

# CAPABILITY POLICY AND PROCEDURE



This policy refers to paid employees only.

The purpose of the capability procedure is to maintain standards of job performance within Anglia Care Trust and to ensure that all personnel are given all reasonable support and encouragement to meet the standards required of them. The procedure is not contractual and the details may be changed at any time.

The procedure applies to all employees who have successfully completed two years' service with the Company and its aim is to ensure consistent, fair and non-discriminatory treatment. In the first 24 months of your continuous employment the capability procedure may not be invoked and your employment may be terminated without recourse to it.

For the purpose of this policy an individual's capability to do their job is assessed by reference to their skills, qualifications, aptitude, health or any other physical or mental quality.

## **a) Lack of performance based on skills, knowledge or competence**

### **Informal Stage**

When there is evidence that you are not performing at an acceptable level, your line manager should investigate the circumstances with you at an informal meeting. At this meeting your line manager will:

- Make clear the areas in which your performance is below expectations and explain the standards required
- Give you the opportunity to explain your under-performance and to raise any concerns you may have about the job. Set a reasonable timeframe within which improvement is expected and arrange a further meeting with you at the end of this time to review the situation. The content and outcome of this meeting will be confirmed to you in writing, including the type of improvement required, any additional support or training that will be provided, any other agreed actions and the timescale for improvement and review. A diary note of the discussion may be kept for reference, but it is not recorded on your file as formal action.

### **Formal Stages**

#### **Stage 1 – First Formal Warning**

If there is continued unsatisfactory performance, or where a first instance of unsatisfactory performance is sufficiently serious to warrant formal action you will be invited to a formal hearing to discuss the matter. An HR Adviser may also be present. At this meeting you will have the opportunity to explain your unsatisfactory performance.

You will be advised, as precisely as possible, of the reasons for the manager's continued concerns about your performance. If, having heard any explanations offered by you, your manager remains concerned, a Formal (Written) Warning will be given for unsatisfactory performance. This will be confirmed in writing to you.

This warning will be placed on your personnel file and will be disregarded after a period of 12 months.

At this hearing further consideration should be given to any additional training or support that could reasonably be provided to you to enable you to reach the required standard of performance. A reasonable time period will be set within which improvement is expected and a further meeting arranged at the end of this time to review the situation.

### **Stage 2 – Final Formal Warning**

If there has been insufficient improvement in performance within the timescale following the formal warning a further formal hearing will be held with you. At this hearing your manager will review the history of the case, including the steps that have been taken to support you to achieve the required level of performance.

If, having heard your explanation, the manager remains concerned, a Final Warning will be issued for unsatisfactory performance. This will be confirmed in writing. You will be informed that your job will be at risk if satisfactory performance levels cannot be achieved and subsequently maintained.

This warning will be placed on your personnel file and will be disregarded after a period of 12 months.

Further consideration should be given to any additional training or support that could reasonably be provided to you to enable you to reach the required standard of performance. A review period will be set within which improvement is expected and a further meeting arranged at the end of this time to review the situation.

### **Stage 3 – Dismissal Hearing**

If there has been insufficient improvement in performance within the timescale following the Final Warning, a further formal hearing will be held with you. At this hearing the manager will review the history of the case, including the steps that have been taken to support you to achieve the required level of performance. Your explanation will be heard and considered.

Once the evidence has been fully examined, the manager will withdraw to consider the case and to decide what the appropriate outcome should be. An adjournment to make a decision should be for no longer than is necessary. The date and time for reconvening the hearing will be agreed with you at the time of the adjournment or shortly thereafter.

On returning to the hearing, the manager will summarise the points that have been covered, the decision taken, the reasons for this decision and any actions that need to be taken as a result of this decision.

Possible outcomes: If the manager deems that your performance is satisfactory, there will be no further action under the policy. If, however, your manager believes that you have under-performed and continue to under-perform, s/he will state the reasons for believing this, specifying the alleged failures to meet the required standards. The manager will then communicate to you which of the following outcomes is most appropriate in the circumstances:

- redeployment – into another role at the same level
- downgrading – to a position of lower status and remuneration
- return to an earlier stage of the procedure
- termination of employment

The decision will be confirmed in writing to you within 10 working days. The letter should confirm the action being taken and the reasons for this. In the case of dismissal, the letter must also state the date on which the dismissal will take effect and your right to appeal against the decision.

In the event of re-deployment or demotion, your performance will continue to be monitored over an appropriate period of time.

#### **b) Lack of capability based on an underlying ill health reason or disability**

Sometimes an employee may have to stop working because of long-term underlying ill-health or a disability. In these circumstances, it is not appropriate to go through the standard disciplinary procedure. Anglia Care Trust's approach is focused on maintaining your dignity especially at a time when you may be feeling especially vulnerable.

You must tell your Manager if you have a medical condition or disability which you think may affect your performance. Anglia Care Trust will always consider ways of helping you back to work if you are in this unfortunate situation. Anglia Care Trust understands that adjustments need to be considered individually and that something suitable for one employee might not be the same for another.

Support may include the following:

- Meeting an employee whilst they are absent from work to check how they are and see if there are any ways Anglia Care Trust might support them.
- Getting a medical report from an employee's GP with their permission (they have the right to see the report before Anglia Care Trust).
- Arranging an occupational health assessment (with an employee's agreement).
- Consulting with an employee about the available options based on the medical facts.
- Considering whether an employee may have a disability and whether there are any reasonable adjustments that might be made to help them return to work. This might include making reasonable adjustments to the work or the workplace such as changing their role, changing hours, changing attendance times, changing location, providing equipment, providing additional training time or providing extra coaching.

Anglia Care Trust will always seek to involve you in making suggestions or reasonable adjustments and other ways in which you might return to work which includes:

- Agreeing a phased return to work.
- Conducting a specific risk assessment.
- Making details of vacancies available to consider other roles that you might find more suitable.

Anglia Care Trust will make all reasonable efforts to consider other options to avoid dismissal which is considered only as a last resort.

If you are still unable to return to work, having considered all reasonable adjustments, Anglia Care Trust will consider the termination of your contract on grounds of capability.

### **The Process**

The following will always apply:

- Anglia Care Trust will seek to meet informally with you before any formal meetings take place.
- You will be advised, in writing, in advance of any meeting where termination of contract is a possible outcome.
- Anglia Care Trust will offer you the right to be accompanied, by a work colleague or union representative, to any formal meeting. In some sensitive or particularly difficult situations a family member/friend may be allowed to accompany an employee at the meeting but this is at the discretion of Anglia Care Trust.
- Normally there will be at least three formal meetings with employees during a capability procedure.
- There will always be a right of appeal against a decision to terminate employment on the grounds of capability.

### **Notification & Representation**

You will receive a minimum of 48 hours advance notice in writing of any formal hearing arranged under this policy. At all such interviews you have the right to be accompanied by any willing and appropriate work colleague or trade union representative. The Company may choose to have an HR Consultant present. Where witnesses are to be called by the manager or by you, prior notice of this should be given.

Where your representative is unable to attend the meeting at the notified time, the meeting will be postponed and re-scheduled to an alternative time within a maximum 5 working days.

## **Right of Appeal**

If you wish to appeal against a warning issued under this procedure you must write to the Director of Business Support within 5 working days of receiving the decision.

If you appeal, you will be invited to attend an appeal hearing. The appeal hearing will normally be heard within five working days of the appeal being lodged. The appeal hearing will follow the same procedure as that for a capability hearing. The person hearing the appeal will reconsider the penalty. It is always possible that the new decision may be more severe than the original penalty.

If possible the appeal will be dealt with by a more senior Manager than the one who conducted the initial hearing.

After the appeal hearing, you will be informed in writing of the final decision.

Date of next review – October 2019