

1	Policy Name	Capability Policy			
2	Accountable Director	Director of Corporate Services			
3	Applies to:	All Employees			
4	Groups / individuals who have overseen the development of this policy	HR, Policy Harmonisation Working Group			
5	Groups which were consulted and have given approval	Joint Partnership Group-October 2019 Executive Management Team-January 2020			
6	Equality Impact Analysis	Policy Screened	Yes	Template Completed	Yes
7	Ratifying Committees & Date of final approval	Joint Partnership Group-October 2019 Executive Management Team-January 2020			
8	Version	1			
9	Available on	Intranet	Yes	Website	No
10	Related documents:	N/A			
11	Disseminated to:	All Employees			
12	Date of implementation	03 February 2020			
13	Date of next formal review	January 2023 or earlier should there be national NHS terms and condition/legislative changes			

Capability Policy

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1. Introduction

The CCG has the right and responsibility to establish its requirements in standards of work to be achieved by its staff, so long as these are realistic and clearly defined. In order to fulfil this responsibility, the CCG will ensure that individual employees' work is monitored fairly.

The CCG is committed to valuing all 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.

This policy applies to all employees of X CCG. Other workers will be subject to the procedures/agreements laid out in any written agreement that exists between X CCG and / or the worker and/or the agency through which they work. This policy will not apply to agency workers and independent contractors, including Bank workers. Separate policies exist for managing employees on a probationary period, for managing absence and attendance and for managing conduct.

2. Principles

During employment adequate training and encouragement are essential to help achieve satisfactory performance. This will mean that regular discussions about performance will take place between employees and their managers. During these discussions managers will attempt to coach and develop employees and as such may set performance or behavioural targets for employees in an attempt to encourage improvements, without the recourse to formal procedures.

Where the performance of an employee is affected by a disability, as defined in accordance with the Equality Act 2010, reasonable adjustments will be considered in any aspect of work arrangements to support the employee in their performance at work.

Equally, employees themselves have a personal responsibility to ensure that they commit sufficient personal effort to achieve and maintain the standards defined for them.

Managers with responsibilities for performance management will receive the appropriate training to help them understand their role and manage performance effectively. This will include information on the objectives of performance management and how it will operate.

Every attempt will be made to ensure that any targets and timescales are a reasonable expectation and are agreed between line manager and employee. Where this agreement cannot be reached, it may be necessary for management to set the target that the employee is reasonably required to achieve within the timescale.

This policy will be implemented where the manager considers that an employee is failing to achieve and maintain defined standards of work.

Employees are entitled to be accompanied at all formal meetings by a Trade Union Representative or CCG work colleague.

The employee may not insist on being accompanied by a colleague whose presence would prejudice the meeting or who might have a conflict of interest. It would also be unreasonable for an employee to ask to be accompanied by a colleague from a remote location when

someone suitably qualified was available on site. Should there be any dispute regarding the chosen companion that cannot be resolved, the matter will be escalated to the Deputy Director of HR or their designated deputy.

Employees will be expected to take reasonable steps to attend all meetings, whether as the employee concerned or as a witness. If the employee, or their chosen companion, is not available to attend on the date proposed, the CCG will endeavour to offer an alternative reasonable date within 5 working days of the original date wherever possible. Note: This meeting will normally only be re-arranged once, except in exceptional circumstances. If the employee concerned fails to attend without good reason and does not nominate a representative to attend in their absence, the meeting/hearing may take place in their absence and a decision will be made on the evidence available. Appropriate weight shall be given to the evidence of any witness that fails to attend a meeting/hearing and their reasons for non-attendance will be taken into account, if known.

3. Scope of Policy

If, in the course of a capability process, a grievance/claim of bullying and harassment is raised that relates to the case, management consideration will be given to either suspending the capability process for a short time whilst the grievance/bullying and harassment claim is managed under the respective policy or managed at the appropriate capability stage. Where the matter is addressed and responded to via the capability process, the outcome will act as the organisational response to the grievance/bullying & harassment matter/process without recourse via any other policy.

Alternatively, if it is considered that the grievance/bullying and harassment matters are not related to the capability process, the CCG may appoint an alternative, neutral manager (or take the view that the already appointed manager is sufficiently neutral) to consider the grievance/bullying and harassment matter concurrently to the capability process.

Separate policies exist for managing employees subject to a probationary period, disciplinary and for managing absence and attendance.

4. Representation

During the formal stages of this policy, employees have the right to be accompanied by a trade union representative or a CCG work colleague to meetings held as a part of this stage of the process. The employee's companion may make representations and ask questions for the employee but they should not answer questions on the employee's behalf.

If the employee wishes to be accompanied to a meeting under this procedure, they should notify the manager holding the meeting in advance, giving the name of the employee's chosen companion within the deadlines specified in the letter of invitation to the meeting, if they are able to do so.

Employees must take all reasonable steps to attend any meetings arranged under this policy and procedure.

In the event that a meeting relating to one of the formal stages is arranged and the trade union representative/CCG work colleague is unable to attend the meeting, the employee

must immediately notify the manager holding the meeting and suggest an alternative time and date that is not more than 5 working days after the initial meeting date.

Legal representatives, whether solicitors, barristers or otherwise, are not permitted to take part in the proceedings in any capacity at any stage of this policy.

An individual may seek advice from their Trade Union Representative as and when required during the informal and formal stages.

5. Referral to Professional Bodies

The CCG reserves the right to inform the appropriate professional body in line with the professional body's code of conduct where the nature of the circumstances under investigation will have a bearing on the employees professional registration status and ability to fulfil their employment contract where registration is essential to the role the employee is carrying out. The employer and employee may need to keep the professional body up to date with the outcome of the investigation or co-operate with them in their own investigation (where applicable)

6. Roles and Responsibilities

CCG has an obligation to set out standards of performance and address instances that fall below those standards.

Managers

All Managers are required to:

- Ensure they are familiar with the Capability Policy and their obligations in relation to the management of issues that will be addressed in line with the policy.
- Have regular 1:1s with their team and provide both positive and constructive feedback
- Take prompt action when issues of performance are brought to their attention and ensure appropriate support is put in place to help staff
- Ensure appropriate records and supporting evidence, are recorded to support investigations and outcomes.
- Maintain a working relationship that proactively identifies and addresses areas for improvement in job performance and addressing training and development needs to support employees fulfil their job role.

Human Resources

The HR team will:

- Advise on the interpretation and implementation of this policy and good practice;
- Be responsible for the coordination of the formal stages of this procedure and be present at all formal meetings.
- Ensure that this policy is applied fairly and consistently across the CCG
- Maintain accurate HR records on documentation relating to this policy and providing monitoring data.

Employees

All Employees are expected to:

- Be responsible for reaching and maintaining the standards of conduct and performance expected of them. Employees are responsible for raising concerns about job performance in a timely manner.
- Co-operate fully in the use of this policy and procedure
- Be responsible for proactively identifying and addressing areas for improvement in job performance and addressing training and development needs to support themselves to fulfil their job role.
- Attend meetings in line with the policy, as required

7. Scheme of Delegation

Informal procedure	Line Manager or equivalent level manager from elsewhere within the organisation
Formal procedure	Line manager or equivalent level manager from elsewhere within the organisation or the line managers direct manager if the line manager has been previously involved or implicated
Appeal following formal procedure	Line Managers manager or equivalent who has not previously been involved or implicated
Dismissal Hearings	Chaired by a Director/Assistant/Deputy Director or equivalent plus one other manager and HR representative
Appeal against dismissal	Chaired by a Director plus one other manager and HR representative

8. Definition of Capability

Capability refers 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.

The easiest and simplest way of identifying issues is through the regular contact employees have with their managers – through catch-ups or '1-2-1's for example, or regular performance reviews. Often staff will identify an area themselves where they feel at risk of underperforming and they are encouraged to explore these and ways of addressing them, at the earliest opportunity.

When considering capability issues and possible solutions, managers should note that work and non-work related matters can impact the individual's performance.

Capability issues can arise when non-work factors put pressure on employees in a way that affects their job performance. These can include domestic problems, ill health, or other factors. Capability issues can arise due to inadequacies in:

- Induction;
- Training;
- policies or procedures;
- clarity around job role;
- clarity around performance expectations;
- workload management (including overwork);
- Insufficient reasonable adjustments for disabled employees.

9. Deciding whether the matter is capability or conduct

Capability is different to misconduct, in that it refers to situations where an employee is genuinely trying to perform to the required standard but is incapable of doing so. It is not a deliberate failure to perform, poor attitude, or failure to meet standards as a result of carelessness, negligence or idleness; these matters are matters of misconduct.

Sometimes it can be difficult to establish whether the matter relates to a person's conduct or their capability. In these circumstances, the person's manager will need to establish the answer through investigation or counselling. There should be no automatic assumption that the matter relates to a person's conduct. In some circumstances, an employee may have both capability and conduct issues. In these circumstances, the manager should keep the issues separate and deal with each issue under the appropriate policy.

10. Possible causes of incapability and solutions

In order to effectively manage capability issues, managers should attempt to ascertain the cause of the problem. Causes can include:

- inadequate or insufficient training, systems, policies and procedures, tools/equipment, supervision/support
- a lack of clarity about the job role, objectives, management instructions
- excessively high workloads
- poor working relationships or bullying/harassment
- ill health or personal problems

Possible solutions, therefore, may include coaching the employee, reviewing systems, policies, procedures, supervision and support, fixing faulty equipment, reviewing workloads, clarifying job roles/instructions, providing additional training to the employee or training their supervisor on particular aspects of people management.

11. Equality Statement

In applying this policy, the CCG will have due regard for the need to eliminate unlawful discrimination, promote equality of opportunity, and provide for good relations between people of diverse groups, in particular on the grounds of the following characteristics protected by the Equality Act (2010); age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation, in addition to offending background, trade union membership, or any other personal characteristic.

12. Data Protection / GDPR

In applying this policy, the Organisation will have due regard for the Data Protection Act 2018 and the General Data Protection Regulation (GDPR). Personal Confidential Data of data subjects will be processed fairly and lawfully and in accordance with the six data protection principles. Data Subject's Rights and freedoms will be respected and measures will be in place to enable employees (data subjects) to exercise those rights. Appropriate technical and organisational measures will be designed and implemented to ensure an appropriate level of security is applied to the processing of personal confidential data. Employees will have access to the CCG's Data Protection Officer for advice in relation to the processing of their personal confidential data and data protection issues.

13. Monitoring & Review

This policy will be reviewed every 3 years by Human Resources in conjunction with operational managers and Trade Union representatives. Where review is necessary due to legislative change this will happen immediately.

Implementation and operation of this policy will be monitored on an annual basis by the HR Team.

14. Breach of Policy

Unauthorised absence and/or the misuse of this guidance will be managed under the Disciplinary Policy.

15. Informal Stage

Day-to-Day Management

It is part of the role of managers to manage the work of their staff on a day-to-day basis and to draw employees' attention to any shortcomings and give counsel or correction. However, in some circumstances it may become necessary to take further corrective action.

Informal Counselling: Improvement Note

It is in everyone's interests to avoid the need to invoke formal capability proceedings where possible. To this end, informal counselling may be appropriate to discuss conduct standards and the discussion may result in an informal improvement note being issued.

Informal counselling should be carried out between the employee and their manager as part of good management practice. Such a meeting should be conducted in an atmosphere that encourages open discussion and enables the employee and manager to make the most of the opportunity for improvement provided them.

It is very important in this informal stage that the employee is made aware of the specific area/s of their performance that is of concern. The unacceptable level of performance should be evidenced and the line manager should share this evidence. The acceptable standard of performance should also be made clear and should be a consistent standard for all staff undertaking the same role.

At the meeting, the manager should:

- Make the employee aware of the issues and the effect on the service/CCG
- Attempt to establish the cause/s

- Obtain the employee's perspective on the matter
- Clarify expected standards
- Identify solutions
- Identify realistic, measurable SMART targets and the period over which these should be achieved and sustained (between 4 to 12 weeks) to achieve a satisfactory improvement in the employee's performance
- Confirm the methods will be used to assess the employee's performance
- Confirm when the performance standards will be reviewed and the fact that formal action could be taken in line with the policy if the required improvement is not satisfactorily achieved and sustained
- Confirm what support mechanisms the CCG will put in place to assist the employee to achieve the required standards

A letter confirming the discussion and outcome of meeting should be sent to the employee within 5 working days', clearly setting out the objectives, timeframes and possible outcome should the employee fail to make a satisfactory improvement. As part of this stage of the process, a development plan should be agreed and copy given to the employee. The development plan clearly outlines the improvement required, outputs required to meet the standard(s), timescales and support. Appendix 1 contains a template action/development plan. This will support the manager to demonstrate that the employee has achieved or failed the targets.

It is expected that the action plan and timescales produced in this section of the procedure will be agreed by both parties. Only in exceptional circumstances would agreement not be reached. In this case, line managers should progress with the process but be mindful that it must be fair and reasonable and ensure that the individual's comments are recorded.

It is important that after the counselling session, the manager continues to provide day-to-day management and ensures that the employee is appropriately supported to help them achieve and maintain the required standard.

If in the course of the monitoring period the manager feels that the improvement has not been satisfactory or consistent and the employee will not meet the set objectives by the end of the monitoring period, they can decide to invoke formal action without the monitoring period being completed.

The objectives and support should, where possible, be agreed between the employee and the manager. Where it is not possible to reach agreement, the manager will need to carefully assess the situation and decide the objectives and support are appropriate in the circumstances, taking account of the employee's perspective on the matter.

16. Formal Stages

If, despite support, the employee is unable to reach and/or maintain the required standard of performance, the consequences of failure to do so should be set out in writing to the employee, using a series of formal stages, which are cumulative and follow the sequence set out below:

- First Formal Stage and Monitoring Phase (Formal Stage 1)
- Second Formal Stage and Monitoring Phase (Formal Stage 2)
- Final Formal Stage: Possible Dismissal/Alternatives to Dismissal (Formal Stage 3)

The First and Second Formal Stages will consist of an action plan, setting out the actions required by both the employee and their manager to support an improvement in their

performance. There will be a development phase that will continue during the period that the formal action is active. These phases will be for the employee to demonstrate sustained improvement and for the manager to ensure they continue to assess the employee's needs, providing tailored support to the individual and continually assessing their capability.

In exceptional circumstances, it may be possible to proceed directly to the first/final formal stage without having completed the preceding steps. This might occur where the employee's performance has had, or is liable to have, a serious or harmful impact on the organisation

Formal action will normally remain active for between 1 - 6 months and, once expired; will be removed from an employee's formal record.

17. Formal Stage 1

If, despite support, the employee is unable to reach and/or maintain the required standard of performance, the manager may convene a performance review meeting in line with the formal stage 1 of this policy.

The purpose of this meeting is for the line manager and the employee to discuss the continuing concerns over the employee's performance and put together a formal Action Plan to set SMART targets to improve it.

The line manager should invite the employee by letter or email (where appropriate) in order to confirm the time, date and venue of the meeting. The manager should give a minimum 5 days' notice of this meeting. The employee has the right to be accompanied by a trade union representative or CCG work colleague. HR will also be present at the meeting.

At this meeting the manager should:

- Explain that the meeting is an opportunity to discuss concerns regarding the employee's current level of performance.
- Discuss the employee's performance over the previous months to establish where performance is not at an acceptable level.
- Identify any reasons or support for the poor performance (where it is felt that there may be a link to an individual's health, then an Occupational Health referral should be made by the line manager at this stage).
- Listen to any comments or concerns that the employee has in relation to their own performance.
- Inform the employee of the expected standard of work (the manager may wish to make reference to their job description or person specification as a guide) and ensure that they are clear about their duties and responsibilities.
- Set targets for expected improvement and record these on an action plan. These will be SMART objectives (Specific, Measurable, Achievable, Reasonable and Time-Limited), with the aim of improving performance to a satisfactory standard.
- Set a suitable review period in which improvement in performance should be made. The review period should be for a minimum of 4 weeks and a maximum of 3 months (and in exceptional circumstances up to 6 months).
- Ensure the employee is aware that failure to provide a sustainable and demonstrable improvement in performance to the expected standard will result in Stage 2 of the Capability Policy being invoked. Also state that, if during the Stage 1 review period performance deteriorates further, it may be necessary to invoke Stage 2 of the Policy prior to the end of the review period.
- Ask the employee whether they feel able to meet the required standards, what development is required to support them with this.

The manager will write and confirm the outcome and key points of the meeting, including a copy of the action plan that was discussed. A date should be set for the stage 2 review meeting as agreed with the employee and their representative where present, in the meeting. Any discussion relating to support and re-deployment (if applicable) must be documented in this letter, together with the right of appeal.

The First Formal Stage is active (between 1 and 6 months). The purpose of the monitoring phase is for the employee to demonstrate sustained improvement and for the manager to ensure they continue to assess the employee's needs, providing tailored support to the individual and continually assessing their capability. Details of this phase, such as 1:1 meetings, should be planned and set out in the action plan, where possible.

18. Formal Stage 2

If, despite the First Formal Stage and monitoring phase and having been offered appropriate support, the employee is unable to satisfy and/or maintain the required standard of performance, the manager may convene a further performance review meeting in line with formal stage 2 of the policy.

The date for this meeting will have already been set in the previous formal review meeting. The manager will inform the employee of the date, time and venue of the meeting in writing, by letter or email, where the scheduled date has had to be moved the manager should give a minimum 5 days' notice of this meeting. The employee has the right to be accompanied by a trade union representative or CCG work colleague. HR will also be present at the meeting.

At this meeting the following areas should be discussed:

- If the manager feels that performance has sustained and improved to an acceptable level then the employee should be told this at the meeting and this should be followed up in writing, confirming that no further action will be taken subject to satisfactory future performance. It is beneficial for the manager and employee to regularly review performance at the required standards is sustained.
- If there has been insufficient or no improvement in performance by the end of the Stage 1 review period, then the Action Plan will be reviewed and revised for a second period of formal review.
- The manager will discuss any concerns with the employee and any further support that is required.
- A suitable review period will be set with a provisional review date set for a minimum of 4 weeks and a maximum of 3 months (in exceptional circumstances, this may be extended up to 6 months)
- If appropriate, there should be a discussion regarding re-deployment. Any discussion on this should be documented in the outcome letter.

After the meeting the manager must write up the action plan and send it to the employee with a covering letter explaining the key points of the meeting, together with the right of appeal. The individual will be asked to confirm their agreement to the plan in writing.

During the second formal review period, the line manager should meet with the employee regularly to continuously monitor their progress in relation to the Action Plan. These regular meetings should be documented on the Action Plan.

End of Stage 2 review Meeting

The date for this meeting will have already been set in the previous formal review meeting. The manager will inform the employee of the date, time and venue of the meeting either verbally, by letter or email.

The date for this meeting will have already been set in the previous formal review meeting. The manager will inform the employee of the date, time and venue of the meeting in writing, by letter or email, where the scheduled date has had to be moved the manager should give a minimum 5 days' notice of this meeting. The employee has the right to be accompanied by a trade union representative or CCG work colleague. HR will also be present at the meeting.

If at the end of stage 2 meeting, the manager feels that performance has improved to an acceptable level and that this improvement will be sustained, the employee should be told this at the meeting and this should be confirmed in writing. No further action will be taken subject to satisfactory future performance.

If there has been insufficient or no improvement in performance by this meeting, then the employee will be informed that they will be referred to a capability hearing and that one possible outcome of this could be their dismissal. This will be confirmed in writing by the manager after the meeting.

19. Formal Stage 3: Possible Dismissal/Alternatives to Dismissal

A capability hearing will be convened in the following situations:

Performance

Formal Stage 3 should be invoked when the employee fails to reach and/or maintain the required standard of performance despite having received both training and support following stages 1 and 2 set out in this policy.

The manager will be required to prepare a management report which details the following:

- In chronological order, the steps taken to manage the employee's performance in line with the Capability Policy, including the regularity of 1:1s
- Dates and summary of informal and formal meeting undertaken in line with this policy
- Any attempts to re-deploy/make reasonable adjustments to support the employee (if applicable)
- The case should also include all relevant documentation such as:
 - Letters and action plans relating to the informal and formal stages of this policy
 - Any evidence that is relevant to the concerns relating to the performance
- Recommendation to the hearing panel

Ill-Health

In cases of ill-health, providing an employee has been managed through all the appropriate stages of the CCG's Managing Absence Policy, the Capability Policy may be invoked at this Stage.

The process outlined in this section applies to employees whose capability issues are as a result of ill-health reasons, i.e. for those who are incapable of attending work or are unable to attend work with sufficient regularity.

The manager will be required to prepare a management case report. The report should detail the following:

- In chronological order, the steps taken to manage the employee's sickness absence through the Absence Management Policy
- Dates and summary of sickness absence review meetings undertaken in line with the Absence Management Policy
- Any attempts to re-deploy the employee
- Attempts to adapt their working hours/environment, in line with the Equality Act 2010.
- The case should also include all relevant documentation such as:
 - All certified sickness absence certificates
 - Reports/letters to and from Occupational Health
 - Reports (if relevant) from GP/Consultant

20. Capability Hearing

Role and Membership of the Capability Hearing Panel

The hearing panel will consist of a chairperson, who will be assisted by an HR representative. Advisors to the panel may be appointed, where specialist knowledge or experience is of use.

The Chair and their advisors will all equally be able to participate in proceedings, however, the responsibility for making the final decision will rest with the Chair. It is therefore important that consideration is given in advance as to the suitability of the Chair and that the Chair carefully considers all the circumstances and advice before reaching a decision. The Chair will also be responsible for ensuring the procedure followed is fair and that the circumstances of the matter are appropriately established to enable them to reach an appropriate decision. The HR representative will be able to provide further advice on these points.

The Chair has absolute discretion on the conduct of the hearing and may at any stage decide to adjourn/amend proceedings to ensure fairness and clarity on any points

Timescales

Before the capability hearing the employee will be advised in writing of the purpose of the meeting and details of the complaint or allegation being considered, covering all issues to be discussed. The individual will be given a minimum of 10 working days' notice of the capability hearing, together with the management case. If the individual, or their chosen companion, is not available to attend on the date proposed, the CCG will endeavour to offer an alternative reasonable date within 5 working days of the original date wherever possible. Note: This meeting will normally only be re-arranged once, except in exceptional circumstances.

The employee and their representative will have the opportunity to submit any documentation and supporting evidence that they wish to rely upon at the hearing. This information must also be made available to the capability hearing panel at least 5 working days prior to the meeting.

The CCG manager and the employee and their representative should confirm the names and positions of those witnesses that they may wish to call at the hearing 5 working days prior to the hearing.

The outcome of the disciplinary hearing will normally be communicated to all attendees within 5 working days and the employee concerned will have 10 working days from the date of that letter to appeal the outcome.

Witnesses and Observers

If the CCG manager is relying upon evidence from a witness, the witness's statement may also be supported by their attendance at the performance review hearing. It is the CCG manager's responsibility to arrange the attendance of their witnesses. If the employee concerned and their representative wish to call witnesses at the performance review meeting, they will be responsible for arranging witnesses' attendance.

Observers may be present at meetings, for example, for training purposes. However, it will be at the discretion of the Chair whether to admit observers to the hearing with the agreement of all parties. Observers will not be permitted to contribute to the meeting.

21. Alternatives to Dismissal

As an alternative to dismissal the Panel Chair may also impose one or more of the following sanctions:

- Redeployment of the employee concerned to an alternative role/work base, with the agreement of the individual. The process to be followed will emulate the redeployment process set out in the CCG's Change Management Policy and the CCG's Pay Protection Policy (if applicable).
- In accordance with the Agenda for Change NHS Terms and Conditions of Service Handbook, if there are significant issues with under performance that have not been resolved despite opportunities for appropriate training/development and support, in exceptional circumstances pay progression may be deferred until the problems are resolved.
- Staff who have been promoted and are unable to perform at that level may be demoted without pay protection if, despite being afforded appropriate opportunities to enable them to perform at the higher level, they cannot do so. This option can only be pursued with the agreement of the individual concerned.
- Appropriate training and development
- Alternative appropriate intervention

22. Appeals

The employee will have the right to appeal against their dismissal. This must be received in writing within 10 working days of the receipt of the outcome letter. Both the employee's intention to appeal and their detailed grounds for the appeal must be submitted at this stage. Failure to do so may mean that an appeal is not heard.

The purpose of an appeal hearing is normally to review the decision made by the performance review meeting chairperson. However, in some exceptional circumstances, for example, where the employee identifies new evidence that came to light after the performance review meeting or where the appeal panel chairperson has a reasonable belief that the employee has established a prima-facie case to demonstrate that the performance review meeting may have been rendered unfair due to procedural irregularities, an appeal may take the form of a re-hearing.

The decision on whether to hear a full or part appeal re-hearing rests with the appeal hearing Chair.

New evidence may only be submitted at an appeal re-hearing and both parties may only call witnesses to an appeal re-hearing. Requests for a rehearing and the grounds for such a request should be submitted by the employee along with their grounds for appeal.

Appeal Hearing Panel

The appeal hearing panel shall consist of a chairperson, who will usually be more senior than the chairperson of the performance review meeting, against whose decision the employee is appealing.

The chairperson should not have been involved in the preceding stages of the procedure.

The chairperson will be assisted by an HR representative Specialist advisors to the panel may be appointed, for example, if the chairperson is from a non-nursing background and the matters being examined may require specialist nursing advice.

The chairperson and their advisors (this includes the HR representative and any specialist advisor in attendance, as detailed above) will all equally be able to participate in proceedings. However, the responsibility for making the final decision will rest with the chairperson.

The chairperson will also be responsible for ensuring the procedure followed is fair and that the circumstances of the matter are appropriately established to enable them to reach an appropriate decision. The HR representative will be able to provide further advice on these points.

Appeal Hearing Procedure

The procedure to be followed at an appeal review hearing is detailed in Appendix 2.

The chairperson will fully consider all the information presented to them by both the employee and their representative and the manager, together with relevant advice from the panel members and advisor/s in deciding whether to uphold the decision of the performance review meeting chairperson. The chairperson may decide to uphold/overturn the decision of the performance review meeting chairperson and may reduce/increase the level of sanction and/or remove/add other requirements, for example, redeployment, training/development, deferral of incremental pay progression, or some other intervention, as detailed in this policy.

The appeal hearing chairperson is responsible for the conduct of the meeting and may at any stage decide to adjourn/adapt proceedings to ensure fairness and clarity on any points. The decision of the appeal hearing chairperson will be final and the employee will have no further recourse to have the matter further examined under any of the other CCG policies and procedures.

Appeal Re-hearings (exceptional circumstances only)

Appeal hearings are normally a review of the decision made by the Chair of the capability hearing. However, in some exceptional circumstances it may be necessary to conduct an appeal re-hearing to re-hear the capability hearing, either in full or in part. Such exceptional circumstances may include where new evidence has come to light following the conclusion of the capability hearing or where the Chair has a reasonable belief that the appellant has

established a prima-facie case to demonstrate that the capability hearing may have been rendered unfair due to procedural irregularities. The decision on whether to hear a full or part appeal re-hearing rests with the appeal hearing Chair and the procedure to be followed in such circumstances is detailed at Appendix 3.

New evidence may be submitted at an appeal re-hearing and witnesses may also be called by both parties if agreed by the appeal panel chair. Requests for a re-hearing and the grounds for such a request should be submitted by the appellant along with their grounds for appeal. Details of any witnesses to be called should be provided by the document exchange deadline. The appeal hearing Chair has absolute discretion on the conduct of the appeal hearing and may at any stage decide to adjourn/amend proceedings to ensure fairness and clarity on any points and may call for a full or part re-hearing even if not requested by either party.

Appendix 1 Template Development Plan

Area of improvement required	Expected Standard	Agreed Actions	Source of support?	Review Date	Date to Achieve Expected Standard/Level of Proficiency
Completion of details on IT system	Record detailed updates of all contact on an IT system within 24 hours, including assessment details and agree plans	<p>Further training on an IT system</p> <p>Protected time each day to complete records and familiarise self with the new system</p> <p>Support from designated system lead</p> <p>Commence and complete ECDL training to improve IT literacy</p>	<p>L&D Department</p> <p>Line Manager to arrange</p> <p>Local Lead</p> <p>L&D Department</p>	<p>1 month</p> <p>1 month</p> <p>3 months</p> <p>3 months</p>	<p>Within 3 months</p>

Appendix 2: Capability and Capability Hearing Procedure

At a capability hearing the following procedures shall be observed:

- (a) The CCG manager shall state the case in the presence of the employee and their representative and may call witnesses.
- (b) The employee and/or her/his representative shall have the opportunity to ask questions of the CCG manager and their witnesses.
- (c) The members of the Capability Hearing Panel shall have the opportunity to ask questions of the CCG and witnesses.
- (d) All parties shall have the opportunity to cross-examine the witnesses on any matter referred to in their examination by members of the Hearing Panel, the employee or their representative.
- (e) The employee and/or their representative shall put their case in the presence of the CCG Manager and may call witnesses.
- (f) The CCG manager shall have the opportunity to ask questions of the employee, their representative and their witnesses.
- (g) The members of the Capability Hearing Panel shall have the opportunity to ask questions of the employee, their representative or their witnesses.
- (h) The employee and/or their representative shall have the opportunity to re-examine her/his witnesses on any matter referred to in their cross examination by members of the Panel and/or CCG manager.
- (i) The CCG manager and the employee or their representative shall have the opportunity to sum up their cases if they so wish. The employee and/or their representative shall have the right to speak last. In their summing up neither party may introduce any new matter.
- (j) Nothing in the foregoing procedure shall prevent the panel from questioning witnesses, management and staffside as appropriate to clarify issues or seek supplementary information, manage the conduct of the case presenters or to amend proceedings to ensure fairness, clarity and the ability to hear the matters appropriately.
- (l) The panel may, at its discretion adjourn the hearing in order that further evidence may be produced by either party or for any other reason. If further evidence is produced then both parties will have the opportunity to test the evidence put before the hearing.
- (m) The CCG manager, the employee and their representative and witnesses shall withdraw.
- (n) The panel shall deliberate in private only recalling both parties to clear points of uncertainty on evidence already given. If recall is necessary, both parties shall return notwithstanding only one is concerned with the point giving rise to doubt.

Appeal Hearing Procedure

At the hearing of an Appeal Review the following procedures should be observed.

- (a) The appellant and/or their representative shall put their case in the presence of the CCG management representative.
- (b) The CCG management representative and members of the Appeal Panel shall have the opportunity to ask questions of the appellant and/or their representative.
- (c) The CCG management representative shall state their case in the presence of the appellant and their representative.
- (d) The appellant and their representative and members of the Appeal Panel shall have the opportunity to ask questions of the CCG management representative.
- (e) The CCG's management representative and the appellant or their representative shall have the opportunity to sum up their cases. In their summing up neither party may introduce any new matter.
- (f) Nothing in the foregoing procedure shall prevent members of the Appeal Panel from seeking to clarify any points from either party, managing the conduct of the case presenters or amending proceedings to ensure fairness, clarity and the ability to hear the matters appropriately.

Appendix 3: Appeal Re-hearing Procedure

At an Appeal Re-hearing the following procedures should be observed:

- (a) The appellant and/or their representative shall put their case in the presence of the CCG management representative and may call witnesses.
- (b) The CCG management representative shall have the opportunity to ask questions of the appellant, their representative and witnesses.
- (c) The members of the Appeal Panel shall have the opportunity to ask questions of the appellant, their representative and/or their witnesses.
- (d) The appellant and/or their representative shall have the opportunity to cross examine their witnesses on any matter referred to in their examination by members of the appeal Panel or the CCG management representative.
- (e) The CCG management representative shall state their case in the presence of the appellant and their representative and may call witnesses.
- (f) The appellant and their representative shall have the opportunity to ask questions of the CCG management representative and witnesses.
- (g) The members of the Appeal Panel shall have the opportunity to ask questions of the CCG management representative and witnesses.
- (h) The CCG management representative shall have the opportunity to cross examine the witnesses on any matter referred to in their examination by members of the appeal Panel, the appellant or their representative.
- (i) The CCG management representative and the appellant or their representative shall have the opportunity to sum up their cases if they so wish. The appellant or their representative shall have the right to speak last. In their summing up neither party may introduce any new matter.
- (j) Nothing in the foregoing procedure shall prevent the Appeal Panel from questioning witnesses, management side and staff side as appropriate to clarify issues or seek supplementary information.
- (k) The Panel may, at its discretion, adjourn the appeal in order that further evidence may be produced by either party or for any other reason.
- (l) The Panel Chair has discretion over the calling of witnesses, the conduct of the case presenters, amending proceedings to ensure fairness, clarity and the ability to hear the matters appropriately and any policy decision arising from the procedure.
- (m) The CCG management representative, the appellant and their representative and witnesses shall withdraw.
- (n) The Panel shall deliberate in private only recalling both parties to clear points of uncertainty on evidence already given. If recall is necessary, both parties shall return notwithstanding only one is concerned with the point giving rise to doubt.