

Capability Procedure

Effective: December 2011

Review: October 2014

1. Introduction

- 1.1 The efficiency and effectiveness by which the Trust discharges its responsibilities depends to a large extent on the ability of all its employees to achieve and maintain high standards of personal job performance. The aim of this policy and procedure is to ensure consistent and fair treatment for all and to assist any employee who is not achieving a satisfactory level of performance in the post to which they were appointed. It is intended to provide managers and employees with an opportunity to improve their contribution and performance in the workplace.
- 1.2 In order to achieve the necessary standards, employees must be aware of what is expected of them, and managers have a personal responsibility to ensure that this is communicated. Open communication is encouraged to ensure understanding of expectations and during employment, proper training, supervision and encouragement are essential and will require the manager and/or immediate supervisor and employee regularly discussing job performance. Staff appraisal is also an essential part of this process.
- 1.3 Employees have a personal responsibility to ensure that they understand what standards are expected of them and they commit sufficient personal effort and self determination to achieve and maintain them. The consequence of unacceptable standards may be very serious to the Trust, therefore, depending on the circumstances of the case it may result in disciplinary action.
- 1.4 If it is considered that failure to achieve the required standard of job performance is because of the carelessness, lack of effort or negligence by the employee then the matter will be dealt with under the Disciplinary Procedure as misconduct.
- 1.5 Where there are concerns about employee wellbeing the policy should be read in conjunction with the Employee Well Being Policy
- 1.6 Concerns about capability should not be confused with disability. If an employee becomes disabled during their employment it is important to ensure that every effort will be made to retain them in their original position or redeploy them to a suitable alternative post in line with the requirements of the Equality Act 2010.
- 1.7 In exceptional circumstances, it may be necessary to temporarily redeploy an employee immediately from their normal job in order to address any shortcomings.

2. Scope

2.1 The procedure applies to all employees with the exception of the following:

- a) any matters concerning the competence of medical and dental staff, for which a separate procedure has been agreed
- b) those employees subject to a probationary period.

2.2 The procedure is intended as a framework and may need to be adapted to suit the needs of each situation. It may not be appropriate to follow each stage of the steps in turn or in the timeframes proposed. The Trust will take individual circumstances into account in determining the appropriate stage or manner of dealing with concerns relating to job performance.

3. Key principles and definitions

Capability refers to the skills, aptitude, and health, impacting on the quality of work of an employee. It may also include attainment or maintenance of 'qualifications', i.e. the academic, technical or professional qualification relevant to the position held by the employee.

Concerns about an employee's capability may be evident from a variety of information or observations including:

- a) lack of proficiency or poor overall organization in the job
- b) lack of aptitude, skill or experience
- c) personal difficulties
- d) poor attendance at work
- e) re-organisation or redefinition of the role
- f) targets or deadlines not being met
- g) difficulty in maintaining good working relationships with colleagues
- h) lack of understanding by the employee related to the duties, priorities or goals

Where capability is related to ill health, proper consultation should take place with the employee to seek their opinion about their condition, and advice should be sought from Occupational Health. In such circumstances, redeployment is an issue which may need to be discussed with the employee, and whilst there is no obligation on the Trust to create a job where none exists, efforts should be made to identify if there are suitable alternative roles which can be considered.

4. Counselling

As soon as a concern is identified by either a line manager or an employee, the issue should be discussed between the employee and nominated or designated manager/supervisor. In these circumstances, both parties should have every opportunity to resolve problems or issues through discussion, make any comments and

suggestions for improvement, and record the action plan without the need for use of a formal procedure. However, if this does not resolve the problem or the matter is more serious, there may be a need to use the formal procedure.

5. Manager's Responsibility

- 5.1 It is the manager's responsibility to agree with the employee the standards of performance required from the employee. The standards should be realistic and defined in respect of quality, quantity, time and cost. This can be achieved through issuing a job description, which sets out the scope, purpose and main tasks of the job, and through the preparation of any further particulars which might affect the performance in a job, e.g. details of working environment etc.
- 5.2 The manager is responsible for ensuring an induction programme is provided to each new employee or an employee promoted to a new post
- 5.3 During employment the job performance of the employee should be continually assessed. This includes a formal review through the appraisal process.
- 5.4 If required, advice may be obtained from the Human Resources Department.

6. Stage 1

- 6.1 As soon as a concern is identified, or if counselling has not resulted in the improvement required, the issue should be discussed between the employee and the nominated or designated manager. In these circumstances the nominated or designated manager will invite the employee to a meeting where both parties will have the opportunity to discuss the issue, make suggestions for improvement and record any agreed improvement plan. A member of the HR Department may also be present.

The meeting should be constructive with the purpose of discussing job performance, stating factual examples of unsatisfactory performance, restating the standards required in terms of duties, outputs and targets, and confirming the need for improvement, as well as enabling the employee the opportunity to express their opinion. The nominated or designated manager may also need to determine whether there are external factors which may be contributing to the poor performance. Where the facts are in dispute, it will be concluded on the balance of probability that the employee has a work performance issue.

- 6.2 The employee should be notified in writing, giving at least five working days notice, of the time, date and place of the meeting, the reason for it and of their right to be accompanied by a representative of a trade union or workplace colleague at any formal stage of the capability procedure. If the representative is unavailable on the date which has been set, or if there is some other good or urgent cause, the employee may delay the date of the meeting by up to five

working days of the original date.

- 6.3 As a result of the meeting, an action plan should be agreed to include some or all of the following;
- a) what further support will be provided, for example, to meet any training needs to facilitate improvement
 - b) monitoring, review and variance of the workload as required
 - c) method of reviewing and monitoring standards of performance in respect of the agreed objectives and requirements of the job
 - d) review and monitoring of the supervision levels
 - e) confirmation that in the event of insufficient improvement, formal disciplinary action may be taken.

The action plan should be agreed and be given in writing to the employee, and should contain a summary of the improvement(s) required, the target(s) and timescale(s) over which they will be expected.

- 6.4 Monitoring and review of any improvement action plan is essential. This should take place over a reasonable period of time of *between* one and three months, depending on the circumstances and need to improve performance. It is anticipated that in the vast majority of cases no further action, other than normal follow-up, will be necessary.
- 6.5 However, as a result of this meeting, the employee may be given a verbal or first written warning for poor job performance, and informed that failure to improve to the required standard may lead to further disciplinary action. Where possible the decision will be given in person. This will be confirmed in writing by the nominated or designated manager concerned within five working days and a copy placed on the employee's personal file within the HR Department. In this situation, the employee will be informed of their right to appeal against any formal warning (see section 8 of the Trust's Disciplinary Policy and Procedure).

7. Stage 2

- 7.1 Where the levels of improvement set out in 6.3 are not met, a further meeting should take place to discuss performance. The employee should be notified, in writing, giving at least five working days notice of the time, date and place of the meeting, the reason for the meeting and the right to be accompanied by a trade union representative or workplace colleague. A member of the Human Resources Department may also be present. The correspondence will include copies of all previous documentation including:
- a) notes of the previous meeting
 - b) letter of outcome of the previous meeting
 - c) the action plan

- 7.2 Where the chosen companion is unable to attend the meeting on the date proposed, then an alternative date and time may be offered as long as it is reasonable and falls within five working days of the originally proposed date.
- 7.3 If the employee fails, without good reason, to attend a meeting under the capability procedure, the meeting may take place and a decision made in their absence.
- 7.4 The purpose of the meeting will be to:
- a) enable the nominated or designated manager to remind the employee of the previous meeting and the required improvements
 - b) enable the nominated or designated manager to explain where he/she sees the shortfall in standards, and produce evidence of the inadequacies in sufficient detail for both the employee and his/her representative to appreciate the concerns of the nominated or designated manager.
 - c) provide the employee with the opportunity to explain why the shortcomings have not been addressed;
 - d) seek to review and reconfirm an action plan and the time scale (the reasonable period/time scale would depend upon the impact on the operation of the Trust of an employee not achieving an acceptable standard) for achieving acceptable standards and any monitoring arrangements prior to formal review.
- 7.5 Following the meeting the nominated or designated manager should confirm in writing the standards expected, the identified inadequacies, the suggested solution(s), an agreed time scale for monitoring and assessing achievement of between one and three months and the review arrangements. If as a result of the meeting the nominated or designated manager is not satisfied with the employee's response to the concerns about their performance, they may issue a first written or final written warning for job performance within five working days of the meeting. Where possible the decision will be given in person. This will be confirmed in writing by the nominated or designated manager concerned within five working days of the decision being given and a copy placed on the employee's personal file within the HR Department. The employee will have the right to appeal against this formal action (see section 8 of the Trust's Disciplinary Policy and Procedure)

8. Stage 3

- 8.1 Failure to improve performance following stage 2 should be followed by a further meeting. The employee should be notified in writing giving at least five working

days notice of the time, date and place of the meeting and the right to be accompanied by a trade union representative or workplace colleague. The correspondence will include copies of all previous documentation including:

- a) notes of the previous meeting
- b) letter of outcome of the previous meeting
- c) the current action plan

The written confirmation should also include reference to the fact that redeployment or termination of employment may be considered due to lack of satisfactory improvement.

- 8.2 At the meeting the employee should be given the opportunity to explain their performance. The nominated or designated manager should also discuss the possibility of voluntary redeployment. If agreed, the employee will be placed on the redeployment register for a period of eight weeks from the date of the meeting.
- 8.3 Redeployment does not have to be on the same band or salary. Pay and protection of conditions of service will not apply.

If during this period redeployment has not been possible or an offer made but is not accepted, a final meeting should be arranged with the employee. This meeting should take place with an Executive Director of the Trust, and the employee should be informed that termination of employment may be an outcome. The employee should be written to, giving at least five working days notice of the date, time and place of the meeting and the right to be accompanied by a trade union representative or workplace colleague. The correspondence will also include copies of all previous documentation regarding this matter including:

- a) notes of previous meetings
- b) outcome letters of previous meetings
- c) the action plans

The decision should be made as soon as is reasonably practicable and, where possible, should be given in person. This must be confirmed in writing by the Executive Director concerned within five working days and a copy placed on the employee's personal file with the Human Resources Department. The letter should contain:

- a) a summary of the identified inadequacies
- b) the decision and the reason for that decision
- c) a copy of the notes of the meeting
- d) details of the right to appeal against the decision if dismissal is the outcome

9. Incremental Progression

Where formal disciplinary action is taken under this policy and a warning is issued, the employee's next salary increment will be deferred by the equivalent duration of the warning (6, 12 or 24 months). This must be communicated to the employee in writing when their warning is confirmed.

10. More Serious Cases

There may be occasions when it is considered that the consequences of an employee not reaching and maintaining an acceptable standard of work are so serious to the Trust that it would be inappropriate to go through with the stages outlined above. In such circumstances the manager concerned should address the matter in line with the Disciplinary Procedure. In such circumstances the outcome will progress straight to a recommendation to dismiss if such a recommendation is deemed to be in the Trust's best interests. Prior to taking any such action the manager must take advice from the Human Resources Department.

11. Audit & Monitoring

- 11.1 Operation of this policy will be monitored by the Director of Human Resources. The organisations' figures will be presented to the Heads of Human Resources Meeting on an annual basis, who will identify appropriate action plans to address any areas of concern and will continue to monitor the plan until its completion.
- 11.2 Monitoring will include reporting of information on the Electronic Staff Record and file audits for the purposes of:
 - a) identifying the number of employees subject to formal action
 - b) monitoring the timeliness of process start and end dates

12. Further Advice and Guidance

Please contact a Human Resources Officer in the Human Resources Department.

Author: The Director of Human Resources

The Newcastle upon Tyne Hospitals NHS Foundation Trust

THE NEWCASTLE UPON TYNE HOSPITALS NHS FOUNDATION TRUST IMPACT ASSESSMENT – SCREENING FORM A

This form must be completed and attached to any procedural document when submitted to the appropriate committee for consideration and approval.

Policy Title:	Capability Procedure	Policy Author:	Ms Karen Pearce, Senior HR Manager (Projects)
		Yes/No?	You must provide evidence to support your response:
1.	Does the policy/guidance affect one group less or more favourably than another on the basis of the following: (* denotes protected characteristics under the Equality Act 2010)		Policy applies to all employees of the Trust. It is underpinned by the Trust's overriding policy on equal opportunities
	• Race *)
	• Ethnic origins (including gypsies and travellers))
	• Nationality)
	• Gender *) see above
	• Culture)
	• Religion or belief *)
	• Sexual orientation including lesbian, gay and bisexual people *)
	• Age *)
	• Disability – learning difficulties, physical disability, sensory impairment and mental health problems *)
	• Gender reassignment *)
	• Marriage and civil partnership *)
2.	Is there any evidence that some groups are affected differently?		There is no evidence to support any group was affected differently (see above)
3.	If you have identified potential discrimination which can include associative discrimination i.e. direct discrimination against someone because they associate with another person who possesses a protected characteristic, are any exceptions valid, legal and/or justifiable?		n/a
4(a).	Is the impact of the policy/guidance likely to be negative? <i>(If "yes", please answer sections 4(b) to 4(d)).</i>		No
4(b).	If so can the impact be avoided?		n/a
4(c).	What alternatives are there to achieving the policy/guidance without the impact?		n/a
4(d).	Can we reduce the impact by taking different action?		n/a

Comments:	Action Plan due (or Not Applicable):
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Name and Designation of Person responsible for completion of this form: Ms Karen Pearce Date:.....26 October 2011.

Names & Designations of those involved in the impact assessment screening process:..... Employment Polices and Procedures Consultation Group.....

(If any reader of this procedural document identifies a potential discriminatory impact that has not been identified on this form, please refer to the Policy Author identified above, together with any suggestions for the actions required to avoid/reduce this impact.)