


Capability (Performance) Policy & Procedure

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Signed on behalf of the Trust:
Anna Hills, Chief Executive


Signed on behalf of JCNP:
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1 Introduction

Cambridgeshire and Peterborough NHS Foundation Trust (hereafter referred to as “the Trust” or “CFPT”) recognises that satisfactory performance is necessary for the effective and efficient operation of the Trust and for the health and safety of patients, clients and employees. Standards of performance are determined by NHS Knowledge Skills Framework (KSF) for all staff employed under Agenda for Change terms, Trust standards, professional standards (including clinical standards where applicable), skill levels required for specific jobs and individual objectives recorded through the Appraisal process.

2 Purpose

The aim of this policy is to provide a clear process for the management of situations where an individual’s performance consistently falls below the acceptable standard. In such circumstances, all employees will be treated in a fair and equitable manner and every effort will be made to assist the individual in improving their performance and reaching and maintaining a satisfactory level of performance.

Key objectives of the policy are:

- a. To support and enable employees to achieve required levels of competency in their role.
- b. To achieve consistency, fairness and transparency in the management of capability issues, providing a framework for matters to be dealt with in a firm but fair manner, whilst also ensuring that employees are treated with dignity and respect;
- c. To encourage improvements with employees whose performance is below acceptable standards within a reasonable timeframe;
- d. To facilitate the retention of experienced and valued employees;
- e. To enable early intervention when poor performance is identified, providing a supportive approach to assist an employee to become effective;
- f. To provide clarity on the range of options available to support and enable employee capability.

3 Scope

This procedure applies to employees within the Trust with the exception of career grade medical and dental staff and Doctors in Training.

Where unsatisfactory performance is a result of wilful negligence and or misconduct, the Trust’s Disciplinary Procedure should be used.

Where an individual’s performance is affected by an alcohol or drug misuse problem, support will be provided in line with the Trust’s Substance Use Policy and Guidance for Staff.

4 Duties

4.1 The Chief Executive

The Chief Executive has overall responsibility to ensure that appropriate performance management arrangements are in place for all employees employed by the Trust and that they are managed responsibly.

4.2 Director of People and Business Development

The Director of People and Business Development has the overall responsibility for ensuring compliance with this policy.

4.3 Associate Director People Services

The Associate Director People Services is responsible in ensuring that procedures and guidance are developed as required in order to support the implementation of and monitoring of the policy and any associated legislation.

4.4 Quality, Safety & Governance Committee

The Quality, Safety & Governance Committee has overarching responsibility for the ratification of this policy, to receive reports pertaining to the implementation of this policy, as required, and to agree actions to address any gaps identified.

4.5 Joint Consultation & Negotiating Committee

The Joint Consultation & Negotiating Committee has responsibility for supporting the development, approval, monitoring and review of this policy.

4.6 Line Managers

Line Managers are responsible for ensuring that individual employees have up-to-date job descriptions, which accurately convey the main duties of each specific role and the key tasks involved. Equally, line managers are responsible for the effective operation of the Appraisal & Supervision process. This requires line managers to translate business plans into realistic and achievable objectives which enable employees to understand what is expected of them. Line managers are required to regularly monitor and address employees' performance through regular professional and/or clinical supervision as well as through the appraisal process, prior to moving to the Capability process/Policy.

Line Managers are responsible for ensuring that the general procedure of this policy is adhered to in a fair, transparent, objective and timely manner ensuring that all stages are documented. The line manager is responsible for carrying out regular reviews of performance, highlighting areas of unsatisfactory performance and where improvement has been achieved, and for giving feedback on both scenarios.

4.7 Employee

All employees have a contractual responsibility to achieve and maintain a satisfactory level of performance and to bring to supervision any concerns, for discussion and recording. All employees are required to participate in the supervision and appraisal process and are expected to actively engage in personal development as detailed in their objectives.

Employees are responsible for attending all meetings arranged in relation to any capability issues and for making every effort to improve in the identified areas where job requirement standards are not being met and should be supported to seek assistance accordingly.

It is the employee's responsibility to seek clarification of any points not fully understood around the issues raised in regard to their capability and the application of the Capability (Performance) Policy and Procedure to their situation.

Staff who are specifically employed for the purposes of completing a training course or there is a requirement to complete a course of study as part of their role, should be aware that their employment is at risk if they fail to complete or pass their course.

4.8 Human Resources

Human Resources are available to provide advice and guidance to managers regarding any aspect of this policy and procedure.

4.9 Trades Union Representative / Accompanying Colleague

An employee is entitled to be represented and supported by an accredited Trades Union representative or accompanied by a Trust work colleague at formal review meetings or subsequent meetings as outlined in this policy.

5 General Principles

It is the continuing responsibility of all employees to perform to a satisfactory level and they should be given every help and encouragement to do so. CPFT has a responsibility for setting realistic and measurable standards of performance and for explaining those standards carefully to employees.

When a line manager identifies that an employee's work performance is unsatisfactory an informal capability meeting should be convened with the employee to discuss, in a constructive manner, the areas of concern. Unsatisfactory performance can become apparent in a number of ways. This may include:

- a. Poor standards of work, e.g. frequent mistakes, not following a job through, unable to cope with instructions given.
- b. Inability to cope with a reasonable volume of work to a satisfactory standard.
- c. Attitude to work e.g. poor interpersonal skills, lack of commitment and drive.
- d. Apparent lack of skill in tasks/method of work required.
- e. Through the supervision and appraisal process when an individual is consistently not achieving agreed and realistic set targets/objectives, and with reference to NHS Knowledge Skills Framework (KSF) for staff on Agenda for Change terms.

(This is not an exhaustive list)

There are a number of points that need to be considered and appropriate action taken before, during or following any Capability process:

- a. The review meetings outlined in this policy should be viewed as a minimum requirement. It is important that regular informal feedback on performance is maintained throughout the review periods. This can be done through appropriate professional and/or clinical supervision or 1:1 meetings. Review periods are usually 4 weeks, but can be shorter or longer depending on:-
 - i. Individual and organisational circumstances
 - ii. The nature of the post and responsibilities
 - iii. The duration and availability of further training
- b. An action plan should be developed with objectives to support the individual to achieve the required standard. There is an expectation that SMART objectives – Specific, Measurable, Achievable, Relevant and Time-bound – should be used.
- c. If performance improves and subsequently falls below required standard again, it is possible to go back into the policy at the stage that had previously been reached.

The employee's line manager or immediate supervisor will manage the employee's performance through this policy, unless otherwise stated. It may be necessary to bring forward the review meeting if issues persist, deteriorate or if the employee is seeking additional support during a review period

- d. If the employee shows significant improvement, but has not reached the desired level the review period in usual circumstances should be extended at the review meeting for up to a maximum of a further 4 weeks, if it is believed they will reach the required standard.
- e. Human Resources will be available to provide advice throughout the process and it is expected that a HR Representative will be present at stage 2 and final review meetings.
- f. Where an individual is absent, for example due to sickness absence, maternity leave, paternity leave, at any point through the process, the process will continue at the stage reached prior to the absence.
- g. In the case of sickness absence, the line manager should approach Occupational Health for advice and a referral should be made for the individual as soon as they are absent, please refer to the Trust's Supporting Attendance Policy for further information.

5.1 Medical Staff

Matters relating to the professional competence of career grade Medical & Dental staff shall be dealt with in accordance with the Procedure for Handling Concerns around Medical and Dental Employees. For Doctors in Training, the Professional Support Unit (PSU) at Health Education East of England, provides a consistent, single point of access to expert advice, guidance and information regarding concerns to all parties involved in the management of medical trainees. Further details can be obtained from Medical Services.

6 Informal Stage

- a. Minor performance issues should initially be addressed informally, initially during professional and/or clinical supervision. The informal stage of the capability process does not constitute part of the formal procedure. The aim of the discussion is to clarify the standards of performance required and to encourage improvement which may include an agreed plan of action.
- b. Where an employee's performance falls below an acceptable standard the immediate line manager should discuss/counsel the employee at the earliest opportunity with a view to providing evidence, identifying the causes and offering assistance where appropriate to help the employee achieve the required standard, and also seeking the employee's views.
- c. Line managers should seek to help resolve the managerial, organisational or environmental causes of poor performance. For example, if poor performance can be attributable to working conditions, managers should seek to change/ improve the conditions, and if this is not possible, adopt a different standard. Performance standards should also be considered to ensure that they are not unreasonably high and that all employees are judged by the same standard. Line managers should support employees with domestic problems by applying the Trust's flexible working policies. Advice is available from Human Resources on these issues.
- d. Line managers should offer assistance and support to employees as appropriate to improve their performance, for example offering training opportunities, closer supervision by someone skilled at the job who will be able to provide an

assessment of the employee's performance, a view on the prospects for improvement, flexible working patterns, weekly/more frequent supervision, access to counselling services, Occupational Health Service.

- e. The line manager should discuss and agree a method of monitoring future performance with the employee and agree clear objectives, which are SMART. Managers should actively support employee participation in setting and agreeing objectives. The review period within which the required standards of performance could be reasonably attained should be specified (normally 4–8 weeks).
- f. At the informal stage relevant points are discussed, objectives are set, support and timescales are agreed. The line manager will confirm in writing to the employee with a copy of the agreed performance improvement action plan within 7 calendar days. The objectives should be continuously reviewed by the manager during the review period.
- g. Where the employee's performance improves to the required standard within the defined timescale, the line manager writes to confirm that a satisfactory level of performance has been achieved and must be maintained for 12 months. The letter is retained on the personal file.
- h. If performance has not improved within the timescale, or is not maintained over the following 12 months, then the employee should be advised that it will be addressed under the Formal Stage 1 procedure.
- i. If it is clear that during the review period progress is not being made against the action plan, the manager can bring forward the review date and move to the next stage of the process.

7 Formal Procedure

7.1 Formal Stage 1

- a. If there has not been an acceptable or sustained improvement in performance at the end of the informal stage, then the manager, in consultation with Human Resources, should consider progressing to the first formal stage, Formal Stage 1.
- b. The immediate line manager should continue to support the process at Formal Stage 1. The line manager should arrange to meet with the employee, giving them at least 7 calendar days written notice of the meeting. The employee should be informed of the purpose of the meeting and provided with any documentary evidence relevant to the review of their performance.
- c. The employee should be informed that they are entitled to be accompanied by an accredited Trades Union representative or a Trust work colleague.
- d. The Formal Stage 1 Meeting
During the meeting the line manager should clearly state the following:
 - i. The purpose of the meeting.
 - ii. The required standards of performance. It may be appropriate to make reference to the relevant documentation at this stage.
 - iii. Examples of where performance has not reached the required standards.
 - iv. The impact that this has made on the service/colleagues.

- v. Reference to remedial action taken and support offered and discussed during previous informal discussion/counselling meetings.
- e. The employee will be given the opportunity to respond to the perceived shortcomings and put forward any mitigating factors or identify any new problems which may be contributing to the poor performance. Any explanations given will be fully considered before a decision is reached as to whether it is appropriate to continue with the Formal Stage 1 capability process, i.e. to set a formal monitoring period, or whether another course of action may be more appropriate (i.e. revert to informal stage, give more training/support before moving to the formal stage).
- f. If it is decided that a formal monitoring period is required, the manager should outline:
 - i. The reason for the formal review period.
 - ii. The level of improvement required i.e. agree future objectives, which are both achievable and measurable.
 - iii. The method of monitoring and ongoing review of future performance and how this will be recorded.
 - iv. The review period in which it is envisaged that the required standards of performance should be attained is normally 4-8 weeks, but may be more or less depending on the specialised nature of the post, length of service, seniority of position and the availability of training and development opportunities.
 - v. Any reasonable assistance and training that will be given, including weekly management supervision. The line manager may consider a range of actions which may include appointing an appropriate professional lead to support the employee.
 - vi. If the required standards of performance are not achieved or sustained, the issue will be dealt with under the Formal Stage 2 procedure and this may ultimately lead to their dismissal.
- g. These points must be confirmed in writing to the employee within 7 calendar days of the meeting. A copy should be held on their personal file for the duration of the formal review.
- h. If, at the end of the monitoring period the employee's performance is satisfactory, the manager should meet the employee. The manager should confirm in writing that satisfactory performance has been achieved, and that this needs to be maintained for 12 months.
- i. If during the 12 months their performance becomes an issue the process will recommence at Formal Stage 2.
- j. If, at the end of the monitoring period the employee has not reached or sustained the required standards then the senior manager (the line manager's manager) should consider progressing the matter to Formal Stage 2.

7.2 Formal Stage 2

- a. The procedure for the meeting is in accordance with the above section (Formal Stage 1) except that:

- i. As this could be the penultimate meeting before a dismissal, it is essential that Human Resources is consulted prior to the meeting and may be present during the meeting.
 - ii. The senior manager (line manager's manager) should chair this meeting at Formal Stage 2.
 - iii. The employee should be informed that they may be accompanied by a recognised Trades Union representative or Trust work colleague.
 - iv. If at the end of the meeting, it is decided that a Formal Stage 2 monitoring period is appropriate, the employee should be informed that continued poor performance during this time may lead to their dismissal.
- b. Where the employee's performance has improved to the required standard by the end of the monitoring period, the employee should be informed of such. This should be communicated both verbally and in writing. It should include a reminder that such standards must be maintained for a period of 12 months or further action may result in accordance with the Capability Policy & Procedure, which could ultimately result in the employee's dismissal.
- c. If there is an identified health condition or the employee's performance relates to their skill or aptitude to fulfil the role and this cannot be addressed through training and support, the manager should discuss redeployment as an option with the employee. If the manager decides that this is suitable, the employee will be placed on the redeployment register for 8 weeks. Redeployment will not attract pay protection.
- d. Where an employee's performance remains unsatisfactory, the matter should be progressed to a Final Capability Meeting for consideration.

7.3 Final Capability Meeting

- a. Where, after having followed the procedure outlined above, the employee fails to achieve or maintain the required standards of performance, consideration should be given to dismissal on the grounds of capability.
- b. The senior manager (Band 8a or above) conducting the final capability meeting should arrange to meet with the employee, giving them at least 7 calendar days written notice of the meeting. The employee should be informed of the purpose of the meeting and provided with any documentary evidence relevant to the review of their performance. They should be advised that they can be accompanied by an accredited Trades Union Representative or Trust work colleague. They should also be informed prior to the final capability meeting that the outcome may result in their dismissal from the Trust. A Human Resources representative must be present at the hearing.
- c. All available evidence will be reviewed, and the senior manager considering the case must be satisfied that the procedure has been followed and the employee has been given all reasonable assistance to improve their performance and achieve the required standards. The employee will also be given the opportunity to explain unsatisfactory/poor performance and put forward any mitigating factors.

- d. If no acceptable mitigating factors are put forward to explain the poor work performance, the employee's contract of employment shall be terminated. The senior manager should explain to the employee:
 - i. The reason for the dismissal, i.e. capability, with reference to any previous formal reviews.
 - ii. The effective date of the dismissal.
 - iii. Period of notice (if any)
 - iv. Right of appeal.
- e. The decision must be confirmed in writing within 7 calendar days.
- f. It may be appropriate to refer the details of any employees who are dismissed from a professionally registered post, to the relevant professional body (e.g. NMC, HCPC, GSCC etc.)

7.4 Alternative Action to Dismissal

- a. It may be appropriate, as an alternative to dismissal, to make recommendations for other action which could include redeployment, retraining, moved to an alternative post or a post of lesser responsibility, change of duties in the current role, change of working hours etc. This should not be considered as an automatic right and will be subject to the needs of the service and management discretion.
 - i. The process will be in line with the redeployment process outlined the Trust's Redeployment Procedure. Please refer to this policy for details.
 - ii. If redeployment is successful, this will be confirmed in writing and the employee will be permanently moved to the new post.
- b. Consideration must first have been given to resolving the situation through measures such as remedial training, flexible working patterns or transfer to other duties, suitable alternative employment or more effective supervision.
- c. Alternative action to dismissal does not normally apply to employees employed to specifically to undertake a training course, however there may be occasions where this may be considered, for example, where redeployment is identified as a reasonable adjustment eg to support an employee with a disability.

8.1 General Points

In some situations employees are appointed on condition that they obtain a particular qualification or pass an examination or assessment in order to continue in employment, either as a requirement of a training organisation or the Trust. In these situations, employees may be dismissed if they fail to do so.

The rules of the governing body / training organisation or those imposed by the Trust in their terms and conditions of service should indicate, where possible, how many attempts the employee is allowed to sit for the examination/assessment and over what time period. These must be made known to the employee at the commencement of their training/employment.

Where employees fail to pass an examination but are entitled to more than one attempt, they must be seen by their line manager following the first unsuccessful attempt and informed of the possible outcome of continued failure, in line with the process below. This should be confirmed in writing. In the event of failure following

the permitted number of attempts, the employee's contract of employment may be terminated by the appropriate Dismissing Officer, in line with the arrangements below.

8.2 Training Provider and Trust Responsibilities

- a. The decision on whether an employee of the Trust fails to complete the course is the responsibility of the training provider or the Trust. The training provider has the responsibility for informing the Trust of any issues relating to the performance of the employee on the course.
- b. At regular intervals there should be conversations between the training provider and the Trust to ensure that the Trust is aware of issues pertaining to its employees.
- c. Any process entered into by the training provider should occur at the same time as the Trust; however, the decision by the Trust to dismiss an employee may only be taken following the decision by the training provider to remove the employee from the course.
- d. For Trainee Clinical Psychologists no action will be taken by the Trust prior to the employee exhausting the appeal process of the training provider. However, the Trust will discuss the implications of the employee failing or leaving the course during this process.

8.3 Investigation Process

- a. Where there is a concern with a Trust employee, which could lead to them failing the course or being asked to leave the course, contact should be made to the line manager for that individual to inform them of the situation. Once this notification is made, the Trust will be required to carry out an investigation of the circumstances.
- b. As part of this investigation, the training provider or the Trust Representative will be asked to submit a statement giving the following information:
 - i. Details of the course and course content
 - ii. Details of the employee's progress on the course
 - iii. Details of the concerns relating to the employee's failing / leaving the course
- c. As well as the statement, they will be required to provide documentary evidence of the process that has been entered into by the training provider, including:
 - i. Any meetings held with the employee relating to the course
 - ii. Statements made by any other employees relating to the employee
 - iii. Details of any decisions made by the provider relating to the employee
 - iv. Any other documentary evidence that has been taken into account when making their decision
- d. Once this information has been submitted to the Senior Manager, an individual will be appointed to interview the employee and Line Manager and produce a report to the Senior Manager. The report should contain information provided to the Trust by the training organisation, interviews conducted with the employee and interviews with the Supervisor, Line Manager or Clinical Practice Tutor.
- e. During the interview, the employee should disclose any mitigating information relating to the issues on the course. It is anticipated that mitigating circumstances

will have been discussed with the training provider/Trust and this will have already been taken into consideration.

The process for the review meeting will be in line with section 7.3 (points b – e) above.

- f. If the employee's contract of employment is terminated, the manager should explain to the employee:
 - i. the reason for the dismissal e.g. capability or some other substantial reason
 - the effective date of the dismissal
 - ii. right of appeal (see Section 7).
- g. The decision must be confirmed in writing within 7 calendar days following the meeting and a copy will normally be sent to the employee's Trades Union representative (if any).
- h. Section 7.4 "Alternative Action to Dismissal" does not normally apply to employees employed to undertake a training course. It may apply however if there are exceptional circumstances as set out in 7.4c.

8 Appeal

Employees have the right of appeal against dismissal under this Capability Policy and Procedure. An employee wishing to appeal should follow the Trust's Appeals Procedure which is laid out in a separate document. An appeal must be made within 7 calendar days of the dismissal meeting.

9 Monitoring Compliance

All cases managed under the formal stages of this Capability and Work Performance Procedure are monitored and reviewed by the Human Resources department. It is recommended that the circumstances which led to each capability and performance case are reviewed by managers within the relevant department/team, with a view to improving working practices and procedures and to prevent future cases.

10 Links to Other Documents / Information

- a. Appraisal Policy
- b. Temporary Employment Policy
- c. Supporting Attendance Policy & Procedure
- d. Supervision Policy
- e. Flexible Working Policy
- f. Early Resolution Policy
- g. Substance Use Policy and Guidance for Staff
- h. Appeal Procedure
- i. Disciplinary Policy & Procedure
- j. Equality, Diversity and Human Rights Policy
- k. Professional Support Unit Health Education East of England
https://heeoee.hee.nhs.uk/PSU_Home

Appendix 1 – Special Cases

Denial by Employees of Inadequate Performance

The employee is unlikely to respond constructively to suggestions of improvements if they do not accept that their performance is inadequate. This response can justify shortening the improvement monitoring period, but managers still need to go through the procedure and provide the employee with formal opportunities to offer an explanation for their performance and to enable management to listen to and consider them.

If the employee invokes the Early Resolution Policy as a result of the manager attempting to tackle the poor performance, it would be appropriate to suspend the Capability Policy & Procedure for a short period until the employee's complaint is considered. Consideration should also be given, where possible, to bringing in another manager to deal with the capability issue.

Probationary Periods

The Trust does not operate policies to support probationary periods for new employees. Applicants should be assessed prior to appointment using structured interviews and pre-employment checks, and only those deemed suitable appointed. The employee's performance, once appointed, will be assessed in line with this procedure. Managers who are concerned about the performance of applicants prior to appointment should contact Human Resources for further advice.

New Starters

The purpose of an induction is to support employees and help them become fully integrated and productive from the earliest opportunity.

It is the line manager's responsibility to monitor the progress of new employees during the initial employment period to provide feedback; ensure training and development needs are identified and met; and ensure that the employee is given opportunity to demonstrate their relevant skills, experience and knowledge. Any concerns or problems should be identified, and support and encouragement put in place to enable sustainable improvements to be made if necessary. This should be in line with Local Induction.

People with Disabilities

Equality Act 2010 makes it unlawful to discriminate against people with disabilities by dismissing them or subjecting them to any detriment, which cannot be justified. Managers must ensure that any action is justified, and that the reason for conducting a formal review or dismissal is not one that can be removed by a reasonable adjustment. A manager who needs to deal with the poor performance of an employee with a disability should consult with Human Resources.

Changes in Working Techniques

If an employee has demonstrated that they are not capable of assimilating new techniques which are required under the terms of their contract of employment, then any action taken up to and including dismissal will be fair as long as the procedure has been followed.

Employees Who Work Outside of Normal Working Hours

For employees who normally work at nights or weekends, meetings and appeals will be held at mutually convenient times. If this involves the employee being available at times when they would not otherwise have been on duty, consideration should be given to appropriate compensation for the time off or expenses incurred.

Consideration will also be given to the special requirements for support in improving performance such as training and supervision to ensure that every opportunity is given to improve and that performance is adequately monitored. For example, consideration may need to be given to moving a permanent night worker onto days for training and supervision.

Statutory Regulating Bodies

The Trust reserves the right to report such matters of a serious nature as it sees fit to the individual's statutory regulating body where appropriate (e.g. NMC, HCPC).

The employee will be notified of this action.