



Capability Procedure

Version: 2

Date: 01/02/2024

Document Control

thesovereigntrust.uk

The Sovereign Trust is a Multi Academy Trust registered in England No. 09666511. Registered Office: Manor Academy Sale, Manor Avenue, Sale M33 5JX



Document Control

Title	Capability Procedure
Supersedes	1.0
Owner	Lisa-Marie Flynn
Circulation/Distribution	All Staff
Review Period	Annually

Version History

Next Review Date		01/02/2025		
Version	Date	Amendments	Author	Status
0.1 to 0.4	Oct 2021 to Oct 2022	Initial Draft – Reviewed by the HR Team & the Trust Board. Consultation Process – Draft shared with the working group consisting of Senior Leaders, HR, and the Trade Unions.	Lisa-Marie McGrath	Consulted & Reviewed, and implemented agreed points
1.0	01/12/2022	Final Draft – Approved by the CEO and The Trust Board	Lisa-Marie McGrath	Approved
2.0	01/02/2024	N/A	Lisa-Marie Flynn	Approved

Capability Procedure

1. ABOUT THIS PROCEDURE

- 1.1 The primary aim of this procedure is to provide a framework within which the Line Manager/ a member of the Senior Leadership Team can work with employees to maintain satisfactory performance standards and encourage improvement where necessary.
- 1.2 Our policy ensures that concerns over performance are dealt with fairly and that steps are taken to establish the facts and allow employees to respond at a hearing before any formal action is taken.
- 1.3 This policy does not apply to cases involving genuine sickness absence, proposed redundancies or misconduct. In those cases, reference should be made to the appropriate policy or procedure in the Staff Handbook.
- 1.4 This procedure applies to all employees regardless of the length of service. However, we may depart from this procedure where we consider it appropriate and where an informal period of support has been implemented and monitored by the Line Manager/SLT. Please refer to the Trust's Disciplinary Procedure (including but not limited to during an employee's probationary period or at any point during an employee's first two years of service). In addition, it does not apply to agency workers or self-employed contractors.

2. IDENTIFYING PERFORMANCE ISSUES

- 2.1 In the first instance, performance issues should normally be dealt with informally between you and your Line manager member of the Senior Leadership Team (SLT). Where appropriate, a note of any such informal discussions that may be placed on your personnel file will be considered for any future capability hearings. The formal 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:

- 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 within 3 months

- 2.2 Employees will not normally be dismissed for performance reasons without previous warnings. However, in serious cases of gross negligence, or in any case involving an employee who has not yet completed their probationary period (3 months) or during an employee's first two years of service, dismissal without previous warnings may be appropriate.

2.3 If we have concerns about your performance, we will assess to decide if there are grounds for taking formal action under this procedure. The procedure involved will depend on the circumstances but may involve reviewing your personnel file, including any appraisal records, gathering any relevant documents, monitoring your work, and, if appropriate, interviewing you and/or other individuals confidentially regarding your work.

3. DISABILITIES

3.1 Consideration may 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 your working arrangements, including changing your duties or providing additional equipment or training. We may also consider making adjustments to this procedure in appropriate cases.

3.2 If you wish to discuss this or inform us of any medical condition you consider relevant, you should contact your Line Manager/SLT or a member of the HR Department.

4. CONFIDENTIALITY

4.1 We aim to deal with performance matters sensitively and with due respect for the privacy of any individuals involved.

4.2 You, and anyone accompanying you (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure.

4.3 Where possible, you will be told the names of witnesses whose evidence is relevant to your capability hearing unless we believe that a witness's identity should remain confidential.

5. NOTIFICATION OF A CAPABILITY HEARING

5.1 If we consider grounds for taking formal action over alleged poor performance, you will be required to attend a capability hearing. We will notify you in writing of our concerns over your performance, the reasons for those concerns, and the likely outcome if we decide that your performance has been unsatisfactory after the hearing. We will also include the following where appropriate:

- A summary of relevant information is gathered as part of any investigation.
- A copy of any relevant documents will be used at the capability hearing.
- A copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case we will give you as much information as possible while maintaining confidentiality.

5.2 We will give you written notice of the capability hearing's date, time, and place. The hearing will be held as soon as reasonably practicable, but you will be given a reasonable amount of ten days to prepare your case based on the information we have given you.

6. RIGHT TO BE ACCOMPANIED AT HEARINGS

6.1 You may bring a companion to any capability hearing or appeal hearing under this procedure. The companion may be either a trade union representative or a colleague. You must tell the Line Manager/Senior Leadership Team conducting the hearing who your chosen companion is in good time before the hearing.

6.2 A companion is allowed reasonable time off from duties without loss of pay, but no one is obliged to act as a companion if they do not wish to do so.

6.3 If your companion is unavailable when a hearing is scheduled, the Trust will work with you and your companion to identify a suitable, whilst ensuring that the process is not drawn out needlessly ;

6.4 We may, at our discretion, allow you to bring a companion who is not a colleague or union representative (for example, a member of your family) where this will help overcome a particular difficulty caused by a disability or where you have difficulty understanding English.

7. PROCEDURE AT CAPABILITY HEARINGS

7.1 If you or your companion cannot attend the hearing, you should inform us immediately, and we will arrange an alternative time. You must make every effort to attend the hearing; failure to attend without good reason may be considered misconduct. If you fail to attend without good reason or are persistently unable to do so (for example, for health reasons), we may have to decide based on the available evidence, including any written representations you have made.

7.2 The hearing will normally be held by your Line Manager/SLT and will normally be attended by a member of the HR department. You may bring a companion with you to the hearing (see paragraph 6). Your companion may make representations, ask questions, and sum up your case but will not be allowed to answer questions on your behalf. You may confer privately with your companion at any time during the hearing.

7.3 You may ask relevant witnesses to appear at the hearing, provided you give us sufficient advance notice to arrange their attendance. In addition, you will be allowed to respond to any information given by a witness.

7.4 The aims of a capability hearing will include:

- Setting out the required standards that we believe you may have failed to meet and going through any relevant evidence gathered.

- Allowing you to ask questions, present evidence, call witnesses, respond to evidence and make representations.
- Establishing the likely causes of poor performance, including any reasons why any measures taken so far have not led to the necessary improvement.
- Identifying whether there are further measures, such as additional training or supervision, may improve performance.
- Where appropriate, discuss targets for improvement and a time scale for review.
- If dismissal is a possibility, establish 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.

7.5 A hearing may be adjourned if we need to gather any further information or consider matters discussed at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

7.6 We will inform you in writing of our decision and our reasons for it within one week of the capability hearing. Where possible, we will also explain this information to you in person.

8. STAGE 1 HEARING: FIRST WRITTEN WARNING

8.1 Following a Stage 1 capability hearing, if we decide that your performance is unsatisfactory, we will give you a first written warning, setting out:

- The areas in which you have not met the required performance standards.
- Targets for improvement.
- Any measures, such as additional training or supervision, will be taken to improve performance.
- A period for review.
- The consequences of failing to improve within the review period or further unsatisfactory performance.

8.2 An Executive Head/Heads/SLT may author a first written warning.

8.3 The warning will normally remain active for six months from the end of the review period. After the active period, the warning will be expunged from your HR file.

8.4 Your performance will be monitored during the review period, and we will write to inform you of the outcome:

- if your Line Manager/SLT is satisfied with your performance, no further action will be taken;
- if your Line Manager/SLT is not satisfied, the matter may be progressed to a Stage 2 capability hearing; or
- if the Line Manager/SLT feels there has been a substantial but insufficient improvement, the review period may be extended.

9. STAGE 2 HEARING: FINAL WRITTEN WARNING

9.1 If your performance does not improve within the review period set out in a first written warning or further evidence of poor performance while your first written warning is still active, we may decide to hold a Stage 2 capability hearing. We will send you a written notification as set out in paragraph 5.

9.2 Following a Stage 2 capability hearing, if we decide that your performance is unsatisfactory, we will give you a final written warning, setting out:

- the areas in which you have not met the required performance standards;
- targets for improvement;
- any measures, such as additional training or supervision, which will be taken to improve performance;
- a period for review; and
- the consequences of failing to improve within the review period or further unsatisfactory performance.

9.3 An Executive Head/Heads/SLT may author a final written warning.

9.4 A final written warning will normally remain active for 12 months from the end of the review period. After the active period, the warning will be expunged from your HR file.

9.5 Your performance will be monitored during the review period, and we will write to inform you of the outcome:

- if your Line Manager/SLT is satisfied with your performance, no further action will be taken;
- if your Line Manager/SLT is not satisfied, the matter may be progressed to a Stage 3 capability hearing; or

- if the Line Manager/SLT feels there has been a substantial but insufficient improvement, the review period may be extended.

10. STAGE 3 HEARING: DISMISSAL OR REDEPLOYMENT

10.1 We may decide to hold a Stage 3 capability hearing if we have reason to believe:

- your performance has not improved sufficiently within the review period set out in a final written warning;
- your performance is unsatisfactory while a final written warning is still active; or
- your performance has been grossly negligent, such as to warrant dismissal without the need for a final written warning.

We will send you a written notification of the hearing as set out in paragraph 5.

10.2 Following the hearing, if we find that your performance is unsatisfactory, we may consider a range of options, including:

- Dismissing you.
- Redeploying you into another suitable job at the same or if your contract permits a lower grade.
- Extending an active final written warning and setting a further review period (in exceptional cases where we believe a substantial improvement is likely within the review period).
- Giving a final written warning (where no final written warning is currently active).

10.3 The decision may be authorised by the Chief Executive Officer or the Board of Directors.

10.4 Dismissal will normally be with full notice or payment in lieu of notice unless your performance has been so negligent as to amount to gross misconduct, in which case we may dismiss you without notice or any pay in lieu.

11. APPEALS AGAINST ACTION FOR POOR PERFORMANCE

11.1 If you feel that a decision about poor performance under this procedure is wrong or unjust, you should appeal in writing, stating your full grounds of appeal, to the Trust's HR Manager within ten days of the date on which you were informed in writing of the decision.

11.2 If you are appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the appeal outcome. However, if your appeal is successful, you will be reinstated with no loss of continuity or pay.

- 11.3 If you raise any new matters in your appeal, we may need further investigation. If any new information comes to light, we will provide you with a summary, including, where appropriate, copies of additional relevant documents and witness statements. You will have a reasonable opportunity to consider this information before the hearing.
- 11.4 We will give you written notice of the appeal hearing's date, time, and place. This will normally be five days after you receive the written notice.
- 11.5 The appeal hearing may be a complete re-hearing of the matter, or it may 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. This will be at our discretion, depending on the circumstances of your case. The appeal will be dealt with as impartially as possible in any event.
- 11.6 The appeal hearing will be conducted by the Board of Directors, who have not been previously involved in the case. A member of the HR Department and/or the Line Manager/SLT who conducted the capability hearing will also be present. You may bring a companion with you to the appeal hearing (see paragraph 6).
- 11.7 A hearing may be adjourned if we need to gather any further information or consider matters discussed at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.
- 11.8 Following the appeal hearing, we may:
- confirm the original decision;
 - revoke the original decision; or
 - substitute a different penalty.
- 11.9 We will inform you in writing of our final decision as soon as possible, within one week of the appeal hearing. Where possible, we will also explain this to you in person. There will be no further right of appeal.