



**BDMAT**  
Birmingham Diocesan  
Multi-Academy Trust

# **BDMAT**

# **Capability**

# **Policy**

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**Version: 4**



## 1. Purpose

This policy sets out the framework for a clear and consistent approach to dealing with significant underperformance of staff that are subject to capability procedures and applies to ALL staff employed in Birmingham Diocesan Multi-Academy Trust ('BDMAT').

***This policy does not form part of the employment contract of BDMAT staff.***

## 2. Context of this Policy

BDMAT is a Christian organisation whose mission is:

To provide high quality education within a Christian framework that allows all pupils to reach their full potential through experiencing a broad and balanced curriculum whilst ensuring staff have a good life / work balance and are fulfilled in their roles.

This mission is encapsulated in our three key vision statements:

**Life in its fullness, for all**

**Success, for all**

**Positive well-being, for all**

A key focus of each of our vision statements is the statement 'for all' – which is aimed at ensuring that all staff within BDMAT experience these elements. It is therefore paramount when approaching the implementation that leaders consider staff well-being; that expectations allow staff to experience 'life in its fullness' through an effective life / work balance; and that each member of staff experience success in their role.

This policy should also be implemented through our values of:

**Hope** – we have hope that there can always be a positive outcome

**Honesty** – we are honest with all inside and outside our organisation, whilst being sensitive to how we deliver these messages

**Integrity** – we have strong principles rooted in our Christian mission that lead our actions and decisions

**Helpfulness** – we work in co-operation and partnership with all staff and stakeholders

**Respect** – we respect all those that we come across

**Dignity and compassion** – we treat all those within and outside our organisation with dignity, irrespective of the circumstances, and we show everyone compassion for the difficulties that they are experiencing

**Wisdom** – The decisions we take are wise and are based on informed discussions and evidence and aimed at ensuring we achieve the best outcomes for all without forsaking our values

#### Effective date

This policy will come into effect on 1<sup>st</sup> September 2021 and will then be reviewed every three years by the BDMAT Board of Directors, unless changes are required sooner.

#### Consultation process

In formulating this policy, the following were consulted:

- BDMAT's Joint Consultative Committee (comprising representatives of our recognised unions). Detailed feedback was received and considered from ASCL, NASUWT, UNISON and the NEU
- BDMAT Headteachers and Chairs of Local Academy Boards
- BDMAT Black, Asian, Minority, Ethnic Groups Forum
- BDMAT LGBTQ+ Forum
- BDMAT Staff Forum

#### Application of the policy

This policy sets out the formal capability procedure which apply only to staff whose performance raises serious concerns that the performance management process has been unable to address.

The policy should always be applied in a way that is robust whilst minimising the impact on workload for staff, line managers and headteachers.

### 3. Capability Procedure

- 3.1. It should be noted that as part of their day -to-day management, line managers may from time to time have discussions about performance with a member of staff that do not form part of a capability process. It should also be noted that some staff issues are better dealt with via the BDMAT Disciplinary Policy and this should be examined before commencing on this procedure with staff.
- 3.2. This procedure applies only to staff where there is serious underperformance which the performance management process has been unable to address. Where the appraiser / line manager has followed the procedures set out within the BDMAT Performance Management Policy and now believes that the member of staff should be supported and assessed through capability procedures, the member of staff should be invited to a meeting with their union representative to discuss

progressing to these procedures. At least 10 working days' notice will be given of the formal capability consideration meeting. The notification will contain sufficient information about the concerns about performance and the possible consequences to enable the member of staff to prepare to answer the case at a formal capability consideration meeting. The invite to the meeting to discuss entering into these procedures will also contain copies of any written evidence (such as lesson observations). The employee will be advised to contact their union whenever a formal capability process is being considered, and representation is permitted at all capability meetings. Staff are entitled to request an alternative date which is within five days of the original date.

- 3.3. Staff should be aware that it is normally a requirement to inform future employers via references if a member of staff has been subject to formal capability procedures in the previous two years of service.

#### **4. Formal Capability Consideration Meeting**

- 4.1. This meeting is intended to establish the facts. It will be conducted by the CEO (for headteacher capability meetings) or headteacher (for other primary school staff), or by another member of the senior leadership team for secondary school staff, and by a member of the BDMAT Executive Team for Central Team staff; the chair of the board of trustees will undertake these procedures for performance issues with the CEO. The meeting allows the member of staff, accompanied by a companion / union representative (see 3.2) if they wish, 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. New information should be presented to the manager undertaking the meeting three days before the meeting to allow them time to consider it.
- 4.2. Formal capability should only be invoked where there is clear, triangulated evidence of sustained underperformance that the performance management process has failed to address.
- 4.3. This capability procedure will not usually apply for newly qualified teachers, who have their performance managed through the ECT framework induction process. However, in serious cases it may be necessary to instigate capability procedures at a stage before the end of the induction period.

4.4. The person conducting the meeting 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 BDMAT Performance Management Policy rather than this capability policy. In such cases, the BDMAT Capability Policy will not be followed. The person conducting the meeting may also adjourn the meeting, for example if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.

4.5. The person conducting the meeting will:

- identify the professional shortcomings, *for example which of the standards expected of teachers are not being met and / or aspects of a job description not being met e.g. for support staff;*
- give clear guidance on the improved standard of performance needed and clear suggestions that can be followed to achieve this, to ensure that the member of staff can be removed from formal capability procedures (this may include the removal of existing objectives and the setting of new objectives with adequate time to achieve them, focused 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 any support that will be available to help the member of staff improve their performance; managers should invite suggestions from the member of staff or their representative;
- 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 most cases could be between six and eight working weeks. It is for the member of staff leading the meeting to determine the set period. It should be reasonable and proportionate, and should provide sufficient opportunity for an improvement to take place. These aspects should be set out in the formal support plan (see appendix A);
- warn the member of staff formally that failure to improve within the set period could lead to dismissal in the final stage of the procedure. At this stage, the member of staff should be issued with a final written warning given the significant implications of not achieving the expectations set out within their formal support plan (please adapt the template in appendix B); and
- The member of staff should be invited to make comment and give suggestions to the proposals and support

- 4.6. Notes will be taken of formal meetings by a note taker and a copy sent to the member of staff, normally within 5 working days. Where a warning is issued and formal capability proceedings are being implemented, the member of staff 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, in line with BDMAT's Staff Disciplinary Policy (see template letter in appendix C).

## **5. Monitoring and Review Period Following a Formal Capability Meeting**

- 5.1. A performance monitoring and review period will follow the formal capability meeting – this will normally be a period of 6-8 working weeks. Formal monitoring, evaluation, guidance, and support will continue during this period. The member of staff will be invited to a formal review meeting.
- 5.2. At least ten working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the member of staff of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.
- 5.3. If the person conducting the meeting is satisfied that the member of staff has made sufficient improvement, the capability procedure will cease and the performance management process will re-start and procedures within the BDMAT Performance Management Policy will be followed rather than the BDMAT Capability policy. 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 (normally this will be for 4 working weeks); the appraiser will write to the appraisee to set this out.
  - If no, or insufficient improvement has been made during the monitoring and review period, the member of staff will be invited to a meeting to consider if dismissal is now appropriate or if further time should be given for the member of staff to improve further.
- 5.4. As before, notes will be taken by a note taker of formal meetings and a copy sent to the member of staff within 5 working days.
- 5.5. Where the period of support is being extended by a further 4 week period the member of staff will be issued with another warning letter outlining that if

insufficient progress is not made then the member of staff is at risk of dismissal and inviting them to a further review meeting.

## **6. Dismissal Decision Meeting for Staff Deemed to Have Made Insufficient Progress**

- 6.1. Where the appraiser believes that the member of staff has made insufficient progress, the appraiser can recommend that the member of staff is considered for dismissal by a 'Dismissal Consideration Committee.' This committee will comprise the CEO and two members of the Local Academy Board. For staff appraised by the CEO (including headteachers) this committee will comprise the Chair of BDMAT and two other directors not previously involved in the case. For dismissal decision meetings involving the performance of the CEO the committee should be of three directors, not including the Chair of BDMAT if they are the person recommending dismissal.
- 6.2. The appraisee will be invited to a meeting with the Dismissal Consideration Committee. A HR representative (either internal to BDMAT or external) will support the process. At least ten working days' notice of a decision meeting will be given to the member of staff and the notification will give details of the time and place of the meeting and will advise the member of staff of their right to be accompanied by a companion who may be a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.
- 6.3. Having heard the case put forward by the member of staff and having considered the evidence from the appraiser, the committee can undertake the following:
  - Dismiss the member of staff,
  - Request that another period of support be given to the member of staff to allow further progress (this will be a maximum of 4 working weeks).
- 6.4. If the member of staff is dismissed they will be informed as soon as possible of the reasons for the dismissal (normally on the same day); the date on which the employment contract will end; the appropriate period of notice and their right of appeal (the contract termination date will normally be in line with contractual notice periods). The member of staff may be asked to spend the remaining time before the termination date on 'gardening leave.'

## **7. Appeal**

- 7.1. If a member of staff 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 days of the decision, setting out at the same time the grounds for appeal.

School-based staff should submit their appeal to the chair of governors; headteachers should submit their appeal to the Chair of BDMAT and BDMAT Central Team members should submit this to the CEO. Appeals will be heard without unreasonable delay (normally within 15 working days) and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a companion 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 member of staff.

7.2. The appeal will be dealt with impartially. For school-based staff (other than the headteacher) the case will be heard by two governors on the local academy board and a member of the BDMAT Executive not previously involved; for headteachers the case will be heard by three directors who were not previously involved; and for Central Staff the case will be heard by a member of the executive not involved in the original decision and two directors. Cases involving members of the executive will be heard by three directors not previously involved in the case.

7.3. The appeal panel should elect a chair who will communicate the structure of the meeting to the member of staff before the meeting. The chair of the panel should use the BDMAT Staff Grievance Policy for the structure of the meetings.

7.4. The appeal panel can decide on one of the following outcomes:

- Uphold the original dismissal decision
- Overturn the original dismissal decision and recommend that the member of staff be given an additional period to improve their performance (another period of 4 working weeks would normally be set)

7.5. The member of staff will be informed in writing of the results of the appeal hearing as soon as possible, and normally within 5 working days.

7.6. There will be no further appeal process.

## **General principles underlying this policy**

### **ACAS Code of Practice on Disciplinary and Grievance Procedures**

This policy will be implemented in accordance with the provisions of the ACAS Code of Practice.

#### **Confidentiality**

The performance management and capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the headteacher, Local Academy Board, BDMAT Executive and BDMAT Board to quality-assure the operation and effectiveness of the performance management system.

#### **Consistency of Treatment and Fairness**

BDMAT is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments for disabled staff. BDMAT is aware of the guidance on the Equality Act issued by the Department for Education.

#### **Grievances**

Where a member of staff raises a grievance during the capability procedure the capability procedure may be temporarily suspended in order to deal with the grievance. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.

#### **Sickness**

If long term sickness absence appears to have been triggered by the commencement of monitoring performance at any stage of the procedure or a formal capability procedure, the case will be dealt with in accordance with BDMAT's Staff Absence Management Policy and the member of staff will be referred immediately to the occupational health service to assess the member of staff's health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures. In some cases, it may be appropriate for formal procedures to continue during a period of sickness absence.

## **Monitoring and Evaluation**

The CEO and headteachers will monitor the operation and effectiveness of the Trust's performance management arrangements. Recognised unions will also monitor its implementation and feedback accordingly to the BDMAT Executive through the Joint Consultative Committee. This will include ensuring that the arrangements minimise the impact on workload for all parties involved.

## **Retention**

All written performance management records are retained and stored in a secure place in line with BDMAT's Retention Policy

## **Appendices**

**Appendix A:** Template formal structured support plan

**Appendix B:** Template letter to staff member inviting them to a meeting to consider moving into capability

**Appendix C:** Warning letter

## APPENDIX A Template BDMAT Formal Structured Support Programme

<b>Name of member of staff</b>	
<b>Date of meeting to discuss performance and support</b>	
<b>Present at the meeting</b>	
<b>Date period this plan will cover</b>	
<b>Date when this plan will be reviewed</b>	

### Teaching staff:

Reason(s) for formal support plan: A number of areas have been identified where the member of staff is making unsatisfactory progress towards the Teachers' Standards.

Teachers' Standards not currently being met:

- **TS1: Set high expectations which inspire, motivate and challenge pupils:** *Concerns: Include brief summary here outlining the concern against this standard*
- **TS2: Promote good progress and outcomes by pupils:** *Concerns: Include brief summary here outlining the concern against this standard*
- **TS3: Demonstrate good subject and curriculum knowledge:** *Concerns: Include brief summary here outlining the concern against this standard*
- **TS4: Plan and teach well-structured lessons:** *Concerns: Include brief summary here outlining the concern against this standard*
- **TS5: Adapt teaching to respond to the strengths and needs of all pupils:** *Concerns: Include brief summary here outlining the concern against this standard*
- **TS6: Make accurate and productive use of assessment:** *Concerns: Include brief summary here outlining the concern against this standard*



- **TS7: Manage behaviour effectively to ensure a good and safe learning environment:** *Concerns: Include brief summary here outlining the concern against this standard*
- **TS8: Fulfil wider professional responsibilities:** *Concerns: Include brief summary here outlining the concern against this standard*
- **Part 2: Personal and professional conduct:** *Concerns: Include brief summary here outlining the concern against this standard*

*And / or is not currently meeting the following aspects of their job description:*

X  
X  
X

**Headteachers:**

Reason(s) for support plan: A number of areas have been identified where the member of staff is making unsatisfactory progress towards the Headteacher Professional Standards.

*And / or is not currently meeting the following aspects of their job description:*

X  
X  
X

**Support staff / Central Staff:**

The member of staff is currently not meeting the following aspects of their job description:

X  
X  
X



Target	What does this mean in practice?	Support	Evidence / method of monitoring
<p><b>e.g. TS1: Set high expectations which inspire, motivate and challenge pupils:</b> Concerns: The pitch of work is not always correct; as a result pupils do not make the progress they could have achieved.</p>	<p>e.g. Planning shows appropriate teaching and activities are being planned for all pupils, based on prior assessments</p> <p>Pupils make good progress in lessons</p>	<p>e.g. Support with developing planning to be delivered by X on at least two afternoons during autumn term 2 and two afternoons in spring term 1.</p>	<p>e.g. Planning to be submitted weekly to SLT (SLT to give weekly feedback)</p> <p>SLT to observe on: Set dates and times</p>

**Additional support requested by member of staff to help fulfil their role and agreed by the manager**

**Additional information discussed at the meeting**

This plan is to support the member of staff to ensure that they meet their objectives and / or meet the requirements of the required standards and / or job description. This formal support is an element of BDMAT Capability Policy. A copy of this policy can be located on the BDMAT website at <https://bdmatschools.com/documents/> alternatively please ask your line manager for a copy of the policy.

Please note that no or insufficient progress towards this plan could lead to the member of staff's dismissal.

## APPENDIX B – Template letter: invitation to a meeting to consider entering formal capability procedures

*School letterheaded paper (BDMAT headed paper for meetings regarding concern of headteachers or the Central Team)*

Name

Address

Date

Dear X

At our last review of your performance on (DATE) I felt you had not made sufficient progress to improving your performance. As a result of this, I would like to hold a meeting with you and your trade union representative on DATE, TIME, VENUE. If you are not in a union or do not wish to have your union representative present you may instead bring a work colleague with you.

This meeting will be to examine the reasons I feel your performance is not at an acceptable level and to consider the support we have already put in place. We will then discuss any further support that is required. You will have an opportunity to outline your thoughts on the process.

If you would like to submit new evidence to this meeting can I ask that you submit this to me within three working days of the date of the meeting in order that I have time to consider it.

Having heard representation from you and your representative I will then let you know at the meeting if I consider that the most appropriate next step is to move into the BDMAT Capability Policy; alternatively I may take the decision to continue to support your performance under BDMAT Performance Management Policy.

If I do move into following the procedures set out in the BDMAT Capability Policy (which can be located at [www.bdmatschools.com](http://www.bdmatschools.com)) you will receive a final written warning to notify you of this decision and it will mean from the date of the meeting you will be supported through capability procedures. If this is the case, if your performance does not substantially improve within a set period of time you could be dismissed from the employment of BDMAT. Please note it is a standard request on references for the Trust to disclose that the member of staff has commenced formal capability procedures for the period the procedure is followed and for two years after concluding the procedure.

I would be grateful if you could confirm your attendance at the above meeting as soon as possible via email to **EMAIL ACCOUNT DETAILS.**

Yours faithfully

**LINE MANAGER**

## APPENDIX C – Written warning

*School letterheaded paper (BDMAT headed paper for meetings regarding concern of headteachers or the Central Team)*

Name

Address

Date

Dear X

Following our meeting on XXX which you attended with XXX, I attach notes taken at that meeting for your consideration; please inform me of any proposed amendments / additions that you would like to make to these notes.

I can confirm that my decision at the meeting you attended was that BDMAT will now start to manage your performance through application of the BDMAT Capability Procedure. A copy of this policy can be located at [www.bdmatschools.com](http://www.bdmatschools.com) or alternatively you can request a printed copy of the policy from your School Admin Lead.

I have attached a copy of the proposed formal structured support plan we intend to follow for your comments.

Moving into formal capability proceedings has not been taken lightly and reflects the level of concern that I have regarding your ability to fulfil the role. As a consequence, I need to inform you that this letter constitutes a **FINAL WRITTEN WARNING** that we now expect to see significant improvements in your performance in the timescales allocated within the formal structured plan. If significant improvement is not achieved, I will have to consider recommending that you are dismissed from the employment of BDMAT. If I consider that dismissal is appropriate the case will be heard by a committee, as outlined within the BDMAT Capability Policy.

You have a right to appeal this final written warning. If you wish to appeal you should follow the procedure for appeal set out within the BDMAT Disciplinary Policy and do so within 10 days of receipt of this letter.

I really do hope that with the support we have planned and your determination we will be able to avoid dismissal.

Yours sincerely,

LINE MANAGER