


EMPLOYEE CAPABILITY POLICY & PROCEDURE

Responsible Director	Director of HR
Approved By	Area Partnership Forum
Equality Assessed: 	We are working to ensure that no-one is treated in an unlawful and discriminatory manner in the workplace because of their age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity status, race, religion or belief, sex, sexual orientation and/or socio-economic status.
Date Approved	June 2010
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Other Relevant Policies	Discipline Policy & Procedure Grievance Policy & Procedure

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1. INTRODUCTION

- 1.1 It is the aim of NHS Greater Glasgow and Clyde¹ (the Board) to ensure that all employees are treated in fair and equitable manner. All employees are required to perform the duties of their post to an acceptable standard. Where an employee cannot meet this standard, they will be offered support, encouragement, guidance and if necessary training to improve their work performance, however, a distinction must be drawn between inherent incapacity and a lack of performance that is attributable to a wilful refusal to work satisfactorily. The latter is a matter of misconduct and will be dealt with under the Disciplinary Policy and Procedure without reference to this policy.

2. SCOPE

- 2.1 This policy applies to all employees of the Board except Medical and Dental staff who have specific national procedures in relation to professional competence.

2.2 Definition

- 2.2.1 The Employment Rights Act (ERA) 1996 states that “capability (is) assessed by reference to skill, aptitude, health or any other physical or mental quality”. It also indicates the “incapability must relate to the work or the kind of work that the employee was employed by the employer to do”. This must be determined in accordance with an employee’s current contractual obligations.

2.3 Application

- 2.3.1 This policy and procedure is designed to deal with those cases where the employee is lacking in some area of knowledge, skill or ability, resulting in a failure to be able to carry out the required duties to an acceptable standard.
- 2.3.2 All staff within NHS Greater Glasgow and Clyde have access to a personal development and planning process linking to the Knowledge and Skills Framework of Agenda for Change or to the Board’s performance management system for senior managers.

¹ NHS Greater Glasgow and Clyde is the common name of Greater Glasgow Health Board

2.3.3 The NHS Knowledge and Skills Framework defines and describes the knowledge and skills which staff need to apply in their work in order to deliver quality services. It provides a single, consistent, comprehensive and explicit framework on which to base review and development for all staff.

2.3.4 (RESPONDING TO THE EQIA) If an employee is known to have a disability or discloses disability(-ies) in the course of discussions with management, then specialist advice should be sought from HR and/or the Occupational Health department. There should be consideration of whether any reasonable adjustments would have a positive impact on the situation.

2.4 What is the purpose of the NHS KSF?

- To facilitate the development of services to better meet the needs of users and the public through investing in the development of staff.
- To support the effective learning and development of individuals and teams with all staff being supported to learn and develop throughout their careers.
- To support the development of individuals in the post in which they are employed so that they can be effective at work.
- To promote equality for and diversity of all staff with the same opportunities for learning and development open to them.

(Abridged from the NHS Knowledge and Skills Framework Handbook Oct. 2004).

2.5 Supported Improvement

2.5.1A process of Supported Improvement is detailed within the Disciplinary Policy which states 'Where improvement in conduct is necessary this will, where appropriate, be sought at an early stage through supported improvement. The aim of this method of support is to ensure every effort is made to assist employees and encourage their improvement. This should be conducted by their manager'

2.5.2 The management of capability should always be consistent with respect for the employee as an individual and should respect the diversity of staff.

2.5.3 Early intervention when poor performance is identified is encouraged enabling a supportive approach to be taken.

2.5.4 As detailed in the Disciplinary Policy, problems should be identified and discussed with the employee as soon as possible. Managers and Trade Union/ Professional Organisation representatives, where appropriate, should work together to define the problem, agree a course of action to resolve it and agree what monitoring mechanisms will be used.

2.5.5 It should be noted that the Capability Process is not a means of dealing with attendance management issues relating to staff which should be addressed through the existing framework of the Attendance Management Policy.

3. PROCEDURE

3.1 Identifying that there is a capability issue

3.1.1 Managers should deal with issues about performance or conduct informally in the first instance. In many cases an informal conversation between the manager and a member of staff will be enough. Formal action is appropriate where the initial approach has not led to the necessary improvement in performance, or where the capability issue is of a serious nature.

3.1.2 In order to determine whether there is a capability issue and that the matter should be dealt with under this policy, the following questions should be considered:

- What are the indications that the employee is not meeting the requirements of the job?
- Are there factual grounds to indicate inadequate performance, such as not meeting objectives or failure to deliver the requirements of the job?

3.2 Informal Discussion

- 3.2.1 The initial approach should be to support improvement through an informal, private, one-to-one discussion, offering advice and guidance on expected future performance and to support the employee achieving the standards required. It should not normally be necessary for a staff representative to be present at this stage.
- 3.2.2 After the discussion the manager should, in a letter to the employee, record the date, time, reason for, and outcome of, the meeting. This letter should set out the agreed timescales for agreed action and the review process, recognising that review dates may need to be variable dependent on access to training and support. This letter should be retained in the employee's personal file.

3.3 Formal Stage(s)

- 3.3.1 If, following the agreed review of the employee's performance, there has been inadequate improvement, a more formal approach should be adopted. Prior to entering the formal stage, the relevant manager will ensure that the employee has had the necessary training and the guidance and support required to undertake the job.

3.4 STAGE 1

- 3.4.1 Where an employee is failing to perform to an acceptable standard despite having been given initial, informal guidance and support or where the capability issue is of a serious nature, a meeting will be arranged with the line manager. The employee will be given at least five working days notice of the meeting. The written invitation to the meeting will include a copy of this policy and detail of the stage being used, clear details of the shortfall in performance, all necessary supporting documentation, details of any informal discussion so far and the will draw attention to the right of representation.
- 3.4.2 The employee will be given the opportunity to improve with clear objectives, which will be agreed. Support mechanisms will be introduced with realistic timescales agreed. Consideration will be given to mentoring, training and coaching where appropriate. The

employee will also be given the opportunity to answer the points made and provide any other relevant information.

- 3.4.3 The outcome of this meeting will be formally recorded in a letter to the employee within five working days of the meeting. The employee should confirm that they understand what is expected of them.
- 3.4.4 There should be regular review of conduct and constructive feedback should be given. The employee will also be provided with the opportunity to give feedback on the benefits of any support mechanisms provided.
- 3.4.5 If, at the agreed review date, the desired improvement has been achieved, the employee will be appraised of the situation. This will be recorded and the employee will be given written confirmation within five working days of the review. A copy of the letter and associated documents will be removed from the personal file after six months from the date of the letter if there has been no further incident or no further cause for concern.

3.5 STAGE 2

- 3.5.1 If, at the review date of Stage 1, the desired improvement has not been achieved, a further meeting with the employee will be arranged. The employee will be given at least five working days notice of the meeting. The written invitation to the meeting will include a copy of this policy and detail the stage being used, clear details of the shortfall in performance, all necessary supporting documentation, details of discussions at Stage 1 and will draw attention to the right of representation.
- 3.5.2 In addition, the support measure(s) previously identified with the employee will also be reviewed and there will be discussion as to whether they should continue or if any additional measure might be helpful. The employee will be given the opportunity to answer the points made and provide any other relevant information.
- 3.5.3 The employee will be made aware of likely outcomes if they fail to improve to the required standard, including the possibility of disciplinary action.

- 3.5.4 The outcome of this meeting will be formally recorded in a letter to the employee within five working days of the meeting.
- 3.5.5 A copy of the letter will be placed in the employee's personal file.
- 3.5.6 If, at the agreed review date, the desired improvement has been achieved, the employee will be appraised of the situation. This will be recorded and the employee will be given written confirmation within five working days of the review. A copy of the letter and associated documents will be removed from the personal file after six months from the date of the letter if there has been no further incident or no further cause for concern.
- 3.5.7 Should the desired improvement not be achieved at the agreed review date, the matter should be pursued through the Board's Disciplinary Policy and Procedure.

4. MONITORING & REVIEW

- 4.1 The application of this Policy will be monitored jointly by the Director of Human Resources and the Area Partnership Forum to ensure equitable treatment of all employees.
- 4.2 With effect from October 2010, the Board is required by law to gather monitoring information relating to a broad range of protected characteristics (e.g. race/ethnicity, age) for many aspects of employee relations. Employees may be asked for information relating to the above in connection with the policy. Employees do not have to give the monitoring information if they do not wish to. Any equalities monitoring information will be held separately and not used to inform any proceedings that occur in relation to this policy.
- 4.3 The operation of this Policy will be regularly reviewed by the Area Partnership Forum to ensure its continued effective operation and formally reviewed no later than June 2012.

5. COMMUNICATION & IMPLEMENTATION PLAN

- 5.1 The terms of this policy will be communicated at dedicated launch events, via St@ffNet, Team Brief and through Induction of new-starts and job changers. The policy will be hosted on the HR Homepage and within the Staff Governance pages.