

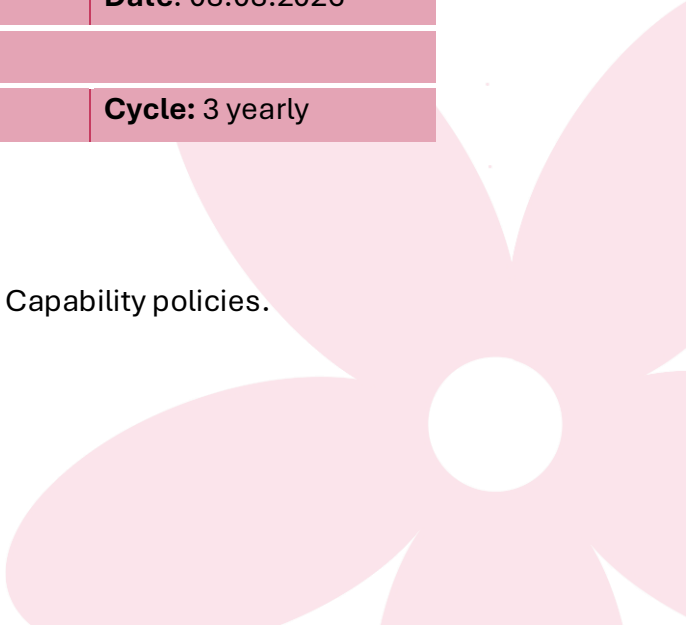


Fioretti Trust

Capability Policy

Approved by:	FAR Committee	Date: 03.03.2026
Last review:		
Next review:	March 2029	Cycle: 3 yearly

This policy supersedes all previous Capability policies.



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1. Aims

The aim of our capability of staff policy is to set out a clear and consistent process for when a member of staff falls below the levels of competence expected of them, as set out in the relevant professional standards, job descriptions and overall performance expectations.

2. Legislation and guidance

- 2.1 The Trust Board and the Executive teacher have a responsibility to help and encourage all staff to maximise their performance, to ensure the highest level of education provision for children.
- 2.2 This procedure is therefore designed to provide a fair and consistent method of achieving this requirement and dealing with poor performance.

This policy is based on:

- [The School Staffing \(England\) Regulations 2009](#) (regulation 8)
- [The School Staffing \(England\) \(Amendment\) Regulations 2012](#)
- [The Education \(School Teachers' Appraisal\) \(England\) Regulations 2012 \(the Appraisal Regulations\)](#)

This policy is based on the [Department for Education's model policy and guidance](#), and the [Department for Education's model policy and guidance](#).

When carrying out capability procedures, we will ensure we abide by the [Equality Act 2010](#).

This policy also complies with our funding agreement and articles of association.

3. Definitions

Lack of capability is defined as:

- A staff member failing to perform their role at the level of competence expected of them and that their job requires

References to 'staff' include the Headteacher, teachers and support staff, unless indicated otherwise.

4. Roles and responsibilities

Where the member of staff subject to the procedure is the Headteacher, the CEO or deputy DEO will be responsible for coordinating the procedure.

Where the member of staff subject to the procedure is not the Headteacher, the Headteacher or a nominated line manager will be responsible for coordinating the procedure.

Where appropriate, other members of staff may be asked to provide additional support to the teacher or to assist in monitoring the effectiveness of the policy. Where this happens, responsibilities will be made clear in advance.

5. Capability procedure

Performance is monitored on a day-to-day basis by line managers as part of their acknowledged management responsibilities, and as part of the arrangements for the supervision, appraisal, support and training of employees. Headteachers or other staff designated by the Headteacher may from time to time discuss aspects of capability with an employee on a day-to-day basis.

Such discussions should not be regarded as falling within the scope of the formal capability procedure but should ensure that employees receive fair and honest feedback on their performance, a balanced assessment, and advice and support on how their performance may be improved.

Formal capability procedures will begin when line management support and the appraisal process have been unable to bring about satisfactory performance or improvements in the staff members' work.

An informal period of support, put in place and monitored by the line manager, will have been in place before formal capability procedures are triggered.

Where an early career teacher (ECT) is subject to capability procedures, we will continue the induction process in parallel with the capability procedure and inform the appropriate body.

5.1 Informal support

This procedure is intended to highlight concerns in performance and provide an opportunity for an employee to improve. **It is strongly recommended that this procedure is only implemented where the appraisal process and appropriate support provided have failed to improve the performance to the required standards. This procedure should only be implemented if the Headteacher or line manager has sufficient recorded evidence from a variety of sources.**

Being subject to a capability procedure should never be a surprise to an employee. **Any concerns should have been raised with the employee in advance as part of the appraisal process.** If it became apparent during or at the end of the appraisal period that the employee's overall performance was below acceptable standards the Headteacher or line manager should have:

- met with the employee to discuss the nature and level of the concerns,
- recorded the concerns as part of the Appraisal Scheme; and
- given the employee the opportunity to reflect on it before arranging another meeting to determine what increased support would be given, the kind of improvement required, the period for improvement, how improvement would be assessed and when the situation would be reviewed. The Headteacher or line manager should have explained to the employee what would happen if they did not meet the required standards within the specified timescales.

During the appraisal process and throughout this procedure, consideration should be given to any mitigating or personal circumstances (including a disability or other health condition) which might explain a dip in the employee's performance. Reasonable adjustments may be considered if an employee has specific needs relating to a disability. A referral to Occupational Health may also be appropriate

5.2 Formal capability meeting

The Headteacher or appropriate line manager shall review the facts and information gathered to date, adding to it where appropriate, and then write to the employee setting out the area(s) of concern and the evidence supporting those concerns and inviting the employee to a formal capability meeting. From this stage onwards the employee may be accompanied by a trade union representative or work place colleague. In addition, a school can request that an appropriate HR Manager attends to provide technical advice.

Notification of a formal capability meeting should not come as a surprise to the staff member concerned, as they will already have been receiving informal support to improve their performance.

The staff member will receive at least 5 working days' notice of the formal capability meeting. The notification will contain:

- The concerns about performance and possible consequences
- Any written evidence
- The time and place of the meeting
- That the staff member has the right to be accompanied by a work colleague or trade union representative

The staff member is entitled to reasonably request an alternative date if they are not able to attend the original date proposed.

The formal capability meeting will be conducted by the Headteacher or line manager (if the Headteacher is the subject to capability this will be conducted by the CEO / deputy CEO).

The purpose of the meeting is to establish the facts, and to allow the staff member to respond to the concerns and make relevant representations.

5.2.1 First capability meeting

The meeting may establish that there are no grounds to pursue the capability issue. In this case, the procedure will come to an end, and the issues will continue to be addressed through the appraisal process.

The meeting may be adjourned if further investigation is needed, or if more time is needed to consider additional information presented.

If the meeting continues, the person conducting the meeting will:

- Explain the expected standards that are not being met based on the Professional standards/ Teachers' Standards or other relevant standards, career stage expectations and/or job description.
- Give clear guidance on the standard of performance needed to end the procedures
- Explain the support available to help the staff member improve their performance
- Set out the timetable for improvement and explain how performance will be monitored and reviewed over a period of 6-7 weeks.
- Arrange a meeting to review the progress, this will be 7 weeks after the first capability meeting
- Warn the individual formally that failure to improve within the set period could ultimately lead to dismissal

5.2.2 After the meeting

The staff member will be sent formal meeting notes.

If an action to improve plan and a second capability meeting has been arranged, the staff member will also receive:

- A written record of the bullet points above
- Information about the timing and handling of the review stage
- Information about the procedure and time limits for appealing against the warning

5.3 Monitoring and review period

A performance monitoring and review period of 6-7 weeks, consisting of formal monitoring guidance and support, will follow the formal capability meeting.

The member of staff will be invited to a formal review meeting.

5.4 First formal review meeting

At least 5 working days' notice will be given of the formal review meeting, and will explain:

- The time and place of the meeting
- That the staff member has the right to be accompanied by a work colleague or trade union representative

The staff member is entitled to reasonably request an alternative date if they are not able to attend the original date proposed.

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 restart.

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 staff member will proceed to a second capability meeting.

Notes will be taken of formal meetings and a copy sent to the member of staff.

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. They will be given information about the further monitoring and review period, the procedure and time limits for appealing against the final warning.

5.5 Second capability meeting

At the second capability meeting progress will be reviewed against the targets, standards and employee support plan. Copies of any evidence to be presented on the employee's performance should be sent in reasonable time beforehand.

At the conclusion of the meeting the Headteacher or line manager will either:

- decide that the employee now meets the requirements of the role and that this procedure is terminated, which will be confirmed in writing; or
- decide that the employee's performance, or certain aspect(s) of it, remains a cause for concern.
 - In this case, they will confirm the nature of those concern(s), note any improvements, decide whether to modify the targets, employee support plan, support provided
 - Set out the timetable for improvement over a further period of 6-7 weeks.
 - Arrange a meeting to review the progress, this will be 7 weeks after the second capability meeting
 - Warn the individual formally that failure to improve within the set period will be referred for a hearing which could ultimately lead to dismissal

5.5.1 Second formal review meeting

At least 5 working days' notice will be given of the formal review meeting, and will explain:

- The time and place of the meeting
- That the staff member has the right to be accompanied by a work colleague or trade union representative

The staff member is entitled to reasonably request an alternative date if they are not able to attend the original date proposed.

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 restart.

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 staff member will proceed to a decision meeting and receive a final written warning.

Notes will be taken of formal meetings and a copy sent to the member of staff.

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. They will be given information about the further monitoring and review period, the procedure and time limits for appealing against the final warning. The staff member will be invited to a decision meeting.

5.6 Decision meeting

The decision meeting will be heard by the CEO or panel of Trustees.

At least 5 working days' notice will be given of the decision meeting, and will explain:

- The time and place of the meeting
- The reason for the meeting and any documentation to be used at the meeting.
- That the staff member has the right to be accompanied by a work colleague or trade union representative
- Names of any witnesses should be circulated in advance all witnesses should be asked to provide a written statement.

The staff member is entitled to reasonably request an alternative date if they are not able to attend the original date proposed, as long as it is not more than 5 working days after the original date

The CEO or panel may reject the suggestion but only if it is unreasonable. In this case they may proceed to hear the case in the absence of the employee or the employee's representative.

5.6.1 At the decision meeting

- The employee may provide documentation and give names of witnesses. It is recommended that witnesses attend formal hearings in support of their written statements. There is no requirement on the employee to submit any documentation, other than a statement from any witness who may be called by the employee. However,

if the employee does not intend to submit any documentation there should be a positive statement from the employee and/or the employee's representative to this effect. Neither side will be able to use at the hearing any evidence not previously provided.

- The Headteacher or line manager should normally present the case, unless the Headteacher is the subject of the hearing, in which case the CEO should present the case.
- The hearing will follow the procedure recommended by the Trust.

5.6.2 Outcomes of the meeting

After considering the relevant evidence, the CEO or panel has the following options and shall decide on one of them:

- take no action against the employee
- determine that a further defined period for improvement should be allowed
- determine that the employees should cease to work at the school or be dismissed on the grounds of professional capability.

The staff member will be informed as soon as possible or in writing within 2 working days of the meeting of:

- The reasons for the dismissal
- The date on which the employment contract will end
- The appropriate period of notice
- Their right of appeal

6. Right to appeal

If a staff member feels that the decision to dismiss them is wrong or unjust, they may appeal in writing against the decision within 5 working days of the decision, setting out at the same time the grounds for appeal.

Appeals will be heard without unreasonable delay and at an agreed time and place. The same arrangements for notification and statutory right to be accompanied will apply as with formal capability and review meetings. Notes will be taken and a copy sent to the staff member.

The appeal will be dealt with impartially and heard by a committee of Trustees who have not previously been involved in the case.

- The appeal should be sent to the clerk to the board of Trustees, who will arrange an appeal hearing.
- The clerk will notify the CEO or panel who made the decision of the grounds of appeal.
- The appeal panel should be given 5 days working notice.
- The employee/trade union rep may suggest an alternative time and date as long as it is reasonable and is not more than five working days after the original date. The committee may reject this suggestion if it is unreasonable and may proceed to hear the case in the absence of the employee or their representative.
- The order of proceedings for an appeal hearing will follow the procedure recommended by the Trust board.

The appeal committee may dismiss the appeal, uphold the appeal, amend the period defined for further improvement, or substitute a defined period for further improvement for a determination that an employee should cease to work at the school or a dismissal from the school.

The staff member will be informed in writing of the results of the appeal hearing within 2 working days.

7. Exceptional circumstances

In extreme cases the Headteacher may need to fast track this procedure and start at the second capability meeting stage.

If so the Headteacher shall write to the employee explaining that this is an extreme case in which the education of pupils is seriously jeopardised, setting out the evidence supporting this allegation, and inviting the employee to a meeting, at which the employee may be accompanied by a trade union representative or work place colleague.

To ensure that the employee has enough time to prepare they should be given at least 5 working days notice.

7.1 Purpose of the meeting:

To define the aspects of capability which lead the Headteacher to allege that the education of pupils is jeopardised and why it is not appropriate to use or continue to use the other sections of this procedure.

To allow the employee and/or their representative to comment and/or offer an explanation;

- For the Headteacher to decide, whether to confirm or withdraw the allegation(s) of lack of capability which seriously jeopardise the education of the pupils;
- For the Headteacher to take one of the following options
 - take no further action under this section of the procedure;
 - start capability meetings at the second formal capability meeting, thereby omitting the first meeting. Under such circumstances, the employee must be informed of the reasons for taking such action.

The Headteacher may decide to arrange for direct supervision of the employee's work for a specified period during the review period.

8. Confidentiality

The capability processes will be treated with confidentiality. However, the desire for confidentiality does not override the need for the Headteacher quality assure the operation and effectiveness of the system.

9. Consistency of treatment and fairness

The board of Trustees is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments where these are deemed either necessary or appropriate.

The board of Trustees is aware of the guidance and provisions of the Equality Act 2010.

10. Monitoring arrangements

The effectiveness of this policy will be monitored by the CEO and COO.

This policy will be reviewed every 3 years but can be revised as needed.

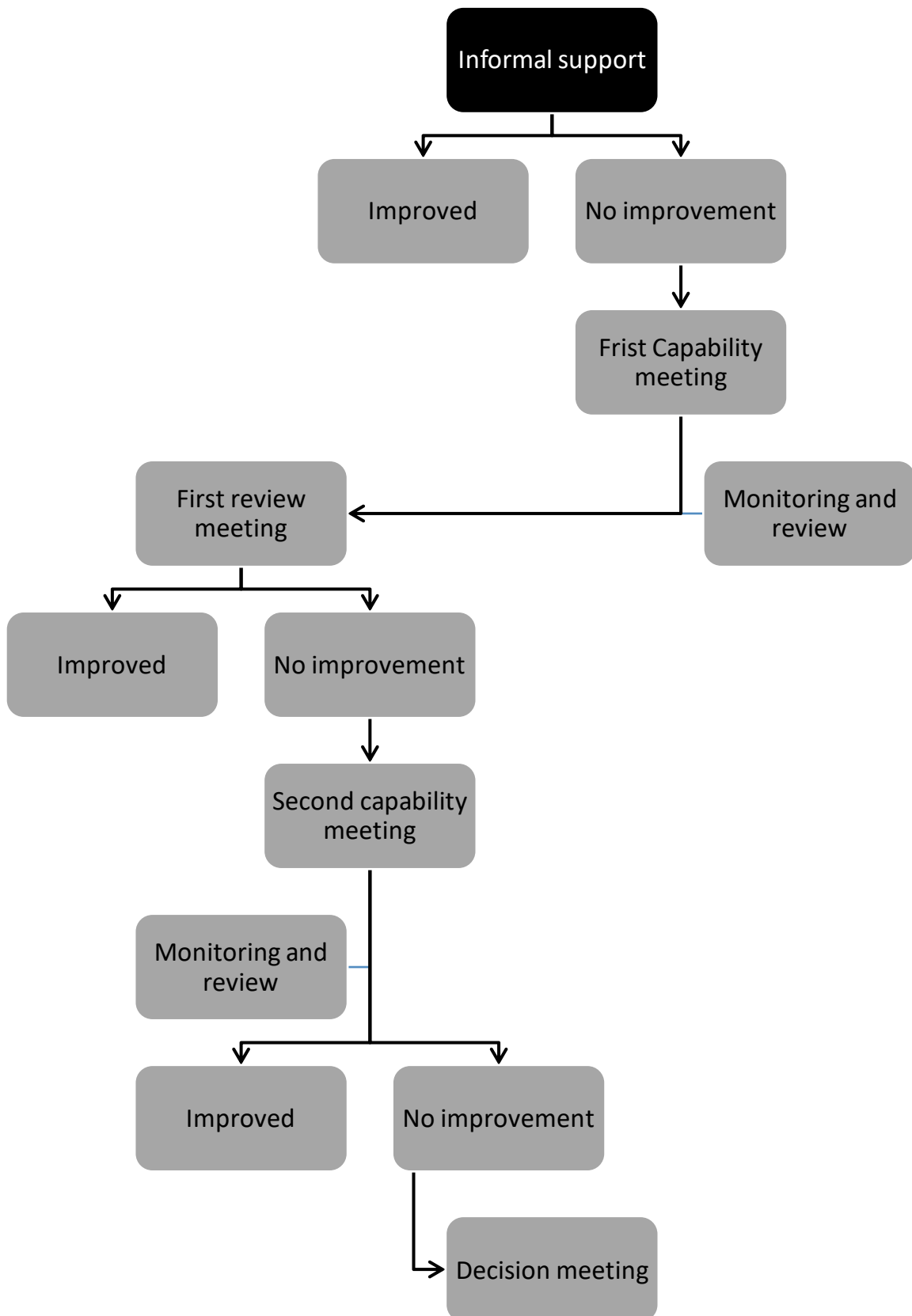
This policy will be approved by the board of Trustees.

11. Links with other policies

This policy links to our policies on:

- Staff code of conduct
- Professional growth policy
- Staff grievance procedures
- Staff disciplinary procedures
- Equality information and objectives
- Early career teacher (ECT) induction

Appendix 1 – Flowchart of capability process



Capability procedure flowchart - Detailed

