

CAPABILITY POLICY

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1. Introduction

Academy and Trust leaders have a responsibility to ensure that pupils receive the best educational opportunities available to them. One of the key elements is the quality of provision provided by ensuring that all colleagues are performing to professionally acceptable standards. It is a statutory requirement for Trusts to have a Capability policy for teaching staff. Whilst there are no statutory regulations for support staff regarding performance, it is good practice to have a fair and equitable scheme for all staff. This policy covers all staff, where performance is not to the professionally acceptable standards. Capability concerns maybe about a single matter or a number of related issues.

This policy sets out the Trust’s formal capability procedure. It replaces the statutory guidance “Capability Procedures for Teachers” that was issued in July 2000. Capability procedures apply only to members of staff about whose performance there are serious concerns that the appraisal process has been unable to address.

This policy sets out the formal capability procedure and reflects the ACAS Code of Practice on disciplinary and grievance procedures.

This policy has been provided as a Trust level resource for BDAT and does not form part of an employee's contract of employment save for the Notice Period clause (below) which amounts to a collective agreement and forms part of every colleague's contract of employment.

2. Policy

The Trust adopted this policy and procedure after consultations with the recognised trade unions. It will be reviewed tri -annually with the JCNC.

The use of a Capability Policy in the Trust will be a supportive and developmental process which is designed to ensure that all members of staff have the skills and support they need to carry out their role effectively. It will help to ensure that staff are able to continue to improve their professional practice and to develop in their professional roles.

The Trust is committed to ensuring consistency of treatment and fairness in the operation of its performance management and capability support processes.

Application of the policy

The Capability Policy will be used to address any specific concerns that are raised about a member of staff's performance and to provide a more tightly focussed strategy of support when the normal appraisal cycle has been unable to address, or specific concerns that fall outside of the normal appraisal system.

The right to be accompanied by a trade union representative or work colleague, applies at all stages of this procedure.

Although it is not a legal requirement, the Trust may discuss the matter with its HR Advisory Service at any stage of the Capability and Appeal process.

The Trust has delegated the following powers to the following levels of staff as described in Appendix one.

Transition to Capability meeting

If a staff member demonstrates serious underperformance and/or has not responded to support provided within the Appraisal Policy, they will be notified in writing that the appraisal system will no longer apply and that their performance will be managed under the capability procedure and will be invited to a formal capability meeting. A transition meeting may be held at any stage of the appraisal cycle.

The employee may be supported by a trade union representative or work colleague and will have at least 5 working days' notice of the meeting if the date had not been agreed at an earlier stage in the appraisal procedure.

The transition to capability meeting will provide an opportunity to review progress towards meeting the appraisal objectives. The process for the meeting will be as follows:

1. A summary of the concerns will be given at this meeting by the transition to capability officer who may be assisted by another manager or HR. Please see Appendix 1 for roles.
2. The staff member will be provided with an opportunity to respond.
3. The transition to capability officer will express a view on whether the appraisal process should remain in place or whether formal capability proceedings should be started.
4. The employee, supported by the trade union representative or accompanying work colleague, may make representations regarding their performance and the objectives set including progress made in meeting these.
5. If it is decided that transition to Stage 1 of the Capability Policy is inappropriate at this time, then the staff member will continue to be supported with an Action Plan, as described in the Appraisal Policy for staff experiencing difficulties, and a new timescale for improvement will be set together with a date for a review meeting.
6. If the outcome of the transition to capability meeting is that capability procedures will continue and progress to Stage 1 of the Policy, the staff member will be notified in writing that the appraisal system will no longer apply and that their performance will continue to be managed under the capability procedure. The staff member will also be informed that as they are moving into the capability process this will impact on the application of the pay progression policy.
7. The parties should agree a date when the Stage 1 Formal Capability Meeting will be held (within 10 working days of the Transition to Capability Meeting), ensuring that the written notification of the meeting, the evidentiary documents and a copy of the procedure are supplied to the employee a minimum of 5 working days ahead of the meeting. Any additional documents supplied by the employee should be done so no later than 3 working days prior to the meeting.

Stage 1 - Formal Capability meeting

The written notification of the meeting, together with the evidentiary documents and a copy of the procedure should be supplied to the staff member a minimum of 5 working days ahead of the meeting.

This meeting is intended to clearly establish the concerns around the employee's performance and the support that they may require to successfully address them. It will be conducted by the Meeting Officer.

The meeting allows the staff member, accompanied by a work colleague or a trade union representative who has been certified as being competent by the union to respond on behalf of their member 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. Evidence may be submitted at this stage.

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 appraisal process. In such cases, the capability procedure will come to an end. The person conducting the meeting may also adjourn the meeting if, for example, 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, or any other meeting which could lead to a formal warning being issued, the person conducting the meeting will:

1. Identify the professional areas for development to enable performance standards to be met, (for example which of the standards expected of teachers are not being met).
2. Give clear guidance on the improved standard of performance needed to ensure that the employee has every opportunity to improve their performance. This may include the setting of new objectives focused on the specific areas of development that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to establish whether or not the necessary improvement has been made.
3. The staff member may request an adjournment at any point in order to consider the management proposals and develop alternative or additional suggestions.
4. Explain any support that will be available to help the staff member to improve their performance.
5. 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. This will normally be at least four weeks depending on the time required for support and assessment processes. It is for the Meeting Officer to determine the set period. It should be reasonable and proportionate and should provide sufficient opportunity for an improvement to take place.
6. Advise the staff member formally that failure to improve within the set period could lead to dismissal. Normally, a warning will be issued where applicable.
7. In very serious cases, where the progress of pupils is being seriously jeopardised or where there are serious concerns on the grounds of health and safety this warning could be a written/final warning being issued with a four-week period for improvement being given.

Notes of this formal meeting will be taken, and a copy sent to the member of staff. Where a warning is issued, the staff member will be informed in writing in addition to 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.

There is a right of appeal to the Appeals Officer. Details of the appeal should be provided in writing and must contain the grounds for appeal within 5 days of the decision being communicated.

A performance monitoring and review period (at least four weeks) will take place following the formal capability meeting. This will be in adherence with the timescales set out above and determined at the formal capability meeting. Monitoring, evaluation, guidance and support will continue during this period. Following the review period, the member of staff will be invited to a Formal Capability Review Meeting.

Stage 2 – Formal capability review meeting

The employee has the right to be accompanied by a work colleague or trade union representative who has been certified by their union as being competent.

The written notification of the meeting, together with the evidentiary documents and a copy of the procedure should be supplied to the staff member a minimum of 5 working days ahead of the meeting. The staff member will be invited to submit their evidence prior to the meeting with details of the timescale of the submission of evidence detailed in the letter.

Following discussion with the employee (and their representative) of the evidence and the progress made, if the Meeting Officer conducting the meeting is satisfied that the staff member has made sufficient improvement, the capability procedure will cease, and the appraisal process will re-start. In other cases:

1. 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.
2. If no, or insufficient improvement has been made during the monitoring and review period, the staff member may receive a final warning.

Notes of this formal meeting will be taken, and a copy sent to the member of staff. Where a warning is issued, the staff member will be informed in writing in addition to 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. The 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 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. There is a right of appeal to the Appeals Officer. Details of the appeal should be provided in writing and must contain the grounds for appeal within 5 days of the decision being communicated.

At the end of the monitoring and review period (at least 4 weeks), the member of staff will be invited to a final capability decision meeting. The staff member must be advised that dismissal is a possible outcome of the Stage 3 meeting.

Stage 3 – Final capability decision meeting

The employee has the right to be accompanied by a work colleague or trade union representative or who has been certified by their union as being competent.

The written notification of the meeting, together with the evidentiary documents and a copy of the procedure should be supplied to the staff member a minimum of 5 working days ahead of the meeting. The notification will give details of the time and place of the meeting and will advise the member of their right to be accompanied by a work colleague or trade union representative who has been certified by their union as being competent.

If the Stage 3 meeting finds that an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end, and the appraisal process will re-start.

If performance remains unsatisfactory, the Meeting officer may:

- i) Order a further period of support to allow the employee the opportunity to demonstrate the further improvement required if they believe that there has been some progress and that there is a likelihood of the staff member being able to reach the required standard of performance with additional support and time for improvement. In this case the Meeting officer will adjourn the meeting for a period of at least four working weeks when it will reconvene to consider whether an appropriate standard of work has been achieved or whether to go ahead with a decision to dismiss the employee.
- ii) make a decision to dismiss the employee on the grounds of lack of professional capability.

NOTE: In Multi Academy Trusts the Trust is the employer but the power to dismiss can be delegated to the CEO / Headteacher. The CEO of the Trust must be consulted on the decision before the dismissal is confirmed. Appropriate HR and Legal advice will also be sought and retained.

The employee will be informed as soon as possible, and in any event within 10 working days, of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal. Any Appeal will be heard by the Appeal Officer.

Appeal

All employees have the right of appeal against dismissal.

Appeals must be lodged detailing the grounds for appeal in writing to the Appeal officer within five working days of the outcome letter being communicated to the employee.

If the employee is appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the appeal is successful the employee will be reinstated with no loss of continuity of pay or service.

If the employee raises any information or evidence in their appeal, the appeal officer may need to carry out further investigation. If any new information or evidence comes to light the appeal officer will provide the employee with a summary including where appropriate, copies of additional relevant documents and witness statements. The employee will have five working days to consider this information before the hearing.

The Trust will give the employee written notice of the date, time and place of the appeal hearing at least five working days beforehand.

The appeal hearing may be a complete re-hearing of the matter or it may be a review of the fairness of the original decision in the light of the procedure that were followed and any new information that may have come to light. This will be at the Trust discretion depending on the circumstances of the appeal. In any event the appeal will be dealt with as impartially as possible.

Where possible, the appeal hearing will be conducted impartially by a more senior manager who has not been previously involved in the case. The employee has the right to be accompanied by a work colleague or trade union representative who has been certified by their union as being competent to the appeal hearing.

The appeal officer may adjourn the appeal hearing if the Trust need to carry out further investigation in the light of any new points the employee has raised at the hearing. The employee will be given reasonable opportunity, normally five working days, to consider any new information obtained before a decision is given.

The appeal officer may:

- confirm the original decision
- revoke the original decision
- issue a different sanction

The appeal officer will inform the employee in writing of the final decision as soon as possible, and normally within five working days of the appeal.

There will be no further right of appeal.

References

The Trust recognises that it has a duty to other employers to give truthful and balanced references and it is the policy of the Trust that any references provided will state, in accordance with the above regulation, if an employee had been subject to formal capability procedures in the preceding 2-year period. For the purposes of clarity, it will be deemed that an individual has entered the formal capability procedures once they have attended the Transition to Capability Meeting.

The Line Manager must, at the request of a Governing Body or proprietor of the employer requesting the reference, provide written details of the duration and outcome of the proceedings and the concerns which gave rise to the actions carried out under the Capability Procedure.

4. General Principles Underlying This Policy

ACAS Code of Practice on Disciplinary and Grievance Procedures

The conduct of the formal capability stage will be undertaken in accordance with the provisions of the ACAS Code of Practice. ACAS publish non-statutory guidance called Conduct and capability procedures when managing performance <https://www.acas.org.uk/capability-procedures> and [Employment Rights Act 1996 \(legislation.gov.uk\), Section 98\(3\)\(a\)](https://www.legislation.gov.uk/ukpga/1996/42/section/98/3/a).

Consistency of Treatment and Fairness

The Trust is committed to ensuring consistency of treatment and fairness and will abide by all relevant equality legislation.

Sickness

Other than for cases of very short absence, if an employee commences sick leave whilst subject to the BDAT Capability Procedure, the Capability Procedure should continue until specific medical advice is received which indicates that the employee is unable to participate in the Capability Procedure (not simply a note of inability to work).

Until the receipt of such specific medical advice the employee will be expected to continue to participate in the Capability Procedure and to attend any scheduled meetings. A failure to do so shall result in the suspension of Occupational Sick Pay until such time as the employee attends a reconvened meeting (with no back pay due). SSP may continue to be payable during such period.

Absence triggered by the Capability Procedure will be referred immediately to Occupational Health by BDAT. The employee is obliged to co-operate fully with the Occupational Health process – and should the employee fail to comply with their obligations (set out above) then Occupational Sick Pay may be suspended during such period until the employee either attends such appointment or provides such evidence.

Should the employee remain off work sick for a substantial length of time following the triggering of the Capability Procedure then BDAT may invite the employee to a Consideration Meeting. The employee is obliged to attend the Consideration Meeting (and any failure to attend – without specific medical evidence that the employee is incapable of attending (not simply a medical certificate of an inability to work) may result in the suspension of Occupational Sick Pay) and may be accompanied by a union representative or colleague. If the employee is unable to attend the Consideration Meeting then it may proceed in the employee's absence.

At the Consideration Meeting – BDAT will consider the employee's absence, the stage reached in the Capability Procedure, the medical advice received (both Occupational Health advice and any advice from the employee's own medical practitioner) and will take a view on whether it expects the employee to return to active service with BDAT. This meeting will cover the issues required for it to be the preliminary meeting specified in the Medical Capability process.

If at the Consideration Meeting BDAT considers that it is unlikely that the employee will return to active service with BDAT then BDAT may move to a Medical Capability Hearing.

Grievances

Where a member of staff raises a grievance during the appraisal or capability process, the appraisal or capability process may be temporarily suspended in order to deal with the grievance. Where the grievance and appraisal or capability cases are related it may be appropriate to deal with both issues concurrently.

Confidentiality & Professional Relationships

The appraisal and capability processes will be treated with confidentiality. Only the appraiser's line manager or, where they have more than one, each of their line managers will be provided with access to the appraisee's plan recorded in the appraisee's statements. This will be done upon request and only where this is necessary to enable the line manager to discharge their line management responsibilities. Appraisees will be consulted on requests for access to statements in the context of this policy.

The process of gathering evidence for performance review will not compromise normal professional relationships between staff. The Governing Body recognises that the appraiser will consult with, and seek to secure the agreement of, the appraisee before seeking information from other colleagues about the work of the appraisee.

However, the desire for confidentiality does not override the need for the Trust to quality-assure the operation and effectiveness of the appraisal system. The Principal/Head of School or appropriate colleague might, for example, review all staff members' objectives and written appraisal records personally – to check consistency of approach and expectation between different appraisers. The Principal/Head of School might also wish to be aware of any pay recommendations that have been made.

Monitoring and Evaluation

The Governing Body and Principal/Head of School will monitor the operation and effectiveness of the Academy's appraisal arrangements.

The Principal/Head of School will provide the Governing Body with a written report on the operation of the Academy's appraisal and capability policies annually. The report will not identify any individual by name. The report will include an assessment of the impact of these policies on:

- Race
- Sex
- Sexual Orientation
- Disability
- Religion and Beliefs
- Age
- Part-time Status
- Maternity and Pregnancy

The Principal/Head of School will report on whether there have been any appeals or representations on an individual or collective basis on the grounds of alleged discrimination.

Retention

The Governing Body and Principal/Head of School will ensure that all written appraisal records are retained in a secure place in line with BDAT's GDPR policy. The Trust will also retain appraisal records for central Trust Staff and Academy Principals. Documents will be retained in accordance with the Trust Document Retention Policy.

Notice Period (Teachers only)

Should a Teacher (including Principal/Head of school/Executive Principal/Headteacher) be dismissed by the Trust by reason of capability then the employee shall be due to receive notice until the end of that term (30 April; 31 August or 31 December – as appropriate). If that period of notice is shorter than two months – then the Trust will make a payment in

lieu for the balance to ensure a minimum of two months' notice/pay in lieu of notice is paid to the employee. This information is provided in accordance with s.1 Employment Rights Act 1996. To the extent that the terms of this clause conflict with the School Teachers' Pay and Conditions and the Conditions of Service for School Teachers in England (the Burgundy Book) or other collective agreement – the terms of this clause shall prevail.

Notice Period (Support Staff only)

Outside of the Probationary Period support staff are entitled to receive one week's notice for each year of their period of continuous employment with BDAT, with a minimum of one month and a maximum of 12 weeks.

Appendix One

	Appraisal	Transition to capability	Stage One: - Formal Capability Meeting		Stage Two: - Formal Capability Review Meeting		Stage Three: - Formal Capability Decision Meeting	
Role			Meeting Officer	Appeal Officer	Meeting Officer	Appeal Officer	Meeting Officer	Appeal Officer
CEO	Chair and nominated Trustee	Chair and Nominated Trustee	Chair and Nominated Trustee	A nominated Trustee	Chair and Nominated Trustee	A nominated Trustee		Panel of three drawn from Trustees
Executive Team	CEO and a nominated Trustee	CEO and a nominated Trustee	CEO and a nominated Trustee	A nominated Trustee	CEO and a nominated Trustee	A nominated Trustee	CEO and a nominated Trustee	Panel of three drawn from Trustees
Central Team	Line Manager	Line Manager	Line Manager	A nominated member of the Executive Team	Line Manager	A nominated member of the Executive Team	CEO	Panel of three drawn from Trustees
Executive Head	Education Director and a nominated Chair of Governors	Education Director and a nominated Chair of Governors	Education Director and a nominated Chair of Governors	A nominated Trustee	Education Director and a nominated Chair of Governors	A nominated Trustee	CEO	Panel of three drawn from the Trustees
Head / Principal / Head of School	Education Director and a nominated Chair of Governors	Education Director and a nominated Chair of Governors	Education Director and a nominated Chair of Governors	A nominated Trustee	Education Director and a nominated Chair of Governors	A nominated Trustee	CEO	Panel of three drawn from the LGB / Trustees
SLT	Head / Principal / Head of School	Head / Principal / Head of School	Head / Principal / Head of School	A nominated Governor	Head / Principal / Head of School	A nominated governor	Head / Principal / Head of School	Panel of three drawn from the LGB
Teachers	SLT	SLT	SLT	A nominated Governor	SLT	A nominated Governor	Head / Principal / Head of School	Panel of three drawn from the LGB
Support Staff	Line Manager	Line Manager	Line Manager	A nominated member of SLT / Governor	Line Manager	A nominated member of SLT / Governor	Head / Principal / Head of School	Panel of three drawn from the LGB

Appendix Two

