



## **Capability**

**Introduction.** Capability refers to an employee's ability to perform the work expected of them to the standard required. This may be assessed by reference to an employee's skill, aptitude, health or any other physical or mental quality in relation to the job that he or she is employed to do.

**Purpose.** The purpose of the Capability Policy is to provide a framework for managing underperformance in a fair and consistent manner. This policy differs from the Disciplinary Procedure and Sickness Absence Management Policy and other policies as its primary focus is that of improving performance to the standard required. This policy establishes guidelines for managers and staff when an employee's work performance falls below the standard appropriate for the role due to underperformance.

Lavington Preschool has a responsibility for setting realistic standards of performance, for explaining these standards carefully to employees and for supporting employees to achieve the standards set.

All members of staff are required to perform their duties to an acceptable standard. Whilst the majority of staff meet or exceed the standards required of them, performance problems may arise. All managers, deputies and practitioners should be aware of the terms of the Capability Policy and ensure that they understand its nature and scope. They should liaise with the Manager and it is the manager's responsibility to identify underperformance and to seek to address this at the earliest opportunity.

It is recognised that capability problems may result from underlying work problems or personal issues that may be outside the employee's direct control. Consequently, there is a need to treat all capability issues with care and sensitivity and to identify and (where appropriate) address the underlying causes.

**Scope.** This policy applies equally to full time and part time employees on a permanent or fixed term contract.

This policy applies where there is a genuine lack of capability displayed in the work that the employee is asked to deliver (eg. lack of skill, aptitude knowledge or ability).

It does not apply to cases of poor attendance or wilful poor performance. In those circumstances the Authorised Absence and Leave and Unauthorised Absence Policy and the Disciplinary Procedure will be invoked respectively. Nothing in this policy prevents Lavington Preschool from taking action under those policies if considered appropriate. Exceptionally, a very serious failure to meet performance standards (eg. negligence which amounts to gross misconduct) may lead to your dismissal without prior warnings and without a notice period under the terms of the Disciplinary Procedure.

This policy does not form part of any employee's contract of employment. Lavington Preschool may change it from time to time and may depart from it depending on the circumstances of any case.

**Setting The Standard.** You must deliver your day-to-day work as outlined in your job description and objectives set out in Staff Appraisals in a timely and professional manner and fully meet the standards and competencies for your job role as set out in your job description. Poor performance occurs where the quality of work deteriorates below the required standard due to lack of ability, skill or knowledge.

Lavington Preschool will aim to ensure that:

- Employees understand what is expected of them in terms of performance.
- That performance is monitored via regular appraisal meetings with the setting manager.
- Employees are given appropriate training and support to meet those standards.

Employees are not normally dismissed for performance reasons without previous warnings.

**Informal Process.** In the first instance, performance issues should normally be dealt with informally between you and your line manager as part of day-to-day management. You are encouraged to have early and open dialogue with your line manager or other senior managers about your performance and any anticipated failures in meeting standards.

Informal discussions may cover the following issues:

- Clarification of the required standards.
- Identification of areas of concern.
- Identification of the likely causes of poor performance.
- Any training, coaching or support needed in order to help you meet the required standard.
- Setting a time period for improvement and review.

You may be given a verbal warning by your line manager but this will not be considered to be a formal sanction and they will be disregarded for the purposes of any formal proceedings under this policy. Where informal discussions have not resulted in a satisfactory improvement after a reasonable period of time, Lavington Preschool may give you further verbal warnings or may invoke the formal procedure set out below.

If poor performance is due to a domestic personal or work-related problem, you must explain this to your line manager. These situations will be dealt with sensitively.

**Formal Capability Procedure.** The formal procedure will be used for cases of serious under performance or where the informal procedure has not resulted in improvement. There are 3 stages under the formal procedure. These stages are detailed below.

**Preliminary Steps Including Investigations.** Lavington Preschool will normally investigate to decide if there are grounds for taking formal action. The investigation will depend on the circumstances but may involve reviewing your file including any appraisal records, gathering any relevant documents, monitoring your work and if appropriate interviewing you and/or other individuals confidentially regarding your work. You and other employees involved are expected to co-operate fully with an investigation and will be asked to maintain the confidentiality of any discussions held.

If Lavington Preschool considers that there are grounds for taking formal action over alleged poor performance, you will be required to attend a meeting to discuss the matter (Capability Hearing).

You will first be notified in writing of Lavington Preschool's concerns, the reasons for those concerns, and the likely outcome if Lavington Preschool decides, after the Capability Hearing, that your performance has been unsatisfactory.

You will also be provided with the following where appropriate:

- A summary of relevant information gathered as part of any investigation.
- A copy of any relevant documents which will be used at the Capability Hearing.

Any documents which you intend to rely on at the Capability Hearing must be submitted to the Manager/Chairperson within a reasonable time before the hearing.

Lavington Preschool will give you written notice of the date, time and place of the Capability Hearing. The hearing will be held as soon as reasonably practicable, but not before you have had a reasonable amount of time, usually 5 working days, to prepare your case based on the information provided to you.

**Procedure at Capability Hearing.** You are entitled to bring a companion to a Capability Hearing.

If you or your companion cannot attend the Capability Hearing, you should inform Lavington Preschool immediately and an alternative time can usually be arranged. You must make every effort to attend because a failure to attend without good reason may be treated as misconduct in itself. Alternatively, Lavington Preschool may have to take a decision based on the available evidence without having met with you.

You may ask relevant witnesses to appear, provided you give Lavington Preschool sufficient advance notice to arrange their attendance. You will be given the opportunity to respond to any information given by a witness.

The aims of a Capability Hearing will usually include:

- Setting out the required standards that Lavington Preschool believes you have failed to meet and going through the evidence of this.
- Allowing you to ask questions, present evidence, call witnesses, respond to evidence and make representations.
- Establishing the likely causes of poor performance including any reasons why any measures taken so far have not led to the required improvement.
- Identifying whether there are measures, such as additional training, support or supervision, which may improve performance.
- Where appropriate, discussing targets for improvement and a time-scale for review.
- Explaining the consequences of a failure to improve.

A Capability Hearing may be adjourned if Lavington Preschool needs to gather any further information or give consideration to matters discussed at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

Lavington Preschool will inform you in writing of the decision and the reasons for it, usually within 5 working days of the Capability Hearing. Where possible this will also be explained to you in person.

**First Capability Hearing: First Written Warning.** If Lavington Preschool decides that your performance is unsatisfactory following a first Capability Hearing, you will be given a first written warning setting out:

- The areas in which you have not met the required performance standards.
- Targets for improvement.
- Any measures such as additional training, support or supervision, which should be provided to you with a view to improving your performance.
- The period for review and the system for monitoring your performance.
- The consequences of failing to improve.

At the expiry of the review period Lavington Preschool will write to inform you of the outcome:

- If your line manager is satisfied with your performance, that no immediate further action will be taken or;
- If your line manager is not satisfied that your performance has met the required standard, that the matter will be progressed to a second Capability Hearing or;
- If your line manager feels that there has been a substantial but insufficient improvement, that the review period will be extended.

The warning will be retained permanently on your file but will normally only remain active for 6 months from the end of the review period, after which time it will be disregarded for the purposes of the future actions taken under this policy.

**Second Capability Hearing: Final Written Warning.** If your performance has not improved by the date of expiry of the review period set out in a first written warning or if there is evidence of further poor performance whilst your first written warning is still active, Lavington preschool may decide to hold a second Capability Hearing.

If Lavington preschool decides that your performance is unsatisfactory following the second Capability Hearing, you will be given a final written warning setting out:

- The areas in which you have not met the required performance standards.
- Targets for improvement.
- Any measures such as additional training, support or supervision which will be provided to you with a view to improving performance.
- The period for review and the system for monitoring your performance.
- The consequences of failing to improve.

At the expiry of the review period Lavington Preschool will write to inform you of the outcome:

- If the manager is satisfied with your performance, that no immediate further action will be taken; or
- If the manager is not satisfied that your performance has met the required standard, that the matter will be progressed to a third Capability Hearing; or
- If the manager feels that there has been a substantial but insufficient improvement, that the review period will be extended.

The warning will be retained permanently on your file but will normally only remain active for 12 months from the end of the review period, after which time it will be disregarded for the purposes of the future actions taken under this policy.

**Third Capability Hearing: Dismissal or Other Sanction.** If your performance has not improved by the date of expiry of the review period set out in a final written warning, or if there is evidence of further poor performance whilst your final written warning is still active, Lavington Preschool may decide to hold a third Capability Hearing.

If Lavington Preschool decides that your performance is unsatisfactory following the third Capability Hearing, Lavington Preschool may decide to:

- Dismiss you.
- Demote you.
- Redeploy you into another suitable job.

A decision to dismiss must be approved by the Chairperson of the Committee. Dismissal will normally be with full notice or payment in lieu of notice.

A record of a disciplinary sanction, other than dismissal, will be retained permanently on your file but will normally only remain active for 12 months from the date of the sanction after which time it will be disregarded for the purposes of any future actions taken under this policy.

If your performance is still poor whilst the sanction is active, Lavington Preschool may decide to re-invoke this procedure at the third Capability Hearing.

**Appeals.** If you feel that a decision about your performance under this procedure is wrong or unjust you should appeal in writing, stating your grounds of appeal, to the Chairperson within 5 working days of the date on which you were informed of the decision.

On receipt of your appeal, you will be asked to attend an appeal hearing and you will be given written notice of the date, time and place. The appeal hearing will normally be held within 5 working days of the date on which you were informed of the decision.

If you raise any new matters in your appeal, Lavington Preschool may first need to carry out an investigation. You will be given a reasonable opportunity to consider any new information obtained before the appeal hearing takes place.

Where possible, the appeal hearing will be conducted by the Chairperson. You may bring a companion with you to the appeal hearing.

The appeal hearing may be a complete re-hearing of the matter or it may be a review of the fairness of the original decision. This will be at Lavington Preschool's discretion depending on the circumstances of your case. A hearing may be adjourned if Lavington Preschool needs to gather any further information.

Following the appeal hearing the chairperson may:

- Confirm the original decision.
- Revoke the original decision.
- Substitute a different decision and the sanction.

If you are appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. You will not be permitted to resume working until the matter has been decided. If your appeal is successful you will be reinstated with no loss of continuity or pay.

You will be informed in writing of the final decision as soon as possible, usually within 5 working days of the appeal hearing. Where possible this will also be explained to you in person. The decision on appeal is final and there is no further right of appeal.

**Your Right to be Accompanied.** You may be accompanied at any Capability Hearing or an appeal hearing by a work colleague, a trade union representative or an official employed by a trade union.

Your companion is allowed to:

- Put forward and summarise your case.
- Ask questions of clarification.
- Respond to views on your behalf.
- Confer with you.

Your companion does not have the right to answer questions for you or to prevent Lavington Preschool from putting forward its case or to address the meeting if you do not wish it.

If you wish to be accompanied by a colleague you must make a reasonable request to Lavington Preschool in advance of the meeting. Please note that your companion has the right to decline to attend. If they choose to accompany you, they will be allowed reasonable time off from duties without loss of pay.

In some circumstances your choice of companion may not be allowed, for example, if they have a conflict of interest or could prejudice the meeting. In those cases, you may be asked to choose someone else.

It is your responsibility to inform your companion of the date, time and place of the meeting. If your companion is not available at short notice, the meeting may be delayed for a short period, Lavington Preschool reserves the right to ask you to choose someone else if the meeting would have to be delayed for over 5 working days because your companion is unavailable.

Lavington Preschool may, in its discretion, allow you to bring a companion who is not a colleague or union representative (for example, a member of your family).

The Manager and Chairperson are responsible for monitoring and evaluating the policy.

Reviewing the Capability Policy: The Chairperson is responsible for overseeing the annual review.

**The Lavington Pre-school Capability Policy will be reviewed on:**

**Date:** ..... **Signed:** .....

**Name:** ..... **Post:** .....

**The Lavington Pre-school Capability Policy will be reviewed on:**

**Date:** ..... **Signed:** .....

**Name:** ..... **Post:** .....