

Performance Capability Policy

Version 3: 1 April 2024



Blakehill Primary School



Policy Details

Blakehill Primary School has adopted the PACT HR recommended model procedure as agreed by the following Trade Unions;

- Unison
- GMB
- NASUWT
- NEU
- NAHT

**ASCL recognises that meaningful consultation took place prior to the adoption and implementation of this policy.*

The Board has agreed that we will adapt the appraisal and Performance Capability procedures (written to be applicable to teaching staff), to be used as a process for dealing with the management of performance (both appraisal and Performance Capability) for all staff employed, whether class or non-class based.

Approved by: Buildings, Staffing and Finance Committee

Approved on: 01/07/2025

Reviewer: Lisa Keighley/ Philip Cavalier Lumley

To be reviewed on: 01/07/2026

This policy/guidance will be retained for a period of 7 years from replacement.

Summary of Key Changes

1. The Performance Management Policy (formerly comprising Appraisal and Performance Capability) has been separated and reverted to two separate policies.
2. Incorporates up to date guidance in line with applicable frameworks such as the current Headteacher Standards, Teacher Standards and Teacher Appraisal Framework.
3. Reference to Committee/School Governing Bodies has been extended to incorporate Multi Academy Trusts and Academies.
4. Adaptation of right to be accompanied permitting employees to attend meetings with family members in instances of Stage 3 Final Performance Capability Meeting, Stage 4; Performance Capability Hearing and Appeals.
5. Clarity regarding working days' notice throughout the policy and where necessary bringing notice in line with other PACT HR policies for consistency of application.
6. Further clarity around when Performance Capability affects the provision of references.
7. Guidance to objective setting is linked to PACT HR's regular updates to ensure best practice is being adopted by Appraisers.
8. Staff Experiencing Difficulties has its own section for transparency and ease of application.
9. Clarification regarding the policy application in relation to Early Careers Teachers
10. Equality Impact Assessment Reference has been added.
11. Paragraph numbers have been inserted on key paragraphs of the policy for transparency purposes.
12. The following Appendices have been added to the policy with word versions for adaption available on the PACT HR website / HR Business Partnering Section:
 - Appendix 1: Equality Impact Assessment

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1. Policy Statement

1.1 Introduction

The School have the responsibility to ensure that all staff perform to professionally acceptable standards to secure high quality educational opportunities for pupils.

Performance Capability Procedures in relation to teaching staff, including Senior Leadership staff, are governed by the School Staffing Regulations. Support staff will be assessed against the requirements of their job description and any nationally agreed standards in place and in order to assure a fair and equitable approach the principles of this policy shall apply to all school-based staff including teaching, senior leadership and support staff.

1.2 Commitment

The School is committed to ensuring that staff are treated fairly and consistently. Senior Leaders will, at all times, abide by the relevant Appraisal Regulations in force, whilst reserving the right to include additional requirements that are relevant to ours School.

The School is of the belief that the School can only be fully effective in delivering a high-quality service to pupils and the community if it has well trained, motivated, committed and competent staff. Appraisals* will be a supportive and developmental process designed to ensure that all staff have the skills and support they need to carry out their role effectively. It will help to ensure that staff are able to continue to improve their professional practice and to develop in their professional roles.

For staff who demonstrate unacceptable underperformance and have not responded to support offered during the appraisal process or has not demonstrated a sustained improvement in performance, a formal Performance Capability meeting will be arranged (Transition meeting) to advise that their performance will no longer be managed through the appraisal process but through the Performance Capability Procedure as outlined in this Policy.

*Appraisals: Please refer to PACT HR's Appraisal Policy.

1.3 Equality Impact Assessment

All Schools, Academies and Trusts must ensure that all strategies, policies, service and functions, both current and proposed have considered equality, diversity and inclusion. It is recommended that an Equality Impact Assessment (EIA) form is used in conjunction with PACT HR Policies. An EIA template is attached to this policy, or a word version can be found on the PACT HR website for completion.

2. Performance Capability Policy

2.1 Purpose

This policy sets out the framework for a clear and consistent assessment of the overall performance of staff, including the Senior Leader, as well as supporting their development within the context of the School plan for improving educational provision and performance and the standards expected of all staff. It also sets out the arrangements that will apply when members of staff fall below the levels of competence that are expected of them. In the case of support staff, they will be assessed against the relevant job description for their post in school and their area of work, together with any nationally agreed standards in place from time to time.

2.2 Application of the Policy

The policy applies only to those staff, both support and teaching, where serious performance concerns arise that the Appraisal Policy is unable to address. This includes any performance concerns in relation to the Senior Leader.

Where concerns arise in relation to Early Careers Teacher (ECT), the appropriate body/institution should be informed ECT's progress. The induction period will continue and run parallel to any action under the Performance Capability Policy. In rare circumstances where dismissal on the grounds of Performance Capability occur before the end of the ECT's induction process they may continue the process at an alternative institution. The induction process cannot be considered failed until full completion.

It is important that the Performance Capability processes are managed in a way that avoids excessively increased workload for all parties concerned, but is sufficiently robust in order to achieve the required outcome.

2.3 General Principles

2.3.1 Consistency of Treatment and Fairness

The Governing Body / Board of Trustees is committed to ensuring consistency of treatment and fairness and will abide by all relevant equality legislation, including the duty to make reasonable adjustments for any members of staff considered to have a disability.

2.3.2 Confidentiality

The Performance Capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the Governing Body, Board of Trustees or the Senior Leader to quality assure the effectiveness of the Performance Capability process.

2.3.3 Sickness

If sickness absence appears to have been triggered by monitoring performance at any stage of the procedure, the absence will be dealt with in line with the Managing

Attendance policy. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

2.3.4 Grievances

Where a member of staff raises a grievance during the Performance Capability procedure, consideration may be given to temporarily suspending the procedure in order to deal with the grievance. However, where the grievance and Performance Capability cases are related it may be appropriate to deal with both issues concurrently.

2.3.5 Monitoring and Evaluation

The Governing Body / Board of Trustees and Senior Leader will monitor the operation and effectiveness of the Performance Capability policy, ensuring that the arrangements minimise the impact on workload for all parties involved.

2.3.6 Retention

The Governing Body/Board of Trustees and Senior Leader will ensure that all written records are retained in a secure place for six years and then destroyed.

2.4 Transition to Performance Capability

Where a member of staff demonstrates unacceptable underperformance and has not responded to support offered during the appraisal process or has not demonstrated a sustained improvement in performance, a Performance Capability meeting will be arranged (Transition meeting) to advise that their performance will no longer be managed through the Appraisal Policy but through the Performance Capability policy.

3. Performance Capability Procedure

3.1 Introduction

The Performance Capability Procedure will be a supportive process allowing an appropriate period of time in which the member of staff will be supported to improve their practice to the standard required by the School.

The time period allowed will be determined by a number of factors including the level of experience of the individual member of staff, the degree of improvement required and the impact of managing the underperformance on the School.

Where the concerns relate to the Senior Leader, the formal Performance Capability meeting will be conducted by the Chair of the Governing Body / Board of Trustees as appropriate.

The Senior Leader of the School will conduct the meeting for all other members of staff, except in instances of support staff underperformance where line management may be more appropriate.

It is important that any member of staff having their performance managed through the Performance Capability procedure is made aware, at each stage of the process, what the possible outcome could be whether performance is judged to have improved or not.

3.2 Right to be accompanied

An employee has the right to be accompanied at each Performance Capability meeting by a trade union representative or a work colleague only, except in Stage 3 Performance Capability Meetings, Performance Capability Hearings and Stage 3 Appeal Hearings, where they may nominate to be accompanied by a family member for support.

The companion should be allowed to address the meeting to put and sum up the member of staff's case, talk things through at the meeting and confer with the employee.

The companion does not, however, have the right to answer questions on the employee's behalf, address the meeting if the member of staff does not wish it or prevent the school from explaining the management case.

It is the responsibility of the employee concerned to arrange their own accompaniment, provide them with copies of any paperwork and inform the relevant person conducting the meeting who this will be.

3.3 Stage 1 Transition Meeting

A transition meeting may be held at any stage of the appraisal cycle if the member of staff's performance remains a cause for concern as part of the normal appraisal procedure.

The staff member may be assisted by a trade union representative or work colleague and will have at least **5 working days' notice** of the meeting if the date had not been agreed at an earlier stage in the appraisal procedure.

The meeting will provide an opportunity to review progress towards meeting the targets for improvement. The process for the meeting will be as follows:

- A summary of the concerns will be given at this meeting by the Senior Leader of the school who may be assisted by the appraiser or another manager.
- The staff member will be provided with an opportunity to respond.
- The Senior Leader will express a view on whether the appraisal process should remain in place or whether formal Performance Capability proceedings should continue.
- The employee, assisted by the trade union representative or accompanying work colleague, may make representations regarding their performance and targets set and progress made in meeting the targets.
- If it is decided that transition to Stage 2 of the Performance Capability Procedure is inappropriate at this time, then the staff member will continue to be supported under an Action Plan, as described in the Appraisal Policy for staff experiencing difficulties, and a new timescale for improvement will be set together with a date for a review meeting.
- If it is decided that Performance Capability procedures will continue and progress to Stage 2 of the Policy, the staff member will be notified in writing that the appraisal system will no longer apply and that their performance will continue to be managed under the Performance Capability procedure.
- The parties should agree a date when the Stage 2 Formal Performance Capability Meeting will be held, ensuring that the written notification of the meeting, the evidentiary documents and a copy of the procedure are supplied to the staff member a minimum of **5 working days** ahead of the meeting.

3.4 References

The [School/Academy/Trust](#) recognises that it has a duty to other employers to give truthful and balanced references and it is the policy of the school that any references provided will state, in accordance with the regulations, if an employee had been subject to formal Performance Capability procedures in the preceding 2-year period. For the purposes of clarity, it will be deemed that an individual has entered the formal Performance Capability procedures once they have attended the Transition Meeting.

The Governing Body / Board of Trustees as appropriate must, at the request of the employer requesting the reference, provide written details of the duration and outcome of the proceedings and the concerns which gave rise to the actions carried out under the Performance Capability Procedure.

3.5 Stage 2 – First Formal Performance Capability Meeting

The written notification of the meeting, together with the -documentary evidence and a copy of the procedure should be supplied to the staff member a minimum of **5 working days** ahead of the meeting.

This meeting is intended to establish the facts. It will be conducted by the School for Senior Leader Performance Capability meetings, or the Senior Leader (or a Deputy Senior Leader) for all other staff. The meeting allows the staff member, accompanied by a work colleague or a trade union representative who has been certified as being competent by the union to respond on behalf of their member of 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 Performance Capability issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases, the Performance Capability procedure will come to an end. The person conducting the meeting may also adjourn the meeting if, for example, 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 areas for development to enable performance standards to be met, (for example which of the standards expected of teachers are not being met);
- give clear guidance on the improved standard of performance needed to ensure that the staff member has every opportunity to improve their performance. This may include the setting of new objectives focused on the specific areas of development 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;
- the staff member may request an adjournment at any point in order to consider the management proposals and develop alternative or additional suggestions;
- explain any support that will be available to help the staff member to 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. In straightforward cases there could be between four and ten weeks depending on the time required for support and assessment processes. It is for the School to determine the set period. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place;
- in very serious cases, where the progress of pupils is being seriously jeopardised or where there are serious concerns on the grounds of health and safety this warning could be a written/final written warning to be issued with a four-week period for improvement being given.;
- advise the staff member formally that failure to improve within the set period could lead to dismissal. Normally, a warning will be issued where applicable.
- Notes of the formal meeting will be taken and a copy sent to the member of staff. Where a warning is issued, the staff member will be informed in writing in addition to 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.

3.6 Stage 3 – Second Formal Performance Capability meeting

The written notification of the meeting, together with the evidentiary documents and a copy of the procedure should be supplied to the staff member a minimum of 5 working days ahead of the meeting.

The employee will have the right to be accompanied by a trade union/professional association representative or work colleague not involved in the case.

If the person conducting the meeting is satisfied that the staff member has made sufficient improvement, the Performance Capability procedure will cease and the appraisal process will re-start. In other cases:

- 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 staff member will receive a final warning.

Where a warning is issued, the staff member will be informed in writing in addition to 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 final 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 staff member will be informed **5 working days** 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.

End of the Improvement Process at Stage 3

At the end of the improvement period there will be a discussion with the staff member and their trade union or colleague supports at which progress towards improvement will be discussed.

If the manager remains dissatisfied, then the staff member will be invited to a Stage 4 final Performance Capability decision meeting at which dismissal can be considered. The staff member must be advised that dismissal is a possible outcome of the Stage 4 Performance Capability Hearing.

Although it is not a legal requirement, before a decision is made to move towards dismissal, the school may discuss the matter with the School education advisers and PACT HR Business Partner.

3.7 Stage 4 - Performance Capability Hearing

The written notification of the meeting, together with the evidentiary documents and a copy of the procedure should be supplied to the staff member a minimum of **10 working days** ahead of the Hearing.

The employee will have the right to be accompanied by a trade union/professional association representative or work colleague not involved in the case. Or, where appropriate, the employee may nominate to be accompanied by a family member for support.

The Final Performance Capability Hearing will be conducted by a Committee of the School's Governing Body, Board of Trustees or nominated persons in line with the Terms of Reference / Delegation of Powers Matrix for staffing matters.

3.7.1 Potential Outcomes

- If the Stage 4 Hearing finds that an acceptable standard of performance has been achieved during the further monitoring and review period, the Performance Capability procedure will end and the appraisal process will re-start.
- The panel (or the persons hearing the case) also have the power to order a further period of improvement and warning; if they believe that there has been some progress and that there is a likelihood of the staff member being able to reach the required standard of performance with additional support and time for improvement. In this case the panel will adjourn the meeting for a period of four working weeks when it will reconvene to consider whether an appropriate standard of work has been achieved or whether to go ahead with a decision to dismiss the employee.
- If performance remains unsatisfactory, the panel may make a decision to dismiss the employee on the grounds of lack of professional Performance Capability.

The staff member will be informed **5 working days** 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.

In a Community or Voluntary Controlled school (whose staff are employed by Bradford Council or other Local Authority Maintained Schools) the employee will also receive a letter from the Director of Children's Services who will confirm dismissal from the Local Authority. In a Voluntary Aided, Trust or Foundation school or in an Academy (whose staff are employed by the Governing Body/Board of Trustees), the letter to the employee from the Chair of the Hearing Panel / Hearing Officer formally confirms dismissal.

3.8 The Right of Appeal

Employees have a right of appeal and any appeal arising as a result of a warning or dismissal must be made in writing to the Clerk of Governors or Board of Trustees, as appropriate, within **10 working days** of receiving written notice of the outcome of the hearing.

If the employee submits an appeal, they will be invited to an Appeal Hearing where their case will be heard by a further Committee of the Governing Body/Board of Trustees in line with the School governance arrangements.

The outcome of the Appeal Hearing will be confirmed in writing to the employee within **10 working days**. There is no further right to appeal.

The employee may request an adjournment of up to **5 working days** if their representative is not able to attend on that particular date. However, it is important to note that only one such adjournment may be accommodated. Alternatively, the re-arranged hearing may go ahead whether or not the member of staff or their representative is in attendance. The employee will be notified of any decisions made in relation to the management of their absence.

It should also be noted that, if the member of staff fails to offer an alternative date for a hearing within the required timeframes, then a date will be set by school management (either the Headteacher or Chair of the panel). This is the case for hearings of any nature, whether Headteacher or Governors/Board of Trustees. Unnecessary delays to any hearing are not acceptable and not in the interest of either the school or the member of staff.

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Appendix 1: Equality Impact Assessment

A word version for adaptation of this Appendix is available on the PACT HR Website : HR Business Partnering : Advice and Guidance Section.

Introduction

All Schools, Academies and Trusts need to ensure that all strategies, policies, service and functions, both current and proposed have considered equality, diversity and inclusion. The below is a recommended Equality Impact Assessment (EIA) Form for use in conjunction with PACT HR Policies. For further advice regarding the completion of this form, please contact your named PACT HR Business Partner.

Assessment

School Name:	
Policy Name:	
Name of staff member conducting assessment:	
Date of assessment:	
Reason for assessment: (what are you aiming to do?)	

Main Stakeholders/Beneficiaries: (e.g., Staff; Pupils; Governors; Trustees)

Will the proposed policy/project/ strategy etc impact on equality groups?	
What information / data do you have? What further information do you need? What cross-strand issues do you need to consider? Please include any actual or potential impacts on stakeholders (e.g., Staff; Pupils; Governors; Trustees,)	
Race	
Sex	
Age	
Disability	
Pregnancy and Maternity	
Gender Reassignment	

Marriage and civil partnership	
Religion or Belief	
Sexual Orientation	

Improvement Plan

The Improvement Plan needs to outline actions you propose to take to mitigate actual or potential negative impacts.

Issues Identified	Action Required	Lead	Timescale	Comments

Governance, ownership and approval

Please state here who has approved the actions and outcomes of the assessment (add rows as required)		
Name	Job title	Date

Publishing

This document will act as evidence that due regard to equality and diversity has been given. For record keeping purposes a copy will be kept on file with a copy of the policy and one with the Governing Body / Board of Trustees approval.	
Date screening completed:	
Date agreed: Governors Body / Board of Trustees	