

Capability Policy

Key words:	HR018	
Version:	1.0	
Approved by:	CCG Governing Body	
Date approved:	November 2014	
Name and designation of author/originator:	GEM CSU Human Resources	
Name of responsible Committee:	CCG Governing Body	
Date issued for publication:	December 2014	
Review date:	October 2016	
Expiry date:	November 2016	
Target audience:	All staff	
Type of policy (tick appropriate box):	Non-clinical <input type="checkbox"/> ✓	Clinical <input type="checkbox"/>
Mandatory to read?	Non-clinical staff <input type="checkbox"/> ✓	Clinical staff <input type="checkbox"/> ✓
Which NHSLA Risk Management Standard(s)?	Not applicable	
Which relevant CQC standards (where applicable)?	Not applicable	

Version	Section/Para/Appendix	Version/Description of Amendments	Date	Author/	Version
1.0		Adoption by CCG	Nov 14	HR	

CAPABILITY POLICY AND PROCEDURE

1. POLICY STATEMENT

- 1.1 The organisation places great importance on assisting employees to maintain levels of performance at an acceptable standard and recognises that it has a responsibility to provide a policy which will assist managers and employees in identifying and managing areas of poor performance.
- 1.2 The aim of this policy is to provide a fair and consistent framework for resolving Issues relating to underperformance and lack of capability when they occur. It is intended that when such issues arise they are dealt with promptly and in a supportive manner, but recognising the need to balance individual development needs with the needs of the service.
- 1.3 This policy aims to ensure that no employee receives less favourable treatment on the grounds of gender, sexual orientation, civil partnership/marital status, colour, race, nationality, ethnic or national origins, creed, religion/belief, disability, age or trade union membership, or is disadvantaged by conditions or requirements which are not justified by the job.

2. SCOPE OF THE POLICY

- 2.1 This policy applies to all non-medical staff employed under a contract of employment with the organisation. Concerns about capability in relation to medical and dental staff will be dealt with under the “Maintaining High Professional Standards” guidance and South Lincolnshire CCG’s local policy in relation to that guidance. It does not apply to independent contractors and agency workers working for the organisation under a contract for services.
- 2.2 For the purpose of this policy, capability is defined as:

“Where a member of staff is failing in a significant or persistent way to carry out their responsibilities or duties in a satisfactory manner, either due to a lack of ability, inadequate training or lack of experience.”
- 2.3 Where poor performance is the result of alcohol or drugs misuse, support will be provided in line with South Lincolnshire CCG’s Substance Misuse Policy. Where this does not provide the required improvement, the Disciplinary Policy will be used.
- 2.4 Where capability issues are due to sickness or disability, these will be dealt with under the organisation’s attendance management policy.
- 2.5 Where the cause of poor performance is found to be wilful negligence or misconduct, the organisation’s Disciplinary Procedure will apply.

3. GENERAL PRINCIPLES

- 3.1 In normal circumstances, each stage of the procedure will be applied in turn. However, in exceptional circumstances it may be appropriate to implement the procedure at a later stage, for example in a case of gross incompetence or where the issues of performance are too serious to be dealt with at an informal stage.
- 3.2 Performance issues will also be dealt with through the normal appraisal process, but where concerns persist the capability policy should be used to address these formally.

The procedures set out in this document aim to ensure that there is:

1. A means of monitoring performance and establishing performance criteria.
 2. A degree of consistency in how staff are given opportunities to attain satisfactory levels of performance.
 3. Assistance in identifying the most appropriate form(s) of support and providing that support.
 4. If a member of staff fails to overcome their difficulties, any consequent action will be based on:
 - Adequate evidence that the member of staff is incapable of performing their duties satisfactorily.
 - A fair procedure.
 - The fact that the member of staff was given all reasonable assistance to overcome such failings.
- 3.3 An employee has the right to be represented and accompanied by a representative of a recognised trade union or workplace colleague at any stage of the **formal** capability procedure.

4. ROLES AND RESPONSIBILITIES

4.1 Role of the Employee

Employees have a responsibility to perform to a satisfactory level. This includes meeting agreed targets and objectives, attending statutory, mandatory and other agreed training and for cooperating with their line manager to address areas of concern.

4.2 Role of Managers

Line Managers have a responsibility to ensure:

- the employee receives an effective corporate induction into the organisation
- the employee receives a robust job induction
- the employee receives regular on the job training to ensure that skills and knowledge are up to date on systems, processes or any other aspects relating to the conduct of their job.
- job content is appropriate to the grade
- the expectation of work performance is realistic
- the volume of work is reasonable

- adequate advice and supervision is available
- appropriate preceptorship and mentorship programmes are in place, if applicable

4.3 Role of Human Resources

The role of HR is to:

- ensure a fair and equitable process in line with the policy
- provide advice at formal capability meetings and appeals, interpreting policy and advising on employment legislation

4.4 Role of the Representative/Work Colleague

A work colleague, accredited Trade Union/Professional Organisation representative or full time officer may accompany an employee during the formal stages of the procedure.

5. REFERRALS TO PROFESSIONAL BODIES

- 5.1 Clinical and professional staff are responsible for complying with the relevant standards set by their professional regulatory body. At any stage during the capability procedure consideration may be given to referring the individual to the relevant professional regulatory body for consideration of action by that body. This responsibility rests with the manager dealing with the case or hearing an appeal, who should contact the relevant head of profession for advice.
- 5.2 The organisation may take action under the capability policy regardless of and independent to the outcome of any referral to a professional regulatory body.

6. PROCEDURE

- 6.1 The procedure to be followed is attached at Appendix 1

CAPABILITY PROCEDURE

1 Stage 1 - Informal Procedure

- 1.1 Where an employee exhibits an inability to perform their duties satisfactorily, attempts will be made to resolve the matter informally via a meeting between the line manager and the member of staff.

At this meeting, the line manager will explain the nature of the unsatisfactory performance and how such performance can be improved to the satisfaction of the line manager. The line manager will agree performance standards with the member of staff, and a time period (normally one to three months) over which improvement will be expected. They will also agree how the individual's performance will be monitored. The outcome of the meeting will be confirmed in writing to the employee.

- 1.2 Continuous monitoring should take place during the agreed period and the manager should meet regularly with the individual during this time to give feedback and assess progress against the action plan.
- 1.3 If the individual's performance improves adequately over the timescale, then the process will terminate at this stage. If performance remains unsatisfactory, then the formal procedure will be invoked by the line manager as set out in stage 2.

2 Stage 2 - Formal Review

- 2.1 Where informal action has not resulted in the required improvement, or the improvement has not been maintained, the member of staff should be made aware that their performance is unsatisfactory. A formal review meeting should be arranged by the line manager.

- 2.2 Individuals have the right to be represented by a work colleague or representative of their trade union or professional organisation at the review meeting and a member of the Human Resources Department will be present at the meeting to provide advice and guidance.

- 2.3 The meeting should be a two way discussion in order to:

- Inform the individual that their standard of performance is unacceptable and detailing the specific areas of shortfall, providing examples and evidence, including the effect on the service and colleagues.
- Allow the individual an opportunity to identify reasons for perceived poor performance
- Advise the individual of the standard of performance required and how that will be measured.
- Advise the individual of the timescale for improvement (usually 4-8 weeks) and the consequences of failure to improve and maintain improvement

- Identify any further support or training required to assist the individual in achieving the required standard of performance, e.g. supervision, mentoring etc
- Make it clear that the individual is being issued with a formal warning under the capability procedure

- 2.4 An action plan will be agreed with the individual which sets out what improvement is required, the timescale for improvement and any identified support and training to be put in place.
- 2.5 Following the meeting the manager will write to the individual within 5 working days of the meeting, summarising the meeting, confirming the outcome and including the action plan.
- 2.6 Regular monitoring should take place during the review period and the manager should meet periodically with the individual during this time to give feedback and assess progress against the action plan.
- 2.7 At the end of the review period the manager should inform the individual if they have met the required standard. If performance is acceptable there will be no further action. The formal warning will remain on the individual's file however for a period of 12 months, and should performance not be maintained during this period the matter will proceed immediately to the next stage.

3 Stage 3 - Capability Hearing

- 3.1 If performance has failed to improve to a satisfactory standard, a capability hearing will take place involving a manager who has the authority to dismiss. Employees will be afforded the right to be accompanied by an accredited trade union representative or work colleague. A HR representative will be present at the meeting.
- 3.2 On hearing and carefully considering the evidence and the explanation, the manager will make a decision on the future employment of the employee.
- 3.3 The options available to the manager are:
- a) To repeat stage 2 and instruct the line manager to set reasonable performance standards for the individual and monitor these for a set period of time.
 - b) Redeployment to a suitable alternative post as an alternative to dismissal. In these circumstances the manager is advised to discuss with HR whether there are other redeployment opportunities within the organisation.
 - c) Downgrading may offer a suitable alternative to dismissal and the manager should consider this option. Employees are not entitled to pay protection as a result of downgrading under this policy and procedure.
 - d) Termination of contract
- 3.4 If the employee is to be dismissed, the employee should be dismissed with appropriate notice and should be informed of the right to appeal.

4 Appeal

Employees have the right of appeal against enforced redeployment, downgrading or dismissal. They should appeal in writing to the relevant senior manager, stating their grounds for appeal, within ten working days of receipt of the letter confirming the outcome.

The purpose of the appeal hearing shall be to review the decision, not to re-hear the capability hearing. The appeal panel shall have the authority to apply a different outcome or uphold the original management decision. Appeals will be heard by a manager of greater seniority than the manager who conducted the capability hearing, advised by a HR representative.

In cases involving allegations of professional incapability, a senior professional from the appropriate discipline should be an additional member of the appeal panel.

The decision of the Chair of the Appeal Hearing represents the final stage of the internal procedure.