# Professional Capability Procedure

**Document Version**: 1.0  
**Reason for Issue**: Statutory policy for FPPF  
**Document Author**: Mike Wallace  
**Creation Date**: September 2019  
**Approved by**: FPPF Governing body  
**Approval date**: December 2019  
**Review frequency**: In line with Federation procedure changes or LA guidance  
**Document location**: Websites  
**Governor with responsibility for Capability**: Derek Moss  
**Further enquiries should be addressed to**: office@FPPF.org.uk or office@fpis.org

<table>
<thead>
<tr>
<th>Version</th>
<th>Date</th>
<th>Author</th>
<th>Status (Draft, approved etc)</th>
<th>Version History (Creation, update, archive)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>September 2019</td>
<td>M Wallace</td>
<td>Approved</td>
<td>Creation – update from previous FPPF – RBWM template</td>
</tr>
</tbody>
</table>
This policy sets out the formal capability procedure adopted by Furze Platt Primary Federation 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 Senior Leaders about whose performance there are serious concerns that, for example, the appraisal process has been unable to address.

The Governing Body will review this policy regularly, but no less frequently than every 3 years, to ensure that it meets current legislative requirements.

1. This procedure applies to teachers or senior leaders about whose performance the appraisal process has been unable to address. Application is to all teachers with the exception of those on contracts of less than one term/13 weeks. In addition, teachers supplied by agencies are exempt from this procedure and schools are expected to address any concerns to the agency.

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

   If, following a period of support and monitoring under the Appraisal Policy, the appraiser/Executive Head teacher 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. He/she will be invited to a formal capability meeting.

3. At least five working days’ notice will be given of the meeting which will 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 (head) teacher 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 senior leader (including Executive Headteacher and Head of School) and teacher 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.

**Formal capability meeting**

3. This meeting is intended to establish the facts. It will be conducted by the Chair of Governors or vice Chair (for Executive head teacher and head of school capability meetings) or Executive head teacher (for other teachers). The meeting allows the senior leader (including Executive Headteacher and Head of School) and 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.

Those present at the meeting will be:

I. The Executive headteacher or governor who is initiating the capability concerns (i.e.; the person conducting the meeting (see Paragraph 4 on the following page)).

II. The senior leader (including Executive Headteacher and Head of School) or teacher who is the subject of the capability concerns

III. An appropriate representative of the person at (II) if so requested by that person

IV. A note-taker

V. an adviser who may be required to attend so that s/he can understand and clarify his/her role in supporting or monitoring the senior leader (including Executive Headteacher and Head of School) or teacher or who may be required to advise on aspects of evidence of the senior leader’s (including Executive Headteacher and Head of School) or teacher’s performance. This person may not be required to attend for the whole of the meeting; the duration of his/her presence or whether s/he is 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 or Authority employing the centrally-funded teacher may be present.

4. 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. S/he may need/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, for example, if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.

5. 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:

- identify the professional shortcomings, for example which of the standards expected of (head) teachers are not being met;
- give clear guidance on the improved standard of performance needed to ensure that the senior leader (including Executive Headteacher and Head of School) or teacher can be removed 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 senior leader (including Executive Headteacher and Head of School) or teacher improve his/her 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 (between four and twelve weeks). The timetable for improvement should include a period - to be determined in individual cases- for senior leader (including Executive Headteacher and Head of School) or teacher to work unsupported in order to demonstrate that s/he is able to work unaided, as would be the case after the period of capability had ended and the target(s) had been attained.

and:

- warn the senior leader (including Executive Headteacher and Head of School) or teacher formally that failure to improve within the set period could lead to dismissal. Very serious cases would include:
  - pupils’ education/progress in jeopardy (as demonstrated by tracking data/pupils’ work) (school standards failing to rise)
  - failure to meet national standards
  - an inspection resulting in the school being placed in an OfSTED category
  - an overspend failing to be addressed or resolved

This warning could be a final written warning.

6. 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 senior leader (including Executive Headteacher and Head of School) or teacher where applicable. Where a warning is issued, the teacher 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.

**Monitoring and review period following a formal capability meeting**

7. 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 11). There may in addition be interim review meetings which the senior leader (including Executive Headteacher and Head of School) or teacher or the Executive headteacher/governor conducting the process may request.

**Formal review meeting**
8. 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 of their right to be accompanied. Please refer to Paragraph 3 for details of those who would normally attend the meeting.

9. If the person conducting the meeting is satisfied that the senior leader (including Executive Headteacher and Head of School) or teacher 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 5, 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 senior leader (including Executive Headteacher and Head of School) or teacher will receive a final written warning. A final warning will 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.

10. 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), 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 senior leader (including Executive Headteacher and Head of School) or teacher will be invited to a decision meeting.

**Decision meeting**

11. 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 senior leader (including Executive Headteacher and Head of School) or teacher 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 senior leader (including Executive Headteacher and Head of School) or teacher and
   - anyone monitoring progress against targets.
   - HR could also be represented, and at this stage such involvement may be advisable.
12. If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end. If performance remains unsatisfactory, a decision, or recommendation to the Governing Body, will be made that the senior leader (including Executive Headteacher and Head of School) or teacher should be dismissed or required to cease working at the school.

**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.

1 In Community schools, the power to determine that the member of staff should no longer work at the school can be delegated in the same way as above but it is the local authority (as the employer) that actually dismisses staff (or – for those who work in more than one school – requires them to cease to work at the school).

13. Before the decision to dismiss is made, the school will discuss the matter with the local Authority.

14. The senior leader (including Executive Headteacher and Head of School) or teacher will be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and his/her right of appeal.

**Decision to dismiss**

15. The power to decide that members of staff should no longer work at this school has been delegated to one or more governors acting with the Executive headteacher.

**Dismissal**

16. Once the Governing Body has decided that the teacher should no longer work at the school, it will notify the Local Authority of its decision and the reasons for it. Where senior leaders (including Executive Headteacher and Head of School) or teachers work solely in this federation, the Local Authority must dismiss them within fourteen days of the date of the notification. Where they work in more than one school, the local authority must require them to cease to work at this school.

17. This will not be a dismissal hearing: the Decision meeting, referred to in Paragraphs 11 and 12, is the forum at which a decision to dismiss will be taken. Where a decision has been taken that the senior leader (including Executive Headteacher and Head of School) or teacher will no longer work in the federation, 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 his or her duties at the federation school.
Appeal

18. If a teacher 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 five days of the decision, setting out at the same time the grounds for appeal: this would be in accordance with the school’s/Authority’s appeal procedure. The same arrangements for notification and right to be accompanied by a companion 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 teacher.

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

20. The senior leader (including Executive Headteacher and Head of School) or teacher will be informed in writing of the results of the appeal hearing as soon as possible.

General Principles Underlying This policy

ACAS Code of Practice on Disciplinary and Grievance Procedures

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

Confidentiality

22. The capability process will be treated with confidentiality.

Consistency of Treatment and Fairness

23. The Governing Body is committed to ensuring consistency of treatment and fairness and will abide by all relevant equality legislation.

Delegation

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

Grievances

25. 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.

Sickness

26. 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 guidelines and will be referred immediately to
the occupational health service to assess the member of staff’s health and fitness for continued employment. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence. 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.

Subsequent lapse in performance 27. Where a senior leader (including Executive Headteacher and Head of School) or teacher meets his or her targets with reference to Paragraph 12, including a period unaided, but subsequently fails to sustain the improvement, the formal meeting as described at Paragraph 3 will take place and, depending on information received at the meeting, the process would be reinvoked from Paragraph 10.
FLOWCHART OF PROCESS

Formal capability meeting → First warning followed by monitoring and review period → Formal review meeting → Final warning followed by further monitoring and review → Decision meeting

5 working days’ notice

4-12 working weeks

Timescales