



Brook Learning Trust

Staff Capability Policy and Procedure

At Brook Learning Trust (BLT) we bring together our unique academies in our belief in the power of education to change lives and communities. It is our steadfast purpose to challenge and defy the barriers that constrain the educational progress of any child. We set high aims for aspiration and secure collective responsibility for all our children's achievements. Our work is underpinned by the values of Integrity, Respect, Courage, Optimism and Accountability.

1. Policy Statement

This policy promotes fairness in the treatment of individual employees and is designed to help and encourage all employees to achieve and maintain high standards of performance at work.

The procedure sets out arrangements for when performance at work falls below expected standards due to issues of capability.

2. Introduction

Good management with clear expectations and appropriate support will clearly contribute towards addressing weaknesses in performance. Early identification of problems through performance review and monitoring will help avoid the need for formal procedures.

This procedure provides a recognised process for dealing with capability (work performance) issues, i.e. where an employee's skills, ability and / or knowledge do not meet those required to carry out his/her job to the expected standard. Capability issues will include cases where a performance problem may have existed for some time or has arisen due to changing job content or individual personal factors.

The capability policy and procedure is separate from the BLT's Disciplinary and Conduct Policy and Procedure and is designed to deal with employees who are unable to perform to the required standards rather than those who choose not to do so, i.e. if a manager believes that the poor performance is due to misconduct, e.g. carelessness, negligence or lack of effort, the issue will be dealt with under the Discipline and Conduct Policy and Procedure.

This policy should not be used in cases of alleged misconduct or lack of capability due to persistent ill health. These should be dealt with separately through the disciplinary procedure and staff absence policy respectively.

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.

In many cases sufficient improvement can be achieved through positive intervention and appropriate support within informal discussions. It is therefore important that all reasonable support, including advice, coaching and further training, where appropriate, should be explored before resorting to the formal capability procedure.

However, if it is reasonably believed that the use of the informal discussions is unlikely to have the desired impact on performance and that the employee has already been made aware of the concerns from discussions during regular line management meetings, or that the level of performance is very serious with regard to pupil progress or/and behaviour, then the process can move directly to the formal procedure as set out in paragraph 4 below.

3. Aim and Scope of the Procedure

The primary aim of this procedure is to assist and support employees whose performance is causing concern to attain the standards required. This is essential in the provision of the highest standards of education and care of children/students. However this procedure also enables the Principal (or the CEO for Principals and central Trust staff) to take essential management action, including dismissal, within reasonable timescales in respect of employees whose performance continues to fall short of the required standards.

This procedure does not apply to staff during probationary periods as any performance (or conduct) concerns should be dealt with as part of the supervision and induction of new staff.

This policy is not applicable to Newly Qualified Teachers (NQTs) for whom separate induction procedures apply.

4. Early Action to Address Performance Concerns

4.1 Informal Standard Setting Discussion

Line managers have a responsibility to maintain professional contact and dialogue with their staff through the continuous performance management process, to clarify expectations, discuss performance issues and to provide support including coaching, advice and (where relevant) observation with constructive feedback.

Where the performance of an employee continues to give concern and the professional dialogue does not appear to be effective then the discussion should move to a standard setting meeting.

This remains an informal part of the procedure although the meeting will be structured and a note of the discussion and outcome will be recorded. The purpose of the meeting is to explore reasons for the performance concerns and discuss targets for improvement alongside a programme of support.

The meeting may be conducted by the line manager or, if appropriate, the matter may be referred to a more senior member of the academy's Leadership Team or the Executive Team for central Trust staff.

The employee should be given reasonable notice (up to five working days) of the meeting to prepare and to obtain someone suitable such as a workplace colleague or Trade Union representative to accompany him/her to the meeting if required.

The standard setting meeting must address the following issues clearly and fully:

- a) The areas of performance that are causing concern and the evidence or information that leads to this view
- b) The expected standards of performance
- c) An opportunity for the employee to respond or to provide any relevant information relating to the concerns
- d) Timescales in which performance is expected to improve
- e) Clear targets to establish whether the required standards have been achieved
- f) Ongoing support, advice, guidance and appropriate training
- g) Arrangements for the monitoring/assessment of performance
- h) Arrangements including a date for assessment at the end of the review period.

Targets set within this discussion should be proportionate in number, reasonable in expectations, with clear success criteria and a focus on development.

It is essential that the employee is made fully aware that the process could move to the formal procedure should performance not improve to the required standard. In the light of this potential implication it could be of benefit to both line manager and employee to permit the involvement of a workplace colleague or Trade Union representative. However, this would not impact upon the status or purpose of the meeting.

The timescale for the review period will need to reflect all the circumstances of the situation but this will normally be a minimum of four and a maximum of ten weeks.

The employee will be given a copy of the notes of the meeting and this will include a record of the arrangements set out in a) to h) above.

4.2 Early Stage Review

At the end of this informal review period a meeting to discuss progress will be held with the employee. This meeting will best be conducted by the person who was involved in the standard setting discussion, where possible.

The employee will be informed that:

- a) His/her performance has improved to an acceptable standard and there will be no further requirement for monitoring against the standards set. It may, however be advisable that ad hoc, informal checking continues for a while to ensure that the improved performance is truly embedded, or
- b) There has been some improvement and it is believed that a short extension of the informal standard setting process should be sufficient to enable the employee to reach the standards expected, or
- c) His/her performance has not reached an acceptable standard and it is considered appropriate to move into the formal procedure. This will require a formal capability meeting to be arranged.

5. Formal Capability Procedure

5.1 Authority to Act

The table below indicates the appropriate person to chair each stage of the capability procedure.

Employee Group	Informal Stages	Formal Capability Meeting	Appeal
Academy staff	Academy Principal or representative of AP	Academy Principal	Panel of Academy Councillors
Trust staff	Line Manager or member of the Executive team	CEO	Panel of Trustees
Principal	CEO	CEO / Chair of Academy Council	Panel of Academy Councillors
CEO	Chair of Trust Board	Chair of Trust Board	Appeals Panel – Chair of Trust Board will ask Clerk to assemble (max 3 Trustees)

5.2 Formal Capability Meeting (Stage 1 Formal Procedure)

At least five working days' notice will be given of the formal capability meeting.

The notification will contain sufficient information about the concerns regarding the performance and their possible consequences to enable the employee to prepare to answer the case at a formal capability meeting. It will also contain copies of any written evidence (unless previously provided); the details of the time and place of the meeting; and will advise the employee of their right to be accompanied by a workplace colleague or Trade Union representative.

This meeting is intended to establish the evidence regarding the performance concerns. The meeting will be chaired in line with the guidance above.

The meeting allows the employee to respond to the 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.

The person conducting the meeting may conclude that there are insufficient grounds for pursuing the capability issue formally and that it would be more appropriate to continue to address the remaining concerns through continuous performance management dialogue or through other informal means. In such cases, the formal capability procedure will come to an end.

The person conducting the meeting may also adjourn the meeting if appropriate, for example if 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:

- Identify the professional shortcomings, for example if an employee is not meeting relevant professional standards or the key requirements of the role;
- Give clear guidance on the improved standard of performance needed to ensure that the employee can be removed from formal capability procedures. (This may include the setting of new objectives or a re-focus of existing objectives 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 or not the necessary improvement has been made);
- Explain the support that will be available to help the employee improve their performance;
- 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 but in straightforward cases this should be between a minimum of four and a maximum of ten weeks; and
- Warn the employee formally that failure to improve within the set period could lead to dismissal. This constitutes a first warning under the procedure. In very serious cases, this warning could be a final written warning.

Notes will be taken of formal meetings and a copy sent to the employee. Where a warning is issued, the employee will be informed in writing of 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 employee should be provided with a clear, written action plan to confirm the objectives, the support being provided and the arrangements for monitoring, review and success criteria.

5.3 Monitoring and Review Period Following a Formal Capability Meeting

A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period.

The employee will be invited to a further formal review meeting, unless they were issued with a final written warning, in which case they will be invited to a decision meeting – **see Stage 3 of formal capability procedure.**

5.4 Formal Review Meeting (Stage 2 of Formal Procedure (unless final warning issued at Stage 1))

As with formal capability meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the employee of their right to be accompanied by a workplace colleague or a Trade Union representative.

- If the person conducting the meeting is satisfied that the employee has made sufficient improvement, the capability procedure will cease
- 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
- If no, or insufficient improvement has been made during the monitoring and review period, the employee will receive a final written warning.

Notes will be taken of formal meetings and a copy sent to the member of staff. The final written 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 (within the set timescale), 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. The employee will be invited to a decision meeting.

5.5 Decision Meeting (Stage 3 of Formal Procedure)

As with formal capability meetings and formal review meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the employee of their right to be accompanied by a workplace colleague or Trade Union representative.

If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end. It may be appropriate to provide a short period of informal monitoring outside the formal process to ensure that the improved performance is fully embedded.

If performance remains unsatisfactory and the evidence is that the employee is unlikely to attain the standard expected within a reasonable timescale then a decision will be made that the employee should be dismissed.

The power to dismiss staff rests with Brook Learning Trust as legal employer.

The employee will be informed as soon as possible and within five working days of the decision meeting 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.

5.6 Appeal

If an employee feels that a decision to dismiss them, or other action taken against them, is wrong or unjust, they may appeal in writing against the decision within ten working days of the decision, setting out at the same time, the grounds for appeal.

Appeals will be heard without unreasonable delay, usually within ten working days of receipt of appeal notice and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied will apply as with formal capability and review meetings and, as with other formal meetings, notes will be taken and a copy sent to the employee.

The appeal will be dealt with impartially and, wherever possible, by managers, Academy Councillors or Trustees who have not previously been involved in the case.

The employee will be informed in writing of the results of the appeal hearing as soon as possible.

In the event that the employee does appeal against a warning, the arrangements, preparation and hearing of the appeal will not interrupt the timescales and/or capability process unless the appeal decision leads to the matter being reconsidered.

6. Timescales

For the purpose of this procedure working days will normally refer to the 195 days of the school year.

With agreement, meetings may take place at a time outside of an employee's normal working pattern.

All parties must take all reasonable steps to avoid delays and make every effort to attend the meetings required.

7. Non Attendance at Formal and Appeal Meetings

Employees are expected to attend and participate in all meetings. Where an employee or their representative is unavailable to attend they should inform the person chairing the meeting at the earliest opportunity.

If an employee's representative is unavailable the formal meeting / review or appeal may be deferred up to five working days from the date of the original hearing. The chair will give due consideration to any other request for postponement taking into account the individual circumstances and the reason for non-attendance.

Should an employee or representative fail to attend a rescheduled meeting or fail to make written representations, the Chair may decide that the meeting may proceed in their absence and a decision made based on the available information.

Other than in exceptional circumstances only one postponement will be granted. Thereafter the meeting will proceed whether or not all parties attend.

8. Absence During the Process

Sickness absence should not delay or avoid the use of formal capability procedures. It is in the interests of all parties to address concerns about performance without undue delay. Arrangements will be made to seek medical advice from an occupational health advisor to determine whether or not the employee is sufficiently fit to take part in the process. It is expected that the employee will consent to a referral being made to an occupational health advisor in such circumstances.

Upon receipt of occupational health advice consideration may be given to any measures that can be put in place to enable the process to proceed. This may include giving the employee the opportunity to make written representations to a meeting, review or appeal, or for their Trade Union representative or workplace colleague to make representations on their behalf.

The academy may also consider making adjustments to this procedure in appropriate cases e.g. moving from this procedure to the absence management policy to terminate the employee's service

on the grounds of ill health. If an employee’s medical condition is not serious enough to warrant consideration of termination of employment on grounds of ill health, the occupational health advisor will be asked to assess whether an employee absent through sickness is fit enough to attend a meeting under the capability procedure. In the event that the employee is deemed not fit to attend a formal capability meeting he/she may present a written submission for consideration and/or be represented by a Trade Union representative in her/his absence.

9. Advice and Support to Employees during the Process

Employees are advised to seek support from their Trade Union or Professional Association in the first instance. Employees may address questions about the procedure to the CEO/Principal or other delegated staff member.

Employees also have access to the Trust’s confidential counselling service and advice helpline and details of how to access this will be included in the written communication to the employee during the capability process.

10. Record Keeping

Accurate and contemporaneous records will be kept throughout the process. Copies of any outcome letters should be retained on the employee’s personnel file.

All records will be treated as confidential and processed in accordance with the General Data Protection Regulation 2018 (GDPR) and The Data Protection Act 2018.

11. Confidentiality

Action under this procedure must be treated by all parties involved in the process as a confidential matter. Discussion with other parties is not acceptable as confidentiality will ensure that performance issues can be dealt with as close to the source as possible and will assist in ensuring that if any action is taken, or recommendations made, there is a stronger likelihood of a successful outcome. Failure to respect the confidentiality of the process may be regarded as a disciplinary matter.

POLICY REVIEW AND RATIFICATION	
Policy reviewed bi-annually and ratified by the BLT Board in July	
This review by HR	June 2019
Summary of amendments	Change of focus to continuous performance management rather than appraisal links Changes to first paragraph to bring into line with all BLT policies New title – removal of (competence) Authority to Act Reference to Line Manager rather than Appraiser Clearer example of definition of capability and links to other policies Clarification of non-attendance / absence during process Clarification of postponement of Trade Union representative Reference to reasonable adjustments under Equalities act Reference to GDPR and Data Protection Reference to Confidentiality
Ratified by academy council	July 2019
Next review	July 2021