



Lydiate Learning Trust

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1. Overview

This policy applies to support staff working in Lydiate Learning Trust about whose performance there is a serious cause for concern and where line management and informal measures to provide additional focussed support, guidance and training has not led to required improvements.

Capability may be in relation to skills, aptitudes, health or any other mental or physical condition. In cases where capability may be affected by health or any other mental or physical condition, such health concerns will be managed under the Managing Staff Attendance – Guidance and Policy and taking into account any occupational health advice.

This policy is intended to be supportive and provides a structured framework for support staff in improving their performance and to achieve the standard required to effectively fulfil the requirements of the job they hold.

The outcome of the procedure can lead to a return to operational line management and usual performance appraisal arrangements or in cases where performance fails to improve to the required standard, the procedure may lead to dismissal.

2. Equal Opportunities

The capability policy must always be applied fairly and in accordance with employment law and equality and diversity policies. The application of this policy will not directly nor indirectly discriminate against members of staff on the grounds of their gender, age, disability, gender re-assignment, marital or civil partnership status, pregnancy, maternity status, race (including colour, nationality and ethnic or national origins), religion or belief or sexual origination.

The application of this policy will not directly nor indirectly discrimination against members of staff on the grounds of trade union membership or activities.

3. Introduction

3.1. Definitions

Unless indicated otherwise, reference to “staff” and “employee” refers to any member of Lydiate Learning Trust Support Staff.

This procedure will not apply to agency workers and independent contractors including casual workers.

3.2. Delegation

The responsibility for hearing Appeals is as per the LLT appeal process.

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3.3. Sickness

It is recognised that capability procedures can be distressing and may sometimes lead to a member of staff feeling unwell. Lydiate Learning Trust believes that it is in everyone's best interest to conclude matters as quickly as possible and will work with the employee to achieve this.

If long term sickness absence appears to have been triggered by the commencement of monitoring through the formal capability procedure, the case will be dealt with in accordance with Trust's Managing Staff Attendance – Guidance and Policy and the case will be referred immediately to the Occupational Health Adviser to assess the employee's fitness for participation in the capability procedure.

3.4. Misconduct

Where poor performance is due to misconduct the Disciplinary Policy and Procedure will apply.

4. Scope of the Procedure

This procedure applies to all Lydiate Learning Trust support staff, and does not apply to Teachers.

The procedure does not apply to:

- unsatisfactory performance during a probationary period
- lack of capability or personal problems/work related disability problems or ill-health
- informal support and monitoring, which would usually precede any move to management of performance under the Capability Policy

4.1. Line Management

Nothing in this policy is intended to prevent a manager ensuring that those employees for whom they are responsible are clear about the tasks and responsibilities which form their job and the standard of performance required. Line management should include 1-1 meetings with staff, team meetings, day to day direction and guidance as well as performance appraisal under the Trust's Support Staff Appraisal Policy. Wherever possible feedback about staff performance is best undertaken close to the event and in the course of day to day interactions. This may be thanking a member of staff for a good piece of work or providing some developmental guidance.

4.2. Guidance Regarding Informal Support

This section summarises good practice with respect to informal support and monitoring. This is not part of the Capability Policy. In accordance with ACAS advice, a quiet word may be all that is required to resolve an issue.

Where a line manager identifies that a member of staff is not working to the standard required they should initially take steps to discuss the short comings with the employee and assist the employee through guidance, training and support to undertake their job to the required level of performance.

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Informal support should not be treated casually. The manager should arrange a meeting with the employee to discuss in detail the shortcomings and areas of concern. They should also seek to identify whether or not there are any mitigating factors that are contributing to the problem and how these may be addressed.

The manager should set out clearly, in writing, the areas of concern, the standard expected and describe the support, training and guidance that will be provided. The manager should also set a reasonable timescale (usually 6 weeks) for monitoring and review of progress, allowing time for the employee to demonstrate the expected improvements.

With good support and clear guidance, it is hoped that the employee will respond positively and make the improvements to their performance that are necessary. Where the review identifies that this is not the case and after a reasonable period of informal support, the manager will advise the employee in writing that their performance will be managed under the Capability Policy.

4.3. Exceptionally Serious Performance Concerns

A formal capability meeting will have been preceded by a period of informal support. However, where an exceptionally serious performance concern arises, which has significant risks for the Trust operations or the health, safety and wellbeing of pupils and the matter is not a matter of conduct, and it has proved impossible to rectify the problem through line management and the appraisal policy and procedures, then action under this procedure may be commenced without delay.

5. Accredited Trade Union Officials

Normal performance standards apply to officials' conduct as employees but action under this procedure should not be taken without inviting the involvement of a Regional Official.

Where any capability procedure is being considered in respect of a recognised trade union or professional association representative, no action shall be taken unless and until the matter has been discussed by the head teacher (or a person acting on their behalf) and a full time officer or locally elected officer at the level of the local authority of that trade union or professional association.

6. Right to be Accompanied

Employees have the right to be accompanied by a certified Professional Representative or a work colleague at all formal meetings of this procedure. Employees are responsible for arranging their own representation. It is suggested that employees who are members of a recognised professional body contact their representative if subject to action under this policy.

In accordance with the ACAS Code, employee representatives can address formal meetings and assist employees in presenting their case. They may respond on behalf of the employee to any views expressed at the meeting and confer with the employee during the meeting. However, they may not respond to questions directed to employees. These should be answered by the employee concerned.

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7. Timescales and Definition of a Working Day

For the purposes of the operation of this Capability Policy, timescales are expressed in working days. For term time only support staff a working day should be reckoned as a day that the school is open for pupils. For all year round staff, a working day is defined as Monday to Friday calendar days. The following timescales (in working days) should be adhered to:

- Written notice of Formal Capability Meeting – at least 5 working days’ notice given
- Written notice of Formal Review Meeting – at least 5 working days’ notice given
- Written notice of subsequent review meetings – at least 5 working days’ notice
- Written notice of Formal Decision Meeting – at least 5 working days’ notice

8. Delegation of Responsibility for the Formal Capability Procedure

The responsibility for operating this policy and chairing meetings under the formal process until the Decision Meeting may be undertaken by a Headteacher, Executive Headteacher or delegated authority.

All Appeals are heard as per the LLT appeals process.

9. Formal Capability Meeting

9.1. Arranging the Meeting

At least 5 working days before a formal meeting, the employee will be provided with a letter inviting them to a Formal Capability Meeting. The letter will set out:

- the time, date and venue of the meeting;
- the reason for the meeting, including an outline of the concerns and a summary of any informal support and action taken to date;
- who is invited to attend and the role they will take;
- copies of any documentation to be relied on at the meeting;
- a copy of the Capability Policy;
- notification of his/her right to be accompanied at the meeting; and
- the opportunity to submit any relevant documents that the employee intends to rely on submitted no later than 2 working days prior to the formal meeting.
- names of witnesses to be called
- the employee’s right to call witnesses on their behalf

Where an employee’s representative cannot attend at the time proposed for a formal meeting, management may postpone the meeting to an alternative date and time suggested by the employee, provided that (a) the alternative time is reasonable and (b) it takes place without undue delay (usually within 5 working days following the day originally proposed in the letter of invitation). If the employee fails to attend a formal meeting without good reason, the manager may proceed in the employee’s absence.

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9.2. Conducting the Meeting

At the meeting, the Manager will establish the facts. The meeting allows the employee, accompanied by a work colleague or professional representative if they wish, to respond to concerns about their performance and to make any relevant representations. This may be to provide new information or a different context to the information/evidence already available.

The Manager conducting the meeting may conclude that there are insufficient grounds for pursuing the capability issue and decide it would be more appropriate to continue to address the concerns 'informally' outside this policy. In such cases the capability procedure will come to an end. The Manager conducting the meeting may also adjourn the meeting for example if they decide that further investigation 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, which could lead to a formal warning being issued, the Manager conducting the meeting will:

- a. Identify the performance shortcomings (it is important that it is made clear to the employee exactly what competencies, behaviours, technical skills, or responsibilities are not being met).
- b. Give clear guidance on the improved standard of performance needed to enable the employee to be removed from the Formal Capability procedure. This may include the setting of targets relevant to the specific weaknesses that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made. Any new targets set should be reasonable, realistic and achievable.
- c. Discuss and agree the support and training to be provided to help the employee improve their performance.
- d. Set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case but should be between 8 to 12 weeks. It is for the Manager to determine the set period.
- e. They may warn the employee formally (first formal warning) that failure to improve within the set period could ultimately lead to dismissal.
- f. Write to the employee setting out the points discussed in the meeting.
- g. Make the employee aware of the right of appeal against any formal warning.
- h. Notes will be taken of formal meetings and a copy sent to the member of staff.
- i. Give the employee an opportunity to ask questions, present evidence, call witnesses, respond to evidence and make representation.

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9.3. Meeting Outcome

After the meeting the Manager will confirm the outcome in writing and provide a copy of the Improvement Plan. It is important that the line manager or other appointed supporting manager ensures that the arrangements set out in the Improvement Plan for training, support and monitoring are put in place. At the end of the period the employee will be invited to a Review Meeting.

Where in extremely serious cases, a final written warning is issued, the employee should have a period of support and monitoring before moving to a Decision Meeting.

10. Review Meeting

At least 5 days before the Review Meeting, the employee will be provided with a letter inviting them to a Formal Review Meeting. The letter will include:

- the time date and venue of the meeting
- the reason for the meeting
- who is invited to attend the meeting and their role?
- include a copy of the Improvement Plan
- any evidence or reports of progress made
- notification of his/her right to be accompanied at the meeting
- invite the employee to submit any further relevant evidence that they believe supports their case (this should be submitted to management no later than 2 days before the meeting)

10.1. Conducting the Review Meeting

At the Review Meeting, the Manager will remind the parties present of the standard of performance expected. He/she will then go through the Improvement Plan and review the progress made. The Manager will invite the employee to describe the progress they have made and share any relevant evidence to demonstrate progress. The line manager will also be invited to describe the training and support provided and the progress that the employee has made.

Where the Manager is satisfied that the employee has made sufficient improvement, the capability procedure will cease. The employee will return to management under usual line management and appraisal arrangements.

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. An updated Improvement Plan will be prepared amending the short-term targets, identifying any further training and support and setting a reasonable period before final review.

If the required standard of performance has not been met during the monitoring and review period, and it does not appear likely that the required standard could be met within any further extension, the employee could be given a final written warning or will be dismissed.

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Consideration could be given to the employee being given a different range of duties or an alternative post. By agreement this may include transfer to a post more suited to the employees' capabilities. If this post is at a lower salary level, the lower salary will apply.

As before, notes will be taken of formal meetings and a copy sent to the member of staff.

11. Final Written Warning

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. Employee will be advised of their right of appeal against the warning.

The employee will be given information about the handling of a final period of monitoring and support which will be no longer than 4 weeks. They will also be advised of their right of appeal against the final warning.

Following the issue of the final written warning, the employee will be invited to a Decision Meeting which will take place at the end of the review period.

12. Right of Appeal Against a Written Warning

If an employee feels that a decision to issue a first/or final written warning is wrong or unjust he or she may appeal in writing against the decision.

Appeals against a written warning shall be restricted to considering the reasonableness of the decision made by the senior manager, any relevant new evidence not previously available to the senior manager or any procedural irregularities. A statement giving the reasons for the appeal should be submitted within 5 working days of the written warning having been received.

All appeal hearings will be held as soon as possible following the Trust appeals procedure.

Pending any appeal, the employee will be expected to continue to work in accordance with targets set for the next stage of the policy and his/her progress towards the achievements of these targets may be monitored during this period.

13. Decision Meeting

The Decision Meeting should be conducted by the Headteacher, unless the Headteacher has determined that the case should be heard by the Local Governing Body.

As with formal capability meetings and formal review meetings, at least 5 working days' notice will be given and the written 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 work colleague, a trade union official.

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The outcome of the Decision Meeting will be one of the following:

- performance has improved, the capability procedure will end and there will be a return to operational management and performance appraisal
- redeployment or demotion to lower graded role by mutual agreement
- performance remains unsatisfactory with no likelihood of improvement and the employee will be dismissed or cease to work at the Trust. Alternative sanctions should be considered first and dismissal must be the last resort.

14. Notice of Dismissal

The Board of Trustees has delegated dismissal decisions to the Headteachers in conjunction with Local Governing Bodies. The Decision Meeting, which can include a decision to give notice of dismissal should usually be chaired by the Headteacher (or in cases where the Headteacher is the direct line manager of the member of staff whose performance is subject of concern, this role can be undertaken by the Executive Headteacher or the Local Governing Body.

Employees should only be dismissed, if despite warning, their capability has not improved within the specified timescale.

The letter of notice of dismissal must contain:

- the reasons for dismissal
- the date on which employment will end
- the appropriate contractual period of notice
- the right of appeal against dismissal, including the timescales

15. Formal Warnings

Where a First Written warning is issued, this will remain on the employee's file for 6 months.

Were a Final Written warning is issued, this will remain on the employee's file for 12 months.

On appeal, the possible outcomes are:

- the warnings are removed
- the length of the warning is reduced to a minimum of 6 months
- the warning is upheld

16. Right of Appeal

If an employee feels that a decision to dismiss them, or other action taken against them during this process is wrong or unjust, they may appeal in writing against the decision. The appeal should be made within 5 working days of the decision, setting out at the grounds for their appeal. Appeals will follow the policy set out in the Trust appeals policy.

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Template Letter Invitation to Formal Capability Meeting

DATE

PRIVATE & CONFIDENTIAL

NAME

ADDRESS

Dear NAME

Formal Capability Meeting

I am writing to inform you that you are required to attend a Formal Capability meeting on DATE at TIME in PLACE.

The purpose of the meeting is to discuss the concerns raised with you at our meeting on [DATE] and to consider the evidence about the lack of improvement identified at the end of the [X] week support programme provided for you. The meeting will be held in accordance with the Trust's Support Staff Capability Policy.

The following documents will be considered or may be referred to at the meeting, copies of which are enclosed:

[Insert all relevant documents, for example]

- Outcome of Meeting held at the conclusion of the Trust's Support Staff Appraisal Policy on DATE

At the meeting I will ask [NAMES] to explain the concerns, the support put in place for you and the outcome of the support period. You will be given the opportunity to ask questions, present evidence, call witnesses, respond to evidence and make representations. We will establish the likely causes of poor performance and consider any reasons why any measures taken so far have not led to the required improvement. Lastly, a timetable will be set for improvement and it will explain how your performance will be monitored and reviewed.

If your performance has improved and there are insufficient grounds for pursuing the formal capability policy, you will be notified that your performance will continue to be monitored under the appraisal policy. If your performance is found to be less than satisfactory you may be issued with a first written warning under the capability policy. This would be confirmed in writing.

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You have the right to representation at the meeting by either your trade union representative or a work place colleague. If you are to be represented please let me know the name of your representative and their designation as soon as possible.

You or your representative have the right to produce documentary evidence and to call witnesses on your behalf. Please let me have, by [DATE], the names of any witnesses you propose to call and copies of any documents you intend to produce.

The meeting will be conducted by me and I shall be accompanied by [NAME AND POSITION] who will act as my adviser.

If you do not attend the meeting without good cause you should be aware that I may decide to proceed in your absence. An additional copy of this letter is enclosed for your work place colleague or trade union representative. Please note that you are required to respect the strict confidential nature of this matter.

Yours sincerely

NAME

JOB TITLE

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Template First Written Warning Letter

DATE

PRIVATE & CONFIDENTIAL

NAME

ADDRESS

Dear NAME

This letter confirms the decision to issue a First Written Warning made at the meeting on [DATE] that was CONVENED to review the concerns regarding your performance as a [JOB TITLE]. At the meeting you were represented by [NAME AND POSITION] and I was accompanied by [NAME AND POSITION] from [XXX].

At the meeting we covered the identified areas of concern, with reference to your Job Description and a copy of the Support Plan is enclosed. A copy of the notes from the meeting [(enclosed)/will follow shortly].

[LIST CONCERNS AND WHICH OF THE STANDARDS EXPECTED ARE NOT BEING MET
(These may be attached in an appendix)]

After considering all the facts presented at the meeting I have concluded that I have serious concerns about your performance in these areas.

You have the right of appeal against this warning to an [Appeals Panel of the Governing Body] and this should be made to the Clerk of the Governing Body within five working days of receipt of this letter, stating your grounds for appeal.

Please note this warning will be disclosed on any reference requests that require the information for a period of twelve months from the date of this letter.

It was agreed at the meeting that the review period will continue for a further [X] weeks and we will meet again on [DATE] to review your progress. I will write to you in relation to this in due course. Failure to make the necessary improvements may result in a final warning which could then lead to dismissal.

Over the next [X] weeks you will be provided with a further support programme [which is enclosed with this letter] [which will be discussed with you on DATE].

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If you have any queries in relation to the content of this letter please do not hesitate to contact me.

Yours sincerely

NAME

JOB TITLE

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Support Staff Capability Policy

APPENDIX C

Template Letter for Appeal Hearing

DATE

PRIVATE & CONFIDENTIAL

NAME

ADDRESS

Dear NAME

I am writing to inform you that a Governors Appeal Hearing to consider your appeal has been arranged for [PLACE] on [DATE] at [TIME].

The purpose of the hearing is to consider your appeal under the Capability Policy against a first written warning as lodged in your letter of [DATE].

The hearing will be limited to the grounds you raised in your letter. A copy of the policy which will be followed at the hearing is enclosed.

The hearing will be conducted by [NAMES] and the following people will also attend: [INSERT NAMES AND POSTIONS OF ALL PARTICIPANTS].

You are entitled to be accompanied at the hearing by a representative of your trade union or workplace colleague of your choice or in accordance with the capability policy. If you are to be accompanied at the hearing please inform me of the name and position of your representative as soon as possible.

I enclose copies of relevant documentation for use at the appeal. If there are any further documents you wish to be considered at the appeal, please provide copies not later than three days before the hearing. If you do not have those documents, please provide details so that they can be obtained.

Please confirm that you have received this letter and that you will attend at the time and place stated above.

If you have any other questions, please contact me as soon as possible.

Yours sincerely

NAME

JOB TITLE

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