



**Lewisham**  
***Clinical Commissioning Group***

# **CAPABILITY PROCEDURE**

# CAPABILITY PROCEDURE

## CCG Policy Reference:

This policy replaces or supersedes Policy Ref:

<b>Target Audience</b>	Governing Body members, committee members and all staff working for, or on behalf of, the CCG
<b>Brief Description (max 50 words)</b>	This policy sets out the principles by which the CCG will: <ul style="list-style-type: none"><li>• Ensure that where an employee's work performance is unsatisfactory, they are treated fairly, with sensitivity, understanding and in a professional manner throughout the process.</li><li>• Give the employee the opportunity to improve their work performance to an acceptable standard, by providing a means for her/him to be advised formally of the effects and potential consequences on their employment should there be no significant improvement in her/his performance.</li></ul>
<b>Action Required</b>	Communication to CCG employees

Approved: CCG Management Team

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**Document Information:**

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<b>Stakeholders engaged in development or review</b>	Staff Engagement Group CCG Management Team
<b>Equality Analysis</b>	<p><b>Equality Analysis</b></p> <p>This policy applies to all permanent and fixed term employees within the CCG. This document has been assessed for equality impact on the protected groups, as set out in the Equality Act 2010. This document demonstrates Lewisham CCG's commitment to create a positive culture of respect for all individuals, including staff, patients, their families and carers as well as community partners.</p> <p>The intention is, as required by the Equality Act 2010, to identify, remove or minimise discriminatory practice in the nine named protected characteristics of age, disability, sex, gender reassignment, pregnancy and maternity, race, sexual orientation, religion or belief, and marriage and civil partnership. It is also intended to use the Human Rights Act 1998 and to promote positive practice and value the diversity of all individuals and communities.</p>
<b>Contact details for further information</b>	

**Glossary**

<b>Term</b>	<b>Definition</b>
Accountable Executive	CCG Executive accountable for development, implementation and review of the policy
Policy Owner	Post holder responsible for the development, implementation and review of the policy
Document definitions	These are provided in Section 1

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## 1. Introduction

### 1.1 Introduction

- 1.1.1 Lewisham CCG aims to recruit and retain well-qualified and skilled employees in order to deliver the best service possible to our service users. The CCG also recognises its responsibility to ensure that employees are aware of the performance standards required in employment.
- 1.1.2 Whilst the CCG has rigorous recruitment and performance management appraisal systems, it also recognises that there may be occasions when employees are not able to perform at the expected standard for the job. In poor performance cases where the reason is not within the control of the employee, e.g. due to lack of ability, inadequate training or lack of experience, this will be dealt with under the CCG's Capability Procedure.
- 1.1.3 These issues can usually be dealt with through the normal supervision and Appraisal processes. However, the CCG also recognises that there will be occasions when, despite such support and training, no improvement takes place. This procedure outlines the process to be used in such circumstances.

### 1.2 Policy Statement

- 1.2.1 This procedure is intended to complement the CCG's performance management appraisal systems, Sickness Absence Policy and Disciplinary Policy as part of the CCG's performance management strategy.
- 1.2.2 To give the employee the opportunity to improve their work performance to an acceptable standard, by providing a means for her/him to be advised formally of the effects and potential consequences on their employment should there be no significant improvement in her/his performance.

### 1.3 Scope

- 1.3.1 This policy applies to all staff of the CCG and sets out how Lewisham CCG will manage capability issues.
- 1.3.2 Appendix 2 gives an Overview of the Capability procedure with the informal and formal stages clearly set out.
- 1.3.3 Appendix 3 provides a model template to record an employee's progress during a Performance Improvement programme.

## 2. Principles

- 2.1 Line Managers have the responsibility to clearly articulate to employees the performance standards expected of them in the conduct of their duties.

- 2.2 All employees have a responsibility to achieve a satisfactory level of performance and to carry out their duties to the standards required by the organisation.
- 2.3 The CCG is committed as an employer to doing its best to ensure that all staff are adequately equipped with the skills and knowledge necessary for the performance of their roles and responsibilities.
- 2.4 All actions taken in line with this Capability Procedure will be applied to all staff equitably and in accordance with the provisions of the CCG's Equal Opportunities and Bullying and Harassment Policies.
- 2.5 The employee will have full access to a copy of the Capability Procedure at both the informal and the formal stage.
- 2.6 Line Managers should discuss with and receive advice from a member of HR at all stages of the formal procedure. They will discuss the case and a member of HR will attend all formal meetings.

### **3. When should Capability or Disciplinary Policy be used?**

When dealing with issues of poor performance and sub-standard work, managers need to recognise that a distinction can often be made between negligence, a lack of ability and ill health or disability. There are firm guidelines in both the Disciplinary & Capability policies to enable managers to clearly distinguish between Standards of Behaviour and Conduct and Negligence. In addition, there are guidelines which distinguish between Poor Performance and Sub Standard work. Manager should use the guidelines to identify the right policy and follow the appropriate course of action/sanction.

- a) Disciplinary procedures will be considered when an employee's standard of work, conduct or behaviour is unsatisfactory.
- b) In poor performance cases where the reason is not within the control of the employee, e.g. due to lack of ability, inadequate training or lack of experience, this will be dealt with under the CCG's Capability Procedure.
- c) In case of sickness absence, either repeated episodes of short term absence or long term sickness absence, the CCG's Sickness Absence Management procedure should be used.

### **4. Managing Performance – General Guidelines**

- 4.1 Managers should provide a comprehensive local induction programme for all new members of their area or service. This will ensure that the employee fully understands what is expected of her/him and will help to structure their expectations of the job.
- 4.2 The employee should receive appropriate levels of support to do their job. Ongoing support and direction may be delivered in a number of ways, including

formal personal development meetings and formal or informal supervision and feedback.

- 4.3 Development, training, supervision and encouragement are essential factors if employees are to achieve a satisfactory level of performance. Steps should be taken to ensure that unsatisfactory performance is identified as soon as possible and remedial action taken on either an informal or formal basis. Most performance issues should be dealt with on an ongoing basis and without recourse to this policy.
- 4.4 When dealing with problems of poor performance and sub-standard work, managers need to recognise that a distinction can often be made between negligence, a lack of ability and ill-health or disability:
- 4.5 Negligence usually involves a measure of personal accountability for failing to maintain a "duty of care" for which some form of disciplinary action, in accordance with Lewisham CCG's Disciplinary Procedure (available on the intranet or internal shared drive), may be appropriate.
- 4.6 Poor performance issues to be dealt with under the CCG's Capability procedure will include cases where the reason is due to lack of ability, inadequate training or lack of experience.
- 4.7 If the performance problem is as a result of ill-health or disability, then Lewisham CCG's Sickness Absence Management procedure (available on the intranet or internal shared drive) should be referred to. Managers should be aware that Disability Discrimination legislation may be applicable in such circumstances and reasonable adjustments may be required.

## **5. Informal Approach**

- 5.1 Where an employee's work falls below the required standard, the first stage in addressing identified unsatisfactory performance is to try to resolve the problem with the employee informally as follows:
- 5.2 The nature of the problem and evidence to support this should be brought to the employee's attention and the reasons explored. The employee will be given an opportunity to explain the unsatisfactory performance and the reasons should be looked into, where applicable.
- 5.3 An action plan to address the unsatisfactory performance will be jointly developed and agreed with the employee (Appendix 3).
- 5.4 Where the reason for the unsatisfactory performance is identified as being due to a lack of required skills, the employee should be assisted through training, on the job coaching and supervision, and given a reasonable timescale in which to reach the required standard of performance. The employee should be made aware that they must demonstrate a commitment to achieve the standards required.

- 5.5 If the reason for the unsatisfactory performance is identified as being due to other factors such as inadequate resources, poor working conditions, harassment and bullying, health-related issues, ways of working with other team members or domestic circumstances, the appropriate intervention to deal with the situation should be made in line with the relevant CCG policy. Once the situation is addressed and unsatisfactory performance is still occurring, an action plan to address this within a reasonable timescale should be developed and agreed jointly with the employee.
- 5.6 The employee will be advised of the possible consequences of failing to improve her/his performance to the required standards. A summary of the meeting and the agreed action plan will be confirmed in writing by the manager.
- 5.7 A review meeting between the manager and the employee will be held at the end of the agreed timescale to assess the level of improvement. If satisfactory improvement has been achieved and is sustained from then on, no further action will be taken. Regular performance monitoring will continue as part of the normal appraisal process.
- 5.8 However, where there has been no satisfactory improvement, the time period may be extended or the employee will be informed that formal capability proceedings are to be initiated. This will be confirmed in writing.
- 5.9 The employee will not normally require representation at the informal stage unless there is a dispute, but is free to consult with her/his trade union representative or work colleague, if needed.
- 5.10 Raising A Grievance Prior To A Capability Hearing

A grievance cannot be lodged in relation to issues being taken forward under this Capability procedure. Those issues should be raised as part of the capability process.

Where a separate grievance process could impact upon allegations being taken forward under the capability process, the grievance investigation may be considered by the chair of the Capability Hearing before a decision on the disciplinary allegations is made.

Any appeal against the grievance decision can be heard at the same time any appeal against a sanction imposed under the Capability process.

## **6. Formal Approach – Rights Of The Employee**

The employee will have the following rights during the formal Capability Procedure:

- 6.1 The employee will be advised in writing, at least 5 working days prior to the meeting that formal capability proceedings are to be initiated. A copy of this policy will be provided.

- 6.2 The employee will be advised in writing of her/his right to be accompanied. Employees will be entitled to be accompanied by a work colleague or Trade Union representative, not acting in a legal capacity, during any hearings, formal meetings or appeals relating to the procedure. The colleague or Trade Union representative will be allowed to confer with the employee during the meeting and to address the meeting on his/her behalf. The colleague or Trade Union representative however, does not have the right to answer questions on behalf of the employee. It is the employee's responsibility to arrange this representation.

The trade union representative need not be an employee of the CCG, but if he/she is not a fellow worker or an employee of his/her union, the CCG may insist on him/her being certified by the union as being experienced or trained in accompanying employees at formal hearings.

The choice of companion is a matter for the employee, but Lewisham CCG reserves the right to refuse to accept a companion whose presence would undermine the sickness absence management process, or where it deems the choice of companion to be unreasonable, when there is someone suitable and willing available at the same location. Please note that individual work colleagues are not obliged to agree to accompany employees. Companions will be given appropriate paid time off to allow them to accompany colleagues at a formal hearing.

A member of Human Resources will support the Manager at all stages and during meetings with both parties.

- 6.3 The employee will be given copies of all relevant documents and written statements.
- 6.4 The employee will have the opportunity of discussing her/his case personally with the manager prior to any decision being reached.
- 6.5 All formal decisions taken by the manager must be confirmed in writing with the employee.

## 7. Formal Procedure

- 7.1 The formal Capability Procedure will be adopted if the informal procedure fails to result in a satisfactory improvement in the employees' performance.
- 7.2 The formal Capability procedure comprises two stages:
- First Formal Review Meeting
  - Final Formal Review Hearing, which may result in redeployment, demotion or dismissal.

- 7.3 The stages will normally be progressive. However, in exceptional circumstances, the full capability procedure may not be appropriate.
- 7.4 In situations where the risk to service users, service delivery or the financial security of the CCG is considered to be significant, it will be appropriate to suspend the employee from duty or to transfer her/him temporarily to other less risky duties.

## **8. First Formal Review Stage**

- 8.1 The employee will be given 5 working days' notice of any meetings.
- 8.2 At each stage, the employee will be clearly informed of the shortfall between her/his performance and the expected standards
- 8.3 The employee will be given an opportunity to explain the reasons for their continued poor performance. Explanations for unsatisfactory performance not previously given will be investigated by the line manager using the appropriate CCG policy.
- 8.4 Consideration will be given to the effectiveness of any help and support that has been given in the past and what additional action and assistance could be given to help the employee to overcome her/his difficulties.
- 8.5 Commitment to reaching the required standards will be gained from the employee and the appropriate course of action and a definite timescale will be agreed. This will be recorded in the form of an Action Plan and will indicate what support the employee needs to reach their targets (e.g. additional training, written guidance, direct supervision and support from an appropriately skilled senior or experienced member of staff).
- 8.6 A reasonable period for the employee to reach the required standards will be set. A monitoring system will be put in place in the interim period and a formal review date will be set. The review meetings will be conducted by the line manager with the employee and their representative. A member of Human Resources will also be present.
- 8.7 At the end of the identified timescale the employee should be informed that either:
- performance is now satisfactory and no further action will be taken; or
  - performance has improved although not sufficiently and an extension to the programme for improvement is required; or
  - He/She has failed to improve or to display sufficient improvement, that a Second Stage Meeting is necessary and the next stage of the Performance Capability Policy be invoked.
- 8.8 All formal meetings should be followed up with a letter to the employee, outlining the discussion and clearly setting out the outcome of the meeting.

- 8.9 The process will be repeated at the end of the agreed review period and, where there is no improvement, the Final stage of the procedure will be initiated.

## **9. Final Formal Review Hearing**

- 9.1 In the event that the employee's performance has not improved to the identified standard, a Formal Hearing will be convened.
- 9.2 Management will submit a full report of the actions taken to manage and support the capability issue to a senior manager, who will chair the formal hearing. The employee should also be provided with a copy of the manager's report and all associated documentation used to inform the report.
- 9.3 Copies of relevant documentation should be circulated at least 5 working days in advance.
- 9.4 If circumstances necessitate, either side can request one postponement of up to 5 working days or more by mutual agreement. All hearings should be held as soon as practicably possible.
- 9.5 The Formal Hearing will be based on the procedure outlined in Appendix 1.
- 9.6 The outcome of the meeting may be:
- a decision to take no further action
  - the issuing of a performance management warning. This warning on file for a period of 12 months.
  - an offer to redeploy the employee to alternative work
  - A decision to dismiss the employee
- 9.7 Consideration of redeployment may be appropriate at this stage as an alternative to dismissal. However, any offer to redeploy the employee will be entirely at the CCG's discretion. Redeployment will include consideration of posts at an equal or lower band. However, refusal by an employee of an offer of suitable alternative employment will result in the termination of her/his employment.
- 9.8 In the event that the panel recommends that redeployment is considered, a meeting will be convened within 5 working days with the employee, their line manager, a member of Human Resources and employee representative to consider suitable vacancies available in the CCG.
- 9.9 Where a suitable post is identified, the employee will have the right to a formal priority interview in such a situation and would need to demonstrate compliance with the essential criteria stated in the job description. No trial period will apply in these circumstances.

9.10 If the employee is not deemed suitable for redeployment to a specific post after interview the employee will have the right to receive formal feedback on the decision.

9.11 Any redeployment or demotion would not attract protection of salary.

9.12 Where no suitable vacancies are identified within this timescale then the panel will reconvene to consider the redeployment process and alternative outcomes which may include termination of the contract. Any dismissal will be with full notice or payment in lieu of notice. The decision to dismiss together with the reasons for dismissal will be set out in writing and sent to the employee.

9.13 All decisions must be confirmed in writing to the employee within 5 working days of the hearing.

9.14 There will be a right to appeal.

## **10. Formal Hearing - Panel Membership**

10.1 The case will be heard by a senior manager who has not been previously involved in the case.

10.2 The Chair will be supported by a member of Human Resources to help ensure fairness, consistency and appropriate standards of conduct.

10.3 The Line Manager will present the case and be supported by Human Resources.

10.4 The Employee will be supported by a trade union representative or a work colleague. Please see Section 6.2.

## **11. Appeals**

11.1 Employees are entitled to appeal against the decision reached at the First and Final Formal Hearing, respectively.

11.2 The right of appeal must be exercised by the employee within 10 working days of the receipt of the outcome letter, in writing to the Chief Officer, stating the grounds on which she/he is making the appeal.

11.3 The appeal will be handled in accordance with the Lewisham CCG's Disciplinary Appeals Procedure available on the CCG's intranet.

## **12. Review**

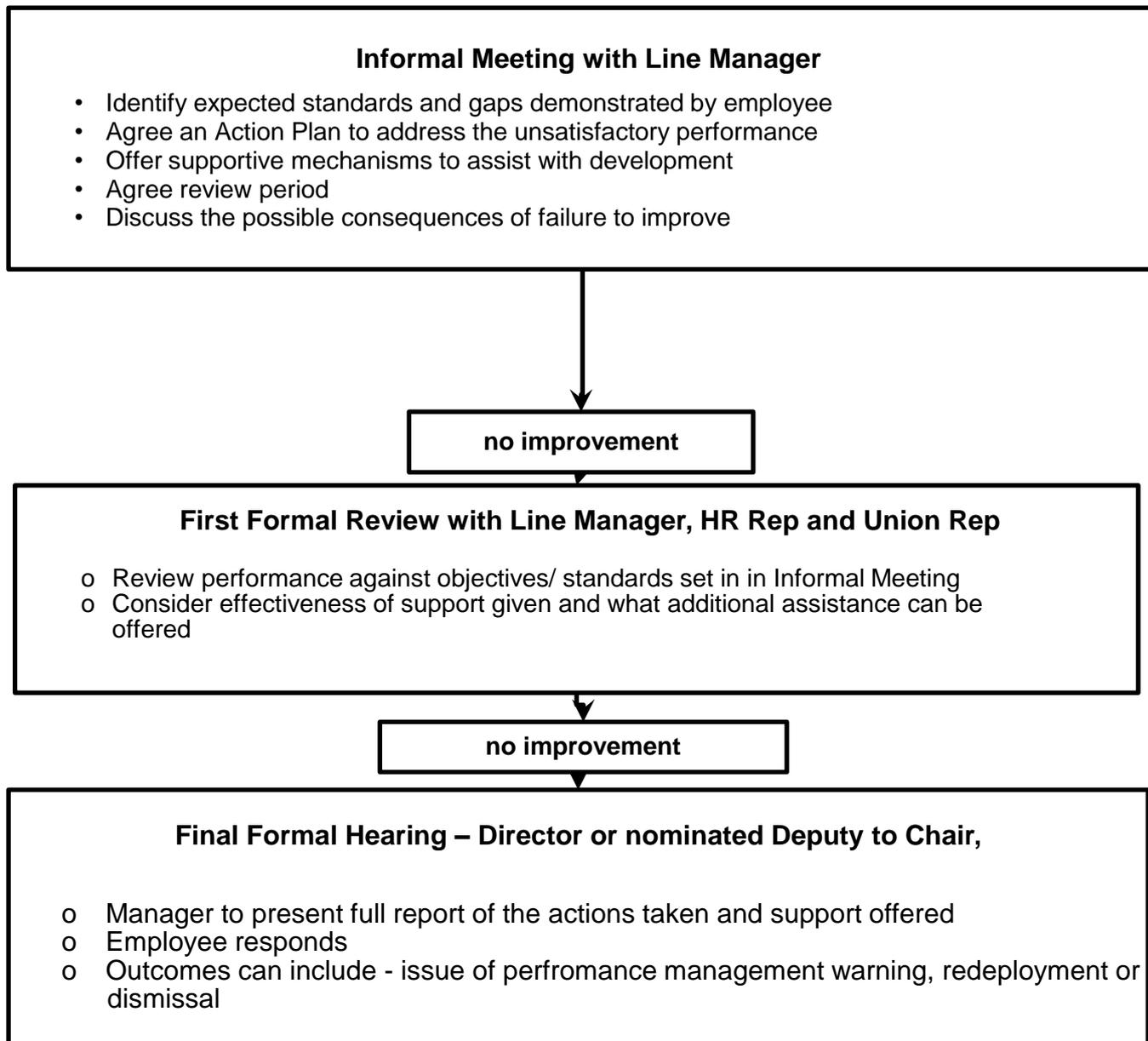
Unless there are changes to legislation this policy will be reviewed every three years.

## Appendix One: Formal Hearing Procedure

This will be carried out in accordance with the CCG's Disciplinary Procedure.

1. The manager will present the case in the presence of the employee and her/his representative and may call witnesses.
2. The employee and her/his representative will have the opportunity to ask questions of the manager and any witnesses.
3. Members of the panel will have the opportunity to ask questions of the manager and witnesses.
4. The manager will have the opportunity to re-examine her/his witnesses on any matters raised by the employee, her/his representative or members of the panel.
5. The member of staff or her/his representative will present their case in the presence of the manager and may call witnesses.
6. The manager will have the opportunity to ask questions of the employee, their representative and any witnesses.
7. Members of the panel will have the opportunity to ask questions of the employee, her/his representative and witnesses.
8. The employee or her/his representative will have the opportunity to re-examine their witnesses on any matters raised by the manager or members of the panel. The representative is not permitted to respond on behalf of the employee.
9. The manager and the employee or her/his representative will have the opportunity to sum up their cases, with the employee or her/his representative having the right to speak last. Neither party can introduce any new matters pertaining to the case at this summing –up stage.
10. The manager, employee and her/his representative shall depart from the immediate panel venue.
11. The Chair, and a member of Human Resources, shall adjourn to deliberate in private on the evidence presented. Where there are points of uncertainty, **they will recall both parties**, irrespective of from which side clarification is required.
12. Where possible, the full panel will be reconvened and the Chair will verbally deliver the decision, which will be confirmed in writing within three working days of the hearing.
13. The employee and her/his representative will be advised verbally and in writing of their rights of appeal.

## Appendix Two: Capability Procedure – Overview



## **Appendix Three: Record Of The Employee's Progress During A Performance Improvement Programme**

Use this model form to keep a record of the employee's progress during a performance improvement programme.

<b>Record of performance improvement</b>	
<b>Name of employee:</b>	
<b>Employee's job title:</b>	
<b>Employee's department:</b>	
<b>Employee's manager:</b>	
<b>Performance concerns:</b>	
<b>Performance concern 1 - improvement required</b>	
<b>Performance concern 2 - improvement required</b>	

**Performance concern 3 - improvement required**

**Performance concern 4 - improvement required**

**Identify specific areas where performance has improved since the last form was completed:**

**Identify any problems that still remain and the steps being taken to address these:**

<b>Summary of the extent of the employee's overall improvement:</b>	
<b>Are any changes required to the performance improvement programme? If yes, give details below:</b>	
<b>Employee's comments on the process so far and any points noted above:</b>	
<b>Employee's signature:</b>	
<b>Manager's signature:</b>	
<b>Date:</b>	