

## LT2 Capability Procedure

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## Our Learning Today Leading Tomorrow Multi-Academy Trust Vision

### Vision

Vision is to build a group of outstanding schools across phases, including specialist provision, to become (a mid-size) Trust that provides vibrant and inclusive learning environments in which every member of the learning community is passionate about learning. The Trust is led by a CEO who works closely with Headteachers who lead the two schools supported by a central team to support finance, HR, estates and governance.

### Mission

LT2 Trust and schools will have a relentless focus on high achievement, supported by robust organisational structures and governance. We aim to give children and young people in our care the knowledge, skills and experiences to expand their minds and world view to enable them to develop a naturally inquisitive approach to learning and life, fit for an ever-changing world.

Ultimately, we will educate and support all children attending LT2 schools to grow into capable and contributing citizens who have developed the personal attributes and characteristics that will enable them to become considerate, self-reliant and confident young people who are ready for the next stage of their lives.

### Values

The Trust Values underpin the mission and provide the basis on which LT2 schools can articulate the key behavioural characteristics that promote a positive philosophy. Our six values are unseen drivers of our behaviour as experienced by others and are designed to create a shared organisational culture:

**Kindness** – The quality of friendliness, generosity, and consideration

**Collaboration** – The belief that working and learning with others will lead to greater success

**Curiosity** – A strong desire to know and to learn

**Resilience** – The ability to recover quickly and learn from the difficulties we face

**Respect** – To appreciate the importance of understanding and admiration for others and self, honesty

**Endeavour** – The belief that hard work is needed to achieve something of which we can be proud

### Definitions

- Where the word 'Trust' is used in this document it refers to The Learning Today Leading Tomorrow Trust.
- Where the words 'Trust Board' are used it refers to the board of Trustees who set the vision for the Trust and hold the executive leadership team to account for delivering the Trust's strategic plan.

## 1. Organisation and Responsibilities

### 1.1 Introduction

This procedure applies to all employees of the trust apart from Newly Qualified Teachers (except in exceptional circumstances) who have separate support and assessment arrangements in place during their induction year, and recently appointed employees who are serving their formal probation period. It does not form part of the terms and conditions of employment with the Trust and is not intended to have contractual effect. However, it reflects the Trust's current practices and employees are strongly encouraged to familiarise themselves with its content.

The primary aim of this procedure is to provide a framework within which the trust can work with employees to maintain satisfactory performance standards and to encourage improvement where necessary. The formal capability procedures will only be instigated when there are serious concerns about an employee's performance that informal guidance and support under the appraisal procedure have been unable to address as per the Performance Management Policy.

It also aims to ensure that LT2 employees are treated fairly and consistently when performance concerns have been raised and that proper and adequate procedures are observed before any decision is taken, particularly when an employee's job is at risk. No-one will be treated less favourably on the grounds of their gender, disability, age, race, creed, colour, religion, nationality, ethnic or national origin, sexual orientation, gender reassignment, medical condition, marital status or trade union membership or activity.

### 1.2 Legislation

Policy legislation

### 1.3 Guidance under this Policy

The Head of HR is responsible for providing advice and guidance under this policy and reviewing and updating the policy as required.

### 1.4 Board of Trustees

**The Board of Trustees, as a corporate body, has the responsibility to set the strategic direction and objectives of all matters across the Trust.**

The Board of Trustees is responsible for ensuring that high standards of corporate governance are maintained

The Chair of the Trust is responsible for managing the CEO, Trustees and Governors under this policy.

### 1.5 The Chief Executive Officer (CEO)

The CEO of Learning Today leading Tomorrow Trust (LT2):

- Takes overall responsibility for the implementation of policies and procedures
- Must provide reports as appropriate to Trustees in relation to this policy
- Ensure that sufficient resources are allocated and authorised within the organisations budget to meet statutory procedures and standards across the Trust

- Is responsible for managing the Headteachers and centrally appointed staff under this policy

### 1.6 Headteachers

Headteachers of LT2 schools are responsible for:

- The implementation of and compliance with this policy within their school ensuring competence in those staff who are responsible for and involved in the operation of this policy and associated guidance
- Identifying training needs
- Communicating this policy to all relevant people within the school
- Managing school-based teaching and associate staff under this policy

### 1.7 Senior and Middle Leaders (and other Supervisory Roles)

Although the Headteacher is responsible overall for the implementation of this policy in their school, managers have some specific responsibilities:

- Applying this policy within their own department and area of work
- Resolving any issues members of staff refer to them, informing the Headteacher of any issues to which they cannot achieve a satisfactory solution with the resources available to them
- Where required, conduct formal meetings, undertake relevant training in relation to this policy and ensure effective and competent operation of this policy

### 1.8 Other Employee Duties

All employees have a responsibility to:

- Comply with this policy and to co-operate with the schools' leadership and management on all matters relating to it
- Undertake any training recommended by their line manager

### 1.9 Related Policies and Procedures

- LT2 Grievance Policy
- LT2 Disciplinary Policy

### 1.10 Review

This policy will be reviewed annually subject to statutory updates.

These procedures have been agreed by the board of trustees, who will approve them whenever reviewed.

## 2. Confidentiality

The Trust aims to deal with performance matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information which is communicated to them in connection with

this capability procedure. Employees and their companions must not make electronic recordings of any meetings or hearings conducted under this procedure.

### **3. Disability**

Consideration will be given to whether poor performance may be related to a disability and, if so, whether there are reasonable adjustments that could be made to the employee's working arrangements, including changing duties or providing additional equipment or training. An employee who wishes to discuss or inform the trust about any medical condition should contact their line manager or the Headteacher.

### **4. Right to be accompanied**

Employees are entitled to be accompanied to formal meetings held under this procedure by a trade union representative or appropriate work colleague. If the employee's chosen companion is unavailable at the time of the hearing the employee can propose an alternative time within five working days of the originally scheduled date. If the companion is not available within five working days the Trust may require the employee to choose an alternative companion. At a formal hearing the employee's companion can make representations, ask questions, sum up the employee's case, and request an adjournment in order to discuss the case privately with the employee.

### **5. NQTS – Action in the event of serious capability concerns**

In a few particularly serious cases it may be necessary to instigate capability procedures, which may lead to dismissal before the end of the probationary period. If this is the case, for as long as the NQT remains at the Academy, the induction and probationary processes will continue in parallel with the capability procedure. The appropriate body will be consulted with prior to any formal capability process commencing and prior to any dismissal taking place.

### **6. Identifying Performance Issues**

In the first instance, performance issues should normally be dealt with informally between the employee and their line manager as part of day-to-day management and the performance management process. As per the Performance Management Policy, where appropriate, a note of any such informal discussions may be placed on the employee's personnel file. The formal capability 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 to:

- 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.

If the Trust/school has serious concerns about an employee's performance, the Trust/school will undertake an assessment to decide whether there are grounds for taking formal action under this procedure. The steps involved will

depend on the circumstances but may include reviewing the employee's personnel file including any job description and appraisal records, gathering any relevant documents, monitoring work, and meeting the employee to discuss their work.

The Trust/school may decide to proceed straight to Stage 3 of this process where the evidence suggests that the employee may have been grossly negligent such as to potentially warrant dismissal without the need for a final written warning.

## **7. Notification of a Capability Hearing**

If the Trust/school considers that there are grounds for taking formal action in relation to alleged poor performance, the employee will be required to attend a capability hearing. The employee will be notified in writing of the decision to initiate the formal capability procedure and confirm:

- the nature of the performance concerns;
- the purpose of the hearing and who will decide the outcome;
- the time, date and location of the capability hearing;
- the employee's right to be accompanied at the hearing;
- copies of any supporting evidence or relevant documents that will be used at the capability hearing;
- the stage of the capability procedure that has been reached;
- the likely outcome if the Trust decides after the hearing that performance has been unsatisfactory.

The hearing will be held as soon as reasonably practicable, but the employee will be given a reasonable amount of time, of at least five working days, to consider the information provided and prepare for the hearing.

## **8. Procedure at Capability Hearings**

The employee must make every effort to attend the hearing, and failure to attend without good reason may be treated as misconduct. If the employee fails to attend without good reason, or is persistently unable to attend the Trust/school may make decisions based on the available evidence including any written representations made by the employee. The Trust understands that this procedure may cause employees some stress and anxiety and will endeavour to provide appropriate support; however an indefinite or lengthy delay is likely to prolong the uncertainty and is therefore unlikely to be in the best interests of employees, pupils, the school or the Trust.

If long term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the case will be dealt with in accordance with the Trust absence policy and the employee will be referred immediately to the occupational health service to assess the employee's health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence. The view of the Occupation Health practitioner will be taken into account before any decision is made.

The hearing will normally be held by the Headteacher or the CEO of the Trust or a Senior Executive of the Trust and may also be attended by the Head of HR and/or a note taker. A Stage 3 hearing must be held by the CEO of the Trust.

The aims of a capability hearing will usually include:

Setting out the required standards that the Trust/school believes the employee may have failed to meet, and going through any relevant evidence that has been gathered;

- Allowing the employee to ask questions, present evidence, respond to evidence and make representations;
- Establishing the likely causes of poor performance including any reasons why previous actions have not led to the required improvement;
- Identifying whether there are further measures, such as additional training or supervision, which may improve performance;
- Discussing targets for improvement and a time-scale for review;
- If dismissal is a possibility, establishing whether there is any likelihood of a significant improvement being made within a reasonable time and whether there is any practical alternative to dismissal, such as redeployment.

A hearing may be adjourned if the Trust/school needs to gather any further information or give consideration to matters discussed at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

The employee will be informed in writing of the Trust/school's decision and the reasons for it, usually within one week of the capability hearing. Where possible this will also be explained to the employee in person.

## 9. Outcome of Stage 1 Hearing

If the specific performance concerns are not upheld, or if the decision maker feels that informal action or support is appropriate in the particular circumstance, the employee will be informed in writing that no further action will be taken.

If it is decided following a Stage 1 capability hearing that the employee's performance is unsatisfactory, the employee will receive a first written warning, setting out:

- The areas in which the employee has not met the required performance standards
- Clear targets for improvement through an action plan and a period for review
- Any supportive measures, such as additional training or supervision, which will be implemented with a view to improving performance
- The consequences of failing to improve within the review period, or of further unsatisfactory performance
- The employee's right of appeal and how this can be exercised

The warning will normally remain active for six months from the end of the review period. Whilst the warning is active, the capability process can be resumed at the same stage if the employee's performance declines. After the active period the warning will remain permanently on the employee's personnel file but will be disregarded in relation to future capability proceedings.

The timescale for the review period will depend on the nature and severity of the concerns and other relevant circumstances of the case. During the review period informal meetings will be held between the employee and the line manager to discuss progress and offer further support.

The Trust reserves the right to suspend an employee's additional payment allowance until such time that the Trust/school is satisfied that the employee's performance has improved to an acceptance standard.

The employee's performance will be monitored during the review period and they will be informed in writing of the outcome:

- If the line manager is satisfied with the employee's performance, no further action will be taken other than to inform the employee in writing that they have demonstrated the necessary improvement, and to remind them that the capability process may be resumed if their performance declines whilst the written warning is active
- If the line manager is not satisfied, the employee will be invited to a Stage 2 capability hearing as set out below
- If the manager feels that there has been a substantial but insufficient improvement, the review period may be extended

## 10. Stage 2 Hearing and Outcome

If the employee's performance does not improve within the review period set out in a first written warning, or if there is further evidence of poor performance while the first written warning is still active, the employee will be invited to a Stage 2 capability hearing as set out under the Notification of a Capability Hearing and Procedure at Capability Hearings sections of this policy.

If it is decided following a Stage 2 capability hearing that the employee's performance is unsatisfactory, the employee will receive a final written warning, setting out:

- The areas in which the employee has not met the required performance standards
- Clear targets for improvement through a further action plan and a period for review
- Any supportive measures, such as additional training or supervision, which will be implemented with a view to improving performance
- The consequences of failing to improve within the review period, or of further unsatisfactory performance
- The employee's right of appeal and how this can be exercised

A final written warning will normally remain active for 12 months from the end of the review period. Whilst the warning is active, the capability process can be resumed at the same stage if the employee's performance declines. After the active period, the warning will remain permanently on the employee's personnel file but will be disregarded in relation to future capability proceedings.

The timescale for the review period will depend on the nature and severity of the concerns and other relevant circumstances of the case. During the review period informal meetings will be held between the employee and the line manager to discuss progress and offer further support.

The employee's performance will be monitored during the review period and they will be informed in writing of the outcome:

- If the line manager is satisfied with the employee's performance, no further action will be taken other than to inform the employee in writing that they have demonstrated the necessary improvement, and to remind them that the capability process may be resumed if their performance declines whilst the written warning is active
- If the line manager is not satisfied, the employee will be invited to a Stage 3 capability hearing as set out below
- If the manager feels that there has been a substantial but insufficient improvement, the review period may be extended

## 11. Stage 3 Hearing and Outcome

The Trust may decide to hold a Stage 3 capability hearing if it has reason to believe that:

- The employee's performance has not improved sufficiently within the review period set out in a final written warning
- The employee's performance is unsatisfactory while a final written warning is still active
- The employee's performance has been grossly negligent such as to potentially warrant dismissal without the need for a final written warning

The employee will receive written notification of the hearing as set out under the Notification of a Capability Hearing and Procedure at Capability Hearings sections of this policy.

If it is decided at or following the Stage 3 hearing that the employee's performance is unsatisfactory, the potential outcomes are as follows:

- Dismissal
- Redeployment into a suitable available job at the same or a lower grade
- Extending an active final written warning and setting a further review period (in exceptional cases where there is reason to believe that a substantial improvement is likely within the review period)
- Final written warning (where no final written warning is currently active)

In addition to the above outcomes, the Trust also reserves the right to permanently remove an employee's additional payment allowance as an outcome to a Stage 3 capability hearing.

The outcome of the hearing will be communicated to the employee in writing without unreasonable delay and usually within 5 working days, giving full reasons for the decision and information about the right of appeal.

Employees will not normally be dismissed for performance reasons without previous warnings. However, in serious cases of gross negligence, or in any case involving a recently appointed employee who has not yet completed their probationary period, dismissal without previous warnings may be appropriate.

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 negligence, in which case the employee may be dismissed without notice or any pay in lieu.

## 12. Right of Appeal

All employees have the right to lodge an appeal in respect of any formal action taken against them.

If an employee wishes to exercise this right of appeal, they should write in the first instance to the Trust Board via the Trust Clerk within 10 working days of the decision they are complaining against, setting out the grounds and basis for the appeal.

Capability appeals will usually be conducted and determined by a Senior Executive of the Trust with no previous involvement in the matter for a written warning or a panel of three members of the Trust Board for a dismissal decision

The employee will receive written notice of the date, time and place of the appeal hearing which will normally be held within ten working days of the notice of appeal. The employee has the right to be accompanied by a work colleague or an accredited trade union official at any disciplinary appeal meeting.

The appeal hearing will be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light. The employee will be given a full and fair opportunity to put forward his or her grounds for appeal together with any supporting evidence.

The hearing may be adjourned if the Trust needs to gather any further information or give consideration to matters discussed at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

The outcome of the appeal hearing may be to:

- Confirm the original decision
- Revoke the original decision
- Substitute a different penalty

If an employee appeals against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the appeal is successful the employee will be reinstated with no loss of continuity or pay.

The appeal hearing will be minuted by a note taker and the employee will be supplied with a copy of the minutes as soon as is reasonably practicable after the hearing.

The employee will be notified of the result of the appeal in writing without unreasonable delay.

The appeal decision is the final stage of the Trust's capability appeal procedure.