

CAPABILITY POLICY FOR SUPPORT STAFF

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CAPABILITY POLICY AND PROCEDURE
FOR SCHOOLS
(EXCLUDING TEACHERS)

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1. INTRODUCTION

1.1 Buckinghamshire County Council (BCC) recognises that our excellence as an authority is dependant on our people and their ability to perform in their roles. As a direct result of this we want to ensure that all employees 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:

ONE: INFORMAL CAPABILITY PROCESS

TWO: FORMAL CAPABILITY PROCESS

THREE: APPEAL PROCESS (at any formal stage where a formal warning has been issued)

1.2 This document sets out the School's Capability Policy and Procedure and provides a structure for management to manage an employee's work performance which is falling below an acceptable level.

1.3 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

2.1 The Policy and Procedure set out in this document applies to Schools based employees employed under the terms of Bucks Pay Employment Conditions but does not apply to Teachers and Headteachers on School Teacher Terms and Conditions of Employment.

3. ROLES AND RESPONSIBILITIES

3.1 The Governing Body 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 Bodies in their arrangements for dismissal and delegate to the Headteacher the authority to manage this process.

3.2 The Governing Body will set up three different committees:

- **A Warning Appeal Committee** – used when the employee appeals against any decision other than dismissal

- **A Staff Dismissal Committee** – set up to hear the final stage of the Capability Procedure where the Headteacher is not able to exercise their right to dismiss as they have been involved at an earlier stage

- **A Staff Dismissal Appeals Committee** – set up to hear appeals against decisions to dismiss

3.3 The Governing Body 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 an employee is dismissed on the grounds of capability.

3.4 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. The Headteacher will also identify those senior employees in School who have the authority to give formal written warnings.

3.5 The Headteacher and/or Chair of the Governing body will:

a. Set and maintain clear and fair standards of performance at work

b. Deal with under performance as and when it arises and inform employees when their work is falling below standard

c. Bring the Capability Policy and Procedure to the attention of employees

d. Monitor the process when the Capability Policy and Procedure is used in relation to any employee and report any action taken under the procedure as and when required by the council

e. Be aware of and refer to the Health & Attendance Policy in terms of health related poor performance and seek medical advice where appropriate

3.6 Employees will:

a. Work with the Headteacher to resolve any problems which are identified in relation to their performance

b. Co-operate with any investigation under the Capability Policy

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

4. PRINCIPLES

4.1 The Policy and Procedure contained within this document is founded on the following principles:

a. To ensure that employees know what performance standards are expected of them

b. To ensure that performance standards are reasonable and achievable taking into account the employee's working hours, job descriptions and contractual terms

c. To primarily help and encourage employees to improve unsatisfactory performance rather than impose sanctions wherever possible

d. To provide appropriate development, training and support to assist with the above

e. To ensure that it is understood that matters dealt with by way of the Capability Policy are different from instances of misconduct

f. To ensure that a fair and structured process is applied consistently, that the employee'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

g. To ensure that matters are dealt with as quickly and reasonably as possible

h. Not to discriminate against any individual in the application of this policy and procedure 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.

i. 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

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

a. Set reasonable standards of performance

b. Made these clear to the employee

c. Warned of the consequences of failing to meet them

d. Given support, training or both

e. Given a reasonable amount of time for improvement

f. Considered redeployment or other alternatives to dismissal and performance is still deemed to be unsatisfactory after a. to e. have been exhausted.

6. RIGHT TO REPRESENTATION

6.1 An employee has the right to be accompanied by their trade union representative or work colleague at any formal capability meeting.

6.2 The employee must advise the manager conducting the meeting of the name and job title of their chosen representative.

6.3 The manager may at their discretion allow the employee to bring a companion who is not a colleague or trade union representative (for example, a member of the employee's family) where this will help overcome a particular difficulty caused by disability, or where the employee has a difficulty understanding English.

7. WHAT COULD CONSTITUTE A CAPABILITY MATTER?

7.1 A capability matter arises when standards which apply to all employees are not being satisfactorily met e.g. there are work concerns about an individual employee who is failing to carry out responsibilities or duties in a satisfactory manner and those professional shortcomings are due to the employee'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 recorded facts to support these concerns which clearly demonstrate that acceptable standards of performance in carrying out the employee's role are not being met.

8. FAST TRACK CAPABILITY CASES

8.1 Particularly serious cases of incapability may be fast tracked. Cases 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 these circumstances 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 which may result in dismissal.

8.2 Exceptionally, where it becomes evident in the first few weeks of employment that the employee is unsuitable for the role, a formal meeting may be held which may result in dismissal. The employee will be given the right to be accompanied to the meeting, and a right to appeal the decision.

9. INFORMAL CAPABILITY PROCESS

9.1 The employee should be 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. If possible reference should be made to notes of supervision where concerns have previously been highlighted and the employee should be provided with examples of where their work has not met a satisfactory standard. Please see Section 9 in the Capability Toolkit for further guidance on the informal process.

10. FORMAL CAPABILITY PROCESS

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

STAGE 1

10.1 FORMAL CAPABILITY MEETING (Stage 1)

A capability meeting to establish the facts will be conducted by the Line Manager or their equivalent.

10.2 MONITORING AND REVIEW PERIOD FOLLOWING A FORMAL CAPABILITY MEETING

A performance monitoring and review period will follow the capability meeting (conducted by the Line Manager or equivalent), the purpose of which is to enable satisfactory improvement to be made. Formal monitoring, evaluation, guidance and support based on professional dialogue between the employee and their line manager will also be agreed for

this period. It will be recorded in a Performance Improvement Plan (PIP) (see Appendices 2 & 3 in the Toolkit).

10.3 FORMAL REVIEW MEETING (Stage 1)

A formal review meeting will be conducted by the Line Manager or equivalent following the monitoring and review period.

If **no,** or **insufficient improvement** has been made during the monitoring and review period, the employee will receive a **written warning or final written warning** as appropriate.

STAGE 2

10.4 MONITORING AND REVIEW PERIOD FOLLOWING A FORMAL CAPABILITY MEETING – RESULTING IN A WRITTEN OR FINAL WRITTEN WARNING

A performance monitoring and review period will follow the formal Stage 1 capability meeting that resulted in the issue of a written or final written warning; the purpose of which is to enable satisfactory improvement to be made. This will be conducted by the line manager or equivalent. Formal monitoring, evaluation, guidance and support based on professional dialogue between the employee and their line manager will again be agreed and continue during this period. It will be recorded on a PIP (see appendices 2 & 3 in the Toolkit).

10.5 FORMAL REVIEW MEETING (Stage 2)

A formal review meeting will be conducted by the Line Manager or equivalent following the monitoring and review period.

If the employee has received a written warning and their performance remains **unsatisfactory** then they may be:

a. issued with a final written warning or

b. requested to attend a Stage 3 (Final Stage) Hearing

If the employee received a final written warning and their **performance remains unsatisfactory** then they will be requested to attend a Stage 3 (Final Stage) Hearing.

STAGE 3

10.6 MONITORING AND REVIEW PERIOD FOLLOWING A FORMAL REVIEW MEETING – RESULTING IN A FINAL WRITTEN WARNING

A performance monitoring and review period will follow the Formal Review Meeting that resulted in the issue of a final written warning; the purpose of which is to enable satisfactory improvement to be made. This will be conducted by the Line Manager or equivalent. Formal monitoring, evaluation, guidance and support based on professional dialogue between the employee and their line manager will again be agreed and continue during this period. It will be recorded on a PIP.

If insufficient improvement has been made during the monitoring and review period then a Stage 3 (Final Stage) Hearing shall be convened.

10.7 STAGE 3 (FINAL STAGE) HEARING – Conducted by the Headteacher or Staff Dismissal Committee (where the Headteacher has been involved at a previous stage)

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 employee must be advised in writing prior to the hearing that at this stage 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 7 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 employee will be entitled to receive their contractual notice entitlement. The letter should confirm the employee's right to appeal the decision. This will need to be received in writing within 10 working days of the date of the letter of notification of the decision.

11. ALTERNATIVES TO DISMISSAL

11.1 As an alternative to dismissal, the Headteacher or governing body could consider the following:

- Redeployment to another post within the School – if this is at a lower grade there will be no salary protection. Redeployment is dependent on a suitable alternative post being available and this may be in competition with others.
- Demotion within the same job - this may be appropriate where the employee has a history of successfully working at a lower grade. There will be no salary protection on demotion.

- Voluntary early retirement or retirement on the grounds of efficiency.

12. APPEAL PROCESS

12.1 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 the date of the letter of notification of the decision.

12.2 An appeal may be raised on one or more of the following grounds:

- Procedure – failure to follow procedure has had a material effect on the decision
- Decision – the evidence did not support the conclusion of the hearing officer
- Warning – too severe given the circumstances of the case
- Alternative action – should (or should not) have been considered

12.3 Once an appeal has been received in writing an appeal panel will be convened without unreasonable delay. For further guidance please go to Section 12 in the School's Capability Toolkit.

13. DEALING WITH ABSENCE

13.1 There is a clear distinction between the employee's inability to perform their job and the effect of persistent or long term sick leave on their role. The latter scenario is not to be confused with the employee failing to perform the role to an acceptable and satisfactory standard. For all cases involving extended sick leave please refer to the Health & Attendance Policy.

14. FURTHER GUIDANCE

14.1 Further guidance is contained in the Capability toolkit for all parties involved during the capability process.

14.2 The toolkit is updated on a regular basis. The Headteacher should ensure that they refer to the most up to date copy on the intranet and not a previous printed version.

14.3 Formal advice and guidance is available from the HR Service Desk.