



## CAPABILITY POLICY AND PROCEDURE

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WEST MIDLANDS AMBULANCE SERVICE NHS FOUNDATION TRUST  
CAPABILITY POLICY AND PROCEDURE

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## 1 Introduction

- 1.1 The Trust is committed to encouraging and supporting members of staff to perform to the best of their ability. This policy and procedure sets out arrangements to ensure a fair, consistent and effective approach in handling situations where individuals are not performing to the standard expected in their role due to lack of skill, knowledge or aptitude.
- 1.2 In implementing this policy and procedure, Managers must ensure that all employees are treated fairly, equitably and within the provisions of the Trust's Equal Opportunity Policy and its visions and values.

## 2 Scope

- 2.1 This policy and procedure applies to all employees of the West Midlands Ambulance Service NHS Foundation Trust and supersedes any other policy and procedures currently in place to deal with capability. This policy excludes doctors for whom separate procedures apply.
- 2.2 Employees of 'student' or 'trainee' status will, additionally, remain subject throughout their training to the requirements of the appropriate training programme and, where appropriate, of the professional or statutory body responsible for the training programme. Failure to satisfy any of these requirements will be referred to the employment panel which may result in dismissal.
- 2.3 New recruits to the Trust remain subject, for the first six months of their employment, to the requirements of their probationary period.
- 2.4 Matters relating to the performance and capability of Executive and other Directors are covered by the arrangements set out in their Statement of Terms and Conditions of Employment.
- 2.5 This policy does not apply to individuals registered as 'Bank Workers' volunteers or as employed by agencies or other contractors. Performance and capability issues for those individuals should be referred to the appropriate employer and, where appropriate, the individual removed from working within or acting on behalf of the Trust.

### 3 Definition

- 3.1** Capability relates to the skills, aptitudes and mental or physical qualities required to perform a particular job of work. Lack of capability means being unable to maintain those requirements.
- 3.2** Trust Values and behaviours which the Trust expects all employees to demonstrate in their day to day work. Assessment against these values forms part of the initial interview process and is a key component of individual employees' ongoing performance management.

### 4 Use of This Policy

- 4.1** Before using this policy and procedure, consideration should be given to appropriateness of this or other related Trust Policies as and when agreed (listed below) given the individual circumstances:-
- Sickness Absence Management Policy
  - Alcohol, Drugs and Solvent Misuse Policy
  - Dignity at Work Policy
  - Recruitment and Selection Guidelines
  - Disciplinary Policy and Procedure
  - Procedure for Dealing with cases involving the Professional Conduct and Professional Competencies.
  - All appropriate codes of conduct/rules for professional bodies
  - Performance & Development Review (PDR) Policy
  - Raising Concerns at Work Policy
  - Other policies that may be considered appropriate
- 4.2** The Trust recognises that there may be instances when unsatisfactory work performance by an employee would more appropriately be dealt with outside the disciplinary procedure. Accordingly, the attached procedure provides a fair and effective procedure to enable management to respond to unsatisfactory performance by an employee at work.
- 4.3** Action in response to misconduct and breaches of disciplinary rules are likely to be taken in accordance with the Trust's Disciplinary Procedure.
- 4.4** There may also be issues of capability, which straddle the boundary between competence and health. Where ill health is the over-riding factor in causing poor performance, this should be dealt with under the Trust's Sickness Absence Management Policy. Performance may also be impaired by alcohol or drug abuse. In these circumstances the issues should be addressed through the Sickness Absence Management Policy or the Trust's Alcohol, Drugs and Solvent Misuse Policy, as appropriate.

- 4.5** It is recognised the managers will need to consider carefully at the outset whether this Policy or other policies should be used. The commencement of the use of this Policy shall not prevent an issue being considered under another policy, if it is evident that this is appropriate at a later stage, or vice versa.

## **5 Principles**

- 5.1** The stages of this procedure are described in the attached flowchart. The stages are not intended to exclude other measures (e.g. training), which in any instance may be considered appropriate for the purpose of encouraging an employee to improve his or her performance.
- 5.2** The procedure will provide the employee with opportunities to hear how and why their performance is considered unsatisfactory; to offer any explanation about this which they wish to put forward, and to be clear about the nature of improvements required.
- 5.3** If, following achievement of a satisfactory level of performance, the individual's performance subsequently deteriorates, action will be escalated to the next stage of this procedure from where it was stopped previously.
- 5.4** In addition to matters appropriate for the disciplinary procedure, this capability procedure does not apply to:-
- inadequate performance, believed to be attributable to a willful refusal to work satisfactorily, or unacceptable behavior, wilful or serious negligence. These cases will be handled in accordance with the Trust's Disciplinary Procedure.
  - attendance issues, where these are covered specifically by other policies/procedures currently in operation in the Trust, for example the Trust's Sickness Absence Management Policy.
- 5.5** Where reasons for unsatisfactory performance are related to disability, as defined in the Equality Act 2010, as amended, the situation will be dealt with to meet the requirements of the Equality Act.
- 5.6** Where a line manager has concerns that a member of staff is under-performing in their job, such concerns must have been raised with the member of staff on an informal 1:1 basis, which will be confirmed in writing, before moving to the formalised stages of the Capability Procedure.
- 5.7** An employee will not be transferred or redeployed to an alternative job role, or dismissed, because of failure to perform to the required standard unless reviews, support and an opportunity to improve have been given, provided the employee's job role is not compromised through the job holder's lack of capability. In such circumstances, it may be appropriate to move the employee from their role to alternative duties, or consider suspension on full pay if no alternative duties are available.

- 5.8** An employee should not normally be dismissed because of failure to perform to the required standard unless reviews and an opportunity to improve have been given. However, exceptional situations may arise where the application of the full process stated may not be appropriate. An example of this could include where it can be demonstrated that there is no possibility whatsoever that the employee can achieve acceptable levels of performance or where the lack of capability creates an immediate danger to other employees or members of the general public.

## **6 Responsibilities**

Please note that job titles may change from time to time; in which case duties (roles and responsibilities) will relate to the most appropriate existing, new or amended job title.

- 6.1 The Chief Executive** has overall responsibility for the use of this policy. Delegated responsibility for the implementation of this policy lies with the Director of Workforce and Organisational Development.
- 6.2 The Director of Workforce and Organisational Development** is responsible for the introduction and monitoring of this Policy ; ensuring it is reviewed within 2 years of implementation and earlier if legislation or guidance dictates. This will ensure that all staff receive adequate support, guidance and any necessary training.
- 6.3 Directors, Managers and Supervisors** are responsible for setting and making their staff aware of the standards of performance expected of them. This should be through the use of job descriptions and person specifications, appraisals, informal feedback, policies, protocols, guidelines or appropriate coaching or training (e.g. statutory and induction training), or by notification and instruction from the line manager or supervisor.
- 6.4** Managers are also responsible for ensuring that their staff are competent to undertake the duties and tasks required of them. Any shortfall in performance that managers become aware of should be pointed out to the member of staff and consideration given as to whether this is due to inadequate instruction, training, supervision or some other failing outside the employee's control.
- 6.5 Human Resources Department** - A Human resources representative should be consulted before any formal action is taken in accordance with this policy and procedure. The role of Human Resources includes advice and assistance to managers on performance and capability issues and to ensure reasonable action is taken. A Human Resources representative will normally be involved in all meetings at the formal stages of this procedure.
- 6.6 Employees** - all employees have a responsibility to strive to achieve the standards of performance required by the Trust and to abide by the NHS Values and Constitution and the Trust's core values and standards. These can be accessed from the Trust's website.

Employees should notify their manager if they feel they are not competent to undertake the duties and tasks required of them.

## **7 Concerns Regarding Professional Registration or Regulations**

- 7.1** Refer to the appropriate department for advice on referral to professional bodies.

## **8 Appeals**

- 8.1** Appeals against termination of employment should be made in writing to the Director of Workforce and Organisational Development within fourteen calendar days after receipt of the letter confirming action taken.
- 8.2** Appeals against termination of employment will be heard by a panel consisting of an Executive, Associate or Deputy Director, a Senior Manager and Human Resources Representative

## **9 Records; Monitoring and Review**

- 9.1** Records are included on employees' personal files with the knowledge of the employee.
- 9.2** The Deputy Director of Workforce and Organisational Development is responsible for maintaining a log of number of cases where the formal procedure of managing performance has been used as part of the overall KPIs for the Workforce and Organisational Development Directorate.
- 9.3** The Deputy Director of Workforce and Organisational Development will regularly monitor and review activity under this policy and its effectiveness in resolving concerns about performance.
- 9.4** The Director of Workforce and Organisational Development will receive exception reports from the Head of HR and Organisational Development which highlight any concerns with the application of this policy and procedure.
- 9.5** The Director of Workforce and Organisational Development Head of HR will ensure that HR responsibilities reflected in this policy and procedure are reviewed at individual performance reviews.



**10 Documents Referenced**

- The Equality Act 2010
- Sickness Absence Management Policy
- Alcohol, Drugs and Solvent Misuse Policy
- Dignity at Work Policy
- Recruitment and Selection Guidelines
- Disciplinary Policy and Procedure

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## Appendix One – Capability Procedure

1. The Capability Procedure includes three stages, outlined below.
2. Notes will be taken at all stages of the procedure and a detailed summary sent to the employee after each meeting.
3. The HR Representative will provide template letters at each stage of the formalized procedure.
4. Under the formalised stages of the Capability Procedure, the employee will be given prior notice of the date and time of the interview; informed of the reason for it and be told that he or she will have an opportunity at the meeting to put forward an explanation, either personally or through a representative.
5. Employees are entitled to be represented and accompanied by a Staff Side Representative or Work Colleague at all stages of this procedure.
6. A member of the HR Department (Adviser or Manager) should be present at all stages of this procedure.
7. It is important that sufficient time be given at each stage for the relevant actions to take effect, and for improvement to be demonstrated and sustained
8. It is expected that an appropriate period of support, development and training will be provided within Stage 1 of the procedure of a period of three months. Notwithstanding, it is accepted that there may be individual circumstances where this period will be less or extended.

### **Stage 1**

Notify employee of concern(s) regarding their work, inform them that the capability procedure has been invoked, and arrange a meeting with employee and representative. At the meeting inform the employee of:-

- i. the standards required;
- ii. the respects, in detail, in which they fall short of the required standards;
- iii. the time in which performance must improve;
- iv. the fact that if they fail to improve and sustain improvement within a reasonable time their employment may be at risk.

Managers should look into the reason why someone falls short of the required standards and ascertain if systems can be altered to improve performance. A development/training programme (Performance Improvement Plan) should be formulated and agreed with the employee, together with a mentor, a facilitator and a timescale.

At this stage consideration can also be given to:-

- v. an alternative post where a vacancy exists and where it is reasonable to expect the employee will be able to perform to the standard required. Where other individuals are being considered for the same redeployment post, appointment will be by competitive interview; or
- vi. consider the feasibility of modifying the employee's existing role and re-banding the post to accommodate the abilities of the employee (this option may only be considered if the revised post does not have an adverse effect on service, or other roles).

If the employee's performance fails to improve a letter should be sent to the employee setting out the respects in which they have failed to improve and inviting them and their representative to a Stage 2 meeting to explain the failure.

### **Stage 2**

Reiterate concern(s) regarding the employee's work. Notify the employee that their employment may be at risk if satisfactory performance is not achieved and sustained.

Again, ascertain reasons; consider whether reason(s) is something outside the employee's control; consider –

- (a) extension of support and development/training programme to give further time in which to improve;
- (b) redeployment (as noted in Stage 1, v. above);
- (c) modification and re-banding of existing role (as noted in Stage 1, vi. above).

If the employee's performance fails to improve, they should be sent a letter setting out the respects in which they have failed to improve and inviting them and their representative to a Stage 3 meeting to explain their failure. The employee should be told that a range of options will be considered under stage 3 including dismissal.

### **Stage 3**

A formal meeting will be convened with the appropriate Head of Department, General Manager or equivalent senior manager, with HR Manager or HR Adviser present.

Reiterate concern(s) regarding the employee's work and give them an opportunity to explain. Depending on the explanation, outcomes of this review may be:-

- further time for improvement,
- consideration of re-deployment, or modification and re-banding (as noted in Stage 1, v & vi above), or
- notice of dismissal (including the right to appeal).

### **Escalation to Stage 3**

An employee should not normally be dismissed because of failure to perform to the required standard unless reviews and an opportunity to improve have been given. However, exceptional situations may arise where the application of the full process stated may not be appropriate. An example of this could include where it can be demonstrated that there is no possibility whatsoever that the employee can achieve acceptable levels of performance or where the lack of capability creates an immediate danger to other employees or members of the general public.

In these situations it may be appropriate to accelerate the employee to Stage 3. Whilst the meeting is being arranged it may be appropriate to suspend the employee on full pay (in accordance with the provisions for suspension set out in the Disciplinary procedure).