



# **Managing Capability Policy**

September 2019

## CONTENTS

		<b>Page No</b>
1.	Introduction	<b>3</b>
2.	Scope of Procedure	<b>3</b>
3.	Guiding Principles	<b>4</b>
4.	Aim of the Procedure	<b>4</b>
5.	Stages of the Procedure	<b>5</b>

## APPENDICIES

1.	Conduct of Capability Hearings and Appeals under the Capability Procedure	<b>9</b>
2.	Performance Improvement Plan (PI	<b>10</b>
3.	Invitation to Attend Counseling Session	<b>13</b>
4.	Formal Warning Letter	<b>14</b>
5.	Flow Chart for Managing Capability Procedure	<b>15</b>

# MANAGING CAPABILITY POLICY

## 1. INTRODUCTION

1.1 BASE Academy Trust is committed to providing high quality teaching and learning efficiently, effectively and economically to its children/young people. Equally, the School wishes to preserve its reputation as a fair and equitable employer who provides good working conditions where the highest standards of teaching and learning can be achieved and maintained. The School is mindful of its responsibility to balance the needs of the individual employee with the requirement to deliver high standards of teaching and learning to its children/young people.

1.2 It is recognised however, that there are occasions when an employee's performance is identified as below an acceptable standard and when normal day-to-day management support has not resulted in satisfactory improvement.

This Procedure will only become 'active' once the normal management processes of discussing performance and providing encouragement, guidance, support and feedback have been provided. This includes any required performance management/supervision and appraisal reviews. As such, it is strongly recommended that this procedure is read in conjunction with the Teachers Performance management (Appraisal) Procedure. A copy of this procedure is attached here.

1.3 Where it becomes necessary to activate this procedure it has been designed to provide the employee with the opportunity to understand how and why their performance does not meet the needs of the school and its children/young people, and to provide a framework to encourage the employee to improve their performance.

## 2. SCOPE OF PROCEDURE

2.1 This procedure is designed to deal with unsatisfactory standards of performance by an employee that it is believed may be due to a lack of the necessary ability, aptitude, knowledge or skills required to do the job.

2.2 This procedure does not deal with sickness absence. It is acknowledged, however, that health problems, particularly those that are stress related, may be identified in the course of the procedure.

In such cases the Managing Sickness Absence Procedure may be used in conjunction with this policy and where appropriate, the advice of HR and/or Occupational Health will be sought to try to find the most appropriate individual solution.

2.3 Similarly, matters of misconduct do not fall within the scope of this document and should be dealt with under the agreed Dismissal and Disciplinary Procedure.

2.4 It should also be noted that this procedure does not apply to-

- Termination of a fixed term Contract of Employment where the term of that contract expires without being renewed.

- Termination of a temporary appointment where the reason for termination is that the requirement for the employee's service has ceased or diminished, or is expected to cease or diminish.
- Termination during or at the end of a probationary period of service, whether or not extended beyond its originally specified duration.
- Termination of employment by reason of redundancy, whether or not competence and performance are criteria taken into account when selecting for redundancy.
- Resignation by the employee, or other termination by mutual consent.

### **3. GUIDING PRINCIPLES**

3.1 This procedure has been produced having regard to the following guiding principles:

- To encourage a sensitive and constructive approach to capability issues by employees, the Executive Headteacher and Governors.
- To involve and recognise the value of the role of the Trade Unions in the operation of this procedure.
- To ensure that the standards of work required are clearly defined, documented and explained so that all parties are clear as to what is expected of them.
- To try to find solutions to overcome any difficulties which may arise, whilst protecting the shared interests of everyone concerned and most importantly, to sustain standards and quality in teaching and learning to children/young people.
- To recognise that whilst all reasonable efforts will be made to support an employee with a capability issue, the School cannot guarantee to maintain employment.

### **4. AIM OF THE PROCEDURE**

4.1 The aim of the procedure is to ensure that employees are aware of, and can meet the basic requirements of the job and perform to the relevant published teacher standards in addition to the internally set performance objectives. This involves making clear what is expected, setting clear identifiable targets, monitoring performance, and where appropriate providing the necessary development and/or training to achieve the necessary standards.

Where, despite this support, an employee is still unable to meet the standards required then it may be necessary to terminate their employment.

## **5. STAGES OF THE FORMAL CAPABILITY PROCEDURE**

### **Preface**

- 5.1 This procedure is staged to provide a framework for Head Teachers, Governors and employees to resolve performance difficulties at the earliest possible opportunity.
- 5.2 Where this Procedure makes reference to 'The Executive Headteacher' this may also be a Representative of the School Leadership Team (SLT) who has been delegated responsibility by the Executive Headteacher to address Performance matters.
- 5.3 The formal stages of the Capability Procedure, detailed below, should only commence once the initial informal stage(s) of managing performance concerns (details of this process are contained within the Teacher Appraisal Policy). This includes the completion of a Teacher Appraisal/Capability Transitional Meeting to ensure the Teacher concerned is aware of the next steps and implications of commencing formal capability procedures.
- 5.4 The Executive Headteachers/Governors should, before entering into the stages of the procedure, ensure that Bolton Council's Schools HR Service are aware of the situation.
- 5.5 When meeting formally with an employee, the Executive Headteacher should normally be accompanied, this may be a representative from HR Children's Services or a colleague, in order to ensure an accurate record of the meeting and the outcome is made.
- 5.6 The Executive Headteacher should endeavor to ensure the employee is accompanied at any meeting, either by their Trade Union Representative, or work colleague. It is the responsibility of the employee to ensure they have appropriate representation at all stages of this process, if required.

### **Stage 1 of the Formal Procedure**

- 5.7 If following the conclusion of the informal stages of the Performance Management (Appraisal) cycle and having held a Teacher Appraisal/Capability Transitional Meeting it is felt that the capability problem remains, or is of a more serious nature, the Executive Headteacher should commence the formal stages of this procedure.

### **Timescales**

- 5.8 Normally, the period given for improvement will be no more than four months after the date of entry into the Formal Procedure (in exceptional circumstances this period could be extended). The frequency of review meetings during this period will depend on the circumstances of each case. In extreme cases where poor performance is likely to present a risk to the School, staff or children/young people, then the period given for improvement in performance after the date of a formal warning will be no more than 4 weeks.
- 5.9 The employee should normally be given notice, of at least 48 hours, of a meeting with the Executive Headteacher and be advised of their right to be represented. It is the employee's responsibility to arrange representation at the meeting. The Executive Headteacher should write to the employee and state the issues he/she is going to discuss at the meeting.

- 5.10 The Executive Headteacher should begin the meeting by outlining the problem(s) as he/she sees it, remind the employee of the standards required and seek to confirm with the employee's agreement that there is a shortfall in performance.
- 5.11 The Executive Headteacher must listen to any reasons given or statements made by the employee and be prepared to adjourn the meeting, if necessary, to investigate any points raised. It is important that the employee is given the opportunity to explain anything that may be affecting their performance.
- 5.12 At the end of the meeting, the Executive Headteacher should:
- Confirm their decision in writing to the employee and any action points made.
  - Set up a **performance improvement plan** with the employee with a timetable for improvement. It is important that the Executive Headteacher monitors performance against the improvement plan on a regular basis in order to:
    - provide support and guidance to the employee, hopefully to assist them to improve their performance;
    - To be aware of/and document problem areas for further discussion.
    - Should an opinion be needed from the Occupational Health Unit, the Executive Headteacher should also refer to this in the letter to the employee. It is important that the Occupational Health Unit is provided with a thorough and accurate account of the problem.
    - **Issue a formal warning to the employee** that their performance is below standard and advise them that failure to improve their performance could ultimately lead to dismissal should they continue to fail to meet the standard required.
    - The employee will have the right to appeal against any Formal Warning issued. This should be done within ten working days of receipt of the letter. Any appeal should be to the Clerk of the Governor Appeals Committee, Judith Pollard. The employee has the right to be represented by their Trade Union or accompanied by a friend.

## **Stage 2 of the Formal Procedure**

- 5.13 If the employee's performance continues to remain below standard, or is seriously below the standard required, the employee should be advised in writing, normally with at least 48 hours' notice that a meeting is to be held to discuss their performance. The issues to be addressed should be outlined and the employee advised of their right to be represented (as in 5. 10).
- 5.14 The Executive Headteacher should state the problem to the employee and remind them of what is required. The Executive Headteacher will need to listen to what the employee has to say (as in 5.5, it is important that due account is taken of any medical information which

the employee has provided and a referral made to the Occupational Health Unit, if appropriate). The Executive Headteacher should be prepared to adjourn the meeting, if necessary, to investigate any points raised by the employee.

5.15 At the end of the meeting the Executive Headteacher will need to:

- Confirm the discussion and action points;
- Set up a **final performance improvement programme** with the employee, with a timetable set for improvement as outlined in 5.13;
- **Issue a final warning** to the employee explaining what will happen if they continue to fail to meet the standard required.
- The employee will have the right to appeal against any Formal Warning issued. This should be done within ten working days of receipt of the letter. Any appeal should be to the Clerk of the Governor Appeals Committee, Judith Pollard. The employee has the right to be represented by their Trades Union or accompanied by a friend.

5.16 Where at the completion of the final period allowed for improvement there has not been acceptable progress, the Executive Headteacher will confirm the intention to convene a Formal Capability Hearing.

### **Stage 3 of the Formal Procedure**

5.17 The employee will be advised in writing of arrangements for a **Formal Capability Hearing** and at least 5 working days' notice will be provided. The notification will include the purpose of the meeting, copies of any written evidence to be submitted, relevant documents to be referred to, and details of any witnesses to be called. The employee will be advised of the right to be accompanied by his/her Union Representative/colleague.

The Panel for the hearing will consist of 3 Governors (one of whom will be the Chair or Vice Chair of Governors and will chair the hearing) in addition to an Officer from Bolton Council's Schools HR Service (to ensure the process is followed and to record the meeting)

5.18 The hearing to be conducted in accordance with procedure outlined in Appendix 1.

5.19 The Panel considering a capability issue will need to consider:

- An outline of the employee's job/role within the School, including their date of commencement, job description, their application form and training record.
- The performance standards required of the postholder.
- Reasons why the standards are achievable.
- The reasons for setting the standards.

- Where the employee falls short of performance (*with evidence where appropriate*).
- Steps that the Executive Headteacher has taken to improve the employee's performance including dates and times of meetings with copies of letters sent and your notes of meetings held.
- The Executive Headteacher's response to any explanations or statements of the employee.

5.20 The Panel may determine either that:

- No further action be taken.
- There be a further opportunity to improve performance, together with any specific recommendations.
- An alternative post be offered which may be at a lower level of responsibility and grade/salary.
- Contract of Employment be terminated with the required period of notice.

5.21 The employee will be advised of the **right of appeal** against the decision and the decision will be conveyed in writing within five working days.

5.22 Any appeal must be registered in to the Clerk of the Governor Appeals Committee, Judith Pollard, within ten working days of receipt of the letter confirming the outcome.

5.23 **The Appeal Hearing** will be conducted in accordance with Appendix I and the decision of the Panel will be final.

**BASE Academy Trust****CONDUCT OF CAPABILITY HEARINGS AND APPEALS UNDER THE CAPABILITY PROCEDURE****GOVERNOR PANEL**

The Panel for the hearing or appeal hearing will comprise three Governors (one of whom will act as Chairman for the purpose of controlling the proceedings). A representative of HR Children's Services will act as adviser to the Governor Panel. The employee may be accompanied by a Children's Services employee, Trade Union Representative or may choose to represent themselves.

**CONDUCT OF HEARINGS**

The Chairman of the Panel will introduce those present and explain the purpose of the hearing, also the procedure to be followed. The procedure will allow for short adjournment should either party wish a brief period for deliberation during proceedings.

The Executive Headteacher will present a statement of the case regarding the reasons for the employee being unable to achieve satisfactory levels of performance. Documentary evidence may be referred to and witnesses called.

The employee/representative will have the opportunity to question the Executive Headteacher and witnesses.

The Panel will have the opportunity to question the Executive Headteacher and witnesses.

Each witness will leave the proceedings after questioning.

The employee/representative will present a statement of case and may call witnesses in support.

The Executive Headteacher will have the opportunity to question the employee and witnesses.

The Panel will have the opportunity to question the employee and witnesses.

Each witness will leave the proceedings after questioning.

The Executive Headteacher will summarise the case introducing no new evidence.

The employee/representative will summarise the case, introducing no new evidence.

The Executive Headteacher and employee will leave the proceedings whilst the Panel considers its decision and recommendations. Should the Panel wish to ask further questions both parties will return notwithstanding that the Panel may only wish to ask questions of one of the parties.

On reaching a decision, the Chair will recall the parties and advise them of the outcome.

The employee will be advised of the outcome in writing.

**APPENDIX 2**

**BASE Academy Trust**

**PERFORMANCE IMPROVEMENT PLAN (PIP)**

To be used by the Executive Headteacher and Employee as part of the Managing Capability Procedure - (all parties to ensure signed and dated record are kept at all times)

\*Formal PIP

\*Final PIP

\*(Delete as appropriate)

**Name of Person Conducting  
Interview:**

**Position:** .....

**Department:**

**Accompanied  
by**

**Name of Employee Being  
Interviewed:**

**Department:**

**Section:**

**Accompanied  
By:**

**Date of  
Interview:**

**Dates of Previous Discussion(s) Regarding Performance:**

.....

.....

.....

(Please attach any supporting documentation)

**SPECIFIC WORK ISSUES WHICH REQUIRE DISCUSSION BETWEEN Executive Headteacher AND EMPLOYEE**

<b>Areas of Concern</b>			
<b>Standards Required</b>			
<b>Agreed Action To Meet Requirements</b>			
<b>Timescale for Improvements</b>			
<b>Support Required</b>			

**Any other information which should be taken into account regarding employees performance - Employee's**

**Comments:**

.....

.....

.....

.....

**Are there any warnings to be given?  
FORMAL/FINAL**

**Date of Next Meeting:**

**Signed By Employee:**

**Date:** .....

**Signed By Executive Headteacher:**

**Date:** .....

**To be completed by Executive Headteacher**

**Reason for issuing Formal Warning:**

.....  
.....  
.....

cc Employee  
Personal File  
Trade Union Representative

**APPENDIX 3**

**INVITATION TO ATTEND COUNSELLING SESSION**

Date:

Ref:

Name  
Address

Dear .....

**MANAGING CAPABILITY – INFORMAL STAGE**

In accordance with the Managing Capability Procedure a meeting has been arranged for *(date, time and place)* to discuss *(Be specific about the problem eg failing to meet payroll deadlines)*.

You are entitled to be accompanied by a Trade Union representative or a colleague if you wish.

Please acknowledge receipt of this letter by signing the attached copy.

Yours sincerely

.....  
(Executive Headteacher)

.....

I acknowledge receipt of an exact copy of this letter.

Signature:..... Date:.....

**FORMAL WARNING LETTER**

Date:

Ref:

Name  
Address

Dear .....

**MANAGING CAPABILITY**

As a result of our meeting on ..... I am now writing to inform you of the outcome.

The purpose of the meeting was to discuss your performance at Stage ..... of the Managing Capability Procedure. The parties present were (Employee), (Executive Headteacher) and ..... who was your representative.

The areas of concern which we discussed were .....

This letter is a formal warning at Stage ..... of the procedure. Your performance is below the standard required and failure to improve could ultimately lead to your dismissal.

I have enclosed a copy of the Performance Improvement Plan, which we completed and agreed. I would ask you to pay particular attention to the requirements of the Plan. We agreed that the timescale for improvements was by (*date*) .....

If you feel that at any time you are in need of any further support in addition to what we agreed please let me know.

Your performance will be reviewed formally on (*date*) ..... however, I will speak to you informally on a daily/weekly/monthly basis.

You have the Right of Appeal against this warning, which should be within 10 working days of receipt of this letter and should be to School Governor Appeals Committee.

Please acknowledge receipt of this letter by signing the attached copy.

Yours sincerely

.....  
(Executive Headteacher)

cc HR Officer  
Trade Union

-----  
I acknowledge receipt of an exact copy of this letter.

Signature:..... Date:.....

### Flowchart for Managing Formal Capability Process

Prior to commencing formal capability proceedings – it is important to ensure the informal stages of the Appraisal (Performance Management) cycle as detailed in the agreed schools appraisal policy have been followed and a Transitional Meeting has taken place to ensure all parties are aware of the potential implications following commencement of this policy.

#### Stage 1

Arrange formal meeting (48 hours notice)



At end of meeting:

- Confirm discussion and action points (in writing)
- Set up a formal performance improvement programme
- Issue a formal warning to employee (explain outcome if they fail to meet standard required)
- Inform employee of their right of appeal



If insufficient improvement has been made during the review period move to stage 2

#### Stage 2

Arrange formal meeting (48 hours notice)



At end of meeting:

- Confirm discussion and action points (in writing)
- Set up a final performance improvement programme
- Issue a final warning to employee (explain outcome if they fail to meet standard required)
- Inform employee of their right of appeal

If insufficient improvement has been made during the review period move to stage 3

#### Stage 3

Write to employee informing them of arrangements for a **Formal Capability Hearing** (at least 5 working day's notice will be provided)



Confirm outcome of Formal Capability Hearing in writing and advise employee of their right of appeal.