

CAPABILITY PROCEDURE

NOVEMBER 2008

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1. INTRODUCTION

It is the Trust's aim to help and encourage all staff to achieve high standards of performance. This procedure is designed to deal with those cases where an employee is lacking in some area of knowledge, skill or ability, and is consequently unable to carry out some, or all of the duties required of them to an acceptable standard. Ignoring unsatisfactory performance can have an impact on the quality of service provided, the employees own sense of satisfaction and enjoyment in their work and that of the team in which they work.

The procedure is to be used where there is evidence of a genuine lack of capability rather than a deliberate failure on the part of the employee to perform to the standards of which he/she is capable. Where the unsatisfactory performance is attributable to the employee's incapacity on the grounds of ill health, this will be dealt with under the Trust's Sickness & Absenteeism/Attendance Management Policy and Procedure.

This procedure applies to all Trust staff (excluding Medical & Dental Staff who are the subject of separate agreed procedures).

2. DEFINITION

Capability in relation to this policy is defined by the Employment Rights Act 1996 as '*capability assessed by reference to skill, aptitude, health or any other physical or mental quality*'. The Trust is also aware of its obligations under the Disability Discrimination Act 1995 as amended in the implementation of this procedure.

Concerns about capability may arise from a number of factors, including:

- Lack of competence, proficiency, poor organisation
- Lack of aptitude, skill or experience
- The re-organisation or redefinition of the person's role, which causes performance/problems e.g. organisational change or technology changes
- Changes in the nature or allocation of work, including changes to employment such as promotional position which the individual may not be able to undertake to standards required
- An individual being unable to satisfactorily complete their probationary period
- External factors such as personal/family difficulties, work life balance

3. AIM

The aim of the procedure is to ensure that:

- The Trust operates effectively as an organisation.
- There is guidance and a protocol through which managers can address employee's capability.

- Capability issues are dealt with fairly, appropriately and consistently and all who are involved in the process are treated with dignity and respect.
- Managers, employees and their representatives are aware of their rights and obligations in dealing with matters of capability under this procedure.

4. PRINCIPLES

The following general principles are applicable to all capability cases:

- Managers should raise issues of capability concerns with employees as soon as they become aware of them. The employee should be issued with a copy of the Capability Procedure at this time. It is expected that in the first instance issues are dealt with between the line manager and the individual
- The same principles of natural justice inherent in the Trust's Disciplinary Procedure should be demonstrated when dealing with an individual's capability.
- It is expected that in many cases, informal discussions will resolve most difficulties.
- If necessary the Trust will enable an individual to avail of additional training to assist in meeting the required standards.
- At all formal stages during this process the employee will have the right to be accompanied and/or represented by an employee representative.
- Accurate records should be kept of all meetings.

5. PROCESS FOR ADDRESSING CAPABILITY ISSUES

This process consists of three steps:

- 5.1 Informal Process
- 5.2 Formal Process – Step One and Two Meetings with Employee
- 5.3 Appeal

5.1 Informal Process

- Unsatisfactory performance should be discussed with the individual and line manager in an informal advisory session. The line manager will remind the employee of the expected standards of performance required.
- It should be outlined by the line manager how the individual's performance is unsatisfactory and unacceptable in view of that standard. The problems being caused by the unacceptable performance should be referred to.
- At this session the line manager will try to identify any factors contributing to the poor performance and will identify assistance that may lead to improved performance including the provision of additional training or mentoring.
- During the discussion an agreed action plan should be drawn up to include details of the improvements expected, with timescales and any support that is to be provided and to also include review periods to assess performance. The individual should be informed that their performance will continue to be monitored over a review period – normally one to three months.

- Where an improvement is achieved the individual should be advised in writing by the line manager that required standards have now been met and should continue to be met. In cases of performance there should be a return to normal performance reviews in line with the Knowledge and Skills Framework process. The line manager should inform the employee that any lapse to previous unacceptable levels within six months from the date of the first informal meeting may result in further steps being taken in accordance with this procedure.
- In the event that there has been insufficient improvement and there is evidence to support this then the employee should be advised in writing that the formal procedure will be used.

5.2 Formal Process – Step 1

In cases where capability issues have not been resolved through the informal procedure, the line manager, following a discussion with an HR representative, will write to the employee inviting the employee to attend a formal meeting. This notification should include:

- Date, time and venue.
- Confirmation that this is a formal meeting in accordance with the formal steps within the capability procedure
- An outline of the issues to be discussed
- Advice that the employee has the right to be accompanied and/or represented by an employee representative and
- Who will be in attendance?

This letter should give the employee at least seven days notice of the meeting and should be sent to the employee as soon as practicable after the conclusion of the informal stage. The employee should be issued with a copy of the Capability Procedure with this letter.

5.2.1 Formal Meeting

- The continued unacceptable performance should be discussed with the individual by the line manager, in a formal meeting; it should be made clear it is not a disciplinary interview. The individual should be informed that despite his/her ability for the work to be done to a satisfactory standard, the continuation of unacceptable performance can not be tolerated.
- Reference should be made to the fact that there has been a failure to improve despite a previous informal meeting.

- The reasons attributing to the continued unacceptable performance along with any associated difficulties the individual may be experiencing should be discussed. The problems being caused by the unacceptable performance should be referred to.
- An indication of the improvement required should be given with an agreed action plan. This action plan should contain objectives, change of behaviour/agreed ways of working that is required, with timescales and clear measurable tasks that can be monitored against the action plan. The individual will also be informed of when this will be reviewed, how often and what the criterion for improvement is within the agreed timescales. Any additional support needed, such as further training or mentoring should be agreed.
- An indication should be given that further action will be taken if the improvement required is not forthcoming within the agreed timescales.
- A formal record will be made of the meeting. A copy of the record should also be issued to the employee.
- Timescales will be agreed by all parties and they will not be longer than 3 months.

Review meeting:-

The purpose of this will be to have a formal review meeting between manager and the employee to discuss progress and determine if the requirements and objectives have been fully achieved

- a) If after review and discussion the capability improves and is maintained this will be confirmed in writing to the employee, with no further requirements. In cases of performance there should be a return to normal performance reviews in line with the Knowledge and Skills Framework process. If there is a relapse within 6 months the matter will be dealt with at the appropriate point within the formal process.
- b) If after a review and discussion the capability concern remains and the objectives have not been achieved the employee would be informed of this and the need for the matter to be referred to stage 2 in the process.

The outcome of the review meeting should be notified in writing to the employee.

5.2.2 Step 2

A formal meeting should be arranged with the next level manager as set out in Appendix 1 and in accordance with the guidance in 5.2 above. A member of HR staff may be in attendance. Furthermore the employee must be informed of the capability issues to be discussed, and informed of the possible outcomes of the meeting, e.g. redeployment/alternative employment, downgrading or termination of employment.

The purpose of this meeting will be to

- a) Discuss the continuing capability concern and the failure to achieve agreed objectives.
- b) Consider the employee's response to the capability concerns. (The individual's line manager may attend if required).
- c) Reach a decision on appropriate action.

The employee will be advised of the decision in writing within 7 days and their entitlement to seek an appeal.

5.3 Step 3 - Appeal

If dissatisfied with the outcome the employee will be entitled to appeal against the decision. The purpose of any appeal would be to consider whether the decision reached was fair and reasonable under the circumstances.

The employee who wishes to lodge an appeal should write to Director of Human Resources stating the grounds of their appeal within 7 working days of receipt of the letter informing them of the decision.

The Appeals Panel, set up in accordance with Appendix 1, will comprise 2 members from the Trust who have had no previous involvement in the case. The employee will have the entitlement to be represented at this appeal.

The decision the appeal panel will be confirmed in writing to the individual within seven days of the decision being taken.

5.4 Referral to Professional Body

Where deemed appropriate a referral should be made by the relevant Director to the relevant professional body for consideration in accordance with their Professional Code of Conduct.

6. EQUALITY AND HUMAN RIGHTS

Western Health & Social Care Trust's equality and human rights statutory obligations have been considered during the development of this procedure.

7. REVIEW OF THE PROCEDURE

This procedure should be reviewed periodically in consultation and negotiation with recognised staff side representatives.

Signed on behalf of Trust:

Amala Sheehin

Date: 14 March 2009

Signed on behalf of Staff Side:

[Signature]

Date: 14 April 2009

MANAGEMENT LEVELS FOR STEPS 2 AND 3

	Step 2	Step 3
Staff at below 4 th Level	Level 4	Level 3
Staff at 4 th Level	Level 3	Level 2
Staff at 3 rd Level	Level 2	Level 2
Staff at 2 nd Level	Level 1/ Level 2	Chair/ Level 1/ Level 2

Level 1 – Chief Executive
 Level 2 – Director
 Level 3 – Assistant
 Level 4 – Senior Manager