

CAPABILITY POLICY

POLICY

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APPENDICIES

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1.0 INTRODUCTION

This policy provides a fair and consistent framework to improve an individual's capability to carry out their role to the required standard. It is intended that when capability issues arise they are dealt with promptly and in a supportive manner, but recognising the need to balance individual development with the needs of the service.

Whenever it is apparent that an individual's performance is considered to be below the required standard, action should be taken. However, the specific actions will vary dependent on the circumstances.

- Where poor performance is due to a genuine lack of skill or ability ('capability'), the performance issues should be addressed through this policy.
- Where poor performance is due to suspected misconduct, it should be dealt with through the Trust's Disciplinary Policy.
- If ill health is the over-riding factor causing poor performance, this should be dealt with through the Trust's Sickness Absence and Wellbeing Policy.
- This policy may be supported in conjunction with the Appraisal Policy and process.

2.0 POLICY STATEMENT

This policy provides a structured formalised support to help address capability issues.

Before making a decision to follow the formal capability process, managers should seek advice from a member of the Operational HR Team.

This policy is applicable to all staff employed on Agenda for Change terms and conditions.

3.0 DEFINITIONS/ ABBREVIATIONS

The Trust: Means the Sherwood Forest Hospitals NHS Foundation Trust

Employee: Employees of the Trust with the exception of medical and dental staff, Trust Board Members and Directors, and bank workers.

Capability: The Employment Rights Act 1996 states that 'capability is assessed by reference to skill, aptitude, health or any other physical or mental behaviour'. It also indicates that 'incapability must relate to the work or kind of work that the employee was employed by the employer to do'. This is determined by the employee's current contractual obligations.

Conduct: Where an employee fails to come up to the required standard as a result of their own carelessness, negligence or idleness, this does not constitute a lack of capability and can be regarded as misconduct. This should be dealt with under the Trust's Disciplinary Policy.

4.0 ROLES AND RESPONSIBILITIES

Line manager responsibilities

It is important that managers set out the required standards of performance as part of the workplace induction process and fully explain the duties and responsibilities in the employee's job description. Line managers will;

- ensure that employees understand the expected level of performance and objectives as outlined in their job descriptions and annual objectives.
- ensure that performance is monitored via regular supervision and the annual appraisal.
- ensure that supervision/appraisal discussions are documented.
- ensure that employees are given appropriate training and support to meet the requirements of their job roles.
- provide constructive feedback and address concerns in a timely and professional manner.
- be fair, consistent and supportive.
- consider whether there is a concern relating to fitness to practice for registrants and whether a referral to the relevant professional body is required.

Clinical Verifier role

A Clinical Verifier will be appointed in cases of Capability where there are concerns around registered professionals (i.e. nurses, midwives, Healthcare Assistants (HCAs), Assistant Practitioners (APs), and Trainee Nursing Associates (TNAs))

The role of the Clinical Verifier is to provide constructive and supportive advice relating to the Capability plan and is deemed to be an objective role providing fairness and objectivity to both parties

- to discuss and verify the capability plan completed by the line Manager and ensure that the expected level of performance and objectives are fair and achievable by the employee
- provide constructive feedback and address concerns relating to the capability plan in a timely and professional manner if deemed necessary.
- be fair, consistent and supportive.
- To be included in any review of the plan throughout the process
- To attend the Capability hearing if deemed necessary as a witness

People Directorate

To provide support to managers and employees in relation to the application of the Capability Policy.

Trade Unions

Trade union representatives and staff organisations are there to help staff members who are going through a difficult situation, and to ensure the policy is being used fairly and equitably. The Trust has a very good partnership working ethos with staff organisations and as such it is good practice to involve staff side representatives when using this policy.

Employee responsibilities

It is the duty of an employee to provide satisfactory service in line with the required standards of their job description, objectives and the values/behaviours of the organisation. It is a condition of employment that employees follow policies and procedures and attend work regularly at the agreed time(s). Employees will;

- meet their contractual obligations
- raise work related concerns they have with their line manager in a timely manner
- communicate effectively with their manager and work colleagues
- actively participate in discussions/meetings in relation to their own performance
- ensure there is two-way communication at one to ones/supervision meetings

5.0 APPROVAL

Joint Staff Partnership Forum

6.0 DOCUMENT REQUIREMENTS

Management Support

Prior to considering the steps in this policy it is crucial that managers explore all support that can be offered to individuals where there are performance concerns. This includes;

- Regular 1:1s, including feedback on any concerns, issues, or achievements,
- Job description reflective of the current roles and responsibilities,
- Timely appraisals, which must be undertaken at least annually,
- Any relevant training and development needs,
- Coaching / Mentoring

Informal Stage

Initial Meeting – Informal Stage

The manager should arrange to meet with the individual to discuss their concerns. Managers should advise individuals that they may be accompanied accompanied by a trade union representative or current workplace colleague (not acting in a professional capacity).

The meeting should cover:

- A clear statement by the manager outlining areas of performance considered unacceptable, together with an explanation of the standard expected.
- A discussion between the manager and the individual to identify the extent and nature of the factors involved.
- The identification of how the factors identified can be overcome or minimised.
- The setting of clear targets for improvement, together with an action plan with timescales for monitoring and achievement.

Following the meeting the manager will write to the member of staff. This letter will confirm and include to the employee the areas of performance confirmed as unacceptable, the improvement targets set and agreed, together with an agreed timescale to achieve and sustain these. A date should be set for a further meeting to review the improvement. 7 days' notice must be given of this meeting in writing to the individual.

Review Meeting – Informal Stage

The review meeting will assess the progress of the individual. The outcome of this meeting may be;

- a) Performance remains below the required level; Performance objectives continued to be monitored for a defined period of time. The individual will be informed of progression to Formal Stage 1, under this Policy. The action plan will be reviewed and new timescales for monitoring agreed.
- b) Performance is significantly improved but still some objectives to achieve; the monitoring period to be extended for a defined period of time. A second meeting at Informal Stage will be convened to review the achievement of the performance objectives at the end of the monitoring period.
- c) Performance is satisfactory; no warning necessary and monitoring ceases. If performance issues arise again within 12 months, the individual will be managed via the Informal stage meeting and appropriate options/outcomes. During the 12 month period there should be regular informal reviews of performance.

At the meeting where performance concerns have been addressed and are now satisfactory, this will be confirmed in writing to the individual. Those who have not met their objectives will be invited to a formal stage 1 meeting within 7 days.

Where the informal stage has not been satisfied, a Formal Stage 1 meeting cannot be convened.

Stage 1

Following a timescale identified at the informal review meeting, a Stage 1 Review Meeting should be convened to review progress. Individuals should be given 7 days' notice of this meeting in writing. The individual is entitled to be accompanied by a trade union representative or colleague (not acting in a professional capacity). A representative from the People Directorate will be present in an advisory capacity.

The meeting should cover as a minimum the following;

- a summary by outlining the informal/formal process to date and outcomes;
- acknowledge any improvement, however small;
- detail all aspects of the individual's performance which remains unsatisfactory;
- Discuss, and agree, action plan for improvements that is required and timescale; give the individual opportunities for (re)training if appropriate
- consider any mitigating factors

The outcome of this meeting may be;

- a) Performance remains below the required level; a first written warning is issued, and will the individual will be informed that Formal Stage 2 will now commence. Performance objectives continued to be monitored for a defined period of time.
- b) Performance is significantly improved but still some objectives to achieve; no formal warning issued and the monitoring period to be extended for a defined period of time. A second Stage 1 review meeting will be convened to formally review the achievement of the performance objectives at the end of the monitoring period.
- c) Performance is satisfactory; no warning necessary and monitoring ceases. If performance issues raise again within 12 months, the individual will be managed via the stage 1 meeting and appropriate options/outcomes, they will not revert back to the informal stages as this has already been carried out. During the 12 month period there should be regular informal reviews of performance.

Managers have the discretion (with advice from the People Directorate) to bring the monitoring period to an end early including if objectives have been met or if it is clear objectives will not be met in the timeframe.

An outcome letter will be sent to the employee within a reasonable period of time following the meeting and the employee has a right of appeal against a sanction of a first written warning being issued. Appeals will be held in accordance with the Trust's Appeal Policy.

A first written warning will remain live for a maximum period of 12 months and the individual will become ineligible for an incremental pay increase until the warning has expired.

Stage 2 Meeting

Following a timescale identified at the Stage 1 meeting, a Stage 2 Review Meeting should be convened to review progress. Individuals should be given 7 days' notice of this meeting in writing.

The individual is entitled to be accompanied by a trade union representative or colleague (not acting in a professional capacity). A representative from the People Directorate will be present in an advisory capacity.

The purpose of this meeting is to review and determine whether there has been sufficient improvement in the performance of the individual.

The meeting should cover as a minimum the following;

- background by outlining the informal/formal process to date and outcomes;
- acknowledge any improvement, however small;
- detail all aspects of the employee's work which remains unsatisfactory;

- discuss, and agree, action plan for improvements that is required and timescale;
- give the employee opportunities for (re)training if appropriate
- consider any mitigating factors

The outcome of this meeting may be;

- a) Performance remains below the required level; a final written warning is issued. The individual will be informed that a Stage 3 Capability Hearing will be convened after a further monitoring period. The purpose of the Capability Hearing will be to assess the individuals' performance. In the meantime, performance objectives will continue to be monitored for a defined period of time.
- b) There has been partial achievement of performance objectives; no formal warning issued and the monitoring period to be extended for a defined period of time. A second meeting at Stage 2 will be convened to formally review the achievement of the performance objectives at the end of the monitoring period.
- c) Performance is satisfactory; no warning necessary and monitoring ceases. If performance issues raise again within 18 months, the individual will be managed via the stage 2 meeting and appropriate options/outcomes, they will not revert back to the informal stages as this has already been carried out. During the 18 month period there should be regular informal reviews of performance.

Managers have the discretion (with HR advice) to bring the monitoring period to an end early including if objectives have been met or if it is clear objectives will not be met in the timeframe.

An outcome letter will be sent to the employee within a reasonable period of time following the meeting and the employee has a right of appeal against a sanction of a final written warning being issued. Appeals will be held in accordance with the Trust's Appeal Policy.

A final written warning will remain live for a maximum period of 18 months and the individual will become ineligible for an incremental pay increase until the warning has expired.

Stage 3 – Capability Hearing

Stage 3 is the final stage in the Capability Process. The hearing will be arranged and will be heard in line with the Trust's Disciplinary Policy.

The individual should be given 7 days' notice of the Capability Hearing. Individuals can be accompanied by a Trade Union Representative or a current workplace colleague (acting in a non-legal capacity).

The purpose of this hearing is to review and determine whether there has been sufficient improvement in the performance of the individual.

The line manager will develop a Capability Hearing Report to be presented to the panel and must include the following;

- background by outlining the informal/formal process to date and outcomes;
- acknowledge any improvement, however small;
- detail all aspects of the employee's work which remains unsatisfactory;
- discuss, and review the action plans for improvements and timescale;
- consider any mitigating factors

The outcome of the hearing may be;

- a) Performance remains below the required level; the employee is dismissed for the reason of capability.
- b) There has been partial achievement of performance objectives; the monitoring period is extended for a defined period of time. The Stage 3 Hearing will be reconvened at the end of the monitoring period to formally review the achievement of the performance objectives.
- c) Performance is satisfactory; no sanction necessary and monitoring ceases. If performance issues arise again within 18 months, the individual will be managed via the stage 3 capability hearing and appropriate options/outcomes, they will not revert back to the informal stages as this has already been carried out.

An outcome letter will be sent to the employee within 7 working day of the hearing. The employee has a right of appeal within 10 working days of the date of the written confirmation of the capability hearing outcome.

Appeals will be held in accordance with the Trust's Appeal Policy.

Failure to attend a meeting/hearing

Failure to attend a capability hearing by the employee without a valid reason may result in the process being carried out in the employee's absence. The Chair of the hearing will decide if to proceed with the hearing in the employee's absence. The Chair will ensure that all evidence is considered thoroughly and robustly in the absence of an employee attending.

7.0 MONITORING COMPLIANCE AND EFFECTIVENESS

Minimum Requirement to be Monitored (WHAT – element of compliance or effectiveness within the document will be monitored)	Responsible Individual (WHO – is going to monitor this element)	Process for Monitoring e.g. Audit (HOW – will this element be monitored (method used))	Frequency of Monitoring (WHEN – will this element be monitored (frequency/ how often))	Responsible Individual or Committee/ Group for Review of Results (WHERE – Which individual/ committee or group will this be reported to, in what format (eg verbal, formal report etc) and by who)
Policy Implementation	People Operational Lead	Audit	Monthly	JSPF

8.0 TRAINING AND IMPLEMENTATION

Managers with people management responsibilities will be expected to have awareness Training to fully understand their responsibilities in the application of this policy.

9.0 IMPACT ASSESSMENTS

This document has been subject to an Equality Impact Assessment, see completed form at Appendix A

10.0 EVIDENCE BASE (Relevant Legislation/ National Guidance) AND RELATED SFHFT DOCUMENTS

Evidence Base:

- ACAS Code of Practice on disciplinary and grievance procedures
- Capability Policy Line Manager Toolkit ACAS
- The Employee Rights Act 1996

Related SFHFT Documents:

- Disciplinary Policy
- Appeal Policy

11.0 APPENDICES

APPENDIX A- EQUALITY IMPACT ASSESSMENT FORM (EQIA)

Name of service/policy/procedure being reviewed: Capability Policy			
New or existing service/policy/procedure: Existing			
Date of Assessment: 06/09/2024			
For the service/policy/procedure and its implementation answer the questions a – c below against each characteristic (if relevant consider breaking the policy or implementation down into areas)			
Protected Characteristic	a) Using data and supporting information, what issues, needs or barriers could the protected characteristic groups' experience? For example, are there any known health inequality or access issues to consider?	b) What is already in place in the policy or its implementation to address any inequalities or barriers to access including under representation at clinics, screening?	c) Please state any barriers that still need to be addressed and any proposed actions to eliminate inequality
The area of policy or its implementation being assessed:			
Race and Ethnicity	None	To treat all staff consistently and fairly hence monitoring at performance meetings and JSPF	None
Gender	None	To treat all staff consistently and fairly hence monitoring at performance meetings and JSPF	None
Age	None	To treat all staff consistently and fairly hence monitoring at performance meetings and JSPF	None

Religion / Belief	None	To treat all staff consistently and fairly hence monitoring at performance meetings and JSPF	None
Disability	None	To treat all staff consistently and fairly hence monitoring at performance meetings and JSPF	None
Sexuality	None	To treat all staff consistently and fairly hence monitoring at performance meetings and JSPF	None
Pregnancy and Maternity	None	To treat all staff consistently and fairly hence monitoring at performance meetings and JSPF	None
Gender Reassignment	None	To treat all staff consistently and fairly hence monitoring at performance meetings and JSPF	None
Marriage and Civil Partnership	None	To treat all staff consistently and fairly hence monitoring at performance meetings and JSPF	None

Socio-Economic Factors (i.e. living in a poorer neighbourhood / social deprivation)	None	To treat all staff consistently and fairly hence monitoring at performance meetings and JSPF	None
What consultation with protected characteristic groups including patient groups have you carried out? JSPF Sub group			
What data or information did you use in support of this EqIA? Monitoring Data			
As far as you are aware are there any Human Rights issues be taken into account such as arising from surveys, questionnaires, comments, concerns, complaints or compliments? No			
Level of impact From the information provided above and following EQIA guidance document Guidance on how to complete an EIA (click here), please indicate the perceived level of impact: Low Level of Impact For high or medium levels of impact, please forward a copy of this form to the HR Secretaries for inclusion at the next Diversity and Inclusivity meeting.			
Name of Responsible Person undertaking this assessment: Associate Director of People (Operations)			
Signature: J Read			
Date: 06/09/2024			