

ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD

PROFESSIONAL CAPABILITY POLICY AND PROCEDURE – TEACHING STAFF IN SCHOOLS

Covers:

- **Formal capability meeting**
- **Review period**
- **Review meeting**
- **Decision meeting**
- **Dismissal**
- **Appeal**
- **Principles**

This policy sets out the formal capability procedure adopted by Trinity St Stephen Church of England First School and reflects provisions of the Department for Education model Capability Procedure which in turn reflects the ACAS Code of Practice on disciplinary and grievance procedures. Capability procedures apply only to teachers and school leaders where there are ongoing challenges in meeting job expectations and/or are failing consistently to perform their duties to a professionally acceptable standard. These procedures will be considered at the point the appraisal process has been unable to address, including any informal support arrangements. The use of this procedure must be distinguished and kept entirely separate from initial support provided under the appraisal procedure. The appraisal process will be suspended when the capability procedure is invoked.

The primary objective is to ensure maximum support is provided through guidance, counselling, and training to improve the employee's performance, encourage professionalism and autonomy, and resolve any performance-related issues, which are more than likely to be temporary.

In all cases, concerns about performance must initially be addressed through additional support provided within the appraisal process before any consideration is given to use of this capability procedure.

Staff should not be placed on capability procedures unless their performance is having a significant impact on Trinity St Stephen Church of England First School's ability to deliver education to pupils or promote their health and welfare. Failure to meet objectives/targets alone is not enough to warrant a referral to capability procedures.

The Governing Body of Trinity St Stephen Church of England First School will review this policy annually, to ensure consistency, fairness, and effectiveness, and to reflect any changes in employment legislation.

Trinity St Stephen Church of England First School will monitor, review and report on the outcomes and impact of this policy on a (insert frequency) basis and in line with the Equality Act 2010.

1. Introduction

1.1 Notification of a formal capability meeting should never come as a surprise to the teacher concerned. Informal support and a performance improvement plan should mean that the teacher is fully aware of the concerns being raised and they should have had every opportunity to improve in a supportive environment.

1.2 This procedure applies to teachers or school leaders about whose performance the appraisal process has been unable to address. Application is to all teachers or school leaders with the exception of those on contracts of less than one term/13 weeks, whichever is applicable to the school or those currently in their induction period. In addition, teachers supplied by agencies are exempt from this procedure and schools are expected to address any concerns to the agency. This procedure should not be used in cases of alleged misconduct or long-term sickness absence, which should be dealt with separately through the disciplinary policy or the absence management policy.

1.3 Transition to capability where the appraisal process has identified concerns.

If, following a period of support and monitoring under the Appraisal Policy, the Headteacher/appraiser is not satisfied with progress, the employee will be notified in writing that the appraisal system will no longer apply and that their performance will be

managed under the Professional Capability Procedure. The employee will be invited to a formal capability meeting to discuss the ongoing concerns and seek to agree a programme of support.

1.4 At least *five* working days' notice will be given of the meeting which would be the commencement of the formal capability process. The notification of the meeting will contain sufficient information on concerns regarding performance and their possible consequences to enable the teacher (school leader) to prepare to answer the case at the formal capability meeting. It will also contain:

- copies of any written evidence;
- the details of the time and place of the meeting;
- advice to the teacher (school leader) 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.
- the nature of these concerns including the evidence to support them;
- evidence of any previous support provided to address the concerns;
- the names of those who will be at the meeting (recognising that it is beneficial for the numbers present to be kept to the minimum required to facilitate the meeting);
- an outline of actions which might follow.

A copy of the letter, together with any enclosures, will be provided for the employee to pass to their representative.

Teachers are entitled to reasonably request an alternative date where they are unable to attend the original date proposed.

While a teacher (school leader) is in capability procedures, pay progression should be withheld. Once the capability procedures have concluded and they are no longer being managed under these procedures, pay arrangements should return to the usual terms. The fact that they were subject to capability procedures during the year should not affect future pay decisions.

1.5 Roles and responsibilities

Where concerns about perceived under-performance and professional difficulties arise, (school name) will ensure they are discussed with the employee and progressed in a structured, supportive, and non-threatening way which takes account of individual circumstances.

All teaching staff are expected to understand the nature of their role, including the professional duties set out in the School Teachers' Pay and Conditions Document (STPCD), the duties set out in their job description and the professional standards set out in the Teachers' Standards.

Support staff are expected to carry out the duties set out in their job description, and classroom-based support staff should also adhere to the TA Standards (2016).

Managers are expected to ensure that all employees have a clearly defined and agreed job description, reviewed on a regular basis to ensure it remains relevant. Additionally,

managers should ensure that employees know what is expected of them, and that relevant school policies and other information are available and drawn to employees' attention.

At every step of this procedure, including at all meetings, the employee has the right to be accompanied by a representative of an independent trade union or work colleague.

Timescales in this procedure may only be shortened or extended with the agreement of both parties.

2. Formal capability meeting

2.1 This meeting is intended to establish the facts and will be conducted by the Chair of Governors or vice Chair (for school leader capability meetings) or head teacher/other suitable senior member of staff (for other teachers) The meeting sets out the required standards which are believed to have been failed by the teacher (school leader). The meeting allows the teacher (school leader) to be accompanied (with reference to the third bullet point above) if they wish, to respond to 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. During the meeting, evidence shall be presented, and witnesses shall be called where appropriate and necessary. The teacher shall be allowed to ask questions, present their own evidence and rely on their own witnesses where appropriate and necessary, and will be permitted to respond to the evidence and ask questions.

2.2 Those present at the meeting will be:

- I. The headteacher or governor who is initiating the capability concerns (i.e. the person conducting the meeting).
- II. The teacher or school leader who is the subject of the capability concerns.
- III. An appropriate representative of the person at (II) if so requested by that person. (e.g. a colleague, a trade union official, or a trade union representative who has been certified by their union as being competent.)
- IV. A note-taker.
- V. An adviser who may be required to attend so that they can understand and clarify their role in supporting or monitoring the teacher (school leader) or who may be required to advise on aspects of evidence of the teacher's (school leader's) performance. This person may not be required to attend for the whole of the meeting; the duration of their presence or whether they are involved or present at all will be at the discretion of the headteacher or governor conducting the meeting.

At this, or any meeting throughout the process, a representative of the HR service of the school may be present.

2.3 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, for example, the appraisal process. They may wish to consult an external adviser/subject specialist as appropriate. In such cases, the capability procedure will come to an end on this occasion.

Alternatively, 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.

2.4 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:

- the issues which continue to give rise to concern about capability and the standards required to bring the capability procedure to an end (including any specific reasonable and achievable objectives, and criteria against which matters will be judged);
- further guidance, counselling and training to be provided to the employee
- explain any support that will be available to help the teacher (school leader) improve their performance;
- arrangements for monitoring and assessment, including the name of the manager responsible, and the length of the review period over which this will happen (this should, in cases where professional support is to be provided, normally be a period of at least 6 weeks. Where both parties are satisfied that concerns have been addressed in a shorter period and that the improved performance can be sustained, the monitoring period may be ended earlier than scheduled.
- The head teacher will make it clear to the employee that failure to meet the required standards could in due course lead to dismissal. In very serious cases, this could include the issuing of a formal written warning following the meeting.
- The head teacher will write to the teacher to confirm the outcome and decisions of the meeting, including any disciplinary warning, within five working days.

This warning may constitute a Final Written Warning, which will remain active for a period of 12 months. Prior to issuing a Final Written Warning, a First Written Warning valid for 12 months must have been given, in accordance with the established hierarchy of warnings.

2.5 Notes will be taken of formal meetings and a copy sent to the member of staff: a copy will be sent to a person supporting or monitoring the teacher (school leader) where applicable. Where a warning is issued, the teacher (school leader) 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.

3. Monitoring and review period following a formal capability meeting

3.1 A performance monitoring and review period will follow the formal capability meeting. Formal monitoring, evaluation, guidance and support will continue during this period. The member of staff will be invited to a formal review meeting at the end of this review period, unless they were issued with a final written warning, in which case they will be invited to a decision meeting (see Paragraph 5). There may in addition be interim review meetings which the teacher (school leader) or the headteacher/governor conducting the process may request. Where managers continue to have concerns during the review period, these must be discussed with the employee to try to achieve the required improvement.

4. Formal review meeting

4.1 As with formal capability meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the

teacher (school leader) of their right to be accompanied. Please refer to Paragraph 2.2 for details of those who would normally attend the meeting.

Teachers are entitled to reasonably request an alternative date where they are unable to attend the original date proposed (for example a date that is within five working days of the original proposed date).

4.2 If the person conducting the meeting is satisfied that the teacher (school leader) has made sufficient improvement with an unaided period, the capability procedure will cease and the appraisal process, where begun and suspended, 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 and therefore to schedule a further formal review meeting. Please refer to Paragraph 2.4, fourth bullet point, of this Procedure for details of the overall timescales.
- If no, or insufficient improvement has been made during the monitoring and review period, the teacher (school leader) will receive a final written warning which will set out the areas where performance standards have not been met, targets for improvement, any measures (training and supervision) which will be taken to improve performance, a period for the review and the consequences of not meeting expected performance standards. A final warning will also need to set out the timescale for improvement, including the period of time during which the employee is expected to maintain the standards unsupported; 4 weeks in total would be the normally expected timeframe.

4.3 As before, notes will be taken of formal meetings and a copy sent to the member of staff within three working days of the meeting. The final written 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, within five working days as recommended by the NEU), 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 teacher (school leader) will be invited to a decision meeting.

5. Decision meeting

5.1 As with formal capability meetings and formal review meetings, at least five working days' notice will be given and the notification will give details of the time and place of the meeting with the headteacher or Chair/Vice-Chair of Governors. It will advise the teacher (school leader) of their right to be accompanied by a companion who may be a colleague or an official or representative of their union. Others present could include:

- any advisers supporting the school and
- anyone monitoring progress against targets.
- HR could also be present, and at this stage such involvement may be advisable.

Sympathetic consideration will be given to any request for postponement.

- 5.2 If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end, and the appraisal process will re-start. If performance remains unsatisfactory, a decision, or recommendation to the Governing Body, will be made that the final written warning should be extended (where possible or appropriate), or the teacher (school leader) should be dismissed or required to cease working at the school. Redeployment into an alternative role may be considered where appropriate and possible. **IMPORTANT NOTE:** Although governing bodies have the power to delegate dismissal decisions they are strongly recommended NOT to delegate such decisions to one person acting alone.
- 5.3 Before the decision to dismiss is made, maintained/academy schools will discuss the matter with the local authority/Governing Body. For maintained schools the local authority may attend and offer advice at all proceedings relating to the dismissal of any teacher, and the governing body must consider any such advice. (*N.B. this is not a legal requirement but schools may find it helpful*).
- 5.4 The teacher (school leader) will be informed as soon as possible (within five working days as recommended by the NEU) 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.
- 5.5 Where the decision is to dismiss, the letter will inform the employee that they can appeal against the decision to the relevant appeals committee of the Governing Body. The employee will be given 45 working days from the date of the letter to write to the Clerk to the Governors stating their intention to appeal and setting out the grounds for the appeal.

6. Decision to dismiss

A - The power to dismiss staff in this school rests with the Governing Body.

7. Dismissal

Once the decision to dismiss has been taken, the Governing Body will write to the teacher (school leader) confirming the decision to dismiss the teacher giving the appropriate notice or pay in lieu of notice.

- 7.1 Where a decision has been taken that the teacher (school leader) will no longer work at the school, a decision on any notice arrangements will need to be considered since it is unlikely that the teacher should remain in the classroom or the headteacher undertake the duties at the school.

8. Appeal

- 8.1 The employee has a right of appeal against any warning issued by the head teacher at any stage of the capability procedure and against any decision taken at a capability hearing. Such appeals will be considered by the appeals committee of the school, comprising at least three governors with no previous involvement in the case. The employee may exercise the right to appeal within 5 working days of receipt of any warning, and the Staff Appeals Committee shall meet to hear the appeal within 10 working days of the appeal being lodged. The employee shall be informed in writing of

the date and time of the meeting at least 5 working days in advance. The Committee can either confirm the warning or decision or cancel it or impose a lesser penalty.

- 8.2 The appeal will be dealt with impartially and, wherever possible, by a panel of three governors who have not previously been involved in the case.
- 8.3 The teacher (school leader) will be informed in writing of the results of the appeal hearing as soon as possible.

9. General Principles Underlying This Policy

9.1 ACAS Code of Practice on Disciplinary and Grievance Procedures

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

9.2 Confidentiality

When dealing with capability matters, the utmost confidentiality must be maintained on a 'need to know' basis. At the commencement of any meetings, the importance of confidentiality will be explained and emphasised. Governors and the Chair will be made aware that their involvement in any stage of the capability procedure will prejudice any involvement at a later stage. The content of any papers which are circulated must not be divulged to anyone. The way in which governors vote, and opinions expressed at governors' meetings, must always be regarded as confidential. Governors, including parents and employees, are representatives of their appointing bodies rather than delegates, and any unauthorised reporting back to persons outside the school removes the protection of privilege and action for defamation could result. The minutes of confidential meetings must be kept separate and not made available for inspection.

9.3 Consistency of Treatment and Fairness

The Governing Body 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 disabled teachers. The Governing Body will ensure the policy will be applied in accordance with the Equality Act 2010 issued by the Department for Education.

An equality impact assessment of this policy will be undertaken to ensure that no groups or individuals with protected characteristics are unintentionally disadvantaged by the policy or practice.

9.4 References

If a teacher has been subject to formal capability procedures in the previous two years", as stated in The School Staffing (England) (Amendment) Regulations 2012 and the Staffing and employment advice for schools, "this must be disclosed to new potential school employers when requested.

9.5 Delegation

Normal rules apply in respect of the delegation of functions by governing bodies, headteachers and local authorities.

9.6 Grievances

Where a member of staff raises a grievance during the capability procedure the capability procedure may not necessarily be temporarily suspended in order to deal with the grievance. However, where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently. The consideration of such grievances

should, however, be expedited where the grievance relates to alleged discriminatory treatment or a contractual breach.

9.7 Sickness

If long term sickness absence appears to have been triggered by the commencement of monitoring at any stage of the procedure or a formal capability procedure, the case will be dealt with in accordance with the school's Managing Sickness Absence Procedure (*E.g. 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 monitoring and/or formal procedures to continue during a period of sickness absence. This ensures that any extended absence can be appropriately managed and that necessary steps are taken to sustain operational needs and support the employee's return to work. Where Occupational Health advise that a period of phased return to work after a period of absence might be advisable, the school will need to consider very carefully the feasibility of such an arrangement and its impact on the school.

Note it is important to exclude the period of absence from the period for support, monitoring, and review.

9.8 Subsequent lapse in performance

Where a teacher (school leader) meets the targets with reference to Paragraph 2, including a period unaided, but subsequently fails to sustain the improvement, the formal meeting as described at Paragraph 4 will take place. Depending on information received at the meeting, the process would be reinvoked from Paragraph 5, provided it falls within the appropriate live period and aligns with the principle of proportionality. If a significant period of time has elapsed or the concerns reemerge later, the procedure will commence anew to ensure fairness and adherence to the usual performance management process.

9.9 Monitoring and Evaluation

The Governing Body and headteacher will monitor the operation and effectiveness of the school's capability policy and procedure. This will include ensuring that the arrangements minimise the impact on workload for all parties involved.

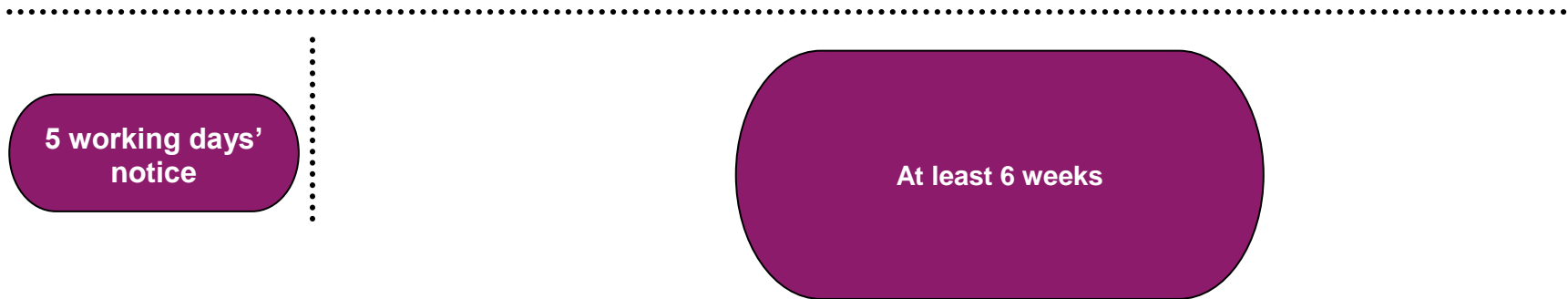
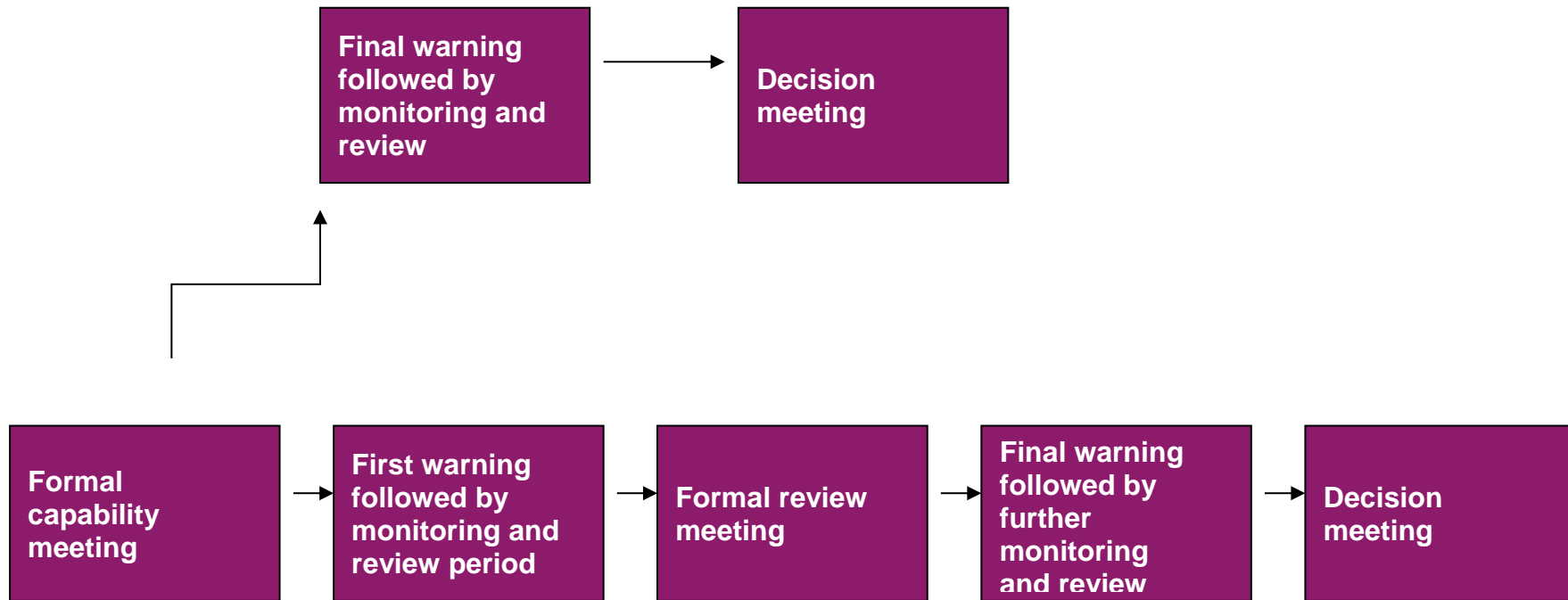
9.10 Retention

The Governing Body and headteacher will ensure that all written capability records are retained and stored in a secure place in line with their (Retention and Disposal or equivalent Policy) and in accordance with data-privacy requirements under the General Data Protection Regulations (GDPR).

9.11 Trade union representatives on capability

No formal capability procedure shall be taken against a trade union representative until a full-time official of the trade union concerned has been notified.

Flowchart of process



Timescales