



## THE CRYPT SCHOOL CAPABILITY PROCEDURE

**Lead Person :** Headmaster

**Governing Body Committee :** Resources, Staff & Pay

### ABOUT THIS PROCEDURE

The primary aim of this procedure is to provide a framework within which managers can work with employees to maintain satisfactory performance standards and to encourage improvement where necessary.

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

**This policy does not apply to cases involving genuine sickness absence, proposed redundancies or misconduct. In those case reference should be made to the appropriate policy or procedure.**

This procedure applies to teachers and professional support staff regardless of length of service, except for teachers in their first year of employment whilst they are in their induction year as a newly qualified teacher. It does not apply to agency workers or self-employed contractors.

This procedure does not form part of any employee's contract and it may be amended at any time.

In most cases it is expected that performance concerns can be addressed through the appraisal process, with appropriate support and training, good management and clear expectations.

It is the responsibility of all teachers and professional support staff to ensure that they are aware of and meet the requirements of their role as identified in their job descriptions and for teachers in both the national Teacher Standards and The Crypt School Teacher Standards, attached to this policy as well as all other statutory duties (for example: Child Protection, Prevent, FGM).

In normal-circumstances the School expects that any member of staff who feels they are unable to meet the requirements of the teacher Standards or of the role in which they are employed they have an absolute responsibility to share this with their line manager. Failure to do so could be considered under the School's Conduct Policy.

- The School's appraisal policy for both teachers and professional support staff enables line managers to set targets for performance, and to identify support and informal coaching and mentoring or other professional development. Identification of support and requests for support is a two way process and employees must ask their line managers for assistance if required. Where an employee refuses to co-operate or accept support, then the Conduct policy may be considered.

- If it is suspected that the employees' health may be affecting performance a referral to the School's Occupational Health Service may be made.

If the informal process under the School's Appraisal Policy is unsuccessful, or the matter is of sufficient seriousness from the beginning, then the formal capability procedure will be invoked.

The formal procedure will usually be led by a senior leader, as determined by the Headmaster; or in the case of the Headmaster, the procedure will be led by the Chair of Governors.

**Status:** The School will follow a fair and effective procedure where your capability is in question. *[The School is not obliged to follow the procedure in every instance. There may be occasions when the School considers it appropriate to change or omit parts of the procedure. If the School amends the procedure, you will be given advance notice of the amendments.]*

**Conduct:** This procedure does not apply to misconduct, or to incompetence, incapability or other poor performance that is attributable to misconduct.

## **DISABILITIES**

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

If you wish to discuss this or inform us of any medical condition you consider relevant, you should contact your line manager or the Headmaster.

## **CONFIDENTIALITY**

Our aim is to deal with performance matter sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with a matter which is subject to this capability procedure.

You, and anyone accompanying you (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure.

You will normally be told the names of any witnesses whose evidence is relevant to your capability hearing, unless we believe that a witness's identity should remain confidential.

## **THE PROCEDURE**

**Investigation:** As a first step any capability issue will be investigated, usually by the Deputy Headmaster or another member of the senior leadership team. If, after investigating the matter, it appears that there are no reasonable grounds for concern, you will be informed and, if relevant, allowed to continue working as normal.

## **Notification of a Capability Hearing**

If we consider that there are grounds for taking formal action over alleged poor performance, you will be required to attend a capability hearing. We will notify you in writing of our concerns over your performance, the reasons for those concerns, and the likely outcome if we decide after the hearing that your performance has been unsatisfactory. We will also include the following where appropriate:

- (a) A summary of relevant information gathered as part of any investigation.
- (b) A copy of any relevant documents which will be used at the capability hearing.
- (c) A copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case we will give you as much information as possible while maintaining confidentiality.

We will give you written notice of the date, time and place of the capability hearing. The hearing will be held as soon as reasonably practicable, but you will be given a reasonable amount of time [usually at least 5 days] to prepare your case based on the information we have given you.

## **Right to be accompanied at hearings**

You may bring a companion to any capability hearing or appeal hearing under this procedure. The companion may be either a trade union representative or a colleague. You must tell the manager conducting the hearing who your chosen companion is, in good time before the hearing.

A companion is allowed reasonable time off from duties without loss of pay but no-one is obliged to act as a companion if they do not wish to do so.

If your companion is unavailable at the time a hearing is scheduled and will not be available for more than five working days we may require you to choose someone else.

We may, at our discretion, allow you to bring a companion who is not a colleague or union representative (for example, a member of your family) where this will help overcome a particular difficulty caused by a disability, or where you have difficulty understanding English.

## **The Capability Meeting:**

The Head, or a member of the senior leadership team to whom this meeting has been delegated to, will conduct the Capability Meeting. You will be able to ask questions and put forward your point of view. The meeting will address your performance and discuss any measures needed to correct and improve this. Whenever possible the School will offer reasonable assistance and time to help you improve. The following will be considered and discussed with you at the meeting:

- Concerns relating to your performance;
- Your response;
- The respects in which your performance has fallen short of the required standards;

- Suggestions as to any appropriate support/training/supervision which could improve your performance;
- The time in which performance must improve; and
- The likely consequence of further instances of poor performance or a failure to improve within a specified time.

**Action Outcomes:** Following the Capability Meeting, the following steps may be taken:

**Written warning** - if you are found to have fallen short of the required standards at the Capability Meeting, you will be given a first 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 first written warning or you are found to have fallen short of the required standard 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. Dismissal will normally be with full notice [or payment in lieu of notice, unless your performance has been so negligent as to amount to gross misconduct, in which case you may be dismissed without notice [or any pay in lieu of notice].

### **Appeals against action for Poor Performance**

If you feel that a decision about poor performance under this procedure is wrong or unjust you should appeal in writing, stating your full grounds of appeal, to the Headmaster within one week of the date on which you were informed in writing of the decision.

If you are appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if your appeal is successful you will be reinstated with no loss of continuity or pay.

If you raise any new matters in your appeal, we may need to carry out further investigation. If any new information comes to light we will provide you with a summary including, where appropriate, copies of additional relevant documents and witness statements. You will have a reasonable opportunity to consider this information before the hearing.

We will give you written notice of the date, time and place of the appeal hearing. This will normally be two to seven days after you receive the written notice.

The appeal hearing may be a complete re-hearing of the matter or it may be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light. This will be at our discretion depending on the circumstances of your case. In any event the appeal will be dealt with as impartially as possible.

You should notify the Headmaster, or Chair of Governors if the Headmaster has conducted the Capability Meeting in writing within 5 working days of being notified of the warning or outcome, giving the grounds for your appeal. The Headmaster will determine who is to hear the appeal which maybe any senior leader not involved in the process. The person(s) hearing the Appeal will be entitled to reach a different conclusion and impose a different outcome than that imposed after the Capability Meeting. You may bring a companion with you to the appeal hearing.

A hearing may be adjourned if we need to gather any further information or give consideration to matters discussed at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

Following the appeal hearing we may:

- a) confirm the original decision;
- b) revoke the original decision; or
- c) substitute a different penalty.

We will inform you in writing of our final decision as soon as possible, usually within one week of the appeal hearing. Where possible we will also explain this to you in person. There will be 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 the period of notice began at the date given in the dismissal decision. If having been dismissed you are reinstated on appeal, your continuity of employment will be unaffected.

### **Links to other policies**

The Crypt School Teacher Standards

The Crypt School Appraisal Policy

Approved by Full Governors : December 2015

Review : July 2016