



**LAURUS**

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TRUST

## **Capability Policy**

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| <b>Policy Title and Summary</b>                      | Capability   |
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| <b>Reviewed By</b>                                   | J Jenkins<br>W Mason   |
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| <b>Audience</b>                                      | All employees  |
| <b>Equality Impact Assessment</b>                    |  |
| <b>Related Documents</b>                             | Sickness Absence Policy<br>Statutory Right to Request Flexible Working<br>Grievance Policy<br>Conditions of Service for School Teachers (Burgundy Book)<br>NJC for Local Government Services National Agreement on Pay and Conditions of Service (Green Book)<br>School Teachers Pay and Conditions Document (STPCD)<br>PDR Procedure<br>Teachers Appraisal Policy<br>Teachers Appraisal Regulations |
| <b>Legal Framework</b>                               | Data Protection Act 2018<br>ACAS Code of Practice and Guidance<br>Employment Rights Act 1996<br>Equality Act 2010<br>Health and Safety at Work etc Act 1974  |

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## **Introduction**

This Policy applies to all employees of the Laurus Trust where their performance is causing serious concerns that have been unable to be addressed via an informal process. It is a supportive procedure which aims to achieve a partnership approach to best allow employees to make a full contribution in work.

The Laurus Trust is committed to creating a working environment where all individuals have an opportunity to achieve their full potential and to provide a sustained and demonstrable contribution. It is recognised that in order to foster this environment, it is essential that all of our employees fully understand both the requirements of their role, the level of performance expected of them and the support they can expect to assist them in achieving this.

The Laurus Trust will ensure that employees who are not able to maintain agreed standards of performance will be treated fairly, sympathetically and in line with contractual obligations contained within the various Conditions of Service. The Capability Policy and Procedure is designed to assist employees to meet and maintain the required standards of performance through a process of open and honest communication backed up by a range of support mechanisms.

## **Scope**

1. This procedure relates to individuals whose performance at any time during the previous 12 months has not met the required standards. It does not apply to cases of incapacity due to ill health or to employees who may be in their probationary period, which are dealt with under separate procedures for resolving such matters.
2. In line with the Teacher Appraisal regulations, a reference for any teacher (including the Head of School and the EHP) who has been subject to capability procedures in the previous two years will include details of the duration of capability and an explanation of the outcome.
3. Employees will have the right to be accompanied by a Trade Union representative or work colleague at all formal meetings held under the Capability Policy and Procedure. There is no entitlement to be accompanied by a legal representative unless the employer is legally represented.
4. In the event that a Trade Union representative is subject to these procedures, the circumstances will be discussed with the HR Team in the first instance.

## **Principles**

1. The Laurus Trust recognises that on occasion an employee may not be able to meet the appropriate standards of performance. It is important for managers to aim to resolve issues through all appropriate informal routes prior to moving to the formal framework. This Policy and Procedure is intended to provide a formal framework to support managers when dealing with an employee's performance issues when appropriate management action under the Performance Development Review (PDR) and/or Teacher Appraisal Policy have proved unsuccessful in bringing about an improvement.
2. This Policy aims to help managers and employees to work together to achieve acceptable levels of performance. In order to do so it is important that the manager is fully appraised

of all necessary background information and relevant factors pertinent to the individual (recognising this may relate to work issues and/or issues outside of work). All available information will be gathered prior to any action being taken. In relation to health issues this may include relevant medical advice surrounding the individual circumstances; for performance issues this may include training records or PDR/Appraisal history.

3. It is possible that an employee may identify a lack of capability themselves. Where the manager agrees with the employee's assessment of their capability the principles of this Policy will apply. As such, managers should create an environment where employees feel able to freely discuss their concerns and offer support in exploring how best to take forward any issues identified. Managers may ask for further advice from HR to assist with an assessment of a self-diagnosed lack of capability.
4. It is vital that the issue being addressed through the Capability Policy and Procedure is treated with appropriate confidentiality and that protocols are in place to support this.
5. Stages in the procedure would normally be followed in sequence. Ordinarily there will be no acceleration through the stages unless a situation requires it due to there being a specific concern.

## **Roles**

### **Employee**

1. All employees have a contractual responsibility to attend work and carry out the requirements of their job to a satisfactory standard. Therefore, employees should:
  - Take all reasonable steps required to improve their performance including undertaking any relevant training and development;
  - Avoid activities that are likely to impact on their performance;
  - Comply with all safe working practices and engage in health, safety and wellbeing strategies conducive to supporting satisfactory performance at work;
  - Engage in regular discussions with their manager to review and address any internal or external factors affecting their ability to perform within their role or attend work;
  - Reasonably engage in all meetings arranged under this procedure;
  - Ask for feedback;
  - Engage in assisting with identifying possible support mechanisms and co-operate with their manager to improve performance in work.

### **Managers**

2. Managers are responsible for identifying and addressing any concerns relating to the performance of their employees. It is the responsibility of the manager to monitor the performance of their direct reports and apply the capability policy fairly and consistently taking the individual circumstances of each case in to consideration. Managers should:
  - Ensure every employee understands their role and responsibilities and what is expected of them under the policies and procedures that make up their terms and conditions of employment;
  - Ensure that employees are aware of the standards of performance expected of them;
  - Notify an employee immediately if their performance is a cause for concern and take appropriate action when standards are not met;
  - Ensure that they communicate, develop and motivate their employees and ensure that relevant training is provided;

- Provide regular feedback, undertake PDR's/Appraisals and address any minor performance issues in a timely manner in order to avoid the use of formal procedures;
- Ensure that all employees are signposted to health and wellbeing support strategies;
- Consider any reasonable adjustments and/or modifications to the employee's role and/or work environment to maintain performance in work;
- Consider if the reason for poor performance is potentially due to a condition covered by the Equality Act 2010 in consultation with Occupational Health and HR;
- Identify any issues in the workplace that may be adversely impacting on the employee's health, safety and wellbeing;
- Keep a confidential record of all discussions relating to an employee's performance. This record should be agreed with the employee and disregarded after appropriate timescales;
- Seek advice from HR when applying the policy and procedures.

## HR

3. The role of HR is to provide support and guidance to managers and employees who are dealing with performance issues. HR will:
  - Provide guidance on how to deal with specific issues;
  - Provide coaching to managers on how to apply the policies and procedures appropriately;
  - Provide appropriate information and advice as necessary;
  - Ensure that the policies and procedures are applied fairly and consistently taking into account the circumstances of each case;
  - Be present at meetings arranged under the Capability Policy and Procedure, where appropriate and requested by the manager.

## Stage 1 – Capability Meeting

1. An employee's line manager or above may initiate a Stage 1 Capability Meeting where it is considered that an employee is not performing to the appropriate standard and informal discussions / support mechanisms have not resolved the issue(s).
2. The manager should gather any relevant documents and evidence in order to try and understand why the employee is under-performing. If required, they should take advice from HR.
3. The manager should provide a copy of all the relevant information to the employee in good time to enable them to prepare for the meeting and be able to comment on why their performance is not at the standard required.
4. At the meeting the manager should:
  - Outline to the employee the expected standard of performance to be achieved;
  - Advise the employee of the policies/procedures/guidance and competencies against which these standards are being measured (*this may include the setting of new objectives focused on the specific weaknesses that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made*);
  - Give the employee and their representative the opportunity to explain any reasons for the individuals' under performance;

- Highlight any support or assistance to be provided;
  - Set the timescale for achievement of the required improvements, which should be no less than 4 weeks and no more than 3 months;
  - Explain that if sufficient improvement is not made then there will be a referral to a Stage 2 Capability Review Meeting.
5. The manager should check that the employee understands what is expected of them going forward.
  6. The manager should complete a summary of the meeting and agree this with the employee. A copy will be placed on the employee's personal file, confirming the following:
    - that the meeting has taken place under the Capability Policy and Procedure;
    - the concerns discussed;
    - the expected standard of performance / work to be achieved;
    - the agreed action plans to be followed;
    - any support or assistance to be offered;
    - timescales for achievement and review dates;
    - outline that that if sufficient improvement is not made then there will be a referral to a Stage 2 Capability Review Meeting;
    - consequences of insufficient improvement;
    - That this constitutes a formal written warning;
    - right of appeal.

NB: Normally, during the specified review period, the line manager and employee will agree to meet periodically to review progress. Failure to meet will not impact the timescales in which improvements are expected to be achieved.

7. At the meeting the manager may conclude that there are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the PDR/appraisal process. In such cases, the capability procedure will come to an end.
8. The Manager conducting the meeting may also adjourn the meeting if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.
9. If it is agreed that the necessary improvement is not going to be achieved within a reasonable and known timescale then the meeting may be adjourned and reconvened as a Stage 2 Capability Review Meeting.
10. Where the required improvements in performance are achieved during the review period, the process will be deemed to have been satisfactorily concluded and the issues resolved. Confirmation that this is the case will be given in writing to the employee and a copy placed on the employee's file.

## **Stage 2 – Capability Review Meeting**

1. The manager should gather any relevant documents in order to try and understand why the employee is under-performing. If required, they should take advice from HR.
2. The manager should provide a copy of all the relevant information to the employee in good time to enable them to prepare for the meeting and be able to comment on why their performance is not at the standard required.

3. The Stage 2 Capability Review Meeting will be called:
  - Normally at the end of the specified review period where the required improvement has not been achieved (however, the meeting may be called earlier if there is a justifiable reason for doing so); or
  - Where the employee and manager have agreed the necessary improvement is not going to be achieved within a reasonable timescale and further advice or guidance is required.
4. The manager will review all the relevant information with the employee at the Stage 2 Capability Review Meeting and explain, clearly outlining with examples, where the employee's performance is not meeting the required standards. The manager will also review the action taken to date to support them in achieving the necessary standards, giving the employee the opportunity to respond and explain any causes for their continued under-performance.
5. The possible outcomes of this meeting could be:
  - To agree a further period over which the required improvements can be achieved. The employee should be reminded of the expected standards of performance to be achieved; the policies/ procedures/ guidance and competencies against which these standards are measured; any support or assistance to be provided; the specified timescale for achievement and the potential consequences should the employee fail to achieve the required standards or;
  - To agree a permanent modification to the employee's substantive role; alternative contractual conditions may be considered. This may include reduced working hours, change of working pattern; revised job description etc. Any changes which require an amendment to an employee's contract of employment must be made having taken advice from HR;
  - To agree redeployment to another post, where appropriate and subject to availability. In this case the meeting should be adjourned and a further meeting convened under the redeployment policy. Any redeployment opportunity would have no rights under personal grade protection. The employee should be advised at this stage that if no suitable alternative employment is secured during the redeployment period, their contract of employment could be terminated;
  - That the required improvements in performance have been achieved and the process is deemed to have been satisfactorily concluded and the issues resolved; or for other reasons there is no need to proceed under the capability policy;
  - If no, or insufficient improvement has been made during the monitoring and review period, the employee will receive a final written warning;
  - Where the employee and manager agree that the necessary improvement is not going to be achieved within a reasonable timescale and further advice or guidance is required the meeting should be adjourned and the matter will be referred to a Stage 3 Capability (Decision) meeting.
6. The manager will write to the employee confirming the outcome of the Stage 2 Capability Review Meeting, placing a copy of the letter on the employee's personal file for reference purposes. This should be disregarded once the timescale has expired, however, in exceptional circumstances where a repeated pattern of similar capability issues is recognised, previous history may be considered.

7. A final written warning outcome will mirror any previous warnings that have been issued. Where a final warning is issued, the member of staff will be informed in writing and will include:
  - that failure to achieve an acceptable standard of performance, may result in dismissal;
  - information about the handling of the further monitoring and review period;
  - the length of the monitoring and review period. The minimum period will be four weeks and the maximum 3 months;
  - the right to appeal against the final written warning. An appeal will not suspend the procedure unless the appeal decision leads to the matter being reconsidered.
8. Following the conclusion of this period of monitoring and review the employee will be invited to a decision meeting.

### **Stage 3 – Final Capability (Decision) Meeting**

1. A Stage 3 Final Capability (Decision) Panel will be convened by a manager with the appropriate delegated authority and made up of either; Trustees, CEO, CFO, EHP, EHS, HOS, the equivalent or above.
2. The manager will ensure that any documentation demonstrating the employee's underperformance is provided within a report to the employee in advance of the meeting. Since this meeting will involve decisions regarding an employee's future employment, the hearing manager should not have had any previous involvement with the case.
3. The Stage 3 Final Capability (Decision) Panel will be called:
  - Normally at the end of the specified review period where the required improvement has not been achieved and it has been concluded that sufficient improvement by the employee is unlikely to be achieved within a reasonable period of time; or
  - In exceptional circumstances where a repeated pattern of similar capability issues are recognised, having considered previous history.
4. The manager will review with the employee all the relevant information provided and explain the reasons for calling the Stage 3 Final Capability (Decision) Panel outlining where the employee's performance has not met the required standards. The manager will also review the action taken to date to support them in achieving the necessary standards, giving the employee the opportunity to respond and explain any causes for their continued under-performance.
5. The possible outcomes of this meeting could be to agree:
  - A permanent modification to the employee's substantive role; alternative contractual conditions may be considered. This may include reduced working hours, change of working pattern; revised job description etc. Any changes which require an amendment to an employee's contract of employment must be made having taken advice from HR;
  - Redeployment to another post, where appropriate and subject to availability, in which case the meeting should be adjourned. The employee should be advised at this stage that if no suitable alternative employment is secured during the redeployment period, their contract of employment could be terminated;
  - The required improvements in performance have been achieved and the process is deemed to have been satisfactorily concluded and the issues resolved;

- To determine that dismissal on the grounds of capability is appropriate where it has been demonstrated that the employee has been unable to achieve the standards of performance required within the timescales agreed previously and no suitable alternatives are available.

N.B. In exceptional circumstances, the manager may determine some other suitable outcome is appropriate given the facts of the case and will seek advice from HR. The employee will be advised in writing of the particular set of circumstances which have led to the manager's decision; informed of any particular requirements the employee must satisfy and/or achieve, and advised when the situation will be reviewed.

6. The manager will write to confirm the outcome of the Stage 3 Final Capability, placing a copy of the letter on the employee's personal file for reference purposes.
7. Where the outcome of the meeting is confirmed as dismissal on the grounds of capability the procedure outlined at Dismissal will be followed.

## **Dismissal**

1. If the employee's performance is confirmed as unacceptable; all suitable alternative courses of action have been exhausted or refused by the employee or are deemed inappropriate, the decision to dismiss will be taken on the grounds of 'capability'.
2. A decision to dismiss can only be taken by Trustees, CEO, CFO, EHP, EHS, HOS, the equivalent or above.
3. Dismissal can only occur, when it is clear that:
  - the standards of performance have been made explicitly clear to the employee;
  - the employee has been unable to reach or maintain the required standard of performance having been given reasonable time, support and opportunity to do so;
  - Redeployment/modifications (if appropriate) have not proved possible or have been refused by the employee.
4. The employee will be entitled to formal notice in accordance with their contract of employment, or payment in lieu of notice (if appropriate). The letter of termination will confirm the effective date of termination and confirm the reason for dismissal as being due to capability. It will also notify the employee of their right of appeal.
5. Advice must be sought from HR before any decision to dismiss is taken.

## **Timescales**

1. The following will normally apply (all days are calendar days):
  - Written notice to attend a Stage 1 Capability Meeting, Stage 2 Capability Review Meeting and Stage 3 – Final Capability Meeting (Review of Employment) – 7 working days;
  - The notification at each stage should contain enough information for the employee to understand the reasons for the meeting and allow them to come prepared to discuss the issues concerned;
  - Provide a written record (decisions/actions) following any Capability Meeting – within 7 working days of the date of the meeting;
  - Review periods – the time allowed for an employee to demonstrate the necessary improvement in performance will depend on the particular circumstances of each

case. Taking all the necessary information in to consideration, the manager should ordinarily agree the timescale in which the employee's performance will be reviewed with the employee. This would normal be no less than 4 weeks and no more than 3 months. The manager will be responsible for meeting with the employee on an agreed basis throughout the review period to ensure the employee is supported and to discuss their progress;

- Appeal should be heard without unreasonable delay and at an agreed time and place;
- Employees will provide any evidence/information in support of their appeal at least 5 working days before the meeting takes place;
- Appeal outcomes will be provided as soon as possible.

## Appeals

1. Where an employee is dissatisfied with an outcome following a Stage 1 Capability Meeting, Stage 2 Capability Review Meeting or Stage 3 Final Capability Meeting (Review of Employment) they may appeal using the following appeals procedure.
2. Appeals must be in writing within 14 days of the employee having received the notification of the outcome and sent to the issuing manager.
3. The employee must outline which of the following grounds their appeal is based on and explain why:
  - The procedure was not conducted properly;
  - The facts of the case were not fully or properly considered at the meeting;
  - The outcome is unreasonable given the circumstances;
  - New evidence has come to light since the Capability Stage 3 meeting which may have an impact on the decision.

NB: Entering into any stage of the Capability process is not in itself grounds for appeal. Where a procedural issue arises that cannot be dealt with by the appeals procedure, normal access to Grievance Procedures still apply. Where a member of staff raises a grievance during the capability procedure the capability procedure may be temporarily suspended in order to deal with the grievance. In the majority of cases where the grievance and capability cases are related both issues will be dealt with concurrently.

4. Appeal hearings will be conducted by a manager with the appropriate seniority who has not had any previous involvement with the case, advised by a representative of HR. Appeal hearings relating to Stage 3 Final Capability Meeting (Review of Employment) will be conducted, where possible, by Trustees (a panel of three).
5. The Appeal Hearing Manager will decide whether:
  - The grounds for the employee's appeal are supported by the information put forward during the Appeal hearing;
  - The outcome of the original capability meeting was inappropriate;
  - To up hold the original decision or determine revised outcome(s) which replace the original findings.

NB: A revised outcome may not be more severe than the original outcome.

6. The manager of the original final capability (decision) meeting will attend the Appeal hearing to answer questions relating to the outcome(s) reached.
7. The following format for the meeting will be adopted:
  - The appeal hearing manager will introduce those attending and read out the grounds for appeal;
  - The employee (or representative) will present their appeal and may call witnesses and/or produce information in support of their case;
  - The original capability meeting manager may ask questions or seek clarification of the facts;
  - The appeal hearing manager may ask questions or seek clarification of the employee or the original capability meeting manager;
  - The employee (or representative) will sum up the basis of their appeal;
  - The management respondent will re-iterate the rationale of the original decision;
  - The hearing will be adjourned while the Manager advised by the HR representative, considers the case put forward by the employee and the manager;
  - The appeal hearing manager will normally inform the employee of their decision at the end of the hearing, unless further time is required to investigate any issues raised during the meeting which are likely to impact that decision;
  - The appeal hearing manager will confirm the decision in writing.
8. If the employee's appeal is upheld by the Appeal Hearing Manager, any outcome(s) of the original capability meeting will be withdrawn completely or replaced. If the appeal is unsuccessful the original decision will remain in place.
9. A copy of the letter confirming the outcome(s) of the hearing will be placed on the employee's personal file.

## **Sickness**

1. 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 Sickness Absence Policy and will be referred immediately to the occupational health service to assess the member of staff's health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedure. In some cases, it may be appropriate for monitoring and/or formal procedures to continue during a period of sickness absence.