Our Lady of Lourdes School

CAPABILITY POLICY AND PROCEDURE

Our Lady of Lourdes Primary School

Capability Policy and Procedure

Schools - Capability Policy and Procedure – England – September 2013 (Updated June 2020 – with minor amendments May 2022)
© The Catholic Education Service

THIS POLICY DOES NOT CREATE CONTRACTUAL OBLIGATIONS ON THE SCHOOL

"In God, we are, we know, we act"

Validation grid

Title	Capability Policy and Procedure
Author	Barbara Costa
Associate Author	Catholic Education Service
Target Audience	All staff
Stake holders consulted	All staff
Curriculum / non curricular	Non - curricular
Associated Policies / Documents	Disciplinary, Appraisal
New Policy or Review of existing policy.	Review
Date of Submission	October 2024
Date for Review	October 2026
Date ratified by Governors	

Headteacher Barbara Costa Barbara Costa

Chair of Governors Fiona Kerin

© The Catholic Education Service

THIS POLICY DOES NOT CREATE CONTRACTUAL OBLIGATIONS ON THE SCHOOL

Commitment to equality:

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

DEFINITIONS

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

i. 'Capability due to ill-health' means any health condition or any other physical or mental quality which results in unsatisfactory performance. In these cases, the Sickness Absence Policy and Procedure will apply.

ii. 'Capability due to lack of competence' means a lack of skill or aptitude leading to unsatisfactory performance. In these cases, this Capability Policy and Procedure will apply.

iii. 'Chair' means the Chair of the Governing Body as appointed from time to time.

iv. 'Clerk' means the Clerk to the Governing Body as appointed from time to time.

v. 'Companion' means a willing work colleague not involved in the substance of the employee's performance issues under review by this Capability Policy and Procedure, or a trade union official, an accredited representative of a trade union or other professional association of which the employee is a member, who should be available for the periods of time necessary to meet the timescales under this Capability Policy and Procedure.

vi. 'Diocesan Schools Commission' means the education service provided by the diocese in which the School is situated, which may also be known, or referred to, as the Diocesan Education Service.

vii. 'Governing Body' means the governing body of the School as constituted from time to time.

© The Catholic Education Service

THIS POLICY DOES NOT CREATE CONTRACTUAL OBLIGATIONS ON THE SCHOOL

viii. 'Governors' means the governors appointed and elected to the Governing Body of the School, from time to time.

ix. 'Headteacher' means the most senior teacher in the School who is responsible for its management and administration.

x. 'Misconduct' means any action or inaction which contravenes the provisions of the employee's contract of employment, the rules laid down by the Governing Body and/or any Professional Code of Conduct and Practice. In such cases the Disciplinary Policy and Procedure will apply and the Capability Policy and Procedure may also apply.

xi. 'School' means the school or college named at the beginning of this Capability Policy and Procedure and includes all sites upon which the School undertaking is, from time to time, being carried out.

xii. 'Vice-Chair' means the Vice-Chair of the Governing Body as elected from time to time.

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

xiv. 'Working Week' means any week that you would ordinarily work.

1. SCOPE

1.1 This Capability Policy and Procedure applies to you if you are an employee or worker at the School (hereinafter referred to as an "employee" or "you").

1.2 The purpose of this Capability Policy and Procedure is to establish a structure to support employees in improving their performance to the standards expected and to take appropriate action to address identified performance weaknesses, where there has not been sufficient improvement, following support being provided pursuant to the Appraisal Policy and Procedure.

1.3 This Capability Policy and Procedure shall be invoked when there is an identified need to address, with a view to remedying, capability due to lack of competence.

© The Catholic Education Service

THIS POLICY DOES NOT CREATE CONTRACTUAL OBLIGATIONS ON THE SCHOOL

1.4 This Capability Policy and Procedure can be invoked by the Governors or their delegate at any stage deemed appropriate although the expectation is that it will only be invoked after the procedure set out in the Appraisal Policy and Procedure has been fully exhausted.

1.5 An employee is entitled to have access, by arrangement, to their personnel file and to request the deletion of time-expired records in line with the provisions of the General Data Protection Regulation (GDPR) and the Data Protection Act 2018.

1.6 The Governors delegate their authority in the manner set out in this policy.

1.7 There may be some occasions where an employee's lack of capability could also be described as Misconduct. This Capability Policy and Procedure and the School's Disciplinary Policy and Procedure may be used concurrently whilst the School endeavours to ascertain if the employee's lack of capability is due to Misconduct or lack of competence.

1.8 There may be occasions where an employee's lack of capability could relate to their health. This Capability Policy and Procedure may be used concurrently with the School's Sickness Absence Policy and Procedure. In particular, if an employee is absent from School on sick leave following this Capability Policy and Procedure being invoked, the School may use its Sickness Absence Policy and Procedure. However, the process of managing unsatisfactory performance due to capability will not necessarily cease where the employee is absent on the grounds of sickness.

1.9 The School is committed to ensuring respect, objectivity, belief in the dignity of the individual, consistency of treatment and fairness in the operation of this Capability Policy and Procedure. This commitment extends to promoting equality of opportunity and eliminating unlawful discrimination throughout the School community.

1.10 This Capability Policy and Procedure offers opportunities to ensure justice for teachers, support staff and pupils alike and has the potential for the expression of Christian qualities such as honesty, self-knowledge, respect for others and their gifts, recognition of the needs and achievements of others, challenge of self and others, personal growth and openness.

1.11 This Capability Policy and Procedure can be invoked at any time during any Appraisal Period as defined in the School's Appraisal Policy and Procedure. The expectation is that it will only be invoked after the procedure set out in the Appraisal Policy and Procedure has been fully exhausted.

1.12 The Capability Policy and Procedure does not form part of any other procedure but relevant information on capability, including the reports referred to in this Capability Policy and Procedure, may be taken into account in relation to the operation of other applicable policies and procedures.

© The Catholic Education Service

THIS POLICY DOES NOT CREATE CONTRACTUAL OBLIGATIONS ON THE SCHOOL

1.13 The management of unsatisfactory performance and related investigations will be treated in confidence as far as possible by all parties involved at all stages of this Capability Policy and Procedure.

1.14 The School will maintain records of all interviews and reviews which take place under this Capability Policy and Procedure for a period of up to 12 months or longer where necessary and where there is an applicable lawful basis under the GDPR for extending the retention period. All data and evidence collected is to be shared between all the relevant parties, including the employee, where there is an applicable lawful basis under the provisions of the GDPR.

2. CAPABILITY POLICY AND PROCEDURE – EMPLOYEES EXPERIENCING DIFFICULTIES

2.1 This Capability Policy and Procedure should, except in exceptional circumstances, only be invoked where the measures set out in Paragraph 9 and Paragraph 10 (if an appeal is lodged) of the School's Appraisal Policy and Procedure for Teachers and/or Paragraph 9 and Paragraph 10 (if an appeal is lodged) of the School's Appraisal Policy and Procedure for Support Staff (as appropriate) have been exhausted; and

a) the employee has made no improvement or no sufficient improvement as required under the relevant Appraisal Policy and Procedure; and/or

b) the employee is failing to improve despite feedback in relation to unsatisfactory performance; and

c) a recommendation has been made under the relevant Appraisal Policy and Procedure that this Capability Policy and Procedure be invoked.

2.2 If a Headteacher is subject to this Capability Policy and Procedure they will normally continue to be responsible for the appraisal of staff at the School unless the Governing Body determines that this is inappropriate.

3. CAPABILITY, FINAL CAPABILITY AND APPEAL MANAGER

The table below sets out the persons to be appointed throughout the stages of the Capability Procedure depending on the person who is the subject of the capability proceedings:

© The Catholic Education Service

THIS POLICY DOES NOT CREATE CONTRACTUAL OBLIGATIONS ON THE SCHOOL

Employee Level	*First/Second Capability Meeting – the Capability Manager*	*Final Capability Meeting – the Final Capability Manager*	*Appeal Manager (re Written Warnings)*	*Appeal Manager (re Dismissal)*
Headteacher	Chair or a non-staff Governor (other than the Vice-Chair) appointed by the Chair	Governors' Capability Panel appointed by the Vice-Chair	A non-staff Governor (other than the Chair or Vice Chair) appointed by the Vice-Chair	Governors' Appeal Panel appointed by the Vice-Chair
Other Leadership Spine and School Business Manager	Headteacher	Governors' Capability Panel appointed by the Chair	A non-staff Governor (other than the Chair or Vice Chair) appointed by the Vice-Chair	Governors' Appeal Panel appointed by the Vice-Chair
Other Teaching Staff	Headteacher or a sufficiently senior member of staff appointed by the Headteacher	Governors' Capability Panel appointed by the Chair	A non-staff Governor (other than the Chair or Vice- Chair) appointed by the Vice-Chair	Governors' Appeal Panel appointed by the Vice-Chair
Other Support Staff	Headteacher or a sufficiently senior member of staff appointed by the Headteacher	Governors' Capability Panel appointed by the Chair	A non-staff Governor (other than the Chair and Vice- Chair) appointed by the Vice-Chair	Governors' Appeal Panel appointed by the Vice- Chair

4. FIRST CAPABILITY MEETING

4.1 Where the School has fully exhausted the Appraisal Policy and Procedure in accordance with Paragraph 2 above, including the appeals process under that Policy (if an appeal is lodged), the School will appoint a Capability Manager in accordance with Paragraph 3 above. The Capability Manager will write to you inviting you to a First Capability Meeting. You will be given at least 5 Working Days' notice of such meeting. At the same time as sending you the letter inviting you to the First Capability Meeting, the Capability Manager will also send you a Performance Report which shall set out:

a) what aspects of your performance are causing concern;
b) what specific and achievable performance standards are expected of you; and

© The Catholic Education Service

THIS POLICY DOES NOT CREATE CONTRACTUAL OBLIGATIONS ON THE SCHOOL

c) the support that has been provided to you so far.

4.2 The Capability Manager's letter shall state that any documentation you wish to rely on during the First Capability Meeting must be submitted at least 2 Working Days prior to the First Capability Meeting.

4.3 At the First Capability Meeting you will have an opportunity to comment upon, offer an explanation and/or refute the contents of the Performance Report and to discuss the professional shortcomings identified, support and guidance required and how your performance will be monitored and supported going forward.

4.4 At the end of the First Capability Meeting, having considered your comments, if the Capability Manager concludes that your performance is satisfactory you will no longer be subject to this Capability Policy and Procedure and shall be notified in writing of the Capability Manager's decision, as soon as is reasonably practicable. The School's Appraisal Policy and Procedure shall resume.

4.5 At the end of the First Capability Meeting, having considered your comments, if the Capability Manager concludes that your performance is unsatisfactory you will be given a First Written Warning and an Improvement and Support Plan will be drawn up in discussion with you as soon as is reasonably practicable, but no later than 5 Working Days following the First Capability Meeting. The Improvement and Support Plan will:

a) detail the professional shortcomings identified;
b) give clear guidance on the improved sustainable standard of performance needed to exit the capability procedure;
c) explain the support that will be provided, and detail how your performance will be monitored and supported over a period of time, referred to in this Capability Policy and Procedure as the Assessment Period;
d) identify a reasonable timetable for improvement and provide a date for the Second Capability Meeting to be held at the end of the Assessment Period; and
e) state that failure to improve may lead to dismissal.

4.6 The length of the Assessment Period following a First Written Warning will be at least 4 Working Weeks and no more than 12 Working Weeks.

4.7 If the Assessment Period is less than 12 Working Weeks, at any time during the Assessment Period the timeframe may be extended by the Capability Manager to a maximum of 12 Working Weeks in total, if there is sufficient evidence that the employee is progressing towards achieving the standards required. You will be informed of any such extension in writing.

4.8 You may appeal against a First Written Warning by writing to the Clerk within 5 Working Days of the date of the First Written Warning.

© The Catholic Education Service

THIS POLICY DOES NOT CREATE CONTRACTUAL OBLIGATIONS ON THE SCHOOL

4.9 An appeal will not delay the commencement of the Assessment Period.

4.10 In the case of a Headteacher, a First Written Warning will remain live for 12 months. In the case of all other employees a First Written Warning will remain live for 6 months. If within that 12 or 6 month period the employee's standard of performance is not sustained, the Capability Manager will recommence the Capability Procedure at the stage it was previously concluded and you will be notified of this in writing.

5. SECOND CAPABILITY MEETING

5.1 At least 5 Working Days prior to the Second Capability Meeting, the date of which will have been notified to you in accordance with Paragraph 4.5(d) above, the Capability Manager will send you an Updated Performance Report along with a letter reminding you of the date of the Second Capability Meeting. The updated Performance Report will provide details of the assessments of your performance that have taken place during the Assessment Period, the support that has been provided to you and an evaluation of your performance at the end of the Assessment Period.

5.2 Any documentation you wish to rely on during the Second Capability Meeting must be submitted at least 2 Working Days prior to the Second Capability Meeting.

5.3 At the Second Capability Meeting you will have an opportunity to comment upon, explain and/or refute the contents of the Updated Performance Report, to discuss any continuing professional shortcomings, support and guidance required and how your performance will be monitored and supported going forward.

5.4 The Capability Manager will confirm the outcome of the Second Capability Meeting in writing within 5 Working Days of the date of such meeting.

5.5 Where the Capability Manager concludes, at the end of the Second Capability Meeting, that the standard of your performance is satisfactory you will no longer be subject to this Capability Policy and Procedure. The School's Appraisal Policy and Procedure shall resume. However, if the required standard of performance is not sustained during the life of the First Written Warning, the Capability Manager will recommence the Capability Procedure at the stage where it was previously concluded and you will be notified of this in writing.

5.6 Where the Capability Manager concludes, at the end of the Second Capability Meeting, that some progress has been made and that with a further period of monitoring an acceptable level of performance will be achieved, the Capability Manager may determine that you should be subject to an Additional Assessment Period of up to an additional 4 Working Weeks. If at the end of this Additional Assessment Period, the Capability Manager concludes that your performance is satisfactory you will no longer be subject to this Capability Policy and Procedure. The School's Appraisal Policy and Procedure shall resume. However, if the required standard of performance is not sustained during the life of the First Written Warning, the Capability

© The Catholic Education Service

THIS POLICY DOES NOT CREATE CONTRACTUAL OBLIGATIONS ON THE SCHOOL

Manager will recommence the Capability Procedure at the stage where it was previously concluded and you will be notified of this in writing.

5.7 Where the Capability Manager concludes, at the end of the Second Capability Meeting, or at the end of the Additional Assessment Period referred to in Paragraph 5.6 above that no, or no sufficient, improvement has been made so that your performance remains unsatisfactory, you will be given a Final Written Warning setting a Further Assessment Period of 4 Working Weeks and notifying you of the date for a Final Capability Meeting to be held at the end of the Further Assessment Period. You will be informed that failure to make satisfactory sustainable improvement during such Further Assessment Period may result in your dismissal.

5.8 You may appeal against a Final Written Warning by writing to the Clerk within 5 Working Days of the date of the Final Written Warning.

5.9 An appeal will not delay the commencement of the Further Assessment Period.

5.10 A Final Written Warning for all employees will remain live for 12 months and if, within that 12 months, the required standard of performance is not sustained the Capability Manager will recommence the Capability Procedure at the stage it was previously concluded and you will notified of this in writing.

6. FINAL CAPABILITY MEETING

6.1 At least 5 Working Days prior to the Final Capability Meeting which you will have been invited to in accordance with Paragraph 5.7 above, the Final Capability Manager will send you a Final Performance Report along with a letter reminding you of the date of the Final Capability Meeting. The Final Performance Report shall contain an evaluation of your performance and will detail any support provided during the Further Assessment Period.

6.2 Any documentation you wish to rely on during the Final Capability Meeting must be submitted at least 2 Working Days prior to the Final Capability Meeting.

6.3 At the Final Capability Meeting you will have an opportunity to comment upon, explain and/or refute the contents of the Final Performance Report and to discuss any continued professional shortcomings.

6.4 The Final Capability Manager will confirm the outcome of the Final Capability Meeting in writing within 5 Working Days of the date of such meeting.

6.5 Where the Final Capability Manager concludes that the standard of performance is satisfactory you will no longer be subject to this Capability Policy and Procedure. The School's Appraisal Policy and Procedure shall resume. However, if the required standard of performance is not sustained during the life of the Final Written Warning, the Final Capability Manager will

© The Catholic Education Service

THIS POLICY DOES NOT CREATE CONTRACTUAL OBLIGATIONS ON THE SCHOOL

recommence the Capability Procedure at the stage where it was previously concluded and you will be informed of this in writing.

6.6 Where the Final Capability Manager concludes that your performance remains unsatisfactory and is not capable of sustainable improvement, the Final Capability Manager may recommend to the Governing Body that your employment is terminated in accordance with your contract of employment and the Governing Body will take appropriate steps to terminate your employment with notice. Alternative sanctions may also be considered, for example, redeployment, or demotion to a lower graded role, by mutual agreement. Alternative employment in these circumstances, does not have to be equivalent in terms and conditions to the current post and protection of salary will not apply. A decision to dismiss will always be the last resort. Please note that the Governing Body will not review the Final Absence Reviewer's decision in order to ensure that a Governors' Capability and Appeal Panel can be convened if necessary.

6.7 You may appeal against a decision to dismiss you with notice by writing to the Clerk within 10 Working Days of the date of the notice of termination.

6.8 An appeal will not delay the commencement of the notice period.

6.9 In the event that your employment is terminated in accordance with Paragraph 6.6 above:

(a) if your contract of employment contains a garden leave clause the Governing Body may exercise that clause so that you are not required to attend the School during the notice period but remain employed and so bound by the terms of your contract of employment until the expiry of the notice period; or

(b) if your contract of employment contains a payment in lieu of notice clause the Governing Body may exercise that clause to bring your contract to an end with immediate effect.

7. APPEALS AGAINST DECISIONS MADE BY CAPABILITY MANAGER AND/OR FINAL CAPABILITY MANAGER

7.1 An appeal against a decision of the Capability Manager or Final Capability Manager can be made at each stage of the procedure set out at Paragraphs 4, 5 and 6 above.

7.2 In all cases, your appeal letter must set out the grounds of your appeal in detail. When preparing your appeal letter, you may wish to consider the following grounds:

(a) That the action taken was unfair;
(b) That this Capability Policy and Procedure was applied defectively or unfairly;
(c) That new evidence has come to light which was not available when the relevant decision was made by the Capability Manager or Final Capability Manager;
(d) That the sanction was overly harsh in all the circumstances.

© The Catholic Education Service

THIS POLICY DOES NOT CREATE CONTRACTUAL OBLIGATIONS ON THE SCHOOL

7.3 Appeals will be heard by the relevant Appeal Manager appointed in accordance with Paragraph 3 within 20 Working Days of the Clerk receiving your appeal letter.

7.4 You will be given 5 Working Days' written notice of an Appeal Meeting and the Appeal Manager will confirm in this notice what evidence will be relied upon at the Appeal Meeting and whether the evidence will be written or oral. If written evidence is to be relied upon you will be provided with copies of such evidence with notice of the meeting in order to enable you to prepare for the Appeal Meeting. If oral evidence is to be relied upon at the Appeal Meeting, you will be given details of who will be in attendance. You will be able to provide evidence prior to the Appeal Meeting provided that such evidence is submitted at least 2 Working Days prior to the Appeal Meeting.

7.5 You will be given an opportunity to comment on the evidence provided during the Appeal Meeting whether such evidence is given in writing or orally. The Appeal Manager will consider the evidence provided by you and by the Capability Manager or Final Capability Manager (as appropriate) in order to determine whether the relevant decision was fair and reasonable.

7.6 The Appeal Manager will confirm the outcome of the Appeal Meeting in writing to you within 5 Working Days of the date of the Appeal Meeting. The decision of the Appeal Manager is final and there will be no further right of appeal. The potential outcomes of an Appeal Meeting are that:

(a) the Appeal Manager may uphold the decision of the Capability Manager or Final Capability Manager; or
(b) the Appeal Manager may uphold the employee's appeal, overturn the decision of the Capability Manager or Final Capability Manager and refer the matter back to the Capability Manager or Final Capability Manager for reconsideration.

7.7 Should an appeal against dismissal be successful, you will be reinstated with no break in your continuous service.

8. GOVERNORS' PANELS

8.1 Governors' Capability and Appeal Panels shall comprise three non-staff Governors not previously involved in the matter and shall not comprise the Chair or Vice-Chair unless there are insufficient numbers of non-staff Governors not previously involved in the matter, in which case the Chair and/or Vice-Chair may be appointed to a Governors' Capability or Appeal Panel.

8.2 In the event that there are insufficient numbers of Governors available to participate in a Governors' Capability or Appeal Panel, the Governing Body may appoint associate members solely to participate in the appropriate Governors' Capability or Appeal Panel on the recommendation of the Diocesan Schools Commission.

© The Catholic Education Service

THIS POLICY DOES NOT CREATE CONTRACTUAL OBLIGATIONS ON THE SCHOOL

9. COMPANION

9.1 If you are the subject of any Capability Meeting you may be accompanied by a Companion.

9.2 You must let the relevant Manager know who your Companion will be at least one Working Day before the relevant meeting.

9.3 If you have any particular reasonable need, for example, because you have a disability, you can also be accompanied by a suitable helper.

9.4 Your Companion can address the meeting in order to:

(a) put your case;
(b) sum up your case;
(c) respond on your behalf to any view expressed at the meeting; and
(d) ask questions on your behalf.

9.5 Your Companion can also confer with you during the meeting.

9.6 Your Companion has no right to:
(a) answer questions on your behalf;
(b) address the meeting if you do not wish it; or
(c) prevent you from explaining your case.

9.7 Where you have identified your Companion and they have confirmed in writing to the relevant Manager that they cannot attend the date or time set for the meeting, the meeting will be postponed for a period not in excess of five Working Days from the date set by the School to a date and time agreed with your Companion. Should your Companion subsequently be unable to attend the rearranged date, the meeting may be held in their absence or written representations will be accepted.

10. TIMING OF MEETINGS

The aim is that meetings under this Capability Policy and Procedure will be held at mutually convenient times but depending on the circumstances, meetings may:

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

© The Catholic Education Service

THIS POLICY DOES NOT CREATE CONTRACTUAL OBLIGATIONS ON THE SCHOOL

11. VENUE FOR MEETINGS

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

12. ASSISTANCE

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

13. REVIEW OF THIS PROCEDURE

This policy and procedure was produced in September 2013 and updated in June 2016, May 2018 and June 2020 by the Catholic Education Service (CES) for use in Catholic Voluntary Aided Schools in England, following consultation with the national trade unions. It may be adapted, as appropriate, for use in joint Church schools subject to the approval of the CES on referral by the relevant Catholic diocese.

© The Catholic Education Service

THIS POLICY DOES NOT CREATE CONTRACTUAL OBLIGATIONS ON THE SCHOOL