NAME]**

**Second Capability Meeting – Updated Performance Report**

Ahead of the Second Capability Meeting on **[INSERT DATE]**, I enclose my Updated Performance Report which, in addition to my earlier Performance Report, sets out the support that has been provided to you and an evaluation of your performance at the end of the Assessment Period.

At the Second Capability Meeting you 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 your performance will be monitored and supported going forward.

Any documentation you wish to rely on during the Second Capability Meeting must be submitted at least 2 working days prior to the Second Capability Meeting, therefore, by **[INSERT DATE]**.

You may be able to obtain support from **[INSERT DETAILS OF ANY LOCAL COUNSELLING OR SUPPORT SERVICES AVAILABLE TO ACADEMY STAFF]**.

You may be accompanied by a Companion who can be a trade union official, an accredited representative of a trade union or other professional association of which you are a member, or a willing work colleague who is not involved in your performance issues. Note that your Companion cannot answer questions for you and you must notify me of their name by at least the working day before the meeting, therefore, by **[INSERT DATE]**.

Yours sincerely

**[NAME]**  
**Capability Manager**

Enc. Updated Performance Report.

# CATHOLIC MULTI ACADEMY TRUST CAPABILITY POLICY AND PROCEDURE

## TEMPLATE LETTERS

### 4. LETTER – OUTCOME OF SECOND CAPABILITY MEETING

Dear [NAME]

#### Outcome of Second Capability Meeting

##### OPTION A:

Following the Second Capability Meeting on [INSERT DATE], I have concluded that the standard of your performance is satisfactory and you are, therefore, no longer subject to the Multi Academy Trust's Capability Policy and Procedure. The Academy's Appraisal Policy and Procedure will resume with immediate effect.

The First Written Warning issued on [INSERT DATE] remains live until [INSERT DATE]; in the event that the standard of your performance falls to an unsatisfactory level, the Multi Academy Trust's Capability Policy and Procedure will recommence at the stage at which it was concluded.

Yours sincerely

[NAME]

Capability Manager

##### OPTION B:

Following the Second Capability Meeting on [INSERT DATE], I have concluded that, whilst some progress has been made, the standard of your performance still remains below the required standard. I believe that with a further period of monitoring an acceptable level of performance will be achieved. As such your performance will be subject to further assessment and I have extended the Assessment Period by [up to 4 working weeks] which will expire on [INSERT DATE], following which we shall meet again to review your performance

If you do not make sustainable improvement to the required standard during this extended Assessment Period, you are at risk of dismissal.

If you consider yourself to be a person with a disability and there are reasonable adjustments you believe I can make to accommodate your disability in relation to the operation of the capability procedure, please do let me know as soon as possible.

## CATHOLIC MULTI ACADEMY TRUST CAPABILITY POLICY AND PROCEDURE

### TEMPLATE LETTERS

You may be able to obtain support from [INSERT DETAILS OF ANY LOCAL COUNSELLING OR SUPPORT SERVICES AVAILABLE TO ACADEMY STAFF].

Yours sincerely

**[NAME]**  
**Capability Manager**

#### OPTION C:

Following the Second Capability Meeting on [INSERT DATE], I have concluded that you have not made sufficient improvement and that your performance remains unsatisfactory. Therefore, I am issuing a Final Written Warning in accordance with the Multi Academy Trust's Capability Policy and Procedure. Your performance will be subject to a further Assessment Period of 4 working weeks which will expire on [INSERT DATE].

If you do not make sustainable improvement to the required standard during this further Assessment Period, you are at risk of dismissal.

You are required to attend a Final Capability Meeting on [DATE] at [TIME] at [VENUE]. This meeting will be conducted by [NAME[s]] as Final Capability Manager appointed in accordance with the Multi Academy Trust's Capability Policy and Procedure.

I will submit my Final Performance Report to you on or after the last day of the Assessment Period and, in any event, by at least 5 working days before the Final Capability Meeting, therefore, by [INSERT DATE]. My Final Performance Report will contain an evaluation of your performance and will detail any support provided during the further Assessment Period.

You have the right to appeal against my decision to impose a Final Written Warning. If you wish to appeal you should notify the Clerk to the Board of Directors of the Multi Academy Trust within 5 working days of the date of this letter, therefore, by [INSERT DATE]. An appeal will not delay the commencement of the Further Assessment Period.

You may be accompanied by a Companion who can be a trade union official, an accredited representative of a trade union or other professional association of which you are a member, or a willing work colleague who is not involved in your performance issues. Note that your Companion cannot answer questions for you and you must notify me of their name by at least the working day before the meeting, therefore, by [INSERT DATE].

## **CATHOLIC MULTI ACADEMY TRUST CAPABILITY POLICY AND PROCEDURE TEMPLATE LETTERS**

If you consider yourself to be a person with a disability and there are reasonable adjustments you believe I can make to accommodate your disability in relation to the operation of the Capability Policy and Procedure, please do let me know as soon as possible.

You may be able to obtain support from [INSERT DETAILS OF ANY LOCAL COUNSELLING OR SUPPORT SERVICES AVAILABLE TO ACADEMY STAFF].

Yours sincerely

**[NAME]**  
**Capability Manager**

# CATHOLIC MULTI ACADEMY TRUST CAPABILITY POLICY AND PROCEDURE

## TEMPLATE LETTERS

### 5. LETTER – OUTCOME OF FURTHER ASSESSMENT PERIOD

Dear [NAME]

#### Outcome of further Assessment Period

Further to my letter dated [INSERT DATE], you have now completed a further Assessment Period which ended on [INSERT DATE]. I have concluded that the standard of your performance is satisfactory and you are, therefore, no longer subject to the School's Capability Policy and Procedure. The School's Appraisal Policy and Procedure will resume with immediate effect.

The First Written Warning issued on [INSERT DATE] remains live until [INSERT DATE]; in the event that the standard of your performance falls to an unsatisfactory level, the School's Capability Policy and Procedure will recommence at the stage at which it was concluded and you will be notified of this in writing.

Yours sincerely

[NAME]

Capability Manager

#### OPTION B:

Further to my letter dated [INSERT DATE], you have completed a further Assessment Period which ended on [INSERT DATE]. I have concluded that you have not made sufficient improvement and that your performance remains unsatisfactory.

As you have not made sustainable improvement to the required standard during this further Assessment Period, you are now at risk of dismissal.

You are required to attend a Final Capability Meeting on [DATE] at [TIME] at [VENUE]. This meeting will be conducted by [NAME[s]] as Final Capability Manager appointed in accordance with the School's Capability Policy and Procedure.

I will submit my Final Performance Report to you in due course and, in any event, at least 5 working days before the Final Capability Meeting, therefore, by [INSERT DATE]. My Final Performance Report will contain an evaluation of your performance and will detail any support provided during the further Assessment Period.

## **CATHOLIC MULTI ACADEMY TRUST CAPABILITY POLICY AND PROCEDURE TEMPLATE LETTERS**

You may be accompanied by a Companion who can be trade union official, an accredited representative of a trade union or other professional association of which you are a member, or a willing work colleague who is not involved in your performance issues. Note that your Companion cannot answer questions for you and you must notify me of their name at least the working day before the meeting, therefore by **[INSERT DATE]**.

If you consider yourself to be a person with a disability and there are reasonable adjustments you believe I can make to accommodate your disability in relation to the operation of the Capability Policy and Procedure, please do let me know as soon as possible.

You may be able to obtain support from **[INSERT DETAILS OF ANY LOCAL COUNSELLING OR SUPPORT SERVICES AVAILABLE TO SCHOOL STAFF]**.

**[NAME]**

**Capability Manager**

**CATHOLIC MULTI ACADEMY TRUST CAPABILITY POLICY AND PROCEDURE  
TEMPLATE LETTERS**

**6. LETTER – FINAL PERFORMANCE REPORT**

Dear **[NAME]**

**Final Performance Report for Final Capability Meeting**

Ahead of the Final Capability Meeting on **[DATE]**, I enclose my Final Performance Report. This report sets out an evaluation of your performance and details the support provided during the further Assessment Period.

At the Final Capability Meeting you 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.

Any documentation you wish to rely on during the Final Capability Meeting must be submitted at least 2 working days prior to the Final Capability Meeting, therefore, by **[INSERT DATE]**.

Yours sincerely

**[NAME]**

**Capability Manager**

Enc. Final Performance Report

# CATHOLIC MULTI ACADEMY TRUST CAPABILITY POLICY AND PROCEDURE

## TEMPLATE LETTERS

### 7. LETTER – OUTCOME OF FINAL CAPABILITY MEETING

Dear [NAME]

#### Outcome of Final Capability Meeting

##### OPTION A:

I am writing further to the Final Capability Meeting on [INSERT DATE]. The Final Capability Manager has concluded that the standard of your performance is satisfactory, and you are, therefore, no longer subject to the Academy's Capability Policy and Procedure. The Multi Academy Trust's Appraisal Policy and Procedure will resume with immediate effect.

The Final Written Warning issued on [INSERT DATE] remains live until [INSERT DATE]; in the event that the standard of your performance falls to an unsatisfactory level, the Multi Academy Trust's Capability Policy and Procedure will recommence at the stage at which it was concluded.

Yours sincerely

[NAME]

On behalf of the Final Capability Manager

##### OPTION B:

I am writing further to the Final Capability Meeting on [INSERT DATE]. The Final Capability Manager has concluded that your performance remains below the required standard and is not capable of sustainable improvement.

The Final Capability Manager has recommended to the Board of Directors that [your employment is terminated in accordance with your contract of employment. Your employment will therefore end upon the conclusion of your notice period on [INSERT DATE].]

**[Note to users: please review paragraph 6.6 of the Capability Policy and Procedure. If, as an alternative to dismissal, another sanction is to be applied by agreement, this arrangement will need to be fully documented here instead of the paragraphs on dismissal contained in this letter]**

**[You will be required to attend work as normal during that notice period.]**

**OR**



## CATHOLIC MULTI ACADEMY TRUST CAPABILITY POLICY AND PROCEDURE TEMPLATE LETTERS

[You will not be required to attend work as normal during your notice period. You should not contact any person connected with the Multi Academy Trust without my permission but should make yourself available to answer queries on the telephone during your normal working hours. You remain bound by the terms of your contract of employment until the expiry of your notice period.]

You have the right to appeal against this decision. If you wish to appeal this decision, you should do so by writing to the [Clerk to the Board of Directors of the Multi Academy Trust] within 10 Working Days of the date this letter, therefore, by [INSERT DATE]. An appeal will not delay the commencement of the notice period.

Yours sincerely

**[NAME]**

**Chair of the Board of Directors**

**CATHOLIC MULTI ACADEMY TRUST CAPABILITY POLICY AND PROCEDURE  
TEMPLATE LETTERS**

**8. LETTER FROM CLERK TO THE BOARD OF DIRECTORS OF THE MULTI ACADEMY TRUST – RECEIPT OF APPEAL**

Dear **[NAME]**

**Receipt of Appeal**

Thank you for your letter of appeal against the decision to **[issue a First Written Warning] [issue a Final Written Warning] [terminate your employment on notice]**. The appeal meeting will take place on **[DATE]** at **[TIME]** at **[VENUE]**. The Appeal Manager will be **[NAME]**.

The Appeal Manager will be relying on the following evidence at the appeal meeting **[INSERT DETAILS OF WRITTEN AND/OR ORAL EVIDENCE] [THIS WRITTEN EVIDENCE IS ENCLOSED WITH THIS LETTER]**

You may be accompanied by a Companion who can be a trade union official, an accredited representative of a trade union or other professional association of which you are a member, or a willing work colleague who is not involved in your performance issues. Note that your Companion is not permitted to answer questions for you and you must notify me of their name by at least the working day before the meeting, therefore, by **[INSERT DATE]**.

If you consider yourself to be a person with a disability and there are reasonable adjustments you believe I can make to accommodate your disability in relation to the operation of the Capability Policy and Procedure, please do let me know as soon as possible.

Any evidence you intend to present at the meeting must be provided to me at least 2 working days in advance of the Appeal Meeting. This is in order to ensure efficiency and operational smoothness and to provide the Appeal Manager with enough time to fully consider the evidence you provide.

You may be able to obtain support from **[INSERT DETAILS OF ANY LOCAL COUNSELLING OR SUPPORT SERVICES AVAILABLE TO ACADEMY STAFF]**.

Yours sincerely

**[NAME]**

**Clerk to the Board of Directors**

**Enc. [Copies of written evidence if applicable]**

**CATHOLIC MULTI ACADEMY TRUST CAPABILITY POLICY AND PROCEDURE  
TEMPLATE LETTERS**

**9. LETTER FROM APPEAL MANAGER – OUTCOME OF APPEAL –REJECTION OF APPEAL**

Dear [NAME]

**Outcome of Appeal**

Further to the appeal meeting held on [INSERT DATE], I am writing to confirm that your appeal was unsuccessful and that the [First Written Warning] [Final Written Warning] [termination of your employment] stands.

[In providing your grounds for appeal, you did not present any new facts or information that had not already been taken into account when the decision was made].

**OR**

[The information you provided in your grounds for appeal did not add anything material to the facts which would warrant further investigation].

There is no appeal against our decision.

Yours sincerely

[NAME]

**On behalf of the Appeal Manager**

**CATHOLIC MULTI ACADEMY TRUST CAPABILITY POLICY AND PROCEDURE  
TEMPLATE LETTERS**

**10. LETTER FROM APPEAL MANAGER – OUTCOME OF APPEAL – FURTHER ASSESSMENT PERIOD**

Dear **[NAME]**

**Outcome of Appeal**

Following the appeal meeting on **[INSERT DATE]**, it has been decided that your dismissal on notice should be revoked and that you should be placed in a further Assessment Period of **[X]** weeks pending a further Final Capability Meeting.

Please note that this process has not affected your continuous employment and any associated rights from your continuous employment.

Yours sincerely

**[NAME]**

**On behalf of the Appeal Manager**

**CATHOLIC MULTI ACADEMY TRUST CAPABILITY POLICY AND PROCEDURE  
TEMPLATE LETTERS**

**11. LETTER FROM APPEAL MANAGER – OUTCOME OF APPEAL – APPEAL UPHeld**

Dear [NAME]

**Outcome of Appeal**

Further to the appeal meeting held on [INSERT DATE], I am writing to confirm that your appeal has been upheld and that the [First Written Warning] [Final Written Warning] [termination of your employment] has been overturned. I shall be referring the matter back to the [Capability Manager][Final Capability Manager] for reconsideration.

Please note that this process has not affected your continuous employment and any associated rights from your continuous employment.  
Yours sincerely

[NAME]

**On behalf of the Appeal Manager**