CAPABILITY POLICY AND PROCEDURE

This Capability Policy and Procedure has been approved and adopted by the Governing Body on 24th November 2016.

Signed by Chair of Governors:

Signed by Headteacher:

DEFINITIONS

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

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

ii. 'Clerk' means the Clerk to the Governing Body appointed from time to time.

iii. '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 an accredited trade union representative or an official employed by a trade union who will be expected to make themselves available for the periods of time necessary to meet timescales under this Capability Policy and Procedure.

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

v. 'Governing Body' means the governing body of the School.

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

vii. '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.

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

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THIS POLICY DOES NOT CREATE CONTRACTUAL OBLIGATIONS ON THE SCHOOL

ix. 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.

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

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 procedure is to establish a structure to improve performance to the standards expected and to take appropriate action to address this where there has not been sufficient improvement.

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

1.4 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.

1.5 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. The process of managing unsatisfactory performance due to capability will not necessarily cease where the employee is absent on the grounds of sickness.

1.6 The School is committed to ensuring respect, objectivity, belief in the dignity of the individual, consistency of treatment and fairness in the operation of performance management as a Catholic school. 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

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for others and their gifts, recognition of the needs and achievements of others, challenge of self and others, personal growth and openness.

1.7 This Capability Policy and Procedure can be invoked at any time during any Appraisal Period as determined in accordance with the School's Appraisal Policy and Procedure.

1.8 The Appraisal Policy does not form part of any other procedure but relevant information from the appraisal process, including the Appraisal Report, may be taken into account in this Capability Policy and Procedure and/or the Disciplinary Policy and Procedure.

1.9 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.

1.10 The School will maintain records of all interviews and reviews which take place under this Capability Policy and Procedure. All data and evidence collected is to be shared between all the relevant parties, where appropriate.

1.11 In this policy "working day" means any day on which you would ordinarily work if you were a full time employee. In other words it will be different for teaching and non-teaching staff but will not be different on the basis of whether an employee is full-time or part-time.

1.12 In this policy "working week" means any week that you would ordinarily work.

2. APPRAISAL POLICY AND PROCEDURE – TEACHERS EXPERIENCING DIFFICULTIES

This Capability Policy and Procedure should, except in exceptional circumstances, only be invoked:

a) where the measures set out in Paragraphs 9 and 10 of the School's Appraisal Policy and Procedure for Teachers and/or Paragraphs 7.12 and 9 of the School's Appraisal Policy and Procedure for Support Staff have been exhausted; and

b) i) the employee has made insufficient, or no, improvement as required under such Policy after feedback;

b) ii) and/or is failing to respond to feedback in relation to unsatisfactory performance;

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

If a Headteacher is subject to this Capability Policy and Procedure he or she will normally continue to be responsible for the performance management process of the School.

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3. CAPABILITY, FINAL CAPABILITY AND APPEAL MANAGER

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

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) nominated by the Chair	Governors' Capability Panel appointed by the Vice-Chair	A non-staff Governor (other than the Chair or Vice Chair) nominated by the Vice-Chair	Governors' Appeal Panel appointed by the Vice-Chair
Other Leadership Spine and School Business Manager	Headteacher	Chair or a non-staff Governor nominated by the Chair	A non-staff Governor (other than the Chair or Vice Chair) nominated by the Vice-Chair	Governors' Appeal Panel appointed by the Vice-Chair
Other Teaching Staff	(1)A member of the Leadership Team (other than the Headteacher) appointed by the Headteacher or, in the event that (1) above cannot be complied with, (2) a person appointed by the Headteacher	Headteacher	Chair or a non-staff Governor (other than the Vice- Chair) nominated by the Chair	Governors' Appeal Panel appointed by the Vice-Chair
Other Support Staff	A person appointed by the Headteacher	Headteacher	Chair or a non-staff Governor (other than the Vice Chair) nominated by the Chair	Governors' Appeal Panel appointed by the Vice- Chair

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NB: In law, only the Governing Body, as the employer of staff, has the power to terminate employment, so the Governing Body will need to ensure that it has delegated this power to the Final Capability Manager in accordance with the table above. Where the Governing Body amends the table above, it will need to ensure that it has delegated its power to dismiss to the panel of persons and/or the individual that it appoints as the Final Capability Manager.

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, 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 copy of the Performance Report which they have prepared and which shall set out:

- 4.1.1 What aspects of your performance are causing concern;
- 4.1.2 What specific and achievable performance standards are expected; and
- 4.1.3 The support that has been provided to you so far.

4.2 At the First Capability Meeting you will have an opportunity to comment upon the Performance Report and to discuss the professional shortcomings, possible support and guidance and how performance should be monitored going forward.

4.3 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. The School's Appraisal Policy and Procedure shall resume.

4.4 If the Capability Manager concludes that your performance is unsatisfactory you will be given a First Written Warning and an improvement and support plan which will:

- 4.4.1 Identify the professional shortcomings
- 4.4.2 Give clear guidance on the improved sustainable standard of performance needed to exit the capability procedure
- 4.4.3 Explain the support that will be available, and how performance will be monitored over a period of time, referred to in this Capability Policy and Procedure as the Assessment Period
- 4.4.4 Identify the timetable for improvement and agree a date for the Second Capability Meeting
- 4.4.5 Make it clearly understood that failure to improve may lead to dismissal.

4.5 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.

4.6 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

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maximum of 12 working weeks in total, if there is sufficient evidence that the employee is progressing towards achieving the standards required.

4.7 You may appeal against a First Written Warning by writing to the Clerk within 5 working days of being sent the First Written Warning.

4.8 The fact of the appeal does not delay the commencement of the Assessment Period.

4.9 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 required standard of performance is not sustained, the Capability Manager will recommence the Capability Procedure at the stage it was previously concluded.

5. SECOND CAPABILITY MEETING

5.1 The Capability Manager will write to you inviting you to a Second 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 Second Capability Meeting, the Capability Manager will also send you a copy of the Updated Performance Report which they have prepared and which shall set out the assessments, support and evaluation of your performance during the Assessment Period.

5.2 At the Second Capability Meeting you will have an opportunity to comment upon the Updated Performance Report and to discuss the professional assessment and any continuing shortcomings, possible support and guidance and how performance should be monitored going forward.

5.3 The Capability Manager will confirm the outcome of the Second Capability Meeting in writing within 5 working days of the date of such meeting.

5.4 Where the Capability Manager concludes that the standard of performance is satisfactory you will no longer be subject to this Capability Policy & Procedure and shall be notified in writing. The School's Appraisal Policy & 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.

5.5 Where the Capability Manager concludes 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 consider extending the Assessment Period determined in accordance with paragraph 4.6 by up to an additional 4 weeks.

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5.6 Where the Capability Manager concludes that no, or insufficient, 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 setting the date for the Final Capability Meeting. You will be informed that failure to make satisfactory sustainable improvement will result in your dismissal.

5.7 You may appeal against a Final Written Warning by writing to the Clerk within 5 working days of being sent the Final Written Warning.

5.8 The fact of the appeal does not delay the commencement of the Further Assessment Period.

5.9 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.

6. FINAL CAPABILITY MEETING

6.1 The Final Capability Manager will write to you inviting you to a Final 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 Final Capability Meeting, the Final Capability Manager will also send you a copy of the Final Performance Report which they have prepared and which shall set out the assessments, support and evaluation of your performance during the Further Assessment Period.

6.2 At the Final Capability Meeting you will have an opportunity to comment upon the Final Performance Report and to discuss the continued professional shortcomings, where appropriate.

6.3 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.

6.4 Where the Final Capability Manager concludes that the standard of performance is satisfactory you will no longer be subject to this Capability Policy & Procedure and shall be notified in writing. The School's Appraisal Policy & 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 recommence the Capability Procedure at the stage where it was previously concluded.

6.5 Where the Final Capability Manager concludes that your performance remains unsatisfactory and is not capable of sustainable improvement the Final Capability Manager will recommend to the Governing Body that your employment is terminated in accordance with your contract

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of employment and the Governing Body will take the appropriate steps to terminate your employment.

6.6 You may appeal against a dismissal with notice by writing to the Clerk within 10 working days of being sent the notice of termination.

6.7 The fact of the appeal does not delay the commencement of the notice period.

6.8 In the event that your employment is terminated in accordance with Paragraph 6.5 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.

7.3 Any appeal should normally 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 The Appeal Manager is not required to hear oral evidence and may rely on written evidence.

7.5 If the Appeal Manager does decide to hear oral evidence, you will be given an opportunity to comment on it either by attending the meeting or by reviewing the notes of that oral evidence after the meeting (if you were not present at the meeting where such oral evidence was given).

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 outcomes of the Appeal Meeting are that:

(a) the Appeal Manager may uphold the decision of the Capability Manager or Final Capability Manager; or

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(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.

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.

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 may 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.

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9.7 Where you have identified your Companion to the relevant Manager and they have confirmed in writing to the relevant Manager that they cannot attend the date or time set for the meeting, the relevant Manager will postpone the meeting for no more than five working days from the date set by the School to a date or time agreed with your Companion provided that it is reasonable in all the circumstances. 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

Meetings under this procedure may:

10.1 need to be held when you were timetabled to teach.
10.2 exceptionally be held during planning, preparation and administration time if this did not impact on lesson preparation.
10.3 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

11. 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.

12. REVIEW OF THIS PROCEDURE

This procedure produced by the Catholic Education Service (CES) for use in Catholic Voluntary Aided Schools in England, was amended in September 2013 and updated in June 2016 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. This procedure will be reviewed by the CES in readiness for the academic year 2018/2019.

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