



# London Design & Engineering UTC

## Staff Capability Policy

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## Version Control Table

Version	Date	Amended by	Rationale
1.0	11/10/2018		Version approved by Directors
1.1	20/10/2019	Ema Mendes Martin	Policy updated following scheduled review
2.0	26/11/2020		Version approved by the Committee

**Guidance on version Control:**

*The above is an example of how to complete the Version control table.*

*Versions are 0.1, 0.2 etc until such point as the document is approved. Then it becomes version 1.0.*

*Subsequent edited versions become 1.1, 1.2, or if it's a major update, 2.0. Do not worry about the numbers going up and up its about getting the policy right – it's all fine.*

# STAFF CAPABILITY POLICY

## Policy Coverage

THE POLICY APPLIES OR COVERS THE FOLLOWING GROUPS			
Type of Learner	Tick (✓)	Type of Stakeholder	Tick (✓)
Key Stage 3 (KS3) Carousel		Teaching Staff	✓
Key Stage 4 (KS4) GCSE		Education Support Staff	✓
Key Stage 5 (KS5) Level 2		Administrative Support Staff	✓
Key Stage 5 (KS5) Level 3		Directors	
Key Stage 5 (KS5) A Levels		Employers	
Apprentices		Visitors / Contractors	

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## 1. Policy Aims

The aim of our capability of staff policy is to set out a clear and consistent process for when any member of staff falls below the levels of competence expected of them, as set out in the relevant professional standards, job descriptions and overall performance expectations. The formal capability procedures will only be instigated when there are serious concerns about an employee's performance that informal guidance and support have been unable to address. Concerns over performance will be dealt with fairly and employees will be given the opportunity to respond at a hearing before any formal action is taken.

This procedure applies to all employees apart from recently appointed employees who have not yet successfully completed a probationary period and, with the exception of particularly serious cases, Newly Qualified Teachers who have separate support and assessment arrangements in place during their induction year.

This procedure does not form part of any employee's contract of employment and it may be amended at any time. Employees will be informed when the policy is updated. The UTC reserves the right not to follow this procedure where an employee has less than 2 years' continuous service.

## 2. Legislation and Guidance

This policy is based on:

[The School Staffing \(England\) Regulations 2009](#) (regulation 8)

[The School Staffing \(England\) \(Amendment\) Regulations 2012](#)

[The Education \(School Teachers' Appraisal\) \(England\) Regulations 2012 \(the Appraisal Regulations\)](#).

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

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

## 3. Definitions

**Lack of capability** is defined as:

A staff member failing to perform their role at the level of competence expected of them and that their job requires

References to **'staff'** include the CEO/Principal, teachers and support staff, unless indicated otherwise.

## 4. Roles and Responsibilities

Where the member of staff subject to the procedure is the CEO/Principal, the Chair of the Board of Directors will be responsible for co-ordinating the procedure.

Where the member of staff subject to the procedure is not the CEO/Principal, the CEO/Principal or a nominated member of senior staff will be responsible for co-ordinating the procedure.

Where appropriate, other members of staff may be asked to provide additional support to the employee or to assist in monitoring the effectiveness of the policy. Where this happens, responsibilities will be made clear in advance.

## 5. Disabilities

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 College about any medical condition should contact their line manager or the Principal.

## 6. Capability Procedure

Performance is monitored on a day-to-day basis by line managers. Regular team or one-to-one meetings are conducted on a fortnightly basis. This will be monitored as part of the day-to-day management and the appraisal process.

Capability procedures will begin when line management support and the appraisal process have been unable to bring about satisfactory performance or improvements in the staff member's work.

An informal period of support, put in place and monitored by the line manager, will have been in place before capability procedures are triggered. Evidence of this will be available before the process begins through line management meeting notes.

### 6.1 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 College 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.

### 6.2 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 induction period. If this is the case, for as long as the NQT remains at the college, the induction process 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.

### 6.3 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. Where appropriate,

a note of any such informal discussions may be placed on the employee's personnel file. 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 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 College has serious concerns about an employee's performance, it 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 College 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.

#### **6.4 Notification of a Capability Hearing**

If the College 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 College will notify the employee in writing of its 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; and
- the likely outcome if the College 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, usually two to seven days, to consider the information provided and prepare for the hearing.

#### **6.5 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 (for example because of poor health), the College may make decisions based on the available evidence including any written representations

made by the employee. The College 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 or the College.

The hearing will normally be held by the Principal or another member of the Senior Leadership Team, and may also be attended by an HR Manager and/or a note taker. A Stage 3 hearing must be held by the Principal.

The aims of a capability hearing will usually include:

- Setting out the required standards that the College 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; and
- 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 College 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 College's decision and the reasons for it, usually within 5 working days of the capability hearing. Where possible this will also be explained to the employee in person.

## **6.6 Stage1 Hearing and Outcome**

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 (if applicable).

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 formal action will be taken.

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

- the areas in which the employee has not met the required performance standards;
- clear targets for improvement 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; and

- the employee's right of appeal and how this can be exercised.

Any warning will normally remain active for a period of six to twelve months from the date of the issue of the warning. The outcome letter will confirm the specific length of the active period of the warning. 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 he/she 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; or
- if the manager feels that there has been a substantial but insufficient improvement, the review period may be extended.

## 6.7 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 in the section "NOTIFICATION OF A CAPABILITY HEARING", and the hearing will be conducted as set out in the section "PROCEDURE AT CAPABILITY HEARINGS", both found above.

The outcome of the Stage 2 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 (if applicable).

If the specific performance concerns are not upheld, or if the decision maker feels that additional action or support is appropriate in the particular circumstance, the employee will be informed in writing that no further action will be taken under Stage 2 of the procedure.

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

- the areas in which the employee has not met the required performance standards;
- clear targets for improvement 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; and



- the employee's right of appeal and how this can be exercised.

Any warning will normally remain active for a period of twelve to twenty-four months from the date of the issue of the warning. The outcome letter will confirm the specific length of the active period of the warning. 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 he/she 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; or
- if the manager feels that there has been a substantial but insufficient improvement, the review period may be extended.

## 6.8 Stage 3 Hearing and Outcome

The College 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; or
- 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 in the section "NOTIFICATION OF A CAPABILITY HEARING", and the hearing will be conducted as set out in the section "PROCEDURE AT CAPABILITY HEARINGS", both found above.

If the specific performance concerns are not upheld, or if the decision maker feels that additional action or support is appropriate in the particular circumstance, the employee will be informed in writing that no further action will be taken under Stage 3 of the procedure.

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); or
- Final written warning (where no final written warning is currently active).

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

## 7. Right to Appeal

If a staff member feels that a formal decision (first/final written warning or dismissal) is wrong or unjust, they may appeal in writing against the decision within five working days of the decision, setting out at the same time the grounds for appeal.

Appeals will be heard without unreasonable delay and at an agreed time and place. The same arrangements for notification and statutory right to be accompanied will apply as with formal capability and review meetings. Notes will be taken and a copy sent to the staff member.

The appeal will be dealt with impartially and by senior leaders or governors who have not previously been involved in the case.

The staff member will be informed in writing of the results of the appeal hearing within five working days.

## 8. Confidentiality

The capability processes will be treated with confidentiality, sensitivity and with due respect for the privacy of any individuals involved. However, the desire for confidentiality does not override the need for the CEO/Principal and Board of Directors to quality assure the operation and effectiveness of the system. 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.

## 9. Consistency of Treatment and Fairness

The Board of Directors is committed to ensuring consistency of treatment and fairness. It will abide by all relevant equality legislation, including the duty to make reasonable adjustments where these are deemed either necessary or appropriate.

The Board of Directors is aware of the guidance and provisions of the Equality Act 2010.

## 10. Monitoring Arrangements

The effectiveness of this policy will be monitored by the CEO/Principal and Board of Directors.

This policy will be reviewed every two years, but can be revised as needed.

This policy will be approved by the Board of Directors or a Committee.

## 11. Links with Other Policies

This policy links to our policies on:

- Staff code of conduct
- Staff appraisal
- Staff grievance procedures
- Staff disciplinary procedures
- Equality information and objectives

## Appendix 1: Capability Action Plan Template

This template can be used as part of the process of supporting an employee who is underperforming. It records the outcomes of the initial capability meeting, where targets and timescales are set and agreed.

Where possible, the objectives should be linked to the relevant professional standards, appropriate to the career experience of the member of staff concerned.

Name of staff member	Name of Appraiser	Date of meeting

<b>Objective 1:</b>		
Professional standard(s) that the objective relates to	Success criteria	Evidence to be used to assess progress
Support/resources to be provided	Monitoring arrangements	Review date

**Objective 2:**

Professional standard(s) that the objective relates to	Success criteria	Evidence to be used to assess progress
Support/resources to be provided	Monitoring arrangements	Review date

**Objective 3:**

Professional standard(s) that the objective relates to	Success criteria	Evidence to be used to assess progress
Support/resources to be provided	Monitoring arrangements	Review date

**Other support provided**

<b>Mentor/coach allocated</b>	Yes/No (If yes give name)
<b>Counselling to be provided</b>	Yes/No
<b>Occupational health referral to be made</b>	Yes/No
<b>[Insert any other support provided]</b>	
<b>Formal review date</b>	

Signed by member of staff	Signed by appraiser	Date