



Summit Learning Trust

Capability Procedure – Support Staff

Approved by:	People & Resource Committee	Date: June 2020
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Monitoring & Review	People & Resource Committee	
Links	Disciplinary Procedure; Sickness Absence Policy; Support Pay Policy	
Staff responsible	HR Director	

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1. Introduction

The primary aim of this procedure is to provide a framework within which Summit Learning Trust can work with its support staff to maintain satisfactory performance standards and to encourage improvement where necessary.

This procedure is intended for guidance only. It does not form part of any employee's contract of employment and it may be amended at any time.

Application of the Policy

The Capability Policy will apply to all members of staff about whose performance there are serious concerns that the informal support process has been unable to address. When the capability policy is invoked, the performance management process will cease, and the individual concerned will no longer be eligible for automatic increment in the following pay round.

2. Identifying performance issues

In the first instance, performance issues should normally be dealt with informally between the the line manager and employee as part of day-to-day management. Where appropriate, a note of any such informal discussions may be placed on their personnel file but will be ignored for the purposes of any future capability hearings. The formal procedure should be used for more serious cases, or in any case where an earlier informal discussion has not resulted in a satisfactory improvement. Informal discussions may help:

- clarify the required standards;
- identify areas of concern;
- establish the likely causes of poor performance and identify any training needs; and/or
- set targets for improvement and a time-scale for review.

Employees will not normally be dismissed for performance reasons without previous warnings.

If there are concerns about an employee's performance, formal action may be taken under this procedure. The procedure involved will depend on the circumstances but may involve reviewing the individual's personnel file including any performance review records, gathering any relevant documents, monitoring or observing your work and, if appropriate, interviewing the employee and/or other individuals confidentially regarding their work.

3. Notification of a capability hearing

If there are grounds for taking formal action over alleged poor performance, the employee will be required to attend a Stage 1 Capability Hearing. They will be notified in writing of the concerns regarding their performance, the reasons for those concerns, and the likely outcome if it is decided after the hearing that the employee's performance has been unsatisfactory. We will also include the following where appropriate:

- Summary of relevant information gathered as part of any investigation.
- A copy of any relevant documents which will be used at the capability hearing.
- A copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case the employee will be given as much information as possible while maintaining confidentiality.

The employee will be given written notice of the date, time and place of the capability hearing, with the hearing being held as soon as reasonably practicable.

4. Right to be accompanied at hearings

An employee has the right to be accompanied to any formal meeting under this procedure by a companion, who may be a colleague or a trade union representative.

If the representative or companion is unavailable at the time a hearing is scheduled and will not be available for more than five working days the employee may be required to choose someone else.

Relevant witnesses may be called by the person conducting the meeting and an employee may request that relevant witnesses are called to any formal meeting.

A formal meeting under this procedure will:

- Identify performance shortcomings
- Allow an employee to respond to those concerns, ask questions and make any relevant representations which may provide new information or a different context to the evidence already collected
- Identify what action (including support provided) has been taken to date and what the outcome was
- Where appropriate, identify and explain a support plan of action that will be available to help the employee improve performance. The employee will be given the opportunity to make an input to this performance improvement action plan.
- Provide the employee with a copy of the performance improvement action plan **(example in Appendix 1)** listing those responsible for ensuring support is provided, targets for improvement, support to be provided and when, and measures of success. It should also detail dates and times for informal review meetings with mentors, observations or other form of intervention activity
- Where appropriate, warn an employee formally that failure to improve within the set period could lead to dismissal
- Confirm the timescale for the monitoring and review period which will follow a formal meeting where a warning is issued. The timetable will depend on the circumstances of the individual case but the period will be reasonable and proportionate and should provide sufficient opportunity for an improvement to be made. Formal monitoring, evaluation, guidance and support will continue during this period.

5. Stage 1 hearing: first written warning

Following a Stage 1 Capability Hearing, if it is decided that employee's performance is unsatisfactory, they will be issued with a first written warning along with an agreed performance improvement action plan setting out:

- The areas in which they have not met the required performance standards.
- Targets for improvement.
- Any measures, such as additional training or supervision, which will be taken with a view to improving performance.
- A period for review.
- The consequences of failing to improve within the review period, or of further unsatisfactory performance.

6. Monitoring and review period (1)

A performance monitoring and review period will follow the formal Capability Hearing (stage 1).

It is important that a timescale for improvement is set in line with the agreed performance

improvement action plan (**see appendix 1**). This will vary according to the level and nature of improvement needed. In exceptional circumstances it could be appropriate for the review period to fall within the range of four to ten weeks, following discussion and seeking to agree with the staff member.

Formal monitoring, evaluation, guidance and support will continue during this period. If at the end of the performance monitoring and review period, the line manager is satisfied with the employee's performance, then no further action will be taken.

If however, the line manager is not satisfied with the level of the employee's performance, the matter will progress to a formal Stage 2 hearing, unless they were issued with a final written warning, in which case they will be invited to a decision meeting (stage 3) (see below).

7. Stage 2 hearing: final written warning

Where, following the formal capability meeting (stage 1), the employee's performance has not improved to a satisfactory level, and despite appropriate support mechanisms having been put in place, the employee's performance remains unsatisfactory, a final written warning may be issued. At this point the employee will be advised that if there is insufficient improvement in performance it could lead to their dismissal.

Again, the main focus of the meeting should be to explore ways of supporting the employee to improve their performance to an acceptable level.

8. Monitoring and review period (2)

A performance monitoring and review period will follow the formal review hearing (stage 2). It is important that a timescale for improvement is set in line with the agreed performance improvement action plan. This will vary according to the level and nature of improvement needed. In exceptional circumstances it could be appropriate for the review period to fall within the range of four to ten weeks, following discussion and seeking to agree with the staff member.

Formal monitoring, evaluation, guidance and support will continue during this period. If at the end of the performance monitoring and review period, the line manager is satisfied with the employee's performance, then no further action will be taken. If performance is deemed to have improved but not reached the required standard, a further monitoring and review period can be put in place.

9. Final formal review meeting – Stage 3

Where, following the formal review meeting (stage 2) and despite appropriate support mechanisms having been put in place, the employee's performance remains unsatisfactory, a Capability Meeting will take place, during which the employee's ongoing employment with the Trust will be considered. At this point the employee should be aware that if there is insufficient improvement in performance, it could lead to their dismissal.

10. Capability hearing

The Capability Hearing will be conducted by a panel of three people; a member of the Local Governing Body, a Principal and an Executive Team member, all of which should not have had any previous involvement in the particular case against the employee. The panel will be advised by a member of the Trust HR Team.

The employee will receive notification of the meeting in writing. The employee and their representative will be provided with relevant documentation to enable them to prepare for the meeting. The employee should be reminded to provide any documentation on which he or she wishes to rely at least 5 five working days' before the Capability Hearing taking place. Neither

party will be able to use any evidence not previously provided at the Capability Hearing.

If appropriate, names of any witnesses from both sides should be circulated in advance and all witnesses should be asked to provide a written statement for inclusion with the documents to be used at the capability hearing.

The panel, having had regard for any mitigating factors presented by the employee, may give notice of dismissal to the employee on grounds of capability.

Dismissal will normally be with full notice or payment in lieu of notice, unless the employee's performance has been so negligent as to amount to gross misconduct, in which case the panel may dismiss the employee without notice or any pay in lieu.

11 Appeal

The employee has a right of appeal against being dismissed or any level of written warning that has been issued to them. The appeal must be made in writing to the Director of HR within 5 working days of the receipt of the written decision. The employee must state the full grounds for the appeal.

The appeal will be heard by an appeal panel comprising of three people; a Governor and two members of the Trust Leadership Team i.e. Principal/ Executive Director, who have no previous involvement in the case. The panel will be advised by a member of the Trust HR Team.

Appeals will be heard without unreasonable delay and, where possible, at an agreed time and place. The employee will have the right to be accompanied by a work colleague or a trade union representative.

The employee will be informed in writing of the results of the appeal hearing as soon as possible and within 5 working days.

There is no further right of appeal against the sanction or dismissal within the Trust. The appeal decision is final.

Payment of annual increments

If the manager conducting any of the above review meetings is satisfied that the member of staff has made sufficient improvement, the capability procedure will cease and the performance review process will re-start. However, it is unlikely that the individual will be awarded an automatic increment in line with the performance management policy, unless the Principal (or other line manager) feels that exceptional progress has been made

12. Sickness

If at any stage long term sickness absence appears to have been triggered by the commencement of this procedure, the case will be dealt with in accordance with the Trust's Sickness Absence Policy. In these circumstances the capability procedure may be postponed until the employee returns to work.

The employee will be referred immediately to the occupational health service to assess their health and fitness.

If at any stage an employee is absent for a short term during this procedure, occupational health may be asked to assess the employee's fitness to return to work and or attend meetings.

13. Misconduct

In some circumstances performance may be unsatisfactory due to an employee's own negligence or wilful misconduct. In such cases the disciplinary procedure should be used rather than the Capability Procedure.

14. Duration of warnings

In circumstances where a written or final written warning is issued it will be placed on the employee's personnel file normally for a period of 12 months, unless the employee is notified to the contrary. After the active period the warning will remain permanently on the employees personnel file but will be disregarded in deciding the outcome of future capability proceedings.

PERFORMANCE IMPROVEMENT ACTION PLAN

Name:

Date:

Issue	Action required	Review date	Evidence presented	Date of completion of action or reasons for non-completion	Further action required

This Action Plan will be reviewed on (date)

Signed (Manager): **Date:**

Signed (Employee): **Date:**