

United Learning Capability Procedure

Document Control	
Document Title:	United Learning Capability Procedure
Version:	3.0
Summary of Changes from Previous Version:	Expanded guidance on informal support and greater clarity on the formal stages of the process including scenarios like grievances or sickness absences arising during capability processes.
Name of Originator/Author (including job title):	HR Policy Team
Target Audience:	All staff
Review By Date:	December 2030
Date Issued:	January 2026
JNC Involvement:	Consulted

Contents

1. Scope	2
2. Introduction	2
3. Informal Capability Process (support plan)	2
4. Formal Capability Process: Stage One	4
5. Formal Capability Process: Stage 2	5
6. Formal Capability Process: Stage 3	5
7. Appeals Against Warnings or Dismissal	6
8. Health and Welfare	7
9. Grievances or Absences Arising During this Procedure	7
10. General Principles Underlying this Procedure	7
11. Employee Support	8
12. Review	8
Appendix 1: Procedural Flowchart	9
Appendix 2: Model Support Plan template	10

1. Scope

The policy and procedure set out in this document applies to all staff employed on United Learning contracts, including teaching, non-teaching, fixed-term, part-time, full-time, permanent and temporary staff. It does not apply to staff on TUPE contracts. Any performance concerns relating to early career teachers (ECTs) will be addressed via the early career framework (ECF) rather than under the capability procedure.

For Central Office staff, any reference to 'School' or 'Headteacher' should be interpreted as referring to the relevant department and Head of Department. Any reference to a member or Chair of the Local Governing Body should be substituted with another Executive Team member, other than the individual's own Head of Department.

In the case of a Headteacher being supported through the capability procedure, 'School' should be interpreted as 'United Learning' and 'Headteacher' as the appropriate Regional Director or their nominated deputy.

When conducting formal hearings please refer to the 'United Learning Guidance for Disciplinary, Grievance and Capability Hearings and Appeals' (available on the Hub).

2. Introduction

- 2.1 United Learning's Capability Procedure is intended to provide a clear formal framework in which perceived capability issues and concerns around performance can be fairly and consistently managed. A robust, transparent and respectful capability process combines support, evidence, and careful management to foster improvement and maintain a high-quality education system. The goal is to support employees to improve their practice, where needed.
- 2.2 The term 'capability' is defined as the ability of an employee to perform their duties to the required standard. School leaders and line managers should routinely discuss performance strengths and areas for improvement with staff as part of normal management and professional development conversations, outside this process.
- 2.3 This Capability Procedure only applies when performance issues haven't improved through normal line management and the PDR process. Such issues should be addressed through a period of structured informal support before moving to a formal capability process is considered.
- 2.4 In serious cases of persistent failure to meet or maintain appropriate performance expectations, or where a member of staff refuses to engage with informal support, a formal capability procedure can be considered without a prior period of informal support.

3. Informal Capability Process (support plan)

- 3.1 School leaders and line managers should endeavour to resolve performance concerns swiftly and informally. Dealing with issues early will often provide a more satisfactory result and avoid the need for more formal action.
- 3.2 Failure to meet PDR objectives will not necessarily lead to formal or informal support as there may have been mitigating circumstances.

- 3.3 An informal meeting should be arranged to discuss any performance concerns which may need more structured support to foster the required improvement. This meeting will usually be between the member of staff and their line manager or the Headteacher.
- 3.4 There is no right to union accompaniment at informal meetings, but employees can seek advice and support from their union separately.
- 3.5 The **informal support meeting** should include the following:
- a) Providing clarity about the performance concerns (using specific examples): how the member of staff is currently falling short of the expected standard and what improvement is needed (what 'good' looks like).
 - b) Encouraging the member of staff to respond to these concerns and explain any factors which may be contributing to underperformance.
 - c) Discussing what additional support might help to improve performance, such as training, observing good practice, closer supervision for a period of time, temporary change or reduction in responsibilities, coaching or mentoring.
 - d) Considering whether/what performance improvement measures may be appropriate, depending on the role.
 - e) Agreeing a clear plan of action for improvement and a timescale for review, usually 4-6 weeks.
 - f) Explaining that the formal capability process may be initiated unless sufficient improvement is made through the informal process.
 - g) Considering referral to Occupational Health if appropriate and reminding the member of staff of options for accessing counselling if needed.
- 3.6 These points should be documented in an informal support plan and shared after the meeting. The format for this plan may vary; a basic example is provided as Appendix 2. The plan should include the names of those providing or overseeing support,
- 3.7 During the period of informal support there should be regular check-ins to provide feedback and discuss progress, and/or an interim review of whether the member of staff is on track to meet expectations by the end of the support plan.
- 3.8 An **informal review meeting** should be arranged at the end of the review period to discuss progress made.
- a) If the member of staff has achieved the required improvements this should be recognised and documented in writing. If the required improvement is not sustained for at least 12 months, the informal process can be resumed. If performance concerns arise after 12 months a new informal process would be started.
 - b) If the required improvement has not yet been made, the Headteacher or line manager should decide:
 - (i) whether to extend the period of informal support, for example for a further 2-4 weeks (if some improvement has been made but more time is needed to reach the required standard); or
 - (ii) whether to progress to the formal capability procedure (if little or no progress has been made).

- 3.9 Informal capability or performance support processes must not be mentioned on references. If a teacher has been subject to a formal capability procedure in the previous two years, this must be disclosed on any reference to a potential school employer. Written details of the concerns which gave rise to the capability procedures, the duration of the proceedings and their outcome, would be provided on request. Due to the potentially serious impact of this on a teacher's employment prospects, a school should not move into the formal process lightly.

4. Formal Capability Process: Stage One

- 4.1 If significant concerns regarding performance remain after the informal support process, a Stage One Formal Capability Hearing will be arranged to discuss the grounds for concern and the best means for addressing them.
- 4.2 Unless otherwise agreed by all parties, the hearing will take place during normal working hours and 5 working days' notice will be given. The hearing can be rescheduled to ensure the availability of a union representative when requested but should not usually be delayed by more than a further 5 working days.
- 4.3 If a member of staff is persistently unable or unwilling to attend the hearing without good cause, a decision may be made to proceed with the hearing in their absence and consider whether to issue a formal warning based on the available evidence.
- 4.4 The letter inviting a member of staff to a formal capability hearing will be sent out 5 days in advance of the hearing and will include:
- a) the nature of the performance concerns including supporting evidence;
 - b) details of support provided to date;
 - c) details of the people who will attend the meeting;
 - d) the right to be accompanied by a trade union representative or workplace colleague; and
 - e) an outline of potential outcomes.
- 4.5 A Formal Capability Hearing would usually be chaired by the Headteacher or other Senior Leader in school, or a Head of Department within Central Office.
- 4.6 An HR advisor will attend the hearing and a note taker will also be present. A copy of the notes will be provided to the member of staff after the meeting.
- 4.7 The line manager and/or person who provided support during the informal stage should attend the hearing to explain what progress has been made and what concerns remain, and answer any questions raised by the parties present.
- 4.8 The employee's companion may address the hearing to make or sum up the employee's case, ask questions, request a break or confer with the employee, but they may not answer questions on the employee's behalf.
- 4.9 During the hearing, the Chair will:
- a) Remind the member of staff of the purpose of the Formal Capability process;
 - b) Review the concerns raised, the support / training provided, and progress made during the informal stage;
 - c) Provide the member of staff with an opportunity to respond and make any representations;

- d) Decide whether to issue a formal warning, or whether more time should be allowed for improvement under the informal process, or whether any other alternatives can be considered such as an agreed change in role or responsibilities on a temporary or permanent basis (the latter may involve a change in pay).
- 4.10 At a Stage 1 Formal Capability Hearing a first written warning would usually be issued, but in very serious cases, a final written warning may be appropriate. A first written warning usually remains 'live' for 12 months, but a longer period may be appropriate particularly if there is a history of performance improvement being made but not sustained.
- 4.11 The outcome of the hearing will be communicated in writing within 7 working days including details of the right to appeal against any written warning issued.
- 4.12 A further period of review and support will then follow, building on the action plan used in the informal stage, and usually lasting 4-6 weeks. The details of this plan and the support to be provided may be discussed in a separate meeting, eg with the line manager after the formal hearing.

5. Formal Capability Process: Stage 2

- 5.1 Guidance, support, monitoring and evaluation will continue during the formal review period, in line with the action plan. A Stage 2 Formal Capability Hearing will then be arranged (unless a final written warning was issued, in which case a Stage 3 Formal Capability Hearing will be arranged; see section 6 below).
- 5.2 The purpose of the Stage 2 Formal Capability Hearing is to review the progress made since the Stage 1 hearing and consider potential next steps.
- 5.3 The Stage 2 Formal Capability Hearing will take the same format as the Stage 1 hearing outlined above. The potential outcomes of the Stage 2 hearing are as follows:
 - a) If performance has reached the required level, the capability process will end. If the improvement is not sustained, the capability process may be resumed within 12 months (or during the lifetime of the written warning if this is longer) at the same stage (Formal Stage 1).
 - b) If some progress is made but more time or support is needed, Stage One may be extended but not usually by more than 2-4 weeks.
 - c) If insufficient progress has been made, a Final Written Warning may be issued and a further period of support and review will be arranged and documented on the action plan.
- 5.4 The member of staff will be informed of the outcome of the meeting in writing within 7 working days. This letter will provide details of the matters covered in the hearing, the reasons for the decision, and how to appeal (if a final written warning was issued).
- 5.5 If a final written warning is issued, this will usually remain live for 2 years.

6. Formal Capability Process: Stage 3

- 6.1 A performance review period will follow the Stage 2 Formal Capability Hearing, of no less than 4 weeks. Formal monitoring, evaluation, guidance and support will continue during

this period, in line with the action plan. At the end of this period, a Stage 3 Formal Capability Hearing will be arranged.

- 6.2 The purpose of the Stage 3 Formal Capability Hearing is to review the progress made during Stage 2 and consider potential next steps.
- 6.3 A Stage 3 Formal Capability Hearing will follow the same format as the hearings held at Stage 1 and 2 above. The potential outcomes of the Stage 3 hearing are as follows:
- a) If performance has reached the required level the capability process will end. If the improvement is not sustained the capability process may be resumed within 2 years at the same stage (Formal Stage 2).
 - b) If some progress is made but more time or support is needed, Stage Two may be extended but not usually by more than 2-4 weeks.
 - c) If no or insufficient progress has been made, the member of staff may be dismissed.
 - d) Alternatives to dismissal, such as permanent redeployment into a different role with appropriate adjustments to salary, can be considered if the member of staff agrees.
- 6.4 The decision to terminate employment can only be made at a Stage 3 Formal Capability Hearing by a Headteacher, Chair of Governors or Regional Director. For Central Office, the decision would usually be made by a member of SLT.
- 6.5 The member of staff will be informed of the outcome of the meeting in writing within 7 working days. This letter will provide details of the matters covered in the hearing, the reasons for the decision, and how to appeal (if the outcome was dismissal).

7. Appeals Against Warnings or Dismissal

- 7.1 Decisions to issue a written warning or dismiss a member of staff under this procedure can be appealed by writing to the Director of HR within ten working days of notification of the decision, setting out the specific grounds of appeal.
- 7.2 An appeal hearing will be arranged as soon as reasonably practicable. At least seven working days' written notice should be given of the appeal hearing. The member of staff has the right to be accompanied by a colleague or union representative.
- 7.3 The appeal will be heard by someone who was not involved with the original decision, usually the Chair of the Local Governing Body, a Headteacher from a different school, a Regional Director, or a senior Central Office employee. The decision-maker from the original hearing will attend to explain the reasons for their decision and answer any questions. An HR Business Partner or senior member of the central HR team will attend to advise on matters of law and process and a note taker will also be present. A copy of the notes will be provided after the hearing.
- 7.4 Appeal hearings will usually focus on the points of appeal rather than taking the form of a full rehearing. Any new relevant evidence which was not presented at the original hearing must be submitted to the appeal panel at least five working days before the hearing. The appeal panel can decide whether to accept the new evidence and share it with other parties attending or it can refuse to accept new evidence (usually if it is not considered relevant).

- 7.5 The outcome of the appeal hearing will be communicated in writing within seven working days and will include the reasons for the decision. There will be no further right to appeal.

8. Health and Welfare

- 8.1 If ill health or other personal circumstances may be contributing to underperformance, the school should consider seeking advice from Occupational Health, particularly if the member of staff may be affected by a disability. Additional support or adjustments can be considered at each stage of this process, including extending timescales or a temporary adjustment in responsibilities, with agreement.
- 8.2 Reasonable adjustments must be made to ensure that disabled members of staff are not substantially disadvantaged at work (compared to colleagues without a disability). Whether and what adjustments might be reasonable and appropriate will depend on the circumstances of each case, and HR advice should be sought at the earliest opportunity.
- 8.3 If serious ill health means that a member of staff may be incapable of performing their responsibilities either permanently or for the foreseeable future, termination of employment on the grounds of ill health can be considered without the application of all stages of this process.
- 8.4 In these circumstances the member of staff may be eligible to apply for early retirement on grounds of ill health, subject to the rules of the relevant Pension Scheme and appropriate medical advice. The school and central pensions team will facilitate any such application.
- 8.5 Wherever possible, a decision to terminate employment on the grounds of ill health will be reached by mutual agreement.

9. Grievances or Absences Arising During this Procedure

- 9.1 Where a member of staff raises a grievance at any stage during the capability procedure, the two processes will usually run concurrently.
- 9.2 If short term absence occurs at any stage during the capability procedure, the line manager should consider whether review timeframes should be extended and whether any further support can be provided.
- 9.3 If long term sickness absence appears to have been triggered by a performance conversation or initiation of the capability procedure, the case should be referred to occupational health for advice on the member of staff's health and fitness for continued employment and engagement with the process, potentially with additional support. It may be appropriate for the process to be paused during a period of sickness absence and resume on a return to work.
- 9.4 United Learning's absence management policy should be followed in respect of all sickness absence. Absence management meetings should discuss reasons for absence including anxiety regarding the capability process, and explore whether further support could help a member of staff return to / remain in work and engage with the process.

10. General Principles Underlying this Procedure

- 10.1 All colleagues involved in the Capability Procedure will be mindful of their obligations and duties under the Equality Act 2010. Reasonable adjustments should always be considered if needed to assist an employee with a disability.
- 10.2 The timescales in this procedure may be amended by mutual agreement. All parties will ensure that review periods, hearings and appeals progress in a timely manner.
- 10.3 Unsatisfactory performance may sometimes amount to misconduct: for example if a member of staff refuses to co-operate in the Capability Procedure, fails to maintain an acceptable standard of performance after successfully completing a support plan; or in cases of gross negligence. In such circumstances the disciplinary procedure can be initiated as an alternative to the formal Capability Procedure.

11. Employee Support

- 11.1 School employees can obtain free and confidential information, support and counselling on a wide range of issues via the Employee Assistance Programme. If you would like to access the confidential employee helpline, it is available seven days a week either by calling 0800 092 0987 and quoting “71728” if you have the Health Cash Plan or "HA239707" if you are not enrolled into the cash plan. You can also access their services via their app – Wisdom. The organisation code is WHCORP (if you have the health cash plan) or WHEASE (if you do not have the health cash plan).

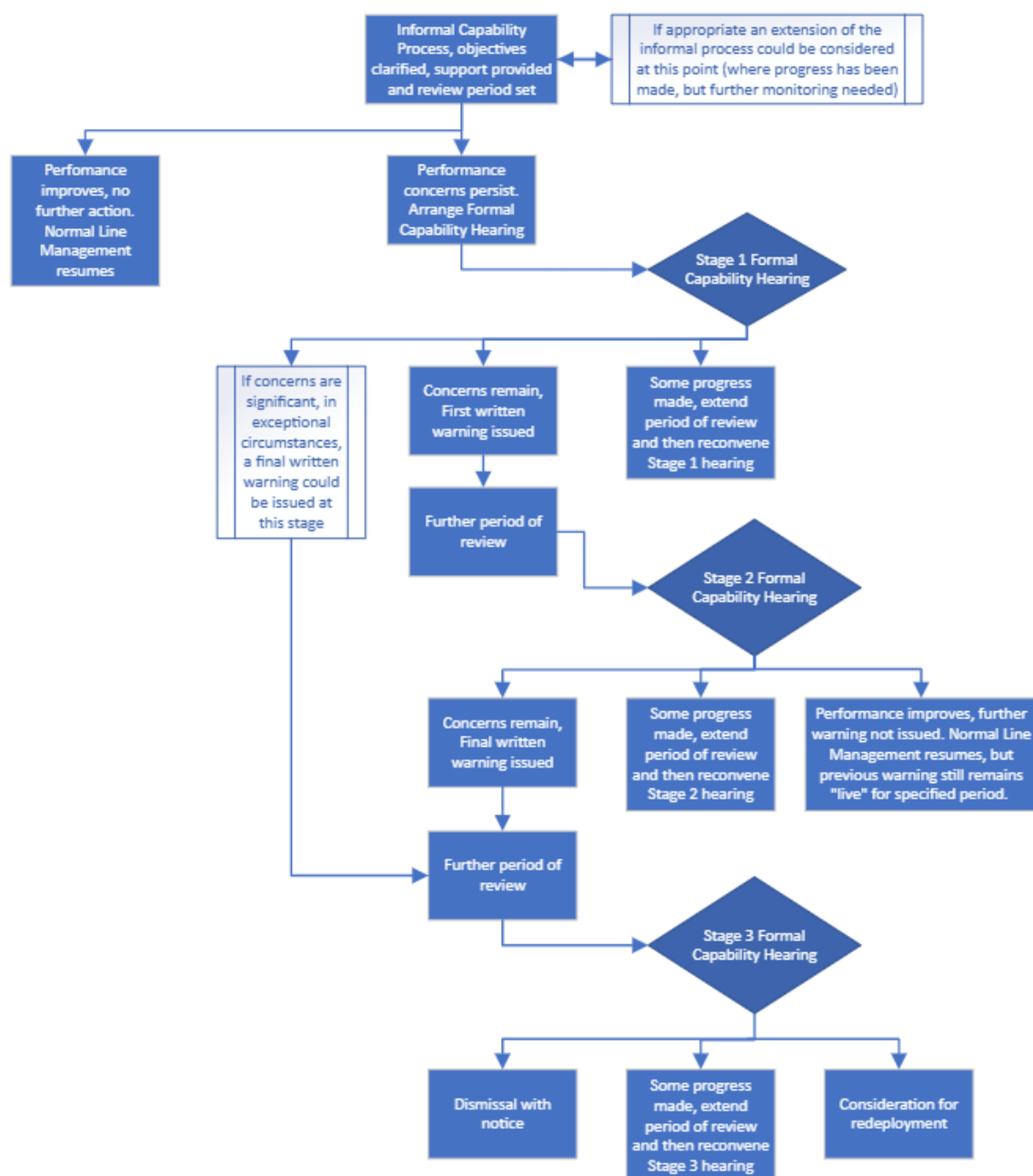
12. Review

- 12.1 For the avoidance of doubt this procedure is non-contractual and United Learning reserves the right to review and amend this procedure. Any such review would include consultation with recognised trade unions.

Appendix 1: Procedural Flowchart

This flowchart provides a visual summary of the key steps in the process. Details may vary depending on the circumstances of each case and the policy wording above provides more detailed guidance. In the event of any perceived contradiction between the policy wording and this flowchart, the policy wording will prevail.

Where there are concerns about shortfalls in performance, it is the responsibility of the line manager to ensure that the employee is aware of the performance level expected, and to have all appropriate measure in place to help the employee achieve these. Should these concerns persist follow the below stages, noting that timescales may be adjusted or steps missed if concerns are significant.



Appendix 2: Model Support Plan template

This is just an example; schools may use their own version or tailor this as appropriate.

Employee Name:	Date plan begins:
Line Manager Name:	Date to be reviewed:
This plan is to ensure that: xxxx is supported to xxxx	

Area for improvement	Success Criteria	Employee Actions	Line Manager Actions/Support to be provided	Timescale for progress to be achieved	Employee comments on progress	Line Manager comments on progress