



## **1.0 Aims and scope of the policy and procedure**

1.1 This policy applies to all teaching, support and centrally employed Trust staff.

1.2 The policy will be applied where performance issues have been identified that cannot be addressed through the appraisal process. In progressing to this procedure, the employee will have been assessed through the appraisal process and will have received constructive feedback throughout the period including any relevant support to assist in improving their skills and competence to the required level.

1.3 The employee will be notified in writing that the appraisal system will no longer apply and their performance managed under the capability procedure.

1.4 The procedure has been developed in accordance with the relevant employment legislation, education regulations and the ACAS Code of Conduct. It includes:

- a written statement from the employer setting out the grounds for action and inviting the employee to a meeting;
- a meeting where certain requirements must be observed;
- the employer's decision and notification to the employee of the right of appeal; and
- a process of appeal.

## **2.0 Principles**

2.1 In operating this policy, line managers will apply the Trust's commitment to equality by treating all employees fairly and without discrimination on the grounds of colour, race, ethnic or national origins, sexual orientation, age, marital status, disability, trade union association or religious beliefs.

2.2 Employees having difficulty in carrying out their duties to the required standard will be treated with sympathy and understanding and will be given help to correct the deficiency.

2.3 At every stage of the formal procedure, the employee will have the right to be accompanied by a trade union representative or work colleague.

2.4 No employee will be dismissed on the grounds of capability until the programme of improvement and assistance has been followed without the employee achieving satisfactory results and there remains an insufficient prospect of improvement within a reasonable timescale.

2.5 The employee will have the right to appeal against any formal decision at each stage of the process.

2.6 Employees suffering from ill-health will be managed in accordance with the Trust Wellbeing and Attendance procedure. If ill health appears to have been triggered by monitoring or formal capability proceedings then the absence will be managed within the Wellbeing and Attendance procedure with advice sought from Occupational Health. It may

be appropriate for formal proceedings to continue during a period of ill health however the views of Occupational health will be considered before any decision is taken.

2.7 Schools will not enter the formal stages of the capability process until they have discussed the situation with the Head of HR and CEO.

### **3.0 Early Career Teachers (ECT)**

3.1 It may become necessary to instigate a capability procedure for an ECT at a stage before the end of the induction period, which may lead to dismissal. The induction period must continue in parallel with the capability procedure. The ECT should be advised to seek the support of their professional association or trade union at an early stage.

3.2 Prior to moving to formal capability proceedings the following must have first taken place:

- The ECT performance has been monitored
- The ECT has been clearly advised about performance which is causing concern and that s/he understands the improvements which are expected
- A reasonable time-limited period (of at least 4 weeks) of careful and structured support, training, monitoring, evaluation and evidence gathering has taken place, giving the ECT every opportunity to improve
- The ECT has been given an informal warning that failure to improve may lead to instigation of the formal capability procedure and that this may lead to dismissal.

3.3 If an ECT is dismissed on grounds of capability before the end of the induction period, he or she will still be allowed to seek alternative employment to complete induction at another institution, as all ECTs must complete a full induction period before they can be judged to have failed.

### **4.0 Informal procedure**

4.1 For teaching staff the appraisal process sets out the informal stages of managing performance. In these circumstances where a teacher's performance has fallen below the minimum standards expected of them (including teacher standards) a meeting will be held to discuss the concerns, set out targets and expectations with defined timescales and agree any further support that will assist them to meet the required timescales. If insufficient progress is made then the teacher will be invited to a transition meeting at which point a decision will be taken as to whether they continue to be monitored within the appraisal process or they move to formal capability.

4.2 Similarly for all support and Trust central staff when instances of under performance are identified they should initially be addressed informally and outside the formal capability procedures.

4.3 A meeting will be held to discuss the concerns and objectives with clear timescales and expectations recorded on a performance improvement plan. The review period will last for a minimum of 4 weeks during which time progress will be reviewed. The employee will

receive coaching to provide support and encourage improvement. If insufficient progress has been made despite the coaching process then the employee will be informed that they will be progressing to formal capability proceedings.

## **5.0 Stage 1 – Formal Capability Meeting**

5.1 Once it has been established that there are serious concerns about an employee's performance that have not been addressed through the informal stages then the employee will be given 5 working days' notice that they will be required to attend a formal capability meeting.

5.2 This notification will contain details about the concerns around performance and the possible consequence to enable the employee to prepare for the meeting. It will contain copies of any written evidence including written feedback given through the informal stages and details of any support/coaching offered.

5.3 The meeting will be conducted by the Chair of Trustees (for CEO capability) the CEO (for headteacher/Trust central staff capability) or headteachers for teaching and support staff. The meeting allows for the employee to respond to the concerns raised about their performance and make any relevant representations.

5.4 The person conducting the meeting may halt or adjourn the process at any time depending on the circumstances.

5.5 The aims of the formal interview will be to:

- (a) Explain clearly the shortfall between the employee's performance and the required standard;
- (b) Give clear guidance on the improved standard of performance needed to ensure that the employee can be removed from the capability procedure. This could include setting clear objectives focussing on the specific weaknesses that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether the necessary improvement has been made.
- (c) Obtain the employee's commitment to reaching the required standard;
- (d) Explain any support that will be available to help the employee improve their performance and any welfare and other support available.
- (e) Set a reasonable period for the employee to reach the standard and agree on a monitoring and review programme between 4 and 8 weeks.
- (f) Tell the employee that dismissal is a possible outcome if the standard is not met.

5.5 The employee should be given the opportunity to provide their explanation for the areas of unsatisfactory performance.

5.6 The line manager will consider the employees explanations and any other mitigating circumstances and determine the action to be taken. This may be:

- That no formal action shall be taken. Recommendations will be implemented and the employee's performance continued to be monitored within the informal process
- That the outcome of the review is unsatisfactory. If this is the case the employee will be issued with a first written warning. In very serious cases where there is a significant impact on children's learning this warning could be a final written warning\*

5.7 The outcome of this interview will be recorded in writing and a copy will be given to the employee.

5.8 The letter will include a written statement that sets out:

- The nature of the unsatisfactory work performance as discussed at the meeting.
- The action required by the employee to improve their performance and how their performance will be monitored over the performance review period.
- Any further training or support that is to be provided and by whom.
- The timescale for achieving the required improvement. The review period will be a minimum of four weeks. It may be longer depending on the nature of the unsatisfactory performance, the job role, and the provision of any necessary additional training or support that is required.
- That the employee has the right of appeal against the written warning. This should be submitted within five working days of the date of the letter confirming the action and sent to the Head of HR. The letter should state the grounds for the appeal and enclose any relevant supporting documentation.
- That the written warning is the first formal stage of the capability procedure and a failure to improve could lead to a final written warning and, ultimately dismissal. If a final written warning has been received\* confirmation that a failure to improve could lead to dismissal.
- That the monitoring and review of performance will continue and run concurrently with the appeal process and timescales.

If appropriate, and depending on the circumstances presented at the time, suitable alternative employment can be mutually agreed, if available. Alternative employment does not have to be equivalent in terms and conditions to the current post and it may take the form of a less senior position in the same work area. The employee's current terms and conditions will not be protected.

5.9 Progress will continue to be monitored throughout the review period.

## **6.0 Stage 2 – 2<sup>nd</sup> Formal Capability/Review Meeting**

6.1 At the end of the agreed review period a further formal meeting will be arranged. The notification will be in accordance with that detailed above.

6.2 The employee will be given 5 working days' notice that they will be required to attend a formal review meeting and will be advised of their rights to be accompanied.

6.3 At the meeting the line manager will review the employee's performance against the set objectives. The employee will be given the opportunity to respond and put forward their views. Following this discussion one of the following decisions will be taken:

- 6.3.1 If the line manager is satisfied that performance has improved to the required standard, they will advise the employee that no further formal action will be taken and future performance will be managed through the normal appraisal and performance management meetings. The employee will be advised that if their performance deteriorates while the written warning is still current (six months from the first Performance Review meeting) formal action will be restarted at Stage One of the Capability Procedure.
- 6.3.2 If some improvement has been made but the standard required not yet met, the review period may be extended if the line manager believes that there is a realistic expectation of satisfactory performance.
- 6.3.3 If no, or insufficient improvement has been made during this review period the employee will be given a final written warning.

If appropriate, any suitable and available alternative work can be considered and mutually agreed on the terms outlined in Stage One.

6.4 The line manager will send a letter confirming the final written warning to the employee, ideally within five working days of the meeting. A copy should also be kept on the employee's personal file and used as the basis for monitoring and reviewing the employee's performance during the defined timescales. The letter will include a written statement that sets out:

- The nature of the unsatisfactory work performance as discussed at the meeting.
- The action required by the employee to improve their performance and how their performance will be monitored over the performance review period.
- Set a reasonable period for the employee to reach the required standard, and agree a monitoring period. This should be a minimum of 4 weeks and a maximum of 8 weeks.
- Any further training or support that is to be provided and by whom.
- The timescale for achieving the required improvement. The review period will be a minimum of four weeks. It may be longer depending on the nature of the unsatisfactory performance, the job role, and the provision of any necessary additional training or support that is required.

- That the employee has the right of appeal against the final written warning. This should be submitted within five working days of the date of the letter confirming the action, and sent to the Head of HR.
- That the final written warning is the second formal stage of the capability procedure and a failure to improve within the agreed timescales could lead to dismissal.

6.5 The final written warning will be valid for a period of twelve months from the date of the Second Performance Review Meeting.

## **7.0 Stage 3 – Final Performance Review/Decisions Meeting**

7.1 At the end of the agreed review period a further formal meeting will be arranged. The notification will be in accordance with that detailed above.

7.2 The employee will be given 5 working days' notice that they will be required to attend a formal review meeting and will be advised of their rights to be accompanied.

7.3 At the meeting the line manager will review the employee's performance against the set objectives. The employee will be given the opportunity to respond and put forward their views. Following this discussion one of the following decisions will be taken:

7.3.1 If the line manager is satisfied that performance has improved to the required standard, they will advise the employee. The employee will be advised that no further formal action will be taken and future performance will be managed through the normal appraisal and performance management meetings. The employee will be advised that if their performance deteriorates while the final written warning is still current (six months from the first Performance Review meeting) formal action will be restarted at Stage two of the Capability Procedure.

7.3.2 If some improvement has been made but the standard required not yet met, the review period may be extended if the line manager believes that there is a realistic expectation of satisfactory performance.

7.3.3 If no, or insufficient improvement has been made during this review period the employee will be advised that a hearing will be held to consider possible dismissal

7.4 The employee will be given 5 days' notice of the hearing. The meeting will be chaired by The Chair of Trustees (for CEO, Trust central staff and Headteacher capability), The CEO for school staff capability)

7.5 If, following consideration of all the facts, a decision is taken to dismiss the employee further consideration will be taken to whether there are any suitable vacancies within the school that the employee would be competent to fill with a reasonable level of training and support. If there are the employee will be given the opportunity to take the role as an alternative to dismissal. Any offer of alternative post will be remunerated on the grade attached to the role and there will be no salary protection.

## **8.0 Appeal**

- 8.1 In accordance with the statutory discipline and dismissal procedure the employee will be notified of their right to appeal against the decision to dismiss. If the employee wishes to appeal against any disciplinary decision taken by the Academy, the employee may do so, in the first instance, by lodging an appeal with the Head of HR within ten working days of the decision being received. The employee should state the reason for their appeal.
- 8.2 Appeal hearings will be convened in writing giving at least five working days' notice. Documents to be referred to during the hearing should be made available to all parties at least five working days in advance. These timescales may be varied with the agreement of all parties.
- 8.3 The Trustees appeal panel will hear the case –the panel being made up of at least three Trustees who have had no prior involvement in the case.
- 8.4 The employee will be entitled to attend the appeal hearing to state their case. They may be accompanied by an academy work colleague or a union representative who may present the employee's case on their behalf. The appeal panel may:
- Uphold the appeal and recommend that performance continues to be managed within either the informal appraisal or formal capability proceedings;
  - Reject the appeal and confirm the action taken;
- 8.5 The decision of the appeals panel will be final within the capability procedure.
- 8.6 If following dismissal, the employee is re-instated on appeal their salary, pension and NI contributions will be back paid to the date of the original termination.

## **9.0 References**

- 9.1 Within the provisions of The School Staffing (England) Regulations 2009 BKAT are required to respond to any request for teacher capability information for the previous 2 years from a maintained school or another Academy.

## **10.0 Grievances**

- 10.1 Where a member of staff raises a grievance during the capability procedure the capability procedure may be temporarily suspended in order to deal with the grievance. In the majority of cases where the grievance and capability cases are related both issues will be dealt with concurrently.