

United Learning Capability Procedure

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1 Scope

The policy and procedure set out in this document applies to all staff employed by United Learning (United Church Schools Trust and United Learning Trust).

We are a values-led organisation which puts children first, expects the best from everyone and aims to bring out the best in everyone.

Where this policy refers to 'School' or 'Head Teacher', within Central Office this should be interpreted to refer to the department where a member of staff works and their Head of Department. Where, in the case of formal hearings, it refers to the attendance of the Chairperson of the Local Governing Body, this should be substituted to mean another Executive Team member, other than the individual's own Head of Department.

In the case of a Head Teacher being subject to the capability procedure, 'School' should be interpreted as 'United Learning' and 'Head Teacher' as the appropriate Education Director or their nominated deputy.

When conducting formal hearings please refer to the 'United Learning Guidance on process to be followed at Disciplinary/Grievance/Capability Hearings and Appeals' (available on the United Hub).

2 Introduction

- 2.1 United Learning believes that, for the proper education of pupils at its schools and for the maintenance of morale amongst all staff, it is essential that all staff are capable of carrying out their duties to the highest possible professional standard. The responsibility to ensure that these professional standards are met and maintained is shared between all staff and United Learning.
- 2.2 United Learning's Capability Procedure is designed to ensure that, in circumstances in which there is a shortfall in performance, action taken in relation to that shortfall is consistent and fair. A capability problem is defined as a situation in which an employee is unable to perform their duties to a professionally acceptable standard. Capability may be in relation to skills, aptitudes, health or any other mental or physical condition. In cases where capability may be affected by health or any other mental or physical condition then account will be taken of an individual's circumstances in relation to any disability that falls within the requirements of the Equality Act 2010. It is distinguishable from misconduct for which United Learning Disciplinary Policy would be appropriate.
- 2.3 United Learning acknowledges that there may be numerous reasons why underperformance may be triggered. Staff may be facing health, disability or emotional difficulties and in each case such matters will be considered as part of the informal process. If there are such factors involved, the appropriate policy/procedure will be followed in order to deal with them prior to addressing issues of performance.
- 2.4 This procedure will not be used in every situation where United Learning has concerns about your performance. Minor shortfalls from acceptable standards of work will be dealt with informally as part of your day to day management through advice, counselling and standard setting. You will be informed what improvement is expected from you, within what timescale and that further occurrences could lead to formal action under this procedure being taken against you. A memorandum of any informal discussions, proposed actions and decisions may be made, and a copy provided to you and your trade union representative if so requested, but will not be used as a warning within this procedure. Such a memorandum would be retained

in your file for a period of six months from the date of issue, subject to no further formal disciplinary action being taken against you during this period.

2.5 Where there are concerns about your capability, it is the responsibility of your line manager to ensure that you are clear about the expectations they have of you and that they set realistic and measurable levels of performance improvement. Further, as far as is reasonably practical, support and assistance from your manager and others as appropriate will be made available in order to help you improve and to address your capability issues. Such support will be tailored to your specific needs but might include:

- a) Identification of training and professional development needs;
- b) Additional supervision, coaching, monitoring and access to development opportunities;
- c) An agreed programme of teaching support, including periods of observation, to identify any development opportunities;
- d) Examination of your job description with consideration given to changes or a reduction in your responsibilities;
- e) The setting of agreed additional intermediate targets;
- f) The opportunity to observe good practise.

2.6 Where the identified shortfall in performance is, or becomes more serious, the following procedure will normally be followed, but United Learning may, with the agreement of you or your representative, depart from the Procedure in appropriate cases and it does not confer any contractual rights upon you.

2.7 United Learning aims to ensure that the following principles are applied when dealing with any performance concerns under this procedure:

- a) At each stage of the procedure you will have an opportunity to respond to concerns about your performance and will be given an explanation for any proposed action and the consequences of it.
- b) Where United Learning considers that you may need training, support or clarification of your job and its duties in order for you to attain the necessary standards, it will do what it considers is reasonable to give such training, support or clarification.

2.8 If it is necessary for United Learning to invoke the following formal Capability Procedure, all those involved must have uppermost in their minds that the central aim of the procedure is to resolve concerns over your performance. The responsibility to address questions of performance remains shared between you and United Learning. Assistance and support as outlined above will continue throughout the formal process.

3 Hearings or Meetings including Appeals

3.1 You will be given:

- a) Not less than five working days' notice in writing of any capability hearing and you will be informed in writing of the issues and given copies of all relevant documents and any supporting evidence. In addition, both you and the School should provide the other with details of any witnesses that you intend to call and witness statements, at least two working days before the hearing.



- b) Not less than five working days' notice in writing of the hearing of an appeal against a warning;
 - c) Not less than eight working days' in writing of the hearing of an appeal against dismissal.
 - d) A further extension of up to 5 working days will be granted if the employee's trade union representative or companion is unable to attend within the initial notice period.
- 3.2 Where it is envisaged that the potential outcome of a hearing may lead to a final warning or to a dismissal, you will be informed of that possibility in writing prior to the hearing, in accordance with 2.1 (a) above.
- 3.3 Unless otherwise agreed by all parties, any hearing or appeal will take place during a working day. For the purposes of this clause, working days are those days when you are required to be available to perform your duties in accordance with the terms of your contract of employment.
- 3.4 At any hearing or appeal the School will explain the complaint against you and you will be given an opportunity to ask questions of the School and any witnesses in attendance, present your case and call any previously notified witnesses or present witness statements, before any decisions are reached.
- 3.5 At any hearing or appeal you will have the right to be accompanied by a colleague from your school or your trade union representative. Your chosen companion may; address the hearing to put/sum up your case; respond on your behalf to any views expressed; or confer with you. However, they may not answer questions on your behalf.
- 3.6 The capability procedure may be initiated by the Head Teacher or by a senior manager.
- 3.7 At any capability hearing the Head Teacher may arrange for an appropriate person to be present as a witness and/or to present the evidence if required. The Head Teacher will also arrange for someone to take notes to create a written record of the meeting.
- 3.8 All meetings will be minuted and a copy provided to you and your trade union representative (if you have chosen to be so represented) within at least seven working days.
- 3.9 In arranging a date for a meeting under this procedure, every effort will be made to find a mutually convenient date including taking account of the availability of your chosen representative. If you fail to agree a date within a reasonable timeframe or fail to attend a hearing without good reason, United Learning may make a decision on the available evidence.
- 3.10 An HR Business Partner, or a qualified HR Officer at school level, will be present at all capability or appeal hearings and consulted before any capability action is taken.
- 3.11 You will be informed in writing of the decision of any capability hearing or appeal within seven working days although decisions will not normally be communicated on the day and this letter will clearly set out the rationale behind the decision taken.
- 3.12 In informing you of the decision of any capability hearing, you will also be informed of your right of appeal.
- 3.13 An appeal hearing will take place on a working day as soon as is reasonable and practicable after the original warning or decision to dismiss, bearing in mind the particular circumstances of the case.

4 Performance Improvement



- 4.1 Before invoking action under this procedure it is acknowledged that there may be concerns with your performance that could be dealt with outside this procedure.
- 4.2 Where following a review of progress, after the period of support and assistance described above, your line manager considers that significant concerns continue as to your standard of performance you will be invited to a formal capability hearing. At this hearing discussions will take place to establish the validity of the grounds for concern and the best means for addressing them.
- 4.3 Where your manager considers that your under performance does not warrant a written warning they will ensure that you are clear about the expectations they have of you, set realistic and measurable levels of performance improvement and within what timescale. A further plan of appropriate support and assistance (as detailed above) will be established, during which your performance will be monitored. This monitoring will include periodic structured meetings to give supportive advice and feedback. You will also be informed that if following this period of assistance and support your performance fails to improve to a wholly satisfactory level you may be given a first written warning. A memorandum of the hearing, proposed actions and decisions will be made, and a copy provided to you and your trade union representative, if so requested. Such a memorandum would be retained in your file for a period of six months from the date of issue, subject to no further formal disciplinary action being taken against you during this period.
- 4.4 Where your manager considers that your under performance is sufficiently serious to warrant a written warning, without a further period of support and assistance, you may be given a first written warning by the Head Teacher or senior manager.
- 4.5 A first written warning may be a final warning if the shortfalls in your performance are of sufficient gravity.
- 4.6 If following a first written warning your performance fails to improve to a wholly satisfactory level you will be given a final written warning. A final written warning will say so and will mention specifically the possibility of dismissal if there is no, or insufficient, improvement to a wholly satisfactory level of performance.
- 4.7 All written warnings will explain the standards that are expected, the shortfalls in your performance and specify a reasonable time within which you must improve to a wholly satisfactory level of performance (which, subject to section 8, will normally be at least one term but will not normally exceed two terms). They will confirm what reasonable and appropriate support you will be given during this time to assist you to improve your performance and explain that you have the right of appeal.
- 4.8 Records of warnings will be kept on your personnel file, will expire after one year from the date of issue and will normally be disregarded after expiry. Expired warnings cannot be used to escalate a capability sanction, but can be taken into account as context should another capability matter arise, e.g. a history of similar conduct.

5 Dismissal

- 5.1 If, following a final warning that is still live and against which no appeal has been upheld, there is gross negligence or a failure to improve or maintain performance to a wholly satisfactory level during the existence of a final warning, the Head Teacher may terminate your employment with notice. The decision to terminate your employment may only be made after a capability hearing by the Head Teacher and after they have



consulted the Chair of the Local Governing Body (or in their absence, their appointed nominee) (and the Chief Executive in the case of a Head Teacher being dismissed).

- 5.2 In appropriate cases, as an alternative to dismissal, consideration may be given (where the circumstances may otherwise warrant dismissal), to redeploying you, with your agreement, to another position as a temporary or permanent measure. In this case your salary and benefits will be adjusted to reflect any reduction in your responsibilities.

6 Appeals Against Warnings and Against Dismissal

- 6.1 You have the right to appeal against all written warnings issued by managers, other than the Head Teacher, by sending written notice to the Head Teacher within ten working days of notification of the decision, setting out the specific grounds for your appeal. The appeal will be heard by the Head Teacher and a member of the Local Governing Body, neither of whom will have been involved with the original decision. Their decision will be final. An HR Business Partner will be present to advise the hearing on matters of law and process.
- 6.2 You have the right to appeal against warnings given by the Head Teacher by sending written notice to the Director of HR within ten working days of notification of the decision, setting out the specific grounds for your appeal. The appeal will be heard by the Chair of the Local Governing Body or their chosen substitute (or the Chief Executive in the case of a Head Teacher appealing, or by an appropriate person nominated by them). The people hearing the appeal will not have been involved with the original decision. Their decision will be final. A senior member of the HR team will be present to advise the hearing on matters of law and process.
- 6.3 You have the right to appeal against dismissal by sending written notice to the Director of HR within ten working days of notification of the decision, setting out the specific grounds for your appeal. A committee normally comprising three people, but not less than two people and not more than four, appointed by the Chair of the Local Governing Body (in consultation with an appropriate senior officer of United Learning in the case of a Head Teacher appealing), will hear the appeal. The members of the committee will not have been involved with the original decision. The Appeal Committee may include an appropriate senior officer of United Learning, e.g. Education Director, any member of the Board, any member of the Local Governing Body, or any appropriate senior officer of United Learning. A senior member of the HR team will be present to advise the hearing on matters of law and process.
- 6.4 At the appeal hearing:
- a) United Learning's legal advisor may be present to advise the Appeal Committee on matters of law;
 - b) The appeal decision shall be final. If the dismissal is upheld the date of the dismissal shall be the date of dismissal by the Head Teacher.
- 6.5 All appeal hearings will be conducted as outlined within section 2 of this procedure.
- 6.6 Appeal hearings will not normally take the form of a full rehearing of the case against you. However, both yourself and the School can request that new relevant evidence be presented at the hearing. Any such request must be submitted to the appeal panel at least five working days before the hearing. The decision of the appeal panel in this respect is final.



7 Ill Health

- 7.1 In cases where ill health is a factor in underperformance the United Learning's Sickness Absence Monitoring Procedure will be followed prior to addressing matters through the capability procedure.
- 7.2 Where you become temporarily incapable of performing your job, a flexible approach to the contractual requirements of the job will be taken wherever possible and within reason in order to assist you to make a return to normal employment.
- 7.3 There may be ill health cases where the nature of the illness makes it most likely that you will be permanently incapable of performing in your job. In these circumstances the only course may be termination of your employment on the grounds of ill health without the application of all stages of the procedure. In such circumstances you may be eligible to apply for an Ill Health Pension subject to the rules of the Pension Scheme of which you are a member. This course will only be pursued in full liaison with a doctor and in consultation with you and take full account of the Equality Act 2010.
- 7.4 Wherever possible, the decision to terminate your employment on grounds of ill health will be reached by mutual agreement.

8 Misconduct

- 8.1 In some circumstances, United Learning may consider that your unsatisfactory performance amounts to, or has become, a matter of misconduct. This may arise where it seems that you are deliberately failing to try to improve or you are deliberately failing to co-operate in the Capability Procedure. In these circumstances United Learning will normally initiate its disciplinary procedure at a stage which it considers appropriate in the circumstances.

9 Other

- 9.1 In cases where the education of pupils may be jeopardised as a result of your unsatisfactory performance, the period given for improvement may be shortened, although would not be less than four weeks. Examples of this might be where a teachers classroom control is so poor that no order can be established to enable teaching to take place, or where the children under a teacher's care fail to progress in that teacher's lessons.

10 Employee Support

- 10.1 Employees can obtain free and confidential information, support and counselling on a wide range of work, personal, financial and family issues. All employees can access free support from Health Assured through [Perkbox](https://perkbox). Health Assured can be contacted through <https://healthassuredeap.co.uk/home/>, 0800 756 0861 or 0800 028 0199. Employees can also contract their trade union for support.



11 Review

- 11.1 For the avoidance of doubt this procedure is non-contractual and United Learning reserves the right to review and amend this procedure. Such a review would also include full consultation with its recognised trade unions.



Appendix 1: United Learning Capability Procedure Flowchart

