



**PERFORMANCE & CAPABILITY POLICY & PROCEDURE 2021**

|  |  |
| --- | --- |
| **Document Reference** | **FSUHR015** |

|  |
| --- |
| **POLICY DOCUMENT – VERSION CONTROL SHEET** |
| **Document Title** | Capability Policy & Procedure 2021 V1 |
| **Document reference** | FSUHR015 |
| **Supersedes** | N/A |
| **Originator/Author** | Regional Policy Development Forum (FSU) |
| **Ratified by Federation Boards** | Oct 2021 |
| **Circulated** | 01/12/2021 |
| **Review date** | 01/12/2022 |

**Federation/FSU**

**Performance and Capability**

 **Policy & Procedure**

**Contents**

[**1.0 Introduction** 4](#_Toc81306456)

[**2.0 Principles** 5](#_Toc81306457)

[**3.0 Purpose & Aims.** 5](#_Toc81306458)

[**4.0 Definitions** 6](#_Toc81306459)

[**5.0 Roles and Responsibilities** 6](#_Toc81306460)

[**5.1 Leads/ Line Managers** 6](#_Toc81306461)

[**5.2 Employee** 7](#_Toc81306462)

[**5.3 Human Resources (HR)** 8](#_Toc81306463)

[**5.4Practice Responsibilities** 8](#_Toc81306464)

[**6.0 Early Resolution** 8](#_Toc81306465)

[**6.1 Moving to the Formal Procedure** 9](#_Toc81306466)

[**7.0 Preliminary Precautionary Measures** 9](#_Toc81306467)

[**8. Regulatory Bodies** 10](#_Toc81306468)

[**9.0 Formal Procedure for addressing Capability Issues.** 10](#_Toc81306469)

[**9.1 - Stage 1** 10](#_Toc81306470)

[**9.2 - Stage 2** 11](#_Toc81306471)

[**9.3 Stage 2 Formal meeting** 12](#_Toc81306472)

[**9.4 Review meeting** 12](#_Toc81306473)

[**9.5 Stage 3** 13](#_Toc81306474)

[**10.Appeal** 14](#_Toc81306475)

[**11. Capability and underlying health conditions** 14](#_Toc81306476)

[**12. Grievances** 15](#_Toc81306477)

[**13.Right to be accompanied** 15](#_Toc81306478)

[**14.Equality Statement** 15](#_Toc81306479)

[**15. Data Protection / GDPR** 15](#_Toc81306480)

[**Appendix 1- Supported Improvement Plan** 16](#_Toc81306481)

# **1.0 Introduction**

It is the aim of Federations/FSU to support and encourage all staff to achieve high standards of performance. The policy and procedure sets out the principles in approaching capability issues relating to the performance of staff, ensuring that any issues are dealt with in a timely, fair, reasonable and consistent manner.

Through the 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 or a new role, employees should be clearly informed of their responsibilities and the standards of work performance required which are relevant to their post.

The purpose of the Capability Policy is to provide a framework of support where an employee is lacking in some area of knowledge, skill or ability, and is consequently unable to carry out some, or all of the duties required of them to an acceptable standard.

Failure to address poor performance and provide an underperforming employee with support and direction to improve performance can have an impact on the quality of service provided, the employees own satisfaction and enjoyment in their work and that of the team in which they work.

Underperformance may also have a direct impact on the quality of service provided by the overall team.

This procedure should be followed where there is evidence of a genuine lack of capability rather than performance issues which stem from a lack of application or a deliberate failure on the part of the employee to perform to the standards of which he/she is capable. In such cases, after exploring the issues, line managers may consider addressing issues through the disciplinary procedure as per section 3.

This policy does not apply in the case of issues of capability related to ill health impacting on attendance. Such issues would be managed under the Absence Sickness Management Policy & Procedure.

Capability/performance issues that arise within the first six months of appointment to the Federation or within any extension to the Probationary Period should be handled in line with the Probationary Periods Policy and Procedure

This policy is relevant to all permanent and temporary employees of the Federation.

# **2.0 Principles**

The following general principles are applicable to all capability cases:

* Managers should raise issues of capability concerns with employees as soon as they become aware of them. It is expected that in the first instance issues are dealt with between the line manager and the individual.
* It is expected that in many cases, early discussion will resolve most difficulties.
* If necessary, the Federation will enable an individual to avail of reasonable additional training to assist in meeting the required standards.
* At all formal stages during this process the employee will have the right to be accompanied and/or represented by an employee representative. Accurate records should be kept of all meetings.

# **3.0 Purpose & Aims.**

* The Performance and Capability Policy & Procedure relates to concerns regarding an employee’s knowledge, skills or ability to perform their role. This may arise from complaints or criticisms of the employee’s work from colleagues or patients, factual evidence, the line Manager/Lead or Practice’s own observations or the employee asking for help to overcome the problem.
* It also relates to performance which has been adversely affected by ill health i.e. If during employment an employee’s physical or mental health condition changes and it impacts on their ability to perform their duties in the foreseeable future and it is not possible to make reasonable adjustments. See Section 11.
* As per section 1, however this policy does not apply in the case of issues of capability related to ill health impacting on attendance. Such issues would be managed under the Absence Management Policy and procedure.
* This policy may also be used to consider cases of employees’ loss / suspension of registration, or other required qualifications such as a driving licence, where this is not considered a conduct matter. Such cases should be considered at a Stage 3 hearing.

# **4.0 Definitions**

* Capability means the knowledge, skill or ability needed to carry out the required duties of the role to an acceptable standard.
* A Supported Improvement Plan is a document which outlines areas for improvement with agreed objectives, timescales and support to achieve the required standard of performance.
* This policy applies in the case of issues of capability. It does not apply in the case of issues of conduct. A distinction must be drawn between a genuine lack of capability and unsatisfactory performance that is attributable to lack of application and/or wilful refusal on the part of the staff member to perform to the standards of which they are capable. This would be a question of “won’t do” rather than “can’t do” and, as a matter of conduct, should be dealt with under the Federation/FSU Disciplinary Policy.
* However, it is recognised that it may not be clear at the outset whether a matter is one of conduct or capability, and therefore it may be that the approach to be followed requires to be changed in the course of managing such matters.

# **5.0 Roles and Responsibilities**

# **5.1 Leads/ Line Managers**

Managers are responsible for ensuring their employees have a clear understanding of what is expected of them. They should help and support employees in identifying and addressing any gaps in the knowledge and skills that are required to perform the duties of their role. Managers should provide all relevant documentation relating to the employee’s job and the standards required of staff. 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 FSU Appraisal Policy for employees and any national or locally agreed competency and preceptorship frameworks.

Managers should: -

* Communicate with employees to ensure they are aware of the performance standards expected of them in their role and monitor employee performance on an ongoing basis
* Know and understand the Capability Policy
* Identify performance issues at an early stage and take appropriate action
* Follow the process outlined in the Capability Procedure
* Ensure consistency, fairness & confidentiality as appropriate when dealing with performance issues
* Provide any necessary support and reasonable training required to enable employees to perform at their best.
* Ensure HR are advised and kept informed when issues reach the formal procedure or prior to this as necessary
* Consider 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.
* If there are any health-related factors identified by the employee which may be impacting on their performance at work a referral to Occupational Health should be discussed with the employee.

# **5.2 Employee**

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
* Making their line manager aware of any gaps in their knowledge so this can be addressed.
* Being aware of the standards of performance expected of them and discussing with their line manager if unclear.
* Trying, to the best of their ability, to meet the expected standards and raise at the earliest opportunity if they are having difficulties meeting the expected standards of performance.
* Actively participate in the process to address any gaps in the knowledge and skills that are required to perform the duties of their role without delay.
* Working with managers on any agreed Supported Improvement Plan
* Complying with any support / monitoring mechanisms put in place.
* Making their line manager aware if they have difficulty at any stage of employment or stage of the capability procedure because of a disability, or a medical condition they consider relevant.
* 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.

# **5.3 Human Resources (HR)**

HR has a responsibility to: -

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

# **5.4 Practice Responsibilities**

Practices where Federation staff are based are responsible for:

* Maintaining confidentiality regarding capability matters as agreed with the relevant Federation Lead/Senior Manager and to share information on a need- to-know basis only.

# **6.0 Early Resolution**

Managers and employees are encouraged to deal with performance concerns with early resolution in the first instance if appropriate.

In many instances, this will entail conversations between the manager and an employee which will be sufficient to ensure that performance improves. Issues may be raised and discussed at an early resolution stage through a conversation or the usual 1:1 meetings/supervision to clarify expectations, identify development needs and ensure that employees have the support and opportunity to perform to the required standard.

Where possible managers should provide training for the employee to try and address the concerns. Training does not necessarily mean external or formal training courses as very often; work shadowing and observation can be equally effective. If lack of resources is raised as a contributing factor to performance, managers should confirm with the employee the resources they feel are lacking and consider whether it is feasible and reasonable to provide these. If the employee raises issues around a lack of clear instructions on how to complete work tasks or that they have been given contradictory guidance from one or more persons, the manager should clarify instructions.

A note of these conversations should be taken by the Lead/Line Manager and agreed with the employee. Performance should be reviewed again after any training, resources or clarification of instructions has been provided.

# **6.1 Moving to the Formal Procedure**

It is not possible to be prescriptive regarding timings of when the formal capability procedure will be invoked with a member of staff. Timescales will depend on the facts and circumstances of each case.

Federation and FSU staff work in an environment where they may have responsibility for the care of patients and their safety, or work in roles to support colleagues to deliver this. Timely action to address performance concerns is therefore vital to ensure the Federation is contributing to and delivering high quality and safe patient care and this may be considered when assessing when concerns should be dealt with via the formal procedure.

Generally before moving to the formal procedure, as above normally a Lead/ line manager will have already raised the concerns held about the employee and provided some level of training/mentoring to assist and support the individual reach the required standard of performance. However, in more serious cases where performance has a significant impact on patient safety or if there is a repeat of the same or similar concern and early resolution has already been tried, a formal approach may need to be adopted from the outset.

Where an individual is not responding to the support provided through early resolution and there is limited evidence of improvement managers should in the first instance speak with HR and seek advice regarding the appropriateness of evoking the formal capability process.

# **7.0 Preliminary Precautionary Measures**

At the point of instigating the formal capability process, it may be necessary, due to the nature of the issues of concern, to remove an employee from certain duties or to put in place additional supervision to mitigate any risk.

It may also be necessary to undertake an investigation as part of the procedure, to determine the nature and extent of the performance concerns, whether the matter is one of capability or conduct and why such concerns have arisen. Such investigation may involve examining work records and / or interviewing other individuals with whom the staff member works including Federation colleagues and Practice staff as appropriate.

In exceptional circumstances, it may be necessary to suspend an employee on full pay to undertake an investigation or until such times as a Supported Improvement Plan can be agreed and implemented.

The expectation is that in most cases, the employee would progress through each stage of the process as outlined below. However, there will be exceptional circumstances where, due to the nature of the capability issue and / or the seriousness of the performance deficiency, it is considered necessary to bypass Stage 1 and move straight to Stage 2 or 3 of the formal procedure. Line Managers/Leads should discuss options with HR if contemplating moving directly to Stage 2 or 3.

# **8. Regulatory Bodies**

In the case of capability issues relating to staff groups who require to be professionally registered, Federations/FSU have in place a mechanism to ensure that relevant statutory regulatory bodies are informed, as appropriate, where such issues arise. Staff members must be advised of referrals and where practicable in advance of any such referral being made.

Decisions in relation to ongoing professional registration as a result of such issues will be for the relevant statutory regulatory body to determine. However, this policy will apply in relation to those capability issues in so far as they relate to an individual’s employment within Federations/FSU.

# **9.0 Formal Procedure for addressing Capability Issues.**

The Formal process consists of four stages : –

* **Stage 1**
* **Stage 2**
* S**tage 3**
* **Appeal**

# **9.1 - Stage 1**

If discussion and support through conversation or the usual 1:1 meetings/supervision has not resulted in improvement or where the performance issues are judged to be sufficiently serious to move straight to stage 1, the following procedure will be followed.

When this formal stage 1 procedure is instigated, the employee will be issued with a copy of the Capability Procedure and invited to a formal advisory session with the line manager. The employee may be accompanied by a trade union representative or fellow worker.

An employee’s unsatisfactory performance should be discussed with the individual and line manager in the formal advisory session with the line manager drawing the employee’s attention to the acceptable standards of practice required by both the Federation and/or professional bodies and summarise any attempts made to address performance issues already undertaken at early resolution stage.

The line manager should clearly explain what is unsatisfactory and unacceptable in their practice against the required standards.

It is important the line manager with the employee identity factors contributing to the poor performance and the assistance that may lead to improved performance (which may include the provision of additional training or mentoring).

At this point an agreed Supported Improvement Plan should be drawn up which will include details of the improvements expected, along with the support that will be offered with timescales for the required standard to be reached. **(See Appendix 1).**

This plan will include review periods to assess performance. The individual should be advised their performance will be monitored over a review period – normally one to three months.

Where an employee reaches the required standard at the end of the monitoring period, they should be notified in writing by the line manager that they have met the necessary required standards, and these should continue to be met.

The line manager should advise the employee any lapse to the previous unacceptable standards within six months from the date of the first formal advisory session could result in further steps being taken in accordance with this procedure.

If the employee does not achieve the required standard in the agreed timeframe, they will be advised that Stage 2 of the process will be invoked.

# **9.2 - Stage 2**

**Formal Notification**

Where the employee does not achieve the required standard through the Stage 1 process the line manager, following a discussion with Human Resources, will write to the employee inviting the employee to attend a formal stage 2 meeting.

The employee should be advised they have the right to be accompanied by a fellow worker or recognised trade union representative.

A member of HR staff may be in attendance at this meeting.

This letter to the formal meeting should include the date, time and venue.

The employee should be advised this is a formal meeting in accordance with the formal steps within Stage 2 of the capability procedure with an overview of the concerns that will be discussed.

The letter should give the employee at least seven working days’ notice of the meeting and should be sent to the employee as soon as practicable after the conclusion of Stage 1 or as soon as issues are identified if progressing directly to Stage 2.

The employee will be issued with a copy of the Federation/FSU’s Capability Procedure with this letter.

# **9.3 Stage 2 Formal meeting**

The performance issues should be discussed with the individual by the line manager, at this formal meeting. It is important the employee should be told that the meeting is not a disciplinary interview but is a formal meeting under the capability procedure.

The employee should also be advised, as appropriate, that despite the support provided through Stage 1 their performance continues to be unacceptable and this situation is unstainable.

At this meeting reasons attributing to the continued unacceptable performance along with any associated difficulties the employee may be experiencing should be discussed and recorded.

The consequences of the unacceptable performance should be referred to.

A plan which outlines the improvement required should be discussed, this may be a revised version of any stage 1 supported improvement plan.

This plan must contain the objectives, change of behaviour/agreed ways of working that is required, with timescales and be clear measurable tasks that can be monitored against the action plan.

A time frame for review, how often the reviews will take place and what the criterion for improvement is within the agreed timescales should be outlined.

Additional support that may be needed to support the employee i.e., further training or mentoring should be identified and agreed.

The employee should be advised of any further action that will be taken if the improvement required is not forthcoming within the agreed timescales.

A formal record will be made of the meeting with a copy of the record issued to the employee.

While timescales for improvement will be agreed between all parties, **they will not be longer than 3 months.**

# **9.4 Review meeting**

A formal review meeting will be arranged between the manager and the employee to discuss progress and determine if the requirements and objectives have been fully achieved. A member of HR staff may be in attendance. The employee should be advised they have the right to be accompanied by a fellow worker or recognised trade union representative.

Where evidence shows that the employee’s capability has improved and been maintained this will be confirmed in writing to the employee, with no further requirements after review. The employee will return to the normal performance reviews in line with Federation/FSU processes.

Where there is relapse within 6 months the matter will be dealt with at the appropriate point within the formal process

However, if after review and discussion the employee’s capability concerns remain and the objectives have not been achieved the employee will be informed of this and the need for the matter to be referred to stage 3 in the process. The outcome of the review meeting will be notified in writing to the employee.

# **9.5 Stage 3**

If, despite all the measures outlined in Stage 1 and 2, the desired improvement has still not been achieved a Stage 3 meeting must be convened by the Manager/Lead (with the authority to dismiss).

As per Section 7, there will be exceptional circumstances where, due to the nature of the capability issue and / or the seriousness of the performance deficiency, it is considered necessary to move straight to Stage 3 of the formal procedure.

The Manager will write to the staff member no later than 7 working days in advance of the meeting, advising as per Stage 2, but additionally confirming that consideration may be given to redeployment, or if not appropriate, termination of employment on grounds of capability.

The employee should be advised they have the right to be accompanied by a fellow worker or recognised trade union representative. They will be advised who will be attending the meeting.

As the outcome of this meeting may involve termination of employment on the grounds of capability, the manager involved at Stage 3 will be required to submit all written supporting material no later than 7 working days in advance of the meeting, which will be shared with all parties in advance of the meeting. Similarly, following receipt of the manager’s case, the staff member, if they wish may submit a written material in response, no later than 5 working days in advance of the meeting, and, again, this will be shared with all parties in advance of the meeting.

The purpose of the meeting will be to discuss the following:

* The nature and extent of the performance concerns and whether such concerns are well founded.
* Possible contributing factors (including whether indeed the matter is one of capability and whether the staff member accepts that there is a problem);
* The improvement in performance which was required and the extent of such improvement achieved;
* What action has been taken by the Federation/FSU and the individual with regard to the agreed supported improvement plan (including any reasonable adjustments and other support mechanisms put in place to address the performance concerns); and
* Whether there are any further considerations, not previously explored, which might result in the required improvement being achieved or whether timeframes previously applied should be extended.

There are 3 potential outcomes:

* It may be considered that the staff member will be able to achieve and maintain the required standard of performance within their current role within a reasonable period of time, in which case a supported improvement plan should be agreed and implemented as per the earlier stages, with the Stage 3 meeting being adjourned until an agreed review date;
* Where it is considered that such improvement is not likely to be achieved and maintained, it may be considered that redeployment (at the same or lower pay level) would be possible. Redeployment should only be considered where there is a likelihood of a suitable alternative role (i.e. which is likely to be performed to the required standard and not present a continuing capability concern) arising within the Federation/FSU within a reasonable period of time. It should be noted that there is no legal requirement to create a post for a staff member who can no longer carry out the job they were employed to do. Redeployment to another post will only be an option where such a post exists. A post will not be created to facilitate such a move.
* It may be that, having considered both of the above options, termination of employment on the grounds of capability is the only option.

The employee will be advised of the decision of the meeting in writing within 7 working days and be advised of their entitlement to seek an appeal and the time frame this can be done in

# **10.Appeal**

Where an employee is dissatisfied with the outcome, they have the right to have an appeal hearing.

The purpose of any appeal would be to consider whether the decision reached was fair and reasonable under the circumstances. The employee who wishes to lodge an appeal should write to the appropriate FSU Human Resource Officer/Advisor stating the grounds of their appeal within 7 working days of receipt of the letter informing them of the decision.

The Appeal Panel will comprise of 2 suitable managers from the Federation or FSU who have had no previous involvement in the case.

The employee will be entitled to be represented at this appeal.

# **11. CAPABILITY AND UNDERLYING HEALTH CONDITIONS**

If during employment an employee’s physical or mental health condition changes and it impacts on their ability to perform their tasks in the foreseeable future and it is not possible to make reasonable adjustments, the line manager will organise a formal meeting with an employee order to discuss how best to support the employee and explore the option of redeployment. This will only be after advice is received from Occupational Health.

If it is not possible to redeploy the employee, a meeting in line with Stage 3 will be convened and one of the possible outcomes could be a dismissal on the grounds of capability. If possible, ill health retirement should be explored with the individual.

# **12. Grievances**

Where a staff member raises a grievance during implementation of the formal capability process, the capability process may be temporarily suspended in order to deal with the grievance. However, where the grievance and capability case are related, it may equally be appropriate to deal with both issues concurrently.

# **13.RIGHT TO BE ACCOMPANIED**

Employees are entitled to be accompanied to a formal capability meeting or appeal hearing by a trade union representative or fellow worker.

The companion may address the meeting or hearing to put forward the employee’s case, sum up their case or respond on the employee’s behalf to any view expressed at the meeting/ hearing. The companion may also confer with the employee during the meeting/ hearing but is not permitted to answer questions on their behalf.

If the employee’s choice of companion is not available to attend at the time proposed for the hearing in question, then the employee may propose an alternative time for the hearing to take place. The alternative date proposed must be within five working days of the initial meeting/hearing date.

# **14.Equality Statement**

In applying this policy, the GP Federation/FSU will have due regard for the need to eliminate unlawful discrimination and promote equality of opportunity.

# **15. Data Protection / GDPR**

In applying this policy, the Organisation will have due regard for the Data Protection Act 2018 and the General Data Protection Regulation (GDPR). Personal Confidential Data of data subjects will be processed fairly and lawfully and in accordance with the six data protection principles. Data Subject’s

Rights and freedoms will be respected, and measures will be in place to enable employees (data subjects) to exercise those rights. Appropriate technical and organisational measures will be designed and implemented to ensure an appropriate level of security is applied to the processing of personal confidential data.

# **Appendix 1- Supported Improvement Plan**

**Employee Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Lead/Line Manager’s Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Target area***Detail specific area where performance standards have not been met* | **Performance concern***Detail specific dates and examples of where the standards have not been met* | **Expected standard of performance.** *Detail what is expected of the employee in terms of their performance i.e., what does ‘good’ look like*  | **Agreed improvement actions.** *Detail what actions need to be taken to meet expected standard of performance* | **Support***Detail what has been agreed in terms of support required to achieve the expected standard of performance* | **Review Date** | **Review notes***Detail improvement made and any future review dates* | **Date to achieve standard** |
|  |  |  |  |  |  |  |  |

**Date of initial meeting \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**In attendance \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** **Employee Signature**

**Lead/Line Manager’s Signature**