

IMPROVING PERFORMANCE POLICY (CAPABILITY)

Learning Academies Trust

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CHANGES

Policy date	Summary of change	Author	Version	Review date
01/01/2024	Policy has been created.	Amy Bosworth HR Lead and Business Partner	1.0	01/01/2025

1. INTRODUCTION

Learning Academies Trust Board have approved this policy and as such, it applies to all schools within the Learning Academies Trust. All policies, procedures and practices are regularly reviewed to ensure they comply with legislative changes and reflect the Trust's values.

This policy is primarily concerned with ensuring that any employee whose standard of performance requires improvement in one or more areas is clearly informed what standards are expected and receives support towards achieving those standards (e.g., coaching, mentoring, training, interventions, etc). It is part of the normal day to day responsibilities of management to inform staff of concerns about standards of performance and where these are not easily resolved measures should be put in place to support staff to achieve the expected standards. The intention of this process is that it should be supportive and is designed to bring about an improvement in performance. The formal process should only be initiated when other support mechanisms have failed to resolve the issues.

This policy is designed to help maintain the required standards of performance. Please refer to the Learning Academies Trust [Code of Conduct](#) as well as the [Teacher standards of performance](#). From a position of knowing what shortcomings in performance have been identified, what improvements are required and in what time frame, this procedure will allow those who do not maintain expected standards of performance the opportunity to improve. It provides a method of dealing with shortcomings in performance including the provision of reasonable levels of support and monitoring and it ensures performance matters are dealt with in a fair and consistent manner.

2. LEGISLATION AND GUIDANCE

This policy is informed by the [ACAS Code of Practice](#) on Conduct and Capability Procedures when Managing Performance. It applies to and is designed to help and encourage staff within and supporting schools to maintain acceptable standards of performance.

The policy applies to all staff directly employed by the Trust.

This policy is not intended as a substitute for good management and sound employment practices such as the induction of new staff/newly promoted staff, good management, and comprehensive appraisal/performance management.

The formal capability procedure will not be implemented unless a support plan has been in place for an agreed period and the employee has been provided with a structured timetable of support including SMART objectives, under an informal process for their performance to improve.

When poor performance is related to a disability under the Equality Act 2010 reasonable adjustments must be made to the support plan.

3. ROLES AND RESPONSIBILITIES

Where the member of staff subject to the procedure is the Headteacher, the Director of Education will be responsible for co-ordinating the procedure, with support from the Chair of Governors.

Where the member of staff subject to the procedure is not the Headteacher, the Headteacher or a nominated member of the Senior Leadership Team will be responsible for co-ordinating the procedure.

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

Employee Responsibilities

- Comply with Trust policies and procedures.
- Carry out their job to the standard that is expected of and required for the role and grade.
- Understand the impact of their job performance on colleagues, the quality of education to students, impact on customers and the wider Trust.
- Work towards achieving any objectives as agreed with their line manager and seek clarification of expectations, tasks, objectives, and behaviours with their line manager if they are unclear about them.
- Identify to their line manager at the earliest opportunity, any issues that may impede their ability to perform to the required standards.
- Co-operate with their line manager to help improve any aspects of their work and performance which are considered to be unsatisfactory.
- Attend meetings to discuss any aspects of their performance which are considered unsatisfactory as requested to do so.

Line Manager Responsibilities

- Set out clear expectations of performance and what is necessary to achieve that performance.
- Feedback constructively to staff on their performance as soon as possible after that performance has occurred, praising good performance and identifying where performance is below the required standards.
- Actively support, guide, and train their staff to enable them to effectively fulfil the duties required of them, as defined by the job description.
- Discuss and agree any changes to the job role and job description with the employee.
- Communicate realistic and measurable standards of performance and ensure the employee understands what is required of them, and regularly review these standards and the employee's performance.
- Identify where performance is not satisfactory at the earliest possible opportunity.

- Take action promptly where performance issues are identified; to investigate the root causes of the performance issue(s) and to meet with the employee, being clear about the required improvement, the relevant timescales and any support or interventions to assist improvement(s). Document all meetings in writing.
- Offer the employee a mentor for the duration of the informal and formal process who will provide pastoral support to the employee.
- To manage staff whose performance is below the required standards of their post in line with this policy and with advice from the Trust HR Team.

4. FLEXIBILITY IN HR PROCEDURES

- 4.1 Cases of incapacity due to ill health may be dealt with under the Trust's Managing Attendance Policy (Ill Health). However, in some circumstances, two or more policies may apply to a situation. In these circumstances the most appropriate procedures will be determined by the manager with guidance from the Trust HR team using the principles of ACAS best practice and employment law. This decision will be reached following discussion with the employee and/or their representative, however, the final decision of the most appropriate process will remain with management. The aim should be to incorporate the essential elements from each procedure but minimise the number of meetings and correspondence to the benefit of all parties to resolve and manage issues promptly.
- 4.2 In cases where it is determined that the performance of an employee is affected or caused by health issues, the line manager should consider whether it is possible to adjust their working conditions or arrangements in light of these issues on a temporary or longer-term basis in line with the Trust's Managing Attendance Policy (Ill health).
- 4.3 In matters where there are serious concerns in performance and the employee's length of service is less than twelve months with the Trust, the Trust reserves the right to escalate the process straight to the formal stage.
- 4.4 It may be that during the improving performance process, the manager wishes to change the policy under which they are reviewing the employee's standard of work. What initially presented as a capability issue may reveal itself to be a conduct issue which may require a different process. Decisions about any change in policy and at what stage of the process it may be appropriate to enter will be taken with proper consideration of the facts as they appear at the time and with advice and guidance from the Trust HR Team.

5. RECORDING OF MEETINGS

- 5.1 Recording of meetings is not permitted without the express consent from all participants. All parties will be required to sign an agreement prior to a recording taking place. Covert recording of these meetings may result in the member of staff conducting the recording being subject to disciplinary action.

6. IMPROVING PERFORMANCE PROCEDURE

6.1 General Principles

- 6.1.1 This procedure applies if serious concerns emerge about an employee's performance. The formal improving performance process will begin when Line Management support and/or the appraisal process have been unable to bring about satisfactory performance or improvements in the staff member's work. The procedure is intended to provide a framework to support the employee to improve.
- 6.1.2 Problems of poor performance will be dealt with quickly and equitably, and every effort will be made to comply with the timescales of this policy.
- 6.1.3 A full explanation will be given to the employee of where they are not meeting the required standard.

- 6.1.4 Managers should be supportive of employees, help them to take action to improve their performance and consider any mitigating circumstances that may be affecting their performance.
- 6.1.5 Employees are responsible for co-operating with their manager in improving their performance and attending meetings under this procedure.
- 6.1.6 All employees who are the subject of this procedure have the right to be accompanied to all formal meetings held under the procedure by a trade union representative or work colleague.
- 6.1.7 When the formal stage of the improving performance procedure is activated, the Trust HR Team will be involved at every stage to review how the procedure is being followed and offer advice and guidance and make sure that the procedure is being followed fairly.
- 6.1.8 This policy should not be used for managing cases of sickness absence or misconduct. For such cases reference should be made to the Managing Attendance Policy or relevant Disciplinary procedure. The purpose of the Improving Performance Policy is to manage cases of underperformance, including those cases where ill health issues are involved, and advice sought from the Trust's Occupational Health Service and HR department as appropriate.
- 6.1.9 Performance issues identified during an individual's probationary period should be dealt with under the Trust's probationary procedure.

Where an early career teacher (ECT) is subject to improving performance procedures, we will continue the induction process in parallel with the capability procedure and inform the appropriate body.

7. INFORMAL STAGE

7.1 Conducting Informal Discussions

- 7.1.2 In the first instance managers should seek to resolve performance issues informally and as early as possible as part of normal day to day management.
- 7.1.3 Informal discussion should:
- Explain the nature of the concerns (providing specific examples as appropriate)
 - Set out the expected standards of performance
 - Establish the likely causes of underperformance and the support that is needed; identify any actions required by the employee or manager to aid improvement, e.g., training, or other sources of support.
 - Set SMART targets (see [Appendix 1](#)) and timescales for improvement and review dates (see performance improvement plan). Where possible these will be agreed between the employee and the manager.
 - Explain the potential consequences of not achieving the required improvements in performance.
- 7.1.4 The manager may consider a range of actions including the provision of advice and guidance, training, coaching, mentoring, work shadowing, or other informal action such as counselling.
- 7.1.5 The manager will confirm the outcomes of any informal discussion in writing to the employee and retain any notes of these informal discussions or meetings for reference purposes. However, such notes will only be used for the purposes of reviewing the standards and expectations set during the informal stage of the procedure.
- 7.1.6 Where there is satisfactory improvement and the employee has clearly met the targets in the performance improvement plan, the matter will be considered to be resolved. The employee's performance will then be managed under the performance review cycle. The informal process can however be restarted should there be capability concerns in the future.

8. FORMAL PROCEDURE SUMMARY

- 8.1 If improvements in performance are not achieved informally, the formal procedure will be instigated.
- 8.2 The employee will be invited to attend a formal performance review meeting.
- 8.3 The employee should receive at least 5 working days written notice of the performance review meeting. The letter inviting the employee to the meeting will outline the purpose of the meeting, the performance issues to be discussed and the potential support that can be considered to improve the employee's performance. Where there is additional relevant information provided to the employee this will be sent with the letter, long with the informal performance improvement plan. The letter will also inform the employee of the date, time and place of the meeting and of the employee's right to be accompanied. The companion may be either a trade union representative or a work colleague.
- 8.4 Prior to the formal performance review meeting the employee must inform the manager conducting the meeting of the names of any nominated witnesses they wish to call, any written submissions they wish to have considered, any documentary evidence they intend to rely on at the meeting, and where requested, an explanation of the relevance of both their own and any witness evidence.
- 8.5 If the employee is unable to attend the meeting, they must notify the Trust HR Team in writing as soon as possible and state the reason for not attending. Failure to attend without a good reason may result in the Senior Management Team devising strategies on how to improve performance in the employee's absence.
- 8.6 The meeting will be held by the employee's manager or a more senior manager and will be supported by an HR representative.
- 8.7 The aims of the performance review meeting will include:
- Setting out the required standards that have not been met during the informal process, considering any relevant evidence.
 - Giving the employee the opportunity to ask questions, present evidence, call witnesses, respond to evidence and make representations.
 - Establishing the likely causes of underperformance and reasons why informal support has not resulted in increased performance.
 - Discussing further support required, such as additional training or supervision, and agreeing SMART targets which may improve performance. Agree a timescale for review (see Performance Improvement Plan (PIP)), ensuring a reasonable period of time is provided for the individual to demonstrate improved performance.
 - If the performance concerns are directly linked to ill-health, consideration will need to be given as to whether any adjustments have been made to support the employee.
- 8.8 The meeting may be adjourned if it is necessary to review additional information or to give further consideration to matters discussed at the meeting.
- 8.9 The employee will receive a copy of all meeting minutes, including the Performance Improvement Plan (PIP) and will be issued with a Formal Notice to Improve for the duration of the formal process.
- 8.10 At the end of the review period the Line Manager will invite the employee to a Decision Meeting. During this meeting the employee's performance will be reviewed and an outcome decided. The employee will be informed in writing of the outcome of the decision meeting and the reasons for the decision within 5 working days.
- 8.11 It is recommended that management extend the review period in the first instance prior to referring to a final performance review. Only in extenuating circumstances, i.e. where no improvement has been made during the informal and initial review period or the employee is not engaging with the PIP, should management refer straight to the final performance review after the initial review period.

9. FORMAL STAGE

9.1 As outlined under 8.3 above, whilst managers should seek to resolve performance issues informally wherever possible, where there are grounds for taking formal action, the employee will be required to attend a performance review meeting.

9.1.1 Initial Meeting

9.1.2 If an employee's performance does not meet the acceptable standards, and informal action has not succeeded in addressing the problem, the employee will be required to attend a formal performance review meeting.

9.1.3 The employee will be invited to an initial meeting as set out in paragraph 8.3 and will have the right to be accompanied by a trade union representative or work colleague.

9.1.4 At the Initial Meeting, the manager must:

- Inform the employee where their performance is not meeting the required standards and outline what these are. The manager will be required to provide clear evidence of the issues/concerns raised.
- Confirm what informal support has already been put in place to assist the employee and explore any further options which may support them.
- Give the employee the opportunity to respond and advise of any issues preventing them from meeting the required standards, including any mitigating factors.
- Carefully consider the employee's response. The meeting can be briefly adjourned if required.
- Give clear guidance on the improvement(s) required to achieve the expected standard of performance, to ensure that the employee can be removed from the formal procedures at the earliest opportunity. This may include the setting of new SMART objectives, focused on the specific areas of improvement, 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.
- Discuss with the employee the possibility of redeployment to another role (if relevant).
- Seek to agree with the employee and their representative the support that will be available to help the employee improve their performance. If no agreement is reached, then the Line Manager will determine the nature of the support.
- Support may include training or the temporary adjustment to duties or responsibilities. Support will always be constructive and not limited to monitoring or observations because the Trust recognises that monitoring and observations are not supportive measures.
- Set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable for this will depend on the circumstances of the individual case. In this Trust, the standard set review period is normally four weeks, however, in exceptional circumstances it could be up to six weeks. This would follow a discussion and the seeking of agreement from the employee.
- The review period will be reasonable and proportionate and should provide sufficient opportunity for an improvement to be made. The criteria and timing for measuring the success of the new target/s should also be clear and explicit. In addition, there should be regular interim reviews with the employee to monitor the progress of the targets and to address any concerns.
- Agree the date of the Decision Meeting.
- The employee will also be informed formally that, in the worst case, if performance does not improve and the procedure progresses to a final performance review, that the termination of employment is a possible outcome.
- Complete a Formal Performance Improvement Plan, that details the concerns raised, support in place, the agreed timescales for improvement and the planned reviews.
- The manager will also inform the employee that they have been placed on a Formal Notice to Improve for the duration of the formal process.

9.1.4 If as a result of the meeting and the evidence presented, the employee's performance is considered to be satisfactory and no further action is required, this will be confirmed to the employee in writing.

- 9.1.5 If as a result of the meeting and evidence presented, the employee's performance is considered to be unsatisfactory, the manager will issue to the employee a written Formal Notice to Improve, to begin the formal process. The letter will state the required improvement in performance, targets and timescales for improvement, any support to be provided and the possible consequence of not meeting the performance targets within the review period. It will also set out the employee's right of appeal.
- 9.1.6 The manager will monitor the employee's performance during the review period and hold regular review meetings with the employee. A performance improvement plan should be used to record actions taken and progress made during the review period. A copy will be provided to the employee. On completion of the review period, the manager will invite the employee to a Decision Meeting.

10. DECISION MEETING

- 10.1 At the end of the set review period the line manager will meet with the employee to formally review their performance against the Formal Performance Improvement Plan, in accordance with the agreed timeframe and actions.
- 10.2 At the meeting, the line manager must:
- Discuss the details of the Formal Performance Improvement Plan including confirming the status of the objectives set and the support/training provided.
 - If the objectives have not been met, give the employee the opportunity to respond and discuss any issues preventing them from meeting the required standards, including any mitigating factors.
 - Carefully consider the employee's response and any documentation provided.
- 10.3 In order for an employee to exit the formal improving performance process, they must have achieved or shown significant progress to all the objectives agreed in the PIP, and made every improvement required. An individual will also need to demonstrate a normal level of autonomy for the role, as well as the expected quality and quantity of work.
- 10.4 An outcome should be made after all the facts and information from the employee have been considered. The line manager should adjourn the meeting briefly to consider the appropriate action before delivering the outcome to the employee.
- 10.5 The outcomes available are:
- **No Further Action** - If the line manager is satisfied that the employee has made sufficient improvement, the formal procedure will cease. The employee should be informed that the Formal Improvement Notice will remain in place and if any similar concerns arise within the next twelve months a further formal improving performance process will be convened.
 - **Extended Review Period** - If some progress has been made and there is confidence that with more time performance will improve to the required standards, a further monitoring and review period will be set for no more than four weeks. This will be followed by a further Decision meeting as outlined in this section.
 - **Final Performance Review Meeting** – if there is no improvement in the employee's performance or the employee is not engaging with the PIP, then the matter will progress to a Final Performance Review Meeting. The employee will also be informed that one potential outcome from this meeting is termination of employment.
- 10.6 An outcome letter from this meeting and any associated documents will be sent to all parties within five working days of the meeting.

11. FINAL PERFORMANCE REVIEW MEETING

- 11.1 The employee must be informed of the Final Performance Review Meeting date in writing at least 10 working days before the meeting is due to take place. Copies of any relevant documents will be included with the letter.
- 11.2 The letter will detail the possible outcomes from this meeting, including that the termination of their contract, due to poor performance (capability) owing to a fundamental failure to meet the contractual required level of performance for their role, is an option to the panel.
- 11.3 The meeting must be chaired by an independent person who has the authority to dismiss i.e. Local Governing Body, independent Headteacher. The Panel Chair supported by two independent people will review the overall performance process, including the PIP and the support and development that the individual has been given to improve.
- 11.4 The dismissal of an employee on the grounds of poor performance (capability) should be a last resort only after all other options have been fully considered and after adjustments have been considered to support their continuing employment. Consideration should be given to redeployment, where possible.
- 11.5 The employee will have the right to be accompanied at the final performance review meeting by a Trade Union representative or a workplace colleague. It is useful to agree a date with the employee's representative before sending the formal invite. The employee may suggest an alternative time and date for the hearing as long as it is reasonable and is not more than five working days after the original date. The Line Manager may reject the suggestion but will only do so if it is unreasonable, and they may proceed with the meeting in the employee's absence. Advice on what is reasonable must be sought from the Trust HR Team.
- 11.6 The Panel Chair will confirm in writing within five working days the outcome of the Final Performance Review Meeting, providing a summary of the key points discussed and confirmation of the outcome.
- 11.7 If an employee is dismissed at Final Performance Review Meeting, the notice period will start to run from the day following the date of the meeting or the day following the date of the letter if the employee is informed solely in writing.

12. ACTION SHORT OF DISMISSAL


- 12.1 Where a reasonable alternative role (including those at a lower grade) is considered an option as an alternative to dismissal on the grounds of capability, an appropriate position must be available and identified as being a role where the employee will be able to perform effectively. This may be at another school within the Trust.
- 12.2 Where an employee accepts an alternative role in line with this policy, the changes to terms and conditions will be a permanent change. There is no entitlement to any pay protection and the employee will be placed on the appropriate grade and pay point of the new post. This may not necessarily be at top of the grade. Normal incremental rules will apply, and increments will be awarded in line with the Trust's Performance Management policy.
- 12.3 Where the employee refuses the alternative role, or if an appropriate post is not available the panel may have no alternative other than to dismiss the employee with notice.

13. RIGHT TO APPEAL

- 13.1 The employee will have the right of appeal against the decision to issue them with a formal notice to improve. Staff will also have the right of appeal against the decision made at the final performance review meeting under this policy.

APPENDIX 1

ACAS - SMART PERFORMANCE OBJECTIVES

		Tips for setting SMART performance objectives	
<p>Before you begin...</p> <p>Ensure the organisation has clear and accurate job descriptions Consider if SMART objectives will help the essential tasks of the role</p>			
<p>Making the objectives SMART...</p>			
Specific		What exactly does your employee need to achieve?	
Measurable		How will you know that an objective has been achieved?	
Achievable		Is this something the employee is capable of achieving?	
Relevant		Is it relevant to the overall purpose of the role, team and organisation?	
Timebound		When does your employee need to achieve the objective?	
<p>Agree objectives with your employee...</p> <p>Involve your employee in setting their objectives so that they understand them Agree that the objectives make sense for the work your employee does If other employees carry out similar tasks, it may be better to agree common objectives for the group but they should still be developed in discussion with the employees and their representatives</p>			
<p>Make sure the objectives stay relevant...</p> <p>If an employee's role changes, their objectives might need to change too Special projects or new tasks may require new or temporary objectives</p>			
<p>Some helpful examples...</p>			
Improve customer satisfaction as far as possible	becomes...	Increase overall customer satisfaction by 5% this year based on the results of the after sales customer questionnaire.	
Keep delivery bays as tidy as possible	becomes...	Clear delivery bays of all waste and other material within 30 minutes of delivery vans leaving.	
Investigate absence levels	becomes...	Prepare a board paper by the end of the year which recommends how staff absence might be reduced.	
Answer customer queries as quickly as possible	becomes...	Answer all customer queries within two working days.	
Want to learn more? www.acas.org.uk/performance			

APPENDIX 2

PROCESS FLOWCHART

