



Professional Concerns and Capability Policy and Procedure

Effective from:

September 2025

Approved by:

People & Culture Committee

Responsibility:

Director of People and Organisational Development

Procedure changes since the last review

- Annual review, no substantial changes made to process or timescales
- Clarified the distinction between when the professional concerns and capability policy will be used and when the Disciplinary Process is more appropriate.
- Added a section on key principles that reinforces a support approach to improvement and definition to clarify informal v informal
- Included a cross reference to the Trust Pay Policy in relation to pay progression during capability proceedings

Review process:

This procedure will be reviewed according to The Mercian Trust's Policy Schedule outlined in its Scheme of Delegation. If there are any changes in legislation or legal requirements, an earlier review will be conducted to ensure compliance and relevance.

Contents

1.	Introduction.....	3
2.	Scope and purpose of this policy.....	3
3.	Key Principles	4
4.	Definitions.....	4
5.	Requesting support and raising early concerns.....	4
6.	Notification and procedure for formal meetings held under sections 6-10 of this policy.....	4
7.	Informal Support Process for Professional Concerns	6
8.	Formal capability process (Stage 1).....	7
9.	Formal capability process (Stage 2).....	8
10.	Decision meeting (Stage 3).....	8
11.	Appeal	9
12.	Pay Progression During Capability Proceedings	10
12.	Sickness	10
13.	Confidentiality and Data Protection.....	10

1. Introduction

- 1.1 The Mercian Trust (from this point referred to as 'Our Trust') is committed to providing high quality teaching and learning. Through our colleagues we aim to increase opportunities and improve outcomes for all of our students. Each colleague will therefore be given support to ensure they are able to develop the skills they need to carry out their role, to help them continually improve their performance and to develop to their full potential, which will in turn help improve outcomes for our students.
- 1.2 Our Professional Growth Policy, whilst linked to this policy, separates out our approach to developing all colleagues within our Trust. This approach embeds our culture of professional responsibility and growth, and the policy can be found on our Mercian HR Portal.
- 1.3 This policy sets out the arrangements that will apply if a colleague falls below the levels of competence and performance that are expected of them and there is serious underperformance which falls outside of the scope of Professional Growth.
- 1.4 This policy applies solely to professional concerns and capability issues (i.e. inability to meet required standards). Where concerns relate to conduct, the Disciplinary Policy will apply.
- 1.5 This policy has been designed to comply with current legislation, the ACAS Code of Practice and it also complies with the requirement for all schools including academy trusts, to have a policy that deals with the capability of colleagues.
- 1.6 Our Trust is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments where necessary. In the context of professional concerns and capability this may include making reasonable adjustment to performance targets, timescales, support provided.
- 1.7 This policy is non-contractual and can be amended at any time subject to any required consultation with colleagues and trade unions if substantial changes are to be made.
- 1.8 Our Trust recognises that professional concern and capability processes can be challenging for those involved and is committed to providing a supportive environment throughout. Access to an Employee Assistance Programme is available for all colleagues.

2. Scope and purpose of this policy

- 2.1 The purpose of this policy is to provide a framework within which our Trust can work with colleagues to improve and maintain satisfactory standards of performance where professional concerns have been raised.
- 2.2 This policy will be applied where there is underperformance, and the required improvement has not been made through day to day line management support.
- 2.3 This policy applies to all colleagues of our Trust, including headteachers, senior leaders, teachers and associate staff, executive leaders and those working in the central team but excluding those who are in their probationary period. On successful completion of the probationary period, colleagues' performance concerns will be covered by this policy. It does not apply to casual workers, agency workers or individuals engaged under an external contract, i.e. consultants.

3. Key Principles

- 3.1 The Trust will ensure that:
 - 3.1.1 Concerns are addressed early, proportionately and informally where appropriate
 - 3.1.2 Colleagues are treated with dignity, fairness and respect
 - 3.1.3 Expectations are clear, measurable, and reasonable
 - 3.1.4 Support, coaching and professional development are prioritised
 - 3.1.5 Decisions are evidence-based and documented
 - 3.1.6 Colleagues have the right to representation at formal stages

4. Definitions

- 4.1 Professional Concerns
 - 4.1.1 Low-level concerns about performance, conduct or behaviours which:
 - Do not meet expected standards.
 - Can reasonably be addressed through informal management action.
 - Do not warrant formal capability procedures at this stage.
- 4.2 Capability
 - 4.2.1 A formal process applied where:
 - There is persistent underperformance, which continues to fall below the required standard for the role.
 - Informal support has not resulted in sufficient improvement.

5. Requesting support and raising early concerns

- 5.1 In the first instance, professional concerns and resulting support should normally be requested and managed informally between a colleague and their line manager as part of day-to-day arrangements.
- 5.2 All colleagues are encouraged to have early and open dialogue with their line manager or other senior manager about their performance regarding and any anticipated concerns in meeting to seek and agree additional support.

6. Notification and procedure for formal meetings held under sections 6-10 of this policy

- 6.1 A colleague will normally be given at least five working days' written notice to attend any formal meetings under this procedure. Day one will be the day after receipt of the written notice.
- 6.2 The written notification will also contain:
 - 6.2.1 Details of the date, time and place of the meeting.
 - 6.2.2 Details of people in attendance at the meeting.
 - 6.2.3 Sufficient information about the performance concerns and their possible consequences to enable the colleague to prepare for the meeting.
 - 6.2.4 Copies of any written evidence being referred to within the meeting.

- 6.2.5 Confirmation that a colleague may be accompanied by a colleague or trade union representative (see 6.3 below).
- 6.3 A colleague has the right to be accompanied to any formal meeting under this procedure by a companion, who may be a colleague (if they agree to be involved in the process) or a trade union representative (if they have one). Colleagues are entitled to request an alternative date which is within five days of the original date, if their representative is unable to attend the meeting. A meeting will only be rearranged once.
- 6.4 A formal meeting under this procedure will:
 - 6.4.1 identify performance shortcomings, including which of the standards expected is not being met.
 - 6.4.2 allow the colleague to respond to those concerns, ask questions and make any relevant representations which may provide new information or a different context to the evidence already collected.
 - 6.4.3 find out if there are any issues (both in and/or outside of work) that are affecting their performance that need to be considered.
 - 6.4.4 identify what action (including support provided) has been taken to date and what the outcome was.
 - 6.4.5 give clear guidance on the improved standard of performance needed to ensure the colleague can be removed from the formal capability procedure.
 - 6.4.6 where appropriate, identify and explain any support that will be available to help the colleague improve performance.
 - 6.4.7 where appropriate, warn the colleague formally that failure to improve within the set period could lead to dismissal or other serious implications such as no pay progression, demotion and redeployment; and
 - 6.4.8 confirm the timescales for the monitoring and review period which will follow the formal meeting. The timescales will depend on the circumstances of the individual case, but the period will be reasonable and proportionate ensuring that the arrangements minimise the impact on workload for all parties involved and should provide sufficient opportunity for an improvement to be made. Formal monitoring, evaluation, guidance and support will continue during this period.
- 6.5 The person conducting the meeting may adjourn the meeting, for example if they wish to consider or seek additional information.
- 6.6 If at any stage the person conducting the meeting is satisfied that there are insufficient grounds for pursuing the capability issue or after a review period the colleague has made sufficient improvement, the capability procedure will cease, and the professional growth process will re-start.
- 6.7 Following a formal meeting, the matters covered in 6.4 and any other relevant points will be summarised and confirmed in writing within 5 working days of the hearing. If under performance occurs again, shortly after the end of professional concerns or formal capability, our Trust reserves the right to deal with the matter at the same stage of the procedure and not return to

an earlier stage of the process.

- 6.8 Minutes will be taken of all formal meetings, and colleagues will be sent a copy following the meeting.
- 6.9 HR will be present at all formal meetings.

How our Trust will address and respond to professional concerns and capability

7. Informal Support Process for Professional Concerns

- 7.1 Where there are professional concerns about the performance of a colleague which have not been addressed through day-to-day line management, a meeting will be arranged between the line manager and the colleague.
- 7.2 The purpose of the meeting is to:
 - 7.2.1 Outline the professional concern and clarification of the required standards.
 - 7.2.2 Ascertain if there are any personal or professional situations i.e. health and wellbeing, which are impacting on the colleague's performance.
 - 7.2.3 Set an improvement plan that must include performance improvement targets that are specific and measurable, clearly outline the success criteria and any sources of evidence required.
 - 7.2.4 Agree any support required to allow the colleague to return to satisfactory levels of performance.
 - 7.2.5 Agree the timescale for the support. The timescale agreed will be reasonable and proportionate to allow the required improvement to be made but is likely to be between 6 - 8 weeks with a mid-point review meeting.
 - (a) Agree who within the school or Trust will provide the required support.
- 7.3 During the support period, the line manager will undertake an objective and evidence-based assessment of performance and may include, but not be limited to;
 - (a) Work based observations
 - (b) Work scrutiny
 - (c) Other evidence routinely collected as part of quality assurance processes.
 - (d) Feedback from other managers
 - (e) Other reasonable methods of assessment relevant to the role of the colleague.
- 7.4 The line manager will use the assessment of performance to inform their decision making. In reaching their decision regarding whether standards have been met and/or sufficient progress has been made, the line manager must be able to demonstrate how they have reviewed and used this information as part of their decision making, particularly before any decision to progress to formal action is made.
- 7.5 At the end of the support period, a review meeting will take place. The purpose of this meeting will be to either:
 - 7.5.1 Confirm that professional concerns have been addressed and that performance has returned to satisfactory levels. In this situation, no further action will be taken. If similar professional concerns are raised again within a 12-month period, our Trust may move to the formal stages of this procedure, without repeating the informal support process outlined in this section.
 - 7.5.2 Confirm that some professional concerns remain, but significant progress has been

made and agree with the colleague that the timescales for the informal support plan will be extended to support the colleague in reaching the required standards. The extended timescale will be proportionate and reasonable to allow the required improvement noting the support already provided during the informal support stage. If after the extension, the required standards have not been met, a further review meeting will take place.

- 7.5.3 Confirm that serious professional concerns remain, the required standards have not been achieved and that progress against the agreed indicators has not been sufficient or satisfactory. In this situation, the process will move to the Formal Capability Process Stage 1.

8. Formal Capability Process (Stage 1)

- 8.1 If serious professional concerns persist following the informal support outlined in Section 7 or sufficient progress has not been made, the colleague will be informed that the required standards have not been met and they are moving into the Formal Capability Process Stage 1, this will be confirmed in writing as a first written warning to the colleague and will include details of where they are not meeting the required standards, what they need to do to improve, details of any further support that will be put in place and the duration of the warning (likely to be no more than 12 months).
- 8.2 In most cases, the line manager, will continue to manage the process at formal Stage 1, unless it is identified that a more Senior Manager, would be appropriate.
- 8.3 A performance monitoring and review period (1), likely to be 4-6 weeks, will follow. Formal monitoring, evaluation, guidance, and support will continue during this period.
- 8.4 Following the period of performance monitoring and review (1), the colleague will be invited to a formal review meeting at the end of the agreed timeframe, to consider whether the required standards have now been met or sufficient progress has been made.
- 8.5 The purpose of this meeting will be to either:
- 8.5.1 Confirm that professional concerns have been addressed and that performance has returned to satisfactory levels. In this situation, no further action will be taken but the first written warning will be placed on the colleague's file for a period of 12 months. If similar professional concerns are raised again within a 12-month period, our Trust may restart the Formal Capability Process at Stage 2. After 12 months, if there are no further concerns raised, the warning will be removed from the colleague's file.
- 8.5.2 Confirm that some professional concerns remain, but significant progress has been made and agree with the colleague that the timescales for the support plan will be extended to support the colleague in reaching the required standards. The extended timescale will be proportionate and reasonable to allow the required improvement, noting the support already provided during the performance monitoring and review period. If after the extension, the required standards have not been met, a review meeting in line with 8.4 will take place. If standards are met but similar professional concerns are raised again within a 12-month period, our Trust may restart the Formal Capability Process at Stage 2. After 12 months, if there are no further concerns raised, the warning will be removed from the colleague's file.
- 8.5.3 Confirm that serious professional concerns remain, the required standards have not been achieved and that progress against the agreed indicators has not been sufficient

or satisfactory. In this situation, the process will move to the Formal Capability Process Stage 2.

9. Formal capability process (Stage 2)

- 9.1 If serious capability concerns persist following Stage 1 or sufficient progress has not been made, the colleague will be informed that the required standards have not been met and they are moving into the formal professional concerns and capability process Stage 2, this will be confirmed in writing as a final written warning to the colleague and will include details of where they are not meeting the required standards, what they need to do to improve, details of any further support that will be put in place and the duration of the warning (likely to be no more than 12 months).
- 9.2 In some cases, management of the professional concerns and capability may move to a more senior manager at this stage, if appropriate.
- 9.3 At Stage 2, a further period of performance monitoring and review will take place. The timescale agreed will be reasonable but in most cases is likely to be no longer than 4 weeks. Formal monitoring, evaluation, guidance, and support will continue during this period.
- 9.4 At the end of the further monitoring and review period (2), the colleague will be invited to a decision meeting outlined in Section 10 below.
- 9.5 At this stage and by agreement with the colleague, instead of progressing to a decision meeting it may be appropriate to consider whether there is an appropriate vacant post and if so whether this may be more suited to the capabilities of the colleague. If there is a vacant post which is agreed is suitable, this would be a permanent change in role and if the alternative post is at a lower salary level, the substantive lower salary would apply. The capability procedure would cease on commencing in the new post and the professional growth process would re-start.

10. Decision meeting (Stage 3)

- 10.1 If there have been no suitable roles identified, as outlined in 9.5, or the colleague wishes progress straight to a decision meeting, this will be carried out in line with 10.2.
- 10.2 The decision meeting will usually be conducted by the Head Teacher or a Senior Central Trust Leader (if they have not previously been involved) or by a Headteacher from a different school or different Central Trust Leader not previously involved in the case, depending on the role (see Table 1). Dismissal is a possible outcome of a decision meeting. The colleague has the right to be accompanied.
- 10.3 If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end, and the professional growth process will re-start. The final written warning will remain on the colleague's file for a period of 12 months. If similar professional concerns are raised again within a 12-month period, the Trust may restart the professional concerns and capability process at Stage 2. After 12 months, if there are no further concerns raised, the warning will be removed from the colleague's file.
- 10.4 If performance remains unsatisfactory and of serious concern, a decision will be made that the colleague should be dismissed. Normal delegation rules apply, outlined in Table 1, to the power of dismissal.

- 10.5 Dismissal will only be considered where the colleague has been given reasonable opportunity to improve, appropriate support has been provided and there has been a continued failure to reach the required standards.

11. Appeal

- 11.1 The colleague has the right to appeal against the decision meeting outcome. This must be in writing, stating the full grounds of appeal and sent to the person indicated in the decision meeting outcome letter within 5 working days of the date on which the colleague was informed of the decision.
- 11.2 Colleagues may appeal on the grounds of:
- 11.2.1 procedural error;
 - 11.2.2 unreasonable outcome based on the evidence presented and considered;
 - 11.2.3 new evidence not previously available.
- 11.3 The colleague will be given written notice of the date, time and place of the appeal hearing. This will normally be no less than ten working days following receipt of the appeal request from the colleague/former colleague. The colleague/former colleague may bring a companion to the appeal hearing.
- 11.4 The appeal hearing will be conducted by relevant person/persons as set out in Table 1 and who has not been previously involved in the case and will be conducted as impartially as possible.
- 11.5 Appeal hearings will normally be held in person, but may be conducted remotely, if this is deemed appropriate and agreed by all parties.
- 11.6 If the colleague/former colleague is appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the appeal is successful, they will be reinstated with no loss of continuity of service or pay.
- 11.7 Appeals will not re-investigate the case; they will consider whether the decision was fair and procedurally sound.
- 11.8 Following the appeal hearing, the person/persons hearing the appeal may:
- 11.8.1 confirm/uphold the original decision.
 - 11.8.2 revoke/overturn the original decision; or
 - 11.8.3 substitute a different penalty. Ordinarily a penalty will not be increased on appeal unless there is new information or evidence being available that requires further investigation
- 11.9 The colleague/former colleague will be informed in writing of the decision and the reasons for it, usually within 5 working days of the appeal hearing. There is no further right to appeal under this policy.

12. Pay Progression During Capability Proceedings

- 12.1 Any colleagues who are part of a Formal Capability Process will not be entitled to automatic pay progression.
- 12.2 Any decision to withhold pay progression will be considered on a case-by-case basis, taking account of the employee's performance against required standards and will be applied fairly, reasonably and consistently.
- 12.3 Once the employee has demonstrated and sustained the required level of performance, their eligibility for future pay progression will be recommenced.

13. Sickness

- 13.1 If long term sickness absence appears to have been triggered at any stage of this procedure, the case will be dealt with in accordance with our Trust's Sickness Absence Policy.
- 13.2 The colleague will be referred immediately to the occupational health service to assess their health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures or make recommendations whether any reasonable adjustments should be considered.
- 13.3 Any capability process may be paused whilst a colleague is on sick leave and will restart at the same stage once the colleague returns to work or is deemed able to participate in the Professional Concern or Capability Process.
- 13.4 In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

14. Confidentiality and Data Protection

- 14.1 **Confidentiality** - The capability process will be treated confidentially. However, it needs to be recognised that, in supporting colleagues through this process, some degree of information sharing is likely to be necessary to quality-assure the operation and effectiveness of the process.
- 14.2 **Retention and Data Protection** - The Head Teacher or central Trust Leader will ensure that all written records are retained in a secure place. As part of the application of this policy, our Trust may collect, process and store personal data in accordance with our Data Protection Policy. We will comply with the requirements of Data Protection Legislation (being the UK General Data Protection Regulation and Data Protection Act 2018) and any implementing laws, regulations and secondary legislation, as amended or updated from time to time. Records will be kept in accordance with our Workforce Privacy Notice, our Retention and Distribution Policy and in line with the requirements of the Data Protection Legislation.

Table 1

Colleague	Decision Hearing	HR	Appeal	HR
Teacher incl TLR holders and Associate Staff	Headteacher from own or another school or a Senior Leader from the Central Trust Team.	Trust-appointed HR Advisor.	Another Headteacher or a Trust Executive Leader or Director	Trust-appointed HR Advisor.
Leadership Spine (excluding Deputy Headteacher or Central Trust Director)	Headteacher from own or another school or a Senior Central Trust Leader	Trust-appointed HR Advisor	Another Headteacher or a Trust Executive Leader or Director	Trust-appointed HR Advisor
Deputy Head (or second most senior member of staff who deputises for the HT) and Central Trust Director	Headteacher from own or another school or Senior Central Trust Leader.	Trust-appointed HR Advisor.	Another Headteacher or a Trust Executive Leader or Director	Trust-appointed HR Advisor.
Headteacher or Trust Executive Leader	CEO	Trust-appointed HR Advisor.	3x Trustees	Trust-appointed HR Advisor.
CEO	3 x Trustees	Trust-appointed HR Advisor.	3 x different Trustees	Trust-appointed HR Advisor.