

# Performance Capability Policy

## 1 Introduction

- 1.1 It is vital that the London Ambulance Service NHS Trust is held in high regard by the community. All staff should maintain high standards of performance and integrity.
- 1.2 It is good management practice to set out the standards expected, to ensure that these are monitored and reviewed, and to provide the necessary support to enable staff to meet these standards.
- 1.3 Supervision, feedback and training are key to the achievement of satisfactory 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. Most performance issues should be dealt with on an ongoing basis and without recourse to the Performance Capability Policy.
- 1.4 The Performance Capability Policy 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 do their job rather than conduct or behaviour i.e. in broad terms somebody 'can't' rather than 'won't' do something.
- 1.5 The primary purpose of this Policy is not to impose warnings but to ensure that staff are dealt with fairly and constructively when it becomes apparent that they are unable to meet the demands of the post.
- 1.6 A flowchart outlining the process is attached as Appendix 2.

## 2 Aim

- 2.1 The aims of the Policy are as follows:
  - 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.
- 2.2 If it is established that performance cannot be improved or cannot be improved sufficiently to meet the job requirements within a reasonable timetable then other options, such as demotion or redeployment, may be considered. Dismissal should be a last resort when all else has failed or when an employee's failure to meet the standards of the job is a very serious one.

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### **3 Legal/Statutory context**

- 3.1 The Policy reflects the ACAS Code of Practice on Disciplinary and Grievance Procedures 2004 and associated guidance.
- 3.2 Separate considerations may apply for staff who are disabled under the terms of the Disability Discrimination Act 1995. Please seek advice from Human Resources in such circumstances.

### **4 Standards of conduct and performance**

- 4.1 The broad standards of conduct and performance required of all staff, together with the means by which these are communicated, are set out in Section 4 of the Trust's Disciplinary Policy. An extract is included as Appendix 3 of this Policy.

### **5 Context and application**

- 5.1 This Policy is to be applied in cases of poor performance due to capability i.e. someone appears unable to meet the requirements of a post. Cases of alleged misconduct should be dealt with through the Disciplinary Policy.
- 5.2 The employee 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.
- 5.3 Standards of work should be explained and recorded and the employee left in no doubt as to what is expected. This is particularly important when an employee joins the Trust or is promoted to a new post.
- 5.4 The employee should be inducted and receive appropriate levels of support in the early stages of 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.
- 5.5 It is recognised that the employee 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.
- 5.6 The Performance Capability Policy should not be applied when employees are undertaking training under the Department of Clinical Education and Development. If issues arise during such periods then

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employees will be subject to that Department's own policies. N.B. A&E trainees will be subject to the Performance Capability Policy, in line with other employees, once they have been posted from training to undertake operational duties.

- 5.7 The Performance Capability Policy should not be used concurrently with Personal Development Review (PDR). If an employee's performance is identified as being of a low standard and this appears to be due to capability, then PDR should be suspended whilst the Performance Capability Policy is applied.
- 5.8 Managers and supervisors have the responsibility to advise, train and guide staff. The Performance Capability Policy does not replace this obligation.
- 5.9 Cases of employee absence should be dealt with via the Trust's absence management policies and guidelines.

## **6 Principles**

- 6.1 The following outlines the key principles around the Performance Capability Policy.
- 6.2 Managers'/supervisors' responsibilities
- 6.3 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. Where an employee's work performance is below standard then it is the manager/supervisor's responsibility to investigate the cause and to take suitable action without delay.
- 6.4 Managers should be clear about what would be the necessary support/training/resources to meet the employee's needs and to ensure that the employee has the greatest opportunity to improve performance.
- 6.5 Record Keeping
- 6.6 Managers should maintain written records at all stages in the application of the procedure including any measures put in place to support employees.
- 6.7 Corrective action
- 6.8 Action taken under this Policy should aim to improve or correct work performance. It is essential that in applying the Policy, objective

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measures of performance are identified and monitored, and reasonable timescales for improvement applied.

6.9 Management style

6.10 The employee should be treated with the appropriate sensitivity and understanding throughout the process.

6.11 Disciplinary action

6.12 If, when dealing with a person under the Performance Capability Policy, the manager identifies that misconduct, rather than a capability issue, has occurred then the employee should be informed that the matter will be dealt with under the Disciplinary Policy.

6.13 Representation

6.14 An employee has the right to be represented by a trade union representative, colleague or nominated person. The representative may present the employee's case, ask questions and provide advice to the employee.

6.15 Confidentiality

6.16 Confidentiality should be maintained as far as possible regarding any employees who are subject to the Performance Capability Policy.

6.17 Action in extremely serious cases

6.18 In extremely serious cases a decision may be made to proceed directly to the Second Stage of the procedure. In such cases, particular care should be taken to ensure that all parts of the Second Stage are followed, Employees should always be given reasonable time to improve performance, and development opportunities, including the appropriate training, should be provided in order to ensure that the employee has the best possible chance of meeting the required level of performance.

6.19 Grievance Policy

6.20 In the course of the capability process an employee may raise a grievance that is related to the case. If this happens then the manager should consider suspending the process for a short period whilst the grievance is dealt with.

6.21 Grievances may only be raised in relation to the Performance Capability Policy in the following circumstances:

- The employee believes that he/she is being unlawfully discriminated against,

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- The employee believes that the true reason for the capability process is not the reason given by the manager.

6.22 It is expected that in most cases the grievance should be dealt with at meetings relating to the capability process. If such 'dual purpose' meetings take place, then additional care should be taken to properly hear and consider the grievance, and to document the discussions and any outcome. For further advice please see the Trust's Grievance Policy and/or consult HR.

6.23 Grievances are not allowed in relation to the Performance Capability Policy when the action taken or contemplated is dismissal.

## **7 Informal Advice and Guidance, Coaching or Counselling**

7.1 Initial problems with poor performance may be best in the first instance dealt with through informal advice or guidance coaching or counselling. Managers should ensure that problems are discussed with the objective of encouraging employees to improve. This should be recorded in writing for both parties either in a letter or using the Advice and Guidance pro-forma (Appendix 4). This may be run concurrently with the Performance Development Review (PDR) process.

7.2 Informal advice and guidance, coaching or counselling does not form part of the Formal Capability procedure and employees should be informed of this.

7.3 The member of staff should be made aware of the need to progress to the formal procedure should their performance fail to improve or not improve sufficiently.

## **8 Formal Procedure - First Stage**

8.1 A manager who believes that an employee is performing her or his work poorly should bring it to the attention of the employee in as constructive a manner as possible.

### **8.2 First Stage Meeting**

8.3 A meeting should be called with the employee at which the matter should be discussed. A letter should be used to confirm the meeting and its purpose, and should enclose a copy of the Policy.

8.4 The employee should be informed that he/she may be represented by a TU representative, colleague or nominated person at this meeting.

8.5 Where appropriate, a professional adviser e.g. a Training Officer should be invited to contribute to the meeting. Any advice provided

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may be considered by the manager in making a decision on how to proceed with the matter.

- 8.6 A Human Resources representative should be invited to the meeting to act in an advisory capacity.
- 8.7 The employee should be informed that the aim of the procedure is to improve or correct work performance. He/she should further be told that it is a serious matter and failure to improve or correct work performance will lead to a further review and then to consideration regarding their suitability for continued employment in the postholder's current role. This could result in redeployment, demotion or dismissal.
- 8.8 The pro forma (see appendix 1) should be used to help identify areas of poor performance and the improvement required. A draft version of this, part completed by the manager, may also be given or sent to the employee in advance of the meeting as a means of helping the employee prepare for the meeting.
- 8.9 At the meeting, the principal areas of achievement and poor performance should be discussed with the employee. The employee must be asked for an explanation of the poor performance and the explanations checked where factors are raised which the manager has not previously considered.
- 8.10 The employee shall have the opportunity to comment, express views or offer an explanation. The manager should take into account any professional or personal issues that may be affecting the employee's performance.
- 8.11 It is essential, as far as possible, that the meeting supports mutual understanding between the manager and member of staff. The member of staff should be clear about the Trust's expectations. The manager should 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.
- 8.12 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 senior or experienced member of staff.
  - Where practicable, further training.
  - Written guidance and /or programmes of work.

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8.13 A final version of the pro-forma will be drawn up at or following the meeting. The pro forma should be signed by both the manager and member of staff.

8.14 A letter confirming the outcome of the meeting should be sent to the employee. This will include a copy of the completed pro-forma.

#### 8.15 Review Period

8.16 The timescale set should be reasonable. It should give the employee adequate time to improve and to demonstrate this improvement. Timescales will also depend on the nature of the poor performance, type of work, period of any agreed training, any targets set and possible implications of the poor performance.

#### 8.17 Monitoring of progress

8.18 During the review period, the employee's progress must be regularly monitored, and regular meetings arranged to provide support and feedback to the employee in order to help improve performance. Any commitments made to provide training, support etc. must be adhered to.

8.19 It is essential that a clear written record of both the employee's performance/progress and the measures put in place to support the employee is maintained.

8.20 At the end of the identified timescale the employee should be informed that:

- 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.

8.21 The outcome should be confirmed in writing and a copy of the letter kept on the employee's personnel file.

## **9 Second stage**

### 9.1 Second Stage Meeting

9.2 The manager should write to the employee giving her/him seven days' notice of a the meeting. The letter shall include details of the alleged inadequate performance and of the right of an employee to be

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represented by a TU representative, colleague or nominated person at this meeting. An adviser from the Human Resources Directorate should also be present at the meeting.

- 9.3 Where appropriate a professional adviser e.g. a Training Officer should be invited to contribute to the meeting. Any advice provided may be considered by the manager in making a decision on how to proceed with the matter.
- 9.4 At the meeting, the principal areas of achievement and poor performance should be discussed with the employee. The employee must be asked for an explanation of the poor performance and the explanations checked where factors are raised which the manager has not previously considered.
- 9.5 The manager should discuss with the employee - the employee's performance during the first review stage of the procedure, the advantages, disadvantages or any shortfalls in the help and support offered and what changes could be introduced to further assist the employee during the Second stage.
- 9.6 The employee shall have the opportunity to comment, express views or offer an explanation. The manager should give proper consideration to any professional or personal issues that may be affecting the employee's poor performance.
- 9.7 It is essential, as far as possible, that the meeting supports mutual understanding between the manager and member of staff. The member of staff should be clear about the Trust's expectations. The manager should 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 performance.
- 9.8 The manager should identify, with the employee, a programme of action designed to improve performance. This programme must have targets, timescales and review dates and may include:
- Direct supervision/support from an appropriately skilled senior or experienced member of staff.
  - Where practicable, further training.
  - Written guidance and /or programmes of work.
- 9.9 The manager should write to the employee formally setting out the programme of action. The employee should also be notified in writing that failure to improve, or failure to improve sufficiently to reach the required standard, will lead to a formal hearing at which redeployment, demotion or dismissal on the grounds of capability could be an option.

9.10 Review Period

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- 9.11 The timescale set should be reasonable and take account of previous timescales set at the First Stage. It should give the employee adequate time to improve and to demonstrate this improvement. Timescales will also depend on the nature of the poor performance, type of work, periods of any agreed training, any targets set and possible implications of the poor performance.
- 9.12 Monitoring of progress
- 9.13 During the timescale for improvement, the employee's progress must be regularly monitored and regular meetings arranged to provide support and feedback to the employee in order to help improve performance. Any commitments made to provide training, support etc must be adhered to.
- 9.14 It is essential that a clear record of the employee's performance/progress and the measures put in place to support her/him is maintained.
- 9.15 At the end of the identified timescale the employee should be informed that:
- the employee's performance is now satisfactory and no further action will be taken.
  - or, the employee's performance has improved although not sufficiently and an extension to the programme for improvement is required.
  - 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.
- 9.16 The decision should be confirmed in writing and a copy of the letter kept on the employee's personnel file.
- 9.17 If the decision is that the employee's performance is now satisfactory the employee should be informed that her/his performance will continue to be reviewed. If there are further poor performance issues within a stated period (maximum 1 year) then the matter will be referred for consideration by the appropriate Director or the ACAO (Head of CAC) and could result in a Formal Capability Hearing.

## **10 The Capability Hearing**

- 10.1 Prior to the hearing
- 10.2 The formal hearing will be carried out by a Director, ACAO for Central Ambulance Control or the Chief Executive.

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- 10.3 In referring the matter to the Director, 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
- 10.4 Copies of all relevant documentation should also be included.
- 10.5 The Director will consider the report and associated documentation. If, following this consideration, the Director decides to proceed with a 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.
- 10.6 The letter will also confirm arrangements for any witnesses to be called.
- 10.7 The employee should also be provided with a copy of the manager's report and associated documentation with the letter.
- 10.8 The employee will be given the opportunity to consult with her/his representative before the hearing.
- 10.9 Copies of relevant documentation should be circulated at least 7 days in advance.
- 10.10 If circumstances necessitate, either side can request one postponement of up to seven calendar days, or more by mutual agreement. All hearings should be held as soon as practicably possible. Capability issues should not be unreasonably delayed due to the non-availability of a specific representative.
- 10.11 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.

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- 10.12 All parties will have the right to consider new information of relevance prior to the completion of the hearing. Where the hearing has already begun, this may require an adjournment.
- 10.13 If either side wish to submit new paperwork or call new witnesses any later than 7 days prior to the hearing, then, provided that both sides agree, the hearing should proceed as planned. If either side disagree with the submission of new paperwork or additional witnesses then the hearing will be deferred to allow for a minimum of seven days notice.
- 10.14 The Capability Hearing
- 10.15 Panels at the Formal Hearing will be Chaired by a Director level, ACAO for Central Ambulance Control or Chief Executive, as the right to dismiss is restricted to these persons, supported and accompanied by a senior member of the Human Resources Directorate.
- 10.16 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 member of the Human Resources Directorate. This will usually be the Human Resources representative who acted in an advisory role at an earlier stage in the Capability process.
- 10.17 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.
- 10.18 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 or other representative and to call witnesses if desired.
- 10.19 The manager shall present her/his case. This should include:
- A summary of the alleged poor performance,
  - Evidence of any support that has been provided,
  - A summary of the performance levels following any support/training etc.
  - Any other relevant information.
- 10.20 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.
- 10.21 The employee or her/his representative shall be given the opportunity to ask questions of the manager and witnesses.

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- 10.22 The panel members may question the presenting manager, witnesses and or the employee at any time.
- 10.23 Each witness shall withdraw after giving evidence and answering any questions put to them.
- 10.24 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.
- 10.25 The presenting manager will be invited to make a final submission – this should summarise the key points and not raise any new matters.
- 10.26 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.
- 10.27 The employee, representative and the presenting manager will be asked to withdraw to allow the Chair time for reflection and proper consideration.
- 10.28 The formal hearing under the Performance Capability policy is likely to cover ongoing 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.
- 10.29 Outcome of the hearing
- 10.30 The Chair shall take a decision on the options appropriate in the circumstances. Options available may include:
- Dismissal from the Trust's service,
  - Redeployment,
  - Restructuring of the employee's job to match her/his abilities with the appropriate pay/re-grading and review arrangements made, There will be no protection of salary or wages,
  - The employee may remain in her/his current job and further targets for improvement may be set and a timetable for review stipulated,
  - That there is no case to answer and that all records should be removed from the employee's file.
- 10.31 Except in the circumstances where the employee is dismissed from the Trust's service or it is decided that there is no case to answer then review arrangements should always be made. The employee should 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.

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## 11 Appeal

- 11.1 If an employee wishes to appeal against the decision of the Director then the employee or her/his representative must notify the Chief Executive in writing that they wish to do so within 14 days of receiving written confirmation of the decision.
- 11.2 In cases of a penalty short of dismissal then the appeal will be heard by the Chief Executive (or her/his designate who should be at Director level) and the Director of HR and OD (or nominated senior HR manager).
- 11.3 Grounds for appeal may include:
- The perceived unfairness of the judgement
  - The severity of the penalty
  - New evidence coming to light
  - Procedural irregularities.
- 11.4 In cases of dismissal, the appeal will be to the Trust Board, which will arrange for an appeal panel to consider the matter. The appeal panel will consist of an external advisor (agreed by management and staff side) a non-executive member of the Trust Board and the Director of Human Resources or her/his nominated representative.
- 11.5 Appeals will not normally involve a re-hearing of the case but should focus on considering the grounds of appeal.
- 11.6 Appeal Hearing
- 11.7 The Appeal Hearing will follow a similar format as the Formal Hearing (above).

## 12 Other matters

- 12.1 Trade union stewards, health and safety representatives and workplace learning advisors
- 12.2 Normal capability standards will apply to those properly accredited in the above roles, in their conduct as employees. However action under the Performance Capability Policy should not take place without a full time official or her/his designate from the recognised trade union concerned, being advised of the circumstances and being given reasonable opportunity to make representations on behalf of the individual.
- 12.3 The Role of Human Resources

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- 12.4 Human Resources (HR) staff are available to provide advice regarding the Performance Capability Policy. HR attendance at the First and Second Stage meetings, the Formal Hearing and any subsequent appeal is mandatory. HR may be invited to review meetings at other times as appropriate.
- 12.5 This HR representative will provide advice and support to the Chair at the Hearing or Appeal.
- 12.6 Specific responsibilities for HR will include ensuring fairness and consistency and ensuring that decisions follow good practice and the relevant legislative guidelines.
- 12.7 Records

Records should be kept detailing actions at every stage of the procedure. These records should be kept in line with the Data Protection Act 1998 and should be made available to the employee at their request. The Trust reserves the right to withhold records in certain circumstances, for example to protect a witness.

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**Appendix 1**

**Performance Capability Policy – 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.....

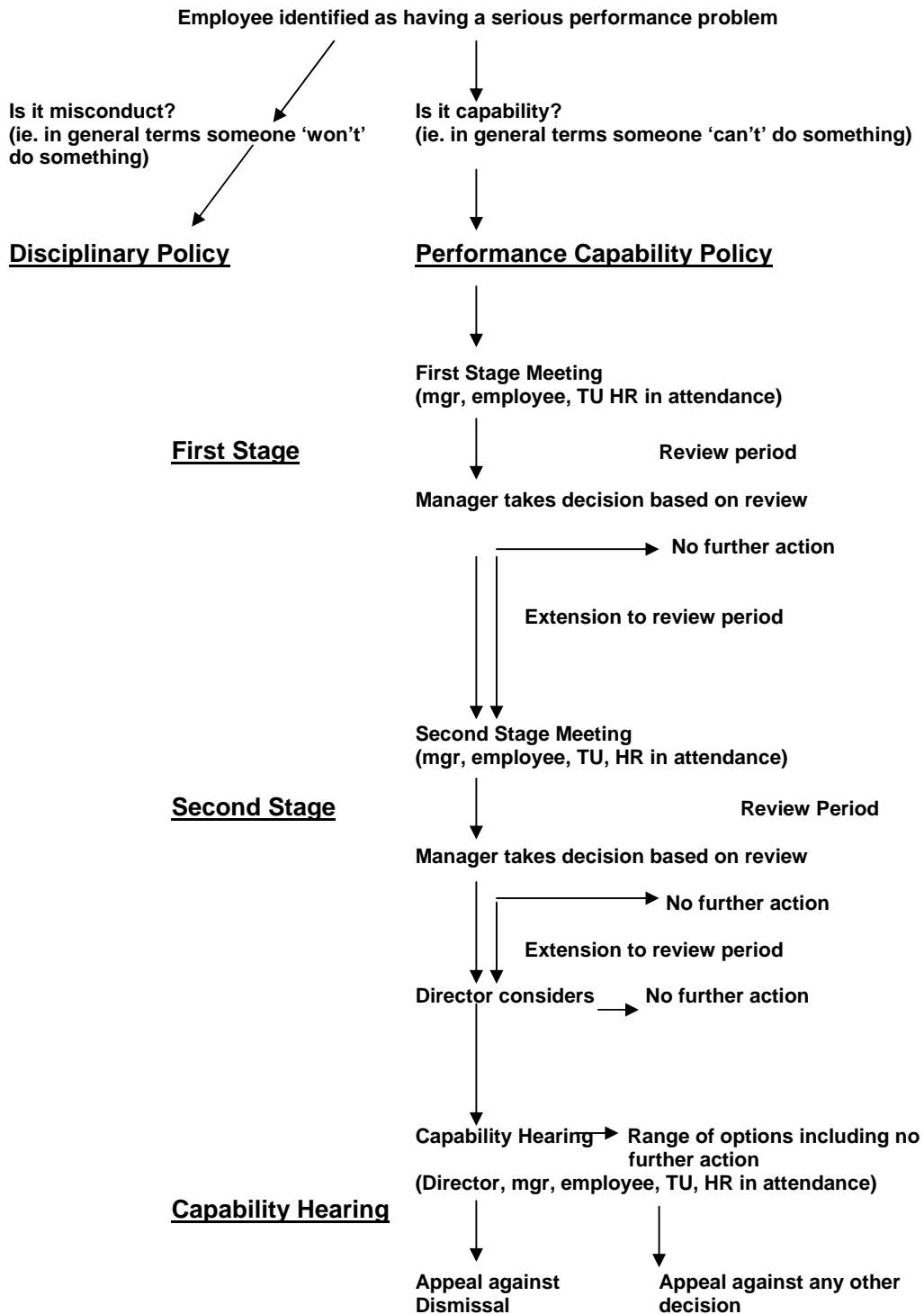
Signature.....

Manager's name.....

Signature.....

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## Appendix 3.

### Standards of conduct and performance (Extract from Section 4 of the Disciplinary Policy.

#### 4.1 Context

4.2 The nature of the work of the London Ambulance Service NHS Trust is that most employees are either delivering an emergency service or directly supporting those delivering the service, or work in an area which requires equally high levels of patient care and support. Key objectives are both the saving of life, and preservation of the quality of individual's lives. Additionally the nature of the service is that it is both geographically spread and dependent on the autonomy of small teams and individuals – hence a high level of trust both between management and staff and between colleagues is essential. It is also important that individuals take personal responsibility for their conduct and performance.

4.3 Whilst most employees work in direct service provision to the public, many work in equally important support roles. This Policy and the standards of conduct and performance it contains, apply throughout the Trust.

#### 4.4 Vision and values

4.5 The LAS has a vision to be:

‘A world class ambulance service for London staffed by well trained, enthusiastic and proud people who are all recognised for contributing to the provision of high-quality patient care.’

4.6 This vision has a set of values that support it. The vision and values are communicated to staff in a number of ways. The values include;

Respect and courtesy – ‘We will value diversity and will treat everyone as they would wish to be treated, with respect and courtesy’.

Integrity – ‘We will observe high standards of behaviour and conduct, making sure we are honest, open and genuine at all times and ready to stand up for what is right’.

Accept responsibility – ‘We will be responsible for our own actions and decisions as we strive to constantly improve.’

4.7 These values are communicated to all staff with an expectation that staff integrate the values into their working practices

#### 4.8 Other standards of conduct and performance

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- 4.9 Other standards of conduct and performance apply either service-wide or to specific staff groups and individuals. These include national standards of professionalism; LAS health and safety, drugs and alcohol, harassment and equal opportunities policies; codes of conduct, Statement of Duties, driving and care of service vehicle instructions, personal issue equipment policies, dress codes, job descriptions and job competencies.
- 4.10 Standards of conduct and performance are communicated both at the recruitment and induction stage and on an ongoing basis including via formal training and the issuing of the JRCALC clinical practice guidelines for use in UK Ambulance Services as well as appraisal systems, the Chief Executive's Consultation Meetings and conferences such as those for Managers and Team Leaders.
- 4.11 Protocols and publications including the operational Policy and Procedure Manual, General Instructions, Routine Information Bulletin, the Trust's intranet site (The Pulse), and exceptional bulletins such as the Chief Executive's Bulletin all support the communication of standards of conduct and performance.
- 4.12 Employees' terms and conditions of service are provided in their contract of employment and associated paperwork. Alongside the standards expected of employees this also details support and provisions available to staff. These are reinforced by the HR policies and procedures which are available on The Pulse. Wilful breaking of contractual rules and standards or abuse of contractual provisions may be a disciplinary offence.

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**Appendix 4.**

**Advice and guidance, coaching or counselling -pro-forma**

Record of advice and guidance given to an employee.

Manager's name..... Job  
title.....

Name of employee..... Job  
title.....

Name of trade union or other representative (if  
present).....

1. Reason for meeting
2. Summary of advice given
3. Any follow up action required and timescales

Signed..... (Manager)  
Date.....

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