



**Learning**  
Community Trust

## LCT Capability Procedure

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## 1. Introduction

We recognise that from time to time employees may, for a variety of reasons have difficulty in sustaining the required level of good performance and as a Trust we want to be able to support such employees in a return to former efficiency through the Trust's Appraisal Policy.

However, where an employee demonstrates serious underperformance, and had not responded to support provided within the appraisal process, then the Capability Procedure will be instigated and the appraisal process will be suspended. Employees will be fully aware of their progression to management under this Procedure as set out in Section 8 of the Appraisal Policy.

The aim of this policy is to **support employees to sustain good performance** and this requires clear communication in terms of shortfalls, support and the required outcome expected within a specified timeframe.

This policy applies to **all employees** within the school, excluding NQT's and reflects the capability section of the DFE Model Policy for Appraising Teacher Performance and Dealing with Capability Issues dated March 2019. All Headteachers will keep the Trust CEO informed and updated on any capability procedure within each academy.

Where the capability of the headteacher/Principal/CEO is being reviewed, the Chair of Governors (or nominated other Governor) and for the CEO, Chair of the Trust will assume responsibility. For all other employees, this responsibility will lie with the Headteacher/Principal/CEO or appropriate manager.

## 2. Other considerations

If an employee who goes off sick at any point during the formal capability process they will be managed in line with the Sickness Absence Policy and the Capability process will be suspended. On the employee's return to work, the capability process will resume after an agreed period of a supported return to work, unless it is clear that these performance concerns were linked to their health condition; in which case this will be managed informally in line with the Appraisal Policy.

Where a grievance is raised by an employee during the capability process and it is related to the process, this will be investigated by an independent manager in accordance with the Grievance Scheme. The capability process will normally continue unless there are justifiable reasons for suspending it pending the outcome of the grievance.

## 3. Formal Capability Process

Where previous support provided through the appraisal process by the Governor/Head Teacher/Manager has not achieved sustained good performance, it may be necessary to progress through the following steps of this formal procedure.

The aim of this will still be to achieve sustained good performance and there are opportunities where the capability procedure can come to an end. However, there is also the possibility that should the sustained good performance not be met, despite appropriate support having been provided, formal warnings may be issued and ongoing poor performance may result in dismissal.

Moving to this procedure will suspend the appraisal process.

A flow chart outlining this procedure is at Appendix 1

An example of an agendas for these formal meetings and any subsequent appeals can be found at Appendices 2 & 3.

### 3.1 Stage 1 Formal Capability Meeting

The employee will be given a minimum of 10 working days' notice of the formal capability meeting.

They will be provided with written notification of the meeting which will contain information about the areas of underperformance, including reference to any relevant professional standards and the possible consequences.

It will also contain copies of any written evidence; details of the time and place of the meeting; and will advise the employee of their right to be accompanied by a companion, a trade union official, or a trade union representative who has been certified by their union as being competent.

This meeting is intended to establish the facts. It will be conducted by the Chair of Governors (for headteacher/principal and by the Chair of the Trust for CEO capability meetings) or Headteacher/manager (for other employees).

The meeting gives the employee an opportunity 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 already collected. This would include what support the employee can identify to help them achieve the required improvements.

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 the appraisal process. In such cases, the capability procedure will come to an end. This will be confirmed in writing to the employee within 5 working days.

The person conducting the meeting may also adjourn the meeting; for example if they decide that further information is needed, or that more time is needed in which to consider any additional information.

In other cases, the meeting will continue.

During the meeting, the person conducting the meeting will:

- Outline and confirm the professional shortcomings as previously discussed and documented informally through the appraisal process.
- give clear guidance on the improved standard of performance needed to ensure that the employee can be removed from the formal capability procedures
- explain any support that will be available to help the employee improve their performance;
- set out the timetable for improvement and explain how performance will be monitored and reviewed. The timescale for improvement will depend on the circumstances of the individual case but will be reasonable and proportionate and will provide sufficient time for improvement to take place.
- consider and discuss the option of redeployment to an alternative role
- warn the employee formally that failure to improve within the set period could lead to dismissal. In very serious cases, this warning could be a final written warning or other serious implications like no pay progression.

Notes will be taken of formal meetings and a copy sent to the employee within 5 working days. This could either be in note or letter format.

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 review stage and the procedures and time limits for appealing against a warning.

### 3.2 Issuing warnings

Issuing a warning is relevant to any case where continued concern about the standard of performance is justified, despite support having been put in place through the Appraisal Policy. The decision on which level of warning to issue will depend on the seriousness of the problem. If performance is unsatisfactory, a written warning will be the next step.

Should a final written warning be issued, and the employee's performance not have improved within the agreed timescale the employee will then be invited to a decision meeting rather than a formal review meeting..

Please see below types of and length of warnings:

1. First Written warning (live for 6 months)
2. Final written warning (live for 12 months)

Where an employee is issued a warning but reaches the acceptable levels of performance to end the capability procedure, the warning is still valid for the remaining period of time. Should this level of performance decline again and the warning is still live, the formal stages of this procedure will be reinstated.

Where levels of performance decline again but this is outside of the time limit of the warning, any decision on what level of the process will be reinstated will take into account the following;

- the specific area of performance decline, for example, is this the same area or something different;
- the support provided to date and what further support would be required;
- the severity of the decline and the
- proximity to the end of the warning.

### 3.3 Monitoring and Review Period following a Formal Capability Meeting.

A performance monitoring and review period will follow the formal capability meeting in line with the timescales set at the Stage 1 meeting.

The employee will be invited to a Stage 2 - Formal Review meeting, unless they were issued with a final written warning, and their performance has not improved to the required level when they will be invited to a Stage 3 - Decision meeting.

### 3.4 Stage 2 - Formal Review Meeting

As with the Stage 1 capability meeting, a minimum of 10 working days' notice will be given and the notification will give details of the time and place of the meeting and will advise the employee of their right to be accompanied by a companion, a trade union official, or a trade union representative who has been certified by their union as being competent.

If the person conducting the meeting is satisfied that the employee has made sufficient improvement, the capability procedure will cease and the appraisal process will re-start along with any agreed support. This will be confirmed in writing to the employee within 5 working days.

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 set a further timescale for improvement
- If no, or insufficient improvement has been made during the monitoring and review period, the employee will receive a final written warning.

As before, notes will be taken of formal meetings and a copy sent to the employee within 5 working days. The final written warning will mirror any previous warnings that have been issued.

Where a final warning is issued, the employee 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 employee will be invited to a decision meeting.

### **3.5 Stage 3 - Decision Meeting**

At least 10 working days' notice of a Stage 3 Decision Meeting should be given. The notification will give details of the time and place of the meeting and will advise the employee of their right to be accompanied by a companion, a trade union official, or a trade union representative who has been certified by their union as being competent.

If an acceptable standard of performance has been achieved during the further monitoring and review period, the capability procedure will end and the appraisal process will re-start. This will be confirmed in writing to the employee within 5 working days.

However, should performance remain unsatisfactory, despite support and consideration has been given to the option of redeployment to an alternative role a decision, or recommendation to the Governing Body may be made that the employee should be dismissed or required to cease working at the school.

### **Dismissal**

The decision to dismiss has been delegated to the Local Governing Body. Once the decision to dismiss has been taken, the Governing Body/Headteacher will dismiss the employee with notice.

The Principal/Headteacher will inform the CEO and Trust HR Officer of their decision and reasons for it.

The employee 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, any entitlement to holiday pay and their right of appeal.

### **3.6 Appeal**

If the employee feels that a decision to dismiss them, or other action taken against them, is wrong or unjust, they may appeal in writing to the Chair of Governors against the decision within ten working days of receipt of the decision, setting out at the same time the grounds for appeal.

Appeals will be heard without unreasonable delay by the Governors Appeals Committee. The same arrangements for notification and right to be accompanied by a companion will apply as with formal capability and review meetings (at least 10 working days) and, as with other formal meetings, notes will be taken and a copy sent to the employee.

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

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

The decision of the Appeals Committee is final.

## **4. General Principles Underlying This Procedure**

### **4.1 ACAS Code of Practice on Disciplinary and Grievance Procedures**

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

#### **4.2 Confidentiality**

The Capability process will be treated with confidentiality. However, the desire for confidentiality does not override the need for the headteacher and governing body to quality-assure the operation and effectiveness of the capability procedure.

#### **4.3 Consistency of Treatment and Fairness**

The 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. The governance board is aware of the guidance on the Equality Act issued by the Department for Education.

#### **4.4 Delegation**

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

#### **4.5 Monitoring and Evaluation**

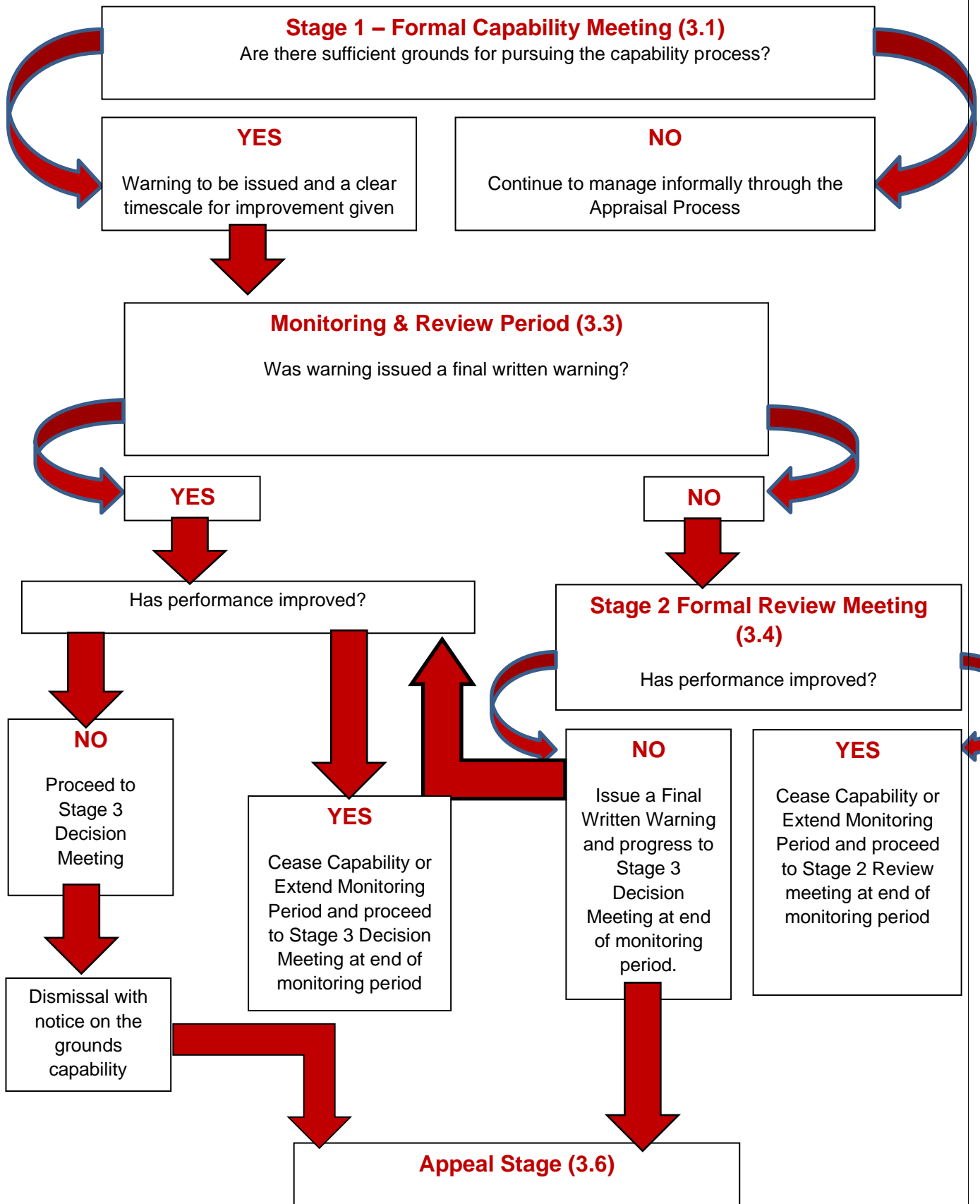
The Governing Body, headteacher and CEO will monitor the operation and effectiveness of the school's appraisal arrangements. This will include equality monitoring and ensuring that the arrangements in place for capability minimise the impact of workload for all parties involved.

This will include ensuring that the arrangements minimise the impact on workload for all parties involved.

#### **4.6 Retention**

The Governing Body and headteacher will ensure that all written records are retained, stored in a secure place and securely destroyed in line with our relevant policies.

## Appendix 1 – Capability Procedure Flow Chart



## **Appendix 2**

### **Agenda for Formal Capability Meetings**

1. Introduce those present and confirm the purpose of the meeting and that employee understands the procedure.
2. Confirm the employee understands their representation rights.
3. Detail the details of capability case.
4. Allow the employee to reply and make any representations.
5. Ask any questions or pursue specific points.
6. Allow employee to make any final points.
7. Adjourn to consider decision
8. Reconvene meeting and ask employee and representative to return
9. Give decision to employee

### **Where decision is to issue a formal warning**

10. Confirm professional shortcomings.
11. Give clear guidance on the improved standard of performance needed to end the capability procedure.
12. Explain the support that will be available, and how performance will be monitored over the following weeks.
13. Identify the timetable for improvement and agree a date for the formal review/decision meeting.
14. Explain the level of warning awarded and make it clearly understood that failure to improve may lead to dismissal.
15. Confirm the right of appeal against the formal warning
16. Write to the employee confirming the decision within 5 working days.



## **Appendix 3**

### **Agenda for Appeal Hearing**

1. Introduce those present and confirm purpose of the meeting and that the employee understands the procedure.
2. Confirm the employee understands their representation rights.
3. Employee to specify grounds for appeal and detail case.
4. Those hearing appeal and those who issued original sanction to ask any questions.
5. Those who issued original sanction to give response.
6. Those hearing appeal and employee to ask any questions.
7. Those who issued original sanction to make any final points
8. Employee to make any final points
9. Adjourn to consider decision.
10. Reconvene meeting asking all parties to return.
11. Give decision.
12. Explain that the decision will be confirmed in writing within 5 working days and that there is no further right of appeal.