



London Ambulance Service **NHS**
NHS Trust

Performance Capability Policy and Procedure

DOCUMENT PROFILE and CONTROL.

Purpose of the document: To provide guidance on how to approach, consider and manage cases where poor performance is identified. To ensure that employees receive the appropriate time, training and support to enable an improvement in performance.

Sponsor Department: Human Resources

Author/Reviewer: Senior HR Manager. To be reviewed by September 2019.

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30/06/17	3.3	IG Manager	Review date correction
04/10/16	3.2	IG Manager	Document Profile & Control update and minor changes to Implementation Plan requested by PMAG
30/09/16	3.1	Senior HR Manager	Appendix 2 – new version added
02/09/16	2.6	IG Manager	Minor changes requested by PMAG
22/07/16	2.5	Senior HR Manager	Changes as requested by JCT group
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03/04/13	1.3	Senior HR Manager (South)	Deletion of paragraph stating policy not applicable to those in training.
20/10/10	1.2	Head BC & RM	Amendments suggested
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03/05	1.0	HR Policy and Projects Manager	First version published

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Links to Related documents or references providing additional information		
Ref. No.	Title	Version
HR014	Grievance Policy	
HR021	Disciplinary Policy	
HR022	Managing Attendance Policy	
	ACAS Code of Practice on Disciplinary and Grievance Procedures	
	ACAS guide – Discipline and Grievance at Work.	

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1 Introduction

- 1.1 Supervision, feedback and training are key to the achievement of effective performance. Regular discussion with employees about performance and personal development, either formally or informally, will help identify any problem areas and allow for prompt remedial action.
- 1.2 The Performance Capability Policy and Procedure provides a framework to address the situation when employees are not meeting the required standards of performance and this appears to be due to capability to undertake their role rather than conduct or behaviour i.e. in broad terms somebody 'can't' rather than 'won't' do something.
- 1.3 The primary purpose of this Policy and Procedure is not to impose warnings but to support staff and ensure that they are dealt with fairly and constructively when it becomes apparent that they are experiencing difficulties in being able to meet the required standards of their post.
- 1.4 The Policy and Procedure also provides guidance when it becomes clear that despite additional measures being made to assist, the employee is not able to meet the required standards.

2 Scope

- 2.1 Any Trust employee may be managed under this Policy and Procedure in circumstances when poor work performance has been identified as being due to capability i.e. his or her 'skill, aptitude, health or any other physical or mental quality' (Employment Rights Act 1996 S98(3)(a)). Whilst issues relating to health will primarily be addressed via the Managing Attendance Policy (HR022) there may be health issues that do not lead to employee absence but do potentially impact upon an employee's performance and such situations should be addressed via this policy and procedure.
- 2.2 Performance issues which are as a result of misconduct should be addressed, as appropriate, via the Disciplinary Policy.
- 2.3 Some staff groups such as trainees may be subject to specific contractual provisions regarding the implications of not achieving the required standards of performance. Where alternate provisions for addressing performance issues during an employee's training period exist then these provisions will be applied in line with the principles set out in this Policy.
- 2.4 Performance management may be part of, or run concurrently with the Performance Development Review (PDR) process but should not wait for the next Review if there is perceived to be a need to act to correct any under-performance.

3 Objectives

- 3.1 The Objectives of the Policy and Procedure are to:
 - Provide guidance on how to approach, consider and manage cases where poor performance is identified;

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- Ensure that employees receive the appropriate time, support, training and development to achieve the required standards of performance;
- Provide guidance when despite additional input the required performance standards for the role are not met.

4 Responsibilities

4.1 It is the responsibility of **managers and supervisors** to ensure that proper standards of work performance are achieved by the employee(s) for whom they are responsible; **HR** will provide advice and support in regards to the application of the Policy and Procedure;

5 Equalities

5.1 Care should be taken to ensure that the policy and procedure is applied fairly and irrespective of the employee's age, sex, marital or civil partnership status; pregnancy and maternity, racial group, disability, sexual orientation, gender reassignment or religion or belief.

5.2 The Employment Act 2010 makes it unlawful for an employer to treat a disabled person less favourably for a reason relating to their disability without a justifiable reason. Care should be taken to ensure that reasonable adjustments are considered and applied as necessary through all stages of the procedure.

6 Procedure

6.1 Standards of performance

6.1.1 All employees should have the necessary skills, knowledge and experience for the post being undertaken. This will be tested at recruitment or promotion and may be subject to successful completion of a training programme, assessment or by achievement of specific qualifications.

6.1.2 It is recognised that employees will, over time, learn and develop within a position. Nevertheless all employees should be able to carry out certain key responsibilities of their post from the start.

6.1.3 Managers should be clear in regards of the standards of performance required by employees; these may come from a variety of sources and may include:

- Job descriptions;
- Objectives;
- Standards as laid out in clinical guidelines, office protocols or policy;
- Comparison with the 'norm' i.e. is an employee consistently demonstrating poor performance in comparison with his or her peers.

6.2 Addressing issues promptly

6.2.1 When underperformance is identified it is essential that it is addressed promptly by speaking to the employee to try, in the first instance, to identify the reason for the perceived poor performance.

6.3 **Additional advice/support**

6.3.1 Specialist advice and/or support for the employee may be sought at any stage of the procedure for example from Occupational Health or the Staff Support Department. Input from the training specialists e.g. Clinical Education Tutors, may be required when there is a particular development need and/or there is a requirement to assess performance during the review period, and as such they may be invited, if appropriate, to meetings set out within the procedure.

6.4 **Informal Stage**

6.4.1 Initial perceptions of poor performance may be best addressed informally with the employee. Managers should ensure that problems are discussed constructively with the objective of encouraging employees to improve.

6.4.2 Underperformance may have a variety of causes and some of them may be outside the individual employee's control. It is therefore important to discuss any problems carefully with the employee in order that practical solutions may be agreed.

6.4.3 Discussions should also identify whether the employee believes that they require additional training or development or requires other assistance to meet the required standards of the role. The outcome of the discussion should be confirmed in writing with the employee.

6.4.4 In circumstances that underperformance is identified as being serious and/or a consistent issue then the formal stage set out below should be followed:

6.5 **Formal Stage**

6.5.1 The formal stage will be initiated when either the informal stage has not been effective or the issue of performance is so serious that it requires immediate intervention at this stage.

6.5.2 Meeting

6.5.2.1 A formal meeting will be called with the employee at which the matter should be discussed. A letter to the employee must be used to confirm the meeting and its purpose, it should set out the issues of perceived poor performance and should enclose a copy of this Policy and Procedure.

6.5.2.2 The employee must be informed that he/she may be represented by a Trade Union representative or workplace colleague at this meeting.

6.5.2.3 An HR Manager will be invited to the meeting to act in an advisory capacity.

6.5.2.4 At the meeting, the employee's role and poor performance should be addressed with him or her. The employee must be asked for an explanation of the poor performance and the explanations should be taken into consideration by the manager.

6.5.2.5 The employee shall have the opportunity to comment; express views or offer an explanation. The manager must take into account any

professional or personal issues that may be affecting the employee's performance.

- 6.5.2.6 It is essential, as far as possible, that the meeting supports a mutual understanding between the manager and employee of the situation. The employee should be clear about the Trust's expectations and the implications should performance not meet the required standards. The manager should also be clear about what support/training/resources would be available to meet the employee's needs and ensure that the employee has the greatest opportunity to improve her or his performance.
- 6.5.2.7 The manager should identify, with the employee, a programme of action (based on the pro forma at Appendix 1) designed to improve performance. This programme must have targets, timescales and review dates and may include:
- Direct supervision/support from an appropriately skilled or experienced employee.
 - Where practicable, further training if this is deemed to be required;
 - Written guidance and /or programmes of work.
- 6.5.2.8 A letter confirming the outcome of the meeting should be sent to the employee which will include a copy of the completed pro-forma (or alternative document – see below).
- 6.5.2.9 Alternative documentation to the pro forma may be used – it must include the necessary information in order that the employee is clear about the standard required and the plan which is to be put in place to support him or her to achieve these standards.
- 6.5.2.10 In exceptional circumstances it may be necessary to remove the employee from their duties including consideration of suspension from duty e.g. in circumstances that the performance issues are such that the individual may be a risk to themselves or others.

6.5.3 Review Period

- 6.5.3.1 Timescales set for the review period should be reasonable. The timescales should give the employee adequate time to improve and to demonstrate this improvement. Timescales will also depend on matters such as: the nature of the poor performance; time in post; type of work; period and availability of any agreed training; work patterns; planned leave; any targets set and the potential implications of the poor performance.
- 6.5.3.2 Where it is identified that the employee has development needs then particular care should be taken to ensure that this development is factored in when considering timescales.

6.5.4 Monitoring of progress

- 6.5.4.1 During the review period, the employee's progress must be monitored on an on-going basis, and meetings arranged as necessary to provide

support and feedback to the employee. There must be adherence to commitments made to provide training, support etc.

- 6.5.4.2 It is essential that a clear written record of both the employee's performance and the measures put in place to support the employee is maintained – this will include notes of progress meetings.
- 6.5.4.3 At the end of the identified timescale a formal meeting should be held with the employee to inform her/him of the outcome of the review. The attendance at this meeting will be in line with those at the initial formal meeting.
- 6.5.4.4 In general the outcome communicated will be one of the following:
- the employee's performance is now satisfactory and no further action will be taken;
 - That a further period of review is necessary;
 - or, the employee has failed to improve or to display sufficient improvement and that a Formal Capability Hearing will be held at which dismissal from the Trust's service is a possible outcome.
- 6.5.4.5 Details of the formal meeting including the outcome should be confirmed in writing.
- 6.5.5 Further review period
- 6.5.1 In circumstances that a further review period is required then the steps outlined above would be maintained as appropriate.

7 Referral to Senior Manager

- 7.5 In referring the matter to a senior manager the manager should set out in a report the events that have led to this stage, indicating:
- The areas where the employee has failed to meet the required standards;
 - The action taken to assist the employee;
 - The consequences or possible consequences of the poor performance;
- 7.6 Copies of all relevant documentation should also be included.
- 7.7 The senior manager will consider the report and associated documentation and consider next steps. Options may include deciding that no further action is necessary or that the employee should be subject to a further review period; alternatively the senior manager may decide that the hearing is necessary.

8 Performance Capability Hearing

8.1 Pre-hearing

- 8.1.1 The requirements as regards to the seniority of the chair of such a hearing are set out in the Trust's Disciplinary Policy.

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8.1.2 The steps to take in advance of any hearing as well as advice concerning the conduct of the hearing is set out in Appendix 3.

8.2 Post hearing – issues to consider and available options

8.2.1 The chair should take into account all relevant factors in considering the outcome of the hearing; these should include:

- Reasonableness of the performance targets which have been set and whether these have they been clearly communicated to the employee;
- The training and support that has been made available to the employee both in advance of and during the review period;
- Performance in comparison with others and the seriousness of the poor performance;
- Whether there has been sufficient opportunity for the employee to improve and whether there has been adequate consideration at review meetings;
- The employee's previous service and performance.

8.2.2 The above list is not exhaustive.

8.2.3 In coming to a decision on the matter possible options available to the chair include the following:

1. That no further action is required;
2. The employee may remain in her/his current job and further targets for improvement may be set and a timetable for review stipulated,
3. In exceptional circumstances the restructuring of the employee's job to match her/his abilities may be considered with the appropriate pay/re-grading and review arrangements made. There will be no protection of salary or wages in such circumstances;
4. Redeployment – (a vacancy must exist);
5. Dismissal from the Trust's service.

8.2.4 Refusal to accept suitable alternative employment would result in dismissal from the Trust.

8.2.5 Except in the circumstances where the employee is dismissed from the Trust's service or it is decided that no further action is required then review arrangements must always be made. The employee must be warned that should poor performance continue over the review period then the case will be referred back for consideration and that this could lead to dismissal from the Trust's service. The review period will be no longer than 12 months.

9 Appeal

9.1 Arrangements for appealing the decision are in line with those set out in the Trust's Disciplinary Policy.

9.2 Appeals will be allowed both in the case of dismissal (option 5) and in circumstances that a decision is made that the employee is subject to a sanction short of dismissal (option 3 and 4). Appeals concerning a sanction short of dismissal may be considered by an appeal panel who are less senior than a panel which considers an appeal against dismissal.

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9.3 The Appeal Hearing will follow a similar format as the Capability Hearing.

10 Other matters

10.1 Record keeping

10.1.1 Managers must maintain records including written notes at all stages in the application of the Policy and Procedure including any measures put in place to support employees. These records must be kept in line with the Data Protection Act 1998.

10.2 Grievances

10.2.1 In the course of the capability process, an employee may raise a grievance that is related to the case. If this occurs then the manager should consider suspending the process for a short period whilst the grievance is addressed.

10.2.2 Where the grievance and capability cases are related it is expected that both issues would be dealt with concurrently at the capability hearing and/or the appeal. Further details are included in the Grievance Policy HR014.

IMPLEMENTATION PLAN				
Intended Audience	All LAS Staff			
Dissemination	Available to all staff on the Pulse and to the public on the LAS website.			
Communications	Revised Policy and Procedure to be announced in the RIB and a link provided to the document.			
Training	Briefing provided to HR staff prior to publishing of Policy and Procedure.			
Monitoring:				
Aspect to be monitored	Frequency of monitoring AND Tool used	Individual/ team responsible for carrying out monitoring AND Committee/ group where results are reported	Committee/ group responsible for monitoring outcomes/ recommendations	How learning will take place
Employees subject to Formal Procedure will be monitored.	Ongoing on HR database	ELT	Workforce or OD committee	Any changes in practise will be communicated via HR managers' group.

Performance Capability Policy and Procedure – Evaluation form and action plan

Evaluation

1. Identify the principal areas of satisfactory work.
2. List the areas of the job where performance has been identified as requiring improvement and detail any specific problems.
3. Identify the effect or potential effect on service delivery.

Action Plan

4. Identify how each area of the job must be improved, addressing any quality or quantity issues as appropriate.
5. List the timescale for improvement against the identified job areas and state how this will be monitored.
6. Identify action to help improve performance e.g. supervision, training, written guidance or programmes of work.

Any other comments

Signed

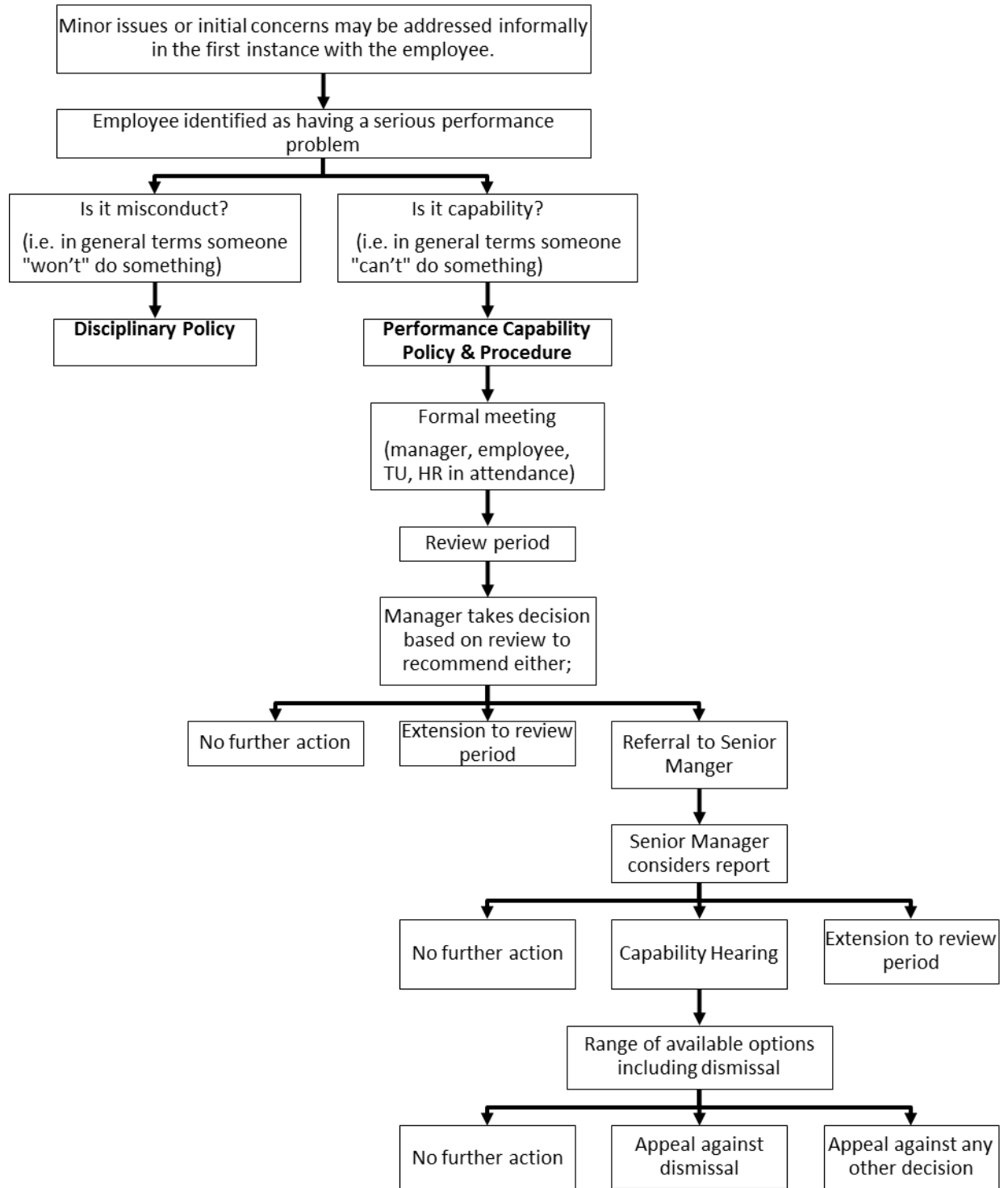
Employee's name.....

Signature.....

Manager's name.....

Signature.....

Poor performance - flowchart



Appendix 3

The Performance Capability Hearing

1 Letter and report

- 1.1 If the senior manager decides that the matter should be considered at hearing then the employee will be informed in writing with not less than seven days' notice of:
- the date and time of the hearing;
 - the purpose of the hearing;
 - the right to be represented;
 - and, that a possible outcome of the hearing, if the employee is held to be incapable of performing her or his duties, may be dismissal from the Trust's service.
- 1.2 The letter will also confirm arrangements for any witnesses and or e.g. a trainer who assisted with the assessments to be called.
- 1.3 The employee must also be provided with a copy of the manager's report and associated documentation with the letter.
- 1.4 Copies of relevant documentation will be circulated at least 7 days in advance.
- 1.5 If circumstances necessitate, the employee may request one postponement of up to seven calendar days, or more by mutual agreement. All hearings will be held as soon as practicably possible. Capability issues should not be unreasonably delayed due to the non-availability of a specific representative.
- 1.6 The individual or representative must formally respond by accepting the date of the hearing or giving a reason for a requested postponement. This response should also include details of any witnesses he/she wishes to call, and copies of any documents to be presented. It is the responsibility of the employee to approach her/his own witnesses. If another employee is to be called, he/she should formally request release to attend if otherwise rostered to work.
- 1.7 If anybody wishes to submit new documentation or call a new witness immediately prior to or during the hearing then the Chair will consider the relevance of the witnesses/documentation and take a decision on whether to accept it – this may involve asking all parties for their views on the material and/or holding an adjournment to consider the additional matters.

2 The Hearing

- 2.1 The manager who dealt with the employee under the formal review will usually be the presenting manager. The presenting manager may be accompanied by a separate HR Manager. This will usually be the HR

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manager who acted in an advisory role at an earlier stage in the Capability process.

- 2.2 The Chair will ensure that the hearing takes place in a fair and orderly way and, as far as possible, ensure that it is non-confrontational.
- 2.3 The Chair should open the Hearing by confirming those present and their respective roles. The Chair should be satisfied that the employee is aware of the right to be accompanied by a trade union representative or colleague and to call witnesses if desired.
- 2.4 The manager make his or her presentation; this should include:
 - Setting out details of the employee's performance;
 - How it has been addressed;
 - Description of the steps taken to support the employee;
 - Details of the performance levels during the review period.
- 2.5 In addition, the manager may call witnesses (including any professional advisors who may have been involved earlier in the Capability process) and present any documentation. No new documentation should be allowed on the day of the hearing except at the discretion of the Chair.
- 2.6 The employee or her/his representative shall be given the opportunity to ask questions of the manager and witnesses.
- 2.7 The panel members may question the presenting manager, witnesses and or the employee at any time.
- 2.8 Each witness shall withdraw after giving evidence and answering any questions put to them.
- 2.9 The employee or representative may present the employee's case and call and question witnesses at any time. The presenting manager may also question the witnesses.
- 2.10 The presenting manager will be invited to make a final submission – this should summarise the key points and not raise any new matters.
- 2.11 The employee and/or representative will be invited to make a final submission – this should summarise the key points and not raise any new matters.
- 2.12 The employee, representative and the presenting manager will be asked to withdraw to allow the Chair time for reflection and proper consideration.
- 2.13 The formal hearing under the Performance Capability policy and Procedure is likely to cover on-going matters rather than one-off incidents. The Chair may therefore wish to take time to consider all the relevant information and deliver the decision in writing at a later specified date. This should be within 7 days of the hearing.