

Capability Policy

Part A - Procedure

Sept 2021

Version 2

1. Introduction

Expansive Learning aims to promote a culture where everyone in the community can play their full part in creating a positive working environment.

This document sets out Expansive Learnings procedure in managing capability issues and reflects the Capability Policy to ensure that the Expansive Learning applies fair and effective arrangements for dealing with under performance and capability matters.

Capability refers to an employee's ability to perform the work expected of them to the standard required. The majority of the employees meet and often exceed the standards and demands of their respective roles. However, performance problems can and do arise.

2. General Principles

Where any instances of under-performance are identified the employee will be given appropriate support and opportunities to enable them to improve their performance.

The following principles will apply in all cases involving unsatisfactory standards of performance:

- **Informal resolution** - employees will be informed at the earliest possible opportunity when there are areas of their performance which are falling short of the required standard. Where appropriate, steps will be taken to resolve issues on an informal basis without recourse to the formal procedure. In all cases consideration will be given to providing support to enable the individual employee to meet the standards required.
- **First instance of under-performance** - at all stages Line Managers will discuss the situation with employees, who will have a chance to give their view before any decisions are made. Normally, an employee should not be dismissed because of a failure to perform to the required standard, unless warnings and an opportunity to improve have been given. However, if the perceived incapability is considered serious enough (e.g. where it could endanger the health and safety of others), or for some other substantial reason a capability problem arises relating to an employee's qualification (e.g. the loss of a driving license or certificate to practice) which makes it impossible to carry out their job, Expansive Learning reserves the right to suspend an employee on full pay whilst an investigation takes place. Following investigation, if proven then this will be referred directly to Stage 3 of the capability procedure.
- **Right to be accompanied** - Employees are entitled to be accompanied by their trade union representative or a work colleague during any formal hearings or appeals relating to this procedure. There is no entitlement to legal representation at any point of this procedure. The companion can address the hearing to put and sum up the employee's case, respond on behalf of the employee to any views expressed at the hearing and confer with the employee during the hearing. A companion may make representations, ask questions and sum up an employee's case, however, does not have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent the employer from explaining their case. Employee's may confer privately with their companion at any time during the hearing. No other form of representation is permitted for either party. Employees are not entitled to be accompanied by a trade union representative or a work colleague during informal discussions about performance.
- **Confidentiality** - All parties involved in these procedures must ensure that they maintain, as appropriate, the confidentiality of the process within and outside Expansive Learning.
- **Participation** – there is an expectation that employees will participate fully in this procedure when required. Employees subject to this procedure are expected to attend meetings and hearings in person, if it is not possible for an employee to attend in person Human Resources will explore alternative methods of participation.
- **Involvement of Human Resources** – the HR Administrator will be consulted and will be in attendance during the formal stages to advise on procedure.
- **Timescales** - Every effort will be made to comply with timescales set out in the procedure. However, timescales may on occasion need to be extended due to the complexity and or specific circumstances of a situation (e.g. maternity leave, long term sickness absence). Where timescales are extended the employee will be made aware of the revised anticipated timescales and the reason(s) for any delay.
- **Records of meetings** – audio recordings of formal or informal meetings are not permitted.

3. Informal Resolution

In the first instance, performance issues should normally be dealt with informally between the Line Manager and the employee as part of normal day-to-day management. Line Managers should seek to resolve minor performance issues informally and expediently wherever possible.

Informal discussions may cover the following:

- Clarification of the required standards
- Identification of areas of concern

Line Managers need to raise issues of under-performance as and when they are identified. For example:

- Identification of the likely causes of under-performance
- Any training, coaching or support needed in order to help the employee meet the required standard
- Setting a time period for improvement and review
- Advise the employee that failure to reach the required performance standard within the timescales discussed may result in the formal procedure being instigated.
- The outcome of any informal discussions, along with the details of appropriate confirmation of improvement, which may include an action plan, will be confirmed in writing to the employee.
- Retain the notes of these informal discussions.

Where informal discussions have not resulted in a satisfactory improvement after a reasonable period of time the Line Manager can invoke the formal procedure set out below.

4. Formal Procedure

- Where informal resolution does not achieve satisfactory results or if informal resolution is not appropriate, the formal procedure will be implemented.
- There are 3 Stages under the formal procedure. Expanse Learning reserves the right to implement the capability procedure at any of the 3 Stages, taking into account the relevant circumstances including the level of under-performance, the nature of the role and the performance issues in question.
- In particular, in cases of gross negligence or in any case involving an employee who has not yet completed their probationary period, dismissal may be appropriate by following other procedures including the Probation and Disciplinary procedures.

5. Arrangements

- If there are grounds for invoking the formal stages of this procedure, the Line Manager will initiate a formal capability hearing. The employee will be required to attend a formal capability hearing which will fall under one of the formal stages 1 to 3.
- The employee will have the right to be accompanied by a trade union representative or work colleague.
- The employee will be invited to attend the formal hearing giving a minimum of 5 working days' notice of the hearing.
- The notification will include the purpose of the hearing, and the names of any other staff that will be in attendance. Where there is additional relevant supporting information to be referred to at the meeting, this will be provided to the employee with the notification.
- In the case of a Stage 3 hearing, this will be conducted by the Head of Department (or nominated deputy) or an appropriate senior manager.
- If an employee fails to attend a hearing, there is one opportunity for the hearing to be rescheduled. The employee will be informed that should they fail to attend the re-arranged hearing, it will be held in their absence.

6. The Hearing

- The hearing will be conducted by the Line Manager and will be attended by an HR representative.
- The manager will present and explain why the employee's standard of work is unsatisfactory, outlining the gap between actual performance and required performance, and the actions/support offered to bring about the required improvement.
- The employee will be given the opportunity to explain why their work is still below the required standard.
- The hearing may be adjourned if further information needs to be gathered or to give consideration to matters discussed at the hearing.
- The employee will be informed in writing of the decision and the reason(s) for this within 5 working days of the Capability hearing.

7. Stage One: Capability Hearing (First Written Warning)

If following the hearing, the Line Manager decides that performance is unsatisfactory and the employee is unable to provide a satisfactory explanation for the performance shortfall, the employee will be given a first written warning.

The warning will set out:

- the areas in which the employee has not met the required performance standards
- areas for improvement and timescales over which improvement will be expected (which should be no longer than 6 months)
- any measures to put in place, such as additional training, support or supervision with a view to improving performance
- the period for review and the system for monitoring performance; and the consequences of failing to improve.
- The warning will be retained on the HR file but will normally only remain active for 12 months, after which time it will be disregarded for the purposes of future actions taken under this policy.

At the expiry of the review period the Line Manager will assess performance and write to inform the employee and HR of the following:

- If the Line Manager is satisfied with the performance, that no immediate further action will be taken; or
- If the Line Manager is not satisfied that performance has met the required standard, that the matter will be progressed to a Stage 2 Capability hearing.
- Throughout the review period the manager will assess performance against the improvement plan. If it is considered during the review period that progress by the employee is not acceptable, the manager will progress to the next stage prior to the expiry of the review period.

8. Stage 2 Capability Hearing: Final Written Warning

If there is evidence of further under-performance whilst the first written warning is still active, or if performance has not improved before the date of expiry of the review period set out in a first written warning, a Stage 2 capability hearing will be initiated.

If, following the hearing, performance is deemed unsatisfactory and no satisfactory explanation is given for the failure to meet the required standard of performance, the employee will be given a final written warning setting out:

- The areas in which the employee has not met the required performance standards
- areas for improvement and timescales over which improvement will be expected (which should be no longer than 6 months)
- Any measures to put in place, such as additional training, support or supervision, with a view to improving performance
- The period for review and the system for monitoring performance.
- The consequences of failing to improve.

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

At the expiry of the review period the manager will review and write to inform the employee and HR of the outcome of the following:

- If the Line Manager is satisfied with the performance, that no immediate further action will be taken; or
- If the Line Manager is not satisfied that performance has met the required standard, that the matter will be progressed to a Stage 3 capability meeting.

Throughout the review period the Line Manager will assess performance against the improvement plan. If it is considered during the review period that progress by the employee is not acceptable, the manager will progress to the next stage prior to the expiry of the review period.

9. Stage 3 Capability Hearing: Dismissal

- A stage 3 Capability Hearing will be held if performance is deemed unsatisfactory and no satisfactory explanation is given for the failure to meet the required standard of performance; or there is a serious issue of incapability; or there is some other substantial reason leading to incapability.
- The decision will be confirmed in writing within 10 working days of the hearing.
- In the event that the decision at a Stage 3 meeting is taken to dismiss the employee, the correspondence will include the reasons for dismissal and the date the employment will terminate together with details of any notice arrangements including the right of appeal.
- A record of the dismissal will be retained on the employee's HR file.

10. Appeal

- An employee who wishes to appeal against the decision from a capability hearing must submit the appeal in writing within 10 working days of the date of the letter confirming the outcome. The appeal should be sent to the HR Administrator setting out the particular grounds for appeal, which are:
 - *That there was failure to follow the procedure, which had a material impact on the outcome*
 - *That new information has come to light that should be considered that was not available at the time of the hearing*
 - *That the action taken was unreasonable or disproportionate to the capability issue.*
- The appeal is not a re-investigation. It will only consider the grounds on which the appeal is based.
- Actions put in place before submission of an appeal, including notice of dismissal, remain in effect pending the outcome of the appeal.
- An appeal hearing will be held within 15 working days of receipt of the appeal.
- The employee will be given a minimum period of notification of 5 working days of the appeal hearing.
- A Director will be appointed to hear the appeal and will not have been previously involved in the case.
- HR will attend the appeal hearing in an advisory capacity.
- The Director hearing the appeal will determine the conduct of the hearing and will ensure that both sides of the case are fully considered, and that the employee and manager who conducted the capability hearing are given the opportunity to state their case.
- The decision may be given verbally at the appeal hearing if appropriate and will be confirmed in writing within 5 working days of the hearing or as soon as reasonably practicable.
- The Director hearing the appeal may substitute a different sanction from the decision made at the original capability hearing.
- The appeal decision is final and there will be no further right of appeal.

11. Status of the Procedure

The employment relationship between Expanse Learning and each of its employees is set out in the contract of employment. This procedure does not form part of the contract of employment, but it will apply both to Expanse Learning and to all of its employees.