

TRUST-WIDE NON-CLINICAL POLICY DOCUMENT

CAPABILITY

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Lead Author(s):	Strategic HR Business Partner

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2015 – Version 7

Quality, recovery and wellbeing at the heart of everything we do

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Further information about this document:

Document name	HR11 CAPABILITY
Document summary	To provide a framework for the Trust to support staff with capability concerns; encouraging staff to achieve effective work standards as described in their job description and the Trusts Staff Charter.
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To be read in conjunction with	Personal Achievement and Contribution Evaluation (PACE) Documentation Staff Charter HR01 Disciplinary Procedure HR07 Management of Attendance Policy HR27 Policy and Procedure for Supporting Disabled Employees
This document can be made available in a range of alternative formats including various languages, large print and braille etc	
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SUPPORTING STATEMENTS – this document should be read in conjunction with the following statements:

SAFEGUARDING IS EVERYBODY'S BUSINESS

All Mersey Care NHS Foundation Trust employees have a statutory duty to safeguard and promote the welfare of children and vulnerable adults, including:

- being alert to the possibility of child/vulnerable adult abuse and neglect through their observation of abuse, or by professional judgement made as a result of information gathered about the child/vulnerable adult;
- knowing how to deal with a disclosure or allegation of child/adult abuse;
- undertaking training as appropriate for their role and keeping themselves updated;
- being aware of and following the local policies and procedures they need to follow if they have a child/vulnerable adult concern;
- ensuring appropriate advice and support is accessed either from managers, *Safeguarding Ambassadors* or the trust's safeguarding team;
- participating in multi-agency working to safeguard the child or vulnerable adult (if appropriate to your role);
- ensuring contemporaneous records are kept at all times and record keeping is in strict adherence to Mersey Care NHS Foundation Trust policy and procedures and professional guidelines. Roles, responsibilities and accountabilities, will differ depending on the post you hold within the organisation;
- ensuring that all staff and their managers discuss and record any safeguarding issues that arise at each supervision session

EQUALITY AND HUMAN RIGHTS

Mersey Care NHS Foundation Trust recognises that some sections of society experience prejudice and discrimination. The Equality Act 2010 specifically recognises the *protected characteristics* of age, disability, gender, race, religion or belief, sexual orientation and transgender. The Equality Act also requires regard to socio-economic factors including pregnancy /maternity and marriage/civil partnership.

The trust is committed to equality of opportunity and anti-discriminatory practice both in the provision of services and in our role as a major employer. The trust believes that all people have the right to be treated with dignity and respect and is committed to the elimination of unfair and unlawful discriminatory practices.

Mersey Care NHS Foundation Trust also is aware of its legal duties under the Human Rights Act 1998. Section 6 of the Human Rights Act requires all public authorities to uphold and promote Human Rights in everything they do. It is unlawful for a public authority to perform any act which contravenes the Human Rights Act.

Mersey Care NHS Foundation Trust is committed to carrying out its functions and service delivery in line with a Human Rights based approach and the FREDA principles of **Fairness, Respect, Equality Dignity, and Autonomy**

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1 PURPOSE AND RATIONALE

- 1.1 **Purpose** – The purpose of this policy and procedure is provide a framework for the Trust to support staff (excluding medical staff) with capability concerns; encouraging staff to achieve effective work standards as described in their job description and the Trusts Staff Charter.
- 1.2 For medical staff refer to “Handling Concerns about the Conduct, Performance and Health of medical staff”.
- 1.3 **Rationale** – this policy and procedure is necessary to:
 - 1.3.1 Assist and encourage all employees to achieve and maintain effective standards of job performance
 - 1.3.2 Provide line managers with a framework and guidance to improve the performance of employees and encourage personal development
 - 1.3.3 Ensure consistent and fair treatment for all employees who experience difficulties in performing the duties of the post or behaving in line with the Staff Charter

2 OUTCOME FOCUSED AIMS AND OBJECTIVES

- 2.1 Mersey Care NHS Foundation Trust recognises the need for a procedure to help and encourage all employees to achieve and maintain effective work standards as described in the individuals job description and to consistently display behaviours in line with the Staff Charter which is based around the four core Trust values; Continuous Improvement, Accountability, Respect and Enthusiasm.
- 2.2 All employees must be clear about the standard of work expected during the course of their employment. A framework for this should be provided with an up to date job description and person specification, along with the Personal Achievement and Contribution Evaluation (PACE) process.
- 2.3 However, in some cases an employee may not be able to carry out the responsibilities/duties of the job to an adequate standard. There may also be circumstances in which an employee’s behaviours and value base are not aligned to the standards set out by Mersey Care in the Trusts Staff Charter.

3 SCOPE

- 3.1 This policy applies to all staff (excluding medical staff) employed by Mersey Care NHS Foundation Trust, including those who act as Bank, Agency or volunteers and those who hold a honorary contract.

4 DEFINITIONS

4.1 The relevant terms and their definitions (within the context of this policy document) are outlined below:

Table 1: Definitions

Term	Definition
'The Trust'	Mersey Care NHS Foundation Trust
Capability	Refers to an employee's skills, aptitude, ability and knowledge in relation to the job they are employed to do. Lack of capability will normally lead to unsatisfactory performance. Capability is different to misconduct in that it refers to situations where an employee is genuinely trying to perform to the required standard but is incapable of doing so.
Misconduct	Refers to a deliberate failure to perform, poor attitude, or failure to meet standards as a result of carelessness, negligence or idleness.
PACE	Personal Achievement & Contribution Evaluation (PACE) process is a system for regularly reviewing and recording; the personal contribution, performance, value base, behaviours, potential and development needs of an employee, together within the contribution the Trust has made to the individual.

5 DUTIES

- 5.1 **Lead Executive Director** – the Lead Executive Director for this policy (Executive Director of Workforce) has strategic responsibility for ensuring that a robust system is in place to ensure compliance with the Capability Policy and Procedure. They will ensure that all Directors, Managers, Human Resources Business Partners, Human Resources Managers, Human Resources Advisors and staff are fully aware of the Capability Policy and Procedure and are aware of their responsibilities.
- 5.2 **Policy Lead** – the Policy Lead, HR Business Partner for Corporate Division and Medical Staffing has operational responsibility for ensuring the policy is kept up to date and any changes are communicated.
- 5.3 **Line Managers** - The line manager has a duty to ensure that all staff are aware of the policy and ensure that all staff who access the policy follow the correct procedure with

support from the Human Resources Department.

Line managers must also ensure:

- 5.3.1 That the employee attends the Trust induction and also has a local induction in their work area, including details of staff support, Occupational Health, mentoring, and supervision.
- 5.3.2 The job content is applicable to the job description, person specification and the Knowledge and Skills Framework (KSF) Outline.
- 5.3.3 Work is done in line with the job description, person specification and Personal Achievement and Contribution Evaluation (PACE) objectives.
- 5.3.4 Advice and supervision is available
- 5.3.5 That the employee attends mandatory training

5.3.6 Line Managers must consider that health could be an important factor in an individual's performance and must ensure that staff are supported by the appropriate process. Where ill-health is the reason for unsatisfactory work performance, the Trust Management of Attendance Policy (HR07) should be followed in conjunction with the Capability Procedure and the Trust Policy and Procedure for Supporting Disabled Employees (HR27).

5.4 Staff - All staff should be aware of this Policy and understand the importance of the content and adhere to the procedure.

Individual staff have a responsibility to:

- 5.4.1 Raise concerns about performance issues
- 5.4.2 Attend induction training
- 5.4.3 Attend agreed mandatory training and other development opportunities appropriate to their role
- 5.4.4 Actively participate in the PACE process
- 5.4.5 Participate in managerial/clinical supervision as appropriate

5.5 Human Resources - The Human Resources Department will support Mersey Care staff at all levels in the application of this policy and procedure. This will also include providing appropriate training were requested to managers to support them further in their responsibilities under this policy. A member of the Human Resources Department will attend formal review meetings and dismissal meetings together with the manager. The Human Resources Department has the responsibility to monitor the implementation and application of this policy to ensure that procedures are managed fairly across the Trust. The Human Resources Department will ensure that this policy is updated in accordance with changes in employment legislation

5.6 Trade Union Representatives - Trade Union Representatives have an important role to play in providing advice and support to individual employees and to generally work in partnership with managers to ensure optimum levels of staff conduct and behaviour. A member of staff under formal capability management has the right to be accompanied by an accredited Trade Union representative or a colleague who is also employed by the Trust. Both colleagues and accredited Trade Union representatives can present evidence on behalf of the employee at formal capability meetings.

6 PROCESS

6.1 Personal Achievement and Contribution Evaluation (PACE)

- 6.1.1 The PACE process is a system for regularly reviewing and recording; the personal contribution, performance, value base, behaviours, potential and development needs of an employee, together within the contribution the Trust has made to the individual.
- 6.1.2 The PACE will ensure that employees are clear about what is expected of them and how they will be supported. The process is two-way and provides an opportunity to help identify and reveal problems which may be restricting progress and causing poor work performance.
- 6.1.3 It is a continuous process and not limited to a formal review once a year. It is essential where work performance problems arise they are addressed at the time, rather than waiting for the annual review.
- 6.1.4 Prior to proceeding to invoke the Capability Policy and Procedure it is expected that line managers will have used the PACE processes, and ongoing supervision to address any areas of concern with an individual's behaviours or performance.

6.2 Differentiating Between Capability or Conduct

- 6.2.1 On occasions it can be difficult to establish whether the matter relates to an employee's conduct or their capability. In these circumstances, the employee's manager will need to establish the answer through investigation of the facts or counselling. There should be no automatic assumption that the matter relates to a person's conduct.
- 6.2.2 In some circumstances, an employee may have both capability and conduct issues. In these circumstances, the manager should keep these issues separate and deal with each issue under the appropriate policy.
- 6.2.3 However, it may be that during the use of this procedure it becomes apparent that the issues are that of conduct and not capability. In such circumstances the staff member will be advised that the procedure will switch to that of conduct, and the Trust Disciplinary Policy and Procedure (HR01) will be invoked. The reverse will apply in investigations being undertaken via conduct procedures.
- 6.2.4 Staff members who do not actively cooperate within the terms of this procedure may be referred to the Trust's disciplinary procedure. For example; should a staff member fail to attend meetings as part of this process or there is a lack appropriate engagement by the staff member in setting out content of an action plan.

6.3 Causes of Incapability and Solutions

- 6.3.1 In order to effectively manage incapability, managers should take into account the causes of the problem. Causes can include:

Inadequate or insufficient training, systems, policies and procedures, tools/equipment, supervision/support. This is often identified by a new incoming manager.

A lack of clarity about the job role, objectives, management instructions

Excessively high workloads

Poor working relationships or bullying/harassment
Ill health or personal problems
Inability to adapt to a changing work environment
Oral or Written Communication problems e.g. Dyslexia

6.3.2 Possible solutions may include coaching the employee, reviewing systems, policies, procedures, supervision and support, fixing faulty equipment, reviewing workloads, clarifying job roles, instructions, Occupational Health/Staff Support referral, additional training to the employee or their supervisor on people management.

6.4 STAGES OF PROCESS / PROCEDURE

6.4.1 Stages

The stages of the Capability Procedure are described below.

The Capability Procedure follows a series of stages which are cumulative and follow the sequence below:

Informal Stage and review period (6-12 weeks) See 6.4.4

First Formal Stage and review period (6-12 weeks) See 6.4.5

Second Formal Stage and review period (6-12 weeks) See 6.4.6

Final Review Hearing: possible dismissal/alternatives to dismissal. See 6.4.7

6.4.2 This procedure is also depicted in a flow chart (see Appendix A).

6.4.3 If during any stage of this procedure the employee's performance improves to a satisfactory level but this improvement is not sustained during a 12 month period, managers can revert back to the stage that the employee was previously at.

6.4.4 Informal Stage

6.4.4.1 The informal stage of capability management is the first step in the procedure and should be followed when concerns regarding an individual's capability have not been resolved via discussions in supervision and the PACE process.

6.4.4.2 An informal meeting should be held between the line manager and the employee to discuss the unsatisfactory performance. This discussion should cover the following:

Make the employee aware of the issues and the effect on the organization

Attempt to establish the cause/s

Obtain the employee's perspective on the matter

Clarify expected standards

Identify solutions

Identify realistic, measurable targets and the period over which these should be achieved and sustained (not exceeding 12 weeks) to achieve a satisfactory improvement in the employee's performance.

Confirm what methods will be used to assess the employee's performance.

Confirm when the performance standards will be reviewed and the fact that formal action could be taken if the required improvement is not satisfactorily achieved and sustained

6.4.4.3 **Actions During Informal Stage Capability Meeting:**

Notes outlining the meeting and the solutions/other outcomes identified should be kept. These notes can be made available to the employee if requested.

An action plan will be discussed and agreed. This action plan must be utilised throughout the whole process and must not include additional objectives /actions. A copy will be given to the employee (see Appendix B for example action plan).

Agree a suitable review period (between 6 and 12 weeks)

Solutions should, where possible, be agreed between the employee and the manager (see section 6.3 for possible solutions). Where it is not possible to reach agreement, the manager will need to carefully assess the situation and decide what solutions are appropriate in the circumstances, taking account of the employee's perspective on the matter.

Discuss the consequences of failure to improve/sustain improvement, i.e. progress to formal capability management.

6.4.4.4 **Actions After Informal Stage Capability Meeting:**

The manager must hold regular informal interim review meetings with the member of staff, both to provide feedback on progress and to encourage improved performance. Any additional training recommended should also be discussed.

At the end of the review period the manager will meet with the member of staff and inform them that either:

- a.) They have achieved the specified levels of performance and no further discussions are necessary, or
- b.) There has been little or no improvement and it will be necessary to move to the formal stage.

Managers should make staff aware that the Staff Support Service is available should they wish to discuss issues in confidence. In addition members of staff can approach the Occupational Health Department directly to seek advice on work related or other health problems.

6.4.5 **First Formal Stage**

6.4.5.1 If, despite following the informal stage, the employee is unable to reach and/or maintain the required standard of performance, the manager may convene a first formal stage meeting.

6.4.5.2 The Manager shall invite the employee to attend all formal meetings in writing giving at least at least 5 working days notice. The written notification should include:

- The stage reached in the capability procedure
- Clear details of the concerns relating to performance
- Any supporting documentation
- Details of any discussion to this point

- The employee's right to representation

6.4.5.3 A HR Representative will be in attendance at this meeting providing advice to the Manager.

6.4.5.4 Staff have the right to be accompanied at formal review meetings by either a colleague or Staff Side representative.

6.4.5.5 Actions During First Formal Stage Capability Meeting:

The action plan discussed at informal stage must be revised and updated in relation to the nature of the problem, the action required of both the employee and the manager, improvements required. This action plan must be utilised throughout the whole process and must not include additional objectives /actions. A copy will be given to the employee (see Appendix B for example action plan).

Agree a suitable review period (between 6 and 12 weeks)

Solutions should, where possible, be agreed between the employee and the manager (see section 6.3 for possible solutions). Where it is not possible to reach agreement, the manager will need to carefully assess the situation and decide what solutions are appropriate in the circumstances, taking account of the employee's perspective on the matter.

Discuss the consequences of failure to improve/sustain improvements, i.e. progress to Second Formal stage of capability management.

6.4.5.6 Actions After First Formal Stage Capability Meeting

The decision to place the employee on the First Formal Stage of capability management must be confirmed in writing, setting out the nature of the problem, an overview of the discussion within meeting and enclose a copy of the agreed action plan (see Appendix B). This letter will be a formal capability warning which will remain on file for 12 months. The purpose of this is to set duration that should there be a significant relapse of performance issues during that period the manager can refer the staff member to the next stage.

The manager must hold regular interim review meetings with the member of staff, both to provide feedback on progress and to encourage improved performance. These supervision meetings should be planned across the review period and set out in action plan. Any additional training recommended should also be discussed.

At the end of the review period the manager will meet with the member of staff and inform them that either:

- a.) They have achieved the specified levels of performance and no further discussions are necessary, or

- b.) There has been little or no improvement and it will be necessary to move to the Second Formal stage.

Managers should make staff aware that the Staff Support Service is available should they wish to discuss issues in confidence. In addition members of staff can approach the Occupational Health Department directly to seek advice on work related or other health problems.

6.4.6 Second Formal Stage

6.4.6.1 If, despite following the informal and first formal stages, the employee is unable to reach and/or maintain the required standard of performance, the manager may convene a second formal stage meeting.

6.4.6.2 The Manager shall invite the employee to attend all formal meetings in writing giving at least at least 5 working days notice. The written notification should include:

The stage reached in the capability procedure
Clear details of the concerns relating to performance
Any supporting documentation
Details of any discussion to this point
The employee's right to representation

6.4.6.3 A HR Representative will be in attendance at this meeting providing advice to the Manager.

6.4.6.4 Staff have the right to be accompanied at formal review meetings by either a colleague or Staff Side representative.

6.4.6.5 Actions During Second Formal Stage Capability Meeting

The action plan discussed at First Formal stage must be revised and updated in relation to the nature of the problem, the action required of both the employee and the manager, improvements required. This action plan must be utilised throughout the whole process and must not include additional objectives /actions. A copy will be given to the employee (see Appendix B for example action plan).

Agree a suitable review period (between 6 and 12 weeks)

Solutions should, where possible, be agreed between the employee and the manager (see section 6.3 for possible solutions). Where it is not possible to reach agreement, the manager will need to carefully assess the situation and decide what solutions are appropriate in the circumstances, taking account of the employee's perspective on the matter.

Discuss the consequences of failure to improve/sustain improvement, i.e. Final Review Hearing; an outcome of which may be dismissal.

6.4.6.6 Actions After Second Formal Stage Capability Meeting

The decision to place the employee on the Second Formal Stage of capability management must be confirmed in writing, setting out the nature of the problem, an

overview of the discussion within meeting and enclose a copy of the agreed action plan (see Appendix B). This letter will be a formal capability warning which will remain on file for 12 months. The purpose of this is to set duration that should there be a significant relapse of performance issues during that period the manager can refer the staff member to the next stage.

The manager must hold regular interim review meetings with the member of staff, both to provide feedback on progress and to encourage improved performance. These supervision meetings should be planned across the review period and set out in action plan. Any additional training recommended should also be discussed.

At the end of the review period the manager will meet with the member of staff and inform them that either:

- a.) They have achieved the specified levels of performance and no further discussions are necessary, or
- b.) There has been little or no improvement and it will be necessary to move to the Final Review Hearing, the employee must be invited to this meeting in writing and informed in writing that a potential outcome of the Final Review Hearing may be dismissal.

Managers should make staff aware that the Staff Support Service is available should they wish to discuss issues in confidence. In addition members of staff can approach the Occupational Health Department directly to seek advice on work related or other health problems.

6.4.7 Final Review Hearing

6.4.7.1 If, despite the Second Formal Stage and review period, and having been offered appropriate support, the employee is unable to reach and/or maintain the required standard of performance, a Final Review Hearing will be convened.

6.4.7.2 The hearing should be chaired in accordance with the Trust Scheme of Delegation (see Appendix C).

6.4.7.3 The hearing should follow the procedure as set out in Appendix D.

6.4.7.4 If, having taken account of all the circumstances, the chair of the hearing considers it appropriate; the employee may be dismissed on grounds of capability and will have the right to appeal against their dismissal. If a Final Review Hearing could lead to dismissal, the chair of the meeting must have authority to dismiss.

6.4.7.5 The chairperson should consider alternatives to dismissal where appropriate; such alternatives are set out in section 6.7.7 below.

6.4.7.6 If there are no suitable options for redeployment or demotion/down banding the staff member may be dismissed with contractual notice or with pay in lieu of notice.

6.4.8 Alternatives to dismissal:

The chairperson should give consideration to the following alternatives to dismissal during a Final Review Hearing:

6.4.8.1 Extension of Second Formal Review monitoring period:

A further Final Review Hearing may take place at the end of this period.

6.4.8.2 Redeployment: Search for a suitable role/work base, with the agreement of the individual. In such circumstances the terms and conditions will be those of the new role and pay protection will not apply if the role is of a lower band or provides different allowances. If, following a 28 day period, agreement cannot be reached on a suitable alternative, the employee may be required to move without agreement or alternative sanctions may apply such as dismissal. There is no requirement on the Trust to create a role suitable for redeployment if such a role is not available.

6.4.8.3 Demotion/Down Banding: Staff who are unable to perform at the required level may be demoted without pay protection to a suitable alternative role/work base if, despite being afforded appropriate opportunities to enable them to perform at the higher level they cannot do so. In the future the employee may apply for higher banded posts via a competitive process. There is no requirement on the Trust to create a role suitable for demotion/downbanding if such a role is not available.

6.4.9 Actions After Final Review Hearing:

The decision should be confirmed in writing, or any other appropriate format, within 7 days of the decision being taken.

6.4.10 Appeals Against Dismissal

6.4.10.1 An employee is entitled to appeal against dismissal. The appeal must be made in writing to the Director of Workforce within **15 days** of receipt of confirmation of the decision.

6.4.10.2 The appeal will be heard in accordance with the Trust's Appeal process.

6.5 SUPPORTING PROCEDURE

6.5.1 Sickness During Capability Procedure

6.5.1.1 If a member of staff has periods of short term sickness absence whilst undergoing capability management, then timescales agreed should be extended to take these absences into account. If a member of staff has a period of long term absence, then the Capability Procedure will be temporarily halted and resumed on the staff members return from absence.

6.5.1.2 Any sickness absence should be managed in line with the Trust's Management of Attendance Policy.

6.5.2 Grievances Raised During Capability Procedure

6.5.2.1 During the application of this procedure, if a grievance is raised that relates to the employee's incapability issues or their management, the Trust will consider how best to proceed. The Trust recognises the merit of resolving all issues as quickly as possible and will therefore normally attempt to deal with both matters concurrently. Consideration will also be given to temporarily halting the capability procedure whilst the grievance is dealt with under the Grievance Procedure, where applicable. HR advice should be sought.

6.5.3 Process Where an Employee Improves to Satisfactory Standard

6.5.3.1 Where an employee's performance improves to a satisfactory standard at any stage of capability management, the employee should be removed from capability monitoring and informed of this in writing.

6.5.4 Failure to Sustain Improvement

6.5.4.1 In circumstances where this procedure is applied and the staff member makes satisfactory improvement, but this improvement is not sustained during a 12 month period; managers can revert back to the stage that the staff member was previously at.

7 CONSULTATION

The following staff / groups were consulted with in the development of this policy document: HR Policy Group and Staff Side Colleagues

8 TRAINING AND SUPPORT

Training will be provided by the divisional HR teams on request from line managers.

9 MONITORING

9.1 Monitoring of the application of this policy will be undertaken on an ongoing basis by the HR directorate. Any formal capability cases are recorded on the HR Employee Relations database and reported to divisional governance boards on a monthly basis.

10. EQUALITY AND HUMAN RIGHTS ANALYSIS

Title: HR 11 Capability Policy
Area covered: Trust wide

<p>What are the intended outcomes of this work? <i>Include outline of objectives and function aims</i></p> <p>TO PROVIDE GUIDANCE AND TO ENSURE A CONSISTENT APPROACH FOR THE MANAGEMENT OF CAPABILITY ISSUES WITHIN THE TRUST</p> <p>Who will be affected? <i>e.g. staff, patients, service users etc</i></p> <p>Staff</p>

<p>Evidence</p> <p>What evidence have you considered?</p> <p>Policy</p> <p>Disability Assurances/clarity needed within the policy re the links between the process of supporting staff with disability / managing attendance and capability.</p> <p>Where statements regarding documentation will be provided in writing to state will be available in appropriate format. Page 11</p> <p>Add in Supporting Disabled Employee Policy and Procedure Page 2</p> <p>Clarity needed how the definition of capability interacts with issues in relation to disability. Page 6</p> <p>The terminology of “counselling” on page 7 is an incorrect use of the term as this relates to mental health treatment requiring specific skills.</p> <p>Page 7 Section 5 relating to possible causes should include undisclosed/unrecognised disability</p> <p>Page 8 Relating to Line Manager duties in the last paragraph to include reference to the Line Managers use of HR27 Policy and Procedure for Supporting Disabled Employees.</p> <p>Page 16 Add in a bullet point after number 7 to direct Line Manager to determine disability issues.</p> <p>Sex</p> <p>See Cross cutting</p> <p>Race <i>Consider and detail (including the source of any evidence) on difference ethnic groups, nationalities, Roma gypsies, Irish travellers, language barriers.</i></p> <p>See Cross cutting</p> <p>Where statements regarding documentation will be provided in writing to state will be available in appropriate format. Page 11</p>
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<p>Age Consider and detail (including the source of any evidence) across age ranges on old and younger people. This can include safeguarding, consent and child welfare.</p> <p>See Cross cutting</p>
<p>Gender reassignment (including transgender) Consider and detail (including the source of any evidence) on transgender and transsexual people. This can include issues such as privacy of data and harassment.</p> <p>See Cross cutting</p>
<p>Sexual orientation Consider and detail (including the source of any evidence) on heterosexual people as well as lesbian, gay and bi-sexual people.</p> <p>See Cross cutting</p>
<p>Religion or belief Consider and detail (including the source of any evidence) on people with different religions, beliefs or no belief.</p> <p>See Cross cutting</p>
<p>Pregnancy and maternity Consider and detail (including the source of any evidence) on working arrangements, part-time working, infant caring responsibilities.</p> <p>See Cross cutting</p>
<p>Carers Consider and detail (including the source of any evidence) on part-time working, shift-patterns, general caring responsibilities.</p> <p>See Cross cutting</p>
<p>Other identified groups Consider and detail and include the source of any evidence on different socio-economic groups, area inequality, income, resident status (migrants) and other groups experiencing disadvantage and barriers to access.</p>
<p>Cross cutting impacts on more than one/all protected group.</p> <p>Need to include a system of Trust monitoring to ensure no indirect discrimination is happening across the Trust against any of the protected groups.</p>

Human Rights	Is there an impact?
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	How this right could be protected?
Right to life (Article 2)	Promotes Human Rights Based Approach
Right of freedom from inhuman and degrading treatment (Article 3)	Promotes Human Rights Based Approach
Right to liberty (Article 5)	Promotes Human Rights Based Approach
Right to a fair trial (Article 6)	Promotes Human Rights Based Approach
Right to private and family life (Article 8)	Assurances of confidentiality in particular to transition to electronic records.
Right of freedom of religion or belief (Article 9)	Promotes Human Rights Based Approach
Right to freedom of expression Note: this does not include insulting language such as racism (Article 10)	Promotes Human Rights Based Approach
Right freedom from discrimination (Article 14)	Promotes Human Rights Based Approach

Engagement and involvement
<p>recognised staff organisations senior managers HR staff</p>
<p>Recommend to involve staff networks for future consultation and review</p>

Summary of Analysis

Eliminate discrimination, harassment and victimisation

Inclusion of equality monitoring will enable identification of indirect discrimination

Advance equality of opportunity

Fair and transparent process should enable support to be given to all staff

Promote good relations between groups

Fair and transparent process should enable support to be given to all staff

What is the overall impact?

Not clear enough to distinguish between disability and capability which may result in indirect discrimination.

Addressing the impact on equalities

Clarity of definition
Clarity of procedure
Effective equality monitoring

Action planning for improvement

Action plan completed

Please give an outline of your next steps based on the challenges and opportunities you have identified. *Include here any or all of the following, based on your assessment*

For the record

Name of persons who carried out this assessment: (minimum of 3 people)

Meryl Cuzak	Equality and Human Rights Lead
George Sullivan	Equality and Human Rights Advisor
Barbara Rafferty	Equality and Human Rights Advisor
Helen Brooks	HR Business Manager

Date assessment completed:

23/7/2012. Reviewed and no amendments Aug 2015.

Name of responsible Director/

Executive Director of Workforce

Date assessment was signed:

FLOWCHART OF CAPABILITY MANAGEMENT PROCEDURE

INFORMAL STAGE

Line manager and employee to meet to discuss the poor performance, in order to:

- Clarify expected standards and identify gaps
- Identify solutions
- Identify realistic, measurable targets and the period over which these should be achieved, setting out a written action plan (see Appendix B)
- Agree a review period (between 6 & 12 weeks)
- Discuss the consequences of failure to improve/sustain improvement, e.g. progress to First Formal Stage
- Regular informal review meetings throughout review period.

Satisfactory improvement



End of capability management

Unsatisfactory improvement



Progress to First Formal Stage

FIRST FORMAL STAGE

Line manager, HR, Staff Side and employee to discuss the poor performance, in order to:

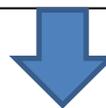
- Review performance against the agreed action plan and standards set at informal stage
- Consider effectiveness of support given and what additional assistance can be offered
- Agree a review period (between 6 & 12 weeks)
- Discuss the consequences of failure to improve/sustain improvement, e.g. progress to Second Formal Stage.
- Regular interim review meetings throughout review period.

Satisfactory improvement



End of capability management

Unsatisfactory improvement



Progress to Second Formal Stage

SECOND FORMAL STAGE

Line manager, HR, Staff Side and employee to discuss the poor performance, in order to:

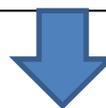
- Review performance against the agreed action plan and standards set at First Formal Stage
- Consider effectiveness of support given and what additional assistance can be offered
- Agree a review period (between 6 & 12 weeks)
- Discuss the consequences of failure to improve/sustain improvement, e.g. progress to Final Review Hearing.
- Regular interim review meetings throughout review period.

Satisfactory improvement



End of capability management

Unsatisfactory improvement



Progress to Final Review Hearing

FINAL REVIEW HEARING

- A Final Review Hearing must be held in line with the Trusts scheme of delegation (see appendix C).
- A potential outcome of this hearing is dismissal on the grounds of Capability, however alternatives to dismissal should be considered. Section 6.7 of this policy must be observed

EXAMPLE OF ACTION PLAN

Target Area	Expected Standard/level of Proficiency	Gap	Required Actions	Who Will Provide Support?	Timescale	Review Date	Date to Achieve Expected Standard/Level of Proficiency
Completion of care plan details on EPEX	Record detailed updates of all contact on EPEX within 24 hours, including assessment details and agree plans	50/80 records currently incomplete 20/80 records not updated No consistent record for other practitioners to refer to regarding the outcomes of the reviews or the agreed action plans	Further training on EPEX Protected time each day to complete records and familiarise self with the new system Support from designated EPEX lead Commence and complete ECDL training to improve IT literacy	L&D Department Line Manager to arrange Local EPEX Lead L&D Department	Within 1 month Ongoing for one month Ongoing Commence course within 3 months and complete within a year	1 month 1 month 3 months 3 months	Within 3 months

Manager: _____ **Signed:** _____ **Dated:** _____

Name of Employee: _____ **Signed:** _____ **Dated:** _____

This plan has been discussed and will be implemented by:

SCHEME OF DELEGATION

CATEGORY OF STAFF	DISMISSAL DOWNGRADING OR TRANSFER BY:
Chief Executive	Trust Chairperson
Executive Directors	Chief Executive
Other staff directly responsible to the Chief Executive	Chief Executive
Staff Directly responsible to Executive Directors	Executive Director
All other staff	The appropriate Executive Director/Divisional Director or Designated Deputy

PROCEDURE AT FINAL REVIEW HEARING

At a Final Capability Review Hearing the following procedures shall be observed:

- (a) The line manager shall state the case in the presence of the employee and their representative.
- (b) The employee and/or her/his representative shall have the opportunity to ask questions of the line manager.

- (c) The members of the Final Review Hearing panel shall have the opportunity to ask questions of the line manager.
- (d) The employee and/or their representative shall put their case in the presence of the line manager.
- (e) The manager shall have the opportunity to ask questions of the employee and their representative.
- (f) The members of the panel shall have the opportunity to ask questions of the employee and their representative.
- (g) The line manager and the employee or their representative shall have the opportunity to sum up their cases if they wish. The employee and/or their representative shall have the right to speak last. In their summing up neither party may introduce any new matter.
- (h) Nothing in the foregoing procedure shall prevent the panel from questioning management and staff side as appropriate to clarify issues or seek supplementary information, manage the conduct of the case presenters or to amend proceedings to ensure fairness, clarity and the ability to hear the matters appropriately.
- (i) If at the outset, the employee concerned admits the matter and does not contest the evidence presented by the line manager, the panel chairperson may decide, with the agreement of all parties, to amend the procedures and hear evidence solely relevant to the level of sanction, for example, on mitigating circumstances and the seriousness/consequences of the underperformance, in order to determine the appropriate outcome.
- (j) The panel may, at its discretion, adjourn the meeting in order that further evidence may be produced by either party or for any other reason. If further evidence is produced then both parties will have the opportunity to test the evidence put before the panel.
- (k) The hearing will be adjourned whilst the panel deliberate in private, only recalling both parties to clear points of uncertainty on evidence already given.
- (l) The panel will then reconvene and the chairperson will present their decision and next steps to the employee. Section 6.7 of this policy must be observed.

Action plan template

This part of the template is to help you develop your action plan. You might want to change the categories in the first column to reflect the actions needed for your policy.

Category	Actions	Date completed	Person responsible and their CBU/SMS
Involvement and consultation	Recommend to involve staff networks for future consultation and review	30.8.12	
Data collection and evidencing Monitoring, evaluating and reviewing	Need to include a system of Trust monitoring to ensure no indirect discrimination is happening across the Trust against any of the protected groups.	30.8.12	Via ESR reports which are checked against the protected groups
Confidentiality	Process of electronic personal files to have clear instructions in relation to confidentiality	30.8.12	Information Governance
Disability	clarity needed within the policy re the links between the process of supporting staff with disability / managing attendance and capability. Where statements regarding documentation will be provided in writing to state will be available in appropriate format. Page 11 Add in Supporting Disabled Employee Policy and Procedure	30.8.12	Policy amended as requested – Lynn Lowe/Pauline Copland

	<p>Page 2</p> <p>Clarity needed how the definition of capability interacts with issues in relation to disability. Page 6</p> <p>The terminology of “counselling” on page 7 is an incorrect use of the term as this relates to mental health treatment requiring specific skills.</p> <p>Page 7 Section 5 relating to possible causes should include undisclosed/unrecognised disability</p> <p>Page 8 Relating to Line Manager duties in the last paragraph to include reference to the Line Managers use of HR27 Policy and Procedure for Supporting Disabled Employees.</p> <p>Page 16 Add in a bullet point after number 7 to direct Line Manager to determine disability issues.</p>		
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