

Capability of Staff Policy

2021-2022



School: Prudhoe Castle First School

Head Teacher: Katie Jacobs

Named personnel with designated responsibility:

Academic Year	Lead	Nominated Local Governor	Chair of board of trustees
2021-2022	Katie Jacobs	Judith Meek	Rob Moore

Policy review dates

Review Date	Changes made	By whom	Date shared
October 2022			

CAPABILITY OF STAFF POLICY AND PROCEDURE

In keeping with Prudhoe Castle First School's other policies and procedures, this document is issued for guidance and is not intended to have contractual effect. Prudhoe Castle First School's reserves the right to vary, amend or depart from the contents of this policy and procedure from time to time in appropriate circumstances.

1.0 Policy

Prudhoe Castle First School's aim is to address and resolve problems in capability at the earliest possible stage, in a supportive way that takes account of individual circumstances, whilst the employee continues to carry out his/her role, so that they are given the opportunity to improve their performance and the problem resolved.

Concerns about performance will initially be addressed through support provided within the appraisal process before consideration is given to the capability procedure.

2.0 Scope

The capability policy and procedure applies to all full time, part time permanent and temporary employees (including the Headteacher), where performance causes serious concerns that the appraisal process has been unable to address.

This policy and procedure does not apply to employees who are subject to a probationary period as the probationary policy and procedure will apply. Where the lack of capability is due to ill health or disability, this should be dealt with under the Prudhoe Castle First School's absence management policy and procedure.

This policy and procedure should not be used in cases of alleged misconduct such as where an employee's failure to perform is due to an act of omission, or a wilful refusal to work satisfactorily. In this circumstance, the Prudhoe Castle First School's disciplinary policy and procedure should be used.

3.0 Definitions

Employee: full time, part time, permanent and temporary teachers and support staff who undertake to do work under an employment contract for Prudhoe Castle First School, personally. Employees are entitled to a wide range of employment rights.

Capability (lack of): For the purposes of this policy and procedure, lack of capability is defined as a situation in which an employee fails consistently to perform his or her duties to a professionally acceptable standard. Capability concerns may be about a single matter or a number of related issues.

Written warning: a sanction which advises the employee that their performance is not acceptable and that improvements are required. A written warning will remain live for 12 months from the date of issue.

Final written warning: a sanction which advises the employee that this is their final opportunity to improve performance before Prudhoe Castle First School considers terminating their contract of employment. Only in extreme cases where the education of children is considered to be at significant risk will a final written warning be issued as a first sanction. A final written warning will remain live for 24 months from the date of issue. A panel may reduce the duration of a final written warning to a minimum of 12 months in circumstances where this is deemed appropriate.

4.0 Principles

The capability policy and procedure is designed to help and encourage all employees to achieve and maintain acceptable standards of capability and work performance. However, at the conclusion of the process, any action, may, at its extreme, lead to dismissal.

The capability procedure will not be implemented unless a support plan has been in place for an agreed period and the employee has been provided with at least 8 weeks of support for their performance to improve under the appraisal process.

The capability procedure will be kept entirely separate from initial support provided under the appraisal process.

Prudhoe Castle First School will consider whether concerns over capability relate to family/personal circumstances or short term health problems. Consideration will also be given to any circumstances within the Prudhoe Castle First School.

This policy and procedure is not intended as a substitute for good management and sound employment practices such as the induction of new staff/newly promoted staff, good management, and comprehensive appraisal/performance management.

Generally, performance should be discussed regularly as part of the employee's supervision, and underperformance identified and tackled early. Early identification of problems through supervision and appraisal will help to avoid formal capability procedures, however, there will inevitably be cases where a more formal and structured approach is necessary.

Timescales should be adhered to wherever possible. However, where there is a valid reason and there is mutual agreement, timescales can be varied. However, there should not be unreasonable delay in undertaking the procedure.

Prudhoe Castle First School 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 employees.

5.0 Responsibility

5.1 Governing Body

The Governing Body has responsibility for adopting, developing and reviewing this policy and procedure and ensuring that effective monitoring systems and procedures are in place.

The Governing Body has delegated authority to the Headteacher to make decisions in relation to the capability policy and procedures.

5.2 Headteacher

The Headteacher is responsible for implementing and undertaking the procedure, when required.

5.3 Line Manager

The line manager will:

- ensure that all employees have a clearly defined and agreed job description, reviewed on a regular basis, to ensure that all employees know what is expected of them;
- appraise assigned employees and agreed appropriate objectives; and
- understand clearly this capability policy and procedure and ensure that these are communicated to all employees; and
- undertake the procedure, when required.

Where a Headteacher's capability is being managed, the Chair of Governors/CEO, as the line manager, is responsible for undertaking the procedure when required.

5.4 Employee

Employees:

- are responsible for performing the duties of the post to the best of their abilities and in accordance with any specified regulations or performance standards (for example Teachers' Standards) and objectives set within the appraisal process; and
- Will fully understand and comply with this capability policy and procedure.

6.0 Transition to Capability

If the appraiser is not satisfied with progress and/or performance, the employee will be notified in writing that the appraisal system will no longer apply and that their performance will be managed under the capability procedure, and will be required to attend a formal capability meeting.

7.0 Formal Procedure

7.1 Right to be Accompanied

At all stages of the capability process, employees have the right to be accompanied and/or represented by his/her trade union representative or by a work colleague. The representative or work colleague may address the meeting, and confer with the employee, but may not answer questions on his/her behalf.

Employees should make their own arrangements to be represented or accompanied. Where the chosen representative or colleague is not available at the proposed time and date of a meeting, the employee may propose an alternative date within 5 working days of the original date. This may be extended in exceptional circumstances. The rescheduled meeting will not cause any unreasonable delay to the process.

Throughout the procedure, wherever possible, the time and date of meetings should be agreed with the employee and their representative.

Where any capability procedure is being considered in respect of a recognised trade union, no action shall be taken until the matter has been discussed by the Headteacher (or a person acting on their behalf), with a full-time officer or locally elected officer of that trade union.

7.2 Formal Capability Meeting

At least five working days' notice will be given of the formal capability meeting. The notification will contain sufficient information about the concerns about performance and their possible consequences to enable the employee to prepare to answer the case at a formal capability meeting. It will also contain copies of any written evidence; the details of the time and place of the meeting; and will advise the employee of their right to be accompanied by a work colleague or a trade union representative.

This meeting is intended to establish the facts. It will be conducted by the Chair of Governors (for Headteacher capability meetings), the Headteacher or line manager (for other employees). The meeting will allow the employee to respond to concerns about his performance and to make any relevant representations. This may provide new information or a different context to the information/evidence already collected.

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 any additional information.

In other cases, the meeting will continue. During the meeting, the person conducting the meeting will:

- identify the professional shortcomings, for example which of the standards expected of teachers are not being met or which areas of the job description are not being achieved to the required standards;
- give clear guidance on the improved standard of performance needed to ensure that the employee can be moved from formal capability procedures (this may include the setting of new objectives 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 employee improve their performance;
- 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 straightforward cases could be between four and ten weeks. 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); and
- if appropriate, issue the employee with a written warning and warn the employee formally that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning.

Notes will be taken of formal meetings and a copy sent to the employee. Where a warning is issued, the employee 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.

7.3 Monitoring and Review Period following a Formal Capability Meeting

A performance monitoring and review period will follow the formal capability meeting. This will depend on the circumstances of the individual case but in straightforward cases could be between four and ten weeks. Formal monitoring, evaluation, guidance and support will continue during this period.

At the end of the review period, the employee will be invited to a formal capability review meeting, unless they were issued with a final written warning, in which case they will be invited to a capability hearing.

7.4 Formal Capability Review Meeting

At least 5 working days' written notice will be given of the formal capability review meeting. The meeting will be conducted by the Chair of Governors (for headteacher capability meetings) or the Headteacher (for other employees).

If the person conducting the meeting is satisfied that the employee has made sufficient improvement, the capability procedure will cease and the appraisal process will restart.

If some progress has been made and there is confidence that more is likely, a further monitoring and review period will be set of between 4-8 weeks. Whatever time period is agreed at the meeting will be realistic in terms of helping the employee to meet the agreed targets.

If no or insufficient improvement has been made during the monitoring and review period, the employee will receive a final written warning before a further monitoring and review period is set. Agreement will be sought regarding the time period and further support will be discussed at the meeting, taking on board the views of both parties. The length of the review period will be appropriate to the circumstances and the support to be provided but will be not less than 6 weeks. This may be 8 weeks where considered appropriate, or in particularly serious cases where the parties agree the education of children is in jeopardy, not less than 4 weeks.

If agreement cannot be reached the view of the Chair of Governors/ Head teacher/line manager will be implemented.

Notes will be taken of the meeting and a copy of these will be sent to the employee. Where a final written warning is issued, the employee will be informed in writing that failure to achieve an acceptable standard of performance (within the set timescale), may result in dismissal. The employee will be provided with written information about the further monitoring and review period and the procedure and time limits for appealing against the final written warning.

At the end of the further monitoring and review period, the employee will be invited to a capability hearing.

7.5 Capability Hearing

If no or insufficient improvement has been made and the employee has already received a final written warning, they will be invited to a capability hearing to consider their continued employment on the grounds of capability.

The employee will be given at least 5 working days' notice of the capability hearing.

The meeting will be conducted by a hearing panel of up to three governors not previously involved in the case and in accordance with Prudhoe Castle First School's procedure for hearings and appeals.

If an employee fails to attend the capability hearing, it will be held in their absence, unless the hearing panel agrees to postpone the meeting following receipt of valid reason for absence.

The hearing panel members will receive copies of all relevant papers that will be referred to in the meeting, including any submitted by the employee. Any evidence the employee wishes to present, should be made available to the panel at least 2 working days before the meeting date. If this is not possible, it could be considered on the day of the meeting, with the agreement of the hearing panel.

At the capability hearing, the hearing panel will consider whether the employee's performance falls below the standard required. The panel members will also satisfy themselves that adequate support mechanisms have been offered to the employee, and ensure that all reasonable alternatives to dismissal, such as redeployment have been exhausted.

Where the panel feels that acceptable improvement has been made, and an acceptable standard of performance has been achieved during the process, the capability process will end and the appraisal process will restart. The hearing panel will confirm this in writing to the employee.

Where performance is deemed to have improved, but not quite reached the required standard, and where there is confidence that following a further monitoring period it will reach an acceptable standard, then a further monitoring period of no more than 4 weeks will be put in place. There will be a further capability hearing following that period.

Where the hearing panel believes that no/insufficient progress has been achieved, nor will it be made, following an extended monitoring period, the employee will be informed that they will be dismissed from their employment on the grounds of capability.

The employee will be informed of the date on which the employment contract will end, the appropriate period of notice and of their right to appeal.

The employee will receive a copy of the notification as above, in writing.

7.6 Appeal

An employee can appeal against any formal action taken against them as a result of this procedure if they feel it is wrong or unjust. Any appeal must be made in writing within ten days of receipt of written confirmation of the hearing panel's decision, setting out the grounds for appeal. Appeals will be heard without unreasonable delay and in accordance with the Prudhoe Castle First School's hearings and appeals procedure.

The employee will be informed in writing of the outcome of the appeal hearing, normally within 5 working days of the appeal panel's decision.

8.0 Monitoring and Review

This policy and procedure will be monitored and reviewed annually by the Head Teacher. Where there are issues with the way the policy and/or procedure are working, these will be looked at closely with a view to identifying measures to improve their effectiveness.