

CAPABILITY (PERFORMANCE) PROCEDURE

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PROCEDURE SUMMARY	
<p>This document sets out the Trust’s approach to the management of capability (performance) issues that should be followed by managers managing performance concerns of members of their team(s). It sets out the overall framework, along with the principles and processes that need to be considered and applied by managers, as well as detailing the steps by which capability performance issues should be managed.</p> <p>This procedure will also need to be read in conjunction with the Trust’s Capability policy.</p>	
The Trust monitors the implementation of and compliance with this procedure in the following ways:	
<p>This procedure is subject to monitoring and review as set out in the Capability Performance policy and through review and agreement with the Trust’s Partnership Committee.</p>	

Services	Applicable	Comments
Trustwide	✓	

**The Director responsible for monitoring and reviewing this policy is
Executive Director of People & Culture**

SAMPLE ONLY

ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST

CAPABILITY (PERFORMANCE) PROCEDURE

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ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST

CAPABILITY PERFORMANCE PROCEDURE

Assurance Statement

Essex Partnership University NHS Foundation Trust, (the Trust) is committed to providing high quality care through the effective management and development of its employees to ensure that they are, and remain, capable of performing their roles and responsibilities to a high standard of competence.

The management of capability procedures within the Trust will be built on and demonstrate the Trust's corporate values and behaviours. These values being:-

- Open
- Compassionate
- Empowering

In doing so support the achievement of its strategic priorities to:

- To continuously improve service user experience and outcomes through the delivery of high quality, safe and innovative services.
- To be a high performing health and care organisation and in the top 25% of community and mental health Foundation Trusts
- To be a valued system leader focused on integrated solutions that are shaped by the communities we serve

1. INTRODUCTION

1.1 Through the Trust's recruitment procedures, every effort is made to ensure that employees have the appropriate skills and abilities, or a clear, demonstrated potential to achieve these, for the roles to which they are recruited. At the start of employment with the Trust, on promotion or redeployment, employees should be clearly informed of their responsibilities and the standards of work performance required which are relevant to their post.

1.2 The purpose of this performance management framework/procedure is to promote and encourage improvement wherever possible by identifying problems at an early stage and exploring ways to address them. It is however recognised that there may be circumstances where it becomes necessary to consider the discontinuation of an employee's contract due to lack of capability (performance).

1.3 It will be exercised objectively, fairly, openly with common sense and with regard to the Trust's commitment to equality of opportunity. This procedure does not form part of employees' contract of employment but is a statement of the Trust's current practice and may be changed from time to time.

- 1.4 The categories of 'aptitude' and 'mental quality' have most often been referred to in capability cases where the employee has an inflexible, negative, uncooperative or otherwise difficult attitude, resulting in poor working relationships with colleagues and/or patients/service users.
- 1.5 In practical terms it can be described as “the ability to undertake the duties of a post as outlined in the job description to the standard required by the employer”.
- 1.6 A capability ‘gap’ will exist where there is a gap between the job performance of an employee and the Trust’s reasonable expectations of the employee.

This procedure provides a framework for helping to identify where the gaps in performance are and putting in place, wherever possible, measures to fill the performance gap, be it by training, coaching or other interventions such as links with professional leads when managing multi-disciplinary teams.

- 1.7 It is therefore important to firstly determine whether the matter is one of capability, performance, (can’t do) or misconduct / negligence (won’t / didn’t do). The line manager can normally ascertain this during supervision and advice can be sought from HR.
- 1.8 Incapability is where an employee has received all necessary training but still cannot achieve and maintain a satisfactory level of performance, even taking into account other issues that may be affecting the performance of the employee.
- 1.9 Capability is defined in the Employment Rights Act 1996 by reference to the skill, aptitude, health or any other physical or mental quality of the employee. Examples of this could include:
 - An employee whose pace of work was unacceptably slow
 - Workers who were unable to meet standards which management had raised to a higher level than before (skill)
 - An employee who failed to establish good working relationships (aptitude or mental quality)
 - An employee who was inflexible and non-adaptable (aptitude or mental quality)
 - An employee who, although efficient, was difficult and abrasive, thus affecting the quality of the work of other staff (aptitude or mental quality)
- 1.10 This procedure is to be used when an employee cannot achieve and maintain an acceptable level of performance due to lack of skill, aptitude or ability, rather than any wilful refusal to carry out the duties of the job
- 1.11 Where there is a wilful refusal to undertake the duties of the job, or where there is carelessness, negligence or idleness, the Disciplinary (Conduct) Policy and Procedure will apply.
- 1.12 Capability issues due to frequent, short or long term sickness absence and/or on-going health problems are dealt with within the scope of the Managing Sickness and Absence Policy.

Capability/performance issues that arise within the first six months of appointment to the Trust will be handled in line with the Trust's Probation Period Policy and procedure.

- 1.13 Where a capability case involves Safeguarding issues for a service user it is important that a co-ordinated approach takes place to ensure the Safeguarding investigation and the capability process run parallel.
- A safeguarding case may be concluded whilst the capability process continues.
 - The Safeguarding Team must be informed by the responsible HR adviser of the outcome of capability investigation
 - The relevant adult and children safeguarding policies and procedures should be adhered to.
 - For Child Protection Procedures for Managing Allegations against Employees and Volunteers Working with Children and Young People please see relevant policy.

2. STANDARDS OF PERFORMANCE

- 2.1 Standards of performance provide a means of measuring what is acceptable. They should be realistic and achievable and must be understood by the employee. Standards and objectives should be measurable in terms of quality, time, cost etc.
- 2.2 When dealing with issues of poor performance, managers will need to consider whether any shortfall in performance may be due to:-
- Unreasonable expectations or lack of explanation concerning the job
 - A lack of understanding or poor or inadequate supervision
 - A lack of adequate training or qualification or equipment.
 - Systems and/or procedures which do not support what the employee is expected to achieve, or which are hard to understand or apply correctly
 - Lack of co-operation from other employees, or harassment/bullying
 - Unreasonable levels of work
 - Changes in the work environment that may impact adversely on the employee
 - Any health or personal issues that may be impacting on work.
 - Insufficient levels of staffing that impact on an ability to perform.
- 2.3 Managers should identify as early as possible when performance fails to meet the required standard, discuss the matter with the employee and how this may be addressed.
- Poor performance may not always be the fault of the employee and the Trust has an obligation to ensure that all the necessary support and guidance is available to employees enabling them to achieve good performance.
- 2.4 It is important to address issues as soon as concerns arise, rather than wait for any review date that may be in the diary as part of the Appraisal or development processes.

- 2.5 Poor performance of one member of a team can affect the service provided by the department and/or have an adverse effect on the morale and output of the remainder of the team.
- 2.6 Where performance concerns arise that appear to be due to lack of ability or skill, this must be evidenced. This could include:-
- Work examples of where performance is not reaching the required standard
 - Evidence from work colleagues or from complaints
 - Details of training undertaken
 - Actions and information provided as part of the induction procedures
 - Appraisal documentation and any Personal Development Plans agreed
 - National or Locally agreed competency frameworks
 - Any action plans, 'SMART' based objectives or standards set
 - Records of supervision sessions as well as of informal and formal meetings
- 2.7 If performance does not improve as a result of discussions during supervision sessions and other informal discussions the formal stages of the policy should be followed.
- 2.8 Employees must take all reasonable steps to attend the meetings under this procedure. Failure to attend a meeting without good reason may be treated as misconduct. If the employee or their representative cannot attend at the time specified the employee should inform their line manager immediately.

3. SUPERVISION AND MANAGEMENT OF PERFORMANCE (INFORMAL)

- 3.1 It is acknowledged that performance/capability issues may arise and the expectation is that these will be addressed as soon after the instance of underperformance as possible. Managers should discuss their initial concerns as quickly as possible and then explore in more depth during the regular 1:1 or supervision meetings which have been duly recorded with a copy signed and retained by the employee.

A proposed resolution can then be agreed between the manager and the individual to resolve any problems at the earliest opportunity without initiating the formal procedure.

This informal stage provides an opportunity to encourage open discussion of the issues involved and to seek effective solutions, including the involvement of appropriate support services, e.g. Occupational Health

- 3.2 Where the employee is a newly qualified member of a professional body they will be expected to comply with any post-qualification development standards as required (e.g. preceptorship for newly qualified nurses).

- 3.3 How and why the employee is not meeting and maintaining the expected and required standards of performance should be explained. The employee should be allowed to respond to the concerns and be given the opportunity of providing any reasons why performance may not be at the required standard. Examples may include those given previously in 2.2.
- 3.4 Improvements required should have been discussed and documented. In addition, there should be agreement to the timeframe for these improvements. The time should be sufficient to allow the employee to be able to achieve the improvements required and attend or undertake any reasonable training or development intervention that has been agreed as reasonable in the circumstances. This will include, in some cases, an expectation of an immediate improvement.
- 3.5 There should be discussion to ensure the employee is aware of what the consequences are of failing to improve or maintain performance, or not meeting the post-qualification requirements before progressing the matter to the formal stage of the Capability procedure.
- 3.6 The manager should keep a written record of supervision meetings to discuss performance issues. This should detail the discussions regarding the actions required, the timeframes for these to be achieved and the date for review. This record should also be shared with the employee. There is an expectation that the manager and the employee will have met on at least one further occasion during which the concerns raised previously should be reviewed.
- 3.7 If all the improvements have been achieved, the Manager should praise the employee for the efforts made and obtain agreement that this level of performance will be maintained. Further support and monitoring should then be maintained through the supervision process.
- 3.8 Where an improvement to a satisfactory level has not been made and the level of performance is still below the standard required; or where post-qualification standards have not been satisfactorily completed the manager should consult with HR prior to instigating formal capability procedures.

4. FORMAL STAGES OF THE PROCEDURE
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- 4.1 Where unsatisfactory performance – or its continuance – despite the employee being given reasonable support/assistance, objectives to meet and time to improve; a meeting should be arranged to instigate the formal stage of the procedure and the steps set out in this procedure should be followed.

4.2 Cases Requiring Escalation

If the situation is sufficiently serious, for example because it is having, or is likely to have a serious harmful effect on patients, service users, colleagues, teams or services, managers may move directly to a 'second stage' meeting where an employee is given one, final opportunity to improve. This will apply where a newly qualified practitioner does not meet the post-qualification requirements.

4.3 Removal from the Workplace (Suspension)

There may be exceptional circumstances where it is necessary that an employee may need to be removed from duty where there are serious and immediate concerns about risks to patients, service users, the employee or the Trust or to other parties. Where this is the case, and redeployment to an alternative area is not considered appropriate in the circumstances, suspension of the individual will be approved and undertaken by the most senior person working on that shift in a more senior capacity. The removal of the employee from the work place will allow for a risk assessment of the situation to be undertaken and a decision taken, with the advice of HR, as to whether to proceed with Disciplinary (Conduct) or Capability (Performance) Procedures.

4.4 Incremental Progression

In accordance with the 2018 Pay Deal incremental progression is conditional upon individuals demonstrating that they have the requisite knowledge and skills / competencies for their role and that they have demonstrated the required level of performance and delivery during the appraisal review period.

Incremental progression will be deferred if an employee is being managed in accordance with the formal capability procedures until such time as the required level of performance has been achieved.

4.5 Alternative Employment

A manager and an employee may discuss and explore the possibility of redeployment to a more suitable, alternative employment at any time within the process. There is however no obligation to create a post specifically to accommodate the employee. Where redeployment is as an alternative to dismissal, refer also to section 9.3.

In all cases, redeployment to alternative employment must be by mutual agreement and with the employee's consent. It may be at a different band, if so the employee will assume the terms and conditions of the new post without protection of pay or benefits.

The employee will be deemed to have accepted the post as an offer of alternative employment, and as a means to secure employment security. Managers must identify appropriate training and development in the alternative post.

It will be a shared responsibility between the manager and the employee to identify and consider appropriate vacancies where advertised. Where a possible vacancy is identified, the manager must seek advice from HR.

HR will facilitate the process and arrange for the employee to be interviewed. Whether there will be a developmental interview, or the need for a formal job application as part of the normal recruitment process, will be assessed on a case by case basis.

4.6 Professional Adviser

A 'Professional Adviser' may be asked to attend any meeting within the formal stages of the capability process, including at the appeal stage, where it is deemed appropriate by the Chair of the meeting to do so.

The role of the 'Professional Adviser' is as an independent assessor with special knowledge of the employee's field of work. This role is in an advisory capacity only.

4.7 The Right to Be Accompanied

Employees have a right to be accompanied by a Trade Union Representative or current work colleague where the outcome of a meeting is likely to be:

- The termination of employment, the taking or
- Confirmation of some other formal action (such as a formal warning being issued) or
- Some other formal action (such as appeal hearings).

The right to be accompanied does not extend to informal discussions, meetings to investigate an issue or any other review meetings, the Trust may however choose to accommodate this where it feels it does not compromise its ability to progress performance matters expeditiously. In these circumstances the request will only be considered if it is by a recognised Trade Union Representative.

Where the right exists, in exercising the right to be accompanied, the request of the companion must be a 'reasonable request'. What is reasonable will depend on the circumstances of the individual case.

It would not normally be reasonable for an employee to ask to be accompanied by a person whose presence would prejudice the meeting, nor would it be reasonable for an employee to ask to be accompanied by a companion from a remote geographical location if someone was willing and available either on site, or from closer vicinity.

Legal representation is not permitted at any stage within the Trust's capability process.

5. FORMAL STAGE ONE MEETING

5.1 The line manager will write to the employee advising them to attend the first formal meeting, the first stage of the formal procedure. The letter confirming the meeting, giving at least 5 working days' notice should include:-

- Time, date and venue of the meeting
- Confirmation of who will be attending
- The procedure and stage of the procedure being used

- Clear details of the shortfall in performance
- Details of any informal discussions, meetings, etc.
- That the employee will be given the opportunity to discuss concerns/issues
- That the employee has the right to representation by an accredited Trade Union representative of a Trust recognised Trade Union or a current work colleague.

5.2 The purpose of the meeting should be outlined at the start of the formal meeting which should include:-

- Status of the meeting
- Background by outlining the informal process to date and outcomes
- Acknowledge any improvement, however small
- Detail all aspects of the employee's work which remains unsatisfactory
- Discuss and agree action plan for improvements and timescale
- Give the employee the opportunity to respond, discuss and give explanations
- Explain the impact on colleagues, the team and service of continued poor performance

5.3 The outcome of the meeting will be confirmed in writing to the employee usually no later than ten working days of the meeting taking place. The outcome letter, which should confirm that it is a formal 'improvement note' will confirm:

- What improvements are required
- How these will be measured and evidenced
- Timeframes for achievement of these objectives and actions
- Identify whether any additional, alternative training or support is required and how this may be provided.
- That should performance problems persist during this period the matter will move to the 2nd formal stage of the procedure.
- The date when the manager will review whether progress has been made - usually within 4-6 weeks following the meeting.
- The letter should confirm that the employee is issued with a formal improvement notice that will remain live on their file for a period of between 6 and 12 months – an improvement notice will be 'removed' when performance has reached the required level or formal action is taken.

This information forms the 'action plan' used for monitoring required improvements.

5.4 In relation to additional training or support, consideration may be given to formal training courses, 'on the job' training, appointing a role model or mentor or support from Occupational Health.

- 5.5 Wherever possible a copy of the action plan will be enclosed with the outcome letter, although the line manager may forward this separately. A copy of the outcome letter/improvement notice that has been issued should be forwarded to HR and a copy placed on the employee's personal file.

6.	REVIEW
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- 6.1 The line manager will assess whether or not the required improvements in performance have taken place against the expected/required improvements confirmed at the previous formal meeting in the outcome letter/improvement notice, in the action plan and within the agreed timescales.
- 6.2 The review can take place as part of the usual management supervision arrangements for the employee in question. For best practice the manager should meet with the employee to undertake the review, although there is no requirement to do so.
- 6.3 Supervision records must clearly record that identified performance issues had been discussed as part of the supervision session in the form of a review of progress against the outcome letter/improvement notice and action plan.

Improvement in Performance

- 6.4 If all improvements have been achieved, the manager will provide written confirmation to the employee. The manager should:
- Acknowledge what efforts have been made by the employee
 - Obtain agreement that this level of performance will be maintained
 - Agree if any further support or training is required to sustain the level of performance to the standards required
 - Agree if, in addition to the usual supervision arrangements any further monitoring or further reviews will be required
 - Confirm that no further action is deemed necessary at this stage, although performance will continue to be monitored.
 - That the improvement notice is removed

No Satisfactory Improvement in Performance

- 6.5 If there has not been an improvement to a satisfactory level, it may be the case that the manager may deem it appropriate to have an extension to the timescales to enable the employee further opportunity to improve to the required standard.

If this is not the case, the employee will be advised in writing that the matter will now proceed to the next formal stage of the procedure. The employee will also be made aware that any continued lack of improvement may ultimately lead to dismissal.

7.	FORMAL STAGE TWO MEETING
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- 7.1 Arrangements will be made for the second formal meeting and this will be confirmed in writing to the employee. At least ten working days' notice should be given for this meeting. A member of the HR team should also be in attendance.
- 7.2 The letter inviting the employee to the formal stage two meeting should include:-
- An outline of the procedure and the stage being used
 - An outline of the purpose of the second formal meeting
 - Background information on the process leading up to stage two
 - Confirmation as to previous discussions on support, assistance, adjustments and actions taken
 - Clear details of the shortfall in performance
 - The right to representation by an accredited Trade Union representative of a Trust Recognised Trade Union or current work colleague
 - Confirmation as to name, job title or HR representative who will also be in attendance.
- 7.3 During the meeting the line manager should ensure the following is identified:-
- Detail the nature and level of continued under-performance
 - Clarify the required standard(s)
 - Establish the cause(s) of poor performance
 - Discuss further/other adjustments, support, assistance, training, redeployment as required
 - Agree commitment from all concerned
 - Agree a reasonable timescale for the performance to improve
 - Explain procedures should improvements not be achieved in the timescale, including that they could be putting their employment at risk should their underperformance continue
 - Set dates for regular meetings when reviews can take place
- The employee will be able to respond to the concerns and provide any reasons for why performance is not at the required standard.
- 7.4 Where the line manager is satisfied that there has not been sufficient improvement in performance to a satisfactory and reasonable level and there is no adequate reason offered by the employee for the shortfall in performance, the line manager will confirm this in the meeting and will follow with written confirmation.
- 7.5 The outcome of the meeting will be confirmed in writing to the employee usually no later than ten working days of the meeting taking place. This outcome letter/improvement notice will confirm:
- What improvements are required
 - How these will be measured and evidenced
 - Timeframes for achievement of these objectives and actions

- Identify whether any additional, alternative training or support is required and how this may be provided.
- That should performance problems persist during this period the matter will move to the 3rd and final formal stage of the procedure, a possible outcome of which is the termination of employment.
- The date when the manager will review whether progress has been made - usually within 4-6 weeks following the meeting.
- That the employee is issued with a Final Written Warning that will remain live on their file for a period of not less than 12 months.
- The appeal process against the issuing of a Final Written Warning.

This information forms the 'action plan' used for monitoring required improvements.

The Employee has the right to appeal against the Final Written Warning. Details regarding the appeals process can be found in the Trust's Appeals Procedure.

- 7.6 Wherever possible a copy of the action plan will be enclosed with the outcome letter/improvement note, where this is not possible the line manager will forward this separately. A copy of this should be forwarded to HR.
- 7.7 Performance will be monitored and reviewed against the agreed action plan. The steps as set out previously in Section 6 'Review' will be followed. This includes the possibility that the review period be extended for a specific purpose, where there is a need to do so.
- 7.8 Should there be a failure to improve following the period of review the employee will be advised that the matter will progress to the third and final, formal stage of the Capability procedure, and that should performance fail to improve, that a possible outcome of this meeting may be the termination of their employment.

8.	FORMAL STAGE THREE MEETING
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- 8.1 An employee required to attend a capability stage three meeting will usually receive not less than 10 working days' notice of the meeting. Employees will be provided with full written details outlining the purpose of the meeting and confirming:
- i. the date, time and venue of the meeting
 - ii. an indication of the possible outcome of the meeting which may be the termination of employment if it is considered that there is a continued failure by the employee to meet the standards of performance expected.
 - iii. the name and status of the manager chairing the meeting and any other panel members
 - iv. their right to be accompanied

and will be supplied with:

- v. A management report which will detail steps that have been taken to date including action plans and any other relevant documentation.
- vi. A copy of the Trust's Capability policy in force at the time.

No later than three working days prior to the meeting the employee will:

- i. Submit their written response to the management report and other documentation on which he/she intends to rely
- ii. Confirm the name and status of any representative and details of any witnesses he/she intends to call.

8.2 The purpose of this meeting is to review, based on the evidence presented, whether there has been improvement in job performance to a satisfactory level and whether or not the employee is able to meet the contractual requirements of their job.

8.3 A senior manager with the delegated authority to dismiss will Chair this meeting accompanied by an HR adviser. At the meeting, the line manager will present evidence and explain to the Chair:

- How and why the employee has not met the expected improvements required, using the measures and evidence agreed at previous meetings
- Explain the impact on colleagues, the team and service of continued poor performance
- Allow the employee to respond to the concerns and provide any reasons for why performance may not be at the required standard.

For the purposes of this policy a 'senior' manager is deemed to be not less than the equivalent of a band 8a.

8.4 The manager chairing the meeting will review all the evidence contained in the management report which should include - timeframes, objectives set and progress towards these from the previous formal meetings.

The Chair will also question the employee as necessary regarding any aspect of their performance, and the training and support they have received to help improve it to the required standard.

8.5 If necessary, the Chair should adjourn the meeting in order to give full and proper consideration to the matters presented. Once the Chair has considered all relevant matters, the meeting will usually be reconvened so that the chair can inform the employee of his/her decision.

In any event, the outcome will be confirmed in writing usually no later than ten working days from the date of the meeting. A copy of the outcome letter should be forwarded to HR.

9. POTENTIAL OUTCOMES OF A STAGE THREE MEETING

There are 4 potential outcomes of the stage 3 meeting:

- Sufficient improvement shown
- A further review period set
- Termination of contract of employment with re-engagement to an alternative post
- Termination of contract of employment

9.1 Sufficient improvement shown.

This will be accompanied by a clear, written expectation that the required standard of performance must be sustained. Where this does not remain the case and performance lapses, Section 13 of this procedure, 'Reinstatement of Procedures' will apply.

9.2 A further review period set.

This will be in exceptional cases where the Chair of the meeting believes that there is a reasonable likelihood of the necessary improvement being made within a reasonable time. The further review period will not ordinarily extend beyond a further 4 weeks.

9.3 Termination of contract of employment with re-engagement to an alternative post.

This is where insufficient improvement has been shown and there is little or no likelihood of the required improvements being achieved within a reasonable timescale, however it is considered, in exceptional circumstances, that as an alternative to the termination of employment and/or in conjunction with a written warning, the employee may be dismissed and re-employed in an alternative post or, with the employee express consent, transferred to alternative post. This may be at a different band, and if so the employee will assume the terms and conditions of the new post without protection of pay.

Where it is as an alternative to dismissal, if the employee does not accept the offer of re-employment then dismissal will be effective from the end of the notice period.

Where in conjunction with a written warning, the employee will need to give express consent to the variation of contract and terms and conditions of employment.

9.4 Termination of contract of employment.

This is where insufficient improvement has been shown and there is no or little likelihood of the required improvements being achieved within a reasonable timescale. The employee will be advised that the decision has been made to terminate their contract of employment. Further, it is not considered that re-engagement is a viable option.

- 9.5 Where the decision has been reached to terminate employment on the grounds of capability, the employee must be notified in writing of their notice period and the termination date, and their right of appeal against dismissal.

The letter confirming the termination of contract of employment which must be sent to the employee within 10 working days should include:-

- Brief details of formal meetings held to discuss performance issues/concerns
 - Issue dates of written warning and final written warning
 - Reason for dismissal (Lack of Capability / Performance)
 - Contract termination date
 - Confirmation of any accrued but untaken annual leave
 - Appeal process
- 9.6 Where it is considered that alternative employment may be a potential option, the employee will be offered the opportunity to discuss this with the relevant manager and the chair of the meeting will confirm the timeframe within which alternative employment will be sought. The line manager will take responsibility in facilitating this process.
- 9.7 Where it is not possible to redeploy the employee within a reasonable period following the capability hearing (to a maximum of 4 weeks), notice of dismissal with contractual notice will be given in writing.
- During the employee's contractual notice period, efforts will continue to be made to identify an alternative post, which may include a post of a lower band. Redeployment will only be by explicit agreement with the employee.
- 9.8 In the event that no agreement can be reached in relation to an alternative post, the employee's employment will terminate on the date previously advised.
- 9.9 Should redeployment to an alternative post during a notice period be successful the employee will work the remainder of their notice (in accordance with their previous contract) in the new post. A new contract of employment will be issued to commence the day after the previously advised termination date.
- 9.10 In addition, performance may continue to be monitored. No pay protection will apply as a result of a reduction in pay due to redeployment under this policy.

If redeployment is successful prior to notice being given then a new contract will be issued to commence immediately.

10. THE APPEAL PROCESS

- 10.1 Where the decision has been reached to issue the employee with a formal sanction or to terminate their employment on the grounds of capability (this includes where employment is terminated and redeployment and re-engagement on new terms to another post is offered), the employee must be notified in writing of their right of appeal in accordance with the Appeals Procedure.

11. RECORD KEEPING

- 11.1 A written record must be kept of meetings undertaken as part of the formal capability procedure. Notes of meetings should set out the points discussed, the support and training provided and the outcome of the meeting. Copies of records of meetings and any related correspondence will be retained on the individual's personal file.

Any record held or information shared is done so in accordance with the requirements of the General Data Protection Regulations (2016) as laid out in the Trust's Employee Privacy Notice

12. TIMESCALES

- 12.1 Timescales regarding the procedural steps contained within the procedure are subject to reasonable variation.
- 12.2 All reference to the term 'working days' in the procedure means Monday – Friday i.e. weekends and public holidays are excluded.

13. REINSTATEMENT OF PROCEDURES

- 13.1 If performance has improved the formal procedure will be deemed to no longer apply. It is expected thereafter that the employee will continue to maintain a satisfactory level of performance.
- 13.2 If however performance again falls below the required standard the Trust retains the discretion to direct employees towards a stage in the procedure as it considers appropriate.
- In most cases where the same or similar performance issues arise within 12-24 months of an improvement notice being issued, this will mean re-entry to the next stage to where the procedures previously lapsed.
- 13.3 In some circumstances, such as where there is a pattern of repeated lapses in performance by an Employee, 'improvement notices' may be considered to be indefinite in duration.

END