



# Performance Improvement (Capability) Policy

22/03/2024

<b>Version</b>	<b>Signed and agreed by</b>	<b>Date</b>	<b>Review by</b>
1.	Adam Coates CPO	10/01/2024	10/01/2026

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### Our Underpinning Beliefs and Values

Oasis is driven by the passionate belief that each human being is uniquely valuable and of equal importance. We all have something to bring, and we all need each other. We call the 'O' in Oasis our 'Circle of Inclusion'. Everyone matters. Everyone belongs. And because we're committed to inclusion, we're committed to ending inequality, injustice, and exclusion wherever and however we can. Our work in the youth secure estate is driven by this philosophy and prevailing commitment to equality and community transformation.

Our staff not only share in our vision but are also champions of our ethos and the Oasis 9 Habits. Our ethos is made up of:

- A **passion** to include everyone
- A **desire** to treat everyone equally, respecting differences
- A **commitment** to healthy and open relationships
- A deep sense of **hope** that things can change and be transformed
- A sense of **perseverance** to keep going for the long haul

Our 9 Habits are the behaviours through which we aim to reflect our ethos:

Compassionate	Joyful	Considerate
Patient	Honest	Forgiving
Humble	Hopeful	Self-controlled

Oasis Restore's key values are **Relationships**, **Curiosity** and **Community** which underpin our Care Framework:

**R** Relationships through building trust

**E** Empowerment through providing choices and nurturing responsibility

**S** Safety through providing consistency, a secure base and community

**T** Trauma-Informed practice through creating a psychologically informed culture and systems

**O** Ownership through providing life affirming opportunities

**R** Restoration through offering support and challenge

**E** Enquiry through encouraging openness and reflection

In using these principles throughout our policies, practice, and processes in the school, we will ensure that we create an environment of high-quality care and psychological safety for our students and staff.

In our approach to addressing any underperforming staff members within Oasis Restore we will strive to draw upon, make reference to and reflect on the Oasis Ethos , 9 Habits and our Framework of Care, knowing that being able to address issues early on and openly is in the best interest of everyone involved, the underperforming employee, the wider team and the students that we serve.

### **Who is this policy for?**

This procedure applies to all staff at all levels, in the organisation including:

- Current employees including permanent, fixed term, full time, term time only and/or part time once they have passed their probation period of employment
- Workers such as those supplied via an agency or staff on casual contracts
- Self-employed staff working personally for Oasis Restore
- Trainees on placement
- Apprentices

In the case of capability concerns regarding the Principal Director the responsibility to manage this lies with the Chief Operating Officer and in the case of capability concerns regarding the Chief Operating Officer responsibility to manage this lies with the Chair of the Board of Trustees (or another nominated Trustee).

This policy would not usually cover those on secondment to us who would normally be managed under their own employer's Capability process.

### **Purpose of this Policy**

The purpose of this procedure is to encourage and ensure that employees of Oasis Restore achieve and maintain acceptable and agreed standards of performance and perform their jobs to the best of their ability. It is designed to ensure fairness & consistency and to provide support towards improvement, in the management of employee under-performance.

'Performance Improvement' or 'Capability' (*the lack of*) refers to an employee's ability to perform the work expected of them to the level required in fulfilment of agreed contractual duties. This may be assessed by reference to an employee's skill, aptitude, competency or ability in relation to the job that they are employed to do, and this appears to be because the employee 'can't' (rather than 'won't') do something.

Oasis Restore accepts that very few employees choose to perform their work badly, make mistakes or fail to complete tasks. Consequently, in the event that an employee is underperforming, a manager should examine the circumstances to identify underlying causes and provide additional support to the employee to help them to improve to the required standard of performance, including an agreed support programme under this policy. PSD advice should also be taken at the earliest opportunity

### **Policy Statement (including procedural matters)**

Oasis Restore strives to ensure that it treats everybody equally, whilst respecting differences. We also strive for open and healthy relationships. In both following the principles of the Oasis Ethos and 9 habits as well as industry best practice, Oasis Restore believes that this policy and procedure not only complies with but exceeds the ACAS (Advisory, Conciliation, and Arbitration Service) Statutory Code of Practice on Disciplinary matters (including poor performance) and Grievances. At the time of writing the said Code can be located via the website of ACAS at <https://www.acas.org.uk/>

### **Roles and Responsibilities**

The procedure itself will explain in further detail as to the roles and responsibilities of parties involved with the Performance Improvement process, sometimes also known as the 'Capability' procedure. The below is a summary, though not an exhaustive list, of some of the key roles and responsibilities of each party. It is a given that all parties involved act professionally, fairly and respectfully at all times, even when emotions may on occasion understandably run high.

#### **Managers, Senior Leaders and Hearing Panels are responsible for:**

- Responding promptly, fairly and reasonably sensitively to underperformance
- To ensure that all staff reports are clear about their roles and responsibilities within their job and the standards of performance required of them.
- To ensure that employees are given the required training and instruction to be able to effectively carry out their role.
- Attending/chairing formal and informal capability meetings and/or appeal hearings as required;

- Complying with this policy and procedure so that underperformance can be addressed fairly, honestly and promptly
- Ensuring that this policy is applied consistently and that colleagues are aware of this policy.
- Prioritising access to training for those managing performance (including ensuring they themselves attend).
- Panel Chairs will need to transparently ensure that steps are taken to monitor that any outcome actions are appropriately implemented via management.
- To be open to constructive feedback

**Colleagues are responsible for:**

- Taking personal responsibility for their own performance and behaviour
- To work with managers constructively to address any underlying issues which may be affecting their performance
- Making every reasonable effort to improve their performance at the earliest opportunity
- Utilising all opportunities to develop and flourish whether this be through CPD, one to ones, supervision meetings or group therapeutic practise sessions
- Complying with this policy and procedure so that any issues of under performance may be resolved.
- Where you believe that a disability (e.g., hearing difficulties, chronic fatigue etc.) or language skills (e.g., English is not your first language) may impact on the ability to participate as appropriate in the procedure, it is your responsibility to raise this with your line manager and/or a member of People Services as soon as possible. In such cases Oasis Restore would provide appropriate reasonable support/adjustments during informal and formal proceedings. Any pertinent Panel members should also be advised on any reasonable adjustments to be made as applicable.
- To be open to constructive feedback

**People Services and Development (PSD) Team are responsible for:**

- Providing advice and guidance to all parties on capability procedures;
- Advising and supporting on the management of individual cases;
- Updating this policy as appropriate to ensure compliance with legislation, best practise and feedback
- Making available training for those investigating and hearing grievances. Such training will be **mandatory**
- To be open to constructive feedback
- Junior members of PSD may clerk formal meetings where available too

**Chosen Companions are responsible for complying with the following rules:**

At any Capability Hearing or Appeal the companion will be allowed to address the meeting in order to:

- put forward the employee's case
- sum up the employee's case
- respond on the employee's behalf to any view expressed at the hearing
- confer with the employee during the meeting.

The companion does not, however, have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it, or prevent the employer from explaining their case.

**Procedure**

**Stage 1 – Detailed Development Program (DDP)- Staff Experiencing Difficulties**

Any concerns regarding an employee's performance should be discussed with them at the earliest opportunity, and managers should try to resolve issues of minor incapability informally and in a supportive manner in accordance with this Policy:

This is managed under the Personal and Professional Development policy.

**Stage 2 - Formal Stage- Performance improvement meeting**

Where stage 1 does not lead to a satisfactory improvement in your performance, you will transition to this formal stage and you will be invited to a performance review meeting.

The purpose of this meeting is to discuss your performance and decide what measures should be taken to help you to improve your performance to an acceptable level. The meeting will be conducted by your manager. Where it is considered appropriate, a member of the PSD department may also be present on such occasions you will be given the option to be accompanied either by a trade union representative or workplace companion.

At the meeting, you will be given an opportunity to ask questions, comment on the issues and put forward any explanation you may have for the matters identified by your manager as amounting to poor performance.

The outcome of the meeting may be:

- a decision to take no further action;
- a decision to refer the matter for investigation under the disciplinary procedure; or
- the implementation of a performance improvement programme (see below).

### *Performance improvement programme*

A performance improvement programme is a series of measures designed to help you to improve your performance. We will seek to agree each measure with you, but reserve the right to insist on any aspect of the performance improvement programme if agreement cannot be reached.

Each programme will be tailored to the particular situation, but will cover the following elements:

#### *Targets*

The particular areas in which improved performance is needed and on what criteria your performance will be assessed. Where appropriate, we will set specific targets that will need to be achieved either by the end of the programme or at identifiable stages within it.

#### *Timescale*

The overall timescale in which the necessary improvement must be achieved, together with the timescale for reaching individual milestones where appropriate.

#### *Measures*

The measures we will take to support you in improving your performance. This may include:

- training;
- additional supervision;
- the reallocation of certain duties; and
- the provision of additional support from your colleagues.

#### *Feedback*

You will be given reasonably regular feedback from your line manager indicating the extent to which you are on track to deliver the improvements set out in the programme.

If, at any stage during the programme, the applicable manager feels that your performance is not progressing in a satisfactory way, a further meeting may be held with you to discuss this, and where appropriate, your programme may be amended and/or extended or escalated to the next stage if required.

#### *Review*

At the end of the programme, your performance will be reviewed. If satisfactory progress has been made, we will confirm this verbally and in writing. If the applicable manager feels that satisfactory progress has not been made, your performance improvement programme may be extended and/or amended. Alternatively, you may be asked to attend a formal hearing under stage 3 of this procedure (see Stage 3 below).

#### *Ongoing review*

Following the successful completion of a performance improvement programme, your performance will continue to be monitored. If, at any stage during the following 12 months, your performance again starts to fall short of an acceptable standard, the applicable manager may decide to initiate either Stage 2 or Stage 3 of this procedure, advice from PSD should be taken.

### **Stage 3 - Formal hearing**

Where stage 2 does not lead to a satisfactory improvement in your performance, you will be invited to a Stage 3 formal performance management hearing.

You will be informed in writing of the grounds on which the hearing is being convened. The letter will set out sufficient information and examples of why the applicable manager believes your performance still falls short of an acceptable standard.

The hearing will be conducted by at least one Senior Leader and a member of the PSD department may attend to provide advice. You will be entitled to be accompanied by a fellow employee or a trade union official. The meeting will also be clerked.

At the hearing, you will be given an opportunity to ask questions, comment on the issues and to put forward any explanation you may have for the matters identified by the applicable manager as amounting to poor performance.

The outcome of the meeting may be a decision to:

- take no further action;
- refer the matter for investigation under the disciplinary procedure (if it is not deemed to be a capability matter);
- institute another performance improvement programme; or
- issue a formal warning.
- Consideration of redeployment to another role (this would be via mutual agreement and may involve a reduction in salary, advice from PSD must always be sought)
- Consideration of reduction of responsibilities (this would be by mutual agreement and ordinarily involve a reduction in salary in proportion to the reduction of responsibilities, advice from PSD must always be sought)
- Make a referral to Occupational Health

A formal warning will be issued if it is concluded that reasonable steps have been taken that should have allowed you to perform to an acceptable standard, but that these measures have not worked. The warning will explain the nature of the improvement that is required in your performance and state the timescale for making these improvements. It will also explain that, if the necessary improvement does not take place, you may be dismissed.

The warning will remain current for a period of 12 months, after which it will cease to have effect.

Where you are issued with a formal warning in accordance with this procedure, you will have a right of appeal.

### **Stage 4 - Dismissal hearing**

If you have been issued with a warning under stage 3 that remains live and the applicable manager believes that your performance is still not acceptable, the matter may be referred to a performance dismissal hearing.

You will be informed in writing of the grounds on which the hearing is being convened but where possible you will also be told verbally as well. The letter will set out sufficient information and examples of why the applicable manager believes your performance still falls short of an acceptable standard. You will be given 10 working days notice to attend the meeting, during this time you may be placed on alternative duties, be instructed to work from home, or placed on gardening leave or suspension.



The hearing will be conducted by at least one Senior Leader accompanied by a senior member of PSD. You are entitled to be accompanied by a fellow staff member or trade union official.

At the meeting, you will be given an opportunity to ask questions, comment on the issues and to explain any issues around your performance or mitigating circumstances.

The outcome of the meeting may be:

- a decision to take no further action;
- an extension of the performance management warning (or the issuing of another one where relevant)
- a discretionary offer to redeploy you to alternative work; or
- a decision to dismiss you.

Any offer to redeploy you will be entirely at our discretion. Such an offer will be made only where we are confident that you will be able to perform well in the redeployed role. While you are free to refuse any offer of redeployment, the only alternative available will usually be dismissal. The alternative role may involve a reduction in salary or authority or both.

If we believe that there is no alternative role available and suitable for you and that you have not met an acceptable standard of performance, you may be dismissed. A decision to dismiss will only be taken by a Senior Leader who has the authority to do so.

The decision to dismiss together with the reasons for dismissal will be set out in writing and sent to you. Any dismissal will be with full notice (normally served on Gardening Leave) or a payment in lieu of notice.

Where you are dismissed in accordance with this procedure, you will have a right of appeal.

## **Appeal**

You have a right of appeal against a sanction issued under stages 3 or 4 of this procedure. A request for an appeal should be sent in writing to the Chair of the original Panel or the PSD Advisor within five working days of being informed of the sanction. Your letter should set out the grounds on which you believe that the decision was flawed or unfair.

An appeal hearing will be convened to consider the matter. It will be chaired by a different Senior Leader who will be accompanied by a senior member of PSD. You will be entitled to be accompanied by a fellow employee or a trade union official.

At the hearing, the decision to impose the sanction will be reviewed and you will be entitled to make representations about the appropriateness of that decision.

The result of the hearing will be either to confirm the sanction, or substitute any outcome that was available to the panel conducting the hearing at which the sanction was imposed on you.

The outcome of the appeal will be confirmed to you in writing, explaining the grounds on which the decision was reached. The outcome of the appeal will be final.

## **Additional Matters Regarding Hearings**

### **Accessibility**

If any aspect of the capability procedure causes any party involved difficulty on account of any disability or underlying health condition, or if they need assistance for example, because English is not their first language, the person concerned should raise this issue with either with a member of PSD, their Line Manager or the Panel Chair, who will consider and help implement any reasonable adjustments.

### **Grievances**

Where an employee raises a grievance during the capability process the capability process may be temporarily suspended or where appropriate the manager addressing the performance issues may be temporarily substituted in order to deal with the grievance and/or the underperformance dependent on the known circumstances of each particular case. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.

### **Non-Attendance at a Stage 3 or Stage 4 Meetings**

If either the employee or their representative is unable to attend either a Stage 3 or Stage 4 meeting due to sickness or another substantial and valid reason, the meeting may be postponed and normally rearranged for within 10 working days of the original meeting date.

If the employee or their representative is unable to attend this second re-arranged meeting, the meeting may be held in the employee or representative's absence. However, absent employees will have the option of requesting that their representative be allowed to present the case in their absence or to present any evidence in writing or remotely .

### **Recordings of meetings**

One of the Oasis Ethos statements is open honest relationships, therefore parties involved in a hearing/meeting should not covertly record it. Any breach of this provision may lead to disciplinary procedures against anyone found in breach of this.

Ordinarily written minutes will be taken of any meeting/hearing and shared for review, but where requested with reasonable notice, Oasis Restore may permit the meeting to be recorded electronically where it has the equipment available to do so and where typing up the recording would not come at an unreasonable cost. For example, where the employee has a visual impairment, it may be

appropriate as a reasonable adjustment under the Equality Act 2010. All participants at the meeting should be informed that the meeting will be recorded and the need to obtain consent for that to happen.

Where Oasis Restore either decides at its own discretion to record a meeting with consent of those in attendance (such as when it is not able to source an experienced minute taker) or permits a request that the meeting/hearing to be recorded electronically, it will take responsibility for making the recording (whether it is video or audio) and typing up the audio transcript to share. Hearings held via MS Teams (or any other equivalent mechanism such as Zoom) would normally be video recorded rather than audio recorded given the nature of that technology, if all parties consent to that.

All records relating to underperformance matters should be stored confidentially and securely on the individual's personal file, and in accordance with the Data Protection Act 2018. Records should be retained for six years after employment ceases, after which time they must be securely destroyed. The employee may also wish to keep records of events to support their case but should keep them confidential at all times

### **Data Protection and Confidentiality**

Oasis Restore processes personal data collected during performance improvement procedure in accordance with its [data protection policy](#). In particular, data collected as part of the procedure is held securely and accessed by, and disclosed to, individuals only for the purposes of managing the capability procedure or monitoring of equal opportunities, and the analysis of positive industrial relations and commercial risk. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the Oasis Restore's data protection policy immediately. It may also constitute a disciplinary offence, which may be dealt with under the disciplinary procedure

### **Training requirements**

All managers and senior staff are required to be trained in managing performance

### **Equality Monitoring**

Oasis Restore is fully committed to the broad principles of social justice and is opposed to any form of discrimination or oppression. It therefore willingly accepts not only its legal responsibilities but also wishes to embrace best practice in all areas of its work in order to secure equality of both treatment and outcome for all.

Oasis Restore is therefore committed to ensuring that no-one is treated in any way less favourably on the grounds of personal differences such as race; colour; national, ethnic or social origin; gender (including reassigned gender); sexual orientation; religious belief; age; disability; marital status; caring responsibilities or political or other personal beliefs.

The Leadership Team of Oasis Restore will implement all necessary action and training to ensure its commitments with regard to equality of treatment and outcome are fulfilled and will regularly monitor and review progress made in this respect.

We will ensure that employment and development opportunities are available to those who are, or who become, disabled on an equal footing with those without a disability, adapting jobs wherever possible to make them accessible. Oasis Restore will ensure that pay decisions focus on capability to do the job based on evidence.

To ensure that Oasis Restore continues to meet its public sector equality duty we will work with staff representatives at our employee Information and Consultation Forum to seek feedback on current circumstances and future aims.

**The requirements that apply to this policy**

The ACAS statutory Code of Practice on discipline (including poor performance) and grievance procedures.



## Document Control

### Changes History

Version	Date	Owned and Amended by	Recipients	Purpose
1	23/03/23	Head of People Development	COO and Lead BP	Review first draft of policy
1	22/09/23	CPO	Leadership folder	Launch on 25/09/23
<u>21</u>	10/01/24	CPO	Leadership policy folder	Incorporating Appraisal policy DDP stage and training on 12 <sup>th</sup> January 2024
2	22/03/2024			Put on all staff teams portal
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### Owner

The People Services and Development Team

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