

Title	Capability – Support Staff
Associated Policies	<ul style="list-style-type: none"> • Performance Management Policy (Support Staff) (TPO/STA/05) • Disciplinary Procedure (TPO/STA/22) • Pay Policy (Support Staff) (TPO/STA/08) • Pay Standardisation Agreement • Single Equality Policy (TPO/EO/01)

REVIEWED: SEPTEMBER 2018

NEXT REVIEW: SEPTEMBER 2021

1. Policy Statement

- 1.1 All Brooke Weston Trust academies are committed to provide consistently excellent education for their students, achieved through high standards of performance from all staff.
- 1.2 This policy sets out the framework for formal capability procedures that will apply when support staff fall below the acceptable levels of performance or conduct that are expected of them which the appraisal and professional development process has been unable to address.
- 1.3 This policy does not form any part of any employee’s contract of employment and it may be amended following consultation. The Trust may also vary any parts of this procedure, including any time limits as appropriate in any case.
- 1.4 The policy will be applied in accordance with the Trust’s Single Equality Policy.

2. Who does this policy apply to?

- 2.1 This policy applies to all Trust support staff.

3. Who is responsible for carrying out this policy?

- 3.1 The implementation of this policy will be monitored by the Board of Directors of the Brooke Weston Trust, the CEO, Executive Principals and governors of each individual Academy.

4. What are the principles behind this policy?

- 4.1 The Trust is committed to ensuring that support staff are given the opportunities to continue to improve their professional practices to ensure they are able to meet required standards and expectations.
- 4.2 If an employee does not demonstrate an acceptable standard of performance or satisfactory progress through performance management procedures the appraiser will notify the employee that they will be managed under the capability procedure in accordance with this policy. Those employees on a formal capability plan should be aware that the Trust reserves the right to suspend their annual incremental pay award, an option which may be considered in certain extreme circumstances (see Pay Policy – Support Staff (TPO/STA/08)). If applicable, the employee will be notified in writing. In the event that an employee’s performance improves and a formal plan is no longer required, the pay situation will be reviewed accordingly from the date the formal procedure no longer applies.
- 4.3 The capability policy applies a consistent and fair framework through which such support staff can achieve and maintain a high standard of performance, or ultimately be dismissed if unable to meet the required standards.
- 4.4 The Trust aims to deal with capability 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 the capability procedure.

- 4.5 The employee and anyone accompanying the employee, including witnesses, must not make electronic recordings of any meetings or hearings conducted under this procedure.
- 4.6 Failure to observe the confidentiality outlined in paragraphs 4.4 and 4.5 could result in disciplinary action under the Trust's Disciplinary Procedure.

5. Procedures

- 5.1 This procedure applies only to support staff whose performance is of serious concern and which the performance management process had been unable to address.
- 5.2 Following an informal review (as per 5.13 of the Performance Management Policy), if the appraiser is not satisfied with progress, the employee will be notified in writing that the performance management system will no longer apply and that his/her performance will be referred to a formal review in the form of a formal capability meeting.
- 5.3 Where there are serious concerns to the health and safety of others or there is a risk to the quality of education for students, the formal procedure (see 5.4) can be commenced immediately without referring to the informal stage.

Formal Capability Meeting

- 5.4 The focus of the capability and subsequent review meetings are to explore ways in which the employee can be supported to improve their level of performance to an acceptable level.
- 5.5 At least seven working days' notice will be given of the formal capability meeting. The senior manager with line management responsibility for the employee will write to the individual to inform him/her about:
 - The date, time and place of the meeting
 - The basic details of the concerns about the employee's performance and their possible consequences
 - Copies of written evidence and documents to be used in the meeting
 - The employee's right to be accompanied by a representative of his/her trade union or a workplace colleague of his/her choice (see 5.13-5.18)
 - Names of witnesses to be called
 - His/her right to call witnesses on his/her behalf
 - The name and office of any adviser who will accompany the senior manager to the meeting.
- 5.6 This meeting is intended to establish the facts. It will be conducted by a senior manager nominated by the Principal. The meeting will allow the employee to respond to concerns about their performance and to make any relevant representations. They may provide new information or a different context to the information/evidence already collected.
- 5.7 The senior manager may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases, the capability procedure will come to an end and the appraisal process as outlined in the Trust's Performance Management policy re-start.
- 5.8 The senior manager conducting the meeting may also adjourn the meeting if it is decided that further investigation is required or that more time is needed in which to consider any additional information.

- 5.9 In all other cases the meeting will continue. The senior manager conducting the meeting will:
- Identify the professional shortcomings of the individual, including which of the professional standards are not being met
 - Ensure that the employee is given an opportunity to ask questions, present evidence, call witnesses, respond to evidence and make representations
 - Give clear guidance on the improved standard of performance required to ensure that the employee can be removed from formal capability procedures which may include the setting of new objectives through an action plan focussed on the specific areas of poor performance which need to be addressed. It will include clear success criteria and the evidence that will be used to assess whether or not the necessary improvements have been made
 - Explain any support that will be put in place to help the employee improve their performance
 - Establish a timetable for improvement and explain how performance will be monitored and reviewed. This timetable will depend on individual circumstances but will be reasonable and proportionate, normally between 4 and 6 weeks.
 - Warn the employee that failure to improve within the set period could lead to a final written warning which could then lead to his/her dismissal
 - Inform the employee of the right of appeal together with the time limit for appealing
- 5.10 Notes will be taken by a clerk of formal meetings and a copy sent to the employee and any representative in order that they are agreed.
- 5.11 Where a first warning is issued, the employee must be informed in writing of the matters discussed in 5.9. The employee must also be informed in writing that failure to achieve an acceptable standard of performance within the set timescales may result in a final written warning which could then lead to dismissal.
- 5.12 If the concerns relate to lack of capability which presents a risk to the health, safety and well-being of students or colleagues, a shorter timescale may be appropriate. In such cases, the senior manager may exceptionally decide to issue a first and final written warning.
- 5.13 Role of companion at meetings**
All employees have the right to be supported by a workplace colleague or trade union representative during a meeting to provide them with support, guidance and advice.
- 5.14 The statutory right is to be accompanied by a fellow work colleague, a trade union representative, or an official employed by a trade union. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany an employee.
- 5.15 Where a member of staff wishes to bring a companion to the meeting, they should notify the line manager conducting the appraisal in advance of the meeting.
- 5.16 The Trust will support all employees in securing the availability of trade union representation where possible. If the chosen companion is unavailable at the time a meeting is scheduled, the member of staff may propose an alternative time for the meeting to take place. As long as the alternative time is reasonable and within five working days after the original scheduled date, the meeting will be postponed. If the chosen companion will not be available for more than five working days afterwards, the Academy/Trust may ask the member of staff to choose someone else.
- 5.17 Should the employee choose to bring a companion to the hearing they will be responsible for making these arrangements and for providing their companion with any paperwork that they require for the hearing.

- 5.18 A companion may make representations, ask questions, and sum up the employee's position, but will not be allowed to answer questions on the employee's behalf. The employee may confer privately with their companion at any time during a meeting.

Sickness Absence and Capability

- 5.19 It is important that sickness absence should not delay or avoid the use of formal capability procedures. It is in the interest of all parties to address concerns about poor performance without undue delay. The Trust will adopt a sympathetic approach wherever possible but reserves the right to proceed with formal capability procedures notwithstanding staff sickness or other absence.
- 5.20 Consideration will be given to whether poor performance may be related to a disability and if so whether there are any reasonable adjustments which could be made to the employee's working arrangements including changing duties or providing additional equipment or training.

Monitoring and Review following Formal Capability Meeting

- 5.21 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 formal review meeting, unless he/she were issued with a final written warning, in which case they will be invited to a decision meeting.

Formal Review Meeting

- 5.22 At least seven working days before the formal review meeting a written notification of the meeting will be given to the employee together with details of the meeting as outlined in 5.5 above. The formal review meeting will follow a similar procedure to the formal capability meeting as outlined in 5.9 above.
- 5.23 If the senior manager conducting the meeting is satisfied that the employee has made sufficient improvement, the capability procedure will cease and the performance management process outlined in the Trust's performance management policy will re-start.
- 5.24 In cases where:
- Some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period.
 - No or insufficient progress has been made during the monitoring and review period, the employee will receive a final written warning.
- 5.25 Notes will be taken of formal meetings and a copy sent to the member of staff and any representative.
- 5.26 Where a final written warning is issued, the employee will be informed in writing that failure to achieve an acceptable standard of performance, within the set timescale, may result in dismissal. The employee will also be given information about the handling of the further monitoring and review period and procedure and time limits for appealing against a final written warning.

Right of Appeal against a Formal Written Warning

- 5.27 If an employee feels that a decision to issue a first and/or final written warning is wrong or unjust, he/she may appeal in writing against the decision.
- 5.28 Appeals against a written warning shall be restricted to considering the reasonableness of the decision made by the senior manager, any relevant new evidence not previously available to the senior manager or any procedural irregularities. A statement giving the reasons for the appeal should be submitted to the Clerk of Governors within five working days of the formal written warning being received.
- 5.29 All appeal hearings will be held as soon as possible after receipt of the appeal at an agreed time and place.

- 5.30 The employee must submit any evidence which he/she wishes to present at least five working days prior to the hearing.
- 5.31 For Academy staff, the appeal will be heard by the Appeal Panel of Governors. The number of governors on the appeal panel will be not less than **two**. For members of the Brooke Weston Trust's central team, the appeal will be heard by an Appeal Panel of the Board of Directors. The number of Directors will be not less than **two**. The panel may be advised by a person engaged for the purpose by the Governing Body. The panel can either:
- Confirm the warning
 - Reduce the final warning to a warning
 - Cancel the warning

The employee will be informed in writing of the decision of the Appeals Panel as soon as possible.

- 5.32 The same arrangements for notification and the right to be accompanied will apply for an Appeals Panel as for the formal capability and review hearings outlined in 5.5 above.
- 5.33 Pending any appeal, the employee will be expected to continue to work in accordance with targets set for the next stage of the procedure and his/her progress towards the achievement of these targets will be monitored during this period.

Decision Meeting

- 5.34 Following the capability review meetings and within the agreed timescale for progress to be made, a decision meeting will take place to determine the next steps.
- 5.35 As with formal capability meetings and formal review meetings, at least seven working days' notice will be given in writing together with details of the meeting as outlined in paragraph 5.5. This meeting will be conducted by the Principal.
- 5.36 If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end and the performance management process will re-start.
- 5.37 If progress has been made and there is confidence that wholly satisfactory performance will be achieved by a short extension, it may be appropriate to extend the monitoring and review period rather than to dismiss. The final written warning will be extended for a short specified assessment period.
- 5.38 If performance remains unsatisfactory, a decision will be made that the employee should be dismissed.

Dismissal

- 5.39 The decision to dismiss staff from an Academy rests with the Principal and for members of the Brooke Weston Trust's Central Team with the Chief Executive.
- 5.40 Once the decision to dismiss has been taken, the Trust will dismiss the employee with immediate effect.
- 5.41 The employee will be informed in writing as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and whether the notice is to be served or whether there will be pay in lieu of notice and of the right to appeal.
- 5.42 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 within five working days to the CEO of the Trust against the decision, setting out at the same time the grounds for their appeal.

Right of Appeal against a Decision to Dismiss

- 5.43 The CEO of the Trust will convene an appeals panel. Appeal hearings will be held without reasonable delay after the receipt of the appeal and will be conducted in accordance with the procedure outlined in paragraphs 5.26, except that the Panel shall consist of at least **three** governors from across the Trust and not less than two, **none** of whom have had any previous involvement in the case.
- 5.44 In this case, the panel are to consider whether the employee's performance falls below the required standard, to determine whether adequate support mechanisms have been offered to the employee and to ensure all other reasonable alternatives to dismissal have been exhausted.
- 5.45 The employee will be informed in writing of the results of the appeal hearing as soon as possible after the date of the hearing.

6. Policy Review

- 6.1 This policy will be monitored annually as part of the Academy's internal review process and reviewed on a three year cycle.