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| **Review Sheet** | |
| Last Reviewed Last Amended Next Planned Review in 12 months, or  16 Nov '20 16 Nov '20 sooner as required. | |
| Business impact | These changes require action as soon as possible.  **HIGH IMPACT** |
| Reason for this review | Scheduled review |
| Were changes made? | Yes |
| Summary: | This policy is one of the main policies governing the employee and employer relationship and 'capability' is one of the potentially fair reasons for dismissal under the Employment Rights Act. There is a process to follow which ensures that the reason for a dismissal is fair and also that the fair reason for dismissal has been reached after following a fair process, both of which are key to ensure that there is no claim for unfair dismissal. This policy relates to issues of capability which are not linked to lack of capability due to ill health. For guidance on ill health capability, you should follow the Sickness Absence Policy and Procedure. |
| Relevant legislation: | * Employment Rights Act 1996 * Equality Act 2010 * Equality Act 2010: Chapter 1 (Protected Characteristics) Chapter 2 (Prohibited Conduct) and Chapter 3 (Services and Public Functions) * General Data Protection Regulation 2016 * Data Protection Act 2018 |
| Underpinning knowledge - What have we used to ensure that the policy is current: | * Author: ACAS, (2019), *Performance management*. [Online] Available from: <https://www.acas.org.uk/index.aspx?articleid=6608>[Accessed: 11/11/2020] * Author: ACAS, (2020), *Code of practice on disciplinary and grievance procedures*. [Online] Available from: [https://acas.org.uk/media/1047/Acas-Code-of-Practice-on- Discipline-and-](https://acas.org.uk/media/1047/Acas-Code-of-Practice-on-Discipline-and-Grievance/pdf/11287_CoP1_Disciplinary_Procedures_v1__Accessible.pdf)   [Grievance/pdf/11287\_CoP1\_Disciplinary\_Procedures\_v1 Accessible.pdf](https://acas.org.uk/media/1047/Acas-Code-of-Practice-on-Discipline-and-Grievance/pdf/11287_CoP1_Disciplinary_Procedures_v1__Accessible.pdf) [Accessed: 11/11/2020] |
| Suggested action: | * Establish process to confirm the understanding of relevant staff * Establish training sessions for staff * Widely distribute the ‘Key Facts’ of the policy * Share content of the policy with all staff |
| Equality Impact Assessment: | This statement is a written record that demonstrates that we have shown due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations with respect to the characteristics protected by equality law. |



**1. Purpose**

* 1. To ensure that Holbeach & East Elloe Hospital Trust takes a fair and consistent approach to any issues of capability.
  2. For Holbeach & East Elloe Hospital Trust to endeavour to ensure that employees achieve and maintain a high standard of performance in their work so as to deliver the best possible service for Service Users.
  3. To attempt to resolve issues of capability or poor performance due to lacking skill and/or ability informally if at all possible.
  4. To ensure that all employees are aware of what is expected of them in terms of performance and attendance.
  5. To support Holbeach & East Elloe Hospital Trust in meeting the following Key Lines of Enquiry:

### Key Question Key Lines of Enquiry

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| --- | --- |
| SAFE | S3: How does the service make sure that there are sufficient numbers of suitable staff to support people to stay safe and meet their needs? |
| SAFE | S6: Are lessons learned and improvements made when things go wrong? |

* 1. To meet the legal requirements of the regulated activities that {Holbeach & East Elloe Hospital Trust} is registered to provide:
     + Employment Rights Act 1996
     + Equality Act 2010
     + Equality Act 2010: Chapter 1 (Protected Characteristics) Chapter 2 (Prohibited Conduct) and Chapter 3 (Services and Public Functions)
     + General Data Protection Regulation 2016
     + Data Protection Act 2018



**2. Scope**

* 1. The following roles may be affected by this policy:
     + All staff
  2. The following Service Users may be affected by this policy:
     + Service Users
  3. The following stakeholders may be affected by this policy:
     + Family
     + Advocates
     + Representatives
     + Commissioners
     + Local Authority
     + NHS



**3. Objectives**

* 1. To ensure that there is a clear process for the management of capability issues which gives the best opportunity to resolve any issues whilst protecting the needs of the Service Users.
  2. To ensure that Holbeach & East Elloe Hospital Trust understands the reasons for any capability issues and investigates and addresses them where necessary.
  3. To address any skill shortages to deliver the best possible service for Service Users.
  4. To make it clear that dismissal is a last resort and that a proper process will be carried out before it will be deemed necessary for Holbeach & East Elloe Hospital Trust to dismiss any employee for capability reasons.



**4. Policy**

* 1. This policy is designed to provide a framework within which managers can work with employees to maintain satisfactory performance standards and to encourage improvement where necessary.
  2. This policy is not to be used in circumstances of misconduct where the Discipline Policy and Procedure applies, i.e. in circumstances of poor behaviour, deliberate wrongdoing or omissions. Although long-term sickness absence is also a capability issue, these will be dealt with separately under the Sickness Absence Policy and Procedure.
  3. Any data collected as part of this policy will be processed in accordance with current data protection legislation, the Privacy Notice issued to staff and the Data Security and Data Retention Policy and Procedure. Holbeach & East Elloe Hospital Trust appreciates that certain health data and medical reports will be Special Category Data and they will process this data accordingly.
  4. It is essential that steps are taken to address poor performance or other capability issues as soon as possible. Staff should understand that it is critical that this action is taken, given that we are responsible for the health of members of the public. We will, therefore, comply with all best practice and regulatory guidelines in this respect.



**5. Procedure**

* 1. Holbeach & East Elloe Hospital Trust will look to apply this policy when it has identified that an employee is failing to achieve the levels of performance standards that are expected of them either through a lack of skill, knowledge, experience or medical/health issues.

Given the nature of the business of Holbeach & East Elloe Hospital Trust, it is essential that poor levels of performance are managed correctly and appropriately in order to ensure that standards of care do not fall below the requisite levels.

Where Holbeach & East Elloe Hospital Trust establishes that an employee’s performance is below the standards of performance which are expected, it will look to take steps to establish the facts and reasons for this and identify ways to address the issues.

* 1. Where the manager/supervisor first establishes that an employee’s performance is unacceptable, an informal discussion will be held with the employee to try to establish the reason. The manager and the employee will then work together to bring the employee's performance back to the required level.

In order to ensure that these performance targets can be measured against what has been agreed, a Performance Improvement Plan will be developed which will include areas of improvement, the timescale for this improvement and what steps Holbeach & East Elloe Hospital Trust can take to assist the member of staff in improving their level of performance.

* 1. Where issues cannot be resolved informally, or where the informal process has not received the desired outcome, Holbeach & East Elloe Hospital Trust will commence the formal capability process set out below.

Holbeach & East Elloe Hospital Trust may, within reason, skip any stage set out below where the circumstances permit this.

### Notification of a Capability Hearing

If Holbeach & East Elloe Hospital Trust considers that there are grounds for taking formal action over alleged poor performance issues/standards, the employee will be required to attend a capability hearing. The employee will be notified in writing of their requirement to attend a hearing to discuss the concerns and the likely outcome if it is decided after the hearing that the employee’s performance has been unsatisfactory.

Holbeach & East Elloe Hospital Trust will also provide the employee with the following information:

* A summary of the evidence gathered as part of an investigation into your performance
* A copy of all relevant documents to be used at the hearing
* Copies of any witness statements

The employee will be entitled to bring a work colleague/trade union representation to accompany them at the hearing. The employee must tell the manager conducting the hearing who their chosen companion will be at least 24 hours before the hearing. If the member of staff or companion is unable to attend the hearing, the member of staff must notify the manager dealing with the capability hearing immediately. If the member of staff or the companion are persistently unable to attend the hearing, Holbeach & East Elloe Hospital Trust reserves the right to make a decision in the staff member's absence giving consideration to the evidence which is in front of it.

### Stage 1 Hearing: First Written Warning

If an employee’s performance does not improve following informal discussions, Holbeach & East Elloe Hospital Trust may decide to hold a Stage 1 Capability Hearing.

As part of the Capability Hearing, Holbeach & East Elloe Hospital Trust will look to discuss the following with the employee:

* + - Details of the required standards and the evidence which suggests that the employee has failed to meet those standards
    - Provide the employee with an opportunity to ask questions and to present evidence on their own behalf
    - Establish the possible causes of poor performance
    - Identify whether any further measures can be taken to assist with the employee's performance standards
    - Discuss and seek to agree with the employee targets for improvement, and a timescale for review Following a Stage 1 Capability Hearing, if an employee’s performance is unsatisfactory, the employee may be given a written warning, setting out:
    - The areas which have not met the required performance standards
    - Targets for improvement
    - Any measures, such as additional training or supervision, which will be taken with a view to improving performance
    - A period for review
    - The consequences of failing to improve within the review period, or of further unsatisfactory performance

A written warning will normally remain active for 6 months (though may be extended up to 12 months) from the date it is issued. After the active period, the warning will remain permanently on the personnel file but will be disregarded in deciding the outcome of future capability proceedings. If the line manager is not satisfied, the matter may be progressed to a Stage 2 Capability Hearing; or if the manager feels that there has been a substantial but insufficient improvement, the review period may be extended.

### Stage 2 Hearing: Final Written Warning

If there has been no improvement in the member of staff's performance or the required standard has not been met by the required timescale or where there is further evidence of poor performance during the period where the first written warning is active, the member of staff will be issued with a final written warning which will set out the following:

* The areas which have not met the required performance standards
* Targets for improvement
* Any measures, such as additional training or supervision, which will be taken with a view to improving performance
* A period for review
* The consequences of failing to improve within the review period, or of further unsatisfactory performance

A final written warning will normally remain active for 12 months from the date it is issued. After the active period, the warning will remain permanently on the personnel file but will be disregarded in deciding the outcome of future capability proceedings. If the line manager is not satisfied, the matter may be progressed to a Stage 3 Capability Hearing; or if the manager feels that there has been a substantial but insufficient improvement, the review period may be extended.

### Stage 3 Hearing: Dismissal

Holbeach & East Elloe Hospital Trust may decide to hold a Stage 3 Capability Hearing if it has reason to believe:

* + - The employee’s performance has not improved sufficiently within the review period set out in a final written warning
    - An employee’s performance is unsatisfactory while a final written warning is still active, or
    - An employee’s performance has been grossly negligent such as to warrant dismissal without the need for a final written warning

Following the hearing, if Holbeach & East Elloe Hospital Trust finds that an employee’s performance is unsatisfactory, the following outcome may be:

* + - Dismissal
    - Extending a final written warning and setting a further review period

Where dismissal is appropriate, this will normally be on full notice and/or payment in lieu of notice unless the member of staff's performance has been so negligent so as to amount to gross misconduct.

### Appeals Against Action for Poor Performance

Where an employee feels that a decision about poor performance under this procedure is wrong or unjust, they should appeal in writing within 7 days of the written decision stating their full grounds of appeal to the appropriate appeal manager who will be confirmed to the employee within one week of the date of dismissal.

Where further investigation is required due to the issues raised in an appeal, the employee will be provided with any additional information that has come to light prior to the meeting taking place.

Where possible, the appeal hearing will be conducted by a more senior manager who has not been

previously involved in the case. The employee may bring a companion with them to the appeal hearing. Following the appeal hearing, Holbeach & East Elloe Hospital Trust may:

* Confirm the original decision
* Revoke the original decision, or
* Substitute a different penalty

Holbeach & East Elloe Hospital Trust will inform the employee in writing of the final decision as soon as possible, usually within 7 working days of the appeal hearing. Where possible, Holbeach & East Elloe Hospital Trust will also explain this to the employee in person. There will be no further right of appeal.

In the event that the employee has been dismissed, the date of dismissal will not be delayed pending the outcome of an appeal. In the event that the appeal is successful and the decision to dismiss the employee is revoked, the employee will suffer no loss of continuity or pay.



**6. Definitions**

### Capability

* + - Whether an employee is capable of performing their role by reference to skill, aptitude, health or any other physical or mental quality

### Performance Improvement Plan (PIP)

* + - A formal plan which sets out the improvement in performance which is expected along with the method required and the timescale for improvement

### Negligence

* + - A wilful or reckless disregard for duties which causes or has the potential to cause harm to a Service User or to the property of Holbeach & East Elloe Hospital Trust

### Special Category Data

* + - Special Category Data is a category of data which is more sensitive than normal personal data. This includes data which relates to:
      * Race
      * Ethnic origin
      * Politics
      * Religion
      * Trade union membership
      * Genetics
      * Biometrics (where used for ID purposes)
      * Health
      * Sex life
      * Sexual orientation



**Key Facts - Professionals**

Professionals providing this service should be aware of the following:

* + - This procedure is not to be used in circumstances where there has been misconduct; in the case of misconduct the Discipline Policy and Procedure should be used
    - The full warning process will be followed unless the issue is so serious as to warrant a more serious sanction, up to and including summary dismissal
    - Performance Improvement Plans will be kept under review and the employee's performance continually monitored
    - Should the employee's capability issues relate to the employee's health, you should refer to the Sickness Absence Policy and Procedure



**Key Facts - People affected by the service**

People affected by this service should be aware of the following:

* + - You and your family can expect the highest quality care that we can offer. Any failure in this regard is a cause for concern and Holbeach & East Elloe Hospital Trust will not hesitate to deal with issues of poor performance to ensure that those who use our service are protected
    - Evidence may be sought from you in order to establish whether or not there has been a failure



**Further Reading**

As well as the information in the 'underpinning knowledge' section of the review sheet we recommend that you add to your understanding in this policy area by considering the following materials:

**Royal College of Nursing - Capability and performance reviews:** <https://www.rcn.org.uk/get-help/rcn-advice/capability-and-performance-standards-and-reviews> **CQC - Taking action in the event of poor care:**

<https://www.cqc.org.uk/what-we-do/how-we-do-our-job/taking-action>



**Outstanding Practice**

To be ‘ outstanding ’ in this policy area you could provide evidence that:

* + - Holbeach & East Elloe Hospital Trust keeps regular contact with under-performing employees and their managers and ensures that a constant review process is undertaken
    - Holbeach & East Elloe Hospital Trust ensures that performance targets are clear and precise and that the employee confirms that they understand them and accept that they are able to meet them
    - Holbeach & East Elloe Hospital Trust ensures that all managers are aware that issues of performance are picked up as soon as possible and a performance management process is undertaken where necessary



**Forms**

The following forms are included as part of this policy:

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| **Title of form** | **When would the form be used?** | **Created by** |
| Appeal Meeting Agenda - PP07 | As a record of the appeal meeting. | QCS |
| Performance Improvement Plan - PP07 | As a record of targets. | QCS |
| Manager's Checklist Capability Procedure - PP07 | As a checklist to guide a manager through the capability process. | QCS |
| Letter - Confirming First Written Warning- PP07 | The second stage of the capability process. | QCS |
| Letter - Confirming Final Written Warning- PP07 | At the penultimate stage of the capability process. | QCS |
| Letter - Confirming Verbal Warning- PP07 | The first stage of the capability process. | QCS |
| Letter - Inviting Employee to Investigation Meeting- PP07 | At the initial investigation stage of the process. | QCS |
| Letter - Invite to Appeal Meeting Following Sanction- PP07 | Appeal for each stage of the process if a sanction has been issued. | QCS |
| Letter - Confirming Outcome of Appeal- PP07 | After appeal hearing. | QCS |
| Letter - Inviting Employee to Capability Meeting (Possible Sanction not dismissal) - PP07 | As part of the process where dismissal is not yet a possible outcome. | QCS |
| Letter - Inviting Employee to Meeting with the Possible Sanction Being Dismissal - PP07 | Capability meeting where dismissal is a possible outcome. | QCS |
| Letter - Confirming Dismissal Following Previous Warning - PP07 | As the last stage of the capability process. | QCS |

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| **Stage of Hearing** | **Completed (Please Tick or N/A)** |
| 1. Introduce those in attendance, stating their role and purpose at the hearing. |  |
| 2. State that the hearing will be recorded and/or minuted. |  |
| 3a. If the employee is accompanied by a companion - introduce the companion and confirm their role at the hearing. Explain that the companion must not answer any questions on behalf of the employee.  3b. If the employee is not accompanied by a companion - ensure that the employee is aware of their right to be accompanied. Ask the employee to confirm that they have chosen to come to the hearing alone. |  |
| 4. Explain that the purpose of the hearing is to hear the employee’s grounds of appeal as set out within their appeal letter. |  |
| 5. Explain how the hearing is to be structured and ensure that it complies with the contractual appeal procedure in place.  Confirm to the employee whether you intend to conduct a full re-hearing or simply consider the grounds raised in the employee’s appeal. |  |
| 6. Ask the employee to put forward their appeal and present any relevant evidence, including calling supporting witnesses.  The employee should limit their grounds of appeal to those set out in their appeal letter only. |  |
| 7. Confirm the known facts. Establish if there are any mitigating circumstances which ought to be taken into account in relation to the appeal. |  |
| 8. Summarise the main issues raised and ask the employee to contribute any additional points. |  |
| 9. Adjourn the hearing in order to consider all the complaint following the issues raised in the hearing. Advise the employee that they shall be notified of the outcome by letter.  Try to provide the employee with the outcome of the appeal within 5 working days of the hearing, provided that your disciplinary procedure does not specify a timeframe in which to notify the employee of the outcome. |  |
| 10. Conduct any further investigations in light of the issues raised in the hearing. |  |
| 11. Consider any mitigating circumstances. |  |
| 1. Consider the outcome of the appeal and whether to:    * Uphold the earlier decision and impose a penalty    * Apply a lesser or more stringent penalty, consider any other outcomes    * Overturn the previous decision (and reinstate the employee if they have been dismissed) |  |
| 13. Write to the employee to inform them of the outcome of the appeal hearing. Inform the employee that there is no further right to appeal. |  |

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| **Employee:** |  |
| **Manager:** |  |
| Details of expected performance: | |
| Details of current performance: | |
| Actions taken so far to get performance back on track: | |
| The results of that action: | |

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| Next Steps (including details of support to be given by Holbeach & East Elloe Hospital Trust): | |
| Timescales for improvement: | |
| Possible outcomes if the employee’s performance does not improve within that timescale: | |
| **Signed (Manager):** | **Date:** |
| **Signed (Employee):** | **Date:** |

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| **Stage 1 – Informal Stage** | |
|  | 1. Arrange an informal meeting to identify the causes of the issue. |
|  | 2. Is the performance/attendance issue related to a disability? If so, ensure that reasonable adjustments are made. |
|  | 1. Is the performance/attendance issue having a serious impact on Holbeach & East Elloe Hospital Trust?    1. If so, proceed to **'Stage 2 – Initiating the Formal Procedure'**    2. If the issue isn’t having a serious impact on Holbeach & East Elloe Hospital Trust, set performance/attendance targets with the employees with timescales and review dates. Provide the employee with this information in writing. If the performance/attendance issue is not resolved, proceed to **'Stage 2 – Initiating the Formal Procedure'** |

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| **Stage 2 – Initiating the Formal Procedure** | |
|  | 1. Write to the employee to invite them to a meeting. Ensure that you inform the employee of their right to be accompanied to the meeting by a colleague or trade union representative.  Include sufficient information about the performance/attendance issues in the letter and state that the capability procedure is being followed. Attach a copy of the capability procedure. |
|  | 2. At the meeting:  •  Introduce those present and explain the reasons for the meeting  •  Give the employee the opportunity to discuss the issues  •  Ask the employee to highlight any mitigating circumstances  •  Agree any additional support that Holbeach & East Elloe Hospital Trust is to provide |
|  | 1. Issue a **Performance Improvement Plan** setting out:    1. Details of the performance/attendance issue    2. What improvement is required    3. Timescales for improvement    4. The consequences of failure to improve    5. The date of review    6. Details of any support to be provided by Holbeach & East Elloe Hospital Trust    7. The employee’s right to appeal the Performance Improvement Plan |
|  | 4. If the capability issue is not resolved and there has been no improvement at the review date, proceed to  **'Stage 3’ – Investigatory Meeting'**. |

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| **Stage 3 – Investigatory Meeting** | |
|  | 1. Hold an Investigatory Meeting with the employee in order to discuss the ongoing performance/attendance issues, and the employee’s performance, under the Performance Improvement Plan (“PIP”). |
|  | 2. Invite the employee to an investigation meeting by letter. Inform the employee of their right to be accompanied at the meeting. The letter should provide the employee with sufficient information about the continued performance/attendance issue, including written notes from the recent review and a copy of the PIP. |
|  | 3. At the meeting, explain the reasons for the meeting, giving the employee the opportunity to discuss the issues and highlight any mitigating circumstances. Discuss and agree any additional support that Holbeach & East Elloe Hospital Trust is to provide. |
|  | 1. Issue a **Written Warning** setting out:    1. Details of the performance/attendance issue    2. Confirmation of what improvement is required    3. Timescales    4. The possible consequences for failing to improve    5. The date of review    6. Details of any support to be provided by Holbeach & East Elloe Hospital Trust    7. The employee’s right to appeal the Final Written Warning |
|  | 5. If the capability issue is not resolved after the review date, repeat stage 3 but issue a final written warning. If the capability issue remains unresolved after the review date, proceed to **'Stage 4 – Capability Meeting'**. |

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| **Stage 4 – Capability Meeting** | |
|  | 1. Write to the employee inviting them to a meeting, informing them of their right to be accompanied at the meeting. The letter should provide the employee with sufficient information about the continued performance/attendance issue, including written notes from the recent review and a warning that the outcome of the meeting may result in dismissal. |
|  | 1. At the meeting:    * Explain the reasons for the meeting    * Give the employee the opportunity to discuss the issues    * Ask the employee to highlight any mitigating circumstances    * Discuss and agree any additional support that Holbeach & East Elloe Hospital Trust is to provide    * Discuss the employee’s performance against the PIP and the continued unresolved performance concerns |
|  | 3. **Before closing the meeting**, check that you have addressed all of the employees’ representations. Consider any mitigating circumstances.  You should then communicate the decision and dismiss if appropriate. |
|  | 1. Issue a **Letter of Dismissal** setting out:    * Details of the continued performance/attendance issues    * That the reason for the dismissal is capability    * The termination date    * Details of the employee’s right to appeal the dismissal |
|  | 5. If the employee appeals the decision, ensure that you deal with the appeal. If the employee’s appeal is unsuccessful, the capability procedure is complete. |

# [Name and Address of Employee] [Date]

Dear **[name of employee],**

# First Written Warning

## Following the capability meeting held on **[date]**, the decision has been made to give you a first written warning under the capability procedure (copy attached).

This decision was made on the basis that your **[performance/attendance]** has been unsatisfactory in the following respect[s]: **[set out unsatisfactory performance/attendance].**

# [On [insert date], you were previously given a verbal warning about your [performance/attendance], which has not yet expired].

At the meeting, we discussed the standards/levels of **[performance/attendance]** expected of you and we confirmed to you that the following improvements are now expected of you: **[set out expected improvements including any timescale if relevant].** OR **[I enclose a copy of your Performance Improvement Plan which sets out your specific targets for improvement and the timescales in which they are to be achieved.]**

It has also been decided that **[set out details of any other action that will be taken, including additional training or supervision].**

This first written warning shall be placed **[permanently]** on your personnel file. However, it shall be disregarded for capability purposes after **[date, usually six months from date of warning]**, on the condition that the improvements set out above are achieved and maintained throughout that time.

Should you fail to maintain the necessary improvements during that time, you may be subject to a further capability meeting, which may lead to a final written warning [or, in the case of gross neglect of duties, to dismissal – **[this would be rarely used – in very extreme circumstances]**.

## Should you wish to appeal against this decision, please inform **[name]** in writing by **[date]**, stating your grounds of appeal in full.

Please do not hesitate to contact me if you have any questions.

Yours sincerely,

**[Insert Name]** on behalf of Holbeach & East Elloe Hospital Trust

*This is a precedent letter and for general guidance only. You should ensure that you complete all the missing information where indicated within the square brackets or delete as appropriate. If you are unsure about any matters referred to within this letter, it is recommended that you seek legal advice.*

**[Name and Address of Employee] [Date]**

Dear **[name of employee],**

# Final Written Warning

## Further to the capability meeting held on **[date]**, the decision was taken to issue you with a final written warning under the capability procedure (copy attached).

This decision was made on the basis that your **[performance/ attendance]** has been unsatisfactory. Furthermore, on **[insert date]** you were previously given a written warning about your **[performance/attendance]**, which has not yet expired.

The details of your unsatisfactory **[performance/attendance]** are as follows: **[set out details of unsatisfactory performance/attendance].**

[At the capability meeting we discussed the standards/levels of **[performance/attendance]** expected of you and as such, we have now set the following targets for improvement. **[set out expected improvements including any timescale if relevant].]**

# OR

## **[**At the meeting we discussed the standards/levels of **[performance/ attendance]** expected of you. Please find enclosed a copy of your Performance Improvement Plan which sets out your specific targets for improvement and the timescales in which they are to be achieved.**]**

It has also been decided that **[set out details of any other action that will be taken, including additional training or supervision].**

This final written warning shall be placed **[permanently]** on your personnel file but shall be disregarded for capability purposes after **[insert date, usually 12 months from date of warning]**, on the condition that the improvements set out above are achieved and maintained throughout that time.

## Should you fail to achieve and maintain the above improvements during that time, it is likely to result in a further capability meeting, which may lead to your dismissal.

If you wish to appeal against this decision please inform **[name]** in writing by **[date]**, stating your grounds of appeal in full. Please do not hesitate to contact me if you have any questions.

Yours sincerely,

**[Insert Name]** on behalf of Holbeach & East Elloe Hospital Trust

*This is a precedent letter and for general guidance only. You should ensure that you complete all the missing information where indicated within the square brackets or delete as appropriate. If you are unsure about any matters referred to within this letter, it is recommended that you seek legal advice.*

**[Name and Address of Employee] [Date]**

Dear **[name of employee],**

# Confirmation of Verbal Warning

Further to the capability meeting which took place on **[date]**, the decision was made to give you a verbal warning. This decision was made on the basis that your **[performance/attendance]** levels have been unsatisfactory for the following reasons: **[set out unsatisfactory performance/ attendance]**

At the meeting, we discussed the required improvements in respect of your **[performance/attendance]** and confirmed that the following improvements are now expected of you: **[details of expected improvements including timescale if relevant]**.

## Details of the verbal warning shall be permanently placed on your personnel file. However, the verbal warning shall be disregarded for capability purposes after **[date, usually six months from date of warning]**. Please note that this is on the condition that the improvements set out above are achieved and maintained throughout that time. Should you fail to achieve and maintain the necessary expected performance levels within that time, you may be subject to a further hearing which may lead to a written warning or a final written warning.

If you wish to appeal against this decision, please inform **[name]** in writing by **[date]**, stating your grounds of appeal in full. If you have any questions regarding this letter please contact **[name].**

Yours sincerely,

**[Insert Name]** on behalf of Holbeach & East Elloe Hospital Trust

*This is a precedent letter and for general guidance only. You should ensure that you complete all the missing information where indicated within the square brackets or delete as appropriate. If you are unsure about any matters referred to within this letter, it is recommended that you seek legal advice.*

**[Name and Address of Employee]**

**[Date]**

Dear **[name of employee],**

# Investigation Meeting

## I am writing to request your attendance at an investigatory meeting which has been scheduled for **[insert date]** at **[insert time]** in **[insert location].** Your attendance is required in accordance with capability procedure of Holbeach & East Elloe Hospital Trust.

There are currently concerns over your level of **[performance/attendance]**. **[Insert details of the shortfall and the expected standards.]**

## The purpose of the meeting is to investigate the reason behind your **[performance/absence]** and to ascertain whether Holbeach & East Elloe Hospital Trust can provide you with assistance to enable you to improve your **[performance/attendance]** to the expected standards.

Before Holbeach & East Elloe Hospital Trust makes a decision as to whether to instigate formal capability action, you will be given an opportunity to explain the reasons behind your **[performance/absence]**. We will also ask you to confirm whether there are any mitigating circumstances that you feel should be taken into account.

Please confirm that you are able to attend the meeting as scheduled **[and whether you wish to be accompanied by a colleague or trade union representative]** so that the necessary arrangements can be made. **[Please note: you are not required to provide an employee with the right to be accompanied at this meeting, but you may do so at your discretion]**

The meeting will be held by **[insert name, job title],** and **[insert name, job title]** will also be in attendance to act as a witness and note taker.

## Please do not hesitate to contact me if you have any questions.

Yours sincerely,

**[Insert Name]** on behalf of Holbeach & East Elloe Hospital Trust

*This is a precedent letter and for general guidance only. You should ensure that you complete all the missing information where indicated within the square brackets or delete as appropriate. If you are unsure about any matters referred to within this letter, it is recommended that you seek legal advice.*

**[Name and Address of Employee]**

**[Date]**

Dear **[name of employee],**

# Appeal Hearing

I am writing to request your attendance at an appeal hearing to be held in **[place]** on **[date]** at **[time]**.

At the hearing we will consider your appeal under the capability procedure (copy attached) in light of **[details of decision to be appealed]** as raised in your letter of **[date]**. The hearing will be **[a full rehearing OR limited to the grounds you raised in your letter of [insert details]]**.

It will be conducted by **[name, job title]** and the following people will also be in attendance: **[give names of all participants]**.

**[I enclose copies of relevant documentation for use at the appeal.]** If there are any **[further]** documents you wish to be considered at the hearing, please provide copies as soon as possible. If you do not have those documents, please provide details so that they can be obtained.

## Please confirm whether you will be able to attend the hearing. You are entitled to be accompanied at the hearing by another employee or a trade union representative. If you wish to bring a companion, please inform me of their name as soon as possible.

If, for any unavoidable reason you or your companion will be unavailable, **[or you wish to suggest an alternative time or place],** or if you have any specific needs at the hearing as a result of a disability, please let me as soon as possible so that arrangements can be made.

## Please do not hesitate to contact me if you have any questions.

Yours sincerely,

**[Insert Name]** on behalf of Holbeach & East Elloe Hospital Trust

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**[Name and Address of Employee] [Date]**

Dear **[name of employee],**

# Outcome of Appeal

Further to the appeal hearing held on **[Date]**, we have decided to uphold our original decision that **[set out details of the original decision]**.

# OR

Further to the appeal hearing held on **[Date]**, we have decided to change our original decision that **[set out details of the original decision]**. Our new decision is that **[details of the decision including action which the employer is intending to take to deal with the grievance]**.

## Please note that our decision is now final. There is no further right of appeal. If you have any further questions, please do not hesitate to contact me.

Yours sincerely,

**[Insert Name]** on behalf of Holbeach & East Elloe Hospital Trust

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**[Name and Address of Employee] [Date]**

Dear **[name of employee],**

# Capability Meeting

I am writing to request your attendance at a capability meeting scheduled for **[insert date]** at **[insert time]** in **[insert location],** in accordance with our capability procedure (copy attached).

As previously discussed, there are currently concerns over your level of **[performance/attendance]**. **[Insert details of any recent discussions held, the shortfall and the expected standards.]**

The purpose of the meeting is to discuss the reason(s) behind your **[performance/attendance issues]** and to ascertain whether Holbeach & East Elloe Hospital Trust can provide you with any assistance to enable you to improve your **[performance/attendance]**, to the expected standards.

## At the meeting, you will be given an opportunity to state your reason(s) for the issues with your **[performance/attendance].** We will also ask you to put forward any mitigating circumstances that you feel should be taken into account.

Please note that as a consequence of this meeting, a **[verbal warning OR first written warning OR final written warning]** may be issued to you together with a performance improvement plan. **[NB: where there is no separate capability policy also include:** Any such warning issued to you as a consequence of this meeting will be in respect of **[performance/attendance]** matters only and will not be considered in relation to general misconduct matters.**]**

## Please confirm that you are able to attend and whether you wish to be accompanied by a colleague or trade union official and inform us of their name ahead of the meeting so that the necessary arrangements can be made.

The meeting will be chaired by **[insert name, job title],** and **[insert name, job title]** will also be in attendance to act as a witness and note taker.

## Please do not hesitate to contact me if you have any questions.

Yours sincerely,

**[Insert Name]** on behalf of Holbeach & East Elloe Hospital Trust

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**[Name and Address of Employee] [Date]**

Dear **[name of employee], Capability Meeting**

I am writing to request your attendance at a capability meeting which has been scheduled for **[insert date]** at **[insert time]**

in **[insert location],** in accordance with our capability procedure (copy attached).

There are currently concerns over your level of **[performance/attendance]**. **[Insert details of any recent discussions held the shortfall and the expected standards.]**

You have previously been given warnings on **[dates]** about your **[performance/attendance]**. On **[date]**, you were issued with a final written warning, which is still active. Your final written warning informed you that, in the event your **[performance/attendance]** did not improve, you could face possible dismissal.

## At the meeting, you will be given an opportunity to explain the reasons behind your **[performance/absence]**. We will also ask you to confirm whether there are any mitigating circumstances that you feel should be taken into account

It is important that you are aware that the meeting may result in your dismissal.

Please confirm that you are able to attend and whether you wish to be accompanied by a colleague or trade union official and provide us with their name ahead of the meeting, so that the necessary arrangements can be made. If you fail to attend the meeting with good reason, Holbeach & East Elloe Hospital Trust may make a decision about your employment with the organisation, in your absence. It is therefore in your interests to attend the meeting to put forward your representations.

The meeting will be conducted by **[insert name, job title],** and **[insert name, job title]** will also be in attendance to act as a witness and note taker.

## Please do not hesitate to contact me if you have any questions.

Yours sincerely,

**[Insert Name]** on behalf of Holbeach & East Elloe Hospital Trust

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**[Name and Address of Employee]**

**[Date]**

Dear **[Name of employee],**

# Confirmation of Dismissal

Further to the capability meeting held on **[date]**, Holbeach & East Elloe Hospital Trust has made the decision to terminate your employment on grounds of you**r** *poor* **[performance/ attendance]**.

This decision has been made on the basis that **[set out each allegation of poor performance/ attendance and summarise findings in respect of each arising from the hearing]*.***

On **[insert dates]*,*** you were given warnings about your levels of **[performance/ attendance]**. Your final written warning dated **[date]**, which is still active, warned you that, unless your **[performance/ attendance]** improved, you would be likely to be dismissed.

## You have the right to appeal against your dismissal. If you wish to appeal against this decision, please submit your appeal in writing, setting out the grounds for appeal in full, to **[name]** by **[date]**. Please note that if you lodge an appeal, it will not delay the dismissal taking effect. However, if you are subsequently reinstated any lost pay will be reimbursed.

The following arrangements apply with immediate effect (but may be varied or revoked in the event of a successful appeal):

* **[You are entitled to notice of [one month] under your contract of employment and your final day of employment shall be [termination date].**

**OR**

* **Your dismissal is effective immediately and your final day of employment is therefore [termination date]. You shall receive [one month's] pay in lieu of notice in accordance with your contract of employment, subject to normal deductions of tax and National Insurance contributions.]**
* *You have* **[number]** *day’s outstanding holiday entitlement, for which you shall receive payment in lieu as part of your final payment of salary. This shall be subject to normal deductions of tax and National Insurance contributions*
* *You will be reimbursed for any genuine expense claims submitted by* **[date]** *with your final payment of salary*
* *You must return any property including* **[insert details such as mobile phone, laptop computer, confidential documents]** *belonging to us in good condition by* **[date]**
* *Your final payment of salary shall be made on* **[date]***, subject to normal deductions of tax and National Insurance contributions. We shall forward your P45 to you in due course*
* *You will remain bound by clauses* **[insert clause numbers]** *of your contract of employment in respect of*

# [insert details of confidentiality obligations and restrictive covenants] until [date] - If applicable

## Please do not hesitate to contact me if you have any further questions.

Yours sincerely,

**[Insert Name]** on behalf of Holbeach & East Elloe Hospital Trust

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