

Capability Procedure

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Capability Procedure

1 Introduction

- 1.1 The Tavistock and Portman NHS Foundation Trust (the Trust) is committed to providing the highest quality service and care. In order to do this, it is dependent on its staff to perform effectively at all times.
- 1.2 Careful recruitment and an appropriate level of induction and training will help to minimise the risk of poor performance. Managers are integral to ensuring that this happens.
- 1.3 There will be occasions when staff do not meet the standards required of them and it will be the responsibility of their manager to deal with their case appropriately.

2 Purpose

- 2.1 This procedure is designed to promote fairness and consistency in the treatment of all staff and to encourage high standards of performance at all times.
- 2.2 It provides guidelines for managers to manage poor performance where the required standard has not been met because of a lack of knowledge, experience, skill or aptitude.
- 2.3 Distinctions should be made between poor performance resulting from incapability due to:
 - Ill health which would be managed under the Sickness Absence Procedure.
 - A wilful refusal to work satisfactorily which would be managed under the Disciplinary Procedure.
- 2.4 Action taken under this procedure must be in accordance with the Trust's commitment to equality and the requirements of the Equal Opportunities Policy.

3 Scope

- 3.1 This procedure applies to all staff employed by the Trust with the exception of medical staff whose procedure is detailed in Maintaining High Professional Standards in the Modern NHS.

4 Definitions

4.1 Capability

Knowledge, experience, skill or aptitude to perform the duties of a role.

5 Duties and responsibilities

- 5.1 **Line Managers** are expected to provide an environment in which employees can achieve the standards required of them. This includes ensuring that standards are explicit, realistic and measurable in terms of what has to be achieved and the required time for achievement.
- 5.2 Appraisal plays a key part in this, and one of the purposes of appraisal is to ensure standards are clear and there is an agreed plan for the employee to meet them through robust objective setting and personal development planning.
- 5.3 It is important that managers demonstrate to employees examples of poor work performance and where they are failing to meet the required standard.
- 5.4 **Employees** have the responsibility to achieve the required standard as outlined by their manager and to cooperate with their line manager in complying with agreed action plans.
- 5.5 **HR advisers** will support managers to apply this procedure by providing advice, guidance, training and coaching.
- 5.6 Where the formal stages of this procedure are commenced then an HR adviser will be present at meetings to act in an advisory capacity and take notes.

6 Procedures

6.1 Managing capability concerns informally

- 6.1.1 When concerns about an employee's performance arise, the manager must establish what these concerns are. Examples of poor performance may include failings in terms of accuracy, deadlines or poor results, or it may concern the employee's attitude or interpersonal skills.
- 6.1.2 The manager must consider whether there could be any contributory organisational or external factors. This may include a lack of proper training and development, a sudden and considerable change in duties, insufficient understanding, lack of guidance, inadequate working conditions or issues outside of employment. A review of the job description and duties should also be undertaken in the first instance.
- 6.1.3 Having given consideration to any contributing factors, managers are required to meet with the employee at the earliest opportunity, setting out the required standards and providing examples of where they have failed to meet them. The manager is responsible for ensuring that the employee understands the areas in which they are failing and both parties should approach the meeting in an open and cooperative manner.
- 6.1.4 Although it is not usually expected that a representative from Human Resources or a colleague or trade union representative be invited at this stage both managers and staff are encouraged to seek advice if this is felt to be appropriate.
- 6.1.5 The manager is responsible for ensuring that the meeting is conducted in a manner in which the employee is able to describe and recognise the performance problems and identify any contributing factors.
- 6.1.6 Through questioning and discussion the manager will need to establish the reasons behind the poor performance and identify possible suggestions for improvement. This may include further training, closer supervision, clearer instruction and practical help with the work environment. Consideration may also be given to appointing a mentor where performance has deteriorated due to a lack of clear career direction.
- 6.1.7 An action plan should be drawn up as a consequence of the meeting and in conjunction with the employee. This is to include:
- Clear guidance on the required standard to be achieved;
 - Any training or support necessary to help the employee to achieve the standards;
 - A realistic timescale for improvement, and
 - A plan for regular review.
- 6.1.8 The manager should meet with the employee at least fortnightly to establish progress, provide feedback and identify any further support. There should be a final review meeting at the end of the agreed timescale, which should

take place between one and three months from the first meeting, depending on the manager's judgement as to how much time is reasonable to improve.

6.1.9 If at the end of the review period it is established that performance has improved to the required standard, the employee should be informed that there will be no further action to be taken under this procedure, although their performance will continue to be monitored within the Trust's Appraisal System.

6.1.10 If the employee's performance consistently fails to meet the required standard, the manager should progress to the formal stages of the procedure.

6.1.11 Where performance has fluctuated between acceptable and an unsatisfactory standard, and the manager believes that a further review period is likely to help, the manager may decide to establish a new timetable for review.

6.1.12 If an employee completes a review period successfully then the manager will confirm this in writing. The employee will be informed in the letter that if their performance becomes reason for concern again within six months then they will re-enter the process in the formal stage of the procedure.

6.2 Formal capability management

6.2.1 If performance fails to meet the required standards after the informal stage, the employee will be requested to attend a formal meeting with the immediate line manager. They will be given at least 5 working days' notice.

6.2.2 At this stage a member of the Human Resources Department will attend the meeting and the member of staff has the right of representation from a recognised trade union or a colleague in support.

6.2.3 The formal stage can be invoked as a first stage if performance concerns are serious enough to warrant it.

6.2.4 The line manager will be required to:

- Provide a summary of action taken under the informal stage of the procedure and outline where the employee is continuing to fail to meet the required standard;
- Explore the reason provided by the employee for the poor performance and identify any further benefit to be gained through training or retraining, and
- Consider any further mitigating factors, which would have hindered the employee's progress in achieving the required standard.

6.2.5 The action plan will be revised as necessary, fortnightly review meetings should be arranged, and a final review meeting should be arranged, again between one and three months, hence, at the manager's discretion.

6.2.6 The employee will be advised that a failure to improve their performance in line with the required standards may lead to further action under the final stage of the procedure.

6.2.7 The outcome of the meeting will be confirmed in writing by the manager within five working days.

6.2.8 If an employee completes a review period successfully then the manager will confirm this in writing. The employee will be informed in the letter that if their performance becomes reason for concern again within twelve months then they will re-enter the process at the capability hearing stage.

6.3 Capability hearing

6.3.1 A capability hearing will be conducted by a manager with the authority to dismiss, since one outcome of this meeting could be dismissal on grounds of capability. HR will also be present. The member of staff has the right of representation from a recognised trade union or a colleague in support.

6.3.2 The line manager will attend to provide a summary of action taken during the earlier stages of the procedure.

6.3.3 The employee will be given the opportunity to raise any mitigating factors that they feel are relevant to their performance and why they have failed to achieve the required standards.

6.3.4 The manager will be responsible for determining what further action is necessary. Options will include:

- a further action plan and monitoring period
- downgrading (without protection)
- redeployment
- dismissal with contractual notice

6.3.5 A new job description and person specification for redeployment or downgrading will be given in advance to the employee. In cases of performance, this will continue to be monitored and failure to meet the required standard will result in continuation of action under the formal stages of the capability procedure.

6.3.6 If redeployment or downgrading to a lower post is refused, dismissal will be the only other outcome on the grounds of incapability.

6.3.7 The outcome of the meeting will be confirmed in writing within five working days, confirming any right of appeal.

6.4 Appeal

6.4.1 The employee will have the right to appeal against action taken as a result of the capability hearing. The process for raising an appeal is detailed in the Trust's HR Appeals Procedure.

6.5 Suspension

6.5.1 In the unusual circumstances where a member of staff's poor performance may compromise patient's safety it may be necessary for line managers to suspend the member of staff on full pay until the matter is resolved.

7 Training Requirements

The human resources team will provide classroom based training at varying intervals for new and existing managers in how to apply the procedure and the relevant legal considerations. Training will be delivered in partnership with our Trade Union stewards.

Managers may access one to one coaching through their designated HR adviser.

When applying this procedure managers are encourage to seek guidance from an HR adviser.

8 Process for monitoring compliance with this Procedure

The Trust will use a variety of methods to monitor compliance with the processes in this document, including the following:

- Quarterly HR reports
- Annual HR statistics report
- Workforce Race Equality Standard

In addition to the monitoring arrangements described above the Trust may undertake additional monitoring of this procedure as a response to the identification of any gaps, or as a result of the identification of risks arising from the procedure prompted by incident review, external reviews or other sources of information and advice.

This monitoring may include commissioned audits and reviews, detailed data analysis or another focussed study, for example. Results of this monitoring will be reported to the committee and/or individual responsible for the review of the process and/or the risks identified.

Monitoring at any point may trigger a policy review if there is evidence that the policy is unable to meet its stated objectives.

9 References

None

10 Associated documents¹

¹ For the current version of Trust procedures, please refer to the intranet.

Disciplinary Procedure
HR Appeals Procedure
Sickness Absence Procedure

Appendix A : Equality Analysis

Completed by	Craig de Sousa
Position	Director of Human Resources
Date	24 February 2017

The following questions determine whether analysis is needed	Yes	No
Is it likely to affect people with particular protected characteristics differently?	X	
Is it a major policy, significantly affecting how Trust services are delivered?	X	
Will the policy have a significant effect on how partner organisations operate in terms of equality?		X
Does the policy relate to functions that have been identified through engagement as being important to people with particular protected characteristics?		X
Does the policy relate to an area with known inequalities?	X	
Does the policy relate to any equality objectives that have been set by the Trust?	X	
Other?		X

If the answer to *all* of these questions was no, then the assessment is complete.

If the answer to *any* of the questions was yes, then undertake the following analysis:

	Yes	No	Comment
Do policy outcomes and service take-up differ between people with different protected characteristics?	X		There is evidence across London that under-represented groups more often are involved in formal HR procedures. This document sets a consistent approach for dealing with performance concerns.
What are the key findings of any engagement you have undertaken?		X	

If there is a greater effect on one group, is that consistent with the policy aims?		X	
If the policy has negative effects on people sharing particular characteristics, what steps can be taken to mitigate these effects?	X		Data will be reported quarterly to the director of HR and annually through the WRES.
Will the policy deliver practical benefits for certain groups?	X		Consistency in approach
Does the policy miss opportunities to advance equality of opportunity and foster good relations?		X	
Do other policies need to change to enable this policy to be effective?		X	
Additional comments			

If one or more answers are yes, then the policy may be unlawful under the Equality Act 2010 –seek advice from Human Resources.