

# Capability Management Policy

**DOCUMENT CONTROL SHEET**

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V1.0	April 2017	Human Resources Business Partner Team	Adapted for use as the Shared Service Policy.
V1.1	18 Sept 2018	Policy Forum	Reviewed at Policy Forum, agreed without additional amendments. Updated to V1.1 following addition of references to West Essex CCG. Next review date updated to 18.09.2020.

**Implementation Plan:**

<b>Development and Consultation</b>	Developed in conjunction with the joint forum, and ratified by, the relevant committees of the Hertfordshire, Bedfordshire, West Essex and Luton CCGs.
<b>Dissemination</b>	This policy will communicate to staff representatives. It will be communicated electronically to all staff and managers and will be published on the CCG's intranet.
<b>Training</b>	HR Masterclasses will be made available to all managers on Performance Management Managers will also be able to access advice from the HR and ODL Shared Service on the implementation and interpretation of this policy.
<b>Monitoring and Review</b>	All complaints of performance management are recorded by the HR and ODL Shared Service and activity is reported on at least annually, together with a breakdown of policy application across the protected characteristics under the Equality Act.

	The data identified from monitoring will be used to update the policy and ensure best practice as necessary.
<b>Equality and Diversity</b>	17/05/2017 - Equality Impact Assessment
<b>Associated Documents</b>	Equality and Diversity Appraisal Policy

**Document Status:**

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## **1.0 Introduction and Description**

NHS Bedfordshire, NHS East and North Hertfordshire, NHS Herts Valleys, NHS West Essex and NHS Luton Clinical Commissioning Groups (respectively referred to as ‘the CCG’) primary primary aim is to commission high quality healthcare. To do this, the CCG needs to promote high standards of work performance and capability for employees and to take appropriate corrective action when those standards are not met. To support this, the CCG believes that to promote good employee relations it is necessary to demonstrate that employees will be treated fairly and according to the laws of natural justice, reasonably, promptly, impartially and consistently in matters relating to work performance capability. In doing this, the CCG’s commitment to commissioning high quality healthcare is underpinned.

This procedure describes the steps to be taken to deal with each work performance capability situation reasonably and with the aim of helping the employee to improve their standards of work performance to reach acceptable standards. It is important that managers and employees understand these steps.

Managers must not discriminate in the application of this policy in respect of protected characteristics covered by the Equality Act, 2010; age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership and pregnancy and maternity.

## **1.0 Scope**

This policy applies to all CCG staff members, including Governing Body Members and Practice Representatives, whether permanent, temporary or contracted-in (either as an individual or through a third party supplier).

## **2.0 Definition**

Capability issues refer to an employee’s skills, aptitude, ability and knowledge in relation to the job that they are employed to do. Lack of capability will normally lead to unsatisfactory performance and it is therefore important to ensure that any capability issue is identified and rectified quickly.

Capability problems can take many forms. The following list provides some examples:

- Not meeting agreed objectives or deadlines
- Persistent errors or omissions in completing work
- Not adapting to changes in working practices
- Not remaining professionally up to date in respect of knowledge, skills and practice.

### **3.0 Policy Statement**

The CCG is committed to valuing all of its employees and will encourage them, through guidance, training and development, to achieve their full potential on a consistent basis.

Where there is an identified failure in performance, the CCG will, as part of the process of encouragement and support, discuss with the employee the reasons giving rise to that situation.

Formal action in line with the principles and procedure outlined below may follow if the employee fails to meet the agreed performance levels

### **4.0 Responsibilities**

#### **4.1 Chief Executive/Accountable Officer**

The Chief Executive/Accountable Officer has overall responsibility for this policy.

#### **4.2 Managers**

Managers are responsible for the careful selection and induction of new employees, ensuring that all employees are aware of the standards required of them in terms of work performance and for ensuring they are adequately trained for the jobs they are employed to perform.

Managers are also responsible for evaluating learning opportunities with their employees, to allow for early intervention if any deficiency or omissions are identified, preventing serious performance issues arising. Managers should also provide constructive feedback to staff where appropriate.

Managers are responsible for conducting annual appraisals with their employees and to determine if the employee has achieved and maintained the required standards to approve pay progression to the next incremental point of the band.

Managers should attend HR Masterclasses delivered by the HR Business Partner team which provides managers with guidance and support in managing their staff. The HR Masterclasses include training on Recruitment and Selection, Capability Management, Appraisal and various others.

#### **4.3 Employees**

Employees have a responsibility to attend training (including statutory training), keep themselves up to date with CCG guidance and procedures, to assist their managers in

identifying the employee's development needs and to act upon them, and to achieve and maintain the standards that have been detailed for them.

Employees also have a responsibility to inform their line manager of any support they may require either from their manager or through further training in order for them to carry out their role safely and effectively.

#### **4.4 Human Resources**

Advice should be sort from Human Resources regarding performance concerns prior to any formal procedure commencing.

Human Resources must be present at any formal meetings arranged with the employee.

Human Resources are responsible for providing training to managers through HR Masterclasses on the key principles of this policy to ensure staff requiring support are treated fairly and in a supportive manner with an aim to achieving required standards.

Monitoring of this policy and procedure and subsequent reviews will be undertaken by the Human Resources Business Partnering team.

#### **5.0 Procedure (See Flowchart – Appendix 1)**

##### **5.1 Stage 1 - Informal Procedure**

Managers should monitor the performance of all of their employees on an ongoing basis.

Where there is an identified failure in performance line managers should firstly bring this to the attention of the individual in a one to one meeting being clear to restate the standard that is required and giving the employee an opportunity to discuss any training or support, e.g. counselling and mentoring, required to improve their performance to reach the required standards. A record of any action and/or agreed training requirements will be documented together with a timescale for the expected improvement to be achieved. This timescale will be reasonable and fair, and agreed e.g. between one to three months. In considering what is reasonable timescale for improvement to occur managers should consider the nature of the post, the extent to which the employee is functioning below standard and the type and extent of training and support required. Advice on timescale can be sought from the HR department.

As this is an informal procedure, the employee does not have right to representation at this stage. The manager will agree a development programme with regular arrangements for review meetings to check progress. The meeting should be held in a positive and supportive environment.

The employee should be given the opportunity to ask for clarification of the standards expected and bring to the manager's attention any issues which they believe may be affecting his or her performance.

Levels of performance can be identified through:

Job profile and person specification

- Grading profile
- Agreed objectives from the performance review process
- Written standards
- Professional Codes of Practice
- Feedback reports from supervisors/team leaders
- Complaints from service users
- Clarity regarding the specific areas of work that are unsatisfactory, the specific level of improvement required in these areas and the standard(s) to be achieved;

Having assessed the situation, the manager should set out an action plan with the employee to assist him / her to achieve the improvements in performance that are expected (see Capability Action Plan template – appendix 2).

The Capability Action Plan should consist of:

- Clarity regarding the specific areas of work that are unsatisfactory, the specific level of improvement required in these areas and the standard(s) to be achieved;
- The support and training to be given to the employee to help them achieve the level of improvement required;
- The timeframe by which the improvement is required. A reasonable and fair timescale would normally be one to three months depending on the nature of the issues. However, consideration should also be given to whether the employee is affected by a health condition or a disability as defined by the provisions set out in the Equality Act 2010 and what adjustments are required for the employee by way of support.
- The process for monitoring the employee's progress over this timescale and future reviews. 1:1 weekly review meetings should be held to review the action plan.

The manager should clearly advise the employee that failure to meet the required standards within the timeframe may result in future formal action in line with this policy.

The performance issues discussed at the meeting and the action plan should be confirmed in writing to the employee within five working days of the meeting.

A copy of the action plan and any additional notes from the informal meeting should be retained on the employee's personal file for information.

If the employee adequately meets the required standards within the required timeframe, the manager should meet the employee to verbally convey this and then confirm in writing. No further formal action will be taken, although the employee's performance will continue to be monitored.

Employees will be expected to work towards achieving the competencies agreed in their performance plan.

## 5.2 Stage 2 - Formal Procedure

Managers will normally be able to deal with minor concerns about poor performance in the course of the day-to-day manager-employee relationship, as set out in the Stage 1 Informal Procedure. However, where following such discussions the manager establishes that an employee's performance continues to be unacceptable, or where the nature of the concern is more serious or is similar to concerns raised previously, then the Formal Procedure should be followed (see flow chart Appendix 1).

Where the level of performance has not been achieved or maintained, or in more serious cases of poor practices, a written warning may be deemed appropriate. In such cases, the line manager should arrange a Stage 2 Formal Capability Meeting with the employee. Human Resources support will be provided to the line manager at the meeting.

Employees are required to attend all meetings related to the capability process. They must inform the hearing manager/HR in advance regarding their representation. If they, or their representative/companion, are unable to attend the arranged meeting, they must give notice and reasons why they are unable to attend. The meeting will then be rescheduled to a mutually convenient time, within 10 working days of the original date, wherever possible. However, where an employee fails to attend such meetings without reasonable grounds, then the meeting may be held in their absence. The employee will be informed of this in writing.

Prior to the meeting the employee should be informed in writing of the basis and purpose of the meeting, including any relevant supporting documentation, the date and

time of the meeting and the right to representation. At least five working days' notice will be provided for this meeting, unless a shorter notice period is mutually agreed (appendix 3 template letter - Invitation to Stage 2 Formal Capability Meeting).

At the Stage 2 Formal Capability Meeting the line manager should:

- a) Identify the shortfall between the employee's performance and the required standard.
- b) Review the reasons for the employee failing to meet the required standard of performance.
- c) Review any action taken to date.
- d) Consider any information the employee wishes to offer in mitigation.

The appropriate Line Manager should review and update any previously agreed action plan with the employee.

The Manager should consider whether a change of duties or downgrading to a lower banded role is possible or appropriate. This should be discussed with the employee at the meeting and confirmed in writing as appropriate.

The Manager should consider whether it is appropriate to issue a written warning in respect of incapability due to unsatisfactory work performance.

If a written warning is issued, it will become spent at the end of 12 months, as long as the required standard of performance is achieved and maintained. It may be removed after nine months.

All staff who are in receipt of a formal warning under the CCG's Capability Management Policy will be prevented from receiving their incremental pay increase during the year that the warning is issued. This will only apply for a period of 12 months

The employee will be informed of their right to appeal against the warning and how this should be exercised (see section 10).

Following the meeting the manager should write to the employee, within 5 working days, confirming (see template letter appendix 4:

- a) The nature of the meeting
- b) The concerns regarding performance
- c) The shortfall between the employee's performance and the required standard
- d) The time frame for improvement and end date of this review period

- e) The agreed action plan, including support, training and supervision as appropriate
- f) Confirmation of any written warning issued and its duration
- g) Confirmation that the employee has been precluded from progressing through their next incremental pay point within the following 12 months
- h) The right to appeal the warning (see section 6.4).

Following the warning, the Manager must hold regular review meetings to monitor the employee's progress throughout the agreed review period and give the employee ongoing guidance on his/her progress towards the required improvement.

The aim throughout this process should be a positive experience for the employee and focused on supporting the individual to achieve the required standards.

Notes of formal meetings will be retained on the employee's personal file with a copy given to the employee.

### **5.3 Stage 3 - Capability Hearing**

Where the level of performance as set out through the informal stage 1 and formal stage 2 processes has not been achieved or maintained, or in the case of a serious performance issue, consideration will be given to dismissal on the grounds of incapability due to unsatisfactory work performance.

In such cases, a formal Stage 3 Capability Hearing will be arranged.

The Capability Hearing chair will be the next level manager, with authority to dismiss or another senior manager with delegated authority to dismiss. Human Resources support will be provided to the Capability Hearing Chair.

If professional issues are involved, an appropriate professional advisor will also sit on the Capability Panel.

The line manager will prepare a Capability Management Report (see template – appendix 5) to be presented and referred to at the Hearing.

Prior to the Stage 3 Capability Hearing, the employee should be informed in writing of the purpose of the meeting, including a copy of the Capability Management Report and any other relevant supporting documentation, the date and time of the meeting and the right to representation. At least five working days' notice will be given of this meeting, unless a shorter notice period is mutually agreed (see template invitation to Stage 3 Formal Capability Hearing – appendix 6). The employee will be entitled to representation.

At the formal Stage 3 Capability Hearing the Hearing Manager should:

- a) Identify the shortfall between the employee's performance and the required standard.
- b) Review the reasons for the employee failing to meet the required standard of performance.
- c) Review any action taken to date.
- d) Consider any information the employee wishes to offer in mitigation.

Taking into account all the matters discussed at the hearing, the Hearing Manager should consider the following options:

- Extend the monitoring period and period of any previous warning (if one is already in operation) and give the employee a further opportunity to achieve the required standard of work performance within a defined timeframe.
- Downgrade to a lower banded role if this is possible (i.e. if there is a current vacancy at the lower band).
- Consider, based on all the facts as presented, whether to dismiss the employee on the grounds of incapability due to unsatisfactory work performance.

The decision of the Hearing Manager will be confirmed in writing, within 5 working days of the hearing, together with the employee's right to appeal against the decision (see appendix 7 – Outcome template letter).

#### **5.4 Stage 3 - Right of Appeal**

Employees may appeal against formal action under this procedure.

The purpose of the appeal will be to determine:

- a) Whether the procedures were followed correctly;
- b) That the decision to take formal work performance capability action was fair and reasonable;
- c) That the action taken was within a band of reasonable responses;
- d) It may also be decided to consider new information where the appeal panel considers that the information is likely to be relevant to the decision made;
- e) All complaints or grievances arising in relation to a work performance capability process will be dealt with either at the formal Stage 3 Capability Hearing itself and/or at the appeal hearing, rather than being dealt with through any separate procedure.

Any intention to appeal must be notified in writing to the Assistant Director of HR and ODL, within 10 working days of the issue of the letter confirming the sanction. **The appellant's letter must state clearly the grounds for appeal which should fall within the definition, contained in 6.4.2 above.**

For all levels of formal action under this procedure there is one level of appeal and the appeal panel will be comprised as follows:

- a) Written warning – the immediate manager of the manager who issued the warning or equivalent when the immediate manager is unavailable, supported and advised by a Human Resources representative. A representative of the relevant professional body may be required to provide advice to the panel if appropriate.
- b) Dismissal – a panel comprising of a Director and a representative from Human Resources. A representative of the relevant professional body may be required to provide advice to the panel if appropriate. The Chair of the appeal will be the Director.

The employee should be given a minimum of 5 working days' notice in writing of the date, time and location of the appeal hearing and this should be accompanied by the management case.

Whenever possible an appeal will normally be heard within four weeks of the issue of the appeal to the CCG. Notification will be given if it is not possible to arrange a hearing within the six week timeframe.

A written statement of case will be prepared by the senior manager who took the decision to issue the written warning / dismissal, and the appellant or his/her representative will provide written reasons of his/her grounds of appeal. There should be an exchange of the statements of case, no later than five working days in advance of the Appeal Hearing.

The outcome of the appeal against formal work performance capability action may be one of the following:

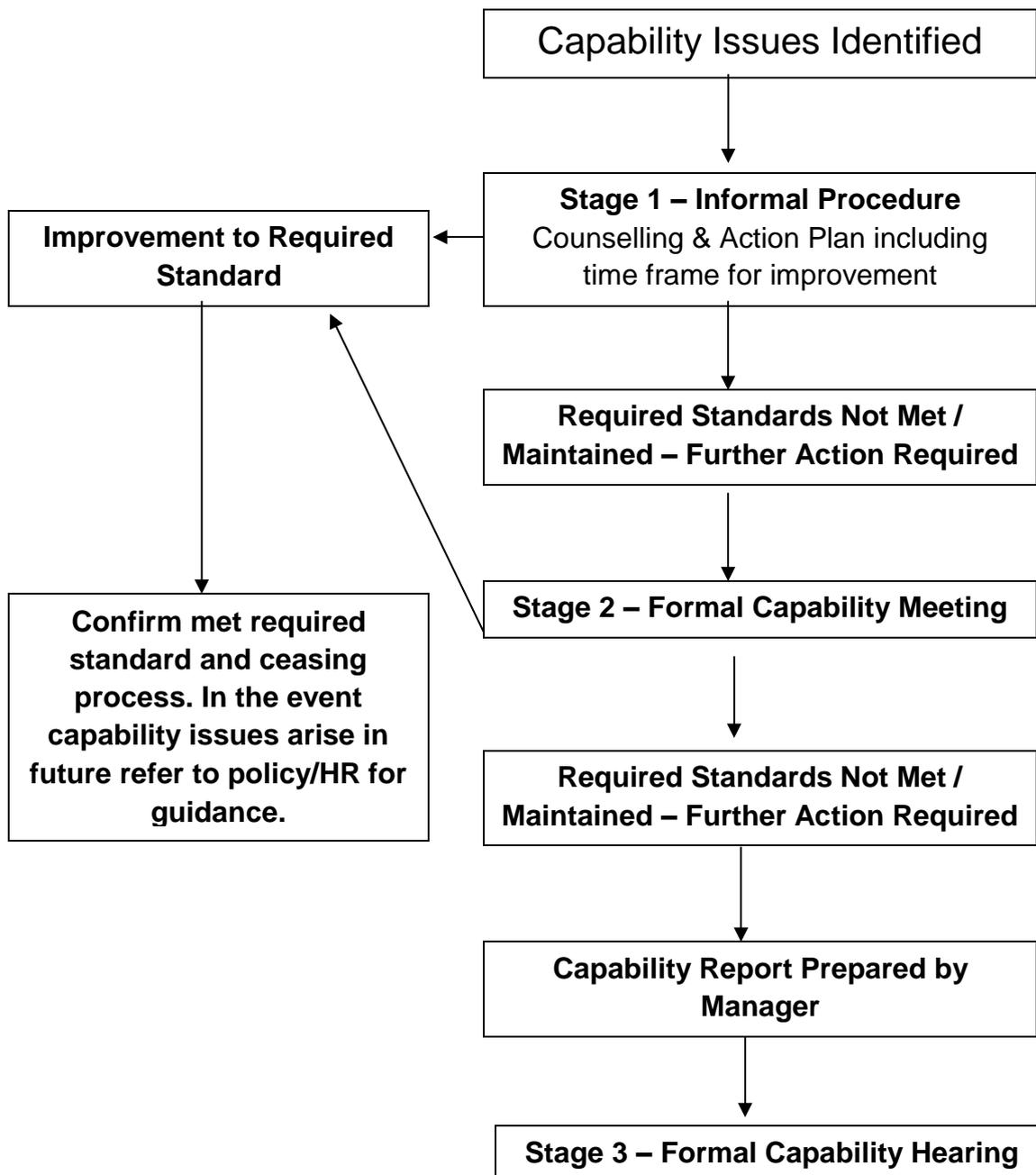
- That the appeal is dismissed and the work performance capability decision is upheld.
- That the penalty is reduced.
- That the appeal is allowed and a finding that no work performance issues are evident is confirmed. The penalty imposed is therefore withdrawn and all records are removed from the file.

Where possible, the Chair of the Appeal Panel will recall both parties and announce the decision verbally. If a decision cannot be made without further deliberation, it may be

necessary to communicate the decision in writing at a later date. In either event, the outcome will be confirmed in writing to the appellant and their representative no later than five working days after the Appeal Hearing.

**Appendix 1 - Performance Capability Procedure – Flow Chart**

**Performance Capability Procedure – Flow Chart**



**Appendix 2 - Work Performance Action Plan**

Work Performance Action Plan for: *Employee Name & Job Title*

	Key Competency / Objective Standard Required	How Measured?	Training / Support / Supervision to be provided	Assessment at Review Date - Standard Achieved?	Assessed By (Name & Title)
1					
2					
3					
4					
5					
6					
7					

## Appendix 3 – Template Letter – Invitation to Stage 2 Formal Capability Meeting

### Private & Confidential – Addressee Only

*Name & Address*

*Date*

Dear ,

**Re: Invitation to Stage 2 Formal Capability Meeting**

Further to our recent informal meeting(s) to review your work based performance against your Performance Management Action Plan, I am writing to inform you have not been able to demonstrate sufficient progress against this plan within the required timeframe(s).

As a result, you are now required to attend a Stage 2 Formal Capability Meeting to discuss this matter further. This meeting will be held in accordance with the CCG's Capability Management policy, a copy of which you have already received / is enclosed.

The Stage 2 Formal Capability Hearing has been scheduled as follows:

**Date:**

**Time:**

**Venue:** (Please report to *venue* at *time*).

*HR Rep* from Human Resources will be in attendance at the meeting and you have the right to be accompanied by an accredited representative from a recognised trade union or professional association, or accompanied by a CCG work colleague not acting in a legal capacity.

As a result of this meeting, action may be considered in accordance with the CCG's Capability Management Policy and the outcome of the meeting may result in a decision to issue you with a formal written warning on the grounds of incapability due to unsatisfactory work performance.

Please confirm your attendance at this meeting by contacting *Contact Name* on *Contact number* at least three working days prior to the meeting.

Yours sincerely

**Manager Name**

*Manager Title*

cc HR Representative Name & Job Title  
Enclosure Capability Management Policy

## **Appendix 4 – Template Letter Confirmation of Written Warning**

### **Private & Confidential – Addressee Only**

*Name and Address*

*Date*

Dear,

### **Re: Outcome of Stage 2 Formal Performance Management Meeting**

I am writing to confirm the decision taken at the Stage 2 Formal Performance Management meeting held on *date*, which was held in accordance with the CCG's Capability Management Policy. *HR Rep* from Human Resources was in attendance at the meeting and you were accompanied by your *colleague / trade union representative name /* you chose to be unaccompanied, but confirmed that you wished the meeting to proceed.

At the meeting, your progress in relation to your Performance Management Action Plan was discussed. *Add details of specific discussions / areas of improvement / areas where further improvement required / deterioration.*

It was explained that you had continued to receive *support / assistance / training / mentoring / clinical supervision* to enable you to work towards achieving the set of objectives that have been set for you within the Performance Management Action Plan, but you have been unable to demonstrate sufficient progress towards these required standards within the timeframes set out in the Action Plan.

Having considered the issues and following discussion with you, I took the decision to issue you with a written warning in line with the CCG's Capability Management Policy, on the grounds of incapability due to unsatisfactory work performance. This warning will remain on your file for a period of 12 months.

At the meeting I confirmed to you that, in accordance with the CCG's Capability Management policy, as you have been issued with this formal written warning, you will be prevented from receiving your next incremental pay increase.

I enclose with this letter the revised Work Performance Management Action Plan which sets out the objectives that you are being measured against, together with the standard required for each objective, how this will be measured and by whom.

You are required to meet these standards by ***Date of Review*** and *Manager Name* will be the person who will take the ultimate decision about whether or not you have met all of the objectives by that time.

If you are unable to demonstrate sufficient progress towards full competency against all of the objectives by *review date* or if your standard of performance subsequently slips below the required standard, then a report will be prepared and a Stage 3 Formal Capability Hearing will be held in line with the CCG's policy.

At that Stage 3 Formal Capability Hearing, consideration may be given to dismiss you from your role, on the grounds of incapability due to unsatisfactory work performance.

You have the right to appeal against this decision to issue you with a written warning. Such an appeal should be made in writing to the Assistant Director of HR and ODL within 10 working days of the date of this letter.

Yours sincerely

**Manager Name**  
Manager Job Title

cc           HR Representative Name & Job Title

Enclosure   Revised Work Performance Action Plan

**Appendix 5 – Template Work Performance Capability Report**

# **Capability Management Report**

***Name***

***Job Title***

***Department***

***Date***

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## **1.0 Executive Summary**

- 1.1 Concerns were raised when capability issues were identified with *Name and Job Title*, who demonstrated continued shortcomings in his/her performance.
- 1.2 Action has been initiated as directed in the CCG's Capability Management Policy. Reasonable steps were taken to support *name* by way of provision of *additional training / supervision from experienced members of staff / other relevant measures* with a view to enhance his/her level of performance.
- 1.3 However, despite this support *name* has not been able to demonstrate the required standard of competency for the role.

## **2.0 Background information**

- 2.1 *Name* has been employed by the CCG since *date* in the role of *role* (see job description and person specification – appendix 1)
- 2.2 Concerns were raised when capability issues were identified with *Name*, who demonstrated continued shortcomings in his/her performance.

## **3.0 Chronology / Methodology**

- 3.1 On *date name* commenced employment with the CCG in the role of *role*.
- 3.2 Concerns were raised in *date* when it became apparent that *name* was not achieving the required standards within the role.
- 3.3 In order to address these concerns, *manager* met with *name* and set out the areas where his/her performance was below the standard required in the role and a performance management action plan was drawn up (see appendix 2).
- 3.4 Although *support / mentoring / additional training / clinical supervision* was provided to *Name*, he/she was unable to attain the standards required in the performance management action plan within the required timeframe and a Stage 2 Formal Capability Meeting was held on *date* (see notes from meeting – appendix 5)

**3.5** At the Stage 2 Formal Capability Meeting, *Name* was issued with a written warning in respect of incapability due to poor performance on *date* (see appendix ). Notes from the

3.5 A revised performance management action plan was drawn up, with revised timeframes for achievement of the standards required (see appendix 4).

3.6 Although further *support / mentoring / additional training / clinical supervision* was provided to *Name* following the written warning, he/she was unable to attain the standards required in the performance management action plan within the revised timeframe.

3.7 Summary of meeting held with *name* on

3.8 Summary of meeting held with *name* on

#### **4.0 Findings / Conclusions**

#### **5.0 Points for Further Consideration**

5.1 Underlying Health Issues

5.2 Training, Mentoring, Support and Clinical Supervision

5.3 Consideration of Downgrading to a Lower Banded Role

#### **6.0 Policies/Procedures**

6.1 This Capability Management report has been prepared in line with the CCG's Capability Management Policy (see Appendix 7).

#### **7.0 Recommendations**

It is recommended that this Capability Management report is considered by a Stage 3 Formal Capability Hearing panel, in accordance with the CCG's Capability Management Policy for the reasons set out below:

*Line Manager name*  
**Job Title**

*HR Support Name*  
**HR Job Title**

*Date*

## Appendix 6 – Template Letter – Invitation to Stage 3 Formal Capability Hearing

### Private & Confidential – Addressee Only

*Name and Address*

*Date*

Dear

### Re : Invitation to Stage 3 Formal Capability Hearing

A Capability Management report has been prepared regarding concerns relating to your work performance capability in the role of *role* and the written warning issued to you on *date*. As a result, you are now required to attend a Stage 3 Formal Capability Hearing. The Stage 3 Formal Capability Hearing has been scheduled as follows:

**Date:**

**Time:**

**Venue:** (Please report to *venue* at *time*).

*Name of manager* and *name of HR representative (title)* will present the enclosed Capability Management Report to myself and *name (HR representative title)*. You have the right to be accompanied at the hearing by an accredited representative from a recognised trade union or professional association, or accompanied by a work colleague not acting in a legal capacity.

As a result of this hearing, action may be considered in accordance with the CCG's Capability Management Policy (a copy of which you have already received / is enclosed). In line with this Policy, the outcome of the hearing may result in a decision to dismiss you from the CCG on the grounds of incapability due to unsatisfactory work performance.

Please provide any supplementary information that you will be submitting in your response to the report at least 5 working days prior to the Hearing. Please confirm

your attendance at this meeting by telephoning *contact name and number* at least 5 working days prior to the meeting date.

Please be aware that if you fail to attend this Hearing without prior contact with us, the hearing may proceed and a decision may be made in your absence, based on the information available.

Yours sincerely

***Hearing Manager***

*Job Title – area*

cc           HR Support to Hearing Manager Name & Job Title  
              Line Manager Name & Job Title  
              HR Support to Line Manager Name & Job Title

Enclosure   Capability Management Report

## Appendix 7 – Template Letter – Confirmation of Outcome

### Private & Confidential – Addressee Only

*Name and Address*

*Date*

Dear

### Re: Outcome of Stage 3 Formal Capability Management Hearing

I am writing to confirm the decision taken at the Stage 3 Formal Work Performance Capability Hearing held on **date**. The hearing was held to consider concerns relating to your capability in the role of **job title** and was heard in accordance with the CCG's Work Performance Capability policy.

**Manager and job title** and **HR support and title**, presented a summary of the Work Performance Capability report to myself and **HR support and title**. You were accompanied at the meeting by (Name), **title**. **Name and title** attended the meeting as note taker. **Names of witnesses and title**, were also present as a management witnesses as they had been involved in managing / assessing your performance at both the informal and formal stages. **Include names and job titles of any staff side witnesses.**

During the course of the Capability Hearing, we heard the following evidence as set out in the Capability Report presented by management side and from the witnesses called to the hearing:

- List issues raised in terms of performance

In response to the management side case, the panel heard the following from you:

- List issues raised
- In summary, you stated that.....

After hearing the cases presented by both sides and considering the information presented, the panel came to the conclusion that your performance was consistently not at the standard expected as set out in your job description. The panel was satisfied that suitable action had been taken by management at both the informal and formal stages of the Work Performance Capability policy, to allow you the

opportunity to address the performance issues highlighted, and that all possible opportunities for training and development / mentoring / clinical supervision had been provided to you.

During the informal and formal monitoring periods, the panel noted that (*insert any relevant points*).

The panel also noted you were issued with a written warning due to unsatisfactory work performance on *date*. It was confirmed that you did not appeal against this warning / that you did appeal against this warning, but that the appeal was rejected and the warning upheld on *date*.

In summary, the panel considered the options that we had available to us, as outlined in the Capability Management policy:

- Extend the monitoring period and period of the previous written warning and give you a further opportunity to achieve the required standard of work performance within a defined timeframe.
- Downgrade to a lower banded role.
- Consider, based on all the facts as presented, whether to dismiss the employee on the grounds of incapability due to unsatisfactory work performance

At the hearing, I advised you that the panel had made the decision *to.....* I explained that this sanction/dismissal was with effect from the *date*, and that you would be paid in lieu of (*how many weeks*) notice as well as for any annual leave that is owed to you.

This dismissal will be reflected in any future employment references that the CCG is asked to supply on your behalf.

I confirmed that, as a result of this dismissal, I would be making a recommendation to the *Chief Nurse / Medical Director*, that your case be referred to the *NMC / other professional body* for their consideration.

As explained at the hearing, you have the right to appeal against this decision in accordance with the CCG's Capability Management policy. If you wish to submit such an appeal, then this must be lodged in writing to the Assistant Director of HR and ODL within ten working days from the date of this letter.

Yours sincerely

**Manager Name**  
Manager Job Title

cc: (Name), *HR support to Chair*  
(Name), *Manager's name and title*  
(Name), *HR support to manager*

## Appendix 8 – Equality Impact Assessment Stage 1 Screening

**Title of policy, service, proposal etc being assessed:**

Capability Management Policy

**What are the intended outcomes of this work?** Include outline of objectives and function aims

NHS Bedfordshire, NHS East and North Hertfordshire, NHS Herts Valleys, NHS West Essex and NHS Luton Clinical Commissioning Groups (respectively referred to as ‘the CCG’) primary aim is to commission high quality healthcare. To do this, the CCG needs to promote high standards of work performance and capability for employees and to take appropriate corrective action when those standards are not met. To support this, the CCG believes that to promote good employee relations it is necessary to demonstrate that employees will be treated fairly and according to the laws of natural justice, reasonably, promptly, impartially and consistently in matters relating to work performance capability. In doing this, the CCG’s commitment to commissioning high quality healthcare is underpinned.

**How will these outcomes be achieved?** What is it that will actually be done?

This procedure describes the steps to be taken to deal with each work performance capability situation reasonably and with the aim of helping the employee to improve their standards of work performance to reach acceptable standards. It is important that managers and employees understand these steps.

**Who will be affected by this work?** e.g. staff, patients, service users, partner organisations etc. If you believe that there is no likely impact on people explain how you’ve reached that decision and send the form to the equality and diversity manager for agreement and sign off

Staff

### Evidence

**What evidence have you considered?** Against each of the protected characteristics categories below list the main sources of data, research and other sources of evidence (including full references) reviewed to determine impact on each equality group (protected characteristic).

This can include national research, surveys, reports, research interviews, focus groups, pilot activity evaluations or other Equality Analyses. If there are gaps in

evidence, state what you will do to mitigate them in the Evidence based decision making section on page 9 of this template.

If you are submitting no evidence against a protected characteristic, please explain why.

**Age** Consider and detail age related evidence. This can include safeguarding, consent and welfare issues.

No local assessment. Developed in conjunction with the joint forum, and ratified by, the relevant committees of the Hertfordshire, Bedfordshire, West Essex and Luton CCGs.

**Disability** Detail and consider disability related evidence. This can include attitudinal, physical and social barriers as well as mental health/ learning disabilities.

No local assessment. Developed in conjunction with the joint forum, and ratified by, the relevant committees of the Hertfordshire, Bedfordshire, West Essex and Luton CCGs.

**Gender reassignment (including transgender)** Detail and consider evidence on transgender people. This can include issues such as privacy of data and harassment.

No local assessment. Developed in conjunction with the joint forum, and ratified by, the relevant committees of the Hertfordshire, Bedfordshire, West Essex and Luton CCGs.

**Marriage and civil partnership** Detail and consider evidence on marriage and civil partnership. This can include working arrangements, part-time working, caring responsibilities.

No local assessment. Developed in conjunction with the joint forum, and ratified by, the relevant committees of the Hertfordshire, Bedfordshire, West Essex and Luton CCGs.

**Pregnancy and maternity** Detail and consider evidence on pregnancy and maternity. This can include working arrangements, part-time working, caring responsibilities.

No local assessment. Developed in conjunction with the joint forum, and ratified by, the relevant committees of the Hertfordshire, Bedfordshire, West Essex and Luton CCGs.

**Race** Detail and consider race related evidence. This can include information on difference ethnic groups, Roma gypsies, Irish travellers, nationalities, cultures, and language barriers.

No local assessment. Developed in conjunction with the joint forum, and ratified by,

the relevant committees of the Hertfordshire, Bedfordshire, West Essex and Luton CCGs.

**Religion or belief** Detail and consider evidence on people with different religions, beliefs or no belief. This can include consent and end of life issues.

No local assessment. Developed in conjunction with the joint forum, and ratified by, the relevant committees of the Hertfordshire, Bedfordshire, West Essex and Luton CCGs.

**Sex** Detail and consider evidence on men and women. This could include access to services and employment.

No local assessment. Developed in conjunction with the joint forum, and ratified by, the relevant committees of the Hertfordshire, Bedfordshire, West Essex and Luton CCGs.

**Sexual orientation** Detail and consider evidence on heterosexual people as well as lesbian, gay and bisexual people. This could include access to services and employment, attitudinal and social barriers.

No local assessment. Developed in conjunction with, and ratified by, the relevant committees of the Hertfordshire, Bedfordshire, West Essex and Luton CCGs.

**Carers** Detail and consider evidence on part-time working, shift-patterns, general caring responsibilities.

No local assessment. Developed in conjunction with the joint forum, and ratified by, the relevant committees of the Hertfordshire, Bedfordshire, West Essex and Luton CCGs.

**Other identified groups** Detail and consider evidence on groups experiencing disadvantage and barriers to access and outcomes. This can include different socio-economic groups, geographical area inequality, income, resident status (migrants, asylum seekers).

No local assessment. Developed in conjunction with the joint forum, and ratified by, the relevant committees of the Hertfordshire, Bedfordshire, West Essex and Luton CCGs.

## **Engagement and involvement**

How have you engaged stakeholders with an interest in protected characteristics in gathering evidence or testing the evidence available?

Policy Forum established. Members include representatives of CCGs and Trade Unions

How have you engaged stakeholders in testing the policy or programme proposals?

Policy Forum established. Members include representatives of CCGs and Trade Unions

For each engagement activity, please state who was involved, how and when they were engaged, and the key outputs:

Policy Forum established. Members include representatives of CCGs and Trade Unions

### Summary of Analysis

Considering the evidence and engagement activity you listed above, please summarise the impact of your work. Consider whether the evidence shows potential for differential impacts, if so state whether adverse or positive and for which groups and/or individuals. How you will mitigate any negative impacts? How you will include certain protected groups in services or expand their participation in public life?

No local assessment. Developed in conjunction with the joint forum, and ratified by, the relevant committees of the Hertfordshire, Bedfordshire, West Essex and Luton CCGs.

Now consider and detail below how the proposals could support the elimination of discrimination, harassment and victimisation, advance the equality of opportunity and promote good relations between groups (the General Duty of the Public Sector Equality Duty).

### Eliminate discrimination, harassment and victimisation

Developed in conjunction with the joint forum, and ratified by, the relevant committees of the Hertfordshire, Bedfordshire, West Essex and Luton CCGs.

### Advance equality of opportunity

Developed in conjunction with the joint forum, and ratified by, the relevant committees of the Hertfordshire, Bedfordshire, West Essex and Luton CCGs.

### Promote good relations between groups

Developed in conjunction with the joint forum, and ratified by, the relevant committees of the Hertfordshire, Bedfordshire, West Essex and Luton CCGs.

### Next Steps

Please give an outline of what you are going to do, based on the gaps, challenges

and opportunities you have identified in the summary of analysis section. This might include action(s) to eliminate discrimination issues, partnership working with stakeholders and data gaps that need to be addressed through further consultation or research. This is your action plan and should be SMART.

New HR monitoring system being developed

How will you share the findings of the Equality analysis? This can include sharing through corporate governance or sharing with, for example, other directorates, partner organisations or the public.

Publication alongside the policy

### Health Inequalities Analysis

#### Evidence

**1. What evidence have you considered to determine what health inequalities exist in relation to your work?** List the main sources of data, research and other sources of evidence (including full references) reviewed to determine impact on each equality group (protected characteristic). This can include national research, surveys, reports, research interviews, focus groups, pilot activity evaluations or other Equality Analyses. If there are gaps in evidence, state what you will do to mitigate them in the Evidence based decision making section on the last page of this template.

No local assessment. Developed in conjunction with the joint forum, and ratified by, the relevant committees of the Hertfordshire, Bedfordshire, West Essex and Luton CCGs.

#### Impact

**2. What is the potential impact of your work on health inequalities?** Can you demonstrate through evidenced based consideration how the health outcomes, experience and access to health care services differ across the population group and in different geographical locations that your work applies to?

No local assessment. Developed in conjunction with the joint forum, and ratified by, the relevant committees of the Hertfordshire, Bedfordshire, West Essex and Luton CCGs.

**3. How can you make sure that your work has the best chance of reducing health inequalities?**

No local assessment. Developed in conjunction with the joint forum, and ratified by, the relevant committees of the Hertfordshire, Bedfordshire, West Essex and Luton CCGs.

## Monitor and Evaluation

### 4. How will you monitor and evaluate the effect of your work on health inequalities?

New HR monitoring system being developed

### Quality Impact Initial Assessment

Quality can be defined as embracing three key components:

- Patient Safety – there will be no avoidable harm to patients from the healthcare they receive. This means ensuring that the environment is clean and safe at all times and that harmful events never happen.
- Effectiveness of care – the most appropriate treatments, interventions, support and services will be provided at the right time to those patients who will benefit.
- Patient Experience – the patient’s experience will be at the centre of the organisation’s approach to quality.

What is the impact on:

<b>Patient Safety?</b>	Positive <input type="checkbox"/>	Negative <input type="checkbox"/>	Neutral <input checked="" type="checkbox"/>
<b>Patient Experience?</b>	Positive <input type="checkbox"/>	Negative <input type="checkbox"/>	Neutral <input checked="" type="checkbox"/>
<b>Clinical Effectiveness?</b>	Positive <input type="checkbox"/>	Negative <input type="checkbox"/>	Neutral <input checked="" type="checkbox"/>

If any there is any negative impact please complete seek advice from the Nursing and Quality Team and a full Quality impact assessment will need to be completed.

**Name of person(s) who carried out these analyses: Paul Curry**

**Date analyses were completed: 17 May 2017**