

**TRUST CORPORATE POLICY
EMPLOYEE PERFORMANCE (CAPABILITY) MANAGEMENT POLICY**

APPROVAL	Interim Partnership Board: 27 Mar 2012, JCC at Whipps Cross: 27 Mar 2012, HR Governance Group at Newham: 27 Mar 2012, Trust Policy Working Group Chair's Action Barts and The London NHS Trust: 27 Mar 2012	Date approved:	27 March 2012
EFFECTIVE FROM	27 March 2012		
DISTRIBUTION	All Wards and Departments via Trust Bulletin		
RELATED DOCUMENTS	Managing Absence as a Result of Sickness Disciplinary Policy Maintaining High Professional Standards policy Probation Policy NHS Constitution		
OWNER	(Designate) Director of HR and (Designate) CEO		
AUTHOR/FURTHER INFORMATION	Author: HR Policy Development Workforce Specialist		
EXTERNAL REFERENCES	NHSLA Risk Management Standard	-	
SUPERSEDED DOCUMENTS	Capability Procedure Trust Core Policy (Barts and the London NHS Trust), Capability Policy and Procedure (Newham University Hospital NHS Trust & Whipps Cross University Hospital Trust)		
REVIEW DUE	Three years from the date of approval shown or earlier subject to legislative or national policy changes or organisational need.		
KEYWORDS	Policy, capability, skills, knowledge, performance, poor performance, support, development		
INTRANET LOCATION(S)	http:// [file location]		
CONSULTATION	<i>Barts Health Working Groups</i>	Policy Development Working Group Merger Governance Lead	
	<i>Barts and the London NHS Trust (BLT)</i>	Policies Working Group	
	<i>Newham University Hospitals NHS Trust (NUHT)</i>	JCC	
	<i>Whipps Cross University Hospital (WXUH)</i>	JCC	
	<i>External Partners</i>	Capital Hospitals Ltd will need to be consulted in relation to BLT via the New Hospital Programme Control Team	
SCOPE	<i>For the groups listed below, failure to comply with this policy may result in investigation and management action; this may include formal action in line with the Trust's disciplinary or capability procedures for Trust employees; and other action in relation to organisations contracted to the Trust, which may result in the termination of a contract, assignment, placement, secondment or honorary arrangement.</i>		
	Application: All Trust staff employed on a contract of employment (except for medical and dental staff, who should be managed using the [Maintaining High Professional Standards] policy instead)		
	Exclusions: e.g. students, agency workers, Bank (only) staff, honorary contracts, all medical and dental staff and contractors working within the Trust		

TABLE OF CONTENTS

1	INTRODUCTION AND AIMS OF POLICY	3
2	DEFINITIONS	3
3	DUTIES AND RESPONSIBILITIES	4
4	CAPABILITY MANAGEMENT PROCESS	6
5	DISMISSAL	7
6	RIGHT OF APPEAL	7
7	IMPACT AND EQUALITIES ASSESSMENTS	7
8	MONITORING THE EFFECTIVENESS OF THIS POLICY	8
	APPENDIX 1: GLOSSARY OF TERMS	9
	APPENDIX 2: OTHER LINKED TRUST POLICIES AND GUIDELINES	10
	APPENDIX 3: EXTRA SOURCES OF INFORMATION AND SUPPORT	11
	APPENDIX 4: SOURCES AND DOCUMENTS ARE AVAILABLE TO SUPPORT SETTING STANDARDS	12
	APPENDIX 5: REDEPLOYMENT FLOW CHART	13
	APPENDIX 6: PROCESS FOR CARRYING OUT A FINAL STAGE CAPABILITY MEETING	14

MANAGING EMPLOYEE PERFORMANCE POLICY

1 INTRODUCTION AND AIMS OF POLICY

- 1.1 Barts Health (“The Trust”) is committed to supporting the development of skills and knowledge for all of its employees which in turn supports the delivery and maintenance of an efficient and consistently high standard of care to its patients and service users.
- 1.2 The Trust commits to provide all employees with clear roles and responsibilities and rewarding jobs for teams and individuals that make a difference to patients, their families and carers and communities (s.3a NHS Constitution).
- 1.3 The Trust encourages open and honest conversations between managers and their employees so that both can work together to ensure the right support is in place to meet the aims of this policy (see 1.4) and where possible remedy any gaps in knowledge or skills required for the employee’s post in a proactive and informal way.
- 1.4 Gaps in employee capability, which result in poor performance, have a disruptive effect on service delivery and therefore this policy sets out a consistent and proactive approach to the management of gaps in capability.
- 1.5 The aim of this policy is to ensure that:
 - Gaps in knowledge or skills that effect an employee’s performance are recognised early and proactive steps taken to close these gaps
 - The management of these issues is fair, consistent and proactive and without discrimination in relation to any of the [\[protected characteristics\]](#)
 - The management of these issues takes the individual’s circumstances and needs into consideration
 - Early intervention is supported
 - Expectations about employee performance are clear to all
 - It is carried out in line with the [\[Equality Act 2010\]](#)
 - Ensures efficient and high quality care for our patients
 - Is monitored to ensure effectiveness of implementation
- 1.6 This policy contains the process and principles for managing capability issues only. For further details please read the supporting [Management Guide].

2 DEFINITIONS

2.1 The following definitions are used in this policy:

Capability issue	Where the employee has difficulties in carrying out their role to the required standards or carrying out a certain element of their role because a lack of knowledge or skills.
Exclusions	Incapability due to ill health – these issues should be managed using the Managing Sickness Absence Policy. Incapability due to alcohol/substance abuse/misuse – these issues should be managed using the Alcohol/Substance Abuse/Misuse policy (see [Appendix 2])

	Conduct issues – where an employee knows what they should do and how to do it but (knowingly) chooses not to, negligence or lack of effort. These issues should be managed using the Disciplinary Policy.
SMARTER Objectives	<p>In order to be constructive, each objective should meet the following criteria:</p> <p><u>Specific</u> – what is the issue/action that the role requires?</p> <p><u>Measurable</u> – how will you measure that the objective has been met or not?</p> <p><u>Achievable</u> – the goal is not extreme but may stretch an employee in order to achieve it.</p> <p><u>Relevant</u> – the objective should be relevant to the employee’s role.</p> <p><u>Time-Bound</u> – what is the deadline for the objective to be achieved? (NB. This should take into consideration the time to acquire any new skills/knowledge through training/development and the application of these).</p> <p><u>Evaluate</u> – progress made and suitability of the objective</p> <p><u>Revisit</u> – when monitoring period has ended, revisit the contents of the objectives. Once met, ensure performance is sustained.</p>
Representative	<p>A representative of a recognised Trade Union, an accredited Staffside representative or an Employee of the Trust.</p> <p>Employees are not permitted to bring legal representation to internal formal or informal meetings.</p>

2.2 For a full list of terms, please see the [\[Glossary\]](#) in [\[Appendix 1\]](#)

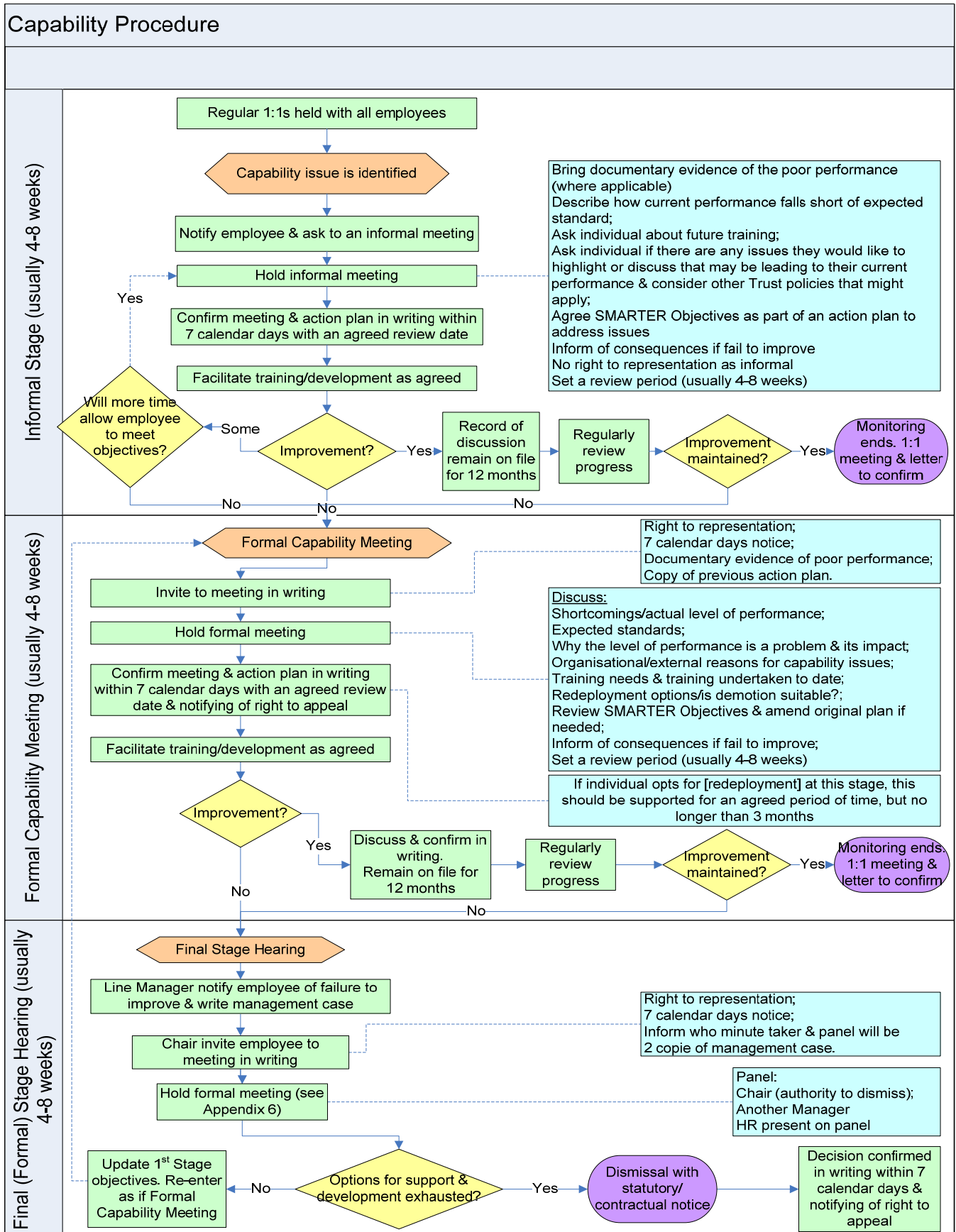
3 DUTIES AND RESPONSIBILITIES

Employee	<ul style="list-style-type: none"> • Engage in the annual appraisal process and scheduled 1:1 meetings with their line manager • Acknowledge where they are struggling with work and take proactive steps to address this, which may include discussing with their manager • Considering what help or support they need to develop and improve their knowledge and skills so that they are able to meet the required standards in their role • Identify any work or organisational factors that may be affective their performance and ability and discuss these with their manager • Think about their training needs and whether there are any particular courses (internal or external) that may help them and arrange attendance with their line manager • Take responsibility for undertaking and engaging with training or development that is relevant or necessary for their role • Talk to their manager about any adjustments or support they may need in order to carry out their role to the required standards and in line with their contract of employment in a timely manner • Utilise [support] that is available where they recognise they are struggling • Exercise right to [representation] at formal meetings/hearings if they wish • Where a representative is unavailable on a formal meeting date, the employee will provide their manager with an alternative within 7 calendar days of the original date or an extension to this by mutual agreement to take place within a reasonable timeframe
Manager	<ul style="list-style-type: none"> • Carry out annual appraisals and scheduled 1:1 meetings with employees to support their development

	<ul style="list-style-type: none"> • Ensure employees are aware of and understand the policy and their responsibilities (this may include helping them to get a copy in an alternative language, in Braille/large print or reading it to them) • Ensure that the employee has an up-to-date job description which reflects their current role and expected standards and a personal development plan. • Be sensitive to individual employee needs and discreet and consistent in their approach to [reasonable adjustments] • Action reasonable adjustments where needed and within 28 calendar days (except in exceptional circumstances) • Seek Occupational Health advice about support or [reasonable adjustments] where needed and make a referral where employee stress or underlying condition is a concern at any point in the process • Consider whether the application of [other Trust policies] is appropriate • Signpost employees to other [support] that is available • Take a proactive and supportive approach to capability management including exploring any work-/workplace-related causes for the performance issues at an early stage and addressing these where possible • Ensure that short-falls in performance are brought to the attention of the employee as soon as they have been identified in scheduled 1:1 meetings • Facilitate attendance at training or development that will help employee capability and performance • Set [SMARTER objectives] to support development, including identifying training or developmental support needed and timescales for improvement • Ensure they are trained in the management of capability and that members of their team who also manage staff are trained • Notify HR of any capability issues that are being managed through a formal process • Inform employees of their right to representation (Trade Union/Staffside representatives or an employee of the Trust) at all formal capability meetings, investigation meetings and any suspension review meetings
Occupational Health (OH)	<ul style="list-style-type: none"> • Provide advice to managers about how to support employees who are under stress as a result of going through the capability process or who have a condition which affects their capability • Signpost to other support available
Human Resources	<ul style="list-style-type: none"> • Advise managers about how to use this policy • Deliver management training • Attend final stage meetings as a panel member.
Staffside/ Trade Union representative	<ul style="list-style-type: none"> • Represent members at formal meetings where requested by employee

4 CAPABILITY MANAGEMENT PROCESS

4.1 The process for managing issues with employee capability is set out in the flowchart below:



COR/POL/010/2012-001

- 4.2 This policy should normally only be applied where there are no organisational reasons for the capability problems i.e. newly introduced systems or procedures, significant changes to the employee's job description or newly appointed members of staff. Where this is the case, support and where necessary training should be given to allow the employee to adjust to the changes.
- 4.3 Where the capability issue causes a significant risk to the Trust, and following advice from HR, it may be appropriate to skip stages of this process. This will normally be where the individual is a senior employee (i.e. Band 8A or above).
- 4.4 Employees who are redeployed into a lower banded post as a result of this policy will not be entitled to pay protection.

5 DISMISSAL

5.1 Dismissal will only be appropriate where the following have been explored and exhausted:

- Impact on the service and colleagues
- Redeployment options
- Occupational Health advice (where appropriate)
- HR Advice
- Individual and representative mitigation
- Feasibility and progress of further support

5.2 Dismissals must be confirmed in writing and sent by Recorded Delivery.

6 RIGHT OF APPEAL

6.1 To appeal against the outcome of the Formal Capability Meeting, the employee should write to the manager of the person chairing the hearing within 14 calendar days of the letter confirming the outcome of the meeting and confirm the reason for making the appeal.

6.2 All employees who are dismissed for incapability as a result of the application of this policy have a right of appeal. This should be made in writing to the Director of HR within 14 calendar days of the letter confirming the dismissal and confirm the reason for making the appeal.

6.3 Reasons for appeal should be based on the following areas:

- Unfairness by comparison to how the policy has been applied to others or bias of the panel;
- Incorrect decision or too severe penalty based on the evidence provided to the panel;
- Did not follow the procedure detailed in the policy;
- New evidence has come to light since the dismissal that would have affected the decision.

7 IMPACT AND EQUALITIES ASSESSMENTS

7.1 An Equality Analysis has been carried out for this policy and has concluded that there are no detrimental effects and some positive effects of this policy. The analysis has been included here:



12 03 12 Capability
EqAnalysis.doc

8 MONITORING THE EFFECTIVENESS OF THIS POLICY

Issue being monitored	Monitoring method	Responsibility	Frequency	Reviewed and followed up by
Overall policy compliance	Review of work of Corporate Policy Review Group and related policy bodies	Chair of Corporate Policy Review Group	Annual	Trust Management Executive
Compliance with duties within Equality Act	Reporting of employee demographics who are going through formal management and their outcomes	Human Resources	Bi-Annual (every 6 months)	CAG Partnership Board & Partnership Board
Capability levels	Report on number of cases and areas of occurrence	Human Resources	Bi-Annual (every 6 months)	CAG Partnership Board & Partnership Board

END

APPENDIX 1: GLOSSARY OF TERMS

<p>Equality Act 2010</p>	<p>Replaces previous discrimination law (e.g. Disability Discrimination Act 1995) and includes the following:</p> <ul style="list-style-type: none"> • Extends the groups protected (protected characteristics) • Removal of health questionnaires • Bans discrimination by association • Bans direct and indirect discrimination • Bans harassment, victimisation and failure to make reasonable adjustments • Replaces all previous discrimination law • Introduces harassment by third parties • Also relates to provision of services to patients, not just employment
<p>Protected Characteristics (part of the Equality Act 2010)</p>	<ul style="list-style-type: none"> • Age • Disability • Gender Reassignment • Marriage and Civil Partnership • Race • Religion or Belief • Sex • Sexual Orientation • (Pregnancy and Maternity)
<p>Reasonable Adjustments (part of the Equality Act 2010)</p>	<p>An 'adjustment' is a change. This can be a physical change or a change in the way something is done. This might include exploring flexible working options (e.g. annualised hours) or specific equipment to enable to employee to do their job without causing harm to themselves.</p> <p>'Reasonable' will depend on a number of circumstances but the tests include:</p> <ul style="list-style-type: none"> • How much will a reasonable adjustment reduce the disadvantage? • The practicality of the change. • The financial & other costs & the extent of any disruption caused. • The extent of the Trust's financial & other resources. <p>Although the Trust must consider reasonable adjustments for employees who have a disability or are pregnant, it is best practice for them to be considered for all employees to facilitate attendance & implemented where service delivery allows.</p>
<p>Disability (Equality Act 2010)</p>	<p>A physical or mental impairment (disadvantage) & this has a substantial (more than minor/trivial effect) & long-term (lasting/likely to last more than 12 months) adverse effect on his/her ability to carry out normal day-to-day activities.</p> <p>A person with Cancer, HIV infection or Multiple Sclerosis is defined as a person with a disability & protected by the Act from the point of diagnosis.</p>
<p>Redeployment</p>	<p>The transferring or recruitment of staff at risk into a suitable alternative post. See the Management of Change policy for further details.</p>
<p>Flowchart Colour Key</p>	<p>In order to assist reading the flowcharts, please note that specific information has been colour coded.</p> <p>Orange hexagons = Start of process/specific milestones Green rectangles = the process to be followed Yellow diamonds = a decision to indicate which part of the process to follow Blue rectangles = provide further information (e.g. topics to be discussed, required information in written correspondence etc) Purple oval = end of process Orange rectangles = possible outcomes</p>

APPENDIX 2: OTHER LINKED TRUST POLICIES AND GUIDELINES

	Title differences where policies have not been amalgamated		
	Barts and The London (& CHS)	Newham University	Whipps Cross University
Probation Periods	Probationary Periods Policy (CHS Equivalent)		Probationary Policy Band 1 – 7 Probationary Periods – Bands 8a 8b 8c 8d & 9
Stress Management	Managing Work Related Stress Policy and Guidance (CHS Equivalent)	Policy for the Prevention and Management of Stress at Work	Stress Management Policy
Alcohol & Substance Misuse/Abuse Policy	Alcohol and Substance Abuse at Work Policy (CHS Equivalent)		Stress Management Policy
Disciplinary Policy	n/a	n/a	n/a

APPENDIX 3: EXTRA SOURCES OF INFORMATION AND SUPPORT

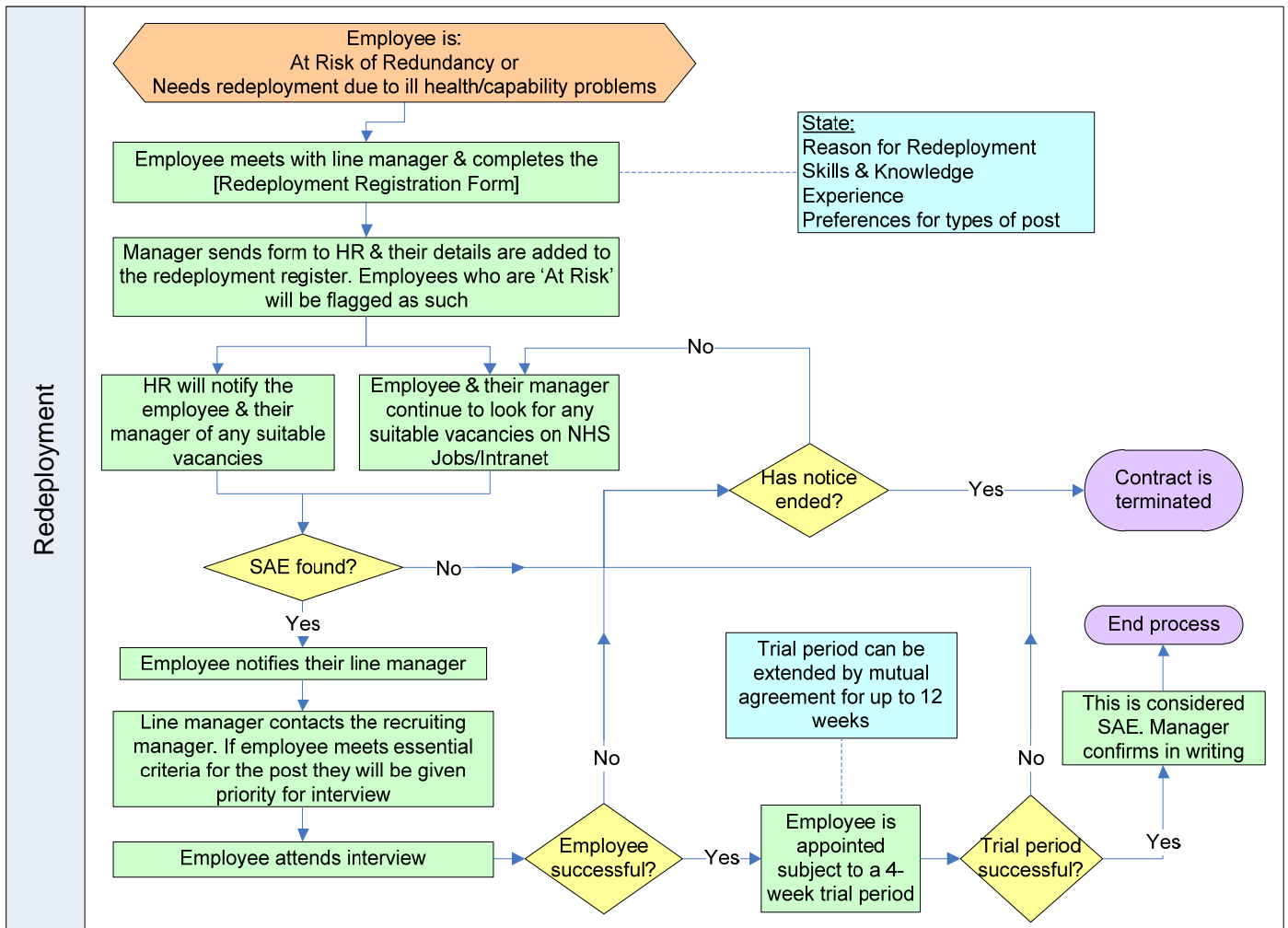
<p>Access to Work</p>	<p>A scheme run by the Government to provide free advice & grants to employees & employers to facilitate an individual to attend work and meet the required standards of their role. This might include funding for equipment, software or transport to & from work.</p> <p>Further info: http://www.direct.gov.uk/en/DisabledPeople/Emplimentsupport/WorkSchemesAndProgrammes/DG_4000347</p>
<p>Employee Assistant Programme <i>provided by CiC</i></p>	<p>A free service to all employees provided 24 hours 7 days a week which includes advice on debt, legal issues, caring and childcare and offers face to face counselling services.</p> <p>Tel. 0800 085 1376</p> <p>Or access them via www.well-online.co.uk</p>
<p>Management Advice Line <i>provided by CiC</i></p>	<p>A dedicated helpline for managers, offering guidance and support on dealing with the interpersonal aspects of their role as a line manager, such as how best to manage a difficult situation or sensitive subject with an employee.</p> <p>If you are a Manager please call 0800 085 3805 to access the Managerial Advice Line.</p> <p>Or access them via www.well-online.co.uk</p>

APPENDIX 4: SOURCES AND DOCUMENTS ARE AVAILABLE TO SUPPORT SETTING STANDARDS

- Job description and person specification
- Trust Corporate plan and vision and values
- Standard Operating Procedures
- Professional codes of conduct (e.g. NMC)
- Industry standards (e.g. Department of Health framework)
- Departmental examples of best practice
- Professional conduct & 'norms'
- Department, team and individual objectives

Please note this list is not exhaustive and other sources may be used.

APPENDIX 5: REDEPLOYMENT FLOW CHART



APPENDIX 6: PROCESS FOR CARRYING OUT A FINAL STAGE CAPABILITY MEETING

