

Introduction

This procedure is designed to offer Counselling, Support and Improvement opportunities to those employees who are failing to operate to the Trust's required standard of competence, where a failure to improve may lead to the termination of their contract of employment. The purpose to this procedure is to seek to ensure that employees are assisted to achieve the required standards of performance.

At all stages of this procedure, expectations with regard to improvement in performance will be clearly set out and communicated to the employee concerned, together with an agreed timetable of meetings for further review of the employee's performance.

All employees undergoing difficulties will be treated equitably, with consistency and fairness and will be given every help and opportunity to improve their performance.

When it becomes evident that employees are failing to perform to the required standard in post, a distinction will be made between those employees whose failure is due to lack of application, lack of care or poor attitude and those whose failure may be due to changes in the role, the need for further training or a marked lack of ability (rather than application).

The former case will invoke the Disciplinary Procedure immediately and the latter case, this Capability Procedure.

Medical Capability will be dealt with separately in conjunction with advice from the Occupational Health Department.

Management Responsibilities

An employee's manager has a responsibility to:

- Communicate objectives clearly and to the expected standard required.
- Address issues of unsatisfactory performance as soon as they arise.
- Provide feedback on a regular basis, both formal and informal.
- Provide guidance, encouragement and support.
- Apply this procedure with discretion, consistency and equality of opportunity.

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Employees Responsibility

An employee has a responsibility to:

- Perform their contractual duties to the required standard.
- Alert their line manager to any work related problems and changes of personal circumstances which may affect their work performance.

Informal Procedure

It is the responsibility in the first instance of the immediate Line Manager to offer suitable help and advice to employees where alleged incompetence such as a lack of skill, aptitude and/or ability or unsatisfactory performance is identified.

At this initial meeting if there are no reasons or explanations which can substantiate poor performance then a monitoring period and support plan will be put in place.

If there is insufficient progress within the review period, the matter will progress to the formal procedure as outlined below.

Stage I

If after help and advice given at the informal stage, the employee's performance is still unsatisfactory, the line manager will inform HR and a member of the senior management team. The employee will be invited to a meeting and advised in writing that her/his performance is still unsatisfactory and that they are entering Stage 1 of the capability procedure.

The meeting will be chaired by a manager (expected to be from the senior management team). The employee will be reminded of the earlier informal discussions and the steps taken to support an improvement in their performance. They will be told as precisely as possible, the reasons for the manager's continue concerns about their performance. An opportunity will be provided at the meeting to explore the causes of unsatisfactory performance. The employee will have the opportunity to explain their unsatisfactory performance and to make any representation, which may include new information or provide a different context to the information / evidence already made available.

The nature of the alleged shortcoming will determine the nature of the help to be provided. The help could include one or more of the following:

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- (i) counselling;
- (ii) a review of commitments and responsibilities;
- (ii) availability of suitable
- (iv) availability of training;
- (v) opportunities to see good practice within the organisation or other appropriate establishments.

This list is not exhaustive.

The employee will be informed of the support that will be available to help them improve their performance. It will also be made clear to the employee how performance will continue to be monitored and reviewed.

A review period of between 4 and 8 weeks, unless complex activity monitoring requires more, will be put into place.

All improvement requirements, support mechanisms and development activity will be documented and all counselling and on-going review meetings will be minuted. This will apply, also, at Stages II and III.

If at any formal stage, some progress has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period.

If, after the reasonable time period agreed at Stage I, II or III, it is deemed that performance has improved sufficiently and set targets are met, the employee will be informed that they are no longer being considered under the formal capability policy.

Stage II

Where, after the period of review as outlined in Stage 1, there has been no marked improvement in performance, or improvement has not been maintained, the employee will be invited to a review meeting and advised in writing that her/his performance is still unsatisfactory.

The meeting will be chaired by a manager (expected to be from the senior management team). Previously set targets will be reviewed, together with a review of the history of the case, including the steps that have been taken to support the employee to achieve the required level or performance. They will be told as precisely as possible, the reasons for continued concerns about their performance.

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Where, after a further period of review (likely to be 4 weeks), there has been no marked improvement in performance, or improvement has not been maintained, the senior manager will inform the employee in writing that adverse criticism persists. She/he will also be informed of the areas where improvement is still necessary and the period for which appropriate support will continue to be made available.

Stage III

This is the final stage of the formal procedure. If, after receiving the counselling and support outlined above, the employee’s performance continues to be unsatisfactory it may become necessary to initiate formal action under the Capability Procedure in the manner of the final stage of the Disciplinary Procedures in order to resolve the issue of persistent lack of capability to perform at the required level and to allow the College organisation to move forward and maintain its standards of quality.

The options to consider are: -

1. Reduction in level of duties
2. Redeployment
3. Termination of employment contract

A further period of help, advice and review (likely to be 2 weeks) will be allowed before moving to this stage.

The employee will be informed that failure to see significant improvement at this stage may result in the termination of their employment contract if alternative options as outlined above are not feasible.

A decision hearing, chaired by the senior manager, will be held where there has not been (or it is clear that there will not be) any evidence of improvement.

A decision will then be taken at the hearing to either apply a sanction on the grounds of capability or to provide the employee with a period of extension to allow further time for improvement. The order to follow at the hearing is set out in Appendix 1.

The option of allowing further time for improvement may only be considered if there is persuasive evidence presented that further time is likely to lead to the required improvement in performance.

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The decision at the hearing will be confirmed in writing to the employee as soon as possible but no later than seven calendar days.

If the decision has been made to dismiss the employee, the dismissal letter will confirm the reason for dismissal and the date at which the employment terminates.

NB. If performance becomes unsatisfactory following achievement of the required standard at any stage, then further stages will be invoked, within the following timescales: -

Stage 1 – within 3 months move to Stage 2, thereafter back to stage 1

Stage 2 – within 6 months move to stage 3, above 6 months back to Stage 2, over 1 year back to Stage 1

Stage 3 – within 6 months move to Disciplinary stage, above 6 months back to Stage 3, over 2 years back to Stage 1

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Capability Flow Chart

Performance issue identified by line manager

Pre-Stage - Informal discussions regarding underperformance with employee to establish cause of underperformance. Mutually agreed support put in place including action plan and clear targets and timeframe for review.

Support should include offer of counselling, review of responsibilities, training, coaching, peer support.

Performance reviewed after agreed timeframe. Performance has not improved to a satisfactory level. Employee informed they will be considered under the formal capability procedure.

Yes. No further action needed. Continue to manage and discuss performance in normal management meetings.

Stage One – Formal Procedure - Invite employee to a formal meeting under the capability procedure. Causes of poor performance will be explored. Opportunity for employee to put their case forward. An improvement support plan and monitoring period will be put in place for a period of 4 to 8 weeks.

Yes. No further action needed. Continue to manage performance as for any other member of staff. If improved performance not maintained for 3 months continue to Stage 2 of the formal process.

Review performance after agreed timeframe. Has performance improved to a satisfactory level? No.

Stage Two – Formal Review Meeting - Invite employee to a formal meeting under the capability procedure. Causes of poor performance will be reviewed. Opportunity for employee to put their case forward. An improvement support plan and monitoring period will be put in place (likely to be 4 weeks).

Review performance after agreed timeframe. Has performance improved to a satisfactory level? No.

Yes. No further action needed. Continue to discuss performance in normal management meetings. If improved performance not maintained for 6 months continue to Stage 3 of the formal process. Otherwise, above 6 months back to Stage 2, over 1 year back to Stage 1.

Stage Three – Disciplinary Procedures and Other Actions - Invite employee to further formal meeting under the final stage of the capability procedure. Causes of poor performance will be reviewed. Opportunity for employee to put their case forward. An improvement support plan and monitoring period will be put in place (likely to be 2 weeks). Continued unsatisfactory performance may initiate formal action. At this stage the employee has the right to be accompanied. Consider possible sanctions available (see guidance notes).

Right of appeal within 10 working days.

