

CAPABILITY PERFORMANCE POLICY

POLICY REFERENCE NUMBER	HR27B
VERSION NUMBER	2
KEY CHANGES FROM PREVIOUS VERSION	Procedure updated and informal stage removed.
AUTHOR	HR Business Partner
CONSULTATION GROUPS	Joint Policy Sub-Group Workforce Transformation Group Joint Partnership Committee Finance & Performance Committee
IMPLEMENTATION DATE	April 2017
AMENDMENT DATE(S)	July 2018
LAST REVIEW DATE	July 2018
NEXT REVIEW DATE	August 2021
APPROVAL BY WORKFORCE TRANSFORMATION GROUP	October 2018
RATIFIED BY FINANCE & PERFORMANCE	25 th October 2018
COPYRIGHT	© Essex Partnership University NHS Foundation Trust 2017. All rights reserved. Not to be reproduced in whole or part without the permission of the copyright owner

POLICY SUMMARY

This Capability Performance policy sets out the framework for the Trust's approach to the management of capability (performance) concerns for managers, staff and staff representatives as well as the scope of the policy to whom it applies.

It confirms the commitment to providing high quality care through the effective management and development of its staff to ensure they are, and remain, capable of performing their roles and responsibilities to a high standard of competence.

This policy is intended to provide a framework to assist managers in dealing with situations where the capability of a member of staff to perform their duties satisfactorily is called into question.

This policy should be read in conjunction with the Capability Performance Procedure.

The Trust monitors the implementation of and compliance with this policy in the following ways;

This policy is subject to monitoring and review as per the agreed review schedule of Trust HR policies and as agreed by the Trust's Partnership Committee.

Compliance with this policy will be against the Trust's agreed minimum requirements/standards as detailed within its Auditable Standards and Monitoring Arrangements, as well as the use of internal reporting and recording within the Human Resources Department.

Services	Applicable	Comments
Trustwide	✓	

**The Director responsible for monitoring and reviewing this policy is
Executive Director of Corporate Governance and Strategy**

ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST
--

CAPABILITY (PERFORMANCE) POLICY

	Contents	
	Assurance Statement	
1.	Introduction	3
2.	Duties	5
3.	Definitions	6
4.	Principles	7
5.	Monitoring of Implementation and Compliance	8
6.	Policy References/Associated Documentation	9
7.	Reference to Other Trust Policies/Procedures	9

ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST

CAPABILITY (PERFORMANCE) POLICY

ASSURANCE STATEMENT

This Capability policy aims to ensure that the Trust (EPUT) sets out and maintains high standards of performance amongst its employees to ensure high standards of service delivery and practice.

This Policy sets out the Trust's principles in approaching capability issues relating to the performance of its staff, ensuring that any issues are dealt with in a timely, fair, reasonable and consistent manner, within the legislative framework and in accordance with the ACAS Code of Practice and Guidance.

The management of capability procedures within the Trust will be built on and demonstrate the Trust's corporate values and behaviours. These values being:

- Open
- Compassionate
- Empowering

In doing so support the achievement of its strategic priorities to:

- Continuously improve service user experiences and outcomes
- Achieve top 25% performance
- Valued system leader focused on integrated solutions

1. INTRODUCTION

1.1 Essex Partnership University NHS Foundation Trust, (the Trust) is committed to providing high quality care through the effective management and development of its employees to ensure that they are, and remain capable of performing their roles and responsibilities to a high standard of competence.

1.2 Through the Trust's recruitment procedures, every effort is made to ensure that new employees have the appropriate skills and abilities, or a clear, demonstrated potential to achieve these, for the roles to which they are recruited.

At the start of employment with the Trust, on promotion or redeployment, employees should be clearly informed of their responsibilities and the standards of work performance required which are relevant to their post.

1.3 This policy and its procedure is intended to provide a framework to assist managers in dealing with situations where the capability of a member of staff to perform their duties satisfactorily is called into question. Reasons for this may include poor job performance or lack of understanding as to what is expected of them.

- 1.4 The emphasis of this framework is to promote and encourage improvement wherever possible by identifying problems at an early stage and exploring ways to address them.

Where these standards are not met, employees will be offered support, encouragement, guidance and, if necessary, (re)training with effective, regular and constructive feedback relating to their work performance.

- 1.5 Managers are responsible for ensuring that performance issues are addressed promptly and fairly. It is recognised that there will be circumstances where it becomes necessary to consider the discontinuation of an employee's contract due to lack of capability where this is the case this will be managed fairly and openly in accordance with the steps set out in the Trust's Capability procedure.
- 1.6 Consideration should be given at an early stage as to whether any such issues relate to the individuals conduct (or negligence) or capability (performance). Advice should be sought from HR to best determine the application of the appropriate policy – either Disciplinary (Conduct) Policy and Procedure or Capability (Performance) Policy and Procedure.

The Employment Relations Act 1996 states that 'capability (is) assessed by reference to skill, aptitude, health or any other physical or mental quality'. It also indicates that 'incapability must relate to the work or the kind of work that the employee was employed by the employer to do'.

Capability issues that relate to the health of the employee should be dealt with in accordance with the Trust's Management of Sickness and Absence Procedure.

Capability/performance issues that arise within the first six months of appointment to the Trust should be handled in line with the Probationary Periods Policy and Procedure.

- 1.7 This policy applies to all employees of the Trust with the following provisions:-
- Medical and Dental staff – this policy does not apply to issues concerning professional conduct and/or competence of Medical and Dental staff who are subject to the provisions of the Maintaining High Professional Standards policy.
 - Temporary staff (including bank or agency workers) – temporary workers are required to maintain the Trust's expected standards of conduct, behaviour and practice. Any issues of capability will be addressed using the Temporary Workers Conduct & Complaints Policy and Procedure
 - Staff newly appointed to the Trust within the first six months of appointment to post who are subject to a separate Probationary Period policy and procedure.

2. DUTIES

2.1 The Trust has delegated authority to its managers to take action as appropriate under the terms of this policy and associated procedure.

2.2 Managers

Managers are responsible for ensuring their employees have all the knowledge and skills required to perform the duties expected of them. All relevant documentation relating to the employee's job and standards required of them is available and support is provided to employees so that they understand what is required of them.

Regular reviews of performance should be carried out. This should include regular management supervision and clinical/professional supervision (where appropriate). In addition, performance should be reviewed in line with the Performance Review (Appraisal) and any National or Locally agreed competency and preceptorship frameworks.

Managers should:-

- Know and understand the policy
- Identify performance issues at an early stage and take appropriate action
- Ensure HR are advised and kept informed
- Follow the process outlined in the Capability Performance Procedure
- Ensure consistency, fairness & confidentiality when dealing with performance issues
- Provide any necessary support and training required to enable employees to perform at their best
- Give proper consideration to whether any unsatisfactory performance of a member of staff is related to a disability and if so, whether there are reasonable adjustments that could be made to the requirements of the job or other aspects of the working arrangements. Taking advice from Occupational Health as appropriate.

2.3 Employees

Employees are contractually obliged to perform to a satisfactory level and therefore are responsible for:-

- Ensuring they have all the necessary knowledge and skills required to perform the duties expected of them
- Achieving and maintaining a satisfactory level of performance
- Ensuring all relevant documentation and support is provided to them
- Making their line manager aware of any shortfalls or gaps in their knowledge so this can be addressed
- Making their line manager aware if they have difficulty at any stage of the procedure because of a disability, or a medical condition they consider relevant

- Requesting regular reviews of performance, both formally under the Performance Review (Appraisal) and any National or Locally agreed competency frameworks and informally from their line managers so any shortfall can be addressed at an early stage
- Ensuring that they are up to date with any mandatory training
- Being pro-active in nominating themselves for any relevant learning events that may be advertised from time to time to address any training or development needs identified.

2.4 Human Resources

HR has a responsibility to:-

- Monitor the policy and related procedure to ensure fairness, effectiveness and consistency of application
- Provide advice and guidance in the interpretation of this policy and related procedure
- Ensure the process and stages are followed appropriately.

2.5 Trade Unions

The role of Trade Unions is to represent and support employees, where appropriate, in order to:-

- Ensure the effective operation and success of the Trust in the interests of patients and service users, the organisation, all employees and commissioners of services
- Maintain excellent management/employee relations and communications
- Work together with the Trust to raise standards across the Trust.

3. DEFINITIONS

For the purposes of applying the provisions contained in this document a glossary of terms that are used with the policy are as follows:-

Capability	The ability to undertake the duties of a post as outlined in the job description to the standard expected.
Capability Gap	Where there is a gap between the job performance of an individual and the manager's reasonable expectation of the employee.
Conduct rather than Capability	The difference between Conduct and Capability concerns can be summarised as Conduct being "won't do" and Capability being "can't do".
Maintaining satisfactory performance	It is important that employees not only achieve an acceptable level of performance but that this is maintained.
Probationary Period	The Trust operates a probationary period of 6 months of appointment to the Trust and a separate Probationary Period policy and procedure applies.

Safeguarding Issues	Where capability involves safeguarding, a co-ordinated approach is required to ensure safeguarding and capability processes run parallel to each other.
Standards of Performance	Provide a means of measuring what is acceptable and measurable in terms of quality, time, cost, etc.
Nationally or Locally agreed competency frameworks	These apply to some roles within the Trust and the employee is required to perform at a satisfactory level the activities contained within them.
Alternative Employment	In some cases, consideration may be given to exploring the possibility of redeployment. However, there is no obligation to create a post specifically to accommodate the employee and must be mutually agreed by both parties.

4. PRINCIPLES

- 4.1 The Capability policy and related procedure will be used in order to guide managers in managing capability concerns of employees within their team(s).

The Trust will endeavour to resolve all issues informally through supervision or other appropriate meetings, as soon as an issue of capability first arises. HR should be fully consulted prior to any action taken in relation to this policy and related procedures.

It is recognised that where the nature of the poor performance is sufficiently serious, it will be appropriate to immediately proceed to the formal stages of the relevant procedures.

- 4.2 The Trust will adhere to the appropriate legislation and other frameworks such as Agenda for Change, local agreements and ACAS (Advisory, Conciliation and Arbitration Service) code of practice and any professional or statutory bodies, e.g. the NMC Code of Conduct.

- 4.3 The Trust seeks to promote fair, reasonable and consistent employment practices referring to relevant policies such as the Equality, Diversity, Inclusion and Human Rights policies. In drawing up this policy aspects of discrimination have been considered so that no particular group(s) are disadvantaged.

This policy is based on best practice as outlined in the ACAS code of practice on disciplinary and grievance procedures (revised 11 March 2015).

- 4.4 All employees should receive supervision on a regular basis, records of which should be documented. In addition, where appropriate, staff should also receive clinical or professional supervision in line with Trust policy and procedure. Regular supervision will help to ensure that any potential capability issues are identified and acted upon as early as possible.

- 4.5 Regular communication will be maintained at each stage of the capability procedure, to ensure its effective implementation and employees will be afforded the rights of representation and appeal to which they are entitled throughout the process.
- 4.6 The Trust will ensure that a written record is maintained at all stages in the procedure. This information will be held and distributed to relevant persons in accordance with its Records Management Policy.
- 4.7 Professional healthcare staff are responsible for complying with the relevant standards set by their regulatory or professional body and are reminded that as part of this code, there is a requirement to bring to the Trust's attention any investigation or action taken by either their professional body, or any other statutory body, where their fitness to practice has been called into question.

Staff must act without delay where they believe that either they or a colleague, or anyone else may be putting someone at risk be this by their job performance or any other reason.

Staff are therefore expected to bring to the attention of the Trust, their professional body, or other statutory body's attention (e.g. Disclosure and Barring Service), practice and/or behaviour which could be deemed as professionally unacceptable.

The Executive Director of Nursing is ultimately responsible for deciding whether a referral should be made to a Statutory Body in consultation with the relevant professional lead.

In all cases, the decision and the basis for the decision to notify any other organisation will be recorded. The member of staff concerned will be advised of the intended communication and specifically what information will be communicated.

External communication will be co-ordinated by the Director of Corporate Governance and Strategy who will act as the initial recipient of information from other organisations.

5. MONITORING OF IMPLEMENTATION AND COMPLIANCE

- 5.1 This policy is subject to review as part of the Trust's HR Policy Schedule, as agreed on an annual basis by the Joint Consultative Committee.

Employees should refer to the Trust's Grievance policy should they feel that the application of this policy is being applied unfairly.

6. POLICY REFERENCES /ASSOCIATED DOCUMENTATION

The policy is guided by several pieces of legislation and by the relevant ACAS codes and guidance, including

- ACAS Code of Practice and Guidance
- NHS Code of Conduct and NHS Constitution
- The Code of Conduct for NHS Managers
- Employment Rights Act 1996 and Employment Act 2008
- Employment Relations Act (1999) (Amended 2004)
- General Data Protection Regulations (Data Protection Act 2018)
- Public Interest Disclosure Act 1998
- Professional Codes of Conduct
- Duty of Candour
- Safeguarding Children and Safeguarding Adults Policy and Procedures
- Equality Act 2010
- Freedom to Speak Up (Raising Concerns at Work) National Policy and guidance
- Health and Safety at Work Act
- National Terms and Conditions of Service
- Fit and Proper Person Test
- Sharing Information on Healthcare Workers 2013 (National Guidance)

7. REFERENCE TO OTHER TRUST POLICIES /PROCEDURES

- Written statement of terms and conditions of employment
- Maintaining High Professional Standards Conduct and Capability policy
- Managing Temporary Workers Conduct & Complaints Policy and Procedure.
- Disciplinary (Conduct) Policy and Procedure
- Supervision and Appraisal Policy and Procedure
- Dignity, Respect (Bullying, Harassment and Discrimination) & Grievance Policy, Grievance Procedure and Dignity & Respect at Work Procedure
- Appeals Procedure
- Freedom to Speak Up: Raising Concerns at Work (Whistleblowing) Policy

END