



THE PRIORY  
LEARNING TRUST

# Capability Policy & Procedure

## Policies approved by the Board of Trustees

Signed:

Name: Barry Wratten

Date: 1<sup>st</sup> September 2020

Chair of Board of Trustees

## Authorised for Issue

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Date: 1<sup>st</sup> September 2020

Chief Executive Officer

## History of Policy Changes

Date	Version	Author	Origin of Change e.g. TU request, change in legislation	Changed by
September 2017	1	FRL	Creation of policy	
May 2018	2		Review of policy	DL
February 2019	3		Following Somerset Union consultation	DL
June 2019	4		Annual review	DL
May 2020	5		Review of policy	AT

This policy applies to The Priory Learning Trust and all its academies.

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Review cycle	Annual
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## **1. Introduction**

- 1.1 The Priory Learning Trust (the Trust) seeks to ensure the effective performance of all its staff in order to deliver the aims and vision of the Trust. This policy is designed to support and encourage all employees who are experiencing difficulties in achieving and maintaining satisfactory levels of performance through ensuring that performance expectations and standards are defined, performance is monitored and employees are given appropriate feedback, training and support to meet these standards. The Trust will ensure that all employees are treated fairly and consistently when addressing cases of underperformance.
- 1.2 This policy does not form part of any employee's contract of employment and it may be amended at any time following consultation.

## **2. Scope and purpose**

- 2.1 As part of the normal management and appraisal process line managers may from time to time discuss aspects of performance with a member of staff where there are concerns that an employee may not be performing to an acceptable standard. Such discussions will take place informally and do not come within the scope of the Capability Procedure. The status of these 'informal' discussions shall be made known to the employee. It is envisaged that most areas for concern can generally be dealt with through informal discussion and coaching.
- 2.2 Informal procedures may include setting objectives in plans such as an informal support plan with additional training, coaching or support provided by colleagues, line management or another appropriate provider
- 2.3 Should an assessment be made that the employee's performance continues to be unsatisfactory, despite the employee being supported through the normal management and appraisal process, the matter should be dealt with in accordance with this Policy.
- 2.4 The Chief Executive Officer can trigger capability procedures for all staff. The Principal or appraiser can trigger capability procedures for Teaching staff, and Teaching & Learning Staff (including, but not limited to Learning Support Assistants and department technicians) and the Chief Operations Officer, Academy Operations Manager or appraiser for Business Staff. During the capability procedures the appraisal process is halted.
- 2.5 This Policy will apply where it is identified that an employee has insufficient skill or aptitude to carry out their duties to an acceptable standard

2.6 This Policy does not apply in the following circumstances:

- Where the underperformance of an employee relates to negligence or an attitudinal problem on the part of the employee (the Trust’s Disciplinary Policy & Procedure will apply).
- Where the underperformance of an employee is identified during the employee’s Probationary period (the Trust’s Probationary Procedure will apply).
- Where no employment relationship exists, for example agency workers, casual/supply workers, volunteers, work experience placements.
- Where the Absence Review Policy & Procedure apply.

2.6 Newly Qualified Teachers: in the event of ‘serious capability problems’ during the induction period of a Newly Qualified Teacher (NQT) the Capability Procedure can be applied to the Newly Qualified Teacher and ‘run alongside’ the induction procedure.

### 3. Capability Review Procedure

3.1 In the event that a line manager has concerns about the performance of an employee and improvement has not been substantial following informal support, the line manager will write to the employee asking them to attend a **Stage 1 Capability Review Meeting**. The letter will set out details of the line manager’s concerns and will contain copies of any documentation or data that the line manager wishes to discuss with the employee, including the informal support plan as detailed in 2.2.

3.2 The Capability Review Meeting (Stage 1, 2 and 3) will be conducted by the following persons, in conjunction with the line manager:

Academy Teaching & Learning Staff (except Leadership Team)	Vice Principal
Leadership Team	Principal
Principal	Chief Executive Officer
Academy Business Staff (except Academy Operations Managers)	Academy Business Manager
Academy Operations Managers	Deputy Chief Operations Officer or Chief Operations Officer
Central Team	Heads of Service / Deputy Chief Operations Officer

3.3 The employee will receive five working days’ notice of the meeting.



- 3.4 The employee may be accompanied to the meeting by a work colleague or trade union official.
- 3.5 The aim of the discussion at this meeting is to jointly identify with the employee the facts that have contributed to the performance problem and to decide the action required. The meeting allows the employee to respond to concerns about their performance and to make any relevant representations. At this meeting the employee should be reminded of the previous informal discussions held regarding their performance and told of their continued shortcomings. The employee should be given an opportunity to give their interpretation on the concerns being raised.
- 3.6 This meeting may provide new information or a different context to the information/evidence already collected. The person conducting the meeting may adjourn the meeting for example if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.
- 3.7 Where, following discussion with the employee, the person conducting the meeting concludes that there are no or insufficient grounds for pursuing the capability issue formally then the employee will be advised in writing of this fact and any other agreements reached at the meeting.
- 3.8 Where the conclusion is that the employee is not meeting the required standards in performance, the person conducting the meeting will, following the meeting, write to the employee to:
- Confirm with the employee his/her performance shortcomings
  - Give clear guidance on the improved standard of performance needed (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);
  - Explain the support that will be available to help the employee improve their performance;
  - 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 and should be reasonable and proportionate and should provide sufficient opportunity for an improvement to take place. In straightforward cases this could be between four and ten weeks; and
  - Warn the employee through issuing a **First Written Warning** that failure to improve within the set period could lead to a Final Written Warning and ultimately their dismissal.
  - The employee will have the right to appeal this decision, if they deem it to be unfair, as set out in section 4.

- 3.9 A performance monitoring and review period will follow. Formal monitoring, evaluation, guidance and support/feedback will continue during this period. A mid-review period meeting will be held with the employee to discuss progress and support put in place and whether there are any adjustments needed to the support arrangements (this meeting is optional but recommended).
- 3.10 At the end of the review period the employee will be invited to a **Stage 2 Capability Review Meeting** to be heard by the relevant person set out in paragraph 3.2
- 3.11 The employee will receive five working days' notice of the meeting.
- 3.12 The employee may be accompanied to the meeting by a work colleague or trade union representative.
- 3.13 During the meeting, the employee's performance will be assessed to establish whether the concerns that have been raised have been adequately addressed. The possible outcomes of this meeting are:
- The employee is advised that they have reached the required standards of performance. They will be advised that they are required to sustain their improvement. Should the employee fail to sustain their improvement within the following 12 months, the employee will be invited to attend a further Stage 2 Capability Review Meeting.
  - If, following discussion with the employee, the assessment is that the employee has made some progress and there is confidence that, given a further reasonable period, they will achieve the standards of performance required, it may be appropriate to extend the Stage 1 monitoring and review period, normally for up to 4 weeks. At the end of this extended review period, the employee and line manager will hold a Stage 2 Capability Review Meeting again. The possible outcomes of this meeting are as set out in this paragraph 3.13 (although it is unlikely that a further extension of the review period will be appropriate).
  - The employee is advised that they have failed to reasonably reach the required standards of performance. They will be advised of the line manager's ongoing concerns. The employee will be issued with a Final Written Warning. Following the meeting, the person who conducted the meeting will write to the employee to:
    - Confirm with the employee his/her performance shortcomings
    - Give clear guidance on the improved standard of performance needed to ensure that the employee can be removed from formal capability procedures (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);

- Explain any support that will be available to help the employee improve their performance;
- 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, should be reasonable and proportionate and should provide sufficient opportunity for an improvement to take place. A timescale by which to improve which should not normally exceed 4 weeks.
- Warn the employee through issuing a **Final Written Warning** that failure to improve within the set period could lead to their dismissal.
- The employee will have the right to appeal this decision, if they deem it to be unfair, as set out in section 4.

3.14 At the end of the review period the employee will be invited to a **Stage 3 Capability Review Meeting**.

3.15 The employee will receive five working days' notice of the meeting.

3.16 The employee may be accompanied to the meeting by a work colleague or trade union representative.

3.17 During the meeting, the employee's performance will be assessed to establish whether the concerns that have been raised have been adequately addressed. The possible outcomes of this meeting are:

- The employee is advised that they have reached the required standards of performance. They will be advised that they are required to sustain their improvement. Should the employee fail to sustain their improvement within the following 12 months, the employee will be invited to attend a further Stage 3 Capability Review Meeting.
- If, following discussion with the employee, the assessment is that the employee has made some progress and there is confidence that, given a further reasonable period, they will achieve the standards of performance required, it may be appropriate to extend the Stage 2 monitoring and review period, normally for up to 4 weeks. At the end of this extended review period, the employee and the suitable person listed in paragraph 3.2 will hold a Stage 3 Capability Review Meeting again. The possible outcomes of this meeting are as set out in this paragraph 3.17 (although it is unlikely that a further extension of the review period will be appropriate).



- The employee is advised that they have failed to reasonably reach the required standards of performance. They will be advised of the ongoing concerns with their capability. The employee will be advised that they are required to attend a **Capability Hearing**, the purpose of which will be consider whether it is appropriate to terminate the employee's employment on the grounds of Incapability.
- 3.18 The Capability Hearing will be conducted by the individual(s) identified within the Scheme of Delegation.
- 3.19 The employee will receive 10 working days' notice of the hearing.
- 3.20 The employee may be accompanied to the hearing by a work colleague or trade union representative.
- 3.21 The person who conducted the stage 1,2 and 3 meetings will prepare a written statement of case for consideration which will include:
- A copy of the relevant performance standards and personal objectives against which the employee's performance is being assessed;
  - Copies of any documentary evidence and/or data relied upon by either the line manager or employee as evidence of the employee's performance;
  - Copies of the record of any formal meetings held with the employee to discuss their underperformance, including relevant appraisal records;
  - Copies of any formal warning issued in respect of the employee's under performance; and
  - Evidence of any support arrangements put in place to date to assist the employee in achieving the standards of performance required.
- 3.22 The written statement of case will be provided to the appropriate person in 3.18 and the employee at least 10 working days before the date of the Capability Hearing.
- 3.23 The employee can decide whether to send a written response for consideration and/or attend the Capability Hearing in person. Any written documentation the employee wishes to consider must be provided at least 5 working days before the date of the Capability Hearing, and copied to the person(s) conducting the hearing.
- 3.24 The names of any witnesses to be called to the Capability Hearing by either the person who conducted the stage 1, 2 and 3 meetings or the employee, must be disclosed to all relevant parties within the same timescales.
- 3.25 All the information submitted, both orally at the hearing and in writing, will be reviewed by the person(s) conducting the hearing and they will decide on one of the following outcomes:

- That the employee has reached the required standards of performance. The employee will be advised that they are required to sustain their improvement. Should the employee fail to sustain their improvement within the following 12 months, the employee will be invited to attend a further Stage 3 Capability Review Meeting.
  - To review the employee's performance again after a specified period of time at a re-convened Capability Hearing. This may be to allow for alternative support arrangements to be put in place.
  - To dismiss the employee on the grounds of Incapability.
- 3.26 The outcome of the Capability Hearing will be confirmed in writing to the employee within five working days. Where a decision to dismiss is taken the employee will be informed of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal, as set out in section 4
- 3.27 Where a decision to dismiss the employee is reached, suitable alternative employment for the employee within the Trust will be sought, where this is practicable during the employee's notice period. Where this is a position at a lower grade pay protection will not apply. In return, the employee has a responsibility to positively engage with the process of seeking to find them an alternative role.

#### **4. Appeals**

- 4.1 If an employee considers that a decision to dismiss them, or other action taken against them (written warning or final written warning), is wrong or unjust, they may appeal, setting out the grounds of their appeal in writing to the appropriate person detailed in the outcome letter within 10 working days of the date of the letter confirming the decision to dismiss, setting out at the same time the grounds for appeal.
- 4.2 Appeals against written warnings following the Capability Review Meetings will be normally heard by the appropriate person detailed in the outcome letter.
- 4.3 An appeal must not interrupt the progress of the procedure, although the appeal decision could lead to the matter being reconsidered and a lower level warning being issued or the review process being concluded. Where an appeal is upheld the matter should be referred back to the line manager and the person who conducted the stage 1,2 and 3 meetings for further appropriate action with recommendations where appropriate.
- 4.4 Appeal Hearings are restricted to considering the reasonableness of the decision made. It can consider any relevant new evidence, or representations about any perceived procedural irregularities.

- 4.5 The employee will receive 10 working days' notice of the appeal hearing.
- 4.6 The employee may be accompanied to the appeal hearing by a work colleague or trade union representative.
- 4.7 The employee will be informed of the outcome of the appeal hearing in writing as soon as possible.

## **5. Currency of Warnings**

Should the employee be absent from work long term (4 weeks or more) during the currency of the warning, the currency of the warning will be extended for a period that equates to the period of absence. This would apply for example in cases of long term sickness and maternity/paternity/adoption leave

## **6. Record Keeping and Data Protection**

Notes will be taken of all formal meetings and made available to the employee on their written request. A copy of any correspondence sent to or received from the employee, together with copies of any relevant evidence, action plan/timetable, will be stored on the employee's personnel file. Audio or video recording of the formal meetings will not be permitted. Records will be treated as confidential and kept for no longer than necessary in accordance with the Data Protection Act 2018.

## **7. Grievances**

- 7.1 Any disagreements or grievances about the interpretation of this policy or the application of any related matters not covered in this policy, must not delay the various elements of the capability procedure or the overall timetable determined to be appropriate for handling any particular case. The appeals process exists to raise any concerns about procedure or the level of sanction imposed.
- 7.2 In exceptional circumstances a member of staff may raise a grievance about the behaviour of the line manager during the course of this procedure. Depending on the circumstances, it may be appropriate to suspend the procedure until the grievance can be considered. Such a delay should only be considered where there is a strong indication that the member of staff has been mistreated and consideration should be given to enabling another manager to deal with the capability case. Any records should be passed to the new manager and if appropriate, the case should be continued within the same timetable.

## **8. Sickness**

- 8.1 If long term sickness absence appears to have been triggered by the implementation of this policy and its procedure this may necessitate an immediate referral of the employee to the Occupational Health Service to assess the employee's health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring or formal procedures during the employee's absence from the workplace. In some cases, it may be appropriate for formal procedures to continue during a period of sickness absence.
- 8.2 Short term absence will not normally delay the progress of the Capability Procedure.

## **9. Review of policy**

This policy is reviewed annually by the Trust and where materially amended is consulted on, where necessary. We will monitor the application and outcomes of this policy to ensure it is working effectively.'