

**EMLC
Academy
Trust**

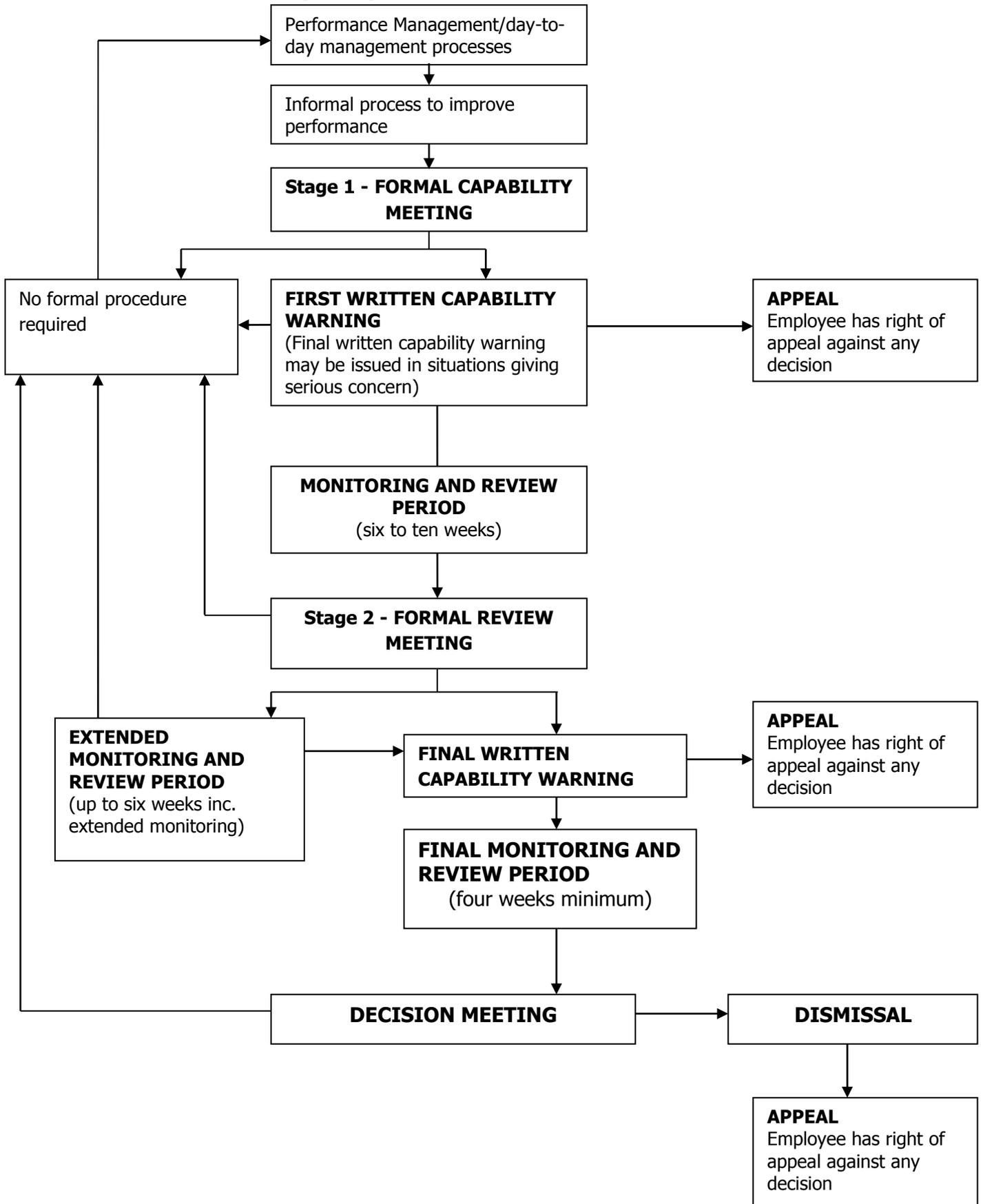
**Capability
Policy
2016/18**

'Every child deserves to be the best they can be'

Scope: EMLC Academy Trust & Academies within the trust	
Version: v.8 16/3/16	Filename: EMLC Academy Trust Capability Policy
Approval: This policy was ratified by the EMLC Academy Trust on: 12th July 2016	Next Review: 12th July 2018 <i>This policy will be reviewed every 2 years by the Strategic Board</i>
Owner: EMLC Academy Trust Strategic Board	Union Status: NJCNC Agreed

Policy type:	
Non-statutory	Replaces Academy's current policy

Overview of Formal Capability Process



CAPABILITY POLICY AND PROCESS

1 Introduction

The Capability Process will provide a fair and consistent approach for supporting individuals who are not achieving or maintaining the required standard for the role. This process is not intended to replace the day-to-day support and supervision that is in place to assist all employees in their work.

EMLC Academy Trust's vision and purpose: "Every child deserves to be the best they can be." The Trust is driven by a strong moral purpose that every child has the right to outstanding teaching and leadership. The objectives set for all employees of EMLC Academy Trust as part of the Performance Management process will, if achieved, contribute to the individual academy's plans for improving educational provision and performance and improving the education of children, students and young people at that academy.

Any issues in achieving these objectives will be addressed through the usual management process of one-to-ones. The Capability Process will only be used where performance of an individual does not consistently meet the required standards for the role.

2 Purpose

This policy aims to encourage employees to achieve and maintain acceptable standards of performance and is designed to ensure fairness and consistency in the management of employee performance.

As part of their day-to-day management, line managers may from time-to-time have discussions about performance with a member of staff. These discussions do not form part of a Capability Process.

3 Scope

This procedure applies to all employees of the school (teaching and support staff, including the Principal) employed within EMLC Academy Trust Academies who either have a permanent contract of employment, or have more than six months continuous service. It does not apply to employees subject to probation or induction.

4 Governance

The Governing Board (GB) is a committee of EMLC Academy Trust. The GB is responsible for implementing the Capability Policy and process for staff, in the context of any procedures and/or guidance issued by the EMLC Academy Trust Board, following agreement with education unions. However, they may delegate these matters to either:

- The Principal;
- A sub-committee of the GB; or
- A sub-committee and the Principal.

Therefore, where this process refers to the GB representative this can be any one of the above.

5 General Principles

Academies will adhere to a number of principles which ensures that any individual who is subject to the Capability Process will receive consistent and fair treatment. These principles are as follows:

- The process will be applied objectively to all members of staff concerned and is designed to ensure that all members of staff are treated consistently and in accordance with Equalities Legislation.
- Managers will clearly define the Trust's agreed standards of performance and ensure members of staff are aware of them.
- Any decision to take formal action against a member of staff will only be taken after a period of agreed supportive action, unless there are exceptional circumstances and it may be appropriate to move to the fast track procedure.
- The Capability Process should only be invoked where there is clear, triangulated evidence of sustained underperformance and where the performance management process has failed to provide a solution following an agreed support plan. The instigation of a Capability Process should not come as a surprise to the employee concerned.
- Every employee has the right to be accompanied to formal capability meetings by a recognised Trade Union official or by a work colleague of their choice who does not normally have any line management responsibility for the member of staff concerned (Employers Relations Act 1999). However the manager and employee may invite a recognised Trade Union official to an informal capability meeting, if they feel this may be helpful.
- The employee will be advised to contact their union whenever the Capability Process may be invoked and representation is permitted at all capability meetings.
- If the employee's actions have had, or are liable to have, a serious or harmful impact upon the academy or Trust, consideration may be given to following the Disciplinary Policy.
- In accordance with the ACAS Code of Practice, where an employee is persistently unable or unwilling to attend a capability meeting without good cause, the employer should consider this under the Disciplinary Policy.
- All members of staff have the right of appeal against any action taken against them at the formal stages of this process.

6 Responsibilities

The GB is responsible for implementing this process when required.

Only the Headteacher/Principal can commence the Capability Process.

Principals and line managers are responsible for ensuring employees receive appropriate training and support and receive clear written feedback on performance.

Employees are responsible for performing the duties of their post to the best of their abilities and in accordance with any specified regulations or agreed professional standards. Employees are also responsible for complying with the process.

7 Informal Process

This process does not form part of the formal process.

All employees will have their performance routinely reviewed under the Academy's Performance Management Policy and Procedure.

Management of performance provides the line manager and employee with the opportunity to discuss performance issues on a one-to-one basis outside of the formal process. Where the line manager has concerns about the performance of an employee they should initially manage these informally as part of the normal day-to-day performance management processes. Employees should be made aware of any concerns at the earliest opportunity and given practice advice and support about how to address these issues.

If informal mutually agreed support does not produce the required improvements to performance within a reasonable timescale the line manager will decide whether to recommend that the matter should be dealt with under the Capability Process.

The line manager will seek advice from the Principal who will decide whether to move to the Capability Process, following advice from EMLC Academy Trust/HR Provider.

8 Formal Capability Procedure

The employee will be notified in writing of the decision to stop the Performance Management process and move to the Capability Process. The notification will include an invitation to attend a formal capability meeting with the Principal/line manager at a mutually agreed time, date and venue. At least five working days' notice will be given of the date of the proposed meeting.

The notification will contain specific information regarding the concerns about performance and their possible consequences to enable the employee to prepare to answer or refute the allegations at a formal capability meeting.

The employee will also be informed in writing of their right to be accompanied, if they so wish, by a companion, who may be a trade union representative or work colleague.

Meetings associated with any stage of the Formal Procedure will normally only be postponed once. A postponed meeting will be re-arranged within 5 working days.

If the employee, their trade union or work colleague is unable to attend on the revised date, the meeting will take place as scheduled.

At least five working days prior to the meeting the employee will receive copies of all documentation to be presented by the Principal/line manager. This should include:

- documents to evidence the concerns;
- details of support already given including notes from one-to-one meetings, feedback from lesson observations, performance management documentation and any other evidence deemed appropriate.

Two working days prior to the meeting the employee must provide the name of the trade union representative or work colleague who is to attend the meeting with the employee, if applicable. The employee may provide additional evidence to support their case and this should be submitted two working days prior to the meeting.

9 Formal Capability – Stage 1 Formal Capability Meeting

Purpose of the Meeting

This meeting is to establish the facts, to identify the on-going areas of concern and to agree a way forward. It is essential that it is made clear to the employee exactly how they have failed to meet expectations and what standard of performance is expected. The purpose of the meeting is to allow the employee, accompanied by a work colleague or trade union representative if they wish, to respond to concerns about their performance and to make relevant representations.

This may provide new information or a different context to the information/evidence already collected. The Principal/line manager, or Chief Executive of EMLC Academy Trust in the case of a Principal, will chair the meeting and may be accompanied by an HR adviser.

The Principal/line 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 Performance Management process. In such cases the Capability Process will come to an end. No formal record of the capability proceedings will be made.

Structure of the Meeting

The Principal/line manager conducting the meeting will:

- identify clearly how the standards are not being met and show evidence to support the concerns.
- give the employee the opportunity to respond to the concerns being raised.
- give clear guidance on the improved standard of performance needed to ensure that the employee can be removed from formal Capability Process. This will form the action plan, setting new objectives focused on the specific areas of concern/weakness 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.
- explain the support that will be available to help the employee improve their performance. This may include monitoring, observing effective practitioners, training and partnership teaching. This list is not exhaustive.

- set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case. Where there are serious concerns that have been identified, a review period of four weeks will be appropriate. This may occur where the employee's actions have had, or are liable to have, a serious or harmful impact on the school. In other cases the Principal/line manager will set a review period having taken into account what is reasonable and proportionate and gives sufficient time for improvement. The maximum timescale for review should be twelve weeks.
- inform the employee that failure to improve within the set period could lead to dismissal. In very exceptional circumstances the decision may be to issue a final written capability warning and invite the employee to a decision meeting. Advice must be sought from EMLC Academy Trust HR/HR Provider if such action is contemplated.
- advise the employee of their right of appeal within five working days of written confirmation being received of any decision issued.
- confirm that the employee will receive notes of the meeting and will be informed in writing of the matters covered in the bullet points above and given information about the timing and handling of the review stage. Where a warning is issued, the employee will also be advised of the procedure and time limits for appealing against the warning. This will be provided to the employee within five working days as it would be required for any possible appeal.

There may be occasions when an employee is repeatedly unable or unwilling to attend a meeting. This may be for various reasons, including genuine illness or a refusal to face up to the issue. The Principal/line manager will need to consider all the facts and take advice from EMLC Academy Trust HR/HR Provider and come to a reasonable decision on how to proceed.

Following the first meeting, the action plan, support and timescales will be agreed.

Where an employee is persistently unable or unwilling to attend a meeting without good cause the Principal/line manager should make a decision based on the evidence available.

Sickness Absence during the process

If the employee is signed off by their GP at the start of, or during, any stage of the Formal Capability Process, the EMLC Academy Trust Staff Absence policy will commence. An Occupational Health Referral should be made to seek medical opinion on the employee's fitness for continued employment and the appropriateness of continuing with the formal process.

If the employee is not fit to attend meetings, it may be appropriate for subsequent monitoring and/or meetings to proceed in their absence or with a trade union representative attending on the employee's behalf. In this case, the Principal/line manager will take due account of the medical condition and will write to the employee to confirm the outcome of

the meeting and ask the employee to comment if they wish. There may be a need to refer to Occupational Health Service in these cases.

Written confirmation of meeting – Appendix C - Model Letter 2 – Stage 1 – Formal Capability Meeting Outcome

The Principal/line manager will confirm in writing the performance issues causing concern, the levels of support to be maintained or put in place, the targets set and the period set for review. A copy of any actions agreed should be enclosed. The letter will give details of the length of time the employee has to reach the required standard and will confirm whether a written capability warning has been issued, together with the length of time this will remain on their personnel file. The employee must be warned that failure to improve could lead to dismissal.

First written capability warnings will lapse after 9 months and a final written capability warning after 12 months.

The employee has the right to appeal against a written capability warning and/or decision to begin the formal Capability Process by writing to the Appeal Committee of the GB. Any appeal must be lodged within 10 working days from receipt of the letter. The review period will continue even if an appeal is lodged. Any appeal should be heard within 10 working days of the appeal letter being received.

If during the review period the employee has concerns about any issues which may impact on their ability to meet or sustain the set targets, they should discuss these with, or provide a written statement to, the named support, the Principal or their line manager as soon as possible and not wait for the review meeting.

Monitoring and review period following a formal capability meeting

An agreed performance monitoring and review period, normally of not less than 6 to 10 working weeks, will follow the formal capability meeting. The agreed formal monitoring, evaluation, guidance and support will take place during this period. Depending on the circumstances it may be appropriate for the Principal or another senior manager to monitor progress. A mid-point review meeting will be agreed to support the employee in reaching the required standard.

10 Stage 2 - Formal Review Meeting

At the end of the agreed monitoring and review period the employee will be invited to a formal review meeting at a mutually agreed time, date and venue. They must receive at least five working days' notice of the meeting.

This written notification will:

- contain detailed information about the concerns about the performance and their possible consequences to enable the employee to prepare to answer the case;
- contain copies of any written evidence;
- confirm the details of the time and place of the meeting;

- advise the employee of their right to be accompanied by a companion, who may be a work colleague or a trade union representative;
- advise the employee of their right to respond to the concerns raised and submit relevant evidence to the person conducting the meeting prior to the meeting (at least two working days before the meeting is due to take place);
- advise the employee who will be conducting the meeting. It will be conducted by the Chief Executive of EMLC Academy Trust for Principal capability or the Principal/line manager for other employees.

If the employee was issued with a final written capability warning, they will be invited to a decision meeting, for which they must receive at least five working days' notice (see Stage 3 – Decision Meeting).

Structure of the Formal Review Meeting

This meeting will follow the same structure as a formal capability meeting.

If the person conducting the meeting is satisfied that the employee has made sufficient improvement, the Capability Process will cease and the Performance Management process will re-start; Support Staff will resume their normal duties. If a first written capability warning was given at the Stage 1 Meeting, this will remain on file for 9 months from the date it was issued or for 12 months in the case of a final written capability warning.

In other cases:

- If some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period.
- If no, or insufficient, progress has been made during the monitoring and review period, the employee will receive a second and final written capability warning.
- The second and final written capability warning will clearly state the improved standard of performance required, the evidence that will be used to assess whether or not the necessary improvement has been made and the support that will be available to help the employee improve their performance. It will set out the timetable for improvement and explain how performance will be monitored and reviewed and confirm the time limits for appealing against the warning.
- The second and final written capability warning will inform the employee that failure to achieve an acceptable standard of performance (within the set timescale), may result in the requirement to attend a decision meeting and dismissal from their post.

Monitoring and review period following a review meeting

A performance monitoring and review period agreed above will follow the formal review meeting. The agreed formal monitoring, evaluation, guidance and support will take place during this period. Depending on the circumstances, it may be appropriate for the Principal or another senior member of staff to monitor progress. If an acceptable standard of performance has been achieved during the further monitoring and review period, the

Capability Process will end and the Performance Management process will restart; Support Staff will resume their normal duties. Any warnings issued either at Stage 1 or Stage 2 of the process will remain on file from the date that they were issued.

If performance remains unsatisfactory, the employee will be invited to a decision meeting conducted by a member of the GB. The meeting will make the decision that the employee should be dismissed or required to cease working at the academy. The Chief Executive of EMLC Academy Trust should be informed if the outcome of the monitoring and review period is to progress to holding a decision meeting and has the right to have a representative at the meeting.

11 Stage 3 - Decision Meeting

Notification

The employee will be invited to a decision meeting. They must receive at least five working days' notice of the meeting.

The written notification will:

- contain detailed information about the concerns about performance and their possible consequences to enable the employee to prepare to answer their case;
- contain copies of any written evidence including previous written capability warnings;
- confirm the details of the time and place of the meeting;
- advise the employee of their right to be accompanied by a companion, who may be a work colleague or a trade union representative;
- advise the employee of their right to respond to the concerns raised and submit relevant evidence to the person conducting the meeting prior to the meeting;
- advise the employee who will be conducting the meeting and provide details of anyone else attending, for example the Principal/line manager, EMLC Academy Trust representative, Clerk to the GB, other members of the GB.

Structure of a Decision Meeting

This meeting will follow the same structure as a formal capability meeting, however the meeting must be held by whoever can make the recommendation to dismiss to the Trust.

If the authority to dismiss has been delegated to the Principal and they have been involved in the process previously then a member of the GB will conduct the meeting.

Dismissal

Before the decision to dismiss is made, the academy will discuss the matter with the Chief Executive of EMLC Academy Trust.

The employee will be informed in writing within five working days of the decision of the meeting of the reasons for dismissal, the date on which their employment contract will end,

the appropriate period of notice and their right of appeal. This letter will come from the Managing Director of the Trust, as the employer.

12 Appeal

If an employee feels that a decision to dismiss them, or other action taken against them, 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 the appeal. Appeals must be submitted to the CEO of EMLC Academy Trust. Appeals will be heard without unreasonable delay and within ten working days from the date of the appeal being lodged. The same arrangements for notification and right to be accompanied by a companion will apply as with formal capability and review meetings. As with other formal meetings, notes will be taken and a copy sent to the employee.

The appeal will be heard by the Appeal Sub Committee and not by governors who have been involved with the case previously.

The employee will be informed of the outcome in writing within five days of the appeal hearing.

13 Fast Track Capability Process

This process is designed for use in exceptional circumstances and where action must be taken as a matter of urgency. Any shortening of the process will only occur in the most extreme circumstances and to address serious issues relating to unacceptable performance.

It is essential that clear and objective facts are gathered and substantiated before making a decision to proceed with the Fast Track process. In all cases the Principal/line manager must take advice from EMLC Academy Trust HR/HR Provider.

Examples could include:

- Non-compliance with legal or statutory requirements;
- Safeguarding issues.

The Fast Track Capability Process can be invoked at any time during the management of performance. There will be two stages, each of 4 weeks duration. A final written capability warning may be issued at the end of the first review period by the Principal/line manager.

The meetings in this fast track procedure will follow the same format as outlined in the formal Capability Process.

No action will be taken under the Fast Track process in respect of a trade union representative until the circumstances of the case have been raised with a senior representative or paid official of the trade union. The Principal must take HR advice before taking any action.

APPENDIX A

FORMAT OF FORMAL CAPABILITY MEETING

Introductions

The Principal/line manager/chair of committee introduces him/herself and invites all others to introduce themselves. The Principal/line manager/chair of committee runs through the agenda.

Nature of complaint

The Principal/line manager/chair of committee specifies that the complaint refers to capability and checks that all parties have the relevant documents.

Presentation by management

The Principal/senior manager/line manager presents the management's case, referring to evidence from the formal stages of the Capability Process. Witnesses may be called.

Questions by employee

The employee and/or representative may question the person presenting the management's case and each of the management's witnesses after they have given evidence.

Questions by principal/line manager/committee members

The Principal/line manager/committee members may question the person presenting the management's case and each of the management's witnesses after they have given evidence and been asked any questions by, or on behalf of, the employee.

Presentation by employee

The employee and/or their representative present their case. Witnesses may be called.

Questions by person presenting the management's case

The person representing the management's case may question the employee and each of the employee's witnesses after they have given evidence.

Questions by principal/line manager/committee members

Principal/line manager/committee members may question the employee, representative and each of the employee's witnesses after they have given their evidence and have been asked questions by the person presenting the management's case.

Final statement by management

The person presenting the management's case may make a final statement.

Final statement by employee

The employee and/or representative may make a final statement.

Withdrawal

Both parties withdraw to allow the Principal/line manager/committee to discuss findings and come to a decision. The note-taker and/or HR representative remain. The parties may be asked to remain available in case the Principal/line manager/committee need to clarify any point.

Adjournments

Either party may request adjournments during the course of the hearing

APPENDIX B

FORMAT OF APPEAL HEARING AGAINST DISMISSAL

Introductions

The chair of the Appeal Committee introduces him/herself and invites all others to introduce themselves. The chair of the Appeal Committee runs through the agenda.

Nature of complaint

The chair of the Appeal Committee specifies that the complaint refers to capability and checks that all parties have the relevant documents.

Presentation by employee

The employee and/or their representative present their case. Witnesses may be called.

Questions by person presenting the management's case

The person representing the management's case may question the employee and each of the employee's witnesses after they have given evidence.

Questions by committee members

Committee members may question the employee, representative and each of the employee's witnesses after they have given their evidence and been asked questions by the person presenting the management's case.

Presentation by management

The Chair of the GB Sub Committee who made the decision to dismiss will present the case, referring to evidence from the formal stages of the Capability Process. Witnesses may be called, which may include the Principal/line manager who undertook the capability process.

Questions by employee

The employee and/or representative may question the person presenting the management's case and each of the management's witnesses after they have given evidence.

Questions by committee members

The committee members may question the person presenting the management's case and each of the management's witnesses after they have given evidence and been asked any questions by, or on behalf of, the employee.

Final statement by employee

The employee and/or representative may make a final statement.

Final statement by management

The person presenting the management's case may make a final statement.

Withdrawal

Both parties withdraw to allow the Principal/line manager/committee to discuss findings and come to a decision. The note-taker and/or HR representative remain. The parties may be asked to remain available in case the Principal/line manager/committee need to clarify any point.

Adjournments

Either party may request adjournments during the course of the hearing.

- **WARNINGS**

If an Appeal Hearing is required for a warning, the Principal may hear this if they have had no prior involvement in the formal process; otherwise the appeal will need to be heard by the Appeal Committee. The same format as outlined above will apply.

APPENDIX C

Model Letter 1 – Stage 1 – Formal Capability Meeting

Private & Confidential

[EMPLOYEE NAME]

[EMPLOYEE ADDRESS]

[DATE]

Dear [NAME OF EMPLOYEE],

Stage 1 - Formal Capability Meeting

I am writing further to our ongoing discussions over the last [INSERT TIME PERIOD [WEEKS/MONTHS] THAT NORMAL SUPERVISION HAS BEEN ONGOING] and the support and guidance that has been put in place to date in relation to the concerns held over your performance. Given that your performance has not improved to the required standard, I would now like to hold a Formal Capability Meeting at Stage 1 of the Formal Capability Process.

The purpose of the meeting will be to discuss the on-going concerns and the mechanisms to support you in reaching the desired level of performance. We will establish a timescale to monitor improvement and agree an Action Plan to ensure that you have a clear understanding of the performance issues causing concern, the support that will be put in place, the targets set and the period for review.

I enclose copies of documents to be discussed at the meeting.

The meeting will be held at [INSERT TIME] on [INSERT DATE] at [INSERT VENUE]. You may bring a workplace colleague or a trade union representative to this meeting, if you wish. I will be accompanied by [INSERT NAME].

Please confirm your attendance at this meeting, details of the person accompanying you, if applicable, and provide any information you would like me to consider before the meeting by [INSERT DATE]. A request for the date of the meeting to be rearranged will not be unreasonably refused but it may only be appropriate to do so for a substantial and acceptable reason. Meetings associated with any stage of the Formal Procedure will normally only be postponed once and will be re-arranged within 5 working days.

If you have any queries regarding the process or content of this letter, please do not hesitate to contact me. A copy of the Capability Process is enclosed for your information.

Yours sincerely,

[INSERT NAME]

Principal

Copy for employee to send to TU representative (if applicable)

Model Letter 2 – Stage 1 – Formal Capability Meeting Outcome

Private & Confidential

[EMPLOYEE NAME]

[EMPLOYEE ADDRESS]

[DATE]

Dear [NAME OF EMPLOYEE],

Stage 1 Formal Capability Meeting Outcome

Thank you for attending the meeting at Stage 1 of the Formal Capability Process held on [INSERT DATE]. At the meeting you were accompanied by [NAME]. [NAME] was also present.

At this meeting we discussed

DETAILS RELATING TO PERFORMANCE, SPECIFIC CONCERNS WHERE REQUIRED STANDARD ARE NOT MET, SUPPORT RECEIVED, ADVICE GIVEN, THE TARGET(S) ESTABLISHED, THE REVIEW PERIOD, ANY FURTHER SUPPORT IDENTIFIED, TO BE INCLUDED HERE.

Copies of the notes of the meeting and the agreed Action Plan are attached.

The outcome of this meeting is a first written capability warning that your performance does not meet the required standard and that failure to improve could lead to dismissal. This warning will remain on file for 9 months from the date of this letter.

You have the right to appeal this decision which you should do in writing to the Appeal Committee of the Governing Body, stating the grounds of your appeal, within 5 working days of receipt of this letter. The appeal procedure will run concurrently with the review period and will be heard as soon as possible and in any event within 10 working days of the appeal being lodged.

A Stage 2 review meeting has been arranged at [INSERT TIME] on [INSERT DATE]. You may be accompanied at this meeting by a trade union representative or work colleague. A request for the date of this meeting to be rearranged will not be unreasonably refused but it may only be appropriate to do so for a substantial and acceptable reason. Meetings associated with any stage of the Formal Process will normally only be postponed once and will be re-arranged within 5 working days.

The possible outcomes of the Stage 2 review meeting could be that:

- the required standard of performance has been fully met and sustained and the Capability Process ends;

- whilst the required standard of performance has been met, there is a requirement to demonstrate that this is sustained and the review period is extended;
- the required standard of performance has been partially met and the review period is extended;
- the required standard of performance has not been met and a final written capability warning is issued.

If you experience any difficulty during the review period you should discuss this with me at the time rather than wait for the review meeting.

Yours sincerely

[INSERT NAME]

Principal

Copy for employee to send to TU representative (if applicable)

Model Letter 3 – Stage 2 – Formal Review Meeting Outcome Standards Met/Partially Met

Private & Confidential

[EMPLOYEE NAME]

[EMPLOYEE ADDRESS]

[DATE]

Dear [NAME OF EMPLOYEE],

Stage 2 - Outcome of Formal Review Meeting

Thank you for attending the formal review meeting held under Stage 2 of the Formal Capability Process on [INSERT DATE]. At the meeting you were accompanied by [NAME]. [NAME/TITLE] was also present.

Option A

At this meeting, we discussed your performance against the targets set at the Formal Capability Meeting on [INSERT DATE], and I was pleased to be able to tell you that you have fully met and sustained the required standard of performance.

Therefore, I am confirming that the Capability Process is now at an end.

Option B

At this meeting, we discussed your performance against the targets set at the Formal Capability Meeting on [INSERT DATE], and while I was pleased to be able to tell you that you have met the required standard of performance, this needs to be sustained.

As discussed, I am extending the review period for a further [INSERT PERIOD] to ensure that the required level of performance is consistently sustained without support. We will meet again on [INSERT DATE] where I hope to be able to end this process. Should your performance deteriorate over the extended review period, I may have no alternative but to move to the next stage of the Formal Capability Process.

Option C

At this meeting, we discussed your performance against the targets set at the Formal Capability Meeting on [INSERT DATE], and I was able to tell you that you had partially met the required standard of performance.

Therefore, as discussed, I am extending the review period for a further [INSERT PERIOD] to enable you to [insert action required] to fully meet and sustain the required standard. We will meet again on [INSERT DATE] where I hope to be able to end this process. However, should your performance deteriorate over the extended review period, I may have no alternative but to move to the next stage of the Formal Capability Process.

Yours sincerely,

**[INSERT NAME]
Principal**

Copy for employee to send to TU representative (if applicable)

Model Letter 4 – Stage 2 – Formal Review Meeting Outcome Standards Not Met

Private & Confidential

[EMPLOYEE NAME]

[EMPLOYEE ADDRESS]

[DATE]

Dear [NAME OF EMPLOYEE],

Stage 2 - Outcome of Formal Review Meeting

Thank you for attending the formal review meeting held under Stage 2 of the Formal Capability Process on [INSERT DATE]. At the meeting you were accompanied by [NAME]. [NAME/TITLE] was also present.

At this meeting we discussed your performance against the targets set at the Formal Capability Meeting on [INSERT DATE] and you were informed that you have not met the required standard of performance.

DETAILS RELATING TO PERFORMANCE, SPECIFIC CONCERNS WHERE REQUIRED STANDARD ARE NOT MET, SUPPORT RECEIVED, ADVICE GIVEN, THE TARGET(S) ESTABLISHED, MOVING TO STAGE 2, REVIEW PERIOD, ANY FURTHER SUPPORT IDENTIFIED, TO BE INCLUDED HERE.

Copies of the notes of the meeting and a further agreed Action are enclosed.

The outcome of this meeting is a final written capability warning as you have not met the agreed standard of performance and the procedure will now move to the next stage of the Formal Capability Process. You should be aware that failure to improve could lead to dismissal. This warning will remain on file for 12 months.

You have the right to appeal against this decision, which you should do in writing to the Appeal Committee of the Governing Body, stating the grounds of your appeal, within 5 working days of receipt of this letter. The appeal procedure will run concurrently with the review period and will be heard as soon as possible and in any event within 10 working days of the appeal being lodged.

A formal review meeting will be arranged for [INSERT NUMBER] weeks' time. Any evidence you wish to be considered should be submitted at least 2 days before this meeting. You may be accompanied at this meeting by a trade union representative or work colleague. A request for the date of the meeting to be rearranged will not be unreasonably refused but it may only be appropriate to do so for a substantial and acceptable reason. Meetings

associated with any stage of the Formal Procedure will normally only be postponed once and will be re-arranged within 5 working days.

The possible outcomes of this formal review meeting could be that:

- the required standard of performance has been fully met and sustained and the Capability Process ends;
- whilst the required standard of performance has been met, there is a requirement to demonstrate that this is sustained and the review period is extended;
- the required standard of performance has been partially met and the review period is extended;
- the required standard of performance has not been met and a Decision Meeting will be held.

If you experience any difficulty during the review period you should discuss this with me at the time rather than wait for the review meeting.

Yours sincerely

[INSERT NAME]

Principal

Copy for employee to send to TU representative (if applicable)

Model Letter 5 – Stage Three – Invitation to Decision Meeting

Private & Confidential

[EMPLOYEE NAME]

[EMPLOYEE ADDRESS]

[DATE]

Dear [NAME OF EMPLOYEE],

Formal Capability Process – Decision Meeting

I am writing to confirm that a Decision Meeting with a panel of Governors will take place on [INSERT DATE] at [INSERT TIME AND PLACE].

The Governors attending this meeting are [INSERT NAMES and include who will chair the meeting]. [INSERT NAMES/JOB TITLES] will also be present at the meeting and you have the right to be accompanied by a trade union representative or a work colleague.

You are advised that the outcome of this meeting could be that a decision is taken to dismiss you on the grounds of capability.

I enclose copies of documents to be discussed at the meeting.

Please confirm your attendance at this meeting, details of the person accompanying you, if applicable, and provide any information you would like me to consider, at least 2 days before the meeting. A request for the date of the meeting to be rearranged will not be unreasonably refused but it may only be appropriate to do so for a substantial and acceptable reason. Meetings associated with any stage of the Formal Procedure will normally only be postponed once and will be re-arranged within 5 working days.

Yours sincerely

[INSERT NAME]

Principal

Copy for employee to send to TU representative (if applicable)

Model Letter 6 – Outcome of Decision Meeting

Private & Confidential

[EMPLOYEE NAME]
[EMPLOYEE ADDRESS]
[DATE]

Dear [NAME OF EMPLOYEE],

Formal Capability Process – Outcome of Decision Meeting

Following the Decision Meeting held on [INSERT DATE] and attended by [INSERT NAMES], the decision of the panel of the Governing Body is that:

Option A

You should be dismissed with notice on the grounds of capability.

The reasons for the Panel's decision are:

INSERT DETAILS

*Your last day of service will be [INSERT DATE]. You will/will not** be required to work your notice period. (**delete as appropriate)*

You have the right to appeal against this decision, which you should do in writing to the CEO of EMLC Academy Trust, stating the grounds of your appeal, within 5 working days of receipt of this letter.

Option B

You should continue to work at the academy and that your performance should continue to be formally managed. The final written capability warning remains in place and on file for 12 months.

The reasons for the Panel's decision are:

INSERT DETAILS

You have the right to appeal against this decision, which you should do in writing to the CEO of EMLC Academy Trust stating the grounds of your appeal, within 5 working days of receipt of this letter.

Yours sincerely

[INSERT NAME]

Chair of Governors' Panel

cc Jan Marshall, Chief Executive of EMLC Academy Trust

Copy for employee to send to TU representative (if applicable)

Model Letter 7 – Appeal Hearing

Private & Confidential

[EMPLOYEE NAME]

[EMPLOYEE ADDRESS]

[DATE]

Dear [NAME OF EMPLOYEE],

Formal Capability Process – Confirmation of Appeal Meeting

I confirm that I have received your appeal dated [INSERT DATE] against the decision to **dismiss you/issue you with a written capability warning/issue you with a final written capability warning** (delete as applicable) and that an Appeal Meeting has been arranged for [TIME] on [DATE] at [VENUE].

The following people will be attending this meeting [INSERT NAMES/JOB TITLES]. I enclose copies of documents to be presented to the Appeal Panel.

You may be accompanied by a workplace colleague or a trade union representative at this meeting.

Please confirm your attendance at this meeting, details of the person accompanying you, if applicable, and provide any information you would like the Appeal Panel to consider, at least 2 days before the meeting. A request for the date of the meeting to be rearranged will not be unreasonably refused but it may only be appropriate to do so for a substantial and acceptable reason. An Appeal Meeting will normally only be postponed once and will be rearranged within 5 working days.

The decision of the Appeal Panel is final and the outcome of the Appeal could result in upholding or overturning the decision to **dismiss you/issue a written capability warning/issue a final written capability warning.** (delete as applicable)

Yours sincerely

[INSERT NAME]

Chair of Governors' Appeal Panel

cc Jan Marshall, Chief Executive of EMLC Academy Trust

Copy for employee to send to TU representative (if applicable)