

Capability at Work and Unsatisfactory Performance Policy and Procedure

Ratification Process

Lead Author:	Senior OD & HR Manager, C&P CCG
Developed by:	Senior OD & HR Manager, C&P CCG
Approved on and by:	23/05/2018 Joint Consultation and Negotiating Partnership (JCNP)
Ratified on and by:	10/07/2018 C&P CCG Remuneration & HR Sub Committee
Version Number:	4
Latest revision date:	July 2018
Review date:	July 2020

**Cambridgeshire & Peterborough CCG
Capability at Work and Unsatisfactory Performance Policy and Procedure**

Document Control Sheet

Development and Consultation	This policy was developed by the CCG HR team and consulted upon with senior managers and staff representatives. This policy has been approved through the Joint Consultation and Negotiating Partnership (JCNP).
Dissemination	All new and updated policies and procedures are notified to senior managers via email for dissemination to their staff. Notification is also sent to all staff via the monthly staff newsletters.
Implementation	All staff and managers. Line managers have an additional duty to authorise in accordance with the policy.
Training	The CCG HR team will organise to inform managers of this policy. Training on equality and diversity is mandatory for all employees. Included in Manager's Induction training
Audit	The CCG HR Team will hold a database of all policies and a reminder will be sent when a policy is due for renewal.
Review	This policy will be reviewed by the CCG HR Team and JCNP every two years, unless an earlier review is required e.g. due to changes in legislation or in NHS direction.
Links with other documents	This policy should be read in conjunction with: CCG Disciplinary Policy & Procedure CCG Grievance Policy and Procedure CCG Probationary Periods Policy and Procedure

**Cambridgeshire & Peterborough CCG
Capability at Work and Unsatisfactory Performance Policy and Procedure**

Revisions

Version	Page/Para No	Description of Change	Date Approved
1	Page 5, section 1.1	The policy applies to all workers of the CCG as well as employees	02/10/2013
1	Page 5, section 2.2	Inclusion of 2.2 outlining capability issues that arise within the probationary period will be managed using the Probationary Periods Policy	02/10/2013
1	Page 7, section 3.7	Inclusion of 3.7 – suspension of the policy where the employee raises a grievance and consideration for bringing in another manager	02/10/2013
1	Page 11, section 6.4	Inclusion of 6.4 stipulating a right of appeal at each formal stage	02/10/2013
1	Page 13, Appendices	Removal of Equal Opportunities Monitoring Form as the form was never used and therefore provides no value to the employee or organisation	02/10/2013
3	Page 6 section 3.5	Delete Disability Discrimination Act 1995 to read Equality Act 2010	17/11/2015
3	Pages 11 and 12 section 6.4	Inclusion in items a and b - “ The panel shall consist of at least two people”	17/11/2015
4	Page 8 section 4.2a	Inclusion of HR representative at First Formal meeting	10/07/2018
4	Page 9 section 4.2g	Clarification on where in the Policy an employee will return should work performance fall within a 12 month period	10/07/2018
4	Page 10 section 4.3	Clarification on where in the Policy an employee will return should work performance fall within a 12 month period	10/07/2018
4	Page 11 section 5.3	Inclusion of time frame and action taken for mitigating circumstances	10/07/2018
4	Page 16 & 18 Appendices	Appendix 2 - Outline that appeal can also be made at First Formal stage Appendix 3 – Letter amended for use at formal stages as well as informal	10/07/2018

Cambridgeshire & Peterborough CCG Capability at Work and Unsatisfactory Performance Policy and Procedure

Contents

Section	Page
1. Scope	5
2. Introduction	5 - 6
3. Review of Poor Work Performance and Competence	6 - 7
4. Procedure	7 - 10
5. Termination of Employment	10 - 11
6. Appeals Procedure	11 - 13
7. Equal Opportunities	13
9. Appendices	15 - 19
Appendix 1 - Performance Improvement Plan	15
Appendix 2 - Example Letter A Confirmation of Action Plan	16 – 17
Appendix 3 – Example Letter B Objectives Achieved	18 – 19

Cambridgeshire & Peterborough CCG

Capability at Work and Unsatisfactory Performance Policy and Procedure

1. Scope

- 1.1. This procedure applies to all employees of Cambridgeshire & Peterborough Clinical Commissioning Group (CCG) as well as non-employees working on behalf of the CCG, such as clinical leads, interims, honorary contract holders and agency staff. Throughout this policy reference is made to 'employees' but it should be noted that this term also applies to workers on behalf of the CCG.
- 1.2. Matters relating to the professional conduct or competence of Medical and Dental staff shall be dealt with in accordance with Maintain High Professional Standards in the Modern NHS: Procedures for Handling Concerns around Medical and Dental Employees.
- 1.3. All staff will have access to a copy of this policy and procedure. Where an employee is the subject of action under this procedure they will be provided with a full copy.

2. Introduction

- 2.1. The CCG recognise that unsatisfactory work performance is not usually attributable to the misconduct of an individual and therefore needs to be dealt with outside of the Disciplinary Policy and Procedure. The aim of this policy and procedure is to improve individual work performance or competence that is not at a satisfactory level. In turn this will contribute toward team and organisational performance.
- 2.2. Any capability issues that arise within the probationary period will be managed using the Probationary Periods Policy and Procedure. By the end of the probationary period the employee must meet the agreed standards before their employment with the CCG is confirmed. The CCG Capability at Work and Unsatisfactory Performance Policy and Procedure will apply after the probationary period is completed.
- 2.3. Concerns about unsatisfactory work performance or competence must be addressed at the earliest opportunity, as they occur, to attempt to alleviate the problem at an early stage. Although unsatisfactory performance may be discussed in the annual performance appraisal, this meeting should hold no surprises and unsatisfactory performance should be addressed under this procedure, the CCG Capability at Work and Unsatisfactory Performance Procedure.
- 2.4. It is acknowledged that some instances of unsatisfactory performance or competence may not improve because the member of staff may be in an ill-fitting role for their current skills or knowledge. Through following this procedure, managers and staff should analyse where this may be the case and managers should support the member of staff to either improve to the

level required, or together discuss what may be a more compatible role for the individual's skills, experience and knowledge.

3. Review of Poor Work Performance and Competence

- 3.1 It is the continuing responsibility of all staff to perform to a satisfactory level whilst demonstrating the values of the CCG and they should be given every help and encouragement to do so. The CCG has a responsibility for setting realistic and measurable standards of performance and for explaining those standards carefully to staff.
- 3.2 When a manager identifies that an employee's work performance is unsatisfactory a meeting should be convened with the employee to discuss the areas of concern in a constructive manner.
- 3.3 Unsatisfactory work performance can become apparent in a number of ways. This may include:
 - a. Poor standards of work, e.g. frequent mistakes, not following a job through, unable to cope with given instructions; and/ or
 - b. Inability to cope with a reasonable volume of work to a satisfactory standard; and/ or
 - c. Attitude to work, e.g. poor interpersonal skills, lack of commitment and drive; and/ or
 - d. Lack of apparent skill in tasks or method of work required; and/ or
 - e. Through the annual performance appraisal process when an individual is consistently not achieving agreed and realistic set targets and objectives.
- 3.4 Unsatisfactory work performance may be for a variety of reasons, such as lack of knowledge or skills, or possibly personal or work related problems. It may even be because of a lack of understanding about what is required. To be able to support the individual to improve to the desired level, it is important to explore and try to understand any underlying reasons for the under-performance at all stages of the procedure. Any subsequent actions can then be tailored according to the needs of the individual and their circumstances.
- 3.5 If the underlying reason for the unsatisfactory performance or competence is because of a disability, managers must comply with their obligations under the Equality Act 2010 before proceeding with the CCG Capability at Work and Unsatisfactory Performance Policy and Procedure. The member of staff must be able to perform the duties required with reasonable adjustments. Managers should consult the OD & HR team for advice in such circumstances.

- 3.6 When the performance of an individual becomes managerially unacceptable it is recommended the following procedure is adopted with the employee:
- a. Informal stage: line manager only
 - b. Formal stage - First Interview: line manager, HR representative and, if requested a trade union representative or work colleague acting in a non-professional capacity.
 - c. Formal stage - Second Interview: line manager, HR representative and, if requested a trade union representative or work colleague acting in a non-professional capacity.
 - d. Termination of employment: Director or Assistant Director of team or directorate, line manager, HR representative and, if requested, a trade union representative or work colleague acting in a non-professional capacity.
- 3.7. In the course of a capability case an employee might sometimes raise a grievance about the behaviour of the manager handling the case. Where this happens, and depending on the circumstances, it may be appropriate to suspend the capability procedure for a short period until the grievance can be considered. Consideration might also be given, where possible, to bringing in another manager to deal with the capability issue.

4. Procedure

4.1 Informal Stage

- a. When an employee's work performance gives cause for concern, the manager should meet with the employee informally, giving at least 24 hours' notice of the meeting and its nature, in an attempt to alleviate the problem at an early stage.
- b. The areas of concern should be discussed and ways to help the employee achieve a better level of performance should be explored. These may include training, closer supervision, coaching and/ or ongoing support.
- c. The employee should be advised at the informal stage that their work performance will be monitored for a period of between four and eight weeks, depending on the circumstances, and if appropriate, together agree and record a plan of actions designed to address the areas of concern to improve performance. A template Performance Improvement Plan can be found in appendix 1. The meeting should be confirmed in writing, using the template letter in appendix 2, within five days of the meeting. To ensure fairness, this action should be taken even where the line manager feels that the employee has an irredeemable incapacity to perform to the

expected standards.

- d. If, at the end of the monitoring period, the employee's work performance is satisfactory, an informal meeting should be arranged with the employee to advise them of this and to inform them the improvement must be sustained. The outcome of the meeting should be confirmed in writing, see example letter in appendix 3. The line manager should continue to monitor the employee's performance and provide support in one-to-one meetings to help maintain their improvement. If the level of work performance falls below the required standard in the next 12 months, the issue will be referred directly to stage 1, formal stage.
- e. If at the end of the monitoring period the employee's work performance is still continuing to cause concern the employee should be advised that the first stage of the formal process will be instigated.

4.2 Formal stage - First interview

Please note, depending on the circumstances it may be appropriate to hold more than one meeting of this type for an individual employee.

- a. Whenever a review date is set, a formal meeting should always be convened with the employee and an HR representative. A letter should be sent at least 10 days in advance to detail the purpose of the meeting and the rights to representation (trade union representative or work colleague acting in a non-professional capacity).
- b. The employee should confirm their attendance at the meeting with the manager three days prior to the meeting, advising whether they will be bringing a representative.
- c. At the meeting the difficulties caused by the poor work performance should be discussed, for example effects on service provision and work colleagues, and the employee should be given every opportunity of identifying any new problems which might be contributing to the poor performance. This should include a review of the performance improvement plan as appropriate.
- d. It is very important at this stage to set clear and realistic objectives or targets to be achieved, which ideally should be agreed with the employee. The objectives should be reasonable and achievable within a review period to be set at between four and eight weeks, and designed to address the areas of concern to improve performance; a template Performance Improvement Plan can be found in appendix 1. **The review period may be less than four weeks depending on length of service, specialised nature of the job and level of the post.**
- e. The employee should be advised of the required objectives, and that continued poor work performance may lead to the termination of their employment. The outcome of the interview should be confirmed in writing to the employee and a copy forwarded to their trade union representative,

or work colleague acting in a non-professional capacity where appropriate. A template letter can be found in appendix 2.

- f. Wherever possible, positive feedback should be given throughout the review period to encourage and support the employee with their efforts to improve but should not make the employee feel that the problems have been resolved if this is not the case.
- g. If, at the end of the monitoring period, the employee's work performance has improved they should be advised and encouraged to maintain and, if possible, further improve in the coming months. Further monitoring and a subsequent review date may be set, if appropriate, to help the employee maintain their improved standard and provide ongoing support. If the level of work performance falls below the required standard in the next 12 months, the issue will be referred directly back to stage 1, formal stage. The outcome of the meeting should be confirmed in writing to the employee and a copy forwarded to their trade union representative, or work colleague acting in a non-professional capacity where appropriate. A template letter can be found in appendix 3.
- h. If at the end of the monitoring period the employee's work performance is still continuing to cause concern the employee should be advised that the second stage of the formal process will be instigated.
- i. An employee has the right to appeal against a first stage formal review letter. Details can be found at 6. Appeals Procedure.

4.3 Formal stage - Second Interview

- a. As with the earlier stage, when a review date is set a meeting should be convened with the employee, an HR representative and if requested, a trade union representative or work colleague acting in a non-professional capacity to discuss their progress. A letter should be sent in advance, as previously. Improvement and the reaching of objectives should be positively acknowledged and continuing support and encouragement should be emphasised. Subsequent monitoring may be appropriate to help the employee maintain their improvement.
- b. The employee should be advised at the interview that the situation is unacceptable. The same points as identified at the first formal interview should be covered and the failure to improve explored in detail, this should include a review of the performance improvement plan as appropriate.
- c. Clear objectives and targets should again be set which should be achievable within an agreed specified review period, not exceeding 12 weeks, and designed to address the areas of concern to improve performance. The employee must be warned if there is no improvement and the objectives and targets are not met, that after a further review meeting, it is likely that termination of their employment will result.

- d. The possibility of alternative employment (redeployment) may be considered at this stage.
- e. Employees redeployed will not be afforded any measure of protected remuneration where they are appointed to a post that carries a lower level of remuneration.
- f. If the employee has not met targets or objectives set, they have the facility to appeal to the next line manager about the process followed if they feel there are grounds. Any such appeal should be made in writing within 14 days of this review meeting, stating the grounds of their appeal. The next stage of the capability procedure should not be suspended pending the appeal, however, no decision to dismiss a member of staff will be taken until after the outcome of the appeal is known.
- g. Comprehensive details of the interview must be confirmed in writing to the employee within five days of the meeting and a copy forwarded to their trade union representative, or work colleague acting in a non-professional capacity where appropriate, using the template letter in appendix 2.
- h. If at the end of the monitoring period the employee's work performance has improved they should be advised and encouraged to maintain and, if possible, further improve in the coming months. Further monitoring and a subsequent review date may be set, if appropriate, to help the employee maintain their improved standard and provide ongoing support. If the level of work performance falls below the required standard in the next 12 months, the issue will be referred directly to stage 2, formal stage. The outcome of the meeting should be confirmed in writing to the employee and a copy forwarded to their trade union representative, or work colleague acting in a non-professional capacity where appropriate using the template letter in appendix 3.

5. Termination of Employment

- 5.1 If after the above stages the situation remains unsatisfactory, the work performance has still not improved, some or all of the objectives have not been met, and where no reasonable explanation can be offered as to why this has happened, a subsequent formal meeting should be arranged to consider the termination of the employee's contract.
- 5.2 At least seven working days' notice of the meeting should be given to the employee, unless it is mutually agreed to hold the meeting within seven working days. The purpose of the meeting and the possible outcome must clearly be identified in writing to the individual prior to the meeting. The employee must be advised of their right to be represented and/or accompanied by a trade union representative or work colleague acting in a non-professional capacity.

- 5.3 In addition the employee should be advised in the letter that the manager responsible for monitoring their work performance will attend to give an account of the review process that has been followed, calling witnesses where appropriate and presenting any relevant documentation. Such documentation should be provided to the employee, at least seven working days prior to the meeting, advising them they may also present any factors in mitigation, **which should be provided in writing to the panel at least 3 working days prior to the meeting. Information provided by the employee will be shared with the manager responsible for monitoring their work prior to the meeting.**
- 5.4 The meeting will normally be conducted by the Director or Associate Director from the department or directorate of the employee concerned, who has not taken part in the review process. Where these managers have been involved with the review or are otherwise not available, then a Director or Associate Director from another department or directorate may be asked to conduct the meeting. An HR representative will also be present.
- 5.5 If no extenuating circumstances are put forward to explain the poor work performance and all alternatives for redeployment have been exhausted, the employee's contract of employment will be terminated, with notice.
- 5.6 The decision must be confirmed in writing to the employee, the employee's trade union representative (if applicable), and the manager responsible for monitoring the work performance, within five working days of the meeting. The letter should give the reason for the dismissal and detail the individual's Right of Appeal.

6. Appeals Procedure

6.1. Employees have the right of appeal against formal reviews and dismissal, as detailed below.

6.2. First Stage Formal Review Letter

An employee who wishes to appeal against a first stage formal review letter should give notice of appeal to the manager of the person who issued the formal review letter within 14 calendar days of the formal review, a reasonable extension to this time frame can be agreed depending on individual circumstances. The appeal can be lodged verbally or will be accepted in writing.

The notice of appeal should indicate the reason for the appeal stating whether or not the employee will be represented by a trade union representative or a work colleague acting in a non-professional capacity, and identifying their name and location. The notice of appeal should also state the names and locations of any witnesses the employee and his/her representative intends to call.

6.3. Second Stage Formal Review Letter and Dismissal

An appeal by an employee against a second stage formal review or dismissal should be lodged to the Head of HR & OD within 21 calendar days of the review meeting, a reasonable extension to this time frame can be agreed depending on individual circumstances. The appeal can be lodged verbally or will be accepted in writing. An appeals panel will be convened.

6.4. Appeals Panel

a. First Stage Formal Review Letter

The appeals panel shall consist of the Senior Line Manager of the Manager who issued the letter, an HR team representative and any other professional adviser as may be appropriate to the case. The appeals panel shall consist of at least two people.

b. Second Stage Formal Review Letter

The appeals panel shall consist of a Director or named Associate Director, an HR team representative and any other professional adviser as may be appropriate to the case. The appeals panel shall consist of at least two people.

c. Dismissal

The appeals panel shall consist of at least three people; one of which will be the Chief Operating Officer or the Chief Clinical Officer or a Named Non-Executive Director, as well as an HR team representative and any other Director or professional adviser as may be appropriate to the case.

d. Appeals panels will normally be convened with the absolute minimum of delay of Notice of Appeal. The employee and his/her representative will receive at least 10 working days' notice of the date of the hearing. Members of the appeals panel and the manager presenting the case in defence of the appeal will receive a similar period of notice.

e. The statement of case from the appellant or his/her representative must be submitted to the chair of the appeal panel and the HR team representative on the panel, at least 14 days prior to the hearing.

f. Appeals panels will be convened within five calendar weeks of receipt of notice of appeal by the Head of OD & HR, who will appoint a secretary to the appeal panel who has not previously been involved in the case. The employee and his/her representative will receive at least 14 calendar days' notice of the date of the hearing. Members of the panel and the manager presenting the case will receive a similar period of notice.

g. Statements of case from the appellant or his/her representative and the management representative must be submitted to the Head of OD & HR at least five working days prior to the hearing. Papers will be distributed on receipt of both sets. The appellant and his/her representative and the management representative will notify the Head of OD & HR no later than 10 working days before the date of the appeal hearing the names of any witnesses they intend to call. Failure to meet with these requirements may mean the arrangements will be

cancelled.

- h. Where possible at least one member of the panel should have specialist knowledge of the field of work of the employee. Where this is not possible in the cases of appeal against dismissal, the panel shall at the request of the employee or employee's representative appoint an assessor (internal to the CCG where possible) to advise the panel, who is experienced in the particular discipline of the employee, and who has not been directly involved in the circumstances leading to the dismissal.
- i. The appeals panel shall not include a member who has been directly involved in the circumstances leading to formal action or dismissal.
- j. The procedure to be followed at the appeal is set out in appendix 3 of the CCG Disciplinary Policy and Procedure.

7. Equal Opportunities

All staff affected by the CCG Capability at Work and Unsatisfactory Performance Policy and Procedure will be treated fairly, equitably and in accordance with CCG equal opportunities policies. If any member of staff feels this procedure has not been fairly applied to them they should refer to the CCG Grievance Policy and Procedure.

**Cambridgeshire & Peterborough CCG
 Capability at Work and Unsatisfactory Performance Policy and Procedure**

Appendix 1 - Performance Improvement Plan

Area of Concern	Required Action	Desired Level of Achievement	Date Action to be Completed	Outcome – to be completed after Review Date

Review Date:.....

Employee Name:..... **Employee Signature:**.....

Date:.....

Manager Name:..... **Manager Signature:**.....

Date:.....

**Cambridgeshire & Peterborough CCG
Capability at Work and Unsatisfactory Performance Policy and Procedure**

Appendix 2 – Template Letter: Confirmation of Action Plan



**Cambridgeshire and Peterborough
Clinical Commissioning Group**

Recorded Delivery

**Private & Confidential
Addressee Only**

Employee Name
Employee Home Address

Date sent to employee

Manager's Name
Full Work Address
Email

Work telephone number
Mobile telephone number

Dear **Employee Name**

Following my meeting with you on **[date]** I write to confirm my concerns that led to the meeting, the standards/level of work performance that you are expected to achieve and to confirm the action plan that we agreed.

My concerns are: **[list areas of concern with specific examples and specific targets where appropriate]**

I expect that you will achieve the following: **[list expected standards]**

To help you achieve these standards the following action plan was agreed: **[confirm what support, training etc you will provide, what the employee will do, the length of the review period, dates of regular review meetings and the end date of the review period]**.

I explained in our meeting that if you do not meet the expected standards/level of work performance by **(end date of review period)**, the issue may be dealt with under the next stage **(state)** of the formal Capability procedure.

[Where appropriate]

However, I am confident that having discussed the issue(s) fully with you, that you are now clear as to what is expected of you in the future and that you are committed to achieving the improvements necessary.

[Include when confirming outcome of formal stages only]

You have the facility to appeal to [NAME - the next line manager] about the process followed. Any such appeal should be made in writing within 14 [First formal]/21 [Second formal] days of [date of review meeting] stating the grounds of your appeal.

If you do not understand what is expected of you or if you have any other queries, you must arrange to come and see me as soon as possible to discuss this further.

Yours sincerely

Line manager Name

Line manager job title

Cambridgeshire & Peterborough Clinical Commissioning Group

Cc HR representative name and job title
Address

**Cambridgeshire & Peterborough CCG
Capability at Work and Unsatisfactory Performance Policy and Procedure**

Appendix 3 – Template Letter: Objectives Achieved



**Cambridgeshire and Peterborough
Clinical Commissioning Group**

Recorded Delivery

**Private & Confidential
Addressee Only**

Employee Name
Employee Home Address

Date sent to employee

Manager's Name
Full Work Address

Email

Work telephone number
Mobile telephone number

Dear **Employee Name**

Work Performance Review Period: [Informal Stage/Formal Stage]

I am pleased to confirm that the above review period came to an end on **[date]** and that it has been concluded that you have achieved the expected standards/level of work performance. Therefore, the matter will not be referred to a Formal Stage [1/2] Work Performance meeting.

The commitment and effort that you have shown in achieving the set targets is acknowledged, however you must continue to sustain these efforts and your current level of work performance consistently. You should be aware that if your level of work performance falls below the required standard in the next 12 months, for whatever reason, the issue will be referred directly to a [Stage ½] Work Performance meeting, in accordance with the Capability at Work Policy and Procedure.

However, I am confident that having successfully achieved the required standard /level of work performance, you are committed to sustaining these improvements.

I enclose an additional copy of this letter for you to give to your representative if you wish.

If you have any queries about the contents of this letter or require further clarification, please do not hesitate to contact me.

Yours sincerely

Line manager Name

Line manager job title
Cambridgeshire & Peterborough Clinical Commissioning Group

Enc Additional copy of this letter

Cc HR representative name and job title
Address