



## **Lincoln Christ's Hospital School**

### **Capability Policy and Procedure**

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## **Introduction**

Lincoln Christ's Hospital School has a duty to provide a policy that addresses the competency of all the staff within the school. This should be done in a supportive way, giving the employee every opportunity to improve their performance and to be able to demonstrate that improvement. This policy should be used in conjunction with the appropriate Performance Management Policy (Teaching or Support Staff).

## **Roles and Responsibilities**

### **Governors**

Adopting the policy, adapting for local circumstances and monitoring its use.  
Forming and serving on an Appeals Committee.

### **Headteacher**

Managerial responsibility for the implementation of the policy and being accountable for its implementation and delivery.

### **Senior Leadership Team**

To be familiar with the policy. They will promote and monitor the policy actively through their teams and through their work planning process, delivery, employment practices and employee development.

### **Staff**

All employees will have access to, understand and implement this policy through their work and actions, supported by team discussions and training.

### **HR Providers**

Provide advice on the application of the policy and offer support for the Headteacher and Governors.

## **Managing the Process**

All staff with any supervisory responsibilities should ensure that employees understand the standards of work that are expected of them and the need to identify as soon as possible any potential problems.

With appropriate support and training most issues can be dealt with using the Performance Management process or line-management meetings.

An employee should be given full opportunity to respond to any issues raised and to explain if anything is affecting his/her performance at work. All circumstances should be taken into account before proceeding further.

The employee should be supported to improve or resolve the situation as soon as it becomes apparent. This may be done purely through counselling discussion, with the objective of encouragement and help.

Where a programme of additional support is being considered the following suggestions may be of help:

- in-service training
- work observation by a suitably experienced person (either from the school or external)
- modified timetable or workload for a specified period
- assistance with planning and work content
- work-sharing with a more experienced person
- regular meetings with a mentor within the school.

The above is not exhaustive and will apply to both teaching and support staff as appropriate.

The Headteacher will need to decide if the matter is a capability one, (where the employee is unable to carry out their duties/responsibilities), or one of conduct (where the employee is capable of carrying out these duties but for some reason has chosen not to do so).

Where targets for improvement are set they should be clearly defined with appropriate timescales. They should be revised as necessary and where possible agreed between the two parties. Targets should be SMART, i.e. Specific, Measurable, Attainable, Reasonable and Time-limited.

Meetings between Headteacher/managers and employees are strictly confidential to those attending and should normally be held within the employee's normal working hours.

The complete history and background of a capability case may be requested at an appeal hearing or at an Employment Tribunal. It is therefore essential that comprehensive records are made of any level of capability action. The note taker will be either the Schools Clerk to Governors or an appropriate member of the administration team. These notes will not be verbatim.

Full records of discussions, including targets and timescales set, must be kept and shared with the individual concerned.

Where satisfactory improvement has been made the decision will remain 'live' for a period of up to one year. If, subsequently, there is deterioration in performance the Headteacher/manager can return to that point in the procedure within the agreed timescale.

## **Sickness Absence During the Procedure**

If long term sickness absence appears to have been triggered by the commencement of monitoring or a formal capability procedure, the employee will be referred to the occupational health service to assess the appropriateness or otherwise of continuing with monitoring or formal procedures. In some cases it may be appropriate for formal procedures to continue during a period of sickness absence. However, the views of the occupational health physician will always be taken into account before a decision is reached.

## **Conditions of Service**

Conditions of Service are not affected by the application of the Capability Procedures although consideration should be given as to whether an employee should progress up the pay spine when their capability is in question. The conditions of service for both teaching and support staff allow for the withholding of increments where service has been unsatisfactory. It is strongly advised, however, that this is not considered until the individual is at the second stage of the procedure.

## **Employee Representation**

During each stage of the procedure an employee is entitled to be accompanied by a work colleague, recognised trade union representative, or a recognised trade union officer.

If an employee's representative is unavailable to attend the meeting at the time specified by the school but proposes an alternative time and date, then the Headteacher/Governors should consider postponing the meeting until the later date provided that the latter is within 5 working days of the original. If this is not practicable then the Headteacher/Governors should arrange a suitable alternative. Meetings or appeal hearings will not normally be held during periods of school closure.

## **Role of Governors**

Governors should not normally be involved with the capability procedure before an appeal hearing following the dismissal of an individual. Where it is the Head Teacher's capability that is in question the Chair of Governors or other appropriate Governor will assume the role of the manager.

Governing bodies need to ensure that they have a properly established capability appeal committee, the members of which are untainted by earlier proceedings. It is advised that the committee would not normally include staff governors.

The Chair of Governors should be kept informed of the progress of any case but not be given the details in case he/she is involved later at the appeal stage.

Where dismissal is being considered the decision will normally be taken by the Head Teacher unless certain circumstances apply. See Appendix.

## **Links**

Performance Management Policy

Disciplinary Policy

Grievance Policy

## **Further Advice**

HR Provider

## **Appendix 1**

### **SCHOOLS' MODEL CAPABILITY PROCEDURE**

#### **Introduction**

A work performance/capability issue may arise when an employee is failing, in a significant or persistent way, to carry out their responsibilities or duties in a satisfactory manner. This may be due to a lack of professional insight, an inability to cope with reasonable workloads or not being able to meet identified standards. Alternatively it may be due to an inability to prioritise work, a lack of aptitude for the work itself, inadequate training or a difficulty in adapting to change in the workplace (i.e. new technology).

Where an employee may be under-performing the Headteacher or other line manager will have identified this through the Performance Management process and ongoing supervision. In circumstances where the Headteacher's capability is in question the Chair of Governors must make arrangements for this to be done in consultation with the Local Authority.

#### **Objectives**

The objective of this procedure is to:

- Contribute towards the improvement of the performance and effectiveness of the school
- Ensure that the school is a fair employer, meeting all relevant legal requirements regarding any capability related decisions it may take in relation to any employee
- Support Headteachers/managers in carrying out their responsibilities for the maintenance of high standards of work performance by all employees
- Ensure that all employees are treated in a fair, consistent and understanding manner in relation to capability issues
- Improve the standard of work performance of an individual employee, wherever necessary and practicable
- Help protect the school, its employees and service users from the consequences of poor work performance.

#### **Records**

A copy of the discussion note and letter to the employee should be kept by the Headteacher/manager and placed in the employee's "supervision" file. Only letters relating to the formal procedure should be on the employee's personal file and should be removed when the cases are no longer "live".

#### **Serious Incapability**

In exceptional cases where one performance error or defect has serious consequences (i.e. if it results in the serious jeopardy of the health and safety of pupils or other employees) the principles/procedure in this policy will not apply. Instead the principles/procedure for gross misconduct as outlined in the Disciplinary Policy should be followed. This should include a full investigation.

### **Initial Stage**

Initial identification of an employee's apparent poor performance should be raised at normal regular supervision or Performance Management meetings in accordance with the School's Performance Management Policy. It is expected that the majority of performance-related issues will be resolved promptly and informally using this procedure.

If the outcome of that procedure is that unsatisfactory improvement has been made then the employee will be informed that they will proceed to the first formal stage of the Capability Procedure.

### **First Formal Stage**

The first step in the formal process is a Formal Capability Meeting. A sample letter (letter 1) is attached

The employee will be sent a copy of the Capability Procedure.

The employee may be accompanied by a work colleague, recognised trade union representative, or a recognised trade union officer.

The Headteacher/manager may also be accompanied by their HR provider or other person offering management support as appropriate.

If following the Performance Management procedure there is unsatisfactory improvement then formal targets will be discussed at the First Formal Meeting (or a further meeting if appropriate) and a date will be set for review allowing at least 4 working weeks. Support and training will again be agreed and provided as appropriate and will be confirmed in writing by the Head Teacher/manager.

Following this period the employee will be reminded of the review date with at least 5 school days' notice (see sample letter 2). Again both parties may be accompanied as appropriate.

### Review

At the review there will be three possible outcomes:

1. satisfactory review and no further action required
2. significant improvement made but extension of review period required
3. unsatisfactory review and progression to the second formal stage.

Where previous meetings have been held by a manager, it is important that the Headteacher attends this meeting if prior to the review it is felt that satisfactory improvement has not been made and that progression to the second stage is a likely outcome.

Where the Headteacher decides to progress to the second stage he/she will inform the Chair of Governors before issuing the letter to the individual confirming the decision (see sample letter 3). In very serious cases the Headteacher may consider progressing immediately to the third formal stage.

The decision will remain 'live' for a set period of time and therefore if satisfactory improvement proves to be of only a temporary nature then the Headteacher has the option of returning immediately to this point in the procedure.

Attached to the letter will be the targets that are to be met as discussed in the review meeting (or further meeting if appropriate), the level of support that will be provided and the timescale in which improvement needs to be achieved. This needs to be a period of at least 4 working weeks. A date for review will also be included.

### **Second Formal Stage**

The second formal stage will commence at the review meeting.

Again, there will be three possible outcomes:

1. satisfactory review and no further action required
2. significant improvement made but extension of review period required
3. unsatisfactory review and progression to the third formal stage.

Where the Headteacher decides to progress to the third formal stage he/she will inform the Chair of Governors before issuing the letter confirming the decision (see sample letter 3).

The letter will include specific targets and the level of support that will be provided and will state that, if targets are not met, there is the possibility of dismissal. A date for review will be set with a minimum period of 4 weeks.

### **Third Formal Stage\***

The third formal stage will commence at the review meeting.

Again, there will be three possible outcomes:

1. satisfactory review and no further action required
2. significant improvement made but extension of review period required
3. dismissal on the grounds of capability.

If the decision is one of dismissal it will be communicated to the employee orally immediately after it has been reached and will then be confirmed in writing. The letter confirming the initial dismissal decision will inform the employee that he/she can appeal against the decision to a committee of the Governors.

Any dismissal must give the appropriate period of notice required by the employee's terms and conditions of employment. However, there are alternatives to placing the employee back into their place of work to serve out their period of notice and these should be explored with the assistance of the School's HR provider.

Following any initial dismissal determination, notification of the termination of the contract will be issued by the school. If a subsequent appeal reverses the dismissal decision the termination notice will be rescinded. See sample letter 4.



The employee will be given ten working days from the announcement of the decision to lodge an appeal with the Clerk to the Governors. The letter from the employee **must** set out the basis for any appeal (see i to iii below). The employee will be given a least one working weeks' notice of the date of an appeal hearing.

The appeal process will consider dismissal decisions on one or more of the following grounds:

- i. The procedure: the procedure was not followed
- ii. The decision: the conclusions of the Headteacher/Disciplinary Committee were unreasonable
- iii. There is relevant new evidence.

***\* If alternative arrangements have been made (see appendix 5) then the review meeting will be replaced by a formal capability hearing before a committee of governors with the procedure the same as that of an Appeal Hearing. The employee will still have the right of appeal to the Capability Appeal Committee.***

### **Capability Appeal Meeting**

The Capability Appeal Committee must be a properly constituted committee of Governors. Members of the committee will be untainted by earlier proceedings. The committee will normally be made up of three Governors, one of whom will be nominated as Chair.

The committee will be advised by a HR provider on matters of procedure. The HR provider will also be able to participate in the meeting but the decision regarding the action to be taken will be made by the committee members only although the HR provider will be present throughout their deliberations in an advisory capacity.

The committee will have the option of two courses of action:

1. to uphold the decision of the Headteacher  
or
2. to refer the matter back to the Headteacher for further action and may include specific recommendations made by the committee.

## **Appendix 2 Sample Letters**

### ***Sample Letter 1 sent by Headteacher/Manager to the employee.***

Dear \_\_\_\_\_

#### **FORMAL CAPABILITY MEETING**

I am writing to inform you that I have concerns in respect of your capability as \_(job title)\_\_\_\_\_ at this school. This follows the processes we have undertaken in relation to your Performance Management and on-going supervision.

In order to address these concerns I am writing to invite you to a meeting at \_\_\_\_\_(time) on\_\_\_\_\_ (date) to be held in\_\_\_\_\_ (place). Also present at the meeting will be \_\_\_\_\_

The aim of the meeting is to discuss my concerns and to agree with you a plan of action in order for you to achieve the required standard of performance. This will include an appropriate timescale with a future date for review.

You may be accompanied to the meeting by a work colleague, recognised trade union representative, or a recognised trade union officer

This will be a first formal meeting under the School's Capability Policy with the intention of finding a constructive way forward. I enclose a copy of the School's Capability Procedure.

Yours sincerely

Headteacher

***Sample letter 2 sent by the Headteacher to the employee***

Dear \_\_\_\_\_

**FORMAL CAPABILITY MEETING**

Following the period of monitoring your capability I am writing to invite you to a formal meeting at \_\_\_\_\_ (time) on \_\_\_\_\_ (date) in \_\_\_\_\_(place). Also present at the meeting will be \_\_\_\_\_

At the meeting a review will take place regarding the targets that have been set and I need to inform you that during the course of the meeting I may consider moving the matter into the second/third formal stage of the procedure.

You may be accompanied to the meeting by a work colleague, recognised trade union representative, or a recognised trade union officer

Yours sincerely

Headteacher

**Sample letter 3 sent by Headteacher to the employee**

Dear \_\_\_\_\_

**CAPABILITY ISSUE –SECOND/FINAL REVIEW (delete as appropriate)**

Following the formal meeting held on \_\_\_\_\_(date) attended by \_\_\_\_\_(names) I am writing to confirm my decision to progress to the second/final (delete as appropriate) formal stage of the procedure and to inform you that your capability as \_\_\_\_\_ at this school must improve to an acceptable and sustained standard.

I need to point out that failure to improve may result in your dismissal from this school. (Insert if progressing to final stage).

Please find attached the targets that have been set in order for you to improve including the timescale for this and support that will be provided.

Yours sincerely

Headteacher

***Sample letter 4 sent by the Headteacher to the employee following dismissal decision– Foundation, voluntary aided and foundation special schools.***

Dear \_\_\_\_\_

**CAPABILITY ISSUE – FINAL REVIEW  
TERMINATION OF YOUR EMPLOYMENT**

Following your final review I am writing that my decision is to dismiss you on the grounds of your lack of capability as \_\_\_\_\_ at this school.

Therefore, I am writing to terminate your appointment as \_\_\_\_\_ on \_\_\_\_\_ on the grounds of capability. This date provides you with the appropriate period of notice in accordance with your terms and conditions of employment and the requirements of employment legislation.

You have the right to appeal against this decision to a committee of governors and if you wish to exercise this right you should do so in writing, setting out your grounds of appeal to the Clerk to the Governors within 10 working days of the announcement of the decision. The appropriate arrangements will then be made for a hearing before governors.

Yours sincerely

Headteacher

## **Appendix 3**

### **Capability Appeal Committee Meeting Procedure**

1. Headteacher (or representative), employee and representative enter together.
2. Chair of the Committee describes the procedure. Any procedural questions are resolved at this point.
3. Employee or representative makes statement (witnesses may be called).
4. Headteacher questions employee/representative (and witnesses) on statement(s).
5. Members of the Committee and HR Adviser question employee and/or representative (and witnesses) on statement(s).
6. Headteacher makes statement in respect of the concerns about the employee's capability and the procedure that has been followed (witnesses may be called).
7. Employee and representative question Headteacher (and witnesses) on statement(s).
8. Members of the Committee and HR Adviser question Headteacher (and witnesses) on statement(s).
9. Employee or representative summarises and concludes.
10. Headteacher summarises and concludes.
11. Headteacher, employee and representative withdraw whilst the Committee, advised by the HR Adviser, considers the appeal.
12. Headteacher, employee and representative return and decision of the Committee is announced.

## Appendix 4

### CAPABILITY PROCEDURE FLOW CHART

#### Performance Management stage

Concerns raised by Headteacher/manager



Targets agreed and support provided



Review period set (up to one term)



Review of performance against targets



#### First formal stage

If no improvement, set targets and provide support



Review period set (at least 4 weeks)



Review of performance against targets



If insufficient improvement progress to second formal stage



#### Second formal stage

Re-set targets and provide support



Review period set (at least 4 weeks)



Review of performance against targets



If insufficient improvement progress to third formal stage



#### Third formal stage

Review of performance against targets



If insufficient improvement, dismissal from the school.



#### Capability Appeal hearing



Initial dismissal decision upheld or notice rescinded

## **Appendix 5**

### **CAPABILITY PROCEDURE - ALTERNATIVE ARRANGEMENTS**

The Headteacher will normally be expected to lead in determining staff dismissals including those where the reason is capability.

The Capability Procedure therefore delegates this responsibility to the Headteacher although in certain circumstances in accordance with the provisions of the Education Act 2003 the Governing Body should apply alternative arrangements if the process reaches the potential dismissal stage.

These arrangements may include decisions being taken by an individual governor or a group of governors with or without the Headteacher. Regardless of the approach adopted the Headteacher has the right to attend to offer advice.

The circumstances are as follows:

- A Headteacher who is unwilling to perform these functions and whose previous history of service at the school did not include any such responsibilities
- A Headteacher subject to suspension, disciplinary procedures (including capability), or disciplinary action
- Where the Local Authority has made representations to the Chair of the Governing Body on grounds of serious concerns about the performance of the Headteacher
- Where the Headteacher has failed to abide by financial limits agreed by the Governing Body for any school purpose
- Where the Governing Body of a faith school has agreed staffing policies, which provide for governor involvement in the interests of preserving the school's religious character.

Where any of the above circumstances apply schools are strongly advised to consult their HR provider.