

# Capability Procedure

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## 1 Purpose

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This procedure applies to all employees employed by Tees, Esk and Wear Valleys NHS Foundation Trust with the exception of medical staff. Concerns relating to capability for medical staff will be dealt with in line with the Medical Disciplinary Policy and Procedure.

Following this procedure will:-

- Encourage and help the employee to improve
- Ensure acceptable standards of performance within the Trust are maintained
- Impose disciplinary action that is fair and reasonable, reflecting the nature and seriousness of the poor performance

## 2 Related documents

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This procedure describes how to implement the Capability/Performance section of the Human Resources, During Employment Policy, which you must read and understand before carrying out the procedures described in this document.

This procedure also refers to:-

- ✓ [Disciplinary Procedure](#)
- ✓ [Grievance Procedure](#)
- ✓ [Whistle Blowing Procedure](#)
- ✓ Trust Values and Staff Compact
- ✓ [End of Employment Procedure](#)
- ✓ [Medical Disciplinary Policy and Procedure](#)
- ✓ [Supervision Policy](#)
- ✓ [Learning & Development Procedure](#)
- ✓ [Partnership Agreement](#)

### 3 Identifying concerns



**Capability** is the ability to perform or achieve certain actions or outcomes to the required standard as outlined in an individual's Job Description

A manager who has concerns about an employee's poor performance should consider, with advice from Human Resources, the most appropriate course of action:

- Disciplinary process, or
- Capability process
- Medical Disciplinary Policy and Procedure for medics.

Concerns may be identified:

- As a result of an internal Disciplinary, Grievance or Whistleblowing process
- As a result of a Complaint.
- By managers or individuals.

If the issues specifically relate to the employee's performance, consider starting the following actions;

- Informal process;
  - If an employee's performance has fallen below the standard required, address concerns informally before invoking the formal procedures.
- Formal process;
  - If there is no improvement after a period of informal monitoring of an employee's performance.
  - If it is clear from the start that the concerns are of such a serious nature they warrant formal action.

### 4 Informal process



Managers must address issues of poor performance at an early stage to try and remedy any problems at the earliest opportunity

The Manager will:

- Discuss any concerns in relation to poor performance in supervision with the employee. *A record of the discussions should be made in the supervision documentation*
- Offer support to help employees understand the options for improving their performance and allow time for them to take necessary action. Managers need to remember that under-performance may have a variety of causes and some of these may be outside the individual's control.
- Where appropriate identify a monitoring period for an improvement in performance; this would

usually be for a period of no longer than one month.

- Where necessary put in place additional supervision.
- Discuss the job description and ensure that employees are clear about the objectives for the job and the competencies required.
- Ensure that the appraisal is completed and up-to-date for the employee and any training is considered in order to improve their performance.
- Establish whether the employee realises and understands that there is a problem with their performance, giving them an opportunity to explain any mitigating circumstances relating to their unsatisfactory work performance.
- Consider whether there are any underlying medical conditions which may be impacting on an individual's performance, this may result in a referral to Occupational Health and/or a stress risk assessment being completed. Advice can be sought from the Human Resources Department on completion of the referral.
- Ensure that all discussions are clearly documented, with clear outcomes and expectations and that these are signed by the individual, a copy is provided to the employee, and a copy retained on personal file.



At this stage, where issues have been raised informally in supervision and requirements set have not been met, the manager should seek advice from Human Resources or their line manager to determine whether the formal capability process should be followed.

## 5 Formal Capability Process



Where informal monitoring has not led to an improvement in performance, the manager should liaise with a HR representative to discuss the areas of job performance that do not meet the required standard. If the decision is to follow the formal capability process, the individual must be advised of this, including the right to be accompanied by a colleague or staffside representative and the discussions followed up in writing.

## 6 First formal meeting



When developing or reviewing the action plan advice may be required from the relevant professional lead e.g. Nursing/Occupational Therapy

Who	What	When
Line Manager	Formally invites the staff member to a meeting together with a representative from the Operational HR Team. The letter will: <ul style="list-style-type: none"> <li>• Give the employee the opportunity to be</li> </ul>	If the staff member has not met the required improvement

	<p>accompanied to the review meeting(s) by a colleague or staff side representative;</p> <ul style="list-style-type: none"> <li>• Include details of the documentation to be reviewed;</li> <li>• Enclose a copy of this Capability Procedure.</li> </ul>	
Line manager	<p>Highlight the aspects of work performance which do not meet the required standards using the following documentary evidence:-</p> <ul style="list-style-type: none"> <li>• Supervision records</li> <li>• Job description &amp; person specification</li> <li>• KSF outline</li> <li>• Staff Compact &amp; Trust Values</li> <li>• Occupational Health report/stress risk assessment</li> <li>• Other supporting documents or evidence to demonstrate performance issues</li> </ul>	During the meeting
Line manager	<p>Establish whether the employee realises and accepts that there is a problem with their performance and give them an opportunity to explain any mitigating circumstances relating to their unsatisfactory work performance.</p>	During the meeting
Line manager	<p>Explore again if there are any medical issues impacting on the individual's ability to perform their duties. Where Occupational Health advice has been sought or a stress risk assessment is carried out, those reports should be discussed with the individual. <b>Reasonable</b> adjustments if appropriate should be considered by the manager.</p>	During the meeting
Line manager	<p>Identify any additional training needs and support available to the employee.</p>	During the meeting
Line manager and employee	<p>Agree an action plan, setting out the following:-</p> <ul style="list-style-type: none"> <li>• Areas of concern /aims relating to poor performance;</li> <li>• Specific objectives to be achieved;</li> <li>• Deadline/time frame (this should differ according to each specific objective and would normally be between 1-3 months)</li> <li>• Details of how this will be achieved and support required to achieve; this will include any training identified either by the manager and/or employee to assist in the individual achieving the action plan</li> <li>• The measurement criteria</li> </ul>	During the meeting
Line manager	<p><b>Must</b> clarify if the individual works Bank shifts elsewhere in the Trust. If so, advise the individual that it would not be appropriate for that to continue whilst the formal capability process is ongoing.</p>	During the meeting

Line manager	Establish timescales for each objective and dates for the review meetings set	At the end of the first formal meeting
Line manager	Record the content of the discussion with clear outcomes and expectations	At the end of the first formal meeting
Line manager	Record the content of the discussion with clear outcomes and expectations	At the end of the first formal meeting
Line manager	Provide a copy of the documentation to the employee with a copy retained on the personal file	After the meeting



In addition to the above, the manager will include agreed regular supervision meetings with the employee on a fortnightly basis to offer additional support. These sessions should be documented and signed by the employee.



Individuals should be clearly informed at the meeting what action will be taken if there is not a significant improvement in performance over the agreed timescales which can include; A Written Warning; A Final Written Warning; Dismissal



If there is a consistent failure to agree an action plan between the manager and the employee at the informal stage, then an independent manager will be asked to review it

## 7 Formal review meeting



Regular supervision must take place during the formal capability procedure to review the individual's progress to-date and to provide support to the individual. The Formal Review Meeting will be held in line with the timescales outlined in the action plan.

A representative from the Operational HR Team will be in attendance.

The Employee will be given the right to be accompanied to the review meeting(s) by a colleague or staff side representative.

The manager will:-

- Formally invite the employee to the review meeting
- Have gathered the necessary evidence before the meeting with the employee to ascertain improvement/no improvement made
- Review and update the action plan where appropriate, eg. dates when objectives are achieved/any additional training identified/if deadlines/time frames are amended
- Consider the level of support or adjustments made available to the employee to improve their performance
- All review meetings will be documented with a copy provided to the employee and a copy retained on personal file



Throughout the process the emphasis should be on helping the employee to achieve the objectives set out in the action plan

**If the employee has achieved the standard of performance/competence required, the employee needs to be :-**

- Informed of this with an acknowledgement of their improvement
- Reminded that they are expected to maintain the level of performance/competence required of their role
- If the employee does not sustain the standard of performance/competence required, the manager should advise the employee that failure to do so could result in disciplinary action.
- A letter confirming the outcome of the meeting(s) will be sent to the employee by the manager confirming that the employee has achieved the action plan.



If there is then a lapse in performance, a review meeting will be undertaken to understand the cause and determine the appropriate course of action.

**If the employee has failed to achieve the standard of performance/competence required:-**

- The manager will have highlighted any ongoing concerns during their regular supervision with the employee
- The Manager will share any information with the employee in relation to the ongoing concerns and inform them that they have failed to meet the required level of performance/competence. Unless there are any mitigating circumstances in relation to the employee's failure to improve their performance, the manager will issue a **Written Warning usually for a period of twelve months**. The individual will be given the right of appeal.
- The action plan will be reviewed and amended accordingly to demonstrate any additional support identified at that point. Advice should be sought from the appropriate professional lead if required.
- The employee's performance will continue to be monitored monthly to give the employee the opportunity to achieve the objectives.
- During the 12 month period of the warning, if there is no improvement in the employee's performance, a second review meeting will be arranged and a **Final Written Warning will be issued usually for a period of 18 months** during which time monitoring of the action plan will continue. This meeting will be held with a manager senior to the person who issued the written warning.
- The meeting can take place when it is identified that the individual's performance is not improving; there is no requirement to wait for the full 12 month period of the written warning. The individual will be given the right of appeal.
- During the monitoring periods, if the standard of the employee's performance is of such a serious concern, consideration should be given to the level of risk of the employee remaining in the same environment. Advice should be sought from Human Resources and the appropriate professional lead and consideration given as to whether it is deemed appropriate



to proceed to a Final Capability Meeting.

- Where the individual's performance is deemed to be affected by an underlying health issue, the manager should seek further advice from Occupational Health with regards to redeployment. Advice should also be sought from the appropriate professional lead if required.
- A letter confirming the outcome of the meeting(s) will be sent to the employee by the manager, including detail of their right to appeal against the decision of the manager should disciplinary action have been taken. Appeal timescales and arrangements shall be consistent with the terms of Disciplinary Procedure.



If the employee's performance continues to be of serious concern and the individual has been issued with a Written Warning and a Final Written Warning, consideration can be given as to whether this is deemed to be 'Irredeemable Capability' and/or whether it is appropriate to progress to a Final Capability Meeting. Advice should be sought from Human Resources and the appropriate professional lead.

## 8 Final capability meeting

The meeting will be chaired by a Head of Service or Associate Director supported by a representative from the Operational HR Team HR and relevant professional lead i.e. Nursing/Occupational Therapy to discuss the remaining shortcomings, any employee mitigation and consequences of failure to achieve the required standards. The employee will be given the right to be accompanied by a colleague or staff side representative.

Prior to the Capability Meeting, managers should prepare a report which will include a copy of the individual's job description, KSF, action plan and details illustrating clear examples of previous review meetings. Managers must ensure that the individual receives a copy of this information in line with the timescales within the Trust Disciplinary Procedure.

Before any decision is made, the following should be considered:-

- Has there been a fair review of the employee's performance issues?
- Has all reasonable support/training been offered?
- Is there documentary evidence available to demonstrate that the procedure has been followed and the employee has been given every opportunity to improve their performance?
- Have the relevant warnings been issued?

The options available at this stage include:-

- Extending the monitoring period (this should only occur where there is evidence that management have not afforded the individual the necessary support)
- Consider redeployment for the employee (usually based on advice from Occupational Health)
- If the performance issues are of such a serious nature and appropriate sanctions have

been issued or it is deemed to be 'Irredeemable Capability', dismissal should be considered

- In exceptional circumstances demotion may be applied, however, it must be offered as an alternative to dismissal and accepted by the employee and have clear objectives that must be achieved within an agreed timescale. If an alternative to dismissal is refused this will be recorded and the employee will be dismissed.

A letter confirming the outcome of the Final Capability Meeting will be sent to the employee by the Determining Manager, including information about their right to appeal against the decision of the manager should disciplinary action have been taken. Appeal timescales and arrangements shall be consistent with the terms of Disciplinary Procedure.



Please note that templates will be available from the HR Department.

## 9 Reporting Capability/Poor Performance issues to Professional Bodies

In some circumstances the Trust is required to notify the appropriate professional body e.g. Nursing and Midwifery Council, Health and Care Professions Council, General Medical Council, who are responsible for the professional practice of particular staff groups.

Dependent upon the seriousness of the capability/poor performance concerns, the Trust may be obliged to inform the professional body. This would normally occur once all the Trust's procedures have **concluded** including the Appeals Process, unless the individual resigns prior to the formal procedures taking place.



Where a Determining Manager finds it necessary to recommend referral to a professional body the employee must be notified in writing of the intention to do so.

## 10 Document control

Date of approval:	03 January 2018	
Next review date:	31 October 2021	
This document replaces:	HR-0003-v3 Capability Procedure	
Lead:	Name	Title
	Nicola Rutherford	HR Manager
Members of working party:	Name	Title
	Policy Working Group	Policy Working Group
This document has been agreed and accepted by: (Director)	Name	Title
	David Levy	Director of Human Resources and OD
This document was approved by:	Name of committee/group	Date
	JCC	03 January 2018
An equality analysis was completed on this document on:	December 2017	

### Change record

Version	Date	Amendment details	Status
V4	Dec 17	Section 2 – Definition of Capability included Section 5 added “right to be accompanied by a colleague or staffside representative	Published
V 4	May 2021	Review date extended to 03 July 2021	Published
V4	2021	Review date extended to 01 Sept 2021	Published
V4	23 Aug 2021	Review date extended to 31 Oct 2021	Published

## 11 Equality Analysis Screening Form

<b>Name of Service area, Directorate/Department i.e. substance misuse, corporate, finance etc</b>	Human Resources				
<b>Name of responsible person and job title</b>	Nicola Rutherford Senior HR Team Manager				
<b>Name of working party, to include any other individuals, agencies or groups involved in this analysis</b>	Policy Working Group				
<b>Title</b>	Capability Procedure				
<b>Is the area being assessed a</b>	<b>Policy/Strategy</b>		<b>Service/Business plan</b>		<b>Project</b>
	<b>Procedure/Guidance</b>			√	<b>Code of practice</b>
	<b>Other – Please state</b>				
<b>Geographical area</b>	Trust-wide				
<b>Aims and objectives</b>	To provide a fair and consistent process for addressing concerns relating to poor performance which meets the ACAS Code of Practice.				
<b>Start date of Equality Analysis Screening</b>	December 2017				
<b>End date of Equality Analysis Screening</b>	December 2017				

**Please read the Equality Analysis Procedure for further information**

<b>1. Who does the Policy, Service, Function, Strategy, Code of practice, Guidance, Project or Business plan benefit?</b>					
Staff, managers and service users.					
<b>2. Will the Policy, Service, Function, Strategy, Code of practice, Guidance, Project or Business plan impact negatively on any of the protected characteristic groups below?</b>					
<b>Race</b> (including Gypsy and Traveller)	No	<b>Disability</b> (includes physical and mental impairment)	No	<b>Gender</b> (Men and women)	No
<b>Gender reassignment</b> (Transgender and gender identity)	No	<b>Sexual Orientation</b> (Lesbian, Gay, Bisexual and Heterosexual)	No	<b>Age</b> (includes, young people, older people – people of all ages)	No
<b>Religion or Belief</b> (includes faith groups, atheism and some other non religious beliefs)	No	<b>Pregnancy and Maternity</b> (includes pregnancy, women who are breastfeeding and women on maternity leave)	No	<b>Marriage and Civil Partnership</b> (includes opposite sex and same sex couples who are either married or civil partners)	No
<p><b>Yes – Please describe the anticipated negative impact</b></p> <p><b>No – Please describe any positive outcomes</b></p> <p>If performance issues exist then all staff will be given the opportunity to improve with support, training, reasonable adjustments or any other measures identified which will enable them to achieve a satisfactory level of performance. If their level of performance does not improve to the required level then the procedure provides a means to progress individuals either into suitable alternative employment or to dismissal, thus ensuring quality of care for our service users.</p>					
<b>3. Have you considered any codes of practice, guidance, project or business plan benefit? If 'No', why not?</b>				<b>Yes</b>	√
				<b>No</b>	

**Sources of Information may include:**

- Feedback from equality bodies, e.g. Care Quality Commission, Disability Rights Commission, etc
- Investigation findings
- Trust Strategic Direction
- Data collection/Analysis
- Staff grievances
- Media
- Community Consultation/Consultation Groups
- Internal Consultation
- Other (Please state below)

**4. Have you engaged or consulted with service users, carers, staff and other stakeholders including people from the following protected groups?: Race, Disability, Gender, Gender reassignment (Trans), Sexual Orientation (LGB), Religion or Belief, Age, Pregnancy and Maternity or Marriage and Civil Partnership**

**Yes – Please describe the engagement and involvement that has taken place**

The procedure has been developed through the Policy Working Group which is made up of staff side representatives, managers and HR.

**No – Please describe future plans that you may have to engage and involve people from different groups**

<b>5. As part of this equality analysis have any training needs/service needs been identified?</b>					
No	Please describe the identified training needs/service needs below				
<b>A training need has been identified for</b>					
Trust staff	No	Service users	No	Contractors or other outside agencies	No
<b>Make sure that you have checked the information and that you are comfortable that additional evidence can provided if you are required to do so</b>					
The completed EA has been signed off by: You the Policy owner/manager: Type name: Nicola Rutherford					Date: December 2017
Your reporting manager: Type name: David Levy					Date: December 2017
Please forward this form by email to: <a href="mailto:tewv.policies@nhs.net">tewv.policies@nhs.net</a> <b>Please Telephone: 0191 3336267/6542 for further advice and information on equality analysis</b>					