



# GMAT POLICIES

## *Capability (Performance) Policy*

**Greater Manchester Academies Trust**

# Revision Information

<b>This document has been approved for operation within</b>	All Trust Establishments
<b>Date of last review</b>	May 2018
<b>Date of next review</b>	April 2021
<b>Review Period</b>	Every three years
<b>Date of Trustee Approval</b>	
<b>Status</b>	
<b>Person Responsible for Policy</b>	
<b>Owner</b>	Greater Manchester Academies Trust
<b>Signature of Approval</b>	

Review Date	Changes Made	By Whom
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*With you...for you...about you...*

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## The Policy

## Introduction

It is important that Trust employees effectively perform the duties for which they are engaged.

It is accepted that there are occasions when an employee's performance is identified as below an acceptable standard and when normal day-to-day management support has not resulted in satisfactory improvement.

The Capability Procedure will only be put into effect once the normal management processes of discussing performance and providing encouragement, guidance, support and feedback have been provided. This includes any required performance management reviews.

The Procedure is designed to provide particular support and guidance to those employees whose level of job performance has been identified as below an acceptable standard and of serious concern.

Separate procedures exist for managing discipline; where an employee wilfully chooses not to do all or part of their job to the required standard.

### **Employees Covered by this Policy**

The Capability (Performance) Policy and Procedure applies to all employees at Greater Manchester Academies Trust.

### **General Principles**

Throughout the procedure reference is made to the 'Manager'. This refers to the lead senior manager who has responsibility for managing the employee's performance under this policy and procedure. It will normally be a member of the Senior Leadership Team.

At formal review meetings the employee will be provided with clear evidence of the performance problems identified and will be given an opportunity to respond.

At every stage of the procedure the employee will have the right to be accompanied by a trade union representative or a work colleague. It is recommended that any employee requiring such support make contact with their representative at an early stage.

Another manager may accompany the Manager at any stage of the Procedure where the Manager deems this as relevant to the process and to the matters under discussion. The timescale set by the Manager over which the employee's performance is to be monitored must be reasonable and appropriate to the particular circumstances.

Sufficient time must be allowed to enable the employee to demonstrate improvement.

For guidance the usual time period for the stages to be completed is one Trust term. If the performance is particularly poor and is having a significant and detrimental effect on student learning or the running of the Trust, the process may be much shorter.

In any case where an employee subject to capability proceedings is absent from work due to ill health that they relate to the process s/he should be referred to an occupational health adviser for advice which will be taken into account when determining the most appropriate way forward.

As far as possible there will be consistency in those managers directly involved in the management and support of the employee throughout the process.

It is accepted that not all capability situations may fall neatly into the procedure. In such exceptional cases, a process will be adopted that is within the spirit and general scope of the procedure.

The employee has responsibility to attend and to participate in any meeting reasonably arranged by the Manager.

## **Redeployment**

Good practice requires that redeployment be properly considered prior to any decision to dismiss an employee for reasons of poor performance.

Redeployment may be discussed and considered at any stage in the process. Details of any/all such discussions must be included in the Manager's written record. It is recommended that the Manager seek appropriate advice from an HR Adviser prior to any discussion about redeployment.

If a suitable post is available and redeployment agreed as viable, the employee will have a trial period in the new post of four weeks. This period will allow the employee to decide whether the new job is suitable and the Manager to assess the employee's performance in the new role.

There is no pay protection for employees who request and who are redeployed to a lower-graded post

## **The Procedure**

### **Stage One**

If the performance of an employee is identified as of an unacceptable standard and of serious concern the Manager giving a minimum of 5 working days written notice will make arrangements for a formal capability meeting. Included with the letter will be a copy of the Procedure and details of the issue(s) of concern. A draft letter is attached as **Appendix A**.

The meeting will be conducted by a member of the Senior Leadership Team (SLT). The purpose of this meeting is to establish the facts and allows the employee to respond to the concerns raised.

The person conducting the meeting may conclude that there are insufficient grounds for pursuing the matter via the capability process and that it would be more appropriate to continue to address matters through the normal performance management procedure and

processes. In such cases the capability process will come to an end at this stage and a draft outcome letter is attached at **Appendix B/C**

The person conducting the meeting may adjourn the meeting (e.g. to allow for further investigation or to allow more time to consider additional information) and a draft outcome letter is attached at **Appendix B/C**

In other cases the meeting will continue. Matters for discussion will include the following:

- The performance issues causing concern
- The improvement that is required
- Details of any support already provided as part of the performance management procedure
- Any relevant issues raised by the employee
- The reasonable timescale over which the employee's performance will be monitored and expected to improve to the required standard
- Details of how progress will be monitored and by whom
- Support/guidance that is to be provided and by whom
- Arrangements for regular review during the monitoring period
- A caution that the potential outcome of failure to effect the required improvement is the termination of employment.
- Date and time of the next formal Review Meeting
- Redeployment – when appropriate and where the employee wishes this to be considered

Following a Stage One meeting and normally within 5 working days the SLT Manager conducting the meeting will provide a record of the meeting (covering all of the matters discussed) to the employee. A draft letter is attached as **Appendix D**. A copy of the letter will be placed on the employee's personal file.

Also included will be the arrangements for the Stage Two Meeting.

## Stage Two

This is a review of performance over the Monitoring Period set at Stage One.

At the end of the monitoring period the SLT Manager (from Stage One) will review the overall performance of the employee against the targets set. This assessment may include discussions with those appointed to monitor the performance of the employee over the period. Any such nominated person may also be asked to attend the subsequent Review Meeting in order to provide verbal feedback.

### **Performance targets met**

If, over the period of monitoring, the employee has met the required standard of performance the purpose of the Review Meeting is to discuss the following:

The performance issues now resolved

Any relevant issues raised by the employee

Providing that improvement is maintained that formal monitoring of performance under this procedure has ended and the employee returned to normal performance management / supervision processes

The SLT Manager will provide a written record of the Review Meeting to the employee normally within 5 working days. A copy will be appended to the original record on the employee's personal file where it will remain for 12 months. Subject to the standard of improved performance being sustained during that period all records will then be disregarded. A draft letter is attached at **Appendix E**.

#### **Performance targets not met/partially met**

If over the period of monitoring the performance has not met the required standard the Stage Two Meeting will be held in order to discuss:

- The outcomes of the monitoring process
- Any successful outcomes
- The performance issues continuing to cause concern
- The improvement that is required
- Any relevant issues raised by the employee
- The timescale during which performance will continue to be monitored
- Details of how progress will continue to be assessed and by whom
- Any support / guidance to be provided and by whom
- Arrangements for regular review discussions during the monitoring period
- Date and time of Stage Three meeting
- Redeployment – when appropriate and where the employee wishes this to be considered

The SLT Manager will **caution the employee** that if performance does not meet the required standard by the end of the next period of monitoring the matter may be taken to a Hearing with the termination of employment being a potential outcome.

The SLT Manager will record the details of the discussions at the review meeting (including the caution) providing a copy to the employee normally within 5 working days of the meeting. A copy will be appended to the record of the Stage One discussion on the personal file. A draft letter is attached at **Appendix F**.

#### **Stage Three**

This is a review of performance over Monitoring Period set at Stage Two.

At the end of the monitoring period, the SLT Manager will review the overall performance of the employee against the targets set. This assessment may include discussions with those appointed to monitor the performance of the employee on a day-to-day basis. Any such nominated person may also be asked to attend in order to provide verbal feedback.

#### **Performance targets met**

If, over the period of monitoring the performance has met the required standard the Stage Three meeting will be held in order to discuss:

- The performance issues now resolved
- Any relevant issues raised by the employee

- Providing that improvement is maintained that formal monitoring of performance under this procedure has ended and the employee returned to normal performance management / supervision processes.

A record of the discussion will be provided to the employee normally within 5 working days of the meeting. A copy will be appended to the original records on the employee's personal file where it will remain for 12 months. Subject to the standard of improved performance being maintained during that period all records will then be disregarded. A draft letter is attached at Appendix E. Performance targets not met/partially met If, over the period of monitoring, the performance has not met the required standard the Stage Three meeting will be in order to discuss:

- The outcomes of the monitoring process
- Any successful outcomes
- The performance issues continuing to cause concern
- Any relevant issues raised by the employee
- Redeployment if appropriate / wanted by the employee
- Alternate duties (not to perform the ones that have been causing concern) or staying at home on full pay, pending a Hearing; with a potential outcome of the termination of employment

The manager will provide a record of the discussion to the employee normally within 5 working days. A sample letter is attached at **Appendix G**.

The SLT Manager handling the employee's performance through stages one and two will convene a Hearing which will be chaired by the Principal/Head (or designated person).

### **The Hearing**

The SLT Manager will provide 10 working days written notice to the employee of any Hearing. The letter will outline the reason for the Hearing the employee's right to be represented and the date, time and location. The SLT Manager will enclose copies of all the supporting documentary evidence to be presented at the Hearing.

The employee will provide any supporting documentation for the Hearing five working days prior to the Hearing date by sending it to the SLT Manager.

If the original date is inconvenient the SLT Manager will determine an alternative date within five working days of the original date.

The employee is entitled to be accompanied or represented at a Hearing by a TU representative or a work colleague and is encouraged to do so.

Failure to attend the Hearing or to be so represented will not prevent it from taking place. The Format for the Hearing is attached at **Appendix H**.

- The outcome of the Hearing will normally be one of the following:
- Termination of employment with notice (spent at home)
- A final period of monitoring, with or without additional support

- Redeployment to another post within the Trust (if available and appropriate and where the employee wishes this). Any such redeployment carrying with it no personal protection of salary, if the new post is at a lower level than the current post
- A decision that the employee's performance is satisfactory and that no further formal action will be taken

The employee will be informed of the outcome usually on the day and the decision will then be confirmed in writing within 5 working days of the Hearing. The employee will also be informed of their right of appeal. The HR Adviser will draft an appropriate letter based on the outcome.

## **Appeal Process**

The employee has a right of appeal against any decision to terminate their employment with the Trust.

An employee wishing to appeal must write to the Chair of the Hearing within 10 working days of the outcome of the Hearing, providing details of the **grounds of Appeal**.

The Chair of the Hearing will respond in writing within 5 working days, providing details of the Appeal arrangements, which will be to a panel of Governors.

The employee may be accompanied or represented at an Appeal by a trade union representative or a work colleague. Failure to attend the Appeal or to be so represented will not prevent it from taking place.

An Appeal hearing is not a re-hearing. The Appeal Panel will examine why the employee feels the decision to dismiss is wrong; and the management representative will outline the evidence they took into consideration before making the decision to dismiss.

The Format for the Appeal Hearing is attached at Appendix I.

The outcome of the Appeal Hearing will be one of the following:

- The decision to dismiss is upheld and the employee is dismissed from the original dismissal date set after the Hearing
- Re-instatement with a final period of monitoring, with or without additional support
- Re-instatement and redeployment to another post within the Trust (if available and appropriate and where the employee wishes this). Any such redeployment carrying with it no personal protection of salary, if the new post is at a lower level than the current post
- Re-instatement and no further formal action will be taken

The outcome of the Appeal will usually be confirmed to the employee on the day and in writing within 5 working days. The HR Adviser will draft an appropriate letter based on the outcome of the Appeal.

Following an Appeal Hearing, there is no further internal right of appeal.

## **Appendix A – Sample Letter: Notice of Stage 1 Meeting to Discuss Performance**

Dear

Re: Notification of a Meeting - Stage One (Capability Process)

I am writing to inform you that you are required to attend a meeting in order that I may formally discuss with you your performance at work. A copy of the relevant procedure is attached.

I have made arrangements for the meeting to take place on <date> at <time> in <place>.

You may be accompanied at this meeting by a representative of your Trade Union or a work colleague.

You are invited to bring with you any information you feel may be relevant to the discussion.

It is important that you make arrangements to attend this meeting. Should you have any difficulties with the proposed arrangements, you must make contact with me immediately, for discussion. Should you have any queries regarding the content of this letter, please do not hesitate to make contact with me on <details>.

Yours sincerely

Name  
Title

## **Appendix B/C - Sample Letter: Record of Stage 1 Outcome – Insufficient Grounds to Continue or Meeting Adjourned**

Dear

Re: Record of Stage One Outcome (Capability Procedure)

I wish to confirm performance details discussed at the meeting held on <date> at which you were accompanied by your trade union representative/work colleague.

Performance Issues causing Concern <details>

Details of Improvement Required <details>

Issues raised by Employee <details>

I have concluded that it is more appropriate for these matters to be addressed through normal performance management processes and day to day supervision from your line manager. This formal Capability process is now at an end. I will inform your manager of my decision and s/he will be in contact with you to discuss any outstanding issues.

**OR**

I adjourned the meeting so as to allow time for (further consideration of the material presented/further investigation). The meeting will be reconvened on <date> at <time> in <place>.

Should you have any queries about the content of this letter please let me know as soon as possible and by <date> at the latest.

Yours sincerely

Name  
Title

## **Appendix D – Sample Letter: Record of Stage 1 Outcome**

Dear Re:

Record of Stage One Outcome (Capability Procedure)

I wish to confirm performance details discussed at the meeting held <date> on at which you were accompanied by <name> your trade union representative/work colleague.

Performance Issues causing Concern <detail>

Details of Improvement Required <detail>

Issues raised by Employee <detail>

Timescale for Monitoring <detail>

Details of how progress will be monitored during the period and by whom <detail>

Details of support offered and agreed <detail>

Date and Time of Next Review <detail>

Right of representation at next meeting

Redeployment <if discussed – details>

Should you have any queries please let me know as soon as possible and by <date> at the latest.

Yours sincerely

Name

Title

## **Appendix E - Sample Letter: Record of Stage Two (Or Stage 3) Outcomes Required Standard reached**

Dear

Re: Record of Stage Two/Three (Delete as Appropriate) Outcomes (Capability Procedure)

I wish to confirm performance details discussed at the meeting held on at which you were accompanied by <name> your trade union representative/work colleague.

Performance Issues now resolved <details>

Sustained Improvement that is now required <details>

Relevant issues raised by employee <details>

As discussed, I am pleased to confirm that your performance has now reached the required standard and the formal monitoring process is now at an end. Normal performance management processes will now be reinstated.

The record of this process will be kept for the next 12 months and providing that you sustain the improvement will then be disregarded.

Should you have any queries regarding the content of this letter, please let me know as soon as possible and by <date> at the latest.

Yours sincerely

Name

Title

## **Appendix F - Sample Letter: Record of Stage 2 Outcomes Performance Remains Below Acceptable Standard**

Dear

Re: Record of Stage Two Outcomes (Capability Procedure)

I wish to confirm performance details discussed at the meeting held on <date> at which you were accompanied by <name> your trade union representative.

Performance Issues causing Concern <details>

Details of Improvement Required <details>

Issues raised by Employee <details>

Timescale for Further Monitoring <date>

Details of how progress will be monitored during the period and by whom <details>

Details of support offered <details>

Redeployment <details>

Date and Time of Next Review and right of representation

As discussed, your performance remains below an acceptable standard and I have cautioned you that, if your performance does not improve to an acceptable standard over the next period of monitoring, the matter may be taken to a formal Hearing, with potential for the termination of your employment.

Should you have any queries regarding the content of this letter please let me know as soon as possible and by <name> at the latest.

Yours sincerely

Name  
Title

## Appendix G - Sample Letter: Record Of Stage 3 Outcomes

- Performance remains below acceptable standard
- Redeployment not wanted/appropriate
- Alternate duties or staying at home pending a Hearing

Dear

Re: Record of Stage Three Outcomes (Capability Procedure)

I wish to confirm performance details discussed at the meeting held on <date> at which you were accompanied by <name> your trade union representative.

Review of performance over the period <detail>

Issues raised by Employee <details>

As discussed, your performance remains below an acceptable standard and I have therefore put you on alternate duties (or we have agreed you will stay at home) on full pay pending a Hearing under the Trust's Capability (Performance) Procedure.

The Hearing will be held in accordance with the attached guidance with a potential outcome of the termination of your employment.

I will write to you again separately, in the next few days, with details of the Hearing. Should you have any queries regarding the content of this letter please let me know as soon as possible and by <date> at the latest.

Yours sincerely  
Name  
Title

## Appendix H - Conduct of Hearing (Capability)

### Preliminaries

The employee will have been notified in writing of the details of the Hearing and the right to representation.

Those present will be as follows:

- The Chair (usually the Principal/Head)
- SLT Manager who has dealt with the Stages of the procedure
- HR Adviser
- Employee
- Trade Union Representative or colleague
- Witnesses called by either side (not in the room until called)

The employee, their representative and the SLT Manager will enter the room together, when invited to do so.

### The Hearing

The Chair introduces all parties, and outlines the procedure.

The SLT Manager presents the facts of the case and may call witnesses.

Questioning of witnesses proceeds in the following order:

- SLT Manager
- Employee and/or Representative
- The Chair / HR Adviser

Witnesses leave the room at the conclusion of their evidence and examination.

The employee and/or their representative may seek clarification and ask questions from the SLT Manager on aspects of their presentation.

The Chair and the HR Adviser may seek clarification from the SLT Manager. The employee and/or their representative has the opportunity to respond and may call witnesses.

Questioning of witnesses proceeds in the following order:

- Employee and/or Representative
- SLT Manager
- The Chair / HR Adviser

The SLT Manager may seek clarification and ask questions from the employee/ representative on aspects of their presentation.

The Chair and the HR Adviser may seek clarification from the employee/ representative.

The SLT Manager sums up the management case (no new evidence may be introduced).

The employee/representative sums up (no new evidence may be introduced).

All retire from the room except the Chair and the HR Adviser.

The Chair considers the evidence and determines an appropriate response. (Before reaching a decision, the Chair may recall the parties to clarify points and/or adjourn for further investigation if required).

The employee/representative and the SLT Manager are invited to return and are informed of the decision.

The decision and the right of appeal are confirmed in writing within five working days.

## Appendix I – Conduct of an Appeals Hearing (Capability)

### Preliminaries

Those present will be as follows:

- The Appeal Panel of Governors to hear the case
- HR Adviser to the Panel
- The Chair and the HR Adviser of original Hearing - to present evidence for the original decision
- Appellant (and representative) – to present the case for the appeal
- Witnesses (called by the Appeal Panel) The appellant, their representative, the Chair and original HR Adviser will enter the room together when invited to do so.

### The Hearing

A member of the Appeal Panel introduces all parties, and outlines the procedure.

The appellant presents the grounds for the appeal and their case for overturning the original decision.

Any witnesses called by the Appeal Panel that originally gave evidence in support of the appellant are called at this point.

Questioning of witnesses proceeds in the following order:

- The Chair/HR Adviser of original Hearing (not both)
- Appeal Panel members

The Chair/HR Adviser of original Hearing may seek clarification from the Appellant.

The Chair / HR Adviser of the original Hearing will put forward the case for the original decision.

Witnesses called by the Appeal Panel that originally gave evidence in support of the management case are called at this point. Questioning of witnesses proceeds in the following order:

- Appellant or representative (not both)
- Appeal Panel members

The appellant and/or representative may seek clarification from the Chair / HR Adviser of the original Hearing.

The Appeal Panel may seek clarification from the Chair / HR Adviser of original Hearing.

The appellant or representative is afforded the opportunity to summarise their case (no new evidence may be introduced).

The Chair / HR Adviser of original Hearing sums up (no new evidence may be introduced).

All retire from the room except the Appeals Panel and their HR Adviser.

The Appeals Panel consider the evidence and determine whether to uphold the decision of the original Hearing. (Before reaching a decision, the Appeals Panel may recall the parties to clarify points and/or adjourn for further investigation if required).

The employee, their representative, the Chair and the HR Adviser of original Hearing are invited to return and are informed of the decision. There is no further right of appeal.

The decision is confirmed in writing within five working days.