



THE
**CREATIVE
LEARNING**
PARTNERSHIP TRUST

Capability Policy for (school version for non- teaching and support staff)

Approved by:	Chair of Trustees Chief Executive Officer	Date: Summer Term 2023
Next review due by:	Summer Term 24	

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This information can be made available in a range of formats and languages including Braille and large print.

If this would be useful, please contact your Head Teacher

2. Statement from the Chief Executive

We (The Creative Learning Partnership Trust) want our workforce to be ambitious, courageous and empowered to do a great job and make a positive difference to the lives of the people we serve. To support this, we want a positive working environment and a culture of confidence, respect and equality. When things do not go to plan, it is important we resolve issues in the right way for all involved. Our People Policies provide managers and colleagues with the clear yet flexible guidance to deal with those issues quickly and fairly.

3. Guiding Principles

We are committed to developing policies and processes that reflect our People Strategy, values and contribute to promoting a positive working environment.

Our principles therefore comprise:

- Encouraging adult-to-adult conversations where everyone acts to address workplace concerns early through day-to-day conversations
- Being supportive, proactive and solution focussed, addressing concerns quickly and fairly, tailored to individual needs
- Recognising that everyone has a responsibility and role to play in creating the right conditions to do their job well
- Focussing on wellbeing and building trust within the workplace
- Developing policies that support diversity and inclusion and promote an inclusive work environment free from any form of discrimination, bullying, harassment, or victimisation
- Holding ourselves and each other to account to always behave and act in the best interests of the council, school and the people in our community

4. Purpose

This policy sets out what you can expect if you are experiencing underperformance issues. It aims to strike a balance between the pursuit of operational needs, to deliver for the people of our community and provide you with support to manage your underperformance concerns.

This policy is only to be used where your performance does not reach the expected standards required for your job role and a formal process is required. The aim of this policy is to enable you to achieve a sustained improvement in your performance to meet the required standards of your role.

5. Scope of Policy

This policy applies to all support and non-teaching employees, regardless of length of service. It does not form part of your contract of employment or any other contract to provide services and can be amended from time to time and in consultation with the recognised trade unions.

This policy does not apply to agency workers, consultants, self-employed contractors, volunteers or interns.

This policy has been implemented following consultation with our recognised Trade Unions.

Decisions will be made in line with the school's local scheme of delegation or equivalent mechanism for making decisions at the appropriate level

6. The question of Capability or Conduct?

It can be helpful to understand when a concern could be a conduct issue and when it might be capability.

- Conduct relates to your behaviours at work not reaching the required standards deliberately or wilfully ignoring guidance or instruction. In those circumstances the Disciplinary Policy would apply.
- Capability is when you are unable to attain expected standards of performance. This may be due to a lack of skill, ability or a need for specific learning or development. In those circumstances your manager will support and manage you through this policy

7. Early considerations

Underperformance can be due to a variety of reasons and some of those may be outside of your control, particularly if there are underlying health issues or a training need. It is therefore important that any problems are discussed early so that you can work with your manager to identify causes and access the right kind of support. For example, if the causes relate to a disability, there may be reasonable adjustments that can be put in place which enable you to reach the expected standards of performance.

Initial minor underperformance concerns will always be managed through day-to-day line management conversations, for example 1-2-1's or supervision, with reference to the Whole School Model Appraisal Policy.

Early discussions will help you and your manager work through these concerns in a solution focused way, by exploring a holistic range of factors that may impact on you undertaking your role, such as

- volume of work

- working relationships
- available technology
- personal issues

In some circumstances additional supervision sessions may be required to help you and your manager keep on track, but these should not be overbearing.

Notes of relevant discussions and actions will be captured and agreed between you and your manager as normal. These will be sufficient to identify where issues, actions and support are discussed, whilst ensuring that this does not feel like formal action.

It is the intention to try to resolve underperformance concerns, wherever possible, through these early 2-way conversations.

If there is a need to move to a formal process, your manager will clearly explain this to you after having reviewed all the relevant facts, information and support. Further, your manager will always seek advice from the school HR provider to ensure a fair and reasonable process is followed.

As part of the formal process, you will be invited to a separate formal meeting with appropriate notice and a [right to be accompanied](#).

8. Formal Capability Process

If despite the normal day-to-day conversations and support through the Whole Schools Model Appraisal Policy, the underperformance continues, or where underperformance concerns are so serious that they are presenting risk to the school, a formal process may become necessary.

For most Stage 1 and Stage 2 formal capability meetings your line manager or Head Teacher will act as the Deciding Manager. For a Stage 3 formal meeting, where dismissal is a consideration, a manager who has not previously been involved and who has delegated authority to dismiss, will act as Deciding Manager. In a school environment a decision, at this level, may be undertaken by a panel from the Governing Body.

If you have difficulty at any stage of this procedure either

- because of a disability or
- because English is not your first language,

you should discuss the situation with your manager as soon as possible, so that suitable support can be explored.

9. Formal Capability Meetings

There are normally three separate formal capability meetings (Stage 1, Stage 2 and Stage 3) during the formal process with a [right to be accompanied](#) and a right of appeal at each stage. You will be given a minimum of 10 calendar days' notice of the meeting taking place unless you request to meet sooner.

Meetings and warnings will normally be cumulative and only be required where performance has not improved or been maintained.

However, if the area(s) of your underperformance is sufficiently serious that it might have had or is liable to have a serious or harmful effect or impact on the school, it may be appropriate to move directly to a final written warning. For example, where the role is inherently hazardous to yourself and others, or perhaps the underperformance issues will have or have had a serious/ harmful effect on students/pupils. If that is considered appropriate in the circumstances, the rationale will be explained to you.

Your manager will have already discussed with you the need to commence a formal capability process and arrange a formal capability meeting. Whether it is a Stage 1, Stage 2 or Stage 3 formal capability meeting, they will formally invite you to meet with them in writing. In their role as Deciding Manager, they will be supported by their HR Provider, where possible.

Please note that the council will be made aware of any potential dismissals for any reason, including capability, and may attend any formal capability meetings where dismissal may be an outcome.

Where it is not possible to hold a face-to-face meeting under this procedure, we may conduct the process remotely, for example using Microsoft Teams. We will ensure that you and your [companion](#) have access to the necessary technology for participating. Your rights will not be affected, and we will ensure that the procedure remains fair and reasonable.

A record of the meeting will be made, either by the person conducting the meeting, a note taker or electronic recording (where the meeting is held remotely). Where electronic recordings are made, for the purposes of transcription, this will be with prior consent by all attendees and data protection obligations being met. A written record or transcription of the meeting will be shared with you.

If you or your [companion](#), are unable to attend a formal meeting, you have a right to suggest an alternative time and date so long as it is reasonable, and it is not more than 5 working days after the original date.

You are expected to attend meetings which form a key part of processes in relation to your employment. Meetings will be rearranged where possible however not usually more than once.

If you are unable to, or fail to, attend a rearranged meeting, without good reason, the meeting may be held in your absence. Where you have indicated, in advance, that you are unable to attend you may be invited to submit written representation (to arrive at least 24 hours before the meeting).

Where a decision is made in your absence it will be based upon the information available at the time, including any written representations you have made.

Your invite letter will include:

- a) A summary of relevant information gathered to date as part of any assessment (including details/notes of any discussions through day to day management conversations where the invite is to a Stage 1 formal capability meeting)
- b) A copy of any relevant documents relating to your underperformance or other documents which will be used at the capability meeting. For example, system reports, training records, completed reports.
- c) A copy of the Capability Policy (where the invite is to a stage 1 formal capability meeting)
- d) A copy of your job description (where the invite is to a stage 1 formal capability meeting)
- e) A copy of your performance management plan (where a formal meeting and first or final written warning has already been issued)
- f) A copy of any relevant witness statements unless the identity of a witness is being kept confidential (in which case you will be provided with as much information as possible). For example, teacher observations. Anonymised witness statements are only used in exceptional circumstances.

If you wish to submit any written representation or evidence relevant to the underperformance concerns being considered, you must share with the Deciding Manager no later than 3 working days before the formal capability meeting.

At all formal capability meetings, discussion will cover the following areas:

- Clarification of the required standards that we believe you may have failed to meet and going through any relevant evidence that we have gathered.

- Clarity on what you need to do to achieve the required improvement in your performance.
- Giving you the opportunity to ask any questions you may have or present any evidence if you disagree with the assessment of your performance, including discussion about any reasons that you feel may be contributing to it or why support to date has not helped.
- Identifying whether there are any other supportive measures such as additional training or supervision that you feel might help you to improve your performance.
- Where appropriate, agreeing targets for your improvement and timescales for review.
- Where dismissal may become a possibility, establishing if there may be any alternatives such as redeployment into another vacant role. Redeployment can be considered at any point in the process.

A formal meeting may be adjourned if we need to gather any further information or consider matters discussed at the meeting. You will be given a reasonable opportunity to consider any new information obtained before the meeting is reconvened.

Your manager will adjourn a formal meeting once discussions have been concluded and then consider potential outcomes. They will then reconvene the meeting and your manager will confirm to you whether they will be issuing a formal warning (or dismissal where appropriate) or whether there are actions that could be taken to help you improve that do not require a formal warning at that time. They will confirm this to you in writing at the earliest opportunity and within 5 working days of the meeting taking place.

Where a first or final written warning is issued, they will also discuss with you the development and/or review of a performance management plan which will detail clearly the areas of concern, the standard and improvement expected, the actions agreed to support your improvement and timescales for review. This may be following the adjournment or at a point soon after the meeting but will be developed with you. The performance management plan is only completed as part of the formal process where a warning is issued.

Your outcome letter will set out the areas in which you have not met the required standards, targets for improvements, any measures, such as additional learning and development or supervision, which will be taken with a view to improving performance, relevant and realistic timescales, and a period for review. This letter will be supplemented by the performance management plan. It will include next steps if underperformance continues which could result in a further formal meeting to consider either a final written warning or your dismissal.

Whilst possible future steps need to be made clear, this is no indication of a foregone conclusion. Meetings, and performance management plans will always be developed with you with positive expectations in mind. The recommended timescale for the required improvements as part of your performance management plan will be discussed with you and will consider the nature of your role, impact, and business/school cycle. The improvement period will be reasonable and realistic enough to allow you sufficient opportunity to improve and the frequency of meetings to discuss progress (Progress Review Meetings) will be agreed between you and your manager as part of that plan.

The possible outcomes of formal meetings under this process and the duration of warnings mirror those outlined in the disciplinary policy:

- **No formal action** – if the Deciding Manager is satisfied with your performance but may include further recommendations for learning, development, coaching or similar support (this could be an outcome following a Stage 1 formal capability meeting)
- **First written warning** - that remains live for 6 months and will be accompanied by a performance management plan. (This could be an outcome following a Stage 1 formal capability meeting).
- **Final written warning** that remains live for 12 months and will be accompanied by an updated and reviewed performance management plan. (This could be an outcome following a Stage 2 formal capability meeting)
- **Dismissal with notice pay** – where the underperformance has not improved, and previous warnings have been issued. (This could be an outcome following a Stage 3 formal capability meeting).
- **Action short of dismissal** – this is not a stand-alone outcome, i.e. it is usually accompanied with a final written warning, but is an option available to the Deciding Manager as an alternative to you being dismissed. This might include a redeployment to another role at a lower grade or another team. This is will only apply in exceptional circumstances and where there is a legitimate vacancy available. If you don't agree to the alternative, then dismissal would proceed.

Your outcome letter will confirm the decision, how and why the Deciding Manager has reached that outcome. It will also explain how long the warning is live for and the consequences of new or continued underperformance. If you feel dissatisfied with the outcome you have a right of appeal as per the Appeal procedure.

We will keep your performance under review and at the end of the agreed improvement period the Deciding Manager will write to you to confirm whether:

- your performance has improved to a satisfactory level
- your performance has improved, but is still not satisfactory OR
- your performance has not improved

An improvement period may be extended if the Deciding Manager feels there has been a substantial but insufficient improvement.

After the active period, the warning will remain permanently on your personnel file but will be disregarded in deciding the outcome of future capability proceedings. An exception to this may be where performance is satisfactory throughout the period of the warning, only to lapse very soon thereafter. Where a pattern emerges and/or there is evidence of abuse, your formal capability record may be borne in mind in deciding how long any warning should last. The purpose of this will be to help you achieve a sustained improvement in your performance. Each case will be considered on its own merits.

In cases where dismissal is an outcome, an authorised officer of the council will write to you within 7 days of the decision being communicated to them by the school.

10. When will a move to a Stage 2 or Stage 3 formal capability meeting be considered?

If your performance has not improved within the agreed improvement period or there is further evidence of underperformance whilst a first written warning is still live, then your manager may decide to hold a Stage 2 formal capability meeting and you may be issued with a final written warning.

Timescales for improvement will be agreed with you as part of the development of a performance management plan. Where underperformance continues, beyond agreed timescales of the improvement period, a further formal meeting may be considered

A Stage 3 formal capability meeting may be arranged if:

- your performance has not improved sufficiently whilst a final written warning is still active, or
- your performance has not been maintained whilst a final written warning is still active, or
- there is a new area of underperformance whilst a final written warning is still active

Your invite letter for a Stage 3 formal capability meeting will include reference to a possible outcome of the meeting being your dismissal or redeployment into another role.

For a Stage 3 formal capability meeting, where dismissal is a consideration, the meeting may be arranged with a panel from the Governing Body (who have not previously been involved) acting as the Deciding Manager. They will be supported by a HR Provider at that meeting.

If you feel dissatisfied with the outcome you have the right of appeal under the Appeal procedure.

11. Moving out of a formal process

If you have successfully improved your performance this will be readily acknowledged and recorded within your performance management plan. In addition, the Deciding Manager will formally notify and confirm to you in writing that your performance management plan has concluded, and normal line management arrangements are resumed for the remainder of the live warning.

You should be aware that if your performance is not maintained or new issues arise, whilst a first or final written warning remains live, a performance management plan may be reinstated or you may be invited to a formal meeting at the next stage of the process, which could include consideration of dismissal.

12. Wellbeing and Support

Supporting wellbeing is an integral and essential part of our People Policies. We recognise that managing underperformance concerns can be stressful for everyone involved. We all respond to stressful situations in different ways. Sometimes a process may cause distress and impact on both physical and mental health.

Where schools buy in to the Councils Health and Safety service this provides access to [Wellbeing](#) support via the SLN (Staffordshire Learning Net). This contains information and resources and provides ideas and solutions to help support your own wellbeing as well as providing advice for your manager.

We will do all that we can, to ensure that we support and encourage you to consider accessing the vast range of prevention and early intervention support available.

13. Health related performance concerns

There may be occasions where your performance at work is adversely affected by a disability or underlying health issues for prolonged periods. Where this happens, your manager will discuss this fully with you to

understand the impact and duration of your condition and discuss any support and reasonable adjustments to enable you to fulfil your role.

If, despite reasonable adjustments and support, you are not able to sustain your performance at a reasonable level because of your health issues, then your manager will discuss this with you and explore if there are options for redeployment or if a formal dismissal meeting needs to be convened. This will be managed through our respective policy for Managing Attendance at Work and Redeployment.

14. Sickness Absence

If you have sickness absence during a formal process we may decide to continue with the capability process especially where your absence is connected to the underperformance concern. It can often have a greater impact to delay or protract processes particularly where sickness absence is directly linked.

We will consider the nature of your sickness absence and usually expect you to agree to a referral to Occupational Health. A referral will ensure we have advice on any adjustments or support that may be required to enable you participate in the process as well as enable informed decisions to be made. We reserve the right to extend the period of any live warning in place, improvement periods and/or rearrange review meetings that may have been missed, relative to the period of sickness absence.

15. Right to be Accompanied

In line with ACAS (Advisory, Conciliation and Arbitration Service) Code of Practice, at any formal meeting you have the right to be accompanied by either:

- a work colleague
- a trade union
- or an official employed by the trade union

You should confirm to the Deciding Manager who will accompany you in advance of any meeting.

Having someone to accompany you can often be helpful as it means you have support within the meeting.

At the meeting, your companion may make representations to us, and may ask questions, but should not answer questions on your behalf. You may talk privately with them at any time during the meeting.

Acting as a companion is voluntary and your colleagues are under no obligation to do so. If they agree to do so they will be allowed reasonable time off from duties without loss of pay to act as a companion.

We may, at our discretion, allow you to bring a companion who is not a colleague or union representative (for example, a member of your family) if this will help overcome a disability, or if you have difficulty understanding English.

16. Data Protection and Confidentiality

All performance matters should be dealt with sensitively and privately. All employees must treat as confidential any information communicated to them in connection with a performance or capability matter. Breach of confidentiality may give rise to disciplinary action under our Disciplinary Policy.

If you are invited to a formal meeting, you must not make any electronic recordings. An exception to this may be where it has been agreed by all parties as a reasonable adjustment related to a disability. Any breach of this provision may lead to disciplinary action, which could include dismissal.

Written outcomes will be placed on your personnel file along with a record of any decisions taken and any notes or other documents compiled during the formal process. These will be processed in accordance with the school Privacy Notice and Data Protection Policy.

17. Further Advice

If you need any further information about any aspect of this policy, please initially speak to your manager or Head Teacher. Alternatively, you can contact the school's HR Provider.

18. Reviewing the Policy

This policy will be reviewed annually unless there is a requirement to do so before due to legislative or best practice changes.

19. Community Impact Analysis

We consider carefully how the decisions we make affect people who share different protected characteristics (race, disability, sex, gender re-assignment, religion, belief, sexual orientation, age, marriage and civil partnership, pregnancy and maternity). The Community Impact Analysis highlights the proactive and positive approach we take to supporting

employees who may be subject to the capability process, whilst taking into consideration any employee protected characteristics.