



"Bringing out the Best in Everyone"

## **Buckinghamshire Council / Pebble Brook School**

### **Capability Policy & Procedure – Teaching Staff**

Signed \_\_\_\_\_ dated \_\_\_\_\_

Chair of Governors

<b>Date Approved /Ratified</b>	Spring 2024
<b>Date of next review</b>	Spring 2025

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## 1. Introduction

- 1.1 Buckinghamshire Council recognises that our excellence is down to our staff and their ability to perform in their roles. As a direct result of this we want to ensure that all teachers are supported and developed so that they can achieve and deliver the best work they are able to. This policy is designed to encourage and maintain standards of capability, efficiency and work performance. There are 3 processes within this policy set out as follows:
1. Informal Capability Process
  2. Formal Capability Process
  3. Appeal Process (at any formal stage where a formal warning has been issued).
- 1.2 This document sets out the Capability Policy for teachers and provides a mechanism based on the Department for Education Model Policy Part B Capability Procedure. This procedure applies only to teachers or Headteachers about whose performance there are serious concerns that the appraisal process has been unable to address. It is important that every effort is made to follow a fair procedure at each stage in the capability process and this document sets out guidelines to ensure that this is the case.

## 2. Scope

Once adopted by the Governing Board the Capability Policy applies to:

- Teachers and Headteachers on School Teacher Terms and Conditions of Employment.

**Please note:** Any reference in this document to teachers also includes Headteachers.

## 3. Roles and Responsibilities

- 3.1 The Governing Board will have ultimate responsibility for the regulation of the capability of employees in the school, adopt an appropriate capability procedure, decide whether or not to collaborate with one or more other Governing Boards in their arrangements for dismissal and delegate to the Headteacher the authority to manage this process.
- 3.2 The Governing Board will set up three different committees:
- A Warning Appeal Committee  
Used when the teacher appeals against any decision other than dismissal.

- A Staff Dismissal Committee  
Set up to hear the final stage of the capability procedure in cases where the Headteacher is not able to exercise their right to dismiss as they have been involved at an earlier stage and the potential outcome could be dismissal.
- A Staff Dismissal Appeals Committee  
Set up to hear appeals against decisions to dismiss.

3.3 The Governing Board will also notify the Director of Children's Services or the Diocesan Director for Voluntary Aided Schools of any capability meeting which could lead to dismissal and seek advice from HR about notification to the Secretary of State whenever a teacher is dismissed on the grounds of capability.

3.4 The Council will write to the Chair of the Governing Board if it has a serious concern about the performance of the Headteacher and will at the same time send a copy to the Headteacher. The Headteacher will be given an opportunity to make representations to the Chair of the Governing Board about the report and will have the right to be accompanied (see para. 6). The Chair of the Governing Board will write to the Director of Children's Services to inform them on the action they intend to take.

3.5 The Headteacher has the authority to give formal written warnings or dismiss through this procedure. The Headteacher should be advised by a Governor and an HR representative before taking the decision to dismiss a teacher. The Headteacher will also identify those senior employees in school who have the authority to give formal written warnings.

3.6 The Headteacher and / or Chair of the Governing Board will:

- Set and maintain clear and fair standards of performance at work.
- Deal with under performance as and when it arises and inform teachers when their work is falling below standard in accordance with the Toolkit.
- Bring the Capability Policy to the attention of teachers.
- Monitor the process when the capability procedure is used in relation to any teacher and report any action taken under the procedure as and when required by the Council.
- Be aware of, and refer to, the Health and Attendance Policy in terms of health related poor performance and seek medical advice where appropriate.

3.7 Teachers will:

- Work with the Headteacher to resolve any problems which are identified in relation to their performance.
- Co-operate with any investigation under the Capability Policy

- Co-operate with all reasonable management instruction whilst performance issues are being managed.

## **4. Principles**

The policy contained within this document is founded on the following principles:

- That teachers and Headteachers know what performance standards are expected of them.
- That performance standards are reasonable and achievable, taking into account the teachers' working hours, job descriptions and contractual terms.
- To help and encourage teachers to improve unsatisfactory performance prior to imposing sanctions if necessary.
- To provide appropriate development, training and support to assist with the above.
- That it is understood that matters dealt with by way of the Capability Policy are different from instances of misconduct.
- That a fair and structured process is applied consistently, that the teacher's account is heard, that they are informed of their right to be accompanied and that any formal steps taken are confirmed in writing, clearly stating a right of appeal.
- That matters are dealt with as quickly and reasonably as possible.
- Not to discriminate against any individual in the application of this policy on the protected characteristics of age, sex, race, disability, gender reassignment, marriage or civil partnership, maternity and pregnancy, religion or belief, sexual orientation, or other grounds protected in law, e.g. part-time worker status, Trade Union membership / activities or HIV positive status.
- If employees have any misgivings about either the process or the Managers leading it they should tell us openly so that we can address their concerns. Any meeting recorded without the consent of all those present (covert recordings) will be treated as a conduct matter.

## **5. Fair Dismissal Process**

A dismissal by reason of capability will normally be considered fair if the employer has:

- Set reasonable standards of performance.
- Made these clear to the teacher.

- Warned of the consequences of failing to meet them.
- Given support, training or both.
- Given a reasonable amount of time for improvement.
- Considered redeployment or other alternatives to dismissal and performance is still deemed to be unsatisfactory after the above bullet points have been exhausted.

## **6. Right to Representation**

A teacher has the right to be accompanied by their Trade Union representative or work colleague at any formal capability meeting.

## **7. What Could Constitute a Capability Matter?**

A capability matter arises when standards which apply to all teachers are not being satisfactorily met, e.g. there are work concerns about an individual teacher who is failing to carry out responsibilities or duties in a satisfactory manner and those professional shortcomings are due to the teacher's skills or aptitude. Capability cases may arise due to lack of professional awareness, inability to cope with what is considered reasonable workloads or being unable to meet identified standards. It may also be an inability to prioritise work, insufficient training or difficulty in adapting to change. In all these cases there must be facts to support these concerns which clearly demonstrate that acceptable standards of performance in carrying out the teacher's role are not being met.

In addition to the above, the Department for Education has provided 8 New Standards for teaching and for personal and professional conduct of teachers as set out in the toolkit. Failure to meet these standards may result in this capability process being invoked.

At any capability meeting the person conducting the meeting shall:

- Identify the professional shortcomings, for example which of the standards expected of teachers are not being met. Written details shall be provided to the teacher in the form of a Performance Improvement Plan (PIP), see Appendix 1 and 2 in the toolkit for guidance and pro forma.
- Give clear guidance on the improved standard of performance needed to ensure that the teacher can be removed from formal capability procedures (this may include the setting of new objectives focused on the specific weaknesses that need to be assessed, 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. Written details shall be provided to the teacher in the form of a PIP, see Appendix 1 and 2 in the toolkit for detailed guidance.
- Explain and agree, where possible, the support that will be available to help the teacher improve their performance.

- Agree and set out the timetable for improvement in a PIP (see Appendix 1 and 2 in the toolkit) and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case. 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.
- Explain to the teacher that failure to improve within the set period could ultimately lead to dismissal.

### **7.1 Fast Track Capability Cases**

Particularly serious cases of incapability may be fast tracked. Cases suitable for the fast track procedure are those where it becomes clear that an acceptable level of improvement is beyond the ability of the person assessed, or where there is a lack of co-operation with suggested methods to achieve improvement. In those circumstances it may be appropriate to deal with a case in a shorter time scale than would normally be envisaged, i.e. 4 weeks or less. This procedure can be entered at any level appropriate to the seriousness of the problem. Therefore, stages can be missed out as long as the teacher has been given at least one warning before dismissal is considered, except in the case of gross negligence / incompetence which would be subject to the school's Conduct and Discipline Policy.

Where a teacher who has been subject to the Capability Policy and Procedure meets the required standard and is removed from the process only to lapse at a later date, then the procedure may commence at the stage it was left off.

Where the education of children is in jeopardy the formal process of the Capability Policy and Procedure shall be implemented and a final written warning issued. This may be followed by a monitoring review period of up to 4 weeks and shall be followed by a Stage 3 (Final Stage) Hearing where insufficient improvement is achieved.

## **8. Informal Capability Process**

The teacher should be invited to a meeting and made aware that there are concerns about their performance, informed of what those concerns are and provided with constructive advice to assist in overcoming those concerns. It should be made clear that the appraisal process has stopped and that the capability process has commenced. A copy of the Capability Policy and Procedure for Teachers shall be given to the teacher or Headteacher. If possible, reference must be made to notes of meetings or lesson observations where concerns have previously been highlighted and the teacher should be provided with examples of where their work has not met a satisfactory standard.

The meeting allows the teacher to respond to concerns and to make relevant representations. This may provide new information or a different context to the information / evidence already collected. Once the facts are gathered there are three options for the Line Manager conducting the meeting:-

1. Decide that there are insufficient grounds for pursuing the capability issue and it would be more appropriate to continue to address the concerns through the appraisal process.
2. Arrange support without invoking the formal procedure.
3. Arrange a Formal Capability Meeting under the Formal Capability Process of the procedure if it becomes apparent that the case is more serious than originally anticipated.

If the second option is taken agreement should be reached about what support is required in order to improve performance to an acceptable standard. The teacher must be told what is required, how performance will be reviewed, the review period and that the formal procedure will commence if there is no improvement. If the teacher expresses discontent or indifference to the support offered, the formal procedure should be commenced to deal with the matter in a more structured and objective manner.

At the end of the informal process a review meeting will take place and the capability procedure will either cease or a Formal Capability Meeting will be convened.

In some cases, where the concern is so significant, it may be acceptable to move straight to the formal process.

## **9. Formal Capability Process**

### **Stage 1**

The Capability Policy and Procedure provides a mechanism to invoke the formal capability process where there are serious concerns that the informal process has been unable to address or where the education of children is in jeopardy. For further guidance please go to section 9 in the Capability Toolkit.

#### **9.1 Formal Capability Meeting - Conducted by the Line Manager or Equivalent**

Where a decision has been made to convene a capability meeting at least 5 working days' notice in writing will be given. The notification will contain sufficient information about the concerns about performance and their possible consequences to enable a teacher to prepare to answer the case at a formal capability meeting and will contain copies of any written evidence. The notice shall also confirm the teacher's right to be accompanied by their Trade Union representative or work colleague. This meeting is intended to establish the facts and will be conducted by the Line Manager or their equivalent.

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 appraisal process. In such cases the capability procedure will come to an end.



- 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 additional information.
- A monitoring and review period is needed to assess performance. In these circumstances a Performance Improvement Plan (PIP) (see Appendices 1 and 2 of the toolkit) shall be agreed between the teacher and their Line Manager. The purpose of the PIP is to enable formal monitoring, evaluation, guidance and support based on professional dialogue between the teacher and Line Manager to be undertaken during the Monitoring and Review Period.
- Minutes will be taken and a copy sent to the teacher and their representative within 5 working days of the meeting.

## **9.2 Monitoring and Review Period Following a Formal Capability Meeting - Conducted by the Line Manager or Equivalent**

A performance monitoring and review period will follow the capability meeting. Lesson observations that are to take place as part of the process are to include an agreed number of planned visits. The purpose is to enable improvement and adequate time between visits is important. Formal monitoring, evaluation, guidance and support based on professional dialogue between the teacher and their Line Manager will also be agreed for this period. It will be recorded in a Performance Improvement Plan (PIP) (see Appendices 1 and 2 in the Toolkit).

The teacher will be invited to a Formal Review Meeting following the monitoring and review period.

## **9.3 Formal Review Meeting - Conducted by the Line Manager or Equivalent**

At least 5 working days' notice in writing will be given of the formal review meeting. Notification will include copies of evidence for discussion.

- If the person conducting the meeting is satisfied that the teacher has made sufficient improvement the capability procedure will cease and the appraisal process will re-start.
- 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 teacher will receive a written warning or final written warning as appropriate. In such circumstances a warning letter should be issued within 5 working days of the meeting. It should identify the precise nature of the capability issue and confirm the employee's right of appeal within 10 working days of the date of the letter. Minutes of the meeting will be taken and a copy sent to the teacher and their representative within 5 working days of the meeting. The teacher has a right to appeal against any formal warning received under section 11. Appeal Process within this policy and procedure.

## Stage 2

### 9.4 **Monitoring and Review Period Following a Formal Capability Meeting – Resulting in a Written or Final Written Warning - Conducted by a Senior Manager or Equivalent**

A performance monitoring and review period will follow the capability meeting that resulted in the issue of a written or final written warning. Lesson observations that are to take place as part of the process are to include an agreed number of planned visits. The purpose is to enable improvement and adequate time between visits is important. Formal monitoring, evaluation, guidance and support based on professional dialogue between the teacher and their Line Manager will again be agreed and continue during this period. It will be recorded on a PIP (see Appendices 1 and 2 in the Toolkit).

### 9.5 **Stage 2 Formal Review Meeting - Conducted by a Senior Manager or Equivalent**

At least five working days' notice in writing will be given of the Formal Review Meeting. The notification will contain sufficient information about the concerns about performance and their possible consequences to enable a teacher to prepare to answer the case and will contain copies of any written evidence.

The purpose of the monitoring and review period will be to enable an assessment to be made against the PIP.

- If sufficient improvement has been achieved during the further monitoring and review period the capability procedure will end and the appraisal process will re-start.
- 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 the teacher has received a written warning and their performance remains unsatisfactory then they may be:

issued with a final written warning

or

requested to attend a Stage 3 (Final Stage) Hearing

The teacher has a right to appeal against any formal warning received under section 11. Appeal Process within this policy and procedure.

- If the teacher received a written final or written warning and their performance remains unsatisfactory then they will be requested to attend a Stage 3 (Final Stage) Hearing.
- Minutes will be taken and a copy sent to the teacher and their representative within 5 working days of the meeting.

### **Stage 3**

#### **9.6 Monitoring and Review Period Following a Formal Review Meeting – Resulting in a Final Written Warning – Conducted by the Senior Manager or Equivalent**

A performance monitoring and review period will follow the Formal Review Meeting that resulted in the issue of a final written warning. Lesson observations that are to take place as part of the process are to include an agreed number of planned visits. The purpose is to enable improvement and adequate time between visits is important. Formal monitoring, evaluation, guidance and support based on professional dialogue between the teacher and their Line Manager will again be agreed and continue during this period. It will be recorded on a PIP (see Appendices 1 and 2 in the toolkit).

#### **9.7 Formal Stage 3 Review Meeting – Conducted by a Senior Line Manager or Equivalent**

At least 5 working days' notice in writing will be given of the Formal Review Meeting. The notification will contain sufficient information about the concerns about performance and their possible consequences to enable a teacher to prepare to answer the case and will contain copies of any written evidence.

The purpose of the monitoring and review period will be to enable an assessment to be made against the PIP.

- If sufficient improvement has been achieved during the further monitoring and review period the capability procedure will end and the appraisal process will re-start.
- 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 insufficient improvement has been made during the monitoring and review period and their performance remains unsatisfactory then they shall be invited to attend a Stage 3 (Final Stage) Hearing.
- Minutes will be taken and a copy sent to the teacher and their representative within 5 working days of the meeting.

#### **9.8 Stage 3 (Final Stage) Hearing – Conducted by Headteacher or Staff Dismissal Committee**

- The Stage 3 (Final Stage) Hearing may be conducted by the Headteacher (if the Headteacher has not been involved at a previous stage) or the Staff Dismissal Committee. The teacher must be advised at this stage that the hearing may lead to a dismissal.
- Notification will include copies of evidence that have led up to the Stage 3 (Final Stage) Hearing.
- At least 5 working days' notice in writing will be given of the Stage 3 (Final Stage) Hearing).

- Any decision to dismiss will be confirmed in writing by the Staff Dismissal Committee within 5 working days of the decision. The teacher will be entitled to receive their contractual notice entitlement. The letter should confirm the teacher's right to appeal the decision of the panel. This will need to be received in writing within 10 working days of written notification of the decision.
- Minutes will be taken and a copy sent to the teacher and their representative within 5 working days of the meeting.

## **10. Alternatives to Dismissal**

For further guidance please go to Section 10 in the Capability Toolkit.

## **11. Appeal Process**

If an employee wishes to appeal against any formal action taken against them under the above stages they must do so in writing within 10 working days of written notification of the decision.

Once an appeal has been received in writing an appeal panel will be convened without unreasonable delay. For further guidance please go to Section 11 in the Capability Toolkit.

## **12. Dealing with Absence**

Please refer to Section 12 of the School's Capability Toolkit for guidance.