



The LETTA Trust

Capability Policy

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| Reviewed by: | TB Resources | Signed: |  |



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1. Introduction

At the LETTA Trust we are all committed to providing the very best education for pupils in our schools. Each member of staff, whatever their role, works hard every day for the benefit of the pupils in their school.

This procedure is to help employees maintain a high standard of performance at work. It provides a fair framework to help schools deal with inadequate performance. It is for times when an employee appears not to be fulfilling their duties to a high standard. The procedure does not apply to employees during their induction/probation period.

Where the concerns relate to the Headteacher, the CEO will manage the procedure with the support of members of the Local Governing Board. They will seek advice from an HR professional. A Headteacher who is the subject of this procedure has the same rights as other employees at the various stages.

This policy is based on the [Department for Education's model policy and guidance](#), the [Acas code of practice on disciplinary and grievance procedures](#), and the Tower Hamlets Local Authority procedure produced in 2020.

When carrying out capability procedures, we will ensure we abide by the [Equality Act 2010](#).

This policy complies with our funding agreement and articles of association.

2. Definition

In employment law, capability is an assessment of the skill, aptitude, health, or any other physical or mental quality. For the purposes of this procedure, incapability is:

'An employee's inadequate performance. This could be due to a range of things. It may be because of an employee's lack of knowledge, skills, or aptitude. It could be that we appointed them for a role that doesn't suit them.'

Leaders must address inadequate performance. They must ensure the job requirements are met and the employee has the opportunity to meet the required standard.

3. Preventing underperformance

Clear expectations, support, and training are the best ways to prevent underperformance. Regular line management through 1-1 meetings will identify potential problems early. This helps to avoid the need for formal capability procedures. We resolve most cases informally with support and attention. If this is not possible, we then adopt a formal approach.

The use of the capability procedure is likely to be a stressful experience for the employee. If they fail to meet the required standard, the procedure will lead to dismissal.



4. Application of other HR procedures during the capability process

Sometimes during the capability process, an employee triggers the sickness procedure. If this happens, we will refer them for an Occupational Health appointment. We will seek advice from the Occupational Health advisor on how long to wait for a person's health to improve before considering dismissal.

Short periods of absence will not delay any part of the formal stage of the capability procedure. We take reasonable steps so that the employee can attend formal meetings. If the employee is unable to attend, the meetings will go ahead in their absence. In these circumstances, we provide the employee with a full account of the meeting in the letter confirming the decision taken.

This procedure may increase the levels of stress experienced by an employee. It is in the employee's best interest to return to work as soon as possible. Then we can address any underlying causes of unsatisfactory performance and related ill health.

If the employee writes a grievance against the person assessing their performance, we will assess the grievance as soon as possible. We may change the person responsible for assessing the employee's performance while we follow the grievance process. The grievance process will not delay any planned support or capability action. The procedure will only be suspended if there is strong evidence that an employee has been mistreated.

5. Equalities

Where the Headteacher or line manager considers that an employee's underperformance may be related to a disability, health condition, or injury at work, they will first investigate, verify, and then address the circumstances. This will normally include referral to Occupational Health (OH) to seek advice and/or confirm whether there is a health-related reason impacting performance.

This referral can be part of the normal management process that precedes this procedure or at any time during the formal stages.

We consider whether the employee's condition is covered under the Equality Act. Under the Equality Act 2010, a person has a "disability" if they have a physical or mental impairment that has a substantial and long-term adverse impact on their ability to carry out normal day-to-day activities. A disabled person is discriminated against if they are treated unfavourably because of something arising in consequence of their ability, and the person discriminating cannot show that the treatment is a proportionate means of achieving a legitimate aim (s.15 Equality Act 2010). Advice is available from OH and the HR Manager.

Reasonable adjustments are considered for disabled employees, for example, special equipment or facilities to enable them to continue to perform their job to the required standard. Reasonable adjustments can be put in place either prior to the start of the



procedure or at any stage once it has commenced. There is also protection for direct and indirect disability discrimination.

In order to establish whether an employee or group of employees is being treated less favourably than others under this procedure, it is important that all action taken is monitored.

6. Informal capability for staff experiencing difficulties

If an employee is having problems in their role, we provide support and training in line management meetings. The aim is to work with the employee so that their performance improves.

When an employee's personal circumstances lead to difficulties at work, we offer support immediately. This might include an occupational health appointment or access to counselling services via the LETTA Trust's Employee Assistance Programme. This support process is not disclosed in the references provided for teachers.

The Trust recognises that the capability process itself may be stressful for employees. In these circumstances, employees will also have access to occupational health services and counselling. In addition, employees are encouraged to speak to their line manager or the HR Manager if they feel that other support is needed. We will ensure that employees undergoing capability processes are made aware of mental health and wellbeing services available to them. If stress or anxiety is identified as a contributing factor to underperformance, managers can put in place reasonable adjustments to support the employee.

If a line manager thinks that the difficulties experienced by an employee could lead to capability procedures, they will discuss it with the employee. The employee should have 5 working days' notice of a meeting to discuss targets for improvement and a programme of support. The headteacher or a member of the leadership team may also attend this meeting. There is no statutory right to invite a trade union representative or workplace colleague to meetings outside of the formal stages of capability. The headteacher will consider any request to do on a case by case basis.

The purpose of the meeting with the employee is to:

- give clear written feedback about the nature and seriousness of the concerns
- explain the implications and process if the employees makes insufficient improvements
- give the employee the opportunity to comment on and discuss the concerns
- produce a support plan in consultation with the employee. The plan could include: coaching, training, in class support, mentoring, observations with feedback, visits to see other practitioners or discussions with consultants
- make it clear how the line manager will track and review progress

The line manager will check the employee's progress and give a reasonable time for their performance to improve. The time scale will depend upon the circumstances but usually is set at a minimum of 6 weeks. During this time the employee will receive support as agreed in



the support plan. The line manager will give the employee regular feedback and change the support plan if appropriate.

If the employee performs at a level that indicates there is no longer a possibility of capability procedures, the line manager will inform them of this at the meeting to review progress. Following this meeting the normal staff performance management process will begin again.

If the employee does not improve enough during this time, the line manager will inform them of this at the meeting to review progress against the support plan. The headteacher or a member of the leadership team may attend this meeting. Following this meeting the employee will be invited to a formal capability meeting.

7. Formal capability

We use this procedure if there are serious concerns that line management and informal capability has been unable to resolve. The aim of formal capability is to support the employee to achieve the required level of performance for their role. Schools have to include information on use of the formal capability procedure in a teacher's reference.

We give the employee 5 working days' notice of the formal capability meeting. The letter will contain information about the performance concerns and their possible consequences. The letter includes enough information so that the employee can prepare to answer the case at the formal capability meeting. It will also contain details of the time and place of the meeting. We tell the employee of their right to be accompanied by a trade union representative or a work colleague.

Within 12 months of the formal capability process ending, the process will begin again if the employee's performance deteriorates. It will begin at the stage the previous process reached. Before restarting the formal process, the line manager will talk to the employee about their concerns. The employee will have a chance to explain why they have not maintained their performance. If the areas of concern are different from before, the employee will have a reasonable period of support to improve before restarting the process.

7.1 Formal capability meeting

This meeting is to establish the facts and to determine a course of action. It will be conducted by the appraiser nominated by the headteacher. This will usually be the line manager with support from a more senior leader. For the headteacher, it will be conducted by the CEO.

The employee may invite a trade union representative or work colleague to the meeting. In the meeting, the employee can respond to concerns about their performance. They may provide new information or a different context to the information already collected.

The person conducting the meeting may conclude that there are insufficient grounds for pursuing formal capability. They may decide that it would be better to address the issues through the appraisal process or informal capability. In such cases, the formal capability procedure will not have commenced. The person conducting the meeting may adjourn the



meeting if they decide that they need more time for further investigation or to consider extra information.

In other cases, the meeting will continue, and the formal capability process will begin. During this and any later meetings, the person conducting the meeting will:

- clarify the inadequate performance, for example, which of the expected standards the employee is not meeting
- clarify the improvements needed to end formal capability procedures. This may include setting objectives focused on the specific weaknesses in performance
- explain any support that will be available to help the employee improve their performance
- set out the timetable for improvement, and explain how the appraiser will track and review performance. The timetable will depend on the circumstances of the individual case. It is for the person conducting the meeting to determine a suitable time frame. It should be reasonable and proportionate, and not excessively long
- clarify formally for the employee that failure to improve within the set period could lead to dismissal

Notes will be taken in formal meetings, and a copy will be sent to the employee. The support plan will include improvements needed and the support to help the employee achieve this. It will also include information about the timing and handling of the review stage. The appraiser will complete the plan in consultation with the employee and trade union representative, if they have one. The appraiser will give the employee a copy of the support plan.

7.2 Monitoring and review period

After the formal capability meeting there will be a performance monitoring and review period. Formal monitoring, evaluation, guidance and support will continue during this period. At the end of this period, the appraiser will organise a review meeting. The employee will be invited to a formal review meeting in line with the timescales given at the formal capability meeting and recorded in the support plan.

7.3 Formal review meetings

The employee will have 5 working days' notice of the time and place of the review meeting. We will tell the employee of their right to be accompanied by a trade union representative or work colleague.

The capability process will stop if the person conducting the meeting thinks that the employee has made enough improvement and that this improvement will continue. In other cases it may be appropriate to extend the review period if the employee has made some progress and there is confidence that more is likely. In these circumstances, the support plan should be updated and another review meeting booked to formally review progress.

At either the first or any later review meetings, if the employee has made insufficient improvement against the support plan, they will be informed of the timescale for holding a decision meeting.



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

If the employee has made insufficient improvement, they will be informed in writing that failure to achieve an acceptable standard of performance within a set timescale may result in dismissal. They will be given an updated support plan and information about the monitoring and review period.

The appraiser will organise a second formal review meeting at the end of the next review period. If the outcome of this second formal review meeting is that insufficient improvement has been made, a decision meeting will be arranged.

If the employee has not achieved the required level of performance but is making satisfactory progress against the support plan, a further formal review meeting can be scheduled. However, formal capability processes will not continue indefinitely.

7.4 Decision meeting

The headteacher will conduct the decision meeting with the CEO. Where the meeting relates to the headteacher, the CEO and a trustee will conduct the meeting.

The headteacher or CEO will give 5 working days' notice and will give details of the time and place of the meeting. This communication will let the employee know of their right to be accompanied by a trade union representative or work colleague. A clerk or other official minute taker will minute these meetings.

The panel will consider evidence presented on the employee's performance and their support plan. The panel will decide which of the following options is appropriate.

The capability procedure will end if the employee has achieved an acceptable standard of performance and the panel is confident that this will continue.

If the employee has made some improvement but not enough to give confidence that an acceptable level of performance has been achieved or the panel requires evidence that sustained improvement can be achieved, the panel may decide that a further period of time is needed. In these circumstances, the decision meeting will reconvene at the end of this period.

If the employee has made insufficient progress despite having a realistic opportunity to show an acceptable level of performance, the panel may dismiss the employee. The panel must be satisfied that all reasonable efforts to support the employee have been made.

Before reaching a decision on dismissal, the panel may explore whether redeployment, or alternative job roles within the organisation could provide a viable alternative to dismissal.

- If the employee has partially met performance expectations, the panel could consider offering an adjusted role with appropriate support.
- If the employee's performance is impacted by a health condition or disability, further Occupational Health (OH) advice should be sought on possible adjustments before confirming dismissal.



- The panel must record in writing why redeployment or adjustments are or are not feasible before making a final decision.

The panel will communicate their decision in writing to the employee within 5 working days of the meeting. If possible, the panel will verbally inform the employee of their decision at the conclusion of the meeting. If dismissal is the outcome, notice will start from the date of the determination to dismiss the letter. Dismissal under this procedure is not a dismissal for misconduct, and employees are entitled to their full notice period.

8. Appeals

Employees may appeal if they feel that a decision to dismiss them is wrong or unjust. They must do this in writing within 10 working days of being informed of the decision. They must set out the grounds of their appeal in the letter. We hear appeals without unreasonable delay and, where possible, at an agreed time and place.

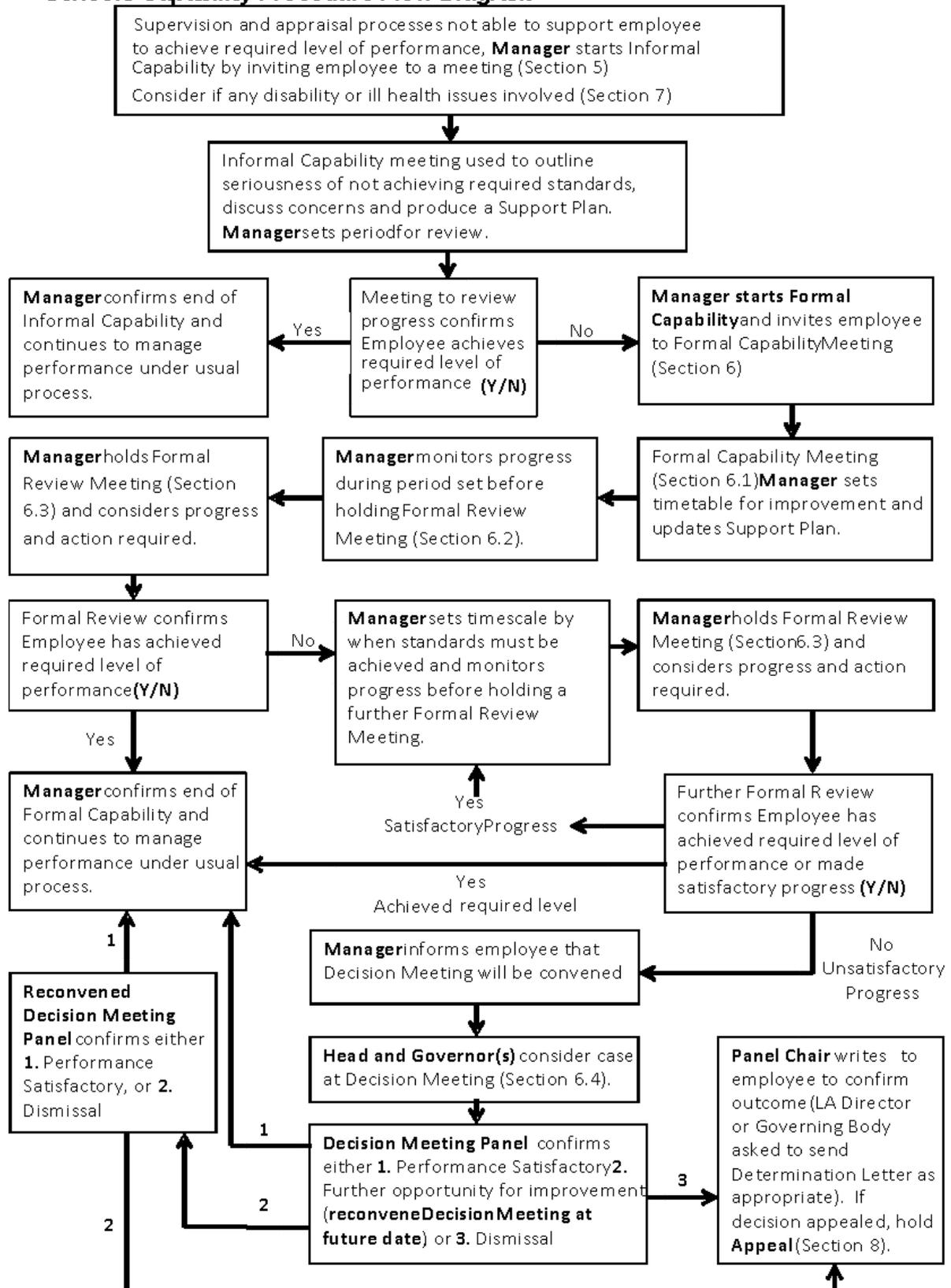
The Chair of Trustees will write to the employee giving details of the appeal hearing. The employee will be advised in writing of their right to be accompanied at the appeal hearing by a trade union representative or work colleague. 2 trustees who have no prior involvement in the case will hear the appeal.

The Chair of the appeal panel will write to the employee to communicate their decision within 10 working days of the appeal hearing. If possible, the Chair will verbally inform the employee of the decision at the end of the hearing. The panel's decision is final and is the end of the procedure. There is no further right of appeal. This decision must be reported to the Trust Board.



Appendix A: Flow diagram

Schools Capability Procedure Flow Diagram





Appendix B: Example support plan template

| Employee name: | | | Date of meeting: | | | |
|----------------|---------|---------|------------------|----------------------|--------------------|------------|
| Objective | Actions | Support | Monitoring | Timescale for review | Objective met? Y/N | Evaluation |
| | | | | | | |
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| | | | | | | |

Employee signature:

Date:

Manager signature:

Date: