

CAPABILITY POLICY

RESPONSIBLE DIRECTOR

Chief Executive Officer

RATIFIED BY TRUST

December 2023

REVIEW DATE

September 2025

Policy statement

1. The primary aim of this procedure is to provide a framework within which managers can work with employees to maintain satisfactory performance standards and to encourage improvement where necessary.
2. It is our policy to ensure that concerns over performance are dealt with fairly and consistently.
3. Lack of capability is defined as a situation in which an employee fails to perform their duties to a professionally acceptable standard. The required standard should be appropriate to the level of the job and the skills and experience reasonably expected of an individual in that position. Headteachers and managers need to ensure that each member of staff has the ability, knowledge, guidance and support to perform their job to an acceptable standard and in accordance with their job description.
4. This policy should be used when an employee has not met satisfactory standards of performance and when the employee's performance has already been address at regular line management meetings, but the measures taken have not resolved the underperformance.
5. This procedure does not form part of any employee's contract of employment, and it may be amended at any time. We may also vary any parts of this procedure, including any time limits, as appropriate in any case.
6. All members of staff subject to the capability procedure are strongly advised to contact their trade union or professional association for advice.
7. The terms Headteacher or Principal are to be taken as one and the same in this policy.

Who is covered by the policy?

8. This procedure applies to all employees of the Trust regardless of length of service and of which school they work in, with the exception of:
 - a. Early Careers Teachers (ECTs) where the Headteacher may consider instigating a capability procedure at any stage before the end of the induction period. This may lead to dismissal before the end of the induction period. The induction procedure will continue in parallel with any capability procedure.
 - b. Where a newly recruited employee has not met the expected standards of performance during their probation period, then the Probation Procedure will apply.
 - c. Where an employee's poor performance is believed to be the result of deliberate negligence, or where serious errors have been made to the detriment of the Academy / Trust, or if an employee can, but will not, carry out their duties in a satisfactory manner due to alleged misconduct, then the Disciplinary Policy and Procedure will apply.
 - d. Agency works or self-employed contractors.

What is covered by the policy?

9. This policy is used to deal with poor performance. It does not apply to cases involving genuine sickness absence, proposed redundancies or misconduct.

Principles of this Policy

10. The Headteacher (or, in the case of Central Staff, the CEO) will decide whether to invoke the Capability procedure in consultation with the employee's line manager or supervisor following an initial investigation of the performance concerns. With regard to teaching staff, it is possible that evidence from the appraisal process will inform the judgement about whether to suspend the appraisal procedure and move to the capability procedure.
11. The Headteacher may delegate the management of this procedure to a person who is either an Assistant Headteacher or another appropriate senior member of staff.
12. In the case of long-term absence, where the capability procedure has been invoked on the grounds of poor performance, the Sickness Absence Policy will run in parallel.
13. When undertaking the capability procedure, the Headteacher / CEO must ensure that no employee is disadvantaged on the basis of a protected characteristic as per the Equality Act 2010. Consideration will be given to whether poor performance may be related to a disability and, if so, whether there are reasonable adjustments that could be made to the employee's working arrangements, including changing of duties or providing additional equipment or training.
14. This procedure is to be applied when it is identified that an employee's performance is falling below the expected standards for their post and where the person is not wilfully underperforming. The evidence from appraisal review will be a key element in deciding when the capability procedure should be invoked.

15. The employee will be given the opportunity to explain their view of their performance at all stages of the procedure.
16. The employee has the right to be accompanied by a trade union/professional association representative or work colleague (the employee chooses which) at all formal stages of this procedure. If the representative cannot attend on the proposed date the employee can suggest an alternative time and date so long as it is reasonable and is not more than five working days after the original date. The five working day time limit may be extended by mutual agreement.
17. The employee may be allowed to a companion who is not a colleague or union representative (for example, a family member) where this will help overcome a particular difficulty caused by a disability, or where the employee has difficulty understanding English. Each request for such an accompany will be dealt with on a case-by-case basis and will be at the discretion of the Headteacher.
18. Meetings associated with the procedure will be postponed once on the grounds of self-certified or medically certified illness. Subsequent arrangements will proceed in the absence of the employee if delay would otherwise compromise the maximum time set aside for the procedure. In such circumstances a full account of the outcomes of the meeting will be provided to the employee and the employee's representatives.
19. If an employee fails to attend an arranged meeting for reasons that are outside their control and unforeseeable when the meeting was arranged the meeting will be rearranged in the first instance. If the reason for non-attendance was due to circumstances that the line manager judges were reasonably foreseeable or within the employee's control, then the meeting will continue in the employee's absence.
20. The employee shall be given a minimum of five working days' notice (excluding bank holidays) together with any relevant documentation prior to any meetings associated with this procedure.
21. Normally the period given for improvement will be no more than two terms after entry into Stage 1 of the procedure (but see paragraphs 22 to 24 below)
22. In extreme cases where the requirements of the service do not permit any delay, where pupils education is jeopardised or where performance has seriously deteriorated, not more than four weeks will be given for the employee to demonstrate a satisfactory improvement from the date of the first formal written performance warning. In such cases it may also be deemed necessary to miss one or more stages of the capability procedure as appropriate. Headteachers should seek advice from their HR provider under these circumstances.
23. Wilful failure to comply with clear advice and instruction or negligence which involves a measure of personal blame and instances of lack of capability and misconduct together will be dealt with under the Disciplinary Policy and Procedure
24. Where it appears that the employee has committed an error which would amount to gross misconduct as indicated in the BCAT Disciplinary Policy, and the actual or potential consequences of that error are so serious as to make it impossible to allow

the employee to continue in employment the gross misconduct provisions of the Disciplinary Policy and Procedure will apply.

25. If performance does not improve sufficiently to meet the targets set, yet the headteacher considers that there has, nonetheless, been a significant improvement, consideration can be given to extending the time allowed to reach the desired standard before moving onto the next stage of the process.
26. Where the employee has failed to satisfy targets and/or performance standards set, consideration should be given to a different balance of duties or an alternative post. This will take place in consultation with the employee and can take place at any stage in the procedure. Where reallocation of duties are agreed, this will be with appropriate consequences for pay (no safeguarding payments will be applicable).
27. If performance improves to the extent that this procedure is suspended but then deteriorates again within a twelve month period this procedure may be reinstated at the same point in the process as previously reached.
28. Under the Education Act 2002 the Local Advisory Board (LAB) can delegate the initial decision to dismiss to the headteacher. The School Staffing Regulations 2009 (in accordance with Sections 35 and 36 of the Education Act 2002) allow that the headteacher should have the delegated responsibility to make the initial decision to dismiss following which there is an opportunity for the employee to appeal to a panel of Local Advisory Body Members.
29. Our aim is to deal with performance matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with a matter which is subject to this capability procedure.

Identifying performance issues

30. It is not intended that the capability procedure replaces the normal interchange between the immediate supervisor and a member of staff. In the first instance, performance issues should be dealt with informally between the employee and their line manager as part of day-to-day management. . Informal discussions may help:
 - a. clarify the required standards;
 - b. establish the likely causes of poor performance and identify any training needs; and/or
 - c. set informal targets for improvement and a timescale for review.

Informal Review Stage (First Target Setting Period)

31. In the event of more serious or ongoing concerns relating to performance, the Headteacher should invite the employee to an informal review meeting in accordance with the capability procedure to discuss the matter, providing five working days' notice. A letter summarising the concerns, indicating the date, time and location of the meeting should be sent to the employee. A copy of the capability procedure should

be provided with the letter and the employee should be reminded of their right to be accompanied by a trade union representative or work colleague. It is recommended that the employees' line manager also attends this meeting, if this is not the Headteacher.

32. If the capability concern is regarding the Headteacher, the process will be managed by the Trust CEO, who will chair any and all meetings relating to the Headteacher's performance.
33. The purpose of this meeting will be to:
 - a. Confirm to the employee clearly what performance issues have been identified, and the process for helping them to make sufficient improvements under the capability process.
 - b. Understand whether the employee is fully aware of the standards required.
 - c. Establish whether the standards have been set at a reasonably attainable level.
 - d. Understand whether the context in which the employee works has altered significantly.
 - e. Review whether the volume of work is reasonable.
 - f. Establish whether poor performance is a training issue to be addressed.
 - g. Assess whether resources and equipment available are appropriate.
 - h. Agree what support will be given to the employee.
 - i. To provide the employee with a written Informal Support Plan, which should clearly detail:
 - i. The areas of improvement: What specific improvement / development needs have been identified?
 - ii. Action steps: What improvement / development actions are required? What evidence will demonstrate improvement?
 - iii. Support: What support, training and guidance is required to help with the improvement?
 - iv. Timescales: when is improvement expected by, and how often will progress be reviewed? These timescales may vary depending on the complexities of the job or the specific area for improvement but should normally be between four and eight weeks.
 - v. A space for progress to be recorded and reviewed by the employee and their line manager.
 - j. This Informal Support Plan should be discussed with the employee at the informal review meeting and should be updated with any suggestions for support from the employee.
34. The employee will be given the opportunity to discuss any mitigating circumstances that may have led to performance concerns.
35. The Informal Support Plan should be used as a system of supporting and advising the employee and monitoring the achievement of targets and standards. Support may take the form of training, visits to other departments or schools. In the case of teaching staff, it may be appropriate to employ the services of a school improvement advisor consultant, which may include classroom observation and feedback.

36. The employee should also be advised of the next stage in the process as set out in paragraph 37 below.
37. At the end of the informal review period (the date of which should be specified in the Informal Support Plan), a meeting to review the performance will take place between the Headteacher, the line manager (if this is not the Headteacher) and the employee. Five working days' notice must be provided of this meeting, and the employee has the right to be accompanied by a trade union representative or work colleague. The possible outcomes of this performance review meeting are:
 - a. Performance has improved satisfactorily, and targets have been met, in which case no further action will be required. This will be confirmed to the employee in writing, advising that should their performance fail to meet the acceptable standards within the next 12 months, the procedure will be reinstated at this informal review stage.
 - b. Significant improvement has been made, but the review period may be extended to allow the employee additional time to meet all of the targets set;
 - c. There has been unsatisfactory improvement to performance, in which case the process is immediately moving onto Stage 1 of the formal capability procedure. If applicable, the appraisal process would be suspended at this stage.
38. In the case of unsatisfactory improvement, meaning that the employee is now moving to Stage 1 of the formal process, the employee should be advised that if performance has not improved by the next review meeting, the process will move on to Stage 2. The Headteacher will consider whether the targets set need to be re-evaluated in discussion with the employee and consider what additional forms of support may be available to help the employee achieve the standard review. A date will be set for the next review meeting.
39. A letter will be sent to the employee detailing the outcome of the meeting. This letter should also include details of the what the performance concerns are, the required improvements, and associated timescales for those improvements. The letter should also confirm the date for the First Formal Review meeting, normally between four weeks and eight weeks for the employee to demonstrate improvement in performance and meet the targets set.

Stage 1 – First Formal Review (Second Target Setting Period):

40. At the end of the Informal Review Stage (First Target Setting Period) the employee will have been informed in writing of the date for the First Formal Review meeting. In any event, five working days' notice must be provided of this meeting and the employee should be reminded of their right to be accompanied by a trade union representative or work colleague.
41. If the capability concern is regarding the Headteacher, the process will be managed by the Trust CEO, who will chair any and all meetings relating to the Headteacher's performance.

42. At the First Formal Review Meeting, the Headteacher and Line Manager will consider the improvements which were required and determine whether sufficient improvement has been made. There are several possible outcomes as detailed below:
- a. Performance has improved satisfactorily, and targets have been met, in which case no further action will be required. This will be confirmed to the employee in writing advising that should their performance fail to meet the acceptable standards within the next 12 months, the procedure will be reinstated at this Stage 1. (If applicable, the appraisal process will now resume).
 - b. Significant improvement has been made but the First Formal Review period may be extended to allow the employee additional time to meet all the targets set.
 - c. There has been unsatisfactory improvement to performance, in which case the capability process is immediately moving onto Stage 2 – Second Formal Review.
43. In the case of unsatisfactory improvement, meaning that the employee is now moving to Stage 2 of the formal process, the employee should be advised that if performance has not improved by the next review meeting, the process will move on to Stage 3. The Headteacher will consider whether the targets set need to be re-evaluated in discussion with the employee and consider what additional forms of support may be available to help the employee achieve the standard review. A date will be set for the next review meeting.
44. A letter will be sent to the employee detailing the outcome of the meeting. This letter should also include details of the what the performance concerns are, the required improvements, and associated timescales for those improvements. The letter should also confirm the date for the Second Formal Review meeting, normally between four weeks and eight weeks for the employee to demonstrate improvement in performance and meet the targets set.

Stage 2 – Second Formal Review (Third Target Setting Period)

45. At the end of the First Formal Review Stage (Second Target Setting Period) the employee will have been informed in writing of the date for the Second Formal Review meeting. In any event, five working days' notice must be provided of this meeting and the employee should be reminded of their right to be accompanied by a trade union representative or work colleague.
46. If the capability concern is regarding the Headteacher, the process will be managed by the Trust CEO, who will chair any and all meetings relating to the Headteacher's performance.
47. At the Second Formal Review Meeting, the Headteacher and Line Manager will consider the improvements which were required and determine whether sufficient improvement has been made. There are several possible outcomes as detailed below:

- a. Performance has improved satisfactorily, and targets have been met, in which case no further action will be required. This will be confirmed to the employee in writing advising that should their performance fail to meet the acceptable standards within the next 12 months, the procedure will be reinstated at this Stage 2. (If applicable, the appraisal process will now resume).
 - b. Significant improvement has been made but the Second Formal Review period may be extended to allow the employee additional time to meet all the targets set.
 - c. There has been unsatisfactory improvement to performance, in which case the capability process is immediately moving onto Stage 3 – Final Review Period and Capability Hearing.
48. In the case of unsatisfactory improvement, the Headteacher will consider whether the targets set need to be re-evaluated in discussion with the employee and consider what additional forms of support may be available to help the employee achieve the standard review. A date will be set for the next review meeting.
49. A letter will be sent to the employee detailing the outcome of the meeting. This letter should also include details of the what the performance concerns are, the required improvements, and associated timescales for those improvements. The letter should also confirm the date for the Final Review Meeting, normally four weeks for the employee to demonstrate improvement in performance and meet the targets set.

Stage 3 – Final Review Period and Capability Hearing

50. At the end of the Second Formal Review Stage (Third Target Setting Period) the employee will have been informed in writing of the date for the Final Review Meeting. In any event, five working days' notice must be provided of this meeting and the employee should be reminded of their right to be accompanied by a trade union representative or work colleague.
51. If the capability concern is regarding the Headteacher, the process will be managed by the Trust CEO, who will chair any and all meetings relating to the Headteacher's performance.
52. At the Final Review Meeting, the Headteacher and Line Manager will consider the improvements which were required and determine whether sufficient improvement has been made. There are several possible outcomes as detailed below:
- a. Performance has improved satisfactorily, and targets have been met, in which case no further action will be required. This will be confirmed to the employee in writing advising that should their performance fail to meet the acceptable standards within the next 12 months, the procedure will be reinstated at this Stage 3. (If applicable, the appraisal process will now resume).
 - b. Significant improvement has been made but the Final Formal Review period may be extended to allow the employee additional time to meet all the targets set.

- c. Unsatisfactory improvement to performance – The employee will be advised that a meeting of the appropriate committee of LAB Members will now be convened (Where management of the capability procedure has been delegated to another senior member of staff the headteacher may conduct the hearing, but should be joined by a minimum of two other panels, which should comprise of Assistant/Vice Principals, or the Headteacher of another school within the Trust). In the event that the capability process concerns the Headteacher's performance, this committee will be comprised three suitable Trustees of BCAT. The procedure to be followed is set out below.

53. The capability hearing procedure is set out in the section below.
54. Evidence in connection with the employee's capability which has been collected during the previous stages of the capability procedure and the appraisal process will be admissible as part of the proceedings and should be shared with all parties.
55. The hearing might determine that where the capability issue relates to management duties rather than classroom teaching, consideration should be given to the reallocation of duties with appropriate consequences for pay.
56. The Headteacher/panel of LAB Members / Trustees may determine that the employee should no longer work at the school on the grounds of capability if they are not performing adequately.

Procedure for the Capability Hearing

Note, the Headteacher can present the case, or hear the case, but cannot do both. The same is true for the CEO in the case where the CEO has managed the capability procedure where the performance issue concerns the Headteacher.

57. Presentation of the case against the employee:
 - a. The Headteacher / CEO (or representative) makes an opening address, outlining the case against the employee.
 - b. The Headteacher / CEO (or representative) calls witnesses (if any) and taking each one in turn:
 - i. Questions each witness.
 - ii. The employee (or representative) questions each witness.
 - iii. The Headteacher / CEO (or representative) can further question each witness.
 - iv. The hearing panel can question each witness.
 - v. The witness withdraws.
 - c. The employee (or representative) can question the Headteacher / CEO (or representative).
 - d. The hearing panel can question the Headteacher / CEO (or representative).
58. Presentation of the employee case:
 - a. The employee (or representative) makes an opening address outlining their case.

- b. The employee (or representative) calls witnesses, if any, and taking each one in turn:
 - i. Questions each witness.
 - ii. The Headteacher / CEO (or representative) can question each witness.
 - iii. The employee (or representative) can further question each witness.
 - iv. The hearing panel can question each witness.
 - v. The witness withdraws.
 - c. The Headteacher / CEO (or representative) can question the employee.
 - d. The hearing panel can question the employee.
59. Summing up:
- a. The Headteacher / CEO (or representative) and the employee (or representative) have the opportunity to sum up their case if they so wish, the employee to have the last word.
 - b. Both parties then withdraw.
60. The decision:
- a. The hearing panel will deliberate in private, only recalling the parties to clarify any uncertainties with regards to the evidence already given. If recall if necessary, both parties will return, even if only one is concerned with the matter giving rise to doubt. The options available to the panel for consideration are:
 - i. Dismissing of the employee. Dismissal will be with payment in lieu of notice. The notice will run from the date of the decision to dismiss.
 - ii. Redeployment of the employee into another suitable job within the School or Trust.
 - iii. Giving a final written warning (where no final written warning is currently active) and setting a further review period (in exceptional cases where the panel has a genuine and evidenced belief that a substantial improvement is likely within the review period).
 - b. The decision will be announced to the parties at the end of the hearing whenever possible. The Chair of the panel will confirm the decision in writing within five working days of the decision, which will also confirm the employee's right of appeal and to whom the appeal should be sent.

Appeal Hearing Process

61. Appeal hearings will follow the procedure set out above, but the appeal will be heard by an independent panel. As this will depend on the Capability Hearing Panel, advice should be sought from the HR Manager as to who will be suitable panel members for the appeal hearing.
62. An employee may lodge an appeal against the outcome of a Capability Hearing in writing within 7 calendar days of the date on which the employee received written confirmation of the outcome of the hearing.
63. The letter of appeal from the employee should state whether:
- a. It is against the findings of the hearing; and / or
 - b. The sanction determined by the hearing; and / or

- c. The capability procedure has been applied incorrectly; and / or
 - d. New evidence has come to light which was not available at the hearing, and which might make a difference to the original decision.
64. All appeals will be heard at the earliest possible date having regard for proper notice to all parties (five working days minimum).
65. Supporting paperwork to be relied on at the appeal (together with information regarding any witnesses) must be exchanged by the parties at least five working days ahead of the appeal hearing.
66. A hearing may be adjourned if the panel needs to gather any further information or consider matters discussed at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.
67. Following the appeal hearing, the panel may:
- a. confirm the original decision;
 - b. revoke the original decision; or
 - c. substitute a different penalty.
68. The Chair of the panel will inform you in writing of the panel's final decision as soon as possible, usually within five working days of the appeal hearing. Where possible, this should also be explained to the employee in person. There will be no further right of appeal, and this is the final stage of the process.