

# CAPABILITY POLICY AND PROCEDURE

**Produced By:** Elizabeth Webber

**Date** July 2004

**Ratified By:** Remuneration and Human Resources Committee  
The PCT Board  
The Joint Consultative Committee

**CEO Signature:** ..... **Chair JCC Signature:** .....

**Policy last reviewed on:** July 2004

**Policy to be reviewed on:** July 2006

**Policy to be reviewed by:** Director of Human Resources and Organisational Development

**Policy to be used in conjunction with:**

Sickness Absence Policy

Equal Opportunities Policy in Employment

Sickness Absence Policy and Procedure

Disciplinary Policy and Procedure

Alcohol and Substance Misuse Policy

## Capability Policy and Procedure

### 1. Purpose and scope

This policy and procedure is designed to help and encourage all employees to achieve and maintain standards of job performance and clarifies the rights and responsibilities of management, staff and their representatives in respect of these standards. It recognises that there are some employees who are unable to achieve these standards for reasons of capability and seeks to address these, find solutions, and make suitable adjustments to bring their performance into line with the standard.

This policy, therefore, establishes a procedure for managers to follow when dealing with issues of poor performance resulting either from a lack of skills, abilities, competencies or knowledge.

1.3 Incapability is work behaviour or performance that falls below the expected standard owing to lack of skill/ability or where an employee has high levels of genuine sickness absence or is incapable of carrying out their job owing to ill health.

1.4 The Capability Policy and Procedure should be used to manage the following situations:

- Unsatisfactory performance in terms of quality, quantity etc.
- Unacceptable high levels of genuine sickness absence
- Unsatisfactory attendance due to ill health
- The manager's observation of instances of poor performance
- Consistent failure to meet deadlines or pre-set targets
- Consistent failure to perform in accordance with the competencies required for the post
- A general fall in standard of work

1.5 This policy applies to all staff employed by Hounslow Primary Care Trust except Medical Staff. Medical staff will be dealt with in accordance with HC (90) and HSG (94)49.

1.6 This policy does not form part of the Disciplinary policy. It is important therefore that a distinction is made between a genuine inability to achieve the required standards of performance and unacceptable conduct.

1.7 This policy may be used in conjunction with the Sickness Absence Policy if an employee's performance is unsatisfactory and his/her sickness absence levels are unacceptably high.

- 1.8 When poor performance is the result of alcohol or drug abuse the PCT's procedure on Alcohol and Substance Misuse should be applied.

## **2. Principles**

- 2.1 The primary objective of the Capability Policy and Procedure is to assist employees to meet the standards established by the PCT. Genuine incapability is not misconduct and employees should be treated sympathetically taking into account their individual circumstances.
- 2.2 Where a manager recognises that an employee's performance is unsatisfactory initial counselling should take place at the earliest possible opportunity. This should take the form of informal discussions with the employee and should be part of the normal process of day-to-day supervision. These counselling sessions should be documented to the individual with clear objectives set for the standards of performance expected and any help/ support available to them in achieving these.
- 2.3 This policy will, in most cases, only be applied when informal discussions and counselling between the employee and his/her immediate manager have failed to result in the desired improvement.
- 2.4 The PCT will undertake to ensure that any failures and shortcomings of staff in relation to the performance of their duties of their post are brought to their attention at the earliest opportunity.
- 2.5 In accordance with the PCT's Equal Opportunities Policy in Employment, this policy will be applied fairly and consistently to all staff employed by the PCT.
- 2.6 Where poor performance is assessed as being attributable to an employee's disability every consideration will be given, and reasonable adjustment made, to assist him/her to meet the standard or to redeploy him/her, to more suitable duties, within the PCT.
- 2.7 Special attention should be given to ensuring that standards are understood by employees for whom English is not their first language or those with little experience of working life.
- 2.8 All employees will have the right of appeal against formal action taken under this policy and the right to be represented by a trade union representative or a friend employed by the PCT not acting in a legal capacity, during formal action.

- 2.9 A Human Resources representative will be consulted and be present at all formal stages of the procedure.
- 2.10 The three stage formal Capability Procedure (detailed in 5.2) will normally be implemented sequentially, however, in exceptional circumstances involving serious/gross incapability or incompetence it may be implemented at stage two or three.
- 2.11 No formal action will be taken against accredited trade union representatives until such time as the matter has been discussed with the relevant full time officer.
- 2.12 Levels of authority will reflect the existing management structure.
- 2.13 Any investigation which may call into question the professional competence of a member of staff will be reported to the professional lead and additional guidance may be sought from the relevant professional body.
- 2.14 The PCT will provide training in this policy and procedure for all managers who have responsibility for the supervision and management of staff.

### **3. Setting and Maintaining Standards**

- 3.1 Management has a duty to establish and maintain fair, achievable and consistent standards and ensure that employees are aware of the standards required of them.
- 3.2 To facilitate this, managers should ensure that:
- Job descriptions are an accurate reflection of the job
  - Person specifications are clearly related to job descriptions and specify objective criteria. These should form the basis for recruitment, selection and performance assessment
  - Recruitment and selection decisions are based upon the individual's skills, abilities and competencies
  - New appointees receive thorough and appropriate induction training
  - Standards of work performance are set and arrangements are in place for appropriate training and supervision of all employees in accordance with the PCT's appraisal system
  - Work performance is carefully monitored on an ongoing basis to identify training or development needs and confirm that performance is developing as required
  - All training identified on an employee's Personal Development Plan takes place

- The standard of work required is explained to the employee
- That the consequences of any failure to meet the required standards are fully explained to employees
- Performance is discussed regularly with each employee individually so that he/she is aware of how he/she is performing
- Following promotion or redeployment, or where standards change through organisational change, the employee is made aware of the new standards of performance and given any necessary training to meet the needs of the post
- Workloads are manageable and resources sufficient for the task
- The needs of an employee with a disability are discussed in relation to the possible impact this may have on his/her performance and advice from Human Resources and Occupational Health is sought to address this issue

#### **4. Procedure**

##### **4.1 Informal Procedure/ Counselling**

- 4.2 When an employee fails to meet the required performance standards, it would usually be dealt with by the manager through informal discussion, often described as “Counselling”. It should be discussed with the employee at the first possible opportunity so that the employee can take steps to improve his/her performance standards.
- 4.3 The term “Counselling” refers to any support given to the employee, in order for them to meet the agreed minimum standards of their role. This may include regular one-to-one, regular/additional supervision sessions, shadowing, any agreed additional training on or off the job, which is not part of their Personal Development Plan.
- 4.4 The employee must be informed that the discussion constitutes counselling and that continued failure to meet the appropriate standards may result in further action taken under the Capability Policy.
- 4.5 The manager would outline the monitoring arrangement and agree a time scale for assessment and further action if appropriate.
- 4.6 If the employee is on sick leave during this period of time, then the manager may consider extending the period of monitoring. But this could not be done for an unlimited period of time.

- 4.7 These counselling sessions should be documented to the individual with clear objectives set for the standards of performance expected and any help/ support available to them in achieving these.
- 4.8 Managers should be sensitive to the needs of the employee and take all reasonable steps to help him/her to achieve the required standard/s.
- 4.9 Counselling does not form part of the formal Capability Procedure.
- 4.10 If there is little or no improvement in the employee's performance the manager should arrange a meeting to discuss the matter and develop a plan of action in conjunction with the employee.

The objectives of the meeting should be to:

- Inform the employee of where and how work performance/capability is below standard
- Give the employee an opportunity to explain and identify any reasons for his/her poor performance/lack of capability
- Gain agreement between the manager and the employee on the required standards
- Develop a plan to improve performance to the required standard. This might include training, counselling, mentoring or changes to working arrangements
- Agree a timetable for improvement
- Agree a date for improvement to be reviewed

The employee should be informed that the meeting constitutes part of the informal stage of the Capability Procedure and that failure to improve could lead to the formal Capability Procedure being implemented.

The manager should make a detailed note of the discussions and plan of action which the employee should be asked to sign as an accurate reflection of the discussion. If the employee does not agree that the written note is accurate he/she should raise his/her specific concerns within three working days of receiving the note. Any amendments to the note should then be made within three working days of the concerns being lodged.

A signed copy of the note will be kept on the employee's file together with any correspondence or emails relating to the meeting. The employee will be entitled to have access to this information in accordance with the Data Protection regulations.

- 4.11 If after the review period the employee's performance meets the required standard no further action should be necessary. The manager must inform the employee of the satisfactory outcome of the review and place a note to this effect on the employee's personal file.
- 4.12 If the employee's performance has not improved, or the improvement is still insufficient to meet the standard, the manager may consider extending the informal review period where this is likely to result in the required improvement.
- 4.13 If the employee is still unable to meet the standards, or refuses to co-operate the following formal procedure should be adopted which may ultimately lead to dismissal on grounds of lack of capability. (In certain circumstances refusal to co-operate may result in the Disciplinary Procedure being invoked)
- 4.14 If poor performance appears to be related to a health problem or disability the PCT's Sickness Absence Policy may be appropriate.

Under this policy the employee may be referred to Occupational Health for an assessment or, with the employee's consent, a medical report may be sought from his/her own doctor in accordance with the Medical Reports Act 1988.

If employee's medical condition is covered under Disability Discrimination Act, then the manager would seek further advice from Human Resources Department. Hounslow PCT would make reasonable adjustments to support the employee to reach agreed standards of performance. At this point Hounslow PCT's Sickness Absence Policy would apply.

## **5.1 Formal Procedure**

- 5.2 Where the manager believes that a more serious case of lack of capability exists, or where persistent poor performance has not responded to informal action, the formal procedure should be invoked.
- 5.2 There are three stages to the formal procedure:
- Stage 1 - First Review Meeting
  - Stage 2 - Final Review Meeting
  - Stage 3 - Dismissal/Capability Transfer
- 5.3 Within five working days of each of the above stages the manager (in liaison with Human Resources) must write to the employee.

The letter should state:

- That this is the first, (second or third stage) of the PCT's Capability Policy and Procedure
- The areas where improvement is required
- The level of improvement required and/or the required standard that must be achieved
- The timescales within which there should be an improvement
- The measures that will be made available to ensure that the employee can achieve this level, e.g. training, supervision, monitoring etc.
- Any other action that will be taken by the manager or employee to resolve the situation
- The consequences if performance does not reach a satisfactory level i.e. further formal action, capability transfer or dismissal.

The manager should include with the letter a detailed file note of the meeting signed by the employee following the procedure (detailed in 4.5)

#### **5.4 Stage 1 - First Review Meeting**

A letter from the manager outlining the date and time of the meeting must be sent to the employee at least five working days in advance of the meeting.

The letter must include:

- The reason for the meeting
- The name of the manager who will conduct the meeting
- The employee's right to be represented by a trade union representative or friend employed by the PCT or work colleague not acting in a legal capacity
- Copies of any documentation to be used at the meeting
- A copy of the Capability Policy and Procedure

The process to be followed at the meeting is as follows:

- a) The manager will be accompanied by a Human Resources representative
- b) He/she will state the standards of work performance expected of the employee in the areas under consideration
- c) Explain how the employee's performance has fallen short of what is required and the impact on service delivery
- d) Confirm that any informal measures have failed to improve performance to the level required and that this is due to a lack of skills, abilities or competencies

- e) Provide the employee with an opportunity to explain and/or give reasons why the manager should not consider that performance has been unacceptable
- f) Discuss the way forward and ensure that a suitable plan of action is drawn up. This should include specific, measurable and achievable targets
- g) Set a review date which allows for regular up-dating to the employee on progress being made and gives a reasonable period of time for the employee to improve and demonstrate that he/she is capable of performing all the duties of the job
- h) Consider options available for enabling the employee to improve to the required standard e.g. further or additional training, closer supervision for a limited period, adjustment to duties consistent with the needs of the PCT which do not change the general character of the post; or access to Occupational Health counselling
- i) Explain that failure to reach the required standard during the review period may result in further formal action, including possible termination of employment on grounds of capability.

If performance is assessed as satisfactory at the end of the review period, the manager should inform the employee of the outcome of the review and confirm this in writing.

If performance has not reached the required level at the end of the review period (or earlier if there is clearly no improvement or a deterioration) the manager should consult Human Resources with a view to either:

- Holding a further formal meeting and extending the review period or
- Holding a final review meeting

## **5.5 Stage Two – Final Review Meeting**

- 5.6 The procedure followed at this stage should be as stated in the First Review Meeting
- 5.7 If the manager considers that there is reasonable further action that could be taken to improve the employee's performance then a suitable plan should be drawn up and implemented. The employee should be informed that this is stage 2 of the formal capability procedure and failure to reach a satisfactory level of performance, within the timescale specified, could result in dismissal or a capability transfer.
- 5.8 The manager should consider at this stage if there are other means of resolving the situation e.g. alternative employment or redeployment. This action should only be taken if the employee

accepts that he/she may have a capability problem and agrees to be considered for alternative work.

- 5.9 In seeking alternative work, the manager should ensure, as far as possible, that the employee will be able to perform the duties of the new post satisfactorily before any alternative post is offered.
- 5.10 Where such work is found, offered and accepted, the rate of pay, grade and other conditions will be those applicable to the new post being offered.
- 5.11 Dependant upon the individual circumstances it may be necessary for the employee to apply for these alternative positions via the normal recruitment processes.

## **6. Stage 3 – Dismissal or Capability Transfer**

### **Dismissal**

- 6.1 Before dismissing an employee on grounds of capability the manager must follow the above formal stages of the Capability procedure.

If after Stage 2 there continues to be no improvement in the employee's performance, a dismissal hearing should be held. At this meeting the director, with the authority to dismiss, shall interview the employee to give him/her the opportunity to state his/her case. Only after evidence has been heard from both the line manager and the employee will a decision be made on whether or not to dismiss the employee.

If it is decided to terminate the employee's contract of employment under these procedures the employee shall be provided, within five working days if practicable, with a notice in writing stating:

- a) the date of termination
- b) the full reasons for termination
- c) the employee's right of appeal, how he/she may exercise that right, the time limit for lodging an appeal and the right to representation.

A copy of this letter will be kept on the employee's personal file in Human Resources.

### **Capability Transfer**

In certain cases a capability transfer may be proposed as an alternative to dismissal. In certain circumstances this transfer may be to a lower grade.

In the case of a capability transfer the PCTs Protection of Earnings policy will not apply. If it is proposed to suggest this course of action, the employee shall be provided with a letter stating:

- a) the date of the capability transfer
- b) the reason for the capability transfer
- c) the employee's right of appeal, time limit and right to representation

A copy of this letter shall be retained on the employee's personal file in Human Resources.

## **7. Ill-Health Retirement**

- 7.1 Where the employee is unable to perform his/her duties, due to ill-health, ill-health retirement should be considered in accordance with the Sickness Absence Policy and Procedure.

## **8. Gross Incapability/incompetence and Suspension**

- 8.1 In exceptional circumstances there may be cases of gross incapability or incompetence, the seriousness of which may make future employment impossible. One example might be action by the employee which puts others at serious risk of injury or threat to life.
- 8.2 In all such cases the manager must be satisfied that the situation is not one of gross misconduct i.e. a wilful act by the employee. If the circumstances do constitute gross misconduct any action taken should be in accordance with the Disciplinary Policy.
- 8.3 Where the gross incapability or incompetence precludes the employee from carrying out his/her duties it may be appropriate for the manager to consider suspension. If it is possible to find alternative or reduced duties this should be the preferred option.
- 8.4 Suspension is not a disciplinary sanction.
- 8.5 Suspension will be on full pay (based on the average pay over the previous four weeks or the shift pattern, if more appropriate) and without prejudice to the capability procedure.
- 8.6 The Directors have the authority to suspend. The authority may be delegated as appropriate.
- 8.7 Suspension will be for a maximum of ten working days in the first instance. Confirmation of the reasons for suspension will be provided in writing within twenty-four hours

- 8.8 If the individual suspended believes the suspension to be unfair, he/she would write to the suspending officer outlining his/her case who would undertake the review of the suspension as soon as possible.
- 8.9 The seriousness of the lack of capability may require that a hearing be convened and this could lead to the employee's dismissal without prior formal warning.

## **9. Role of the Manager**

- 9.1 Managers are responsible for ensuring that the PCT's standards of performance and attendance are conveyed and fully explained to their staff.
- 9.2 Managers are responsible for complying with the principles and procedures outlined in this document and, in cases of incapacity through sickness absence those outlined in the Sickness Absence Policy and Procedure.

## **10. Role of the Human Resources Department**

- 10.1 The Human Resources Department is responsible for advising managers on capability matters and assisting with maintaining consistency in the application of this policy.
- 10.2 The Human Resources Department will be present at Capability Reviews with staff.
- 10.3 Staff and their representatives may consult the Human Resources Department for clarification, information and interpretation of this policy and procedure.
- 10.4 The Human Resources Department will keep all records of formal capability procedures raised under this policy and procedure.
- 10.5 Where the capability issue is related to sickness absence the role of the Human Resources Department will be as outlined in the Sickness Absence Procedure.

## **11. The role of the Employee's Representative**

- 11.1 The role of the employee's representative will be as set out in the Disciplinary Policy and Procedure.

11.2 If the capability issue is a result of sickness absence his/her role will be as set out in the Sickness Absence Policy and Procedure.

**12. Appeals**

12.1 Appeals shall be conducted in accordance with the PCT Appeals Policy.

**13. Review**

13.1 This policy and procedure will be reviewed in two years following agreement and thereafter every two years to ensure that it is operating fairly and effectively.