

St Joseph's Catholic Primary School

Mater Christi Multi Academy Trust
Loving, Living, Learning Together



At St. Joseph's Catholic Primary School, we believe that every child is a unique creation of God.

We promote respect and care for one another following in the footsteps of the family Jesus wants us to be.

Caring for one another is at the centre of our school life.

We promise to provide educational opportunities and experiences to enrich the learning and well-being of the children by following the teaching of Jesus Christ.

Our school values its partnership with the Parish community and MAT, together enabling our children to become rounded, confident individuals, with an understanding of Gospel values as preparation for the world of work and life.

Capability of Staff Policy

Written by:	Date reviewed:	Approved by:	Date for next review:
Miss Rachael Griffiths	September 2023	Fr. John-Paul Evans	September 2024

The Governing Board of St. Joseph's Catholic Primary School adopted this policy in September 2021. It will review it on an annual basis.

This Policy has been developed in consultation with the Teacher Trade Unions.

1. PURPOSE

- 1.1 This policy sets out the arrangements that will apply when teachers, including headteachers, fall below the level of performance that is expected of them.

2. APPLICATION

- 2.1 This policy applies to the headteacher and to all teachers employed by the school, about whose performance there are serious concerns that the appraisal or performance management process has been unable to address.
- 2.2 The School has a separate policy in place for teacher appraisal.
- 2.2 Sections 8-16 of this policy outline the procedure that should be followed to manage matters of capability for teacher/headteachers in Schools. A flowchart outlining this procedure is at Appendix 1 of this policy.
- 2.3 A separate Capability Policy exists for school support staff.
- 2.4 Separate procedures exist for handling matters of misconduct or complaints made by parents or other persons outside the School.
- 2.5 The Headteacher*/Chair of Governors may wish to contact the appropriate representative of the Schools' HR Team for advice on the implementation and application of this policy.
- 2.6 Section 14 provides information about who in this school has the power to dismiss staff or decide that a member of staff should no longer work at the School. To preserve the integrity of the Capability Policy, in schools where the power to dismiss staff has been delegated to the headteacher, it would be appropriate for another member of the School Senior Leadership Team to take responsibility for the earlier stages of this procedure. This will then leave the headteacher available to consider the case for possible dismissal, without prior involvement in the case.
- 2.7 This procedure should be applied consistently and fairly so as not to discriminate against any particular group on the grounds of a protected characteristic under the Equality Act e.g. age, disability, gender reassignment, marriage/civil partnership, pregnancy and maternity, race, religion and belief, sex and sexual orientation.

- 2.8 The right to representation by a representative of a trade union or work colleague applies at the formal stages of this policy (section 9 to 16).

3. GLOSSARY OF TERMS

Teacher	Any reference to teacher within this policy refers to the person being monitored under this policy, which may also include the headteacher
Companion	The person who accompanies the teacher/headteacher to any meeting under the formal stage of this policy, who could be a work colleague or representative of a trade union. The Companion has the right to make statements, provide advice and ask questions on behalf of the teacher/headteacher, but not to answer questions on the teacher/headteacher's behalf
Headteacher*	Where there is an asterisk next to any reference to the Headteacher, it relates to cases where initial dismissal decisions have been delegated to the headteacher by the Governing Board (see Section 11). In such cases, the usual role of the Headteacher should be delegated to another member of the School Senior Leadership Team
School day	One of the 195 days of the published school year when a teacher is required to be available for work under the School Teachers' Pay and Conditions Document.

4. KEY PRINCIPLES

- 4.1 In most cases, issues relating to professional capability can be dealt with informally through the appraisal process without recourse to the Formal Capability Policy.
- 4.2 Teacher/headteachers, as professionals, are constantly striving to improve their skills and expertise in order to develop their effectiveness. In this regard, they may draw upon support available within the school and from the network of professional services provided by the Authority, Diocesan authorities and from their own professional associations.
- 4.3 At school level, teachers may look to the advice, support and encouragement available from colleagues, particularly those with

professional leadership roles such as senior members of staff, Deputy Headteachers and the Headteacher.

- 4.4 All teacher/headteachers should have clear job descriptions and be aware of the appropriate teacher standards, to ensure they fully understand their role as a teacher.
- 4.5 New teachers and experienced teachers taking up new posts may require induction support, particularly where there are changes to the role or additional responsibilities. Developments in the curriculum may require appropriate INSET and support programmes for the staff involved.
- 4.6 Newly Qualified Teachers should also benefit from the structured statutory induction programme.
- 4.7 These everyday processes of support, training and advice are fundamental to professional effectiveness and wherever possible any difficulties should be resolved informally in a spirit of partnership. Only where these processes do not succeed in overcoming the difficulties should consideration be given to entering the formal stage of the Capability Policy.

5. DEFINITIONS

- 5.1 'Incompetence/lack of capability' refers to situations where, due to a lack of capability and/or application, a teacher/headteacher fails to perform his/her duties to a professionally acceptable standard. Such situations should be dealt with through the appraisal process initially, and this policy if there is insufficient improvement under the appraisal process.
- 5.2 'Misconduct' is an act or omission by a teacher/headteacher which is considered to be unacceptable professional behaviour. It can range in seriousness from minor to gross misconduct. Such matters should be dealt with under the School Disciplinary Procedure.
- 5.3 Where complaints are made against teacher/headteachers from parents or other persons outside the school, the procedure for handling complaints in schools (revised 2009) should be used to investigate such complaints. At the conclusion of the investigation, the Headteacher*/Chair of Governors should inform the teacher/headteacher in writing of the outcome and of any subsequent action that may be taken, including action under this procedure, where relevant.

6. CONFIDENTIALITY STATEMENT

- 6.1 All parties involved in this policy will be expected to observe the principle of confidentiality in relation to the processes involved and any documentation that arises thereof.
- 6.2 Any correspondence or record of action taken will be retained in the teacher/headteacher's personal file and will not be recorded in any place where there is a risk of information being disclosed to any person who does not have a genuine reason for access to the information.
- 6.3 Documentation arising from the procedures involved in this policy will only be shared with individuals who have genuine reason for accessing this information, including those involved in monitoring performance in School, or those involved in any capability proceedings that may follow. The teacher should be informed if documentation relating to their appraisal is shared.
- 6.4 Documentation arising from the procedures involved in this policy should be stored securely and not stored, either electronically or manually, in any public areas in school/on the school's computer network.
- 6.5 To preserve the integrity of members of the Governing Board, specific information about any teacher/headteacher being dealt with under these procedures should not be shared at meetings of the school's Governing Board. This will ensure that governors are not tainted in the event that a dismissals and/or appeals committee needed to be convened. Any attempt by a member of the Governing Board to elicit information about a specific case would be inappropriate and could be prejudicial to the case. Any governor that is provided with detailed information on a specific case would be disqualified from being a member of any committee convened to consider that case, with the exception of the information that is circulated to committee members in advance of such a committee hearing taking place.

7. HEALTH & ATTENDANCE ISSUES

- 7.1 In the event that a teacher/headteacher commences a period of sickness absence during action under this policy, action under this policy should temporarily be postponed. Monitoring and assessment under this policy should be based on evidence of performance at work, which normally requires the teacher/headteacher to be present in School.
- 7.2 Where a teacher/headteacher commences a period of sickness absence whilst being monitored under this policy, the Headteacher*/Chair of Governors should consider a referral to the Occupational Health Unit (OHU). The Teacher/Headteacher should also be reminded of the support that may be available to them from their trade union/professional association.

7.3 Cases of sickness absence during the operation of the Capability Policy should be dealt with under the School's policy on the management of sickness absence.

7.4 In cases where the employee attributes the concerns about their performance to a disability or other ill health, the Headteacher*/Chair of Governors should consider making a referral to the OHU. The Headteacher*/Chair of Governors should then consider any advice provided by OHU, including any provided about making reasonable adjustments for the employee.

8. INFORMAL PROCEDURE

8.1 Where concerns arise about any aspects of the Teacher/Headteacher's performance, which cannot be resolved through the appraisal process, the Headteacher* or other member of the Senior Leadership Team/Governing Board (for Headteachers) will meet the Teacher/Headteacher to:

- give clear feedback to the Teacher/Headteacher about the nature of the concerns;
- give the Teacher/Headteacher the opportunity to comment and discuss the concerns, including any extenuating circumstances that have led to the concerns being raised;
- agree any support (eg coaching, mentoring, structured observations), that will be provided to help address those specific concerns;
- make clear how, and by when, the appraiser and/or member of the Senior Leadership Team/senior manager will review progress. It may be appropriate to revise any objectives/targets, and it will be necessary to allow sufficient time for improvement. Objectives should be SMART (Specific, Measurable, Achievable, Realistic, Timebound);
- explain the implications and process if no or insufficient improvement is made. This may include reference to the formal stages of the Capability Policy, and if so, a copy of this policy should be provided;
- indicate a meaningful timeframe during which the improvement should be demonstrated.

8.2 A model letter, which may be used to invite the Teacher/Headteacher to this meeting is provided at Appendix 2. A record of such a meeting should be taken and shared with the teacher/headteacher.

8.3 In cases involving a teacher other than the Headteacher, the appraiser (if not the Headteacher), should advise the Headteacher* that this meeting is taking place and then discuss the content and outcomes of the meeting with the Headteacher*.

- 8.4 Whilst there is no right to representation by a work colleague/trade union representative at this meeting, the Headteacher*/Chair of Governors may decide to offer that right. At the very least, the Teacher/Headteacher should be advised to consult their trade union representative.
- 8.5 When progress is reviewed following this meeting, if the appraiser is satisfied that the Teacher/Headteacher has made, or is making, sufficient improvement, the appraisal process will continue as normal, with any remaining issues continuing to be addressed through that process.
- 8.6 When progress is reviewed following this meeting, if the appraiser is not satisfied that the Teacher/Headteacher has made, or is making, sufficient improvement, the Teacher/Headteacher should be advised to seek the support of their trade union, and the Headteacher*/Chair of Governors should consider whether to convene a Formal Capability Meeting.

9. FORMAL PROCEDURE - FORMAL CAPABILITY MEETING

- 9.1 Where the informal capability process has failed to resolve concerns about a Teacher/Headteacher's performance, the Headteacher*/Chair of Governors will invite the Teacher/Headteacher to a Formal Capability Meeting. At least 7 school days' written notice will be provided of such a meeting.
- 9.2 During the meeting, the Headteacher*/Chair of Governors may be accompanied by the School Advisor and a representative of the Schools' HR Team. A note-taker may also attend to clerk the meeting.
- 9.3 The notification of the meeting will outline the concerns about performance and the possible consequences, along with any written evidence, in order to give the Teacher/Headteacher the ability to adequately prepare to answer the case at the formal capability meeting. The notification will also provide the date, time and location of the meeting and will advise the Teacher/Headteacher of their right to be accompanied by a companion who may be a work colleague or a representative of a trade union. The Teacher/Headteacher should also be provided with a copy of this policy.
- 9.4 If the Teacher/Headteacher's trade union representative is not available at the time allocated for the meeting, the meeting should be postponed and reconvened within 5 school days of the original date. The Headteacher*/Chair of Governors may liaise with the trade union representative to identify a mutually convenient date for the meeting.
- 9.5 The meeting is intended to establish the facts. It will be conducted by the Chair of Governors (for Headteacher capability meetings) or

Headteacher* (for other teachers). The meeting allows the Teacher/Headteacher 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.

9.6 During the meeting, or any other meeting which could lead to a formal warning being issued, the person conducting the meeting will:

- identify the areas of concern. For example, which of the standards expected of the Teacher/Headteacher are not being met;
- give clear guidance on the improved standard of performance expected, identifying any success criteria that might be appropriate and that may assess whether or not the necessary improvement has been made;
- invite the Teacher/Headteacher to provide an explanation/response to the concerns raised

9.7 At the end of the meeting, the person conducting the Formal Capability Meeting may conclude one of the following outcomes:

- i. 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 appraisal process;
- ii. that there are insufficient grounds for pursuing the capability issue and that the concerns should be addressed through the appraisal process, but that the Teacher/Headteacher should be provided with informal counselling/advice and/or written guidance or instruction;
- iii. that the concerns are not those of capability, but misconduct and as such, the person conducting the meeting may consider referring the matters through the school disciplinary procedure;

In i.-iii. above, action under the Capability Policy would cease;

iv. In cases where the person conducting the meeting believes that the formal capability procedure should continue, the person conducting the meeting will:

- (a) remind the Teacher/Headteacher of the improved standard of performance expected, identifying any success criteria that might be appropriate and that may assess whether or not the necessary improvement will be made;

(b) explain any support that will be available to help the Teacher/Headteacher improve their performance and consider any requests from the Teacher/Headteacher for such support;

(c) set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the nature and seriousness of the concerns within the individual case, and should be between four and ten weeks. It is for the school to determine the set period in each case. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place; and

(d) warn the Teacher/Headteacher 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.

9.8 A suggested template for an action plan covering iv. (a)-(c) above, is contained at Appendix 3.

9.9 The person conducting the meeting may adjourn the meeting at any time in order to seek advice, to arrange for further investigations, or because more time is needed in which to consider any additional information.

9.10 A request for an adjournment by any party should not be unreasonably refused.

9.11 Notes will be taken of the Formal Capability Meeting and a copy provided to the member of staff.

9.12 A written outcome of the Formal Capability Meeting will be provided to the Teacher/Headteacher within 5 school days. The written outcome will include the matters covered in (a)-(d) above and give information about the timing of the review stage. The outcome will contain the procedure and time limits for appealing against the warning. If a final written warning has been issued, the Teacher/Headteacher will also be informed that failure to achieve an acceptable standard of performance within the set timescale may result in referral to the Dismissals Committee of the Governing Board, with dismissal a possible outcome.

10. MONITORING AND REVIEW PERIOD

10.1 A performance monitoring and review period will be set during the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period.

10.2 If the Teacher/Headteacher was issued with a warning other than a final written warning, they will be invited to a Formal Review Meeting at the conclusion of the monitoring and review period.

10.3 If the Teacher/Headteacher was issued with a final written warning, they will be invited to a Decision Meeting at the conclusion of the monitoring and review period.

11. FORMAL REVIEW MEETING

11.1 The Formal Review Meeting will be conducted by the Chair of Governors (for Headteacher capability meetings) or Headteacher* (for other teachers).

11.2 At least 5 school days' written notice of a Formal Review Meeting will be provided and the notification will contain details of the time, date and place of the meeting and will advise the Teacher/Headteacher of their right to be accompanied by a companion who may be a work colleague or trade union representative.

11.3 During the meeting, the Headteacher*/Chair of Governors may be accompanied by the School Advisor and a representative of the Schools' HR Team. A note-taker may also attend to clerk the meeting.

11.4 If the person conducting the meeting is satisfied that the Teacher/Headteacher has made sufficient improvement, action under the Capability Policy will cease and the appraisal process will re-start.

11.5 In cases where the person conducting the meeting believes that there has been some progress/improvement and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period for a further 4-10 weeks. In such cases, a further Formal Review Meeting will take place at the conclusion of the monitoring and review period.

11.6 If the person conducting the meeting believes that there has been no or insufficient progress/improvement during the monitoring and review period, the Teacher/Headteacher will be issued with a final written warning and the monitoring and review period extended for a further 4-10 weeks.

11.7 Notes will be taken of formal review meetings and a copy will be provided to the member of staff. The final written warning will mirror any previous warnings that have been issued.

11.8 The Teacher/Headteacher should be provided with a written outcome of the meeting within 5 school days, which should provide details of any further monitoring and review period and the procedure and time limits

for appealing against the final written warning. The outcome should also inform the Teacher/Headteacher that they will be invited to a Decision Meeting at the conclusion of the further monitoring period, or earlier if additional performance concerns arise during the further monitoring period. Where a final written warning has been issued, the Teacher/Headteacher will be informed in writing that failure to achieve an acceptable standard of performance within the set timescale may result in a referral to the Dismissals Committee of the Governing Board/Headteacher Hearing*, with dismissal a possible outcome.

12. FINAL REVIEW & DECISION MEETING

- 12.1 The Decision Meeting will be conducted by the Chair of Governors (for Headteacher capability meetings) or Headteacher* (for other teachers).
- 12.2 At least 5 school days' written notice of a Decision Meeting will be provided and the notification will contain details of the time, date and place of the meeting and will advise the Teacher/Headteacher of their right to be accompanied by a companion who may be a work colleague or trade union representative.
- 12.3 During the meeting, the Headteacher*/Chair of Governors may be accompanied by the School Advisor and a representative of the Schools' HR Team. A note-taker may also attend to clerk the meeting.
- 12.4 If an acceptable standard of progress/improvement has been achieved during the further monitoring and review period, action under the Capability Policy will end and the appraisal process will re-start.
- 12.5 If the Teacher/Headteacher's performance continues to be a cause for concern, a decision will be made to refer the matter to the Dismissals Committee of the Governing Board or a Headteacher Hearing, with a recommendation to the Committee/Headteacher* that the Teacher/Headteacher should be dismissed from their role in the school.

13. DISMISSALS COMMITTEE/HEADTEACHER HEARING*

- 13.1 At least 7 school days' written notice of a Dismissals Committee/Headteacher Hearing will be provided. The notification will contain details of the time, date and place of the meeting and will advise the Teacher/Headteacher of their right to be accompanied by a companion who may be a work colleague or trade union representative. The Teacher/Headteacher will also be provided with a copy of the report that is to be presented by the Headteacher*/Chair of Governors (or other member of the Senior Leadership Team in cases of Headteacher Hearings) at the same time as the notification.

- 13.2 The Teacher/Headteacher has the right to present documentation to the Committee and this should normally be provided in advance of the meeting. Requests to present additional documentation during the hearing will be considered by the Committee or headteacher (in the case of a Headteacher Hearing).
- 13.3 Prior to a dismissal decision being taken, the Governing Board or Headteacher (in the case of a Headteacher Hearing) will consult with an appropriate member of the local authority (e.g. School Adviser and Schools' HR Team). In cases involving voluntary aided schools, the person conducting the meeting may also consult with the relevant Diocesan/Church Authority advisor.
- 13.4 The procedure to follow at a hearing of the Dismissals Committee/Headteacher Hearing* is contained at Appendix 4.

14. DECISION TO DISMISS

- 14.1 The School Staffing (England) Regulations 2003 and 2009 allow the Governing Board of any school to delegate the authority to make initial dismissal decisions to the Headteacher. As a result, the Headteacher becomes responsible for all action under the Capability Policy up to and including dismissal.
- 14.2 The Governing Board will need to take a decision as to whether they wish to delegate this responsibility to the Headteacher.

NB - To preserve the integrity of the Capability Policy, in schools where the power to dismiss staff has been delegated to the Headteacher, it would be appropriate for another member of the School Senior Leadership Team to take responsibility for the earlier stages of this procedure. This will then leave the Headteacher available to consider the case for possible dismissal, without prior involvement in the case.

- 14.3 Community Voluntary Controlled, Community Special, and Maintained Nursery schools only
In this school, the power to decide that a member of staff should no longer work at this school rests with the Governing Board°/has been delegated to the Headteacher°/ the Dismissals Committee° (°delete as appropriate).
- 14.4 Foundation, Voluntary Aided and Foundation Special Schools only
In this school, the power to dismiss staff rests with the Governing Board°/has been delegated to the Headteacher°/ the Dismissals Committee° (°delete as appropriate).

15. DISMISSAL

- 15.1 In the event that a decision to dismiss or decide that a member of staff should no longer work at this school is taken, the Teacher/Headteacher will receive due notice.
- 15.2 For the dismissal of a Teacher/Headteacher in a Community, Voluntary Controlled, Community Special or Maintained Nursery School, once the Governing Board has decided that the Teacher/Headteacher should no longer work at the school, it will notify the Local Authority of its decision and the reasons for it. Where the Teacher/Headteacher works solely at this school, the Local Authority will dismiss them within 14 days of the date of the notification. Where they work in more than one school, the Local Authority must require them to cease to work at this school. This notification does not apply for the dismissal of a Teacher/Headteacher in a Voluntary Aided School. However, such schools will need to carry out the necessary administration in relation to the dismissal of any Teacher/Headteacher under this policy, which may involve the Local Authority's Payroll Service.
- 15.3 The notice period will commence from the date that the decision to dismiss or determination that the Teacher/Headteacher should no longer work at the school is taken.

16. RIGHT OF APPEAL

- 16.1 If a Teacher/Headteacher wishes to appeal against any action taken by the Headteacher*/Chair of Governors under this policy (e.g. a warning, final written warning) or against a dismissal decision taken by a Dismissal Committee/Headteacher hearing, they should submit a written appeal within 5 school days of receipt of the written outcome, outlining the grounds for appeal.
- 16.2 The formal Capability Procedure will continue during the course of an appeal.
- 16.3 All appeals will be heard by the Appeals Committee of the Governing Board and will be heard without unreasonable delay. The same arrangements for notification (i.e. with 7 school days) and right to be accompanied by a companion will apply as with other meetings held under this policy.
- 16.4 Notes of the appeal hearing will be taken and a copy provided to the Teacher/Headteacher.
- 16.5 The Teacher/Headteacher will be informed in writing of the outcome of the appeal hearing as soon as possible, and no later than within 5 school days of the hearing.