



**LAURUS**  
TRUST

# Capability Policy

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<b>Policy Title and Summary</b>	Appraisal Policy
<b>Author</b>	S Carty
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<b>Reviewed By</b>	S Carty
<b>Date and Responsibility of next update/review</b>	The Appraisal Policy will be monitored and reviewed every 3 years, unless there is a statutory change
<b>Trade Union Consultation</b>	
<b>Ratification Date</b>	
<b>Audience</b>	All employees
<b>Related Documents</b>	Sickness Absence Policy Disciplinary Policy Appraisal Policy Pay Policy Grievance Policy Probation Procedure Managing Change and Employee Reductions Policy NJC Terms and Conditions and Teachers Terms and Conditions (Burgundy Book) NJC for Local Government Services National Agreement on Pay and Conditions of Service (Green Book)
<b>Legal Framework</b>	The Equality Act 2010 The Employment Rights Act 1996 Data Protection Act 1998 The General Data Protection Regulation (EU) 2016/679 Education School Teachers' Appraisal (England) Regulations 2012 (the Appraisal Regulations) Public Sector Equality Duty ACAS Code of Practice on Disciplinary and Grievance Procedures

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# Introduction

The Laurus Trust is committed to creating a working environment where all employees have the opportunity to achieve their full potential. To support this, the Trust has a responsibility for setting realistic standards of performance and ensuring that all of our employees understand the requirements of their role and the level of performance expected of them.

Whilst the majority of employees will meet or exceed the standards required of them, the Trust recognises that performance problems may arise. Therefore, the purpose of this policy is to provide a framework for managing underperformance in a supportive, fair and consistent manner.

The Laurus Trust is committed to equality and diversity principles in operating this procedure. At all stages, the application of this policy will be carried out in accordance with the Trust's duty and commitment to encouraging equality, diversity and inclusion among our employees, and eliminating unlawful discrimination.

When applying this policy, the Trust will not unlawfully discriminate because of the Equality Act 2010 protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race (which includes colour, nationality and ethnic or national origin), religion or belief, sex and sexual orientation.

Information about employees' performance and capability will be handled carefully and in accordance with the Data Protection Act 2018 and The General Data Protection Regulation to ensure that sensitive details remain confidential.

## Scope

- This policy and procedure applies to all employees of the Laurus Trust.
- The stages outlined within this policy are consistent with those contained within NJC Terms and Conditions and Teachers Terms and Conditions (Burgundy Book), NJC for Local Government Services National Agreement on Pay and Conditions of Service (Green Book); and accord with legal requirements and with the ACAS Code of Practice and Guidance.
- Employees have the right to be accompanied by a Trade Union representative or work colleague at all formal meetings held under the Capability Policy.
- Employees may have a Trade Union representative or work colleague present at a meeting held under the informal stage of the procedure, as long as they are immediately available.
- There is no entitlement for the employee to be accompanied by a legal representative unless the Trust is legally represented.
- The Trust is responsible for ensuring that the Capability Policy is ratified and regularly reviewed.
- This policy should not be used for managing sickness absence as cases of this nature will be dealt with under the Sickness Absence Policy. See Ill Health Capability / Sickness Absence during Capability Proceedings for further details regarding cases where an employee's health

may be linked to their underperformance.

- This policy does not apply to employees still within their probation period, as any performance issues for probationers will be managed under the Probation Procedure.
- This policy should not be used for managing cases of misconduct, as such cases will be dealt with under the Employee Discipline Policy.

## Principles

- The Trust recognises that on occasion, an employee may not be able to meet and maintain the required standard of performance. This could be for a number of reasons including an underlying work problem or a personal issue, which may be outside of the employee's direct control. Therefore, capability issues should be dealt with sensitively and wherever possible, appropriate support should be identified and put in place.
- In line with the School Staffing (England) (Amendment) Regulations 2012, if asked by a prospective employer (if this is a maintained school or an Academy school), the Trust is required to confirm whether or not a member of the teaching staff at that school has, within the last two years, been the subject of capability procedures. The written details will contain the concerns which gave rise to this, the duration of the proceedings and their outcome.
- Meetings held under the informal stage, stage 1 and stage 2 of this policy will normally be chaired by an employee's line manager, or a more senior manager (as appropriate).
- Stage 3 hearings will normally be chaired by the Head of School, or another senior leader, advised by a representative of HR.
- Appeal hearings will be conducted by a manager with the appropriate seniority who has not had any previous involvement with the case, advised by a representative of HR.
- Where performance issues are identified, the formal stages of this policy will normally only be implemented if it has not been possible to address and resolve the capability issue via the informal route. However, in exceptional circumstances, it may be appropriate to proceed directly to the formal stage.
- If an employee fails to comply with any aspect of the Capability Policy, this may be considered as a conduct issue and could result in a referral to the Disciplinary Policy.
- It is possible that an employee may identify a lack of capability themselves. Where the manager agrees with the employee's assessment of their capability, further advice should be sought from HR regarding the application of the policy.
- Stages in the procedure will normally be followed in sequence. Ordinarily there will be no acceleration through the stages unless a situation requires it due to there being a specific or serious concern.
- Employees will not normally progress to the next stage of the procedure until the end of the current review period, if the required improvement has not been achieved. However, a meeting at the next stage may be called earlier if there is a justifiable reason for doing so. For example, if there is a serious performance concern or if it is deemed that the employee is unable to make the required improvements within a reasonable or known timescale.

- In the event that an employee is unable to attend a formal stage 1 or 2 capability review meeting or a stage 3 capability (decision) hearing arranged under this procedure, it will only be rearranged on one occasion. The meeting will go ahead on the second occasion, unless in exceptional circumstances. An employee is able to send a representative or written submission to the meeting in their absence.
- Being invited to attend a formal capability meeting or hearing in itself will not normally be considered grounds for appeal. However, employees have the right to appeal against the outcome of any formal meetings held under this policy.
- Dependent upon the individual circumstances, if an employee raises a grievance during a capability process, the capability procedure may be temporarily suspended in order to deal with the grievance. Where the grievance and capability cases are related, it may be appropriate to deal with both issues concurrently.

## III Health Capability / Sickness Absence during Capability Proceedings

The Trust will apply the definition of a disability, as outlined in the Equality Act 2010, in carrying out the stages of this procedure. Namely, a person is considered to have a disability if they have a physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out day-to-day activities:

- ‘Substantial’ means more than minor or trivial, for example, it may take a person much longer than it usually would to complete a task such as getting dressed;
- ‘Long-term’ means the adverse effects of the impairment have lasted, or are likely to last, for 12 months or more;
- Some impairments are automatically treated as a disability even if they don’t affect a person’s day to day activities.

In deciding whether the Capability or Sickness Absence Policy will apply to an individual case, consideration should be given to how the ill health is affecting the employee’s ability to carry out their job to the required standard. If the issue is primarily that the employee has unacceptable levels of absence from work, then the Sickness Absence Policy will apply. If the employee’s attendance is good but their performance is affected due to ill health, the Capability Policy will apply. Advice should be sought from HR to determine the most appropriate course of action.

Particular care should be taken if it is determined that an employee’s health may be a contributing factor to their underperformance. Advice should be sought from Trust HR and Occupational Health regarding the best way to manage the performance issue, particularly if the employee has or may have a condition which is considered to be a disability under the Equality Act 2010.

Where an employee’s ill health is impacting their performance, it may be appropriate to consider whether ill health retirement should be explored (the employee must be a member of the relevant pension scheme). Further advice should be sought from HR and Occupational Health.

If an employee begins a period of long-term sickness absence during any stage of the capability procedure, this will be managed via the Sickness Absence Policy. Subject to the receipt of appropriate medical advice (e.g., Occupational Health), both the capability and sickness absence cases may be dealt with concurrently.

## Roles and Responsibilities

### Employee

All employees have a contractual responsibility to attend work and carry out the requirements of their role and should therefore:

- Take all reasonable steps required to improve their performance including undertaking any relevant training and development;
- Comply with all safe working practices and engage in health, safety and wellbeing strategies conducive to supporting satisfactory performance at work;
- Engage in regular discussions with their manager to review and address any internal or external factors affecting their ability to perform within their role;
- Attend meetings arranged under this procedure;
- Ask for feedback;
- Engage in assisting with identifying possible support mechanisms and co-operate with their manager to improve performance in work.

### Managers

Managers are responsible for identifying and addressing any concerns relating to the performance of their team. Therefore, managers should:

- Apply the Capability Policy fairly and consistently in consultation with Trust HR, taking the individual circumstances of each case into consideration;
- Monitor the performance of their direct reports and notify an employee immediately if their performance is a cause for concern;
- Ensure that employees are aware of the standards of performance expected of them;
- Signpost employees to the Laurus Trust health and wellbeing support strategies;
- Consider if the reason for poor performance is potentially due to a condition covered by the Equality Act 2010, in consultation with Occupational Health and Trust HR;
- Consider any reasonable adjustments and/or modifications to the employee's role and/or work environment to maintain their performance in work;
- Identify any issues in the workplace that may be adversely impacting on the employee's performance;

- Keep a confidential record of all discussions relating to an employee's performance;
- Provide regular feedback to employees and undertake performance development reviews (PDRs) (support staff) and Appraisals (teaching staff);
- Gather relevant information prior to any informal or formal action being taken, for example employee training records and PDR/Appraisal documentation.

## HR

The role of HR is to provide support and guidance to managers and employees. HR will:

- Provide guidance and advice to managers on how to deal with specific performance issues;
- Ensure that the Capability Policy is applied fairly and consistently, taking into account the circumstances of each case;
- Be present at meetings arranged under the Capability Policy, where appropriate and requested by the manager;
- Write and send the invite and outcome letters for any capability meeting or hearing, in consultation with the manager.

## Timescales

### Informal Stage

- Formal written notice will not normally be provided at the informal stage, as meetings during this part of the procedure will normally take place organically e.g., as part of the Appraisal or PDR process.
- Informal Performance Improvement Plans will remain 'live' for a period of 12 months from the date of issue and will be disregarded for capability purposes after this time. If there are continued/further performance related concerns during this period, the employee may be referred to a capability meeting under the formal stages of the policy.

### Formal Stage

- Written notice to attend a stage 1 or stage 2 capability review meeting: 10 calendar days.
- Written notice to attend a stage 3 capability (decision) hearing: 10 calendar days.
- All information / evidence to be considered as part of a stage 1, 2 or 3 meeting/hearing or appeal hearing should be shared with all concerned parties a minimum of 5 working days before the hearing date.
- Written outcome of a stage 1, 2 or 3 meeting/hearing: within 7 working days of the meeting taking place.
- First and final written warnings will remain active for 12 months from the date of issue and will

be disregarded for capability purposes after this time. If there are continued/further performance related concerns during this period, the employee may be invited to attend a meeting under the next stage of the formal procedure.

- Written notification of an employee's appeal against any decision taken following a stage 1, 2 or 3 meeting/hearing: within 7 working days of the date of the written outcome.
- Appeal hearings will normally be arranged within 21 calendar days of receipt of the appeal letter.
- Written outcome of an appeal hearing: within 7 working days of the hearing taking place.

## Informal Procedure

In the first instance, managers should seek to resolve performance issues informally and as early as possible as part of normal day to day management.

For support staff, this early intervention may take place as part of one to ones or during the PDR process.

For teaching staff, in the first instance performance issues will normally be dealt with in-line with the Appraisal Policy.

During a discussion around performance at the informal stage, the manager should:

- Explain the area(s) where performance standards have not been met, along with specific examples;
- Set out the expected standards of performance, referencing any policies, procedures, guidance and/or competencies against which these standards are being measured;
- Set objectives detailing what actions need to be taken, focusing on the specific weaknesses that need to be addressed. Objectives should be 'SMART' wherever possible:
  - Specific;
  - Measurable;
  - Achievable / agreed;
  - Relevant;
  - Time-bound / timely.
- Confirm the indicators for success, detailing the evidence that will be used to assess whether or not the necessary improvement has been made;
- Establish any likely causes of underperformance. Detail any support or assistance which will be put in place to help the employee to meet the required standards;
- Detail the timescale in which the improvements are required. It is advised that this time period is no less than 4 weeks and no longer than 3 months;
- Agree when they will meet with the employee again to review progress.

- Explain that if the employee is unable to meet the required standards of performance within the timescales agreed, they may be referred to a formal stage 1 capability review meeting. Informal conversations should be recorded using the Informal Performance Improvement Plan template, which can be found on the [Managers' HR HUB](#). A copy of the agreed Informal Performance Improvement Plan should be signed by both the employee and line manager and retained on the employee's file by HR.

If the employee makes the required improvements to their standard of performance within the review period, the informal process will end and the matter will be considered to be resolved.

In the event that the employee is not successful in meeting or maintaining the required performance standards during the informal review period, the matter may be referred to a stage 1 capability review meeting.

If any further performance issues arise during the period in which the Informal Performance Improvement Plan remains 'live', the matter may be referred to a stage 1 capability review meeting.

## Formal Procedure

### Stage 1 Capability Review Meeting

Where it is considered that an employee is not performing to the appropriate standard and informal discussions/support mechanisms have not resolved the issue(s), they should be invited to attend a stage 1 capability review meeting.

The manager should gather all relevant information and evidence which demonstrates the areas of concern and the support already explored via the informal process. This may include examples of the underperformance, employee training records, PDR/Appraisal documentation and the Informal Performance Improvement Plan. Copies of the information to be discussed at the meeting should be provided to the employee in advance of the meeting, in-line with the timescales laid out in this policy.

The employee and/or their representative has the right to present written and/or verbal evidence at the meeting. Employees should share any documentation they wish to refer to with all relevant parties in advance of the meeting, in-line with the timescales laid out in this policy.

The purpose of the stage 1 capability review meeting is to:

- Review the performance issues explored at the informal stage and confirm why the manager has concluded that the matter has not been resolved;
- Explain the current area(s) of concern, along with specific examples;
- Confirm the expected standards of performance, referencing any policies, procedures, guidance and/or competencies against which these standards are being measured;
- Provide the employee and/or their representative with the opportunity to explain any reasons for the underperformance;

- Discuss the support already explored and agree if any further support mechanisms can be put in place.
- The manager should review the information discussed at the meeting and make an evidence-based decision on the most appropriate outcome. If necessary, the meeting should be adjourned to allow the manager to gather further information or to give further consideration to the matters discussed.

The possible outcomes of the meeting are:

### First written warning

Where it is established that further improvement is required, a first written warning will be appropriate. The manager should:

- Set objectives detailing what actions need to be taken, focusing on the specific weaknesses that need to be addressed. Objectives should be 'SMART' wherever possible;
- Confirm the indicators for success, detailing the evidence that will be used to assess whether or not the necessary improvement has been made;
- Detail the timescale in which the improvements are required. It is advised that this time period is no less than 4 weeks and no longer than 3 months;
- Agree when the manager and employee will meet again to review progress;
- Complete the Performance Improvement Plan template, which is held by HR. A copy of the agreed Performance Improvement Plan should be included within the outcome letter and retained on the employee's file by HR;
- Explain that this constitutes a first written warning under the capability procedure;
- Explain that if the employee does not make a sufficient and sustained improvement to their standard of performance during the review period, they will move to the second stage of the capability procedure and will be invited to attend a stage 2 capability review meeting;
- Explain that if the required improvements in performance are achieved during the review period, the process will be deemed to have been satisfactorily concluded and the issues resolved. However, if any further performance issues arise during the period in which the first written warning remains 'live', they may move to the second stage of the capability procedure and could be invited to attend a stage 2 capability review meeting;
- Advise that the outcome of the stage 1 meeting will be confirmed in writing, including details of the right to appeal.

### No further action

Where it is established that there are insufficient grounds for continuing with the capability procedure, the process will come to an end. The manager should:

- Confirm that no immediate further action will be taken;
- If appropriate, advise that any remaining concerns will be dealt with via the PDR or Appraisal

process;

- Advise that the outcome of the stage 1 meeting will be confirmed in writing, including details of the right to appeal.

## Stage 2 Capability Review Meeting

If an employee fails to improve their performance to a satisfactory standard during the stage 1 review period, or if further performance issues arise during the time their first written warning remains 'live', they should be invited to attend a stage 2 capability review meeting.

The manager should gather all relevant information and evidence which demonstrates the areas of concern and the support already explored. This may include examples of the underperformance, employee training records, PDR/Appraisal documentation and information relating to the stage 1 capability review meeting, including the Performance Improvement Plan. Copies of the information to be discussed at the meeting should be provided to the employee in advance of the meeting, in-line with the timescales laid out in this policy.

The employee and/or their representative has the right to present written and/or verbal evidence at the meeting. Employees should share any documentation they wish to refer to with all relevant parties in advance of the meeting, in-line with the timescales laid out in this policy.

The stage 2 capability review meeting should follow the same procedure as outlined above within stage 1 capability review meeting.

In addition, it may be appropriate to discuss:

- Whether redeployment to another post should be considered;
- Whether it may be appropriate to consider a permanent modification to the employee's role.

The manager should review the information discussed at the meeting and make an evidence-based decision on the most appropriate outcome. If necessary, the meeting should be adjourned to allow the manager to gather further information or to give further consideration to the matters discussed.

The possible outcomes of the meeting are:

### Extension to the stage 1 review period

Where it is established that the employee should be provided with a further period of time to improve, the stage 1 review period should be extended. The manager should:

- Review the employee's previous objectives/set new objectives (as appropriate) and detail what actions need to be taken, focusing on the specific weaknesses that need to be addressed. Objectives should be 'SMART' wherever possible;
- Confirm the indicators for success, detailing the evidence that will be used to assess whether or not the necessary improvement has been made;
- Detail the timescale in which the improvements are required. It is advised that this time period

is no less than 4 weeks and no longer than 3 months;

- Agree when the manager and employee will meet again to review progress;
- Update the employee's Performance Improvement Plan. A copy of the agreed Performance Improvement Plan should be included within the outcome letter and retained on the employee's file by HR.
- Explain that if the employee does not make a sufficient and sustained improvement to their standard of performance during the agreed review period, the stage 2 capability meeting will be reconvened;
- Explain that if the required improvements in performance are achieved during the review period, the process will be deemed to have been satisfactorily concluded and the issues resolved. However, if any further performance issues arise during the period in which the first written warning remains 'live', the stage 2 capability meeting may be reconvened;
- Advise that the outcome of the stage 2 meeting will be confirmed in writing, including details of the right to appeal.

### Final written warning

Where it is established that further improvement is required, a final written warning will be appropriate. The manager should:

- Review the employee's previous objectives/set new objectives (as appropriate) and detail what actions need to be taken, focusing on the specific weaknesses that need to be addressed. Objectives should be 'SMART' wherever possible;
- Confirm the indicators for success, detailing the evidence that will be used to assess whether or not the necessary improvement has been made;
- Detail the timescale in which the improvements are required. It is advised that this time period is no less than 4 weeks and no longer than 3 months;
- Agree when the manager and employee will meet again to review progress;
- Update the employee's Performance Improvement Plan. A copy of the agreed Performance Improvement Plan should be included within the outcome letter and retained on the employee's file by HR;
- Explain that this constitutes a final written warning under the capability procedure;
- The employee should be advised of the seriousness of this stage of the procedure, confirming that a failure to make a sufficient and sustained improvement to their standard of performance may lead to the third stage of the capability procedure, which a stage 3 capability (decision) hearing.
- Explain that if the required improvements in performance are achieved during the review period, the process will be deemed to have been satisfactorily concluded and the issues resolved. However, if any further performance issues arise during the period in which the final written warning remains 'live', they may move to the third stage of the capability procedure and could be invited to attend a stage 3 capability (decision) hearing;

- Advise that the outcome of the stage 2 meeting will be confirmed in writing, including details of the right to appeal.

### No further action

Where it is established that there are insufficient grounds for continuing with the capability procedure, the process will come to an end. The manager should:

- Confirm that no immediate further action will be taken;
- If appropriate, advise that any remaining concerns will be dealt with via the PDR or Appraisal process;
- Confirm the date on which the first written warning issued at the stage 1 capability review meeting will be disregarded for capability purposes. Advise that if any further performance issues arise during the period in which the first written warning remains 'live', the stage 2 capability meeting could be reconvened.
- Advise that the outcome of the stage 2 meeting will be confirmed in writing, including details of the right to appeal.

### Permanent modification to the role

Where it is established that an employee's performance will improve if adjustments are made to their substantive role, permanent modifications should be explored. The manager should:

- Agree the alternative contractual conditions with the employee. This may include reduced working hours, a change of working pattern or a revised job description etc. Any changes which require an amendment to an employee's contract of employment should only be agreed having taken advice from Trust HR.
- Advise the employee that they will receive formal confirmation of the change to their contract of employment;
- Advise that the outcome of the stage 2 meeting will be confirmed in writing, including details of the right to appeal.

### Redeployment

Where it is established that an employee's performance will improve if they are appointed to a different role, redeployment should be explored. The manager should:

- Adjourn the meeting and advise that the employee will be invited to a separate meeting under the Managing Change and Employee Reductions Policy;
- Advise the employee that if no suitable alternative employment is secured during the redeployment period, they will be invited to attend a stage 3 capability (decision) hearing which could result in the termination of their employment on the grounds of capability;
- Advise that the outcome of the stage 2 meeting will be confirmed in writing, including details of

the right to appeal.

### Ill health retirement

Where it is established that the employee is a member of the relevant pension scheme and is likely to meet the criteria for ill health retirement (as advised by HR and/or Occupational Health), this should be explored. The manager should:

- Adjourn the meeting and advise the employee that a referral will be made to Occupational Health to obtain further advice surrounding ill health retirement;
- Advise the employee that if it is determined that ill health retirement is not a viable option, they will be invited to attend a stage 3 capability (decision) hearing which could result in the termination of their employment on the grounds of capability;
- Advise that the outcome of the stage 2 meeting will be confirmed in writing, including details of the right to appeal.

### Stage 3 Capability (Decision) Hearing

If an employee fails to improve their performance to a satisfactory standard during the stage 2 review period, or if further performance issues arise during the time their final written warning remains 'live', they should be invited to attend a stage 3 capability (decision) hearing.

The manager should produce a report containing all relevant information and evidence which demonstrates the areas of concern and the support explored. The report should be provided to the employee in advance of the hearing, in-line with the timescales laid out in this policy.

The employee and/or their representative has the right to present written and/or verbal evidence at the meeting. Employees should share any documentation they wish to refer to with all relevant parties in advance of the meeting, in-line with the timescales laid out in this policy.

Arrangements for the hearing will be the same as those within the Trust's Hearing Procedure, which can be found on the [HR HUB](#).

The possible outcomes of the meeting are:

#### No further action

Where it is established that there are insufficient grounds for continuing with the capability procedure, the process will come to an end. The manager should:

- Confirm that no immediate further action will be taken;
- If appropriate, advise that any remaining concerns will be dealt with via the PDR or Appraisal process;
- Confirm the date on which the final written warning issued at the stage 2 capability review meeting will be disregarded for capability purposes. Advise that if any further performance issues arise during the period in which the first written warning remains 'live', the stage 3

capability (decision) hearing could be reconvened.

### Permanent modification to the role

Where it is established that an employee's performance will improve if adjustments are made to their substantive role, permanent modifications should be explored. The manager should:

- Agree the alternative contractual conditions with the employee. This may include reduced working hours, a change of working pattern or a revised job description etc. Any changes which require an amendment to an employee's contract of employment should only be agreed having taken advice from Trust HR.
- Advise the employee that they will receive formal confirmation of the change to their contract of employment.

### Redeployment

Where it is established that an employee's performance will improve if they are appointed to a different role, redeployment should be explored. The manager should:

- Adjourn the meeting and advise that the employee will be invited to a separate meeting under the Managing Change and Employee Reductions Policy;
- Advise the employee that if no suitable alternative employment is secured during the redeployment period, the stage 3 capability (decision) hearing will be reconvened and this could result in the termination of their employment on the grounds of capability.

### Ill health retirement

Where it is established that the employee is a member of the relevant pension scheme and is likely to meet the criteria for ill health retirement (as advised by HR and/or Occupational Health), this should be explored. The manager should:

- Adjourn the meeting and advise the employee that a referral will be made to Occupational Health to obtain further advice surrounding ill health retirement;
- Advise the employee that if it is determined that ill health retirement is not a viable option, the stage 3 capability (decision) hearing will be reconvened and this could result in the termination of their employment on the grounds of capability.

### Some other outcome is appropriate given the facts of the case.

Any such decision should be made in consultation with Trust HR.

## Dismissal on the grounds of capability.

The decision to dismiss on the grounds of capability can only be taken having taken advice from Trust HR and when it is clear that the employee's performance is unacceptable, and:

- The standards of performance expected have been made explicitly clear to the employee;
- The employee has been unable to reach or maintain the required standard of performance having been given reasonable time, support and opportunity to do so;
- All suitable alternative courses of action (for example redeployment or modifications / adjustments to the role) have been exhausted, deemed inappropriate, proved not to be possible or have been refused by the employee.

The employee should be advised that the outcome of the stage 3 capability (decision) hearing will be confirmed in writing, including details of their right to appeal (if applicable).

Where the outcome is dismissal, the employee will be entitled to formal notice in accordance with their contract of employment, or payment in lieu of notice (if appropriate).

## Appeals

Where an employee is dissatisfied with an outcome following any formal meeting under the Capability Policy, they should outline the grounds of their appeal in writing and submit to Trust HR.

Arrangements for the hearing will be the same as those within the Trust's Hearing Procedure, which can be found on the [HR HUB](#).

The purpose of the appeal hearing is to establish whether the decision taken at the capability meeting/hearing was reasonable/appropriate.

The manager of the original meeting/hearing will attend the appeal hearing to answer questions relating to the outcome reached.

The possible outcomes of the appeal hearing are:

- The original decision is upheld and remains in place;
- The original decision is not upheld and a revised outcome is determined which will replace the original findings;
- The original decision is not upheld and the original outcome is completely withdrawn.

The appeal hearing chair will normally inform the employee of their decision at the end of the hearing, unless further time is required to investigate any issues raised during the meeting which are likely to impact that decision. The decision will also be confirmed to the employee in writing, with confirmation that there is no further right to appeal.

## Equality Impact Statement

Names and title of people involved with this assessment	Rachel Robinson Assistant Trust Director of Inclusion
Impact assessment carried out with regard to identified characteristics	<input checked="" type="checkbox"/> Race <input checked="" type="checkbox"/> Disability <input checked="" type="checkbox"/> Sex <input checked="" type="checkbox"/> Age <input checked="" type="checkbox"/> Religious belief <input checked="" type="checkbox"/> Sexual Orientation <input checked="" type="checkbox"/> Gender Reassignment
Summary of any issue/proposed changes	Transferred the policy onto the current template Removed the Hearing Procedure from the appendices and linked to the current document on the HR HUB
Date	Sept 2025
Date of next review	Sept 2028