



**THE BLESSED EDWARD BAMBER CATHOLIC MULTI ACADEMY TRUST
CAPABILITY POLICY AND PROCEDURE**

1. SCOPE

- 1.1 This procedure shall apply to all employees employed by the Blessed Edward Bamber Catholic Multi Academy Trust.
- 1.2 The purpose of the procedure is to give a structure to improve performance to the standards expected and to facilitate the fair dismissal of those who have not improved.
- 1.3 The Trust delegates its authority in the manner set out in this procedure.
- 1.4 There may be some occasions where an employee’s behaviour could also be described as misconduct. This Capability Policy and Procedure and the Trust’s Disciplinary Policy and Procedure may be used concurrently whilst the Trust endeavours to ascertain if the behaviour is due to misconduct or incapability.
- 1.5 There may be occasions where an employee’s capability could relate to their health. This Capability Policy and Procedure may be used concurrently with the Trust’s Sickness Absence Policy and Procedure. In particular if an employee goes off sick following the use of this Capability Policy and Procedure, the Trust may use its Sickness Absence Policy and Procedure.
- 1.6 This Capability Policy and Procedure can be initiated at any time during any appraisal cycle.
- 1.7 In this policy “working day” means any day on which you would ordinarily work. In other words it may be different for teaching and non-teaching staff. It will be different for full-time and part-time employees.
- 1.8 Lack of capability is defined as a situation in which an employee fails consistently to perform his/her duties to professionally acceptable standards. The focus will be on the fact that the employee cannot perform to satisfactory standard, rather than will not, which may be viewed as a conduct issue.

2. INFORMAL ACTION

- 1.1 Where your performance falls short of the standard expected, your line manager may give you management advice, mentoring, coaching and counselling. Arrangements may also be made for you to observe work undertaken by colleagues elsewhere across the Trust or offering you the opportunity to discuss your practice with other external sources of support, such as advisory teachers. An informal stage would last no less than six working weeks and no more than eight.
- 1.2 Informal action could include establishing the expectations your employer has of you and what support will be given you to help you meet those expectations.
- 1.3 Informal action may be recorded in writing and may be referred to at a later stage as evidence that an informal approach was attempted and the success or failure of such an approach.

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3. CAPABILITY, FINAL CAPABILITY AND APPEAL MANAGERS

Employee Level	First/Second Capability Meeting – the Capability Manager	Final Capability Meeting – the Final Capability Manager	Appeal Manager (re Written Warnings)	Appeal Manager (re Dismissal)
CEO/Executive Director	Board Director appointed by the Chair of the Board	Chair of the Board	Trust Appeal Panel	Trust Appeal Panel
Headteacher	CEO/Executive Director	Board Director appointed by the Chair	Chair of the Board	Trust Appeal Panel
All other employees	Headteacher	CEO/Executive Director	Board Director appointed by the Chair of the Board	Trust Appeal Panel

4. ALTERNATIVE ACTION

- 1.1 There may be a situation where the Capability Manager considers that a recent promotion or job change has been a contributory factor in any unsatisfactory performance and that informal action has not been or is unlikely to be effective.
- 1.2 The Capability Manager may offer you the option of taking a voluntary demotion as an alternative to proceeding with a First Capability Meeting.

5. FIRST CAPABILITY MEETING

- 1.1 The Capability Manager will produce a Performance Report setting out:
 - 1.1.1 What aspects of your performance are causing concern
 - 1.1.2 What specific performance standards are expected
 - 1.1.3 The support that has been provided to you so far
- 1.2 This Performance Report will be sent to you at least 5 working days before the First Capability Meeting.
- 1.3 At the First Capability Meeting you will have an opportunity to comment upon the Performance Report and to discuss the professional shortcomings, possible support guidance and monitoring.
- 1.4 If the Capability Manager concludes that performance is satisfactory you will no longer be subject to these procedures.

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- 1.5 If the Capability Manager concludes that performance is unsatisfactory you will be given a First Written Warning (confirmed in writing) which will
- 1.1.1 Identify the professional shortcomings
 - 1.1.2 Give clear guidance on the improved sustainable standard of performance needed to exit the capability procedure
 - 1.1.3 Explain the support that will be available, and how performance will be monitored over the Assessment Period
 - 1.1.4 Identify the timetable for improvement and agree a date for the next Capability Meeting
 - 1.1.5 Make it clearly understood that failure to improve may lead to dismissal.
- 1.5 The length of the Assessment Period following a First Written Warning will be at least 4 working weeks and no more than 12 working weeks.
- 1.6 If the Assessment Period is less than 12 working weeks, it may be extended by the Capability Manager to no more than 12 working weeks in total if there is sufficient evidence of progress towards the required standards.
- 1.7 You may appeal against a First Written Warning by writing to the Clerk to the Board within 5 working days of being sent the Written Warning.
- 1.8 The submission of an appeal does not delay the implementation of the Assessment Period.
- 1.9 Any appeal should normally be heard within 20 working days of the Clerk to the Board receiving your appeal.

6. SECOND CAPABILITY MEETING

- 1.1 The Capability Manager will prepare an Updated Performance Report recording the assessments, support and evaluation of your performance during the Assessment Period. This Report may be prepared and sent on the last day of the Assessment Period.
- 1.2 This Report will be presented to you at least 5 working days before the Second Capability meeting.
- 1.3 If the Capability Manager concludes that performance is satisfactory you will no longer be subject to these procedures. The first written warning will remain on file for 12 months.
- 1.4 If after the Second Capability Meeting the Capability Manager considers that your performance remains unsatisfactory you will be given a Final Written Warning setting an Assessment Period of no less than six working weeks and no more than eight and setting the date for the Final Capability Meeting. You will be informed that failure to make satisfactory sustainable improvement may result in your dismissal.
- 1.5 You may appeal against a Final Written Warning by writing to the Clerk to the Board within 5 working days of being sent the Final Written Warning.
- 1.6 The submission of an appeal does not delay the implementation of the Assessment Period.
- 1.7 Any appeal should normally be heard within 20 working days of the Clerk to the Board receiving your appeal.

7. FINAL CAPABILITY MEETING

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- 1.1 The Capability Manager will prepare a Final Performance Report recording the assessments, support and evaluation of your performance during the Assessment Period. This report may be prepared and sent on the last day of the Assessment Period.
- 1.2 This report will be presented to you at least 5 working days before the Final Capability Meeting.
- 1.3 If the Capability Manager concludes that performance is satisfactory you will no longer be subject to these procedures. The final written warning will remain on file for 18 months.
- 1.4 If after the Final Capability Meeting the Final Capability Manager concludes that your performance remains unsatisfactory and is not capable of sustainable improvement the Final Capability Manager will terminate your employment on notice.
- 1.5 You may appeal against a dismissal on notice by writing to the Clerk to the Board within 10 working days of being sent the notification of termination.
- 1.6 The submission of an appeal does not delay the commencement of the notice period.
- 1.7 If your contract contains a payment in lieu of notice clause the Trust may exercise that clause to bring your contract to an end with immediate effect.
- 1.8 Any appeal should normally be heard by the person or body specified at Paragraph 3 above within 20 working days of the Clerk receiving your appeal.

8. TRUST APPEAL PANEL

- 1.1 The Trust Appeal Panel shall comprise three members not previously involved in the matter..
- 1.2 In the event that there are insufficient members available to participate in a Panel, the Chair of the Board or Vice-Chair as appropriate may appoint associate members to solely participate in the appropriate Panel, on the recommendation of the Diocesan Schools Commission.

9. COMPANION

- 1.1 If you are the subject of any capability meeting, you may be accompanied by a companion who must be either a willing work colleague not involved in the substance of performance issues related to you or an accredited trade union representative of a union recognised by the Trust.
- 1.2 You must let the relevant Manager know who your companion will be at least one working day before the relevant meeting.
- 1.3 If you have any particular need, for example, a disability, you may also be accompanied by a suitable helper.
- 1.4 Your companion can address the meeting in order to:
 - (a) put your case
 - (b) sum up your case

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(c) respond on your behalf to any view expressed at the meeting.

- 1.5 Your companion can also confer with you during the meeting.
- 1.6 Your companion has no right to answer questions on your behalf, or to address the meeting if you do not wish it, or to prevent you from explaining your case.
- 1.7 Where you have identified your companion to the relevant Manager and your companion has confirmed in writing to the relevant Manager that they cannot attend the date or time set for the meeting, the relevant Manager will postpone the meeting for no more than five working days from the date set by the Academy/Trust to a date or time agreed with your companion provided that it is reasonable.

10. TIMING OF MEETINGS

Meetings under this procedure may:

- 1.1 need to be held when you were timetabled to teach.
- 1.2 exceptionally be held during planning preparation and administration time if this did not impact on lesson preparation.
- 1.3 not be held on days on which you would not ordinarily work.

11. ASSISTANCE

In all cases involving any sanction in relation to the CEO/Executive Director, Headteachers or to a person on the Leadership Spine or to potential or actual dismissal of any other member of staff, the Diocesan Schools Commission may send a representative to advise the Capability Manager, Final Capability Manager or Appeal Manager/Panel.

12. REVIEW OF THIS PROCEDURE

This procedure was first produced September 2014 and follows the principles set out in the Catholic Education Service (CES) policy and procedure for use in Catholic Voluntary Aided Schools and Academies in England. It will be kept under regular review and any proposed changes will be the subject of consultation with the recognised trade unions.

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