

The Mercian Trust

Performance Management and Capability Policy

Policy Owner	The Mercian Trust
Policy Author:	Insight HR Ltd
Date Ratified by Trust Board	September 2019
Date to be Reviewed:	September 2020
Date Adopted	1st October 2019

Contents

1. Purpose
2. Principles
3. Application of the policy
4. Section A – Performance Management
5. Section B – Capability Procedure
6. Section C – Pay Progression
7. General Principles Underlying this Policy

1. Purpose

This policy sets out a Mercian Trust framework for a clear and consistent assessment of the overall performance of all staff employed in all Trust schools. Some parts of this Policy however will only be applicable to Teaching Staff such as the Annual Statements which form part of the School Teachers Pay and Conditions Document. It aims to support staff development within the context of the Trust's plan for improving educational provision and performance. The performance management process is developmental and supportive and intended to foster professional dialogue between colleagues.

It also sets out the arrangements that will apply for making decisions on pay progression and for any occasion when an employee falls below the levels of competence that are expected of them.

This Policy does not apply to newly qualified teachers.

The policy sets out principles and arrangements which *must* pertain in all Trust schools. It does not, however, preclude variations that reinforce the established identity and ethos of individual schools provided that:

- The School maintains an Ofsted grading of good or better
- Any variation does not contradict any of the procedures or principles set down in this policy

2. Principles

The performance management process across all schools in the Trust will be conducted in a manner which promotes personal and professional development and completed within the employees working hours. The process will be:

- diagnostic and evaluative
- purposeful and rigorous
- developmental
- supportive and affirmative

It should be seen as an opportunity to celebrate, applaud, and build on good practice in all Trust schools.

Performance Management in Trust schools will foster and provide:

- a sense of identity and belonging
- professional dialogue between colleagues
- access to relevant training opportunities and CPD across the Trust
- effective faculty, departmental and subject teamwork both within individual schools and across the Trust
- the realisation of personal fulfilment and aspirations

3. Application of the Policy

The Trust delegates the implementation of the policy to Local Governing Bodies (LGBs)

The policy is in three separate sections:

- Section A: performance management
- Section B: capability
- Section C: pay progression

Part A of the policy, which covers Performance Management, applies to all staff employed by the Trust, except:

- those on contracts of less than one term
- those undergoing induction (*ie* NQTs)
- New Associate staff that are subject to a probationary period of six months. During this time their performance will be assessed by their Line Manager in terms of general performance against the requirements of the job description
- those on capability procedures

Part B of the policy, which sets out the formal capability procedure, applies only to colleagues (including the Headteacher or Principal) about whose performance there are serious concerns that the performance management process has been unable to address.

The policy also applies to the following members of the Trust Central Team:

- The Chief Executive Officer
- The Chief Finance Officer
- C-Suite posts
- Director posts in Central Team

4. Section A: Performance Management

The performance management period

The performance management period for teachers will run for twelve months from 01 November to 31 October.

The performance management period for associate staff will run for twelve months from 01 April to 30 March.

Employees who are employed on a fixed term contract of less than one year will have their performance managed in accordance with the principles underpinning this policy. The length of the period will be determined by the duration of their contract.

Appointing reviewers

The performance of the Chief Executive Officer (CEO) will be assessed and managed by the Board of Trustees, supported by a skilled and experienced external advisor appointed by the Board for that purpose.

The performance management of Headteachers or Principals will be assured by the LGB and conducted by the CEO. The LGB will delegate the task of reviewing the recommendations made by the CEO to a panel of three Governors. The LGB may decide to appoint an additional external advisor, but the recommendation will be made by the CEO and any additional support will be in an advisory capacity only.

Where the Headteacher or Principal is of the opinion that any of the governors appointed by the LGB to review his or her performance management is unsuitable, he or she may submit a written request for that governor to be replaced, stating the reasons for the request.

The Headteacher or Principal will decide who will manage the performance of other members of staff. The reviewer will normally have line management responsibility for the

employee whose performance they are reviewing. Where an employee has an objection to the Headteacher or Principal's choice, their concerns will be carefully considered and, where appropriate and possible, an alternative reviewer will be offered.

Expectations of the reviewee

Each member of staff involved in performance management is expected to be proactive in participating in the process. They share a responsibility for making sure that the appropriate meetings take place according to the schedule. They also carry a responsibility for identifying and collating evidence to support the process during the course of the year.

Setting objectives

The CEO's objectives will be set by the Board of Trustees after consultation with the external advisor.

The Headteacher or Principal's objectives will be set by the CEO and reviewed by the LGB after consultation with any additional advisor if they so decide.

Objectives for all other staff will be set before, or as soon as practicable after, the start of each performance management period. The objectives set will be

- Specific
- Measurable
- Achievable
- Realistic
- Time-bound

The objectives set will be appropriate to the employee's role and level of experience as determined in each school in the Trust. The reviewer and reviewee will agree the objectives but, if in exceptional circumstances that is not possible, the reviewer will determine the objectives. In setting the objectives, reviewers will have regard to what can be reasonably expected in the context of roles, responsibilities and experience; and consistent with the Trust's over-arching concern for the well-being of all staff. Objectives may be revised if circumstances change.

The objectives set for each employee will, if achieved, contribute to the Trust's over-arching Strategic and Development Plans and the school's plans for improving educational provision and performance and improving the education of pupils at that school.

For teachers in all Trust Schools, it is expected that three objectives will be set:

Objective One

This will be an objective relating to the performance of pupils in the teacher's teaching groups.

In setting the objective, the following principles will be observed:

- The objective will consider performance in all teaching groups (not just a specific exam group)
- The objective will consider performance against an appropriate and agreed benchmark (of expected pupil performance)

In assessing the objective, the following principles will be observed:

- An individual teacher's performance will be moderated in relation to the performance of the whole school
- An appropriate range of tolerance will be applied (which will be moderated across the Trust).

Objectives two and three

It is usually expected that these will be set according to the following principles:

- The objectives will have a clear link to the teacher's professional developmental needs according to their career stage and responsibilities; they will also relate to appropriate standards – whether they are locally agreed career-stage standards or national standards (such as for leadership or headteachers)
- The objectives will contribute to the successful achievement of departmental and school development plans

For Senior Leaders in all Trust schools, it is expected that an objective will be set which will relate to one or more of the following:

- The Trust's over-arching development plan
- A Trust collaborative project
- A Trust priority (such as closing the gap for disadvantaged pupils)

If necessary, this can be a fourth objective.

The Chief Executive Officer will moderate a sample of objectives from schools across the Trust in order to check that they:

- Comply with the requirements of this policy
- Are consistent between schools for those who have similar experience and levels of authority
- Comply with statutory regulations (including legislation on equality)

It is expected that headteachers/principals will also moderate the objectives within their own academy.

In a case where an objective might be deemed more appropriate than one set to adhere to the above principles, this case must be agreed with the CEO.

Associate Staff

There are no national Performance Management regulations which apply to associate staff and there is no national agreement on Performance Management with associate staff unions. However, it is our belief that all staff at The Mercian Trust are entitled to have a positive annual review where progress is assessed and acknowledged and objectives for continued professional and personal progress are set

Associate staff development in schools is essential. Clear job descriptions should be provided and reviewed as necessary. If performance issues are identified as part of the performance management cycle, associate staff will enter the Capability Procedure. In such circumstance's performance concerns should have been raised appropriately during the academic year for example at meetings with line managers or in the course of day to day management.

Relevant professional standards

The Trust's Pay Policy sets out the professional standards and wider expectations against which, where relevant, the employee will be assessed, and which will contribute to an overall assessment of performance at the end of the performance management period. Reviewers should ensure that all employees are clear about the standards and expectations against which they will be assessed as soon as practicable after the start of each performance management cycle.

Reflective practice is an essential part of continuous professional development for all staff, and self-evaluation is encouraged in all roles. Teaching staff should consider their development in relation to the Teachers' Standards and may find it helpful to complete a self-evaluation against the Teachers' Standards in anticipation of their annual review. Associate staff may refer to professional standards or competency frameworks relevant to their roles.

Reviewing performance

Observation

The Trust believes that observation of classroom practice and of other responsibilities is important:

- To assess an employee's ' performance in order to identify any particular strengths and areas for development
- To gaining useful information about good practice which might be shared across the Trust

All observation will be carried out in a supportive fashion.

Observation in the Trust may take the form of:

- Formal observations
- Learning Walks
- Drop-ins
- Peer observations for the purpose of staff development

Development and support

Performance management is a supportive process which will be used to inform continuing professional development. The Trust wishes to encourage a culture in which all colleagues take responsibility for improving their practice through research, discussion and appropriate professional development. The Trust will provide a market place of different opportunities for professional development linked to Trust and school improvement priorities and to the ongoing professional development needs and priorities of individual staff.

Feedback

All staff will receive constructive feedback on their performance throughout the year and as soon as practicable after observation has taken place or other evidence has come to light. Feedback will highlight particular areas of strength as well as any areas that need attention. Where there are concerns about any aspects of the employee's performance the reviewer will meet the member of staff to:

- give clear feedback about the nature and seriousness of the concerns
- give the employee the opportunity to comment and discuss the concerns
- agree any support (e.g. coaching, mentoring, structured observations), that will be provided to help address those specific concerns
- make clear how, and by when, the reviewer will review progress
- explain the implications and process if no – or insufficient – improvement is made.

When progress is reviewed, if the reviewer is satisfied that the employee has made, or is making, sufficient improvement, the performance management process will continue as normal, with any remaining issues continuing to be addressed through that process.

Informal Capability Process

Where a reviewer has a concern about performance there will normally be an informal period to improve performance. The purpose of this is to identify and examine any areas of support and guidance, to ensure that the colleague understands any future expectations of performance and, where appropriate, to develop a capability improvement plan leading to improvements in performance. Although this may result in a note of the discussion and any follow-up correspondence being kept on file, this will not be considered to be a sanction under the formal Capability procedure detailed below.

The employee should be asked to confirm that they agree with any action plan they are signing up to, that it is achievable and realistic, and they should raise any concerns that they have about the action plan with their reviewer.

In the event that the matter cannot be resolved informally within a reasonable timescale or the matter is too serious for the informal approach to be applied, the formal capability process detailed below will follow. The aim of the process is to improve performance. Although the stages of the capability process will normally be followed sequentially, the Trust may enter the process at any stage depending on the seriousness of the matter.

Transition to Formal capability

If the reviewer is not satisfied with progress and it has been moderated by a member of the Senior Leadership Team the employee will be notified in writing that the performance management system will no longer apply and that their performance will be managed under the formal capability procedure and will be invited to a formal capability meeting where they will have the right to be accompanied by a work colleague or a Trade Union Official. The capability procedures will be conducted as in part B of this policy.

Annual assessment

Teachers' performance will be formally assessed in respect of each performance management period. In assessing the performance of the Headteacher or Principal, the LGB will review the recommendations of the CEO, with additional advice, if appropriate, from any additional external advisor.

This assessment is the end point to the annual performance management process, but performance and development priorities will be reviewed and addressed informally on a regular basis throughout the year and at a mid-year interim meeting.

The employee will receive as soon as practicable following the end of each performance management period – and have the opportunity to comment in writing on - a written performance management report.

In The Trust, teachers will receive their written performance management reports by 31 October (31 December for the Headteacher or Principal). The performance management report will include:

- details of the teacher's objectives for the performance management period in question;
- an assessment of the teacher's performance of their role and responsibilities against their objectives and the relevant standards;
- an assessment of the teacher's professional development needs and identification of any action that should be taken to address them;
- a recommendation on pay where that is relevant. This will be done according to the principles in Section C of this Policy

The assessment of performance and of professional development needs will inform the planning process for the following performance management period.

5. Section B: Capability Procedure

Part B of this policy will be implemented in accordance with the provisions of the ACAS Code of Practice.

This procedure applies only to employees about whose performance there are serious concerns that the performance management process has been unable to address. At least five *working* days' notice will be given of the formal capability meeting. The notification will contain sufficient information about the concerns about performance and their possible consequences to enable the member of staff to prepare to answer the case at a formal capability meeting. It will also contain copies of any written evidence; the details of the time and place of the meeting; and will advise the employee of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

Timescales

Capability issues should normally be resolved within ten to twelve weeks, however, it is acknowledged that there may be circumstances when the process will take longer to complete. These may include annual leave, working patterns or ill-health where reasonable adjustments need to be made under the Equality Act 2010. Where this is anticipated, advice must be obtained from the Trust HR Advisors.

The period of monitoring under a first or final written warning following a formal review meeting will not normally exceed six weeks, (excluding school closure periods where appropriate), according to the needs of the individual and the school. Whilst every effort should be made to agree the appropriate length of this period of monitoring, where agreement cannot be reached, it will be set by the appropriate manager conducting the meeting.

Formal capability meeting

This meeting is intended to establish the facts. It will be conducted by:

- the Chair of Trustees (or his/her delegate) for the CEO and members of the Trust Central Team
- the Chair of the LGB (for Headteacher/Principal capability meetings)
- the Headteacher/Principal (or his/her delegate) for all other staff

The meeting allows the member of staff, accompanied by a companion if they wish, to respond to concerns about their performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected.

The person conducting the meeting may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the performance management process. In such cases, the capability procedure will come to an end. The person conducting the meeting may also adjourn the meeting for example if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.

In other cases, the meeting will continue. During the meeting, the person conducting the meeting will:

- identify the professional shortcomings, *for example, in the case of teacher performance, which of the standards expected of teachers are not being met;*
- give clear guidance on the improved standard of performance needed to ensure that the employee can be removed from formal capability procedures (*this may include the setting of new objectives focused on the specific weaknesses that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made*);
- explain any support that will be available to help the employee improve their performance;

- set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case but in straightforward cases should be no more than six weeks.
- warn the employee formally that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning.

Notes will be taken of formal meetings and a copy sent to the member of staff. Where a warning is issued, the employee will be informed in writing of the matters covered in the bullet points above and given information about the timing and handling of the review stage and the procedure and time limits for appealing against the warning.

Warnings will remain on a member of staff's personal file for the following period:

- A First Written Warning will remain active for six months
- A Final Written Warning will remain active for twelve months

If there is evidence within six months of the procedure ceasing (for a first written warning or within twelve months for a final written warning) that the employee has not sustained the level of performance required, the procedure may be resumed at any stage up to and including that stage previously reached.

Where there are no further concerns and the employee has sustained the level of performance required the warning will be disregarded unless similar concerns are raised shortly after its expiration.

Monitoring and review period following a formal capability meeting

A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. The member of staff will then be invited to a formal review meeting, unless they were issued with a final written warning, in which case they will be invited to a decision meeting (see below).

Formal review meeting

As with formal capability meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the employee of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent. The employee and their chosen companion will have an opportunity to present evidence and discuss any mitigation applicable. HR will also be present to advise the Trust/Academy reviewer.

If the person conducting the meeting is satisfied that the employee has made sufficient improvement, the capability procedure will cease, and the performance management process will re-start. In other cases:

- If some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period;
- If no, or insufficient, improvement has been made during the monitoring and review period, the employee will receive a final written warning.

As before, notes will be taken of formal meetings and a copy sent to the member of staff. The final written warning will mirror any previous warnings that have been issued. Where a final warning is issued, the member of staff will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale), may result in dismissal and given information about the handling of the further monitoring and review period and the procedure and time limits for appealing against the final warning.

Decision meeting

Where performance continues to be a concern, the employee will be invited to a Decision Meeting. As with formal capability meetings and formal review meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the employee of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.

If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end and the performance management process will re-start. If performance remains unsatisfactory, the employee will be informed that a recommendation will be made to the LGB or Board of Trustees (as appropriate) that the employee should be dismissed on the grounds of capability. The employee will be invited to attend a hearing convened for this purpose and will be given five working days' notice of this meeting.

Sustained Performance

It is necessary that once an employee meets their performance standards that they maintain that performance level. Whilst a capability warning is in place, should performance standards revert to an unacceptable level then the formal capability procedure will resume at the stage of the warning on the employee's record.

Appeals

If an employee feels that a decision to dismiss them, or other formal action taken against them, is wrong or unjust, they may appeal in writing against the decision within five days of the decision, setting out at the same time the grounds for appeal. Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a companion will apply as with formal capability and review meetings.

The appeal will be dealt with impartially and, wherever possible, by managers or governors who have not previously been involved in the case.

The employee will be informed in writing of the results of the appeal hearing as soon as possible.

6. Section C: Pay Progression

The Trust delegates decisions on pay progression within its schools to the LGBs provided that they adhere to the following principles:

- Decisions on staff pay will be taken in accordance with the Nolan principles of public life relating to objectivity, openness and accountability
- Decisions will ensure equality of opportunity for all staff and compliance with discrimination legislation
- Pay decisions will be taken in the context of the school and the Trust as a whole
- The LGB will use fair, transparent and objective criteria
- The LGB will have due regard to statutory guidance, conditions of service for staff and recommendations made by government agencies (such as the ESFA) and inspectorates (such as Ofsted)
- The LGB will pay due regard to the outcomes of the performance management process described in Section A
- The LGB will take in to account recommendations that are based on:
 - All of the performance management objectives (and not exclusively the objective relating to pupil progress data)
 - Employee performance demonstrating the behaviours we value (in the Trust as a whole and in the individual school)
 - For teachers, performance relating to statutory teacher standards
 - The quality of the evidence provided by the reviewee in demonstrating his or her contribution to the wider life of the school or Trust.

The CEO will moderate the pay recommendations made by headteachers/principals to the LGBs in order to ensure consistency across the Trust.

7. General Principles underlying this policy

Confidentiality

The performance management and capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the headteacher/principal and governance board to quality-assure the operation and effectiveness of the appraisal system

Consistency of Treatment and Fairness

The 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 for disabled employees. The Trust is aware of the guidance on the Equality Act issued by the Department for Education.

Sickness Absence during the Capability Process

Absence which is triggered by the capability procedure, and which management believe is likely to be long term, should be referred immediately to the occupational health adviser to assess whether the employee is fit for continued employment.

Short absences should not delay any part of the formal stage of the capability procedure.

Reasonable steps should be made to enable the employee to attend evaluation meetings, but where the employee is unable to attend, these may proceed if the absence is protracted and the operation of this procedure is a substantial factor in the illness. In such cases the failure to meet targets will not be discounted because of illness.

If the employee is absent from such meetings a full account of the evaluation should be provided in the letter confirming the decision taken.

Action against a Trade Union Official

Although normal capability standards apply to the performance of trade union officials who are employees of the Trust, no action under the formal procedure should be taken until the circumstances of the case have been discussed with a more senior trade union representative or full time official.

Monitoring and Evaluation

The Trust board and Headteacher/Principal will monitor the operation and effectiveness of the school's performance management arrangements. This will include ensuring that the arrangements minimise the impact on workload for all parties involved.

Retention

The Trust board and Headteacher/Principal will ensure that all written performance management records are retained and stored in a secure place in line with their Retention and Disposal Policy