



Managing Teachers' Capability Policy

03 November 2023

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Contents

Section		Page
1	Introduction	3
2	Scope of procedure	3
3	Guiding principles	4
4	Aim of the procedure	4
5	Stages of the formal capability procedure	4

Appendix		Page
A	Conduct of capability hearings and appeals under the capability procedure	8
B	Performance improvement plan	9
C	Invitation to attend counselling session	12

1 Introduction

- 1.1 This school is committed to providing high quality teaching and learning efficiently, effectively and economically to its children and 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.
- 1.3 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 [Appraisal, Performance Management Policy](#).
- 1.4 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 and 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.
- 2.3 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.
- 2.4 Similarly, matters of misconduct do not fall within the scope of this document and should be dealt with under the agreed [Disciplinary and Dismissal Policy](#).
- 2.5 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, Head of Schools 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 or training to achieve the necessary standards.
- 4.2 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 of Schools, Governors and employees to resolve performance difficulties at the earliest possible opportunity.
- 5.2 Where this Procedure makes reference to 'The Head of School' this may also be a Representative of the School Leadership Team (SLT) who has been delegated responsibility by the Head of School 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 teachers [Appraisal, Performance Management Policy](#). This includes the completion of a period of informal support for as well as a teacher appraisal and capability transitional meeting to ensure the teacher concerned is aware of the next steps and implications of commencing formal capability procedures.
- 5.4 Head of Schools and Governors should, before entering into the stages of the procedure, ensure that Bolton Council School's HR Service is aware of the situation.
- 5.5 When meeting formally with an employee, the Head of School 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 Head of School should endeavour 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 one 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 and capability transitional meeting it is felt that the capability problem remains, or is of a more serious nature, the Head of School 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 or young people, then the period given for improvement in performance after the date of a formal warning will be no more than four weeks.
- 5.9 The employee should normally be given notice, of at least 48 hours, of a meeting with the Head of School and be advised of their right to be represented. It is the employee's responsibility to arrange representation at the meeting. The Head of School should write to the employee and state the issues they are going to discuss at the meeting.
- 5.10 The Head of School should begin the meeting by outlining the problem(s) as they see 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 Head of School 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 Head of School 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 Head of School monitors performance against the improvement plan on a regular basis in order to;
 - i. provide support and guidance to the employee, hopefully to assist them to improve their performance;
 - ii. Should an opinion be needed from the Occupational Health Unit, the Head of School 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.
 - iii. **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;
 - iv. 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. The employee has the right to be represented by their Trade Union or accompanied by a friend.

Stage two 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 Head of School should state the problem to the employee and remind them of what is required. The Head of School 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 Head of School 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 Head of School 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. 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 Head of School will confirm the intention to convene a Formal Capability Hearing.

Stage three of the formal procedure

- 5.17 The employee will be advised in writing of arrangements for a formal capability hearing and at least five 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 their Union Representative or colleague.
- 5.18 The panel for the hearing will consist of three 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).
- 5.19 The hearing to be conducted in accordance with procedure outlined in [Appendix A](#).
- 5.20 The panel considering a capability issue will need to consider;
- an outline of the employee's role within the school, including their date of commencement, job description, their application form and training record;
 - the performance standards required of the post holder;
 - 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 Head of School 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 Head of School's response to any explanations or statements of the employee;
- 5.21 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 or salary;
 - contract of employment be terminated with the required period of notice;
- 5.22 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.
- 5.23 Any appeal must be registered in writing within ten working days of receipt of the letter confirming the outcome.
- 5.24 The Appeal Hearing will be conducted in accordance with [Appendix A](#) and the decision of the panel will be final.

APPENDIX A

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 hearing

- 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 Head of School 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 (or representative) will have the opportunity to question the Head of School and witnesses.
- The panel will have the opportunity to question the Head of School and witnesses.
- Each witness will leave the proceedings after questioning.
- The employee (or representative) will present a statement of case and may call witnesses in support.
- The Head of School 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 Head of School will summarise the case introducing no new evidence.
- The employee (or representative) will summarise the case, introducing no new evidence.
- The Head of School 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.

Performance improvement plan

*Formal PIP

*{delete as appropriate}

Further information
Date of interview
Dates of previous discussion(s) regarding performance
Please attach any supporting documentation

Specific work issues requiring discussion between Head of School and employee

Areas of concern	Standards required	Agreed action to meet requirements	Timescale for improvements	Support required

Employee's comments

Any other information which should be taken into account regarding employees' performance.

Further information

Are there any warnings to be given? **FORMAL / FINAL** (delete as appropriate)

Date of next meeting

Signed by employee

Date

Signed by Head of
School

Date

Head of School's comments

Reason for issuing formal warning.

cc Employee File
 Personal File
 Trade Union Representative

APPENDIX C

Invitation to attend counselling session

Date:

Ref:

Private and Confidential

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 e.g. 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,

Head of School

Tel:

Email:

I acknowledge receipt of an exact copy of this letter.

Signed	Date
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