

Milton Road Primary School



Staff Capability Policy

Written – Tanim Paul	September 2023
Approved Rae Snape	
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Approve	

School Aims

We want our child to be happy and healthy today, fulfilled in the future and able to make their world an even better place.

Policy Overview

Milton Road Primary School have a responsibility to ensure that pupils receive the best educational opportunities available to them. One of the key elements to learning is the quality of teaching provided ensuring that all teachers are performing to professionally acceptable standards. The Capability Policy covers all staff, where performance is not to the professionally acceptable standards. This policy sets out the school's formal capability procedure.

This policy is compliant with the revised statutory School Staffing Regulations (England) (Amendment) 2012 and applies to all employees of (collectively referred to as "you" and "employee" in this policy apart from recently appointed employees who have not yet successfully completed a probationary period and, with the exception of particularly serious cases, Newly Qualified Teachers (NQTs)/Early Career Teachers (ECTs) who have separate support and assessment arrangements in place during their induction period.

Aims of the Policy

This policy sets out the framework for a clear and consistent assessment of the overall performance of employees, including the head teacher, and for supporting their development within the context of the school's plan for improving educational provision and performance, and the standards expected of them. The Capability Policy will be used to address any specific concerns that are raised about a member of staff's performance and to provide a more tightly focussed strategy of support.

Context

1.1 Capability refers to an employee's ability to perform the work expected of them to the standard required. This may be assessed by reference to an employee's skill, aptitude, health or any other physical or mental quality in relation to the job that he or she is employed to do.

1.2 The purpose of the Capability Policy is to provide a framework for managing underperformance in a fair and consistent manner. The Policy differs from the Disciplinary, Sickness Absence and other policies as its primary focus is that of improving performance to the standard required. The Policy establishes guidelines for managers and staff when an employee's work performance falls below the standard appropriate for the role due to underperformance.

1.3 The school has a responsibility for setting realistic standards of performance, for explaining these standards carefully to employees and for supporting employees to achieve the standards set. Please see the Induction and Probation guidance for further information. The Capability Policy will not be invoked during any probationary period.

1.4 All members of staff are required to perform their duties to an acceptable standard. Whilst the majority of staff meet or exceed the standards required of them, performance problems may arise. All managers should be aware of the terms of the Capability Policy and ensure that their line reports understand its nature and scope.

It is a manager's responsibility to identify underperformance and to seek to address this at the earliest opportunity.

1.5 It is recognised that capability problems may result from underlying work problems or personal issues that may be outside the employee's direct control.

Consequently there is a need to treat all capability issues with care and sensitivity and to identify and (where appropriate) address the underlying causes.

2. Eligibility

2.3 Performance issues identified during an individual's probationary period should be dealt with under the relevant probationary procedure.

2.4 This Policy should not be used for managing cases of sickness absence or misconduct. For such cases reference should be made to the Staff Absence Policy or the relevant disciplinary procedure. The purpose of the Capability Policy is to manage cases of underperformance, including those cases where ill health may be a contributing factor. Particular care should be taken when health issues are involved and advice sought from the Occupational Health Service and the HR Advisory as appropriate.

3. Confidentiality & Professional Relationships

3.1 The appraisal and capability processes will be treated with confidentiality. Only the appraiser's line manager or, where they have more than one, each of their line managers will be provided with access to the appraisee's plan recorded in her/his statements. This will be done upon request and only where this is necessary to enable the line manager to discharge their line management responsibilities. Appraisees will be consulted on requests for access to statements in the context of this policy.

3.2 The process of gathering evidence for performance review will not compromise normal professional relationships between staff. The Governing Body recognises that the appraiser will consult with, and seek to secure the agreement of, the appraisee before seeking information from other colleagues about the work of the appraisee.

3.3 However, the desire for confidentiality does not override the need for the Head of School and Governing Body to quality-assure the operation and effectiveness of the appraisal system. The Head teacher or appropriate colleague might, for example, review all staff members' objectives and written appraisal records personally – to check consistency of approach and expectation between different appraisers. The Head teacher might also wish to be aware of any pay recommendations that have been made.

4. Disability

Consideration will be given to whether poor performance may be related to a disability and, if so, whether there are reasonable adjustments that could be made to the employee's working arrangements, including changing duties or providing additional equipment or training. If you wish to discuss or inform us about any medical condition, you should contact your line manager or the Head teacher.

5. Right to be accompanied

Employees are entitled to be accompanied to formal meetings held under this procedure by a trade union representative or appropriate work colleague. If your chosen companion is unavailable at the

time of the hearing, you can propose an alternative time within 5 working days of the originally scheduled date.

If your companion is not available within 5 working days, we may require you to choose an alternative companion. At a formal hearing your companion can make representations, ask questions, sum up your case, and request an adjournment in order to discuss the case privately with you.

6. NQTS/ECTs – Action in the event of serious capability concerns

In a few particularly serious cases it may be necessary to instigate capability procedures, which may lead to dismissal before the end of the induction period. If this is the case, for as long as the NQT/ECT remains at the School the induction process will continue in parallel with the capability procedure. The appropriate body will be consulted with prior to any formal capability process commencing and prior to any dismissal taking place.

7. Appraisal Informal Support - 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 meeting will provide an opportunity to review progress towards meeting the appraisal objectives.

8. Identifying Performance Issues

In the first instance, performance issues should normally be dealt with informally between you and your line manager as part of day-to-day management [and the appraisal process]. Where appropriate, a note of any such informal discussions may be placed on your personnel file. The formal procedure should be used for more serious cases, or in any case where an earlier informal discussion has not resulted in a satisfactory improvement. Informal discussions may help to:

- clarify the required standards;
- identify areas of concern;
- establish the likely causes of poor performance and identify any training needs; and/or
- set targets for improvement and a timescale for review.

If we have serious concerns about your performance, it will undertake an assessment to decide whether there are grounds for taking formal action under this procedure. The steps involved will depend on the circumstances but may include reviewing your personnel file including any job description and appraisal records, gathering any relevant documents, monitoring work, and meeting you to discuss your work.

We may decide to proceed straight to Stage 3 (see below) of this process where the evidence suggests that you may have been grossly negligent such as to potentially warrant dismissal without the need for a final written warning.

8.1 The process for the meeting will be as follows:

- A summary of the concerns will be given at this meeting by the Head teacher who may be assisted by the appraiser or another member of SLT.
- The staff member will be provided with an opportunity to respond.
- Head teacher will express a view on whether the appraisal process should remain in place or whether formal capability proceedings should be started.

- The employee, supported 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 1 of the Capability Policy 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.
- establish the likely causes of poor performance and identify any training needs; and/or
- set targets for improvement and a timescale for review.

8.2 Stage 1

1. If it is decided that capability procedures will continue and progress to Stage 1 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 capability procedure.
2. The parties should agree a date when the Stage 1 Formal 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 employee a minimum of 10 working days ahead of the meeting.

8.2.1 In the case of a Head teacher/Head of School capability

1. A summary of the concerns will be given at this meeting by the Chair of Governor and Deputy Head.
2. The Head of School will be provided with an opportunity to respond.
3. The Chair of Governor will express a view on whether the appraisal process should remain in place or whether formal capability proceedings continue.
4. The Head of School, 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.
5. If it is decided that transition to Stage 1 of the Capability Procedure is inappropriate at this time, then the Head of School 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, normally at least six weeks, will be set together with a date for a review meeting.
6. If it is decided that capability procedures will continue and progress to Stage 1 of the Policy the Head of School will be notified in writing that the appraisal system will no longer apply and that their performance will continue to be managed under the capability procedure.
7. The parties should agree a date when the Stage 1 Formal 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 employee a minimum of 10 working days ahead of the meeting.

Stage 1 - Formal 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 10 working days ahead of the meeting.

This meeting is intended to clearly establish the concerns around the employee's performance and the support that they may require to successfully address them. It will be conducted by the Deputy Head teacher and the Chair of Governor for Head teacher capability meetings, or the Head teacher (or a Deputy Head teacher) 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 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. Evidence may be submitted at this stage.

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.
- They 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:
 1. 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).
 2. Give clear guidance on the improved standard of performance needed to ensure that the employee 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 establish whether or not the necessary improvement has been made.
 3. The staff member may request an adjournment at any point in order to consider the management proposals and develop alternative or additional suggestions.
 4. Explain any support that will be available to help the staff member to improve their performance.
 5. 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. This will normally be at least six 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 and should provide sufficient opportunity for an improvement to take place.
 6. 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 being issued with a four week period for improvement being given
 7. 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 this 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.

There is a right of appeal to the Appeals Committee. Details of the appeal should be provided in writing within 5 days of the decision being communicated.

Stage 2 – Formal Capability meeting

Again, employee has the right to be accompanied by a work colleague or trade union representative or who has been certified by their union as being competent.

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 meeting. The staff member will be invited to submit their evidence prior to the meeting. Details of the timescale will be in the letter.

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

1. 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.
2. If no, or insufficient improvement has been made during the monitoring and review period, the staff member may 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 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.

There is a right of appeal to the Appeals Committee. Details of the appeal should be provided in writing within 5 days of the decision being communicated.

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 makes the decision that the employee has not made sufficient improvement, then the staff member will be invited to a Stage 3 final capability decision meeting at which dismissal can be considered. The staff member must be advised that dismissal is a possible outcome of the Stage 3 meeting.

Although it is not a legal requirement, before a decision is made to move towards dismissal, the School may discuss the matter with its HR Advisory Service.

Stage 3 – Final capability decision meeting

This meeting will be held by the Governing Body's Discipline, Grievance and Dismissals Committee. In the case of the Head teacher, responsibility lies with the Chief Executive Officer and Chair of the Local Governing Body to create a panel. The School has the overall decision-making authority.

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 meeting. The notification will give details of the time and place of the meeting and will advise the member of their right to be accompanied by a work colleague or trade union representative who has been certified by their union as being competent.

If the Stage 3 meeting finds that 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, the Committee may make a decision to dismiss the employee on the grounds of lack of professional capability.

The Committee (or the persons hearing the case) also have the power to order a further period of support to allow the employee the opportunity to demonstrate the further improvement required 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 Committee will adjourn the meeting for a period of at least 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. 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 meeting.

9. Appeal

If an employee 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 5 days of the decision, setting out at the same time the grounds for appeal.

Appeals will be heard by the Governing Body's Appeals Committee without unreasonable delay and, where possible, at an agreed time and place. The same arrangements for notification and right to be accompanied by a work colleague or trade union representative who has been certified by their union as being competent 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 staff member.

9.1 In the Case of Head of School

If the Head of School 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 5 days of the decision, setting out at the same time the grounds for appeal.

Appeals will be heard without unreasonable delay by the Chair of Governors, at an agreed time and place. The same arrangements for notification and right to be accompanied by a work colleague or trade union representative who has been certified by their union as being competent 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 staff member.

10. References

The School 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

above regulation, if an employee had been subject to formal capability procedures in the preceding 2 year period. For the purposes of clarity, it will be deemed that an individual has entered the formal capability procedures, once they have attended the Transition Meeting.

The Governing Body must, at the request of a Governing Body or proprietor 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 Capability Procedure.

11. General Principles Underlying This Policy

ACAS Code of Practice on Disciplinary and Grievance Procedures

The conduct of the formal capability stage will be undertaken in accordance with the provisions of the ACAS Code of Practice. ACAS publish non-statutory guidance called “How to Manage Performance” and Employment Rights Act 96, Section 98(3)(a).

12. Attendance at Meetings

The employee must take all reasonable steps to attend meetings. Failure to do so without good reason may be treated as misconduct.

12.1 Sickness

If long term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case will be dealt with in accordance with the School’s absence management policy and will normally be referred 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. However, the views of the occupational health physician will always be taken into account before a decision is reached.

12.2 Grievances

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

13. Monitoring and Evaluation

The Governing Body and Head teacher will monitor the operation and effectiveness of the School’s appraisal arrangements.

The Head teacher will provide the Governing Body with a written report on the operation of the School’s appraisal and capability policies annually. The report will not identify any individual by name.

The Head teacher will report on whether there have been any appeals or representations on an individual or collective basis on the grounds of alleged discrimination.

14. Retention

The Governing Body and Head teacher will ensure that all written appraisal records are retained in a secure place for six years and then destroyed. The School will also retain appraisal records for

central School Staff and Head teachers. Documents will be retained in accordance with the School Document Retention Policy.

15. Notice Period

Should a Teacher (including Head teacher/Deputy Head teacher/Assistant Head teacher) be dismissed by the School by reason of capability then the employee shall be due to receive notice until the end of that term (30 April, 31 August or 31 December – as appropriate). If that period of notice is shorter than two months – then the School will make a payment in lieu for the balance to ensure a minimum of two months' notice/pay in lieu of notice is paid to the employee.

This information is provided in accordance with s.1 Employment Rights Act 1996. To the extent that the terms of this clause conflict with the School Teachers' Pay and Conditions and the Conditions of Service for School Teachers in England (the Burgundy Book) or other collective agreement – the terms of this clause shall prevail.

Staff Capability Process

