



## STAFF CAPABILITY AND DISCIPLINARY POLICY & PROCEDURE

(THIS POLICY APPLIES ACROSS THE TRUST)

This Policy was approved by the Proprietor on:	<i>Spring 2022</i>
The implementation of this policy will be monitored by the:	<i>SMT</i>
The Trustees will receive a report on the implementation of the Policy at regular intervals and at least:	<i>Annually</i>
This Policy will be reviewed every two years, or more regularly in the light of any significant new developments. The next anticipated review date will be:	<i>Spring 2024</i>

### PURPOSE AND SCOPE

The Trust is committed to improving the standards of education for all Pupils. We value the contribution of our employees towards this success and Staff are expected to strive for the highest standards of performance and conduct. All employees should be made aware of the standards they are expected to deliver. These are set out in individual job descriptions and the Staff Code of Conduct and these are monitored via the Trust's Appraisal Policy and procedure.

Where any instances of underperformance or misconduct are identified, this Policy and accompanying procedures provide a framework for managing such cases in a constructive, fair and consistent manner.

This policy has been written after consultation with employee representatives and follows guidelines set out by ACAS.

The School is not obliged to follow this procedure in every instance. However, The Trustees will ensure that the School follows fair and effective procedures where capability of staff is concerned or in the event that disciplinary action is needed. This procedure does not form part of your contract of employment and there may be occasions when the School considers it appropriate to modify parts of a procedure. If this happens then advance notice will be given of the amendments and the reasons for these.

Informal action will be considered, where appropriate, to resolve problems. All disciplinary & capability situations will be dealt with without unreasonable delay.

No disciplinary action will be taken against an employee until the case has been fully investigated. For both Capability and/or Disciplinary cases the staff member will receive in writing the detail of any allegation.

Capability and Disciplinary are dealt with separately below. The procedures for misconduct are outlined below under 'Disciplinary' below.

In circumstances that a Safeguarding incident directly involves a member of staff, the L.A.D.O (Local Authority Designated Officer) will be informed immediately by the School's Designated Safeguarding Lead and/or the Headteacher. Concerns about the Headteacher would follow the same procedure but with the involvement of the Proprietor.

### **Right to be accompanied**

You may if you wish be accompanied to any Capability or Disciplinary Hearing/Meeting by:-

- a work colleague
- a workplace trade union representative who's certified or trained in acting as a companion
- an official employed by a trade union

You must inform the HR Manager in advance of who will accompany you.

## 1. CAPABILITY

Please note that the following apply to incompetence or incapability. For the purpose of the Capability Procedures below, capability is defined as:

*"Where a member of staff is failing in a significant or persistent way to carry out their responsibilities or duties in a satisfactory manner, either due to a lack of ability, inadequate training or lack of experience. It also applies to genuine persistent, intermittent short-term absence and long-term ill-health absence.*

*Such failings will be identified by use of the procedures set out below and steps taken to improve performance. Where such steps prove unsuccessful the member of staff may have their employment terminated on the grounds of lack of capability to do their job".*

The procedures set out in this document aim to ensure that there is:

- A means of monitoring performance and establishing performance criteria
- A degree of consistency in how staff with widely differing responsibilities and duties are given opportunities to attain satisfactory levels of performance
- Assistance in identifying the most appropriate form(s) of support and providing that support

If a member of staff fails to overcome their difficulties, any consequent action will be based on:

- Adequate evidence that the member of staff is incapable of performing their duties satisfactorily
- A fair procedure
- The fact that the member of staff was given all reasonable assistance to overcome such failings

The focus of the Capability Policy and Procedures is to resolve performance issues by providing appropriate support to enable the employee to perform to the standard required.

### **Suspension**

If it is thought at any stage of the investigation to be in the interests of the School, a pupil, an employee or you, you may immediately be suspended from work on full pay and benefits while the investigation proceeds. Suspension is not considered as a disciplinary action at this point and will be reviewed after 5 days to ensure it is not unnecessarily protracted. During any suspension the staff member will be notified of an appropriate member of staff, likely to be a member of the HR team, who they can contact to discuss any issues relating to work or the investigation.

## **CAPABILITY PROCEDURES**

### **Stage 1 - Informal Procedure:**

Where an employee of St Edward's Trust exhibits an inability to perform their duties satisfactorily, the Trust will attempt to resolve the matter informally via a meeting between the supervisor / line manager and the member of staff.

The nature and date of the meeting will be recorded and if necessary, a Performance Improvement Plan (PIP) (see appendix 1 below) agreed with the member of staff indicating the nature of their unsatisfactory performance and how such performance can be improved to the required standard.

At this meeting, the supervisor / line manager will agree required performance standards with the member of staff, and a time period (normally three months) over which improvement will be expected. They will also agree how the individual's performance will be monitored.

If the individual's performance improves adequately over the agreed timescale, then the process will terminate at this stage. A letter will be sent to the staff member confirming the process has ended. If performance remains unsatisfactory, then the formal procedure will be invoked by the line manager as set out in stage 2.

### **Stage 2 - Formal Procedure - Information Collection:**

Where possible the formal procedure will be implemented by the next more senior manager, in conjunction with the HR team. This manager will appoint an Investigating Manager, this could be an external advisor or another member of the Management Team as necessary, to collect the necessary information.

Those who carry out the investigation will have received training in how to conduct a workplace investigation. These include the HR team, Headmaster and SLT. They will interview the member of staff concerned and the line manager, as well as any other appropriate individuals. Whilst not a statutory right, the member of staff may be accompanied at any meetings by a trade union representative or work colleague.

A written report based on evidence gained e.g. by interviews and observation of performance will be prepared by the Investigating Manager. The report should be precise and specific in the observations and comments it makes and shall contain clear information on:

- areas where the member of staff is failing to perform adequately
- actions already taken by management to address these failings and whether these actions were adequate - i.e. were clear performance standards set and monitored
- whether the member of staff acknowledges a problem and shows a willingness to improve
- the impact of the individual's failings on colleagues and work output
- any other mitigating factors

The report will be submitted to the HR Manager who will ensure a copy is given to the member of staff concerned and to the line manager. Both may record in writing any comments on the observations contained within the report.

The senior manager will consider the report, and may opt to take one of the following options:

- no further action
- instruct the line manager to agree a Performance Improvement Plan (PIP) (See Appendix A below) with the individual and monitor these for a set period of time. *(This option should be chosen only if this has not previously been carried out adequately and at least three months given to improve)*
- convene a formal capability hearing to consider the matter further (see Stage 3 below).

### **Stage 3 - Capability Hearing**

The senior manager or HR will write to the member of staff informing them of the date of the hearing, attaching any relevant documentation. The letter will contain:

- The performance deficits in sufficient detail to ensure that the member of staff fully comprehends their nature, extent and seriousness
- The time, date and venue of the interview
- The person who will conduct the interview, usually the senior manager
- A statement that all employees have the right to be accompanied by a trade union representative or work colleague at any interview or hearing held under the provision of these procedures
- At least 10 days' notice of the hearing must be given to allow all parties to gather information and evidence as necessary.

At the hearing, the member of staff will be given the opportunity to put forward a defence, to bring witnesses in support of their defence, to present mitigating circumstances and to make a full statement. A written copy of the procedure to be adhered to during the hearing (see Appendix B) must be made available to the member of staff before the hearing takes place.

If the allegation is found to be justified, then a decision on the action to be taken must be made. Depending on the nature, frequency and seriousness of the allegation(s) it is expected that at this stage a Warning will be issued and this will be confirmed in writing.

### **Actions**

Possible outcomes: following the Capability Meeting, the following steps may be taken:

- **Performance Improvement Plan (PIP) – A detailed PIP will be discussed and agreed with the staff member with clear expectations and timeline.**
- **First written warning** - in the case of minor instances of poor performance you will be given a formal first written warning which will set out details of the poor performance and the time period for improvement.

- **Second written warning** - if you fail to improve within the time referred to in the first written warning or you are found to have fallen short of the required standards in any other respect, you will be given a second written warning, which will set out the details of poor performance and the time period for improvement.
- **Final written warning** - if you fail to improve within the time referred to in the second written warning or you are found to have fallen short in any other respect, you will be given a final written warning which will set out the details of poor performance and the time period for improvement.
- **Dismissal** - if you fail to improve within the time specified in the final written warning or you have fallen short of the required standards in any other respect, you may be dismissed with notice.
- **Currency of warnings** - A first written warning will be recorded on your file for a period of 6 months from the date the warning was given. A second or final written warning will be recorded on your file for a period of 12 months from the date the warning was given.
- **Summary Dismissal Action**  
Where you have committed a single error due to **gross** negligence and the actual or potential consequences of that error are, or could be, extremely serious, the School may decide that warnings may not be appropriate and in such circumstances, summary dismissal action may be taken.

A letter should be sent to the member of staff confirming the decision and the reason(s) why it was made. The letter will also indicate that the member of staff's progress will continue to be monitored, how they will be supported and how this will be carried out. A time scale for performance to improve and a review date(s) will be specified.

If the failings are found to be not sufficiently serious to warrant a formal warning or where there are mitigating circumstances, then monitoring should be discontinued subject to a clear indication to the member of staff that it may be reintroduced if the problem(s) reappear.

**If a member of staff fails to attend any meeting without good cause, the School will be entitled to make a decision on the evidence available at the meeting, in their absence.**

#### **Stage 4 - Second Capability Hearing:**

If after the agreed timescale, poor performance continues, the process set out in stage 3 should be repeated. The time scale for improvement will depend on the nature of the duties and responsibilities of the employee concerned and the seriousness of the complaint(s).

If the conclusion of the second hearing is that performance has not sufficiently improved and that there is still evidence of incapability despite support and prior warnings, a final warning should be issued.

The letter confirming the decision as well as covering the points made at Stage 3, should clearly state that if an improvement is not forthcoming, the Trust will convene a final meeting at which it will consider terminating the contract of the member of staff involved on the grounds of capability.

## **Stage 5 - Third and Final Capability Hearing:**

The appropriate senior manager will conduct the third hearing at which if previous advice, training and warnings have not had the desired effect, they will terminate the contract of the employee concerned. The procedures for this hearing as outlined in Stage 3 (Appendix 2), will be followed.

### **Right of appeal**

You have the right to appeal to an Appeal Panel against any sanction or warning imposed on you following the Capability Meeting. The Appeal Panel shall not include the Investigation Officer or anyone involved in the Capability Meeting and will comprise one or more persons. The Appeal Panel will include a Senior Manager or Trustee as appropriate.

### **Appeal procedure**

You should notify the Head in writing within 5 working days of being notified of the warning or outcome, giving full details of why you wish to appeal. The Appeal Panel will arrange a review meeting or a fresh capability meeting which will take place as soon as reasonably practicable. There shall be no right of appeal from the decision of the Appeal Panel. The Appeal Panel will be entitled to reach a different conclusion and impose a different outcome than that imposed after the Capability Meeting.

### **Communication of appeal decision**

When the Appeal Panel has made a decision, it will be communicated to you in writing, usually within 5 working days of the appeal hearing or as soon as reasonably practicable.

### **Employment status**

If an appeal is made against a dismissal decision, the dismissal decision will have immediate effect so that a period of notice begins at the date given in the dismissal decision. If having been dismissed you are reinstated on appeal, your continuity of employment will be unaffected.

## **2. DISCIPLINARY**

**Please note that the following procedures apply to misconduct or other poor performance that is attributable to misconduct. This should be read in conjunction with the School's Staff Code of Conduct.**

If formal action is required, the employee will be advised of the nature of the complaint against him or her and will be given the opportunity to state his or her case before any decision is made at a disciplinary meeting.

### **Separation of roles**

The School will appoint a senior member of staff to carry out the investigation ("the Investigating Officer"). All such staff will have received training in how to complete a Workplace Investigation.

### **Investigation**

As a first step any disciplinary issue will be investigated. The investigation will be confined to establishing the facts and gathering any relevant documentation. Where necessary, statements will be obtained from any relevant individuals. If, after investigating the matter, it appears that there are no reasonable grounds for concern, you will be informed and, if relevant, return to work as normal. Upon completion of the investigation the Investigating Officer will complete a report and submit this to the HR Manager. This report will remain strictly confidential and only disclosed as required. The report will be sent to the staff member concerned.

### **Suspension**

If the matter to be investigated is thought at any stage of the investigation to involve gross misconduct or it is in the interests of the School, a pupil, an employee or you, you may immediately be suspended from work on full pay and benefits while the investigation proceeds. Suspension is not considered as a disciplinary action and will be reviewed to ensure it is not unnecessarily protracted. You will be assigned a person to contact at School for any work or investigation issues that may arise.

### **Preliminary interview**

As part of the investigation, the Investigating Officer may (if considered appropriate) undertake a preliminary interview with you. If you are interviewed as part of an investigation you will be advised of the nature of the complaint and be given the opportunity to state your case and submit any relevant documents.

### **Completion of investigation**

If on completion of the investigation the Investigation Officer considers that it is necessary to take formal action in respect of the complaint, a disciplinary hearing will be arranged. You will be invited to attend and will be given (at least 5 days) advance notice of the hearing. You will be told, in writing, the purpose of the hearing, the nature of the complaint and the possible consequences. Where appropriate, you will be provided with copies of any written evidence gathered during the investigation.



## **Right to be accompanied**

You may if you wish be accompanied by a colleague, or a trade union official who meets the statutory requirements to the Disciplinary Hearing.

## **Witnesses**

If statements have been obtained from witnesses during the course of the investigation you will be given a copy of them. In certain circumstances it may be necessary to preserve the anonymity of a witness and witnesses statements may be amended to reflect this. Where either party intends to call any relevant witnesses at the disciplinary hearing, reasonable advance notice of their intention to do so must be given.

## **Disciplinary Panel**

The School may appoint a Disciplinary Panel to hear the matter. The Disciplinary Panel may constitute one or more persons made up of the following: Head of either the Senior & Sixth Form or the Preparatory, School, the Bursar, member(s) of the Trustee Body. The Investigating Officer shall not be a member of the Disciplinary Panel.

## **The Disciplinary Hearing**

Before a decision is reached or any disciplinary action taken there will be a disciplinary hearing. You and your companion should make every effort to attend the disciplinary hearing.

If you fail to attend any hearing without good cause, the School will be entitled to make a decision on the evidence available at the hearing in your absence.

At the hearing you will have an opportunity to state your case and respond to the allegations that have been made. You will have a reasonable opportunity to call any relevant witnesses and present evidence. You and the person accompanying you will be given the opportunity to address the Disciplinary Panel. The person accompanying you is entitled to address the hearing to put and sum up your case, respond on your behalf to any views expressed at the hearing and confer with you during the hearing. The person accompanying you does not have the right to answer questions on your behalf, address the hearing if you do not wish it or prevent the School from explaining its case. The Investigating Officer may be asked to attend to present the findings of any investigation.

## **Adjournment**

The Disciplinary Panel may adjourn the proceedings at any stage if this appears necessary or desirable. If adjourning for the purpose of enabling further information to be obtained, the Disciplinary Panel will specify the nature of the information. You may ask for an adjournment for the purpose of consulting the person accompanying you. An adjournment will normally be for a specified period of time.

## **Decision making**

On completion of the hearing, the Disciplinary Panel will retire to consider the decision. Neither you, the person accompanying you, or the Investigating Officer will be allowed to take part in nor be present during the Disciplinary Panel's deliberations.

## **Communication of decision**

When the Disciplinary Panel has made a decision, it will be communicated to you on the day, in writing within five working days of the hearing, or as soon as reasonably practicable. If the complaint is upheld, you will be informed of the action to be taken, explanation of any penalty imposed and of the right to appeal against the decision.

## **Sanctions**

Depending upon the nature of any misconduct or gross misconduct found to have been committed, any explanation given by you and any mitigating circumstances, the Disciplinary Panel may impose any of the following sanctions:

- **A first written warning** - In the case of minor offences you will be given a formal written warning. You will be advised of the reason for the warning, the formal nature of the warning and possible future consequences;
- **A second written warning** - In the case of more serious offences or a repetition of earlier minor offences, you will be given a second written warning, setting out the nature of the offence and the likely consequences of further offences;
- **A final written warning** - In the case of a sufficiently serious offence, or a repetition of earlier offences, you will be given a final written warning, setting out the nature of the offence, the likely consequences of further offences and specifying, if appropriate, the improvement required and over what period. This may include a statement that any recurrence of the same or different misconduct may lead to a dismissal or to some other action short of dismissal;

**or**

- **Dismissal with or without notice** - this stage will normally result from continued failure by you to act on a previous warning or an act of gross misconduct. In the case of gross misconduct, you will normally be dismissed without notice or payment in lieu of notice (see below). The Disciplinary Panel has the right in certain circumstances not to dismiss, but to apply the sanction of demotion.

**If the decision has been taken to dismiss you, you will be informed as soon as reasonably practicable of the reasons for the dismissal, the date on which the contract between the parties will terminate, the appropriate period of notice (or pay in lieu of notice) (if any), as well as information regarding your right to appeal.**

## **Currency of warnings**

A **first written warning** will be recorded on your file for a period of **6 months** from the date the warning was given. A **second or final written warning** will be recorded on your file for a period of **12 months** from the date the warning was given.

## **Gross misconduct**

Where there is gross misconduct the Disciplinary Panel may dismiss without notice. Examples of what the School considers to be gross misconduct include but are not limited to:

- Indecent, violent or offensive behaviour whether committed at or outside work
- Misuse of or deliberate damage to School property
- Fraud, theft or dishonesty
- Being on duty whilst unfit due to the influence of non-prescribed drugs and /or alcohol
- Possession or consumption of alcohol on School premises or during working hours
- Bullying or harassment
- Conduct (whether committed at or outside work) which is likely to damage the School's reputation
- Discrimination (including harassment or victimisation) on grounds of sex, race, disability or other unlawful discrimination
- Disregarding health and safety rules / requirements potentially endangering yourself and others
- Willful or gross neglect or refusal of duty
- Misuse of confidential information
- Offences related to drug abuse, sexual misconduct and the abuse of children.
- Unacceptable use of obscene or abusive language (including language of a discriminatory nature)
- Unauthorised access to or use of computer data or computer hardware
- Conviction of a criminal offence (except for minor road traffic offences) that impacts on your suitability to do your job

## **Right of appeal**

You have the right to appeal to an Appeal Panel against any penalty imposed by the Disciplinary Panel. The Appeal Panel may consist of the Head, or Trustees appointed by the Chairman and shall not include any member of the Disciplinary Panel nor the Investigating Officer and may comprise of one or more persons.

## **Appeal procedure**

Such a right of appeal must be exercised in writing, within 5 working days of your being notified of the sanction, giving full details of why you wish to appeal. The notice should be sent to the relevant School Head. The Appeal Panel will arrange an Appeal Hearing to take place as soon as reasonably practicable. The procedure at the Appeal Hearing shall be the same as that for the Disciplinary hearing, save that there will be no right of appeal from the decision of the Appeal Panel. Where new evidence arises during the appeal, you, or your representative, will

be given the opportunity to comment before any action is taken. The Appeal Panel will be entitled to reach a different conclusion and impose a different sanction than that imposed by the Disciplinary Panel.

### **Communication of Appeal Decision**

When the Appeal Panel has made a decision, it will be communicated to you in writing usually within five working days of the appeal hearing, or as soon as practicable.

The Appeal Panel's decision will be final. There is no further right of appeal.

### **Employment status**

If an appeal is made against a dismissal decision, that dismissal decision will have immediate effect so that, if the dismissal is by notice, the period of notice will have begun at the date given in the dismissal decision. If summary dismissal without notice has been imposed, you will not be entitled to be paid for the period between that decision and the decision of your appeal unless you have been re-instated on appeal. If having been dismissed you are re-instated on appeal, your continuity of employment will be unaffected.

**APPENDIX A**  
**Performance Improvement Plan**

The purpose of this plan is to identify areas where the employee's performance has not met the required standard and to help and support them in reaching this standard within a reasonable timescale.

Employee Name:		Managers Name:		Date:	
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Performance Area Where performance has fallen below acceptable standards	Performance concern Outline specific issues / examples	Support Describe what support has been agreed to help the employee meet the required standards	Agreed actions Detail what specific actions / tasks have been agreed	Review Date

This Performance Improvement Plan has been agreed by:

Name of Staff Member: \_\_\_\_\_ Name of Manager: \_\_\_\_\_

Signed: \_\_\_\_\_ Signed: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_

## **APPENDIX B**

### **Capability Meeting – [Procedure]**

**To discuss the matter of: {detail of who and what the meeting relates to}**

**To be held on [Date at time hours]**

**In the [Location]**

**Attendees:**

**Chair: {Name of person who will chair the meeting}**

**Note taker: {Name of person who will take notes}**

**Others: {Name(s) of any other witnesses/people who have been asked to attend}**

### **Agenda**

1. Chair - Welcome and introductions
2. Chair - Outline reasons for meeting and detail of underperformance
3. Staff member will be invited to present their case
4. The Panel and staff member may clarify issues and ask questions as required
5. The Chair will either adjourn to seek further information or close meeting
6. The Chair will declare the outcome of meeting if possible or the staff member will be told that they will be advised within 5 days