



LIGHTHOUSE SCHOOLS PARTNERSHIP

CAPABILITY POLICY

Policy Approved by the Board of Trustees

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Date *20 June 2021*

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Document History

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This Policy applies to all schools and employees within the Lighthouse Trust Partnership.

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CAPABILITY POLICY

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1. Aims

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

2. Legislation and guidance

This policy is based on the Department for Education's model policy and guidance, and the ACAS code of practice on disciplinary and grievance procedures.

When carrying out capability procedures, the Trust will ensure we abide by the Equality Act 2010.

This policy also complies with the Trust's 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 or effectiveness expected of them and that their job requires
- References to 'staff' include all staff directly employed by the Trust.

4. Scope

This procedure applies to all staff directly employed by the Trust about whose performance there are serious concerns which informal action/additional or more focused support (outside of this formal procedure) has been unable to address.

This procedure will not apply to employees who remain in their probationary period.

This procedure will not apply to teachers who are in their statutory induction period unless there are serious capability concerns, which require formal action outside of the process provided for in the regulations relating to teachers undergoing induction.

This procedure will not apply where the matter is related to conduct, as in these circumstances the separate Disciplinary Procedure will be used.

Where there are issues relating to ill health, the School's Sickness Absence Management Procedure and Guidance should be consulted to ensure that the most appropriate action/support is implemented.

5. Roles and responsibilities

Where the member of staff subject to the procedure is the Headteacher, the Chair of Local Governing Body and a Trustee or the Chief Executive will be responsible for co-ordinating the procedure.

Where the member of staff subject to the procedure is not the Headteacher, the Headteacher or a nominated member of senior staff will be responsible for co-ordinating the procedure.

Where the member of staff is from the Trust central team the Chief Executive or a nominated member of senior staff will be responsible for co-ordinating the procedure.

Where the Chief Executive Officer is subject to the procedure, a Trustee will be responsible for co-ordinating the procedure.

Where appropriate, others may be asked to provide additional support to the member of staff going through the capability review or to assist in monitoring the effectiveness of the policy. Where this happens, responsibilities will be made clear in advance.

6. Capability Process

Performance is monitored on a day-to-day basis by line managers. The Trust's Teacher, Headteacher and Support Staff Appraisal Policies set out how informal support can be provided if staff are not meeting the expectations of their job roles. As a minimum, informal support should offer clarity on the areas where performance is unsatisfactory and an opportunity for the member of staff to improve. The following informal process would achieve this.

6.1 Informal Process

6.1.1 Five working days' notice will normally be given for the informal review meeting. Should the staff member wish to hold the meeting sooner this will be accommodated where practicable.

6.1.2 There is no legal right to representation at the informal stage of the process. Should the staff member so wish they may be accompanied by a work colleague or trade union member, providing that there is no delay to convening the meeting.

6.1.3 The purpose of the informal review meeting is to discuss:

- The expectations of the staff member
- How the staff member is falling short of the expectations
- The required improvement to performance
- What support can be provided (coaching/mentoring/training/one-to-one meetings, equipment/resources)
- The duration of the review period
- The employees' explanation and mitigating factors
- Potential consequence of not achieving the required improvement within the timescale.

6.1.4 A personal improvement plan (PIP) will normally be put in place to outline the objectives, support and timescale for improvement (see appendix A), so the process is transparent and clear to all parties.

6.1.5 Should an assessment be made that performance continues to be unsatisfactory, despite the staff member being supported through the personal improvement plan, the matter should be dealt with under the 'formal process' of the Capability

Procedure. Evidence of the unsatisfactory performance will be required before the formal process begins.

Formal Capability procedures will begin when line management support and the PIP process have been unable to bring about satisfactory performance or improvements in the staff member's work. If a formal capability process is invoked the appraisal process will be placed on hold until the capability process concludes.

6.2 Formal Process

6.2.1 Formal Process - First Capability Meeting

At least 5 working days' notice will be given of the formal capability meeting; a letter will be sent to the employee and will explain:

- 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
- Who will be chairing the formal capability meeting

If it is the Chief Executive who is subject to the Capability Procedure, a sub-group of Trustees responsible for his/her appraisal (the Appraisal Review Committee) should conduct the Formal Capability Meetings.

If it is a Trust central staff member who is subject to the Capability Procedure, the Line Manager responsible for his/her appraisal should conduct the Formal Capability Meetings.

If it is a Headteacher, the Chief Executive and Chair of Governors (or a governor from the Appraisal Panel) should conduct the Formal Capability Meetings.

If it is a teacher or a member of the support staff, the Headteacher (or the relevant manager to whom the Headteacher has delegated the matter) should conduct the Formal Capability Meetings.

The Trust's Head of HR, or nominated HR person, will be in attendance to the capability hearing.

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. The evidence collated during the informal process will be reviewed and discussed.

During the formal capability process the appraisal process will be placed on hold until the capability process concludes.

6.2.2 Possible Outcomes of the Formal 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 Teacher's 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 (see PiP - Appendix A)
- Warn the staff member that failure to improve within this timetable could lead to dismissal
- Issue staff member with a formal first written warning
- A final written warning may be issued at the first formal capability meeting in serious cases.

6.2.3 After the meeting

The staff member will be sent formal meeting notes. If a formal warning has been issued, the staff member will also receive:

- A written record of the bullet points above in 6.2.2
- Confirmation of the level of warning being issued
- Information about the monitoring of improvements and the review period
- Information about the procedure and time limits for appealing against the warning

6.3 Formal Process - Monitoring and Review Period

A performance monitoring and review period consisting of formal monitoring guidance and support will follow the formal capability meeting if a formal warning has been issued.

Formal monitoring, evaluation, guidance and support/feedback will continue during this period and a PiP (Appendix A) may be completed to evidence this. A mid-review period meeting may be held with the employee to discuss progress and support put in place and whether there are any adjustments needed to the support arrangements (this meeting is optional but recommended). The employee is entitled to be accompanied by a trade union representative, official employed by a trade union or work colleague at this meeting.

At the end of the review period the employee will be invited to a second Formal Capability Meeting, unless they were issued with a final written warning, in which case they will be invited to a Capability Hearing (see 6 below).

6.4 Formal Process - Second Capability Meeting

At least 5 working days' notice will be given of the second capability meeting, a letter will be sent to the employee 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 same procedure applies as in accordance with section 6.2 above.

6.4.1 Possible Outcomes of the Meeting

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 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 staff member will receive a final written warning.

6.4.2 After the meeting

The staff member will be sent formal meeting notes. If a final warning has been issued, the staff member will also receive:

- A written record of the bullet points above
- Information about the monitoring and review period
- Information about the procedure and time limits for appealing against the warning
- And be informed in writing that failure to achieve an acceptable standard of performance within the set timescale may result in dismissal.

The staff member will be invited to a Capability hearing.

6.5 Monitoring and Review Period (if required)

To be carried out as detailed in 6.3.

7 Capability Hearing

7.1 Composition of panels

- 7.1.1 Panels will be comprised of a Trustee and two persons appointed by the Board of Trustees (these people are likely to be members of a Local Governing Body or senior members of staff from a school or the central team). Panel members should not have conducted previous Capability Meetings or have been directly involved in managing the performance of the employee for whom the panel is convened.
- 7.1.2 The panel may gain advice from experts as required and will be supported by the Trust's Head of HR or designate.

7.2 Notice of hearings

At least 5 working days' notice will be given of the capability hearing; a letter will be sent to the staff member 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

- 7.3 Please see appendix C for protocol for Capability Hearings.

7.4 Outcomes from a Capability Hearing

- 7.4.1 If an acceptable standard of performance has now been achieved, the capability procedure will end and the appraisal process will re-start.
- 7.4.2 If the staff member's performance has not improved to a sufficient standard, a decision may be made that the staff member should be dismissed or required to cease working at the school.

The staff member will be informed in writing as soon as possible of:

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

8 Attendance at Meetings

- 8.1.1 Employees will be expected to make reasonable effort to attend meetings convened under the Capability procedure.

When it is not reasonable or practicable for an employee or their trade union representative or work colleague to attend a meeting for a reason which was not foreseeable when the meeting was arranged, one further meeting will be arranged within 5 working days of the original meeting date.

8.1.2 Should the employee not attend the re-arranged meeting the meeting may proceed in their absence.

Employees will be offered the opportunity to be represented in their absence or make a written submission.

8.1.3 If the employee is unable to attend the meeting due to long term sickness, the meeting should normally be postponed and the Managing Attendance Policy should then be followed for the duration of the Absence.

9. Formal Warnings

9.1 The outcomes following capability meetings/hearing:

- **Written warning** requiring improvement: if your performance is below the expected standards or you have not met the improvement within the timescale set.
- **Final written warning** - in the event of a more serious failing, if your performance is below the expected standards or you have not met the improvement within the timescale set.
- **Dismissal**: if your performance is below the expected standards and you have not met the improvement with the timescale set, you may be dismissed immediately without notice.

Written warnings will remain on the employee's personal file for 12 months from the date of issue.

The exception to this will be in the event that further action is necessary under the Capability Policy within the 12-month currency period which is related to performance and has led to a final written warning being issued. In these circumstances all relevant documentation will be retained on the employee's personal file until such time that the employee has no active capability warnings on record for a period of 12 months.

N.B Should the employee be absent from work long term (4 weeks or more) during the currency of the warning, the currency of the warning will be extended for a period that equates to the period of absence. This would apply for example in cases of long-term sickness and maternity/paternity/adoption leave.

9.2 Serious cases of underperformance

In very serious cases, a final written warning may be issued without a first written warning having previously being issued.

Where a final written warning is issued the employee should be warned that failure to improve their performance could lead to further action under the Capability Procedure, including their dismissal.

A final written warning will start a monitoring and review period not normally exceeding 4 weeks.

10 Requesting a Change in Role

If the employee would like consideration to be given to them voluntarily changing their role, for example stepping down from some of their higher-level responsibilities or moving to a different vacant post within the school then they can request this to be considered at any point during the procedure.

The Headteacher/manager will need to give consideration to whether they can reasonably accommodate this request within the needs of the school. They are under no obligation to agree any requests. Where the request is to be redeployed to a different post, this should only be considered if they believe the individual is able to demonstrate that they meet the essential criteria of the new role.

Pay protection does not apply under these arrangements and any current warnings will transfer with the individual to the new post.

11 Dismissal

The power to dismiss staff is delegated through the Trust Scheme of Delegation. The person with delegated authority will put into effect the decision of the Capability Hearing Panel. The decision to dismiss must be taken in conjunction with the Trust's Head of HR.

12 Right to Appeal

- 12.1.1 Employees have the right to appeal against dismissal or any written warning they receive under the Capability Procedure. They should notify the Head of HR in writing of their intention to appeal within 10 working days of receiving the sanction letter.
- 12.1.2 Appeals by school-based staff will be heard by a panel of 3 to be made up of either Trustees and/or Local Governing Body members (non-staff representatives). For a Headteacher, an appeal will always be heard by a panel of 3 to be made of Trustees and/or the CEO. Appeals by Central Team staff will be heard by a panel of 3, made up of Trustees and/or the CEO (for the Chief Executive, by a panel of 3 Trustees).
- 12.1.3 Appeals at each stage will be dealt with impartially and by senior leaders, Local Governing Body Members (non-staff), Trustees or CEO who have not previously been involved in the case.
- 12.1.4 A request for an appeal does not interrupt the progress of the procedure: review periods and timescales set by formal meetings or Capability Hearings remain in place unless or until they are revoked by an Appeal Hearing.
- 12.1.5 An Appeal Panel may require a matter to be reconsidered, a lower-level warning be issued or the capability process be concluded.
- 12.1.6 Appeal Hearings are restricted to considering the reasonableness of the decision made at the former Hearing. An Appeal Hearing can consider any relevant new evidence, or representations about any perceived procedural irregularities.

- 12.1.7 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 accompanied by a trade union representative, official employed by a trade union or work colleague 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 employee as soon as possible.
- 12.1.8 The staff member will be informed in writing of the results of the appeal hearing within 10 working days of the date of the appeal hearing.

APPENDIX A - PERSONAL IMPROVEMENT PLAN (PIP) TEMPLATE

This template can be used as part of the process of supporting a member of staff who is underperforming. It records the outcomes of the initial capability meeting, where targets and timescales are set and agreed.

Where possible, the objectives should be linked to the relevant professional standards, appropriate to the career experience of the member of staff concerned.

IMPROVEMENT OBJECTIVES AND RECORD OF ACHIEVEMENT

NAME _____ **DEPARTMENT/SCHOOL** _____

Dated: (start date of this PIP) _____

The below information on objectives and justification was gathered, and agreed, during the meeting with (NAME _____) and _____

(MANAGER NAME _____) on (DATE _____).

SMART Objective (area needing improvement) relate to <i>professional standards/job description</i> .	Justification/rationale – examples of where performance relating to this objective has not met expectations in past	Support / Resources (including training and advice) Required and Given	Timescales (deadline for improvement and review) (dd/mm/yy)	Review (by who, and outcome). Manager/supervisor to initial and date any review comments, ask employee to do the same for any review, and provide updated copy of this document to employee.

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As part of the Capability meeting it was agreed that these objectives will be next reviewed on (DATE _____)

Coach or mentor allocated: (NAME _____)

The employee was advised that if the above objectives are not met, Formal Capability Proceedings may be taken, and employment could be terminated due to failure to meet performance objectives to a satisfactory standard.

Please sign to confirm that the above objectives have been agreed.

Signed:
(NAME _____)

Date:

Signed:
(NAME OF MANAGER _____)

Date:

APPENDIX B - CAPABILITY HEARING PROTOCOL

Introduction

The Chairperson will:

- Introduce those people present
- Explain the way in which the hearing will be conducted

Presentation of Management's Evidence

The Headteacher/relevant manager will present the management case including relevant evidence in support of it. Any witnesses called by the Headteacher/relevant manager will be:

- Questioned by the employee and his/her representative
- Questioned by the Headteacher/relevant manager to clarify any particular points but not to introduce new evidence.
- Questioned by the Capability Panel

At the conclusion of the Headteacher/relevant manager's submission he/she may be questioned by the employee and his/her representative and by the Capability Panel.

Employee's Response

The employee and or representative may respond to the management case and may introduce evidence in their defence. Any witnesses called by the employee and/or representative will be:

- Questioned by the Headteacher/relevant manager
- Questioned by the employee and/or representative to clarify any particular points but not to introduce new evidence.
- Questioned by the Capability Panel

At the conclusion of the employee's/representative's submission he/she may be questioned by the Headteacher/relevant manager and by the Capability Panel.

Summing-Up

The Headteacher/relevant manager will be asked to sum up his/her case but not to introduce new evidence.

The employee and/or representative will be asked to sum up his/her response but not to introduce new evidence.

Decision

The Capability Panel will adjourn in order to consider the case before giving a decision. The Panel must consider all the facts and decide what action to take, bearing in mind all the relevant factors, which will include the following:

- the seriousness of the concerns/shortfall regarding performance
- whether the employee is subject to any current capability warnings/sanctions
- the employee's general record
- the School's Capability Policy in relation to the likely outcome given the circumstances of the case
- the consequences to the school of the shortfall in performance
- any mitigating circumstances
- the outcome in similar cases in the past

Conclusion of Capability Hearing

When a decision has been reached, the Chairperson will draw up a statement setting out the Panel's finding and decision. The Capability Hearing will be reconvened, and the employee and Headteacher/relevant manager informed of the Panel's decision. Details of the appeals procedure will also be outlined.

The outcome of the Hearing will be confirmed in a letter to the employee within 5 working days of the Capability Hearing. The letter will state clearly:-

- The panel's conclusions in relation to the evidence presented.
- The nature and seriousness of any shortfall in performance.
- The decision of the Panel [and where relevant any time limits involved].
- * The standard of performance expected in future and the likely consequences for the employee if this is not met. [*** Include only if relevant**]
- * Any support to be provided by the school to assist the employee. [*** Include only if relevant**]
- * The way in which the employee may exercise his/her right of appeal against any capability sanctions that has been issued. [*** Include only if relevant**]

Witnesses

In hearings, witnesses must withdraw as soon as questions to them are concluded. It may be necessary to recall them, otherwise they may be released.

Appendix C - Capability procedure flowchart



