

# Mossley Hollins High School



## Teacher Capability Policy

At Mossley Hollins we will ensure that at every level, in all our work and throughout all aspects of the school community and its life, all will be treated equally, with respect and dignity, free from discrimination and harassment. Each person will be given fair and equal opportunities to develop their full potential regardless of their age, disability, gender, gender-identity, race, religion or belief, sexual orientation, pregnancy and maternity (refers to staff / employment), socio-economic background and special educational needs. Our school will tackle the barriers which could lead to unequal outcomes for these protected groups, ensuring there is equality of access and that we celebrate and value the diversity within our school community. The school will work actively to promote equality and foster positive attitudes and commitment to an education for equality

### Data Protection Statement

The procedures and practice created by this policy have been reviewed under our Data Protection Policy in line with GDPR.

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1. Introduction	3
2. General Principles	4
3. Teachers Experiencing Professional Difficulties	5
4. Step 1 – Formal Capability Meeting	6
5. Monitoring and Review Period	7
6. Step 2 – Formal Capability Review Meeting	7
7. Step 3 – Capability Hearing	8
8. Appeal	9

**Appendices**

- A. Flowchart – Teacher Capability Process
- B. Schedule for Capability Hearing
- C. Schedule for Appeal Meeting

## 1. INTRODUCTION

Capability arrangements are set out in the 'Teacher Appraisal and Capability' model policy, prepared by the Department for Education (revised 2019).

Schools and Local Authorities must have a procedure which deals with lack of capability. This procedure applies only to Teachers, including Headteachers. It has been written in the context of schools, but the same principles apply to centrally based teachers.

This capability procedure only applies to Teachers and Headteachers about whose performance there are serious concerns, and that the appraisal process has been unable to address. It must be ensured that the 'Teachers Experiencing Professional Difficulties' process is followed, as outlined in the 'Appraising Teacher Performance' Policy, before transitioning to the Capability Procedure.

## 2. GENERAL PRINCIPLES

### 2.1. Scope

This procedure applies only to teachers, including the Headteacher (and/or Executive Headteacher, where in post), who are employed for one term or more, about whose performance there are serious concerns that the appraisal process has been unable to address.

This procedure sets out the arrangements that will apply when teachers fall below the levels of competence that are expected of them.

### 2.2. Purpose

The key objectives of this procedure are to encourage and support improvement where a teacher is failing to meet the required performance standards; and to deal with capability in a supportive but structured and consistent way.

This procedure does not deal with lack of capability due to ill health, nor with misconduct – separate procedures exist and have been adopted by the Governing Body to address such matters.

Headteachers should seek advice from their HR Provider if they have difficulty in determining whether an issue is a capability or a conduct matter.

### 2.3. Confidentiality

Any discussions that take place during meetings are confidential to the individuals concerned. However, any objectives, targets or action plans will, if necessary, be passed to those responsible for ensuring action is taken.

In addition, Headteachers and Governing Bodies have a statutory obligation, under the 2012 amendments to the School Staffing (England) Regulations, to convey information to prospective employers about whether a teacher is, or has, been subject to capability procedures within the last 2 years of their employment.

### 2.4. 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.

### 2.5. Definitions

Unless indicated otherwise, all references to 'teacher' include the Headteacher.

All references to 'Headteacher' include Executive Headteachers, where these are in post.

### 2.6. Sickness

Where absence appears to have been triggered by the capability procedure, the Managing Attendance procedure will be followed. It may be appropriate for the capability procedure to continue during a period of sickness absence.

Reasonable steps should be taken to enable the teacher and/or a representative to attend capability meetings. However, where the teacher is unable to attend, the meeting(s) may proceed in their absence if delay would otherwise compromise the maximum time set aside for the procedure. In such circumstances, the teacher should be provided with a full account of the meeting(s) in the letter confirming the decision taken.

## 2.7. Grievances

Where a member of staff raises a grievance during the capability procedure, the capability procedure may be temporarily suspended in order to deal with the grievance. In other cases, for example where the grievance and capability cases are unrelated, it may be appropriate to deal with both cases concurrently.

## 2.8. Rights of Representation

Teachers have the right to be accompanied by a work colleague or a certified trade union representative. The role of the representative is to be present in order to support and advise the teacher and to make representations on behalf of the teacher.

The meeting may be postponed at the employees request for up to 5 working days if the trade union or other representative is not available on that date.

No formal action shall be taken against an employee who is an accredited representative of one of the certified Teachers' Associations until the one of the following have been notified:

- the local secretary; in the case of a school representative or local officer: or,
- a full time official of the association; in the case of a local secretary or a national executive member.

## 2.9. Suspension

The Headteacher and the Chair of Governors have the power to suspend on full pay if it is deemed necessary.

Any suspension will be reviewed no later than every 2 weeks, or earlier if new information is established. The period of suspension may be extended. The suspension review will be confirmed in writing to the employee.

The Headteacher must inform the Chair of the Governing Body of the suspension / suspension review. In the event of suspension / suspension review by the Chair, the Chair must inform the Governing Body. Should the suspension relate to a Headteacher this will normally be considered and monitored by the Chair of the Governing Body. The Governing Body may end a suspension.

# 3. TEACHERS EXPERIENCING PROFESSIONAL DIFFICULTIES

Mossley Hollins High School's 'Appraising Teacher Performance' Policy states that the appraisal procedure will be used, in the first instance, to address any concerns that are raised about a teacher's performance. When dealing with a teacher experiencing professional difficulties, the objective is to provide support and guidance through the appraisal process in such a way that the teacher's performance improves, and the problem is therefore, resolved.

Where there are concerns about any aspects of the teacher's performance; the appraiser, the Headteacher, or a member of the leadership team will, as part of the appraisal process, conduct a formal meeting with the teacher.

A reasonable period of time will be allocated for the teacher's performance to improve, which will depend upon the circumstances, with the aim that the teacher will achieve improved and sustained performance. During this monitoring period, the teacher will be given feedback on progress and arrangements will be made to modify the support programme if appropriate. The appraiser/headteacher will provide a written update to the teacher of progress against the plan.

When progress is reviewed after the monitoring period and the appraiser determines that no, or insufficient improvement has been made, the teacher 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 invited to a formal capability meeting.

For more information on the 'Teachers Experiencing Professional Difficulties' process, please see the 'Appraising Teacher Performance' Policy.

## 4. STEP 1 - FORMAL CAPABILITY MEETING

At least 5 working days' notice will be given to the employee of the formal capability meeting.

The notification will contain sufficient information regarding the concerns about performance and the possible consequences to enable the teacher 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, a copy of the capability procedure, and will advise the teacher of their rights of representation.

### 4.1. The Formal Meeting

This meeting is intended to establish the facts. It may be appropriate for a line manager or appraiser to be present and involved in the discussion at the formal meeting, but it will be conducted by the Headteacher (for other teachers), or the Chair of Governors (for Headteacher capability meetings).

During the meeting, the Headteacher / Chair of Governors will:

- identify the professional shortcomings, including which of the standards are not being met;
- give the teacher the opportunity to respond and make relevant representations.

This may provide new information or a different context to the information/evidence already collected. A decision by the Headteacher / Chair of Governors should be made after all the facts and any representations from the teacher have been considered.

The decision 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 Headteacher / Chair of Governors 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.

If the Headteacher / Chair of Governors determine that it is appropriate to continue with the formal meeting, they must:

- Give clear guidance on the required standard of performance to ensure that the capability process can come to an end. This may include the setting of new objectives focused on the specific weaknesses that need to be addressed, identifying any success criteria that might be appropriate, and outlining the evidence that will be used to assess whether or not the necessary improvement has been made;
- Explain any support that has already been made available, or will be available, to help the teacher 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, but in straightforward cases, could be between 4 and 10 weeks. The period should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place;
- Draw up a formal written action plan to confirm the above requirements, to assist the teacher in achieving the required standards;
- Set a date for a formal review meeting immediately following the monitoring and review period.

### 4.2. Written Warning

Where appropriate, the Headteacher / Chair of Governors may issue a written warning and warn the teacher formally that failure to improve within the set period could lead to dismissal.

Notes will be taken of formal meetings and a copy of the notes and action plan will be sent to the teacher as soon as possible. Where a warning is issued, the teacher will be informed in writing of the matters covered above and given information about the timing and handling of the review stage, the procedure, and time limits for appealing against the warning.

#### 4.3. Cases Causing Serious Concern

In cases of particular serious concern where the education of children is in jeopardy, it is possible to move directly to a **final written warning** at the formal meeting, and redeployment should be considered.

Immediately following the issue of a final written warning, a period for improvement with an appropriate plan will be implemented, which will be **no more than four working weeks**.

Following these four working weeks, if satisfactory performance is achieved, the monitoring and review period will commence, for a maximum of 4 weeks.

If performance is unsatisfactory within the four working weeks, the matter will then be referred to a Capability Hearing. In the intervening period, consideration must be given to suspension of the employee.

### 5. MONITORING & REVIEW PERIOD FOLLOWING A FORMAL CAPABILITY MEETING

A performance monitoring and review period will follow the formal capability meeting. During this time formal monitoring, evaluation, guidance and support will continue.

Where a written warning has been issued at the formal meeting, the monitoring and review period will be for a minimum of 6 weeks.

Where a final written warning has been issued at the formal meeting, the monitoring and review period will be for a maximum of 4 weeks.

Following the monitoring period, the teacher will be invited to a formal capability review meeting.

### 6. STEP 2 - FORMAL CAPABILITY REVIEW MEETING

As with formal capability meetings, at least 5 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 of their rights of representation.

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.

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;
- If no, or insufficient improvement has been made during the monitoring and review period, the teacher will receive a final written warning and redeployment will be considered;
- If a final written warning has previously been issued, and no, or insufficient improvement has been made during the monitoring and review period, the matter will be referred to a Capability Hearing.
- If a final written warning has previously been issued, and sufficient and acceptable progress towards meeting the teacher standards has been made within the monitoring period, an extended monitoring and review period of up to 4 weeks may be agreed.

As before, notes will be taken of formal meetings and a copy sent to the employee. The final written warning will mirror any previous warnings that have been issued. Where a final 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.

In the event of a written warning, the employee will be advised of the Appeals procedure.

## 7. STEP 3 – CAPABILITY HEARING

As with formal capability meetings and formal capability 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 and will advise the teacher of their right to be accompanied by a work colleague or a certified trade union representative.

The people present at the Decision meeting may include the following:

- Governors (usually a panel of three), or an Assistant Executive Director for centrally based teachers
- the teacher
- the teacher's trade union representative or work colleague
- the Headteacher / Head of Service
- a representative from Human Resources; and
- a clerk to minute the meeting.

The Decision meeting will be conducted in accordance with the attached schedule (Appendix B).

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. The teacher will be sent written confirmation of this decision.

If performance remains unsatisfactory, a decision, or recommendation to dismiss the teacher will be made to the Governing Body.

Alternative employment may be considered at any stage of this process, but must be considered by the Governing Body, following a final written warning and before contemplating dismissal.

If an alternative role is identified at school, and the employee confirms their request in writing to transfer into the alternative role, this may be facilitated. In these circumstances, the three-year salary safeguarding regulations **DO NOT** apply.

In determining whether the alternative role is a suitable solution to the capability concern, the Headteacher should be satisfied that the teacher is fully able to undertake the role.

In the event of dismissal, the employee will be informed within 14 days, of the:

- reasons for dismissal
- appropriate period of notice
- contract termination date
- right of appeal.

## 8. APPEAL

If a teacher feels that a decision to issue a warning, or to dismiss, is wrong or unjust, they may appeal in writing within 10 days of the decision, setting out the grounds for appeal. Appeals will be heard without unreasonable delay, and where possible, at an agreed time and place.

The same arrangements for notification and right to be represented by a work colleague or a certified trade union representative will apply and, as with other formal meetings, notes will be taken, and a copy sent to the Teacher.

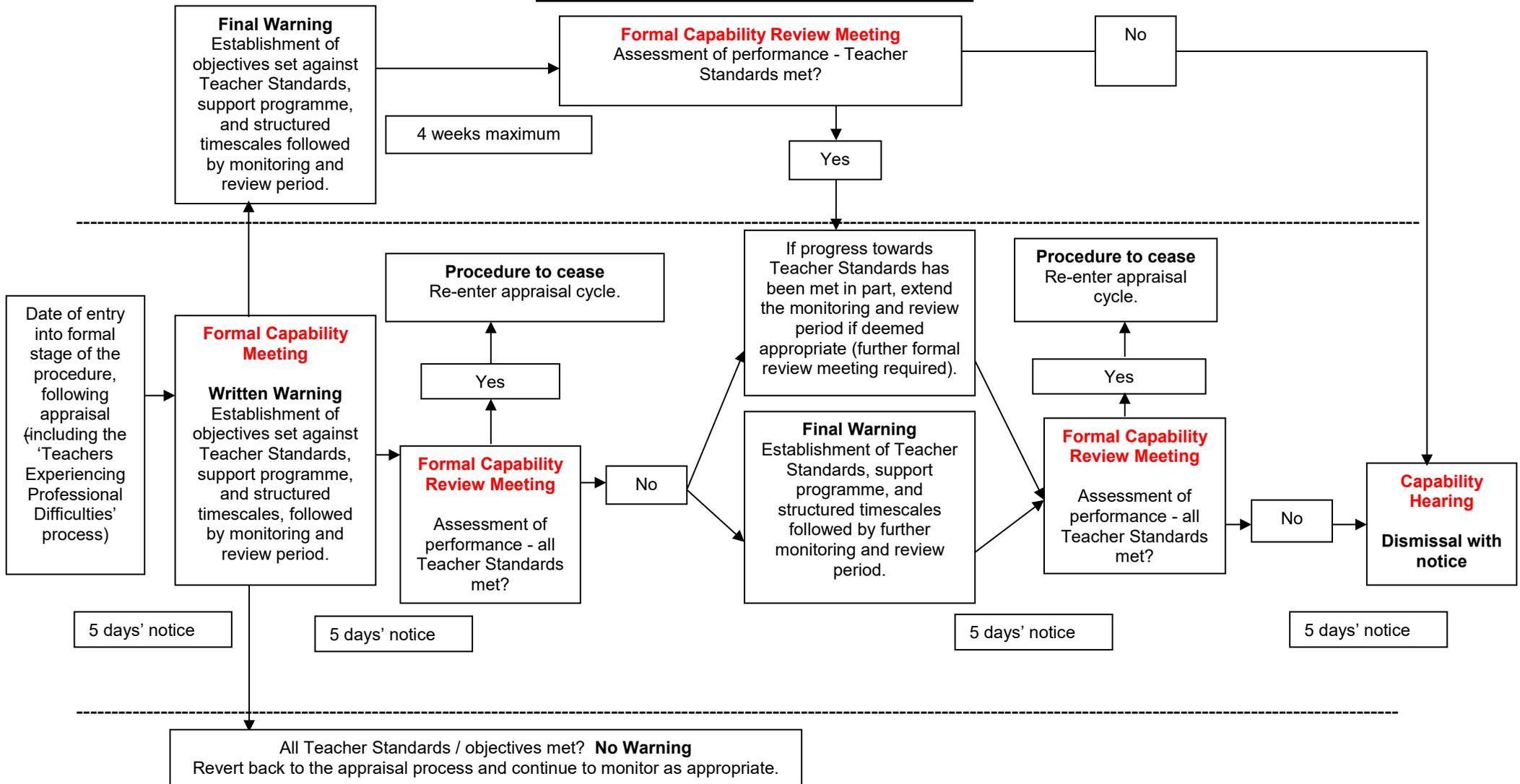
The appeal meeting will be conducted in accordance with the attached schedule (Appendix C).

The appeal will be dealt with impartially and, wherever possible, by Managers or Governors who have not previously been involved in the case.

This should not interrupt the progress of the procedure unless the appeal decision leads to the matter being reconsidered.

The teacher will be informed in writing of the outcome of the appeal hearing as soon as possible.

# TEACHER CAPABILITY PROCESS



**Notes:**

- The timings given above are illustrative only and are offered as minimum periods which will be appropriate only in straightforward cases. Schools will need to tailor the length of their monitoring and review periods to suit individual circumstances.
- At each stage of the process the teacher has the right to appeal against any decisions that have been made.

## SCHEDULE FOR CAPABILITY HEARING

This schedule sets out the procedure to be followed at a decision meeting held by a Committee of the Governing Body in line with the Capability Procedure, where a decision of dismissal may be considered.

The Chair of the meeting will:

- Make introductions
- Confirm the reason for the meeting
- Confirm the teacher is aware of their rights of representation
- Confirm relevant notification and any supporting documentation has been received
- Confirm if any witnesses are to be called
- Outlines the format of the meeting to be followed

Format of the Meeting:

1. The Headteacher outlines the process that has been followed and the areas of concern which should include objectives / targets set, support given and timescales involved. Witnesses may be called and/or statements presented. Any of these witnesses may be questioned, first by the employee or his/her representative, followed by the Governors.
2. The teacher/representative may ask questions of the Headteacher
3. The Governors may ask questions of the Headteacher
4. The teacher or his/her representative make their opening statement. Witnesses may be called and/or statements presented. Any of these witnesses may be questioned by the Headteacher, followed by the Governors
5. The Headteacher may ask questions of the teacher
6. The Governors may ask questions of the teacher
7. The Headteacher sums up
8. The teacher/representative sums up
9. Both sides adjourn while the Governors consider the matter
10. The meeting is re-commenced and the Governors decision is conveyed
11. The decision will be confirmed in writing

During the proceedings, the decision of the Chair of the Committee as to which matters are of relevance to the proceedings will be final.

During the proceedings either side may request a short adjournment, in which case both sides will withdraw from the meeting.

Following a resolution of the Committee to dismiss, the teacher will have the right to appeal this decision.

Following a decision to dismiss an employee, the Governing Body will:

- request the Council to dismiss within 14 days

## SCHEDULE FOR APPEAL MEETING

This schedule sets out the procedure to be followed to consider an appeal against a decision to issue a formal warning, or against a decision to dismiss the teacher taken at a Decision meeting in line with the capability procedure.

The Chair of the appeal hearing will:

- Make introductions
- Confirm the reason for the meeting
- Confirm the teacher is aware of their rights of representation
- Confirm relevant notification and any supporting documentation has been received
- Confirm if any witnesses are to be called
- Outlines the format of the meeting to be followed

Format of the Meeting:

1. The teacher or his/her representative make their appeal statement. Witnesses may be called and/or statements presented. Any of these witnesses may be questioned by the Headteacher, followed by the Governors
2. The Chair of the dismissal hearing may ask questions of the teacher
3. The Governors may ask questions of the teacher
4. The Chair of the Decision meeting outlines the process that was followed and the reasons for concluding that dismissal was appropriate. Witnesses may be called and/or statements presented. Any of these witnesses may be questioned, first by the teacher or his/her representative, followed by the Governors
5. The teacher/representative may ask questions of the Chair of the Decision meeting
6. The Governors may ask questions of the Chair of the dismissal hearing
7. The teacher/representative sums up
8. The Chair of the Decision meeting sums up
9. Both sides withdraw while the Governors consider the matter
10. Both sides are recalled and the Governors decision is conveyed
11. The decision will be confirmed in writing to the teacher

During the proceedings, the decision of the Chair of the Appeal meeting as to which matters are of relevance to the proceedings will be final.

During the proceedings either side may request a short adjournment, in which case both sides will withdraw from the meeting.

Following a resolution of the Committee on appeal against dismissal, the teacher will have no right to a further appeal. This does not affect the teachers legal rights as defined under Employment Legislation.