



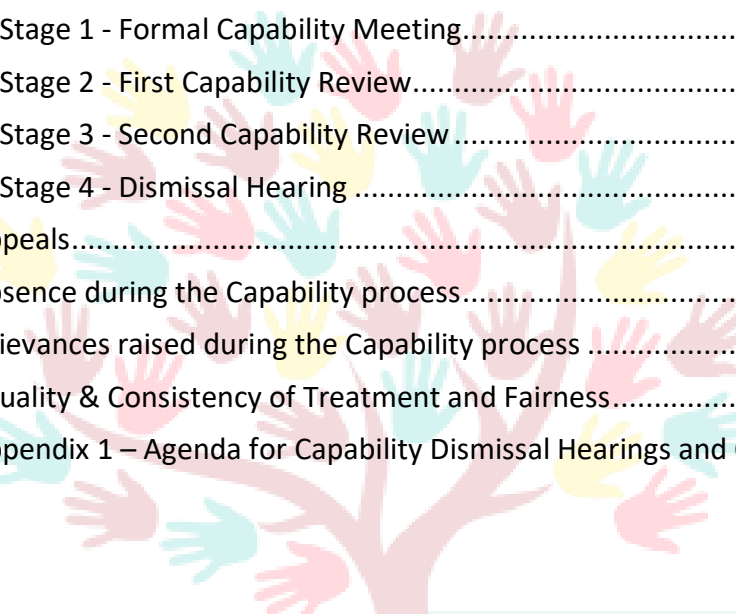
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Capability Policy

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Introduction

Capability refers to the employee's skills, aptitude, ability and knowledge in relation to performing their role to a satisfactory standard. The employer expects that performance will be managed throughout the normal appraisal and performance management cycle.

Where performance does not meet the required standards and if the required improvements are not made during set timescales then the employee's capability will be managed using this policy.

The purpose of this policy is to outline the responsibilities of both the employee and the employer under the capability policy and to outline the approach which will be taken when a more formal approach to addressing capability issues is required.

Scope

The policy applies to all employees of the Learning for Life Trust. All employees will be made aware of the existence of this policy and will have access to a copy.

Employee Responsibilities

Employee responsibilities are to:

- Work effectively towards targets, objectives and action plans set by the line manager.
- Perform their work to the highest standards required of the job.
- Ask for assistance should they require support or clarification in any area of work. Asking for assistance is not a sign of weakness and any such requests will be treated positively.
- Identify and bring to the attention of their line manager any learning and development activities which will enhance work performance so these can be considered.
- Attend and implement learning from any development activities arranged by line managers.
- Work with the line manager to agree an appropriate way to address any performance shortfalls / capability concerns.
- Advise their line manager of anything which is / may affect their capability in order that appropriate support can be discussed and considered.

Line Manager Responsibilities

Line Manager responsibilities are to:

- Appraise employees in accordance with the Learning for Life Trust's appraisal policy.
- Set appropriate targets and objectives for employees.
- Identify any learning and development opportunities to help employees perform their work to the highest possible standards.
- Consider any learning and development opportunities identified by employees to help them perform their work to the highest possible standards.
- Respond positively and provide appropriate support in response to any requests for assistance received from employees.
- Raise any performance concerns with employees as soon as these become apparent.

- Work with employees to develop and monitor an action plan to address any identified performance issues.

Stages of the formal Capability procedure

The stages of the formal procedure are as follows:

1. Formal capability meeting
2. First capability review
3. Second capability review
4. Dismissal hearing

At all stages of the formal Capability procedure the following points will apply:-

- a. The employee will be invited to the appropriate meeting / hearing in writing and will receive not less than five School / Academy working days' notice of the arrangements for the meeting / hearing.
- b. The employee will be provided with information at each stage of the process which details the performance concerns and the possible outcomes of each meeting / hearing to allow them to fully prepare.
- c. At each meeting / hearing under the formal Capability procedure the employee will have the right to be accompanied by a single companion who may be a work place colleague, not involved in the issue, or their trade union representative. It is the employee's responsibility to arrange for a companion to be present if required.
- d. At each meeting / hearing under the formal Capability procedure the manager may be supported or advised by a HR Adviser. A note taker may also be present. Notes may be produced following each formal meeting / hearing with a copy being provided to the employee.
- e. The outcome of each stage of the process will be confirmed in writing to the employee ideally within five working days of the meeting / hearing taking place.
- f. If any sanction is applied at any stage of the process the employee will have the right to appeal against the decision to an impartial appeal hearer / panel.
- g. The normal appraisal / performance management process will be "suspended" whilst formal capability proceedings are on-going.
- h. For employees on formal capability proceedings, there will be no entitlement to a pay award.

In the event of gross misconduct, the Trust reserve the right to proceed directly Stage 4 (Dismissal Hearing).

Stage 1 - Formal Capability Meeting

The purpose of this meeting is to formally establish the facts. The manager will explain the concerns regarding the performance, present factual evidence of the concerns, review any support previously provided and the actions taken to date to try to avoid the need to start formal capability proceedings.

The employee may respond to the concerns raised and provide any further information they feel is relevant to the matter.

Once all facts have been presented the manager may adjourn the meeting to consider what action to take. The options available will be one of the following:

- i. That further investigation or time to consider evidence presented is required. The meeting may therefore be adjourned to allow this to happen.
- ii. That there are insufficient grounds to continue with the capability process and that the normal performance management and appraisal process should continue.
- iii. To issue a first written warning, which will remain live for 12 months, from the date it is issued.
- iv. To issue a final written warning, which will remain live for 24 months, from the date it is issued. N.B. This would be in exceptional circumstances only e.g. If the education of pupils is judged to be in serious jeopardy.

If a first or final written warning is issued the manager will clearly explain:-

- The shortfalls in performance which have led to the warning being issued.
- The improved standards which are required to bring the capability procedure to an end.
- The training, coaching and additional support which will be provided, including seeking the employee's views on the support they require.
- The timescale for the required improvements to be made, the length of the review period, and details of how the required improvements will be monitored and reviewed during the review period. **It is important to note that the timescale in which the required improvements are to be made, the review period, is not the length of the warning which has been issued.**
- The possible consequences, which may include dismissal if a final written warning has been issued, if the required improvements are not made within the review period.
- That the outcome of the meeting will be confirmed in writing and that the employee will have an opportunity to appeal against the decision.

Stage 2 - First Capability Review

The employee will be formally invited to a review meeting at the end of the review period outlined in Stage 1 above.

The purpose of the First Capability Review meeting is to formally review the results to the objectives or targets set in the Stage 1 Formal Capability Meeting. The manager will present and review factual evidence of results achieved during this period and the employee may present evidence of the actions taken and provide any further information they feel is relevant to the matter.

Once all facts have been presented the manager may adjourn the meeting and will decide what action to take. The decision will be one of the following:-

- i. If sufficient improvements have been made the capability process will end. If a formal warning was issued under Stage 1 of the procedure, the employee will be reminded that this will remain live as previously advised, and that if performance is not sustained during the period of the live warning then it is likely that further capability action will recommence at this point without the need to start the process again at Stage 1.
- ii. If some progress has been made, and if the manager is confident that further improvements are likely, then the review period may be extended.
- iii. If no or insufficient progress has been made the manager may issue a final written warning which will remain live for 24 months from the date it is issued.
- iv. If no or insufficient progress has been made to an employee with a final written warning after stage 1, then the process will move into Stage 4 (Dismissal Hearing).

If the review period is extended or if a final written warning is issued the manager will clearly explain:-

- The performance shortfalls which have led to the review period being extended or a final written warning being issued.
- The improved standards which are required to bring the capability procedure to an end.
- The training, coaching and additional support which will be provided, including seeking the employee's views on the support they require.
- The timescale for the required improvements to be made, the length of the review period, and details of how the required improvements will be monitored and reviewed during the review period. **It is important to note that the timescale in which the required improvements are to be made, the review period, is not the length of the warning which has been issued.**
- The possible consequences, which may include dismissal if a final written warning has been issued, if the required improvements are not made during the review period.
- That the outcome of the meeting will be confirmed in writing and that the employee will have an opportunity to appeal the decision.

Stage 3 - Second Capability Review

The employee will be formally invited to a review meeting at the end of the review period outlined in Stage 2 above.

The purpose of the Second Capability Review meeting is to formally review the results to the objectives set in the Stage 2 meeting. The manager will present and review factual evidence of the results achieved during this period and the employee may present evidence of the actions taken and provide any further information they feel is relevant to the matter.

Once all facts have been presented the manager may adjourn the meeting and will decide what action to take. The decision will be one of the following:-

- i. If sufficient improvements have been made the capability process will end. If a formal warning was issued under Stage 2 of the procedure the employee will be reminded that this will remain live as previously advised, and that if results are not sustained during the period of the live warning, then it is likely that further capability action will recommence at this point without the need to start the process again at Stage 1.
- ii. If some progress has been made, and if the manager is confident that further improvements are likely, then the review period may be extended.
- iii. If no or insufficient progress has been made the manager may, if appropriate and if a suitable vacancy exists, advise the employee of any alternative roles which may be available should the employee wish to transfer to another role to avoid a Stage 4 dismissal hearing. It should be noted that there is no obligation on the manager to offer an opportunity to transfer and that neither is there any obligation on the employee to accept a transfer if offered. Any transfer agreed as an alternative to a Stage 4 dismissal hearing would be at the appropriate salary for the new post and no salary protection would be available.
- iv. That a Stage 4 dismissal hearing will be arranged at which grounds for dismissal for reasons of capability will be made to a Hearing Manager / Panel and that they will receive written notification of the arrangements for this hearing in due course.

Stage 4 - Dismissal Hearing

The employee will be formally notified in writing of the arrangements for the Dismissal Hearing. This notification will include the following and be provided to the employee at least five School / Academy working days ahead of the date for the hearing.

- i. Full details of the performance issues to be discussed at the hearing
- ii. Copies of any evidence to be used / referred to at the hearing
- iii. Arrangements for the hearing including date, time, venue and details of the other attendees, including witnesses, and their role at the hearing
- iv. A statement to advise the employee that they have the right to be accompanied / represented at the hearing by a single companion who should be their trade union representative or a work place colleague not otherwise involved in the issue. It is the employee's responsibility to arrange for a suitable companion to be present if required.
- v. A statement to advise the employee that they may submit evidence and call witnesses together with the arrangements for doing so. If evidence is not submitted

or witness details not provided within the timeframe specified in the letter of invitation then they will not be permitted other than in exceptional circumstances.

vi. Details of the possible outcomes of the hearing.

A suggested agenda for this hearing is included at Appendix 1 of this policy.

The purpose of the dismissal hearing is for the Manager to present to a Hearing Manager / Panel details of the performance issues, the improvements which are required and details of all the support which has been made available during the various stages of this procedure.

The employee may present evidence of the actions they have taken, results they have achieved and provide any further information they feel is relevant to the matter.

Once all facts have been presented the Hearing Manager / Panel may adjourn the hearing and will decide what action to take. The decision will be one of the following:-

- i. That further investigation or time to consider evidence presented is required. The hearing may therefore be adjourned to allow this to happen.
- ii. That there are insufficient grounds to dismiss the employee and that a further final review period should be permitted for the employee to demonstrate the required sustained improvements.
- iii. That the employee will be dismissed with statutory / contractual notice, whichever is greater. In this case the Hearing Manager / Panel will confirm the reasons for dismissal, the date on which the employment will end and the right of appeal. If the employee's contract of employment allows for payment to be made in lieu of notice then this may be considered by the Hearing Manager / Panel however it should be noted that there is no obligation on the employer to offer pay in lieu of notice. The organisation may, at their discretion, also advise the employee that they are not required to attend work during their notice period, known as "garden leave". It should be noted that there is no obligation on the employer to offer garden leave.

Appeals

If any warnings are issued or if the employee is dismissed under this procedure, then they will have the right to appeal against the decision to an impartial Appeal Manager / Panel. Appeals must be received within five working days of the date of receipt of the outcome letter, they should be in writing, addressed to the person named in the outcome letter and must include a clear reason for the appeal.

Appeals will be arranged within 10 working days, following receipt of the appeal and will be heard as soon as possible thereafter. Appeals will consider the employee's grounds for appeal and the School / Academy presenter's response. Appeal hearings will not generally constitute a full re-hearing; they will focus on the areas of appeal and may follow the suggested Agenda contained at Appendix 1 of this policy.

Arrangements for the appeal will be confirmed in writing at least five working days ahead of the date for the Appeal Hearing to the employee who may be accompanied by a single work place colleague, not involved in the issue, or by their trade union representative. It is the employee's responsibility to arrange

for a companion to be present if required. The Appeal Manager / Panel and the Presenting Manager may each be accompanied by a HR Adviser if required and a note taker may also be present.

After hearing the evidence presented, the Appeal Manager / Panel will take one of the following decisions, which may be delivered verbally by the Appeal Manager / Chair of the Panel but which will always be confirmed to the employee in writing ideally within five working days of the appeal hearing taking place:-

- i. To reject the appeal and confirm that the original level of sanction stands.
- ii. To allow the appeal and overturn the original decision. In this case the Appeal Manager / Panel may remove or reduce the original level of sanction.

There is no scope for the Appeal Manager / Panel to increase the level of sanction applied. When an appeal against dismissal is not upheld the original date of termination will stand. An appeal decision is final and there is no further right of appeal.

Absence during the Capability process

If the employee is absent from work at any stage of the capability process, then the absence will be managed in accordance with the absence policy. Action taken will depend on the specific circumstances of each case and may include a medical referral or temporarily suspending the process until the employee recovers as appropriate. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.

Grievances raised during the Capability process

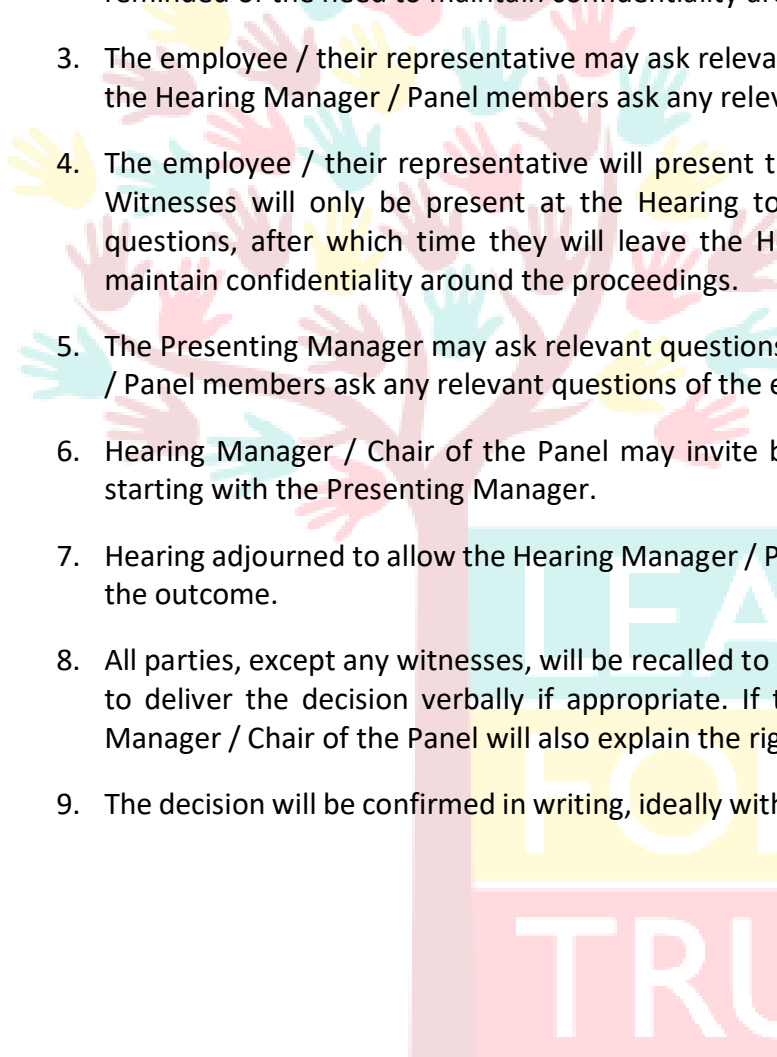
If an employee raises a grievance during the capability process then the action to be taken will depend on the circumstances of the situation and the nature of the grievance. It should however be noted that the lodging of a grievance will only, in exceptional circumstances, lead to suspension of the capability proceedings until such time as the grievance has been resolved. In most circumstances it is more likely to be appropriate that the capability process continues concurrently with the grievance procedure. Depending on the nature and context of the grievance, it may be appropriate for a different manager may manage the process until the grievance is resolved.

Equality & Consistency of Treatment and Fairness

The Learning for Life Trust 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 staff. All staff involved should have regard for the Trusts Equality objectives and act accordingly. The Learning for Life Trust is fully aware of the guidance on the Equality Act issued by the Department for Education.

Appendix 1 – Agenda for Capability Dismissal Hearings and Capability Appeal Hearings

1. Hearing Manager / Chair of the Panel introduces those present, explains their roles and the process to be followed during the hearing. The Hearing Manager / Chair of the Panel should check that all parties have received all documentation that will be referred to at the Hearing.
2. Case presented by an appropriate manager (the Presenting Manager) who may present evidence and call witnesses as appropriate. Witnesses will only be present at the Hearing to present their evidence and respond to any questions, after which time they will leave the Hearing having been reminded of the need to maintain confidentiality around the proceedings.
3. The employee / their representative may ask relevant questions of the Presenting Manager before the Hearing Manager / Panel members ask any relevant questions of the Presenter Manager.
4. The employee / their representative will present their case & call any witnesses as appropriate. Witnesses will only be present at the Hearing to present their evidence and respond to any questions, after which time they will leave the Hearing having been reminded of the need to maintain confidentiality around the proceedings.
5. The Presenting Manager may ask relevant questions of the employee before the Hearing Manager / Panel members ask any relevant questions of the employee.
6. Hearing Manager / Chair of the Panel may invite both parties to make short closing statements starting with the Presenting Manager.
7. Hearing adjourned to allow the Hearing Manager / Panel members to deliberate in private & decide the outcome.
8. All parties, except any witnesses, will be recalled to allow the Hearing Manager / Chair of the Panel to deliver the decision verbally if appropriate. If the decision is delivered verbally the Hearing Manager / Chair of the Panel will also explain the right of appeal & what happens next.
9. The decision will be confirmed in writing, ideally within five working days of the date of the Hearing.



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