



# Capability Policy



**The Trust has developed this Capability Policy to set out how it will deal with issues relating to employees' ill health and poor job performance that are not regarded as within the employee's control.**

## **ILL HEALTH**

### **Case management**

The Trust will adopt a 'case management' approach when dealing with employees who are unable to work due to ill health. This means regularly reviewing an employee's absence and state of health or fitness to see whether there is any improvement and to identify if it can do anything to facilitate the employee's recovery and return to work.

### **Contact**

The Trust will keep in touch with the employee throughout his or her absence. The employee will be consulted about how contact will be maintained, for example by telephone, e-mail and/or visits to the employee's home or an agreed location at agreed times. The employee's views on how contact should be made will be sought and respected.

### **Medical examination**

Employees may be asked to attend a medical examination by their own GP and/or an assessment by an independent occupational health specialist (at the Trust's expense) and to agree to allow the doctor to provide a medical report to the Trust. The purpose of this will be to obtain a medical prognosis so the Trust is better informed about the nature of the absence and likely prospects for recovery and what steps it can take to assist the employee to return to work in the future.

Employees must give such consent when reasonably asked to do so and have the right to see a medical report.

### **Return to work**

When an absent employee is well enough to return to work, the employee's manager will meet with him or her to discuss the arrangements for return.

## **No reasonable prospect of return**

Where it is established that there is no realistic prospect of returning to work, the Trust may have to consider terminating the employee's contract on grounds of capability. It will only do so after consulting with the employee and seeking medical advice.

The Trust will only consider terminating the employment of an employee on grounds of capability after a lengthy period of absence and following a review of the case. In these circumstances, this will take account of the employee's length of service, past absence record and likelihood of return to work. It will consult with the employee and allow a right of appeal against any decision to dismiss the employee on grounds of long-term ill health.

## **POOR JOB PERFORMANCE**

### **Overall aim**

Our policy is to support employees who are unable to perform to the required standards due to a lack of knowledge, skill or ability. In this context, the Trust recognises the difference between:

a failure on the part of the employee to perform to the standards of which he or she is capable, eg due to negligence, carelessness or lack of effort, in which case this will be treated as misconduct under the disciplinary procedure; and

a case of incapability, where an employee is lacking in knowledge, skill or ability and so cannot carry out his or her duties to the standards required. In these cases the Trust will use this capability policy, in an attempt to improve performance.

### **Informal performance counselling**

If it becomes clear that an employee is not capable of performing to the required standards, the Trust will arrange a meeting with the employee to discuss the matter. The Trust will:

- make the employee aware that he or she is not performing to the required standard;
- give the employee a reasonable period to improve and undertake any training that is deemed necessary;
- offer the employee closer supervision by his or her manager; and
- provide additional support, resources or facilities if necessary.

At the end of this period, another meeting may be arranged to review the employee's progress and decide whether any further action is required.

### **Formal warnings**

If, after performance counselling, the employee's performance has still not improved to an acceptable standard, a more formal procedure will be used. The employee will be given formal warnings about his or her performance, given a further chance to improve, and offered closer supervision and/or further support.

## **Stage 1 – first written warning**

The employee will be fully informed of the precise nature of the poor performance, the level of improvement required and the period for achieving that improvement, any review stages during the warning period, the consequences of failure to improve and the length of time the warning will remain on file. For a first written warning, the warning will expire after 12 months.

## **Stage 2 – final written warning**

If there is insufficient improvement following a Stage 1 warning, the employee will be given a final written warning setting out the details as outlined above in the first written warning. A Stage 2 warning will include a statement that a failure to improve to the required standard is likely to result in dismissal. For a final written warning, the period will expire normally after 12 months.

## **Stage 3 – dismissal**

If there is still insufficient improvement, as a last resort the employee will normally be dismissed with notice or pay in lieu of notice.

Before any decision to dismiss is taken, the Trust will advise the employee in writing as soon as it is established that termination of employment has become a possibility and meet with the employee to discuss the options and consider the employee's views on continuing employment.

## **Appeals**

Under this capability policy, employees may appeal against formal warnings as well as dismissal. The same appeals procedure as set out in the Trust's disciplinary procedure will be used.

## **Right to be accompanied at formal meetings**

Employees may be accompanied by a work colleague or trade union representative at any meetings to discuss a failure to meet the required standards of performance.

## **Alternative employment**

At any stage in the procedure, if the employee is unable to improve to the required standard, the Trust will consider whether he or she can be moved to alternative work more suited to his or her abilities.

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