



The Trust for Developing Communities

Capability Policy

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1. Introduction

- 1.1 If employees are incapable of performing their duties satisfactorily, it may be inappropriate to apply a disciplinary procedure and to issue disciplinary warnings. The Capability Policy has been drawn up to assist in the identification of reasons for unsatisfactory performance by employees, and to help them achieve the appropriate level of performance required for their posts within a reasonable time scale.
- 1.2 It is important that this procedure is read in conjunction with other potentially relevant policies to ensure that the appropriate policy is being applied (for example, Health & Wellbeing Policy, Sickness Absence Policy and Grievance & Disciplinary Procedure and Supervision Policy).

2. Scope

- 2.1 This procedure applies to all employees of The Trust for Developing Communities (TDC).
- 2.2 A separate Grievance & Disciplinary Procedure is available for handling misconduct. Some elements of unsatisfactory or unacceptable work performance that may fall under this policy include: lapses in work standards, errors, negligence, unacceptable quality or quantity of work output which arise out of deliberate actions or wilfulness on the employee's part, for example, arising from a lack of motivation, inattention, idleness or deliberate under-performance, where a measure of personal blame is involved.
- 2.3 On occasion, it is not immediately clear whether some issues, for example, poor performance or persistent short-term sickness absence, fall into the scope of the Capability Policy or the Grievance & Disciplinary Procedure/Sickness Absence Policy. The line manager should take advice from the Management Team and

decide which is the more appropriate after weighing up all the circumstances. The line manager will explain the reasons for their decision to the employee.

- 2.4 The employee will be informed verbally which TDC procedure e.g. Sickness Absence Policy, is being followed. If at any stage management has good reason to believe that an alternative procedure is more appropriate, then the process will be halted and the issue examined under another procedure.
- 2.5 On occasions, a post-holder may identify a lack of capability themselves. Line managers should create an environment where individuals feel able to freely discuss their concerns and should be supportive in exploring how best to take forward any issues identified. Managers may ask for further advice from any appropriate source to assist with an assessment of a self-diagnosed lack of capability identified by a member of staff. The principles of this policy will apply where the manager agrees with the individual's assessment of his/her capability.

3. Guiding Principles

- 3.1 The policy has been drawn up to comply with the requirements of the Equality Act 2010, Human Rights Act 1998, and The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 1986, and generally in line with the good practice guidelines of the ACAS guide 'Discipline and Grievances at Work'.
- 3.2 The policy will be applied in a non-discriminatory way, irrespective of an employee's age, racial/ethnic origin, colour, sexual orientation, nationality, religion, disability, age, gender or marital status.
- 3.3 At all formal stages of the Capability Policy, an employee will have the right of representation.
- 3.4 Capability issues will be treated as confidentially as possible, so that only those who need to know will be involved.
- 3.5 Issues involving health, safety and disability will be handled with particular sensitivity.
- 3.6 No employee will be dismissed on capability grounds without the appropriate stage(s) of this procedure being followed.
- 3.7 No formal action will be taken in respect of a recognised trade union representative until the case has been discussed with the appropriate full-time trade union official.
- 3.8 Before starting the formal procedure, and at every stage, managers should consult the Management Team for advice to ensure fairness and consistency.

4. Defining the Term 'Capability'

- 4.1 'Capability' in the Employment Rights Act 1996 is defined as an employee's 'capability assessed by reference to skill, aptitude, health or any other physical or mental quality'.

- 4.2 Lack of capability or loss of capability can arise for various reasons. It can be short or long term in its effects.
Examples are:
- Stress for any reason, e.g. connected to any aspect of an individual's home or employment life
 - Promotion beyond ability
 - Appointment to a job that is inappropriate for the individual's skills or experience
 - Acquired disability or ill health
 - Development in job demands over the years or changes brought about by outside influences, such as new technology, or new work methods or legislation
 - The employees own attitudes or behaviours

5. Measuring Acceptable Standards of Competence or Capability

- 5.1 The standard of work performance can be assessed in various circumstances for example:
- Day-to-day management and regular contact with the line manager
 - Management feedback/supervision and regular assessment of progress against targets jointly agreed with the line manager
 - Assessment of the employee's performance against the job description and the person specification for the post
 - Assessment of the employee's performance against the competencies required for the particular post
 - Assessment of the employees performance against organisational policies/procedures and guidelines

6. Disability Issues

- 6.1 Employees may lose capability because of 'acquired disability' during the course of their working lives. Employers have a duty to make 'reasonable adjustments' to ensure a disabled employee is not placed at a substantial disadvantage compared to someone who is not disabled. Due consideration should be given to the Equality Act 2010.
- 6.2 A line manager will need to clarify whether the employee falls into the definition of a disabled person under legislation and good practice. They should consult the employee and their representative if required, plus seek advice from the Management Team, supported by an individual risk assessment, before deciding whether and what 'reasonable adjustments' can or should be made.
- 6.3 This process may be done easily, or may take a number of meetings and consultations. Laying down specific time limits for this is not appropriate but managers should try to resolve an employee's situation as quickly as possible.

7. Incapability through Ill Health or Injury

- 7.1 If the reasons for incapability involve factors related to health or injury, the line manager and Management Team will consult the employee and take appropriate medical advice if required. It is in everyone's interests to do this at an early stage.
- 7.2 The employee will be fully consulted throughout and may be represented at all stages. Laying down specific time limits to cover health-related issues is not always appropriate; however, managers should aim to resolve an employee's situation as quickly as possible.
- 7.3 On occasion, the medical advice will be that the employee is not physically or mentally fit to undertake the duties of their current post but is fit for other duties. In such cases the manager will, together with the employee (and his or her representative) and the Management Team, will explore alternative options.
- 7.4 In other situations the decision may be that the condition is either permanent or that it will prevent the employee from undertaking his or her post within a reasonable period of time.
- 7.5 If reasonable adjustment or redeployment (with reasonable adjustment) are not feasible options, or are rejected by the employee, then a management decision whether to dismiss because of medical capability will be made.

8. Management Supervision

- 8.1 In a minor case of unsatisfactory performance, a line manager will meet the employee and agree with him or her the scale of the problems that need to be addressed as well as the measures that will be put in place, if appropriate (e.g.: additional training, coaching, supervision, adjustments to the workplace or working practices).
- 8.2 The employee will be informed of his or her perceived shortcomings and will be given the opportunity to respond. They will then be informed of expected standard of work to be achieved, the policies/procedures/guidance/competencies against which these standards are being measured, the specified timescale for achievement and agreed review dates. They will be warned that, if there is insufficient improvement or a further lapse in performance, the formal stage of the Capability Policy will apply.
- 8.3 A record of these discussions, signed by both parties, will be kept for reference purposes. The line manager will also write to the employee, placing a copy on the employee's personal file confirming the following:
- Concerns discussed
 - Expected standards of behaviour/work – linked to relevant policies/procedures/guidance/competencies

- Agreed action plans, including support offered (i.e.: training/supervision)
- Timescales for achievement
- Review dates
- Consequences of insufficient improvement
- Any other notes kept, agreed and signed by both parties

9. Rights of the Employee at all Formal Stages

- To be informed in writing that a Formal Capability Meeting is to take place, the level of procedure being instigated and the reasons for the meeting.
- At least 24 hours' notice of Management Supervision (where possible, unless there is a serious situation), and 5 working days at Stages 1 and 2.
- The assistance of a colleague or trade union representative at Formal Stages 1 & 2.
- The right to state a reply verbally or in writing.
- The right to appeal against formal action.

10. The Right to be Accompanied

- 10.1 Staff have a right to be accompanied to a Capability meeting by a work colleague or trade union representative (companion). Any request to be accompanied by a work colleague must be reasonable. When a member of staff is choosing a companion, however, they should bear in mind that it would not be reasonable to insist on being accompanied by a colleague whose presence would prejudice the meeting or who might have a conflict of interest. The companion must, of course, be willing to undertake this responsibility.
- 10.2 Under no circumstances will staff be permitted to be accompanied by a legal Representative.
- 10.3 The companion will be allowed to address the hearing in order to:
- Put the employee's case
 - Sum up the employee's case
 - Respond on the employee's behalf to any view expressed at the meeting

11. Overview of Formal Capability Procedure

- 11.1 The following procedure describes actions that can be taken under the capability procedure
- Management Supervision
 - Formal Meeting
 - Formal Review Meeting
 - Dismissal

The formal stages of the procedure will usually be implemented sequentially, however, where the standard of performance is considerably below that which is required, or the consequences of the performance have or may have a significant adverse effect on the service users, home or organisation, it may be decided to take action under the latter stages of the process in the first instance.

11.2 Stage 1 - Formal Meeting

When a line manager considers that an employee is not performing to the appropriate standard, and informal discussions and support mechanisms put in place (see 8.1) have not solved the issue or not been felt to be appropriate in the circumstances, the line manager will convene a formal meeting with the employee.

The employee will be informed of his or her perceived shortcomings and will be given the opportunity to respond. They will then be informed of expected standard of work to be achieved, the policies/procedures/guidance/competencies against which these standards are being measured, and the specified timescale for achievement.

A record of these discussions will be kept for reference purposes. The line manager will also write to the employee, placing a copy on the employee's personal file confirming the following:

- Confirming this meeting has taken place under Stage 1 (Formal Meeting) of the TDC Capability Policy
- Concerns discussed
- Expected standards of behaviour/work – linked to relevant policies/procedures/guidance/competencies
- Agreed action plans
- Timescales for achievement
- Review dates
- Consequences of insufficient improvement

The employee will be given a specified review period to demonstrate improvements in performance required. Normally, during this review period, interim meetings will be planned to review progression at appropriate intervals.

The outcome of these meetings will be confirmed to the individual in writing, within five working days of the outcome being determined. Where the required improvements in performance are achieved during the review period, the process will be deemed to have been satisfactorily concluded and the issues resolved. Confirmation that this is the case will be given in writing to the individual.

The individual and the manager may agree that an improvement is not going to be achievable by the individual over a reasonable timescale and further advice or guidance is required. In such cases, the meeting should be adjourned and reconvened as a Formal Review Meeting (see below).

11.3 Stage 2 - Formal Review Meeting

The Stage 2 Formal Review Meeting may be called if:

- At the end of the specified review period (or earlier if there is good reason) where the required improvement has not been achieved
- When it has been concluded that an improvement by the employee is not going to be achievable
- When, following initial attainment of satisfactory performance, there are further failures to meet agreed standards
- The consequences of the employees performance have or may have a significant adverse effect on the service users, home or organisation

The employee will be informed of the specific reasons for calling a Stage 2

meeting, his or her perceived shortcomings and will be given the opportunity to respond. They will then be informed of expected standard of work to be achieved, and the policies/procedures/ guidance/competencies against which these standards are being measured.

The possible outcomes of this meeting could be:

- To agree a further period over which the required improvements can be achieved, after which the issue may be resolved, or the meeting reconvened and the options set out below considered
- To agree a period of secondment
- To agree alternative contract conditions, such as reduced hours, change of role
- To agree redeployment to another post, where appropriate and subject to availability, in which case the meeting should be adjourned for a specified period to allow this proposed course of action to be explored. The employee should be informed at this stage that if no suitable alternative employment is secured during the agreed redeployment period, their contract of employment could be terminated on the grounds of capability
- To determine that dismissal for incapability is appropriate where there has been a failure to meet the standards required (including following a failure to find a redeployment opportunity or refusal to take up such a position by the individual concerned)

12. Consultation

12.1 Managers, in consultation with the Management Team will consider the best way to assist the employee. They will highlight areas worth considering, such as changes to current contract conditions, permanent, temporary or short-term employment, part-time or full-time employment, re-training or secondments. They will be responsible for making an assessment of the employee's needs and abilities.

12.2 The appropriate manager will meet the employee to explain the redeployment procedure and what everyone, including the employee, has to do to ensure it is successful.

12.3 Issues that will be taken into consideration include:

- Details of employee's skills and aptitudes
- Areas of the current job specification and job description where current performance is effective
- Details of previous experience and deciding which skills used in the past are still valid
- Specific areas of interest for alternative employment
- Hobbies and interests outside work that use skills and abilities not previously exploited at work
- Any geographical limitations on redeployment
- Specifying what reasonable adaptations may be required and which are available
- Personal circumstances, such as those affecting hours of work
- Availability of appropriate training

13. Secondment

- 13.1 An alternative may be to provide on-the-job experience or secondment on a short-term basis, where there is an identified project or task to be carried out. This arrangement may be supported by coaching and mentoring and supplemented, where necessary, by short skills courses.
- 13.2 The aim of this is to enable the employee to attain the skills required to return to their current post.

14. Alternative Contract Conditions

- 14.1 Changes to current contract conditions may also be identified as a suitable solution. This could include changing shift patterns, reducing hours, changes to current job role.
- 14.2 Changes to current contract conditions cannot be imposed on unwilling employees. They (and their representative) must, however, be fully aware of the consequences (i.e. possible dismissal) of not exploring all the possibilities with an open mind.
- 14.3 Any offer of alternative contract conditions, will be made in writing and will set out the terms and conditions of that employment, which will be relevant for the post in question.
- 14.4 A 4-week trial period can be included, with a possible extension of up to 12 weeks in exceptional circumstances where further time is needed to make an assessment of the success of the change of contract conditions.

15. Redeployment Procedure for Capability Situations

General Principles:

- 15.1 The opportunities for redeployment will depend on whether there is a suitable alternative vacancy and the needs of that vacancy. TDC is not obliged to create a post to achieve redeployment. It is recognised that opportunities for redeployment within the organisation are very limited.
- 15.2 In some cases, an employee will agree to re-training to develop new skills for a change in career. Re-training should be relevant, appropriate to aptitude and circumstances, and geared towards future employment within TDC.
- Re-deployment or re-training cannot be imposed on unwilling employees. They (and their representative) must, however, be fully aware of the consequences (i.e.: possible dismissal) of not exploring all the possibilities with an open mind.
 - Employees who are to be re-deployed and who meet the identified criteria will be given priority for appointment, not just for interview. This is to say that they will be appointed to the vacant post if they are found to match the person specification for the post.
 - With employees who are disabled, there is a legal responsibility to make reasonable adjustments to enable them to undertake the duties of the new

post on redeployment, and this will be taken into account when applying the paragraph above.

NB: employees will not be able to use this process as a mechanism to inappropriately gain preference to be appointed to a particular vacancy to the detriment of other candidates.

There must, therefore, be sound and justifiable reasons for an individual to be granted 're-deployed' status.

16. Offer of Alternative Employment

- 16.1 Any offer of alternative employment will be made in writing and will set out the terms and conditions of employment, which will be those relevant for the post in question.
- 16.2 A 4-week trial period can be included, with a possible extension of up to 12 weeks in exceptional circumstances where further time is needed to make an assessment of the success of the re-deployment.

17. Induction to a New Post

To help the employee settle into the new job, care should be taken over the induction process. Appropriate support mechanisms will be put into place to enable the employee to settle successfully into the new post.

18. Dismissal

- 18.1 If the employee's performance is confirmed as unacceptable and the alternative courses of action have been exhausted, refused by the employee or are inappropriate, the decision to dismiss the employee will be made on the grounds of 'capability'.
- 18.2 A decision to dismiss can only be taken by the Management Team.
- 18.3 Dismissal can only occur when it is clear that:
- The standards expected of the employee have been made explicitly clear
 - The employee knew, or should have known, of the standards required of them
 - The employee has fallen short of the standards, or continues to fall short of the standards, having been unable to reach the required standards within a reasonable timescale
 - Appropriate support and time for improvement has been made available to the employee concerned and the required improvement has not been achieved
 - Redeployment (if appropriate) has not proved possible or has been refused by the employee
 - It is clear that the required improvement would not be achieved
 - The consequences of the employee's performance have or may have a significant adverse effect on the service users, home or organisation

18.4 The employee will be entitled to formal notice in accordance with their contract of employment, or payment in lieu of notice. The letter of termination will confirm the effective date of termination and state the reason for dismissal.

19. Dissatisfaction with Process

Where an employee is dissatisfied with the use of the procedure (or how it is being applied) in their particular case, they may attempt to resolve their dissatisfaction by using the TDC Grievance & Disciplinary Policy.

20. Appeal

Where an employee is dissatisfied with the outcome of the Formal Review (Stage 2), they may follow the appeal procedure set out below:

STAGE NO	APPEAL MADE IN WRITING	TIMESCALE
Stage 2	TDC Chair	Within 21 days of receiving confirmation of the decision taken at the Capability Hearing Process

20.1 The employee should notify the Management Team within 21 days that they wish to appeal to the Chair of the Board of Trustees.

20.2 The Management Team will set up an Appeals Committee to sit within 5 weeks of receiving the Notice of Appeal, consisting of the following:

The Chair or Acting Chair, plus 2 other Trustees

None of the three Appeal committee members will have had previous involvement in reaching the decision in question.

20.3 The employee may be accompanied by a colleague/companion or trade union representative.

20.4 After considering the evidence of both parties, the Management Team will decide whether to either uphold the appeal OR to allow the decision to stand. The decision will be made known in writing to both parties.

There will be no further appeal.