

Appendix 3

Conduct and Capability Process

1 Introduction

- 1.1 Cumbria, Northumberland, Tyne and Wear NHS Foundation Trust places great importance on maintaining a workforce that is skilled and capable of carrying out all elements of the required occupational role. An individual's capability to do their job is assessed by reference to their values, attitudes, skills, qualifications, aptitude, general health and any other relevant physical or mental qualities required of the role. This includes the ability to perform all necessary physical tasks in line with their occupational role.
- 1.2 The Trust will provide appropriate training, support and where practical make reasonable adjustments to enable staff to perform their role and will assist those members of staff who are no longer able to perform their duties into alternative roles within the Trust, wherever possible, thus retaining valued skills and experience.
- 1.3 All new members of staff will have the expectations of their job explained to them by their line manager or supervisor as part of the induction process. Staff will also be provided with a detailed job description and will be given a copy of, or referred to, any written guidance that exists in relation to their area of work. Staff will be given access to the appropriate training and support to enable them to carry out their role effectively.
- 1.4 All members of staff have a contractual responsibility to perform their duties to an acceptable standard and they will be given all reasonable support and encouragement to do so using recognised systems such as JDR, appraisal and supervision.

2 Supporting a Capable Workforce

- 2.1 Cumbria, Northumberland, Tyne and Wear NHS Foundation Trust's visions, values and priorities focus on delivering safe, effective high quality care to our service users. The Trust recognises that the health, well-being and capability of staff members is a key enabler in achieving this.
- 2.2 Helping and encouraging staff to be appropriately skilled, reliable and healthy is a priority.
- 2.3 The Trust provides advice and support mechanisms for staff through, for example:

- Induction, Education and Training;
- Management Support, Supervision and Appraisal;
- Workforce Advisors;
- Occupational Health;
- Trust Equality and Diversity Lead;
- Trust-wide Safer Care Group;
- Staff Side Representatives.

2.4 The support structures in place are part of the wider NHS Workforce Planning process to enable the organisation to plan for the future and achieve organisational goals set at a national and local level. Workforce planning integrates the Trusts' core business of care and treatment for people in the service and human resource plans ensuring that the focus is on patients' needs being met whilst maintaining the safety of the patients, staff and the wider community.

2.5 CNTW strives to have a workforce that is made up of employees who are educated, skilled and "fit for purpose", working jointly towards a shared vision and committed to delivering excellence.

2.6 The Workforce Strategy supports that vision by ensuring statutory and mandatory training is completed and staff are competent to an appropriate level to ensure both their own and others wellbeing by utilising a multi layered approach to the maintenance of safety and management of risk. Ensuring public safety requires a number of organisational arrangements to be in place, for example, staff training, systems to monitor adherence to professional codes of conduct, robust human resource management policies and compliance to the Health and Safety at Work Act and other aspects of legislation and positive practice guidance.

2.7 The NHS must comply with all Health and Safety requirements under the Health and Safety at Work Act 1974, to safeguard the public and their own staff. The Health and Safety at Work Act 1974 is the primary piece of legislation covering Occupational Health and Safety in Great Britain.

Health and Safety at Work Act requires employers to ensure the health, safety and welfare at work of their employees and to ensure that their activities do not adversely affect the health and safety of other people.

The employees have a duty of care to their own health and safety and that of others who may be affected by their work actions.

- 2.8 An additional safeguard to promote safety within organisations is the monitored adherence to professional codes of conduct, for examples for Nursing and Midwifery Council. All professional groups have to be registered and be fit to practice. Public safety is reliant on a skilled and competent workforce who can confidently and competently deliver high standards of care.
- 2.9 The Trust also has an obligation to ensure that the patient and carer experience is a positive one. There are a range of patient and carer feedback methods and examples of good practice. More recently the NHS Friends and family Test has been introduced and from April, 2013 this is included in all Standard NHS contracts as a requirement for all NHS funded Acute In-patient Services and in future will become a key requirement for all of the NHS to have this embedded in services. This will provide a comparable indicator which commissioners will be able to use to drive improvements. Organisations are able to utilise such feedback to target improvements and benchmark their performance.
- 2.10 By using a multi layered approach of checks and balances the Trust can ensure that a capable and competent workforce is in place and fulfil statutory duties to the public.

3 Employee Responsibilities

- 3.1 The Trust places reasonable responsibilities on its employees in order to ensure individuals gain and maintain the competencies and capabilities in keeping with their occupational role.
- 3.2 The Trust seeks to provide a high quality service and to treat employees with respect and understanding. In turn, staff members are expected to:
- Demonstrate at all times the Trust's values;
 - Contribute positively to the delivery of Trust services by fulfilling all of the requirements of their job description;
 - Participate in statutory, mandatory and developmental education and training and apply knowledge and skills in practice;
 - Abide by their professional Codes of Conduct, Staff Charter, Trust Policies and relevant Trust Strategies e.g. Nursing, Workforce;
 - Deliver care or support services with dignity, respect and compassion;
 - Ensure that patients are free from intentional harm and abuse whilst receiving services and care and to therefore

report immediately untoward incidents or any aspect of service delivery which they think are below standard in any way;

- Achieve a healthy work life balance which allows for regular and sustained attendance at work and the fulfilment of their contract of employment;
- Demonstrate a positive attitude, reliability and helpfulness to others (colleagues and patients) at all times.

4 Organisational Responsibilities

4.1 The Trust has a responsibility to ensure employees, including bank staff, gain and maintain the competencies and capabilities in keeping with their occupational role. Any contractors, including agencies providing care delivery staff, must be able to demonstrate to the Trust that they comply with the relevant legislative requirements and that staff are appropriately trained and their fitness to practice standards, in line with their occupational role, are monitored.

4.2 As a public service the NHS is mandated to provide services that are safe, effective and meet the needs of the individuals accessing care and treatment. Compliance to Human Rights Legislation (for example, Article 2 – Positive Obligation to Preserve Life), Primary Legislation (for example, Health and Safety at Work Act, Mental Health Act) and secondary legislation is essential. Organisations also have a responsibility to comply with evidence based practice guidance and also to demonstrate learning from events (for example, from public inquiries and local investigations) that have led to potential or actual harm of patients, staff or the public. In order to achieve this, a key enabler is a competent and effective workforce.

4.3 CNTW has systems in place to provide staff with the skills to carry out their duties and protect the wellbeing of themselves and others including;

- Recruitment Standards;
- Induction Procedures;
- Training at Induction;
- Refresher Training to maintain or enhance skills;
- Supervision and support structures;
- Specialist support and advice;
- Policies and Procedures.

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- 4.4 In order to ensure a competent workforce staff members are expected to comply with policy and procedure. This includes participating in aspects of statutory, mandatory and developmental non-physical and physical skills training and the subsequent competent application of the skills learned in practice.
- 4.5 As a supportive employer CNTW recognises the need to provide reasonable adjustments for staff in certain circumstances and managed options for temporary or permanent exception can be considered in line with appropriate employment legislation as outlined in this document.
- 4.6 There is, however, an overarching need to ensure that the safety of people using, working in or visiting our services is not compromised.

Flexible practice in terms of reasonable adjustment cannot be managed if there is an actual or potential risk to safe and effective service delivery.

- 4.7 The following training and practice skills are considered essential to the provision of safe and effective services:
- **Attitudes and values** – In keeping with the Trust's expectations, a caring profession and public service;
 - **Resilience** – Some occupational roles may result in staff involvement in (or witnessing) distressing events or accessing disturbing information. Support mechanisms are in place to help staff to manage psychological and emotional resilience;
 - **Moving and Handling** – this includes use of mechanical aids and the moving and handling of objects, equipment and / or people in line with the occupational role as per job description;
 - **Immediate Life Support** – this includes the transfer of equipment in an emergency, the use of life support equipment (crash bag) and life support intervention in line with the occupational role as per job description;

- **Conflict management / PMVA** – this requires staff in inpatient areas to carry out mandatory training that includes physical interventions to prevent further harm. Staff may be required to provide an emergency response to another service area and therefore must be competent in the use of the physical intervention hierarchy. Staff working in the community will be required to participate in mandatory training for personal safety which involves the need to be competent in the use of breakaway skills. Use of emergency restraint safety equipment is also required in some service areas and training is provided in response to service need.
- **Fire Safety** – staff must attend mandatory training in order to be competent in the use of equipment and personal assessment of fire risk. This includes the need to transfer and deploy fire safety equipment when deemed appropriate following personal risk assessment. This also includes the need to utilise evacuation equipment e.g. slide sheets and evacuation chairs in line with environmental risk management plans and occupational role;
- **Driving** – In accordance with requirements of occupational role;
- **Dexterity aspects** – (including key board skills) In accordance with requirements of occupational role.

5 Physical Capability

5.1 It is important that each member of staff who works for the Trust has the capability to perform their role. Although physical intervention plays a small part in care delivery some roles require a greater degree of physical capability and dexterity than others. Examples include, but are not limited to:-

- Clinical roles that involve the application of PMVA techniques, moving and handling, immediate life support and evacuation of patients;
- Maintenance roles that involve moving and handling heavy equipment, climbing ladders, reaching, and the dexterity associated with intricate manual tasks;
- Roles that involve driving, such as portering and community nursing roles;
- Roles that require dexterity associated with keyboard skills.

5.2 Physical demands that are intrinsic to the role will be incorporated into job descriptions and will be described during the interview and selection process.

5.3 The Occupational Health Department is aware of the physical requirements of roles within the Trust in order to properly assess the impact of these on an individual's capability to perform the role.

5.4 Where appropriate, the physical capability of an individual will be assessed in order to establish that the individual is capable of performing the role. Such assessments will occur as part of the interview and selection process and on an on-going basis during employment to ensure the individual continues to meet those requirements.

5.5 Action to be taken in cases of Incapability

5.5.1 Where an individual is unable to perform aspects of the physical requirements of the role, a decision will be made as to whether to restrict the role of the individual immediately, by means of a temporary or permanent exemption, to safeguard the individual, the service users and other members of staff.

5.5.2 The following will be taken into consideration when assessing whether temporary or permanent exemption is appropriate and practicable:-

- Anticipated duration of the restrictions;
- Staffing complement;
- Demands of the ward / team / work area;
- Whether other member of staff are currently exempt;
- To what extent the member of staff can respond to an incident / emergency.

5.5.3 Medical evidence will be obtained as appropriate and each case will be reviewed on a regular basis.

5.5.4 Consideration will be given to introducing reasonable adjustments and, where necessary, the possibility of redeployment into an alternative role will be explored.

5.5.5 Only when all possible alternatives have been explored, will termination of employment on the grounds of incapability be considered.

5.6 Temporary Exemption

5.6.1 The following are examples where an individual may be exempt from performing aspects of the physical requirements of the role on a temporary basis:

- Pregnancy;
- A medical condition, supported by medical evidence, that restricts the person's ability to perform the full range of duties;
- Newly appointed staff awaiting training.

5.6.2 The extent of the temporary period will be reviewed on a regular basis and additional medical evidence sought where necessary. The normal time period will be up to 6 months after which 3 months' notice of termination could be issued whilst suitable alternative employment is considered.

5.7 Permanent Exemption

5.7.1 The following is an example where an individual may be exempt from performing aspects of the physical requirements of the role on a permanent basis:

- A medical condition, supported by medical evidence, that restricts the person's ability to perform the full range of duties

5.8 Reasonable Adjustments

5.8.1 Where an individual member of staff is unable to perform aspects of the role due to a disability, every effort will be made to introduce reasonable adjustments wherever practicable and without compromising the safety of the individual, service users and other members of staff.

5.8.2 Examples of reasonable adjustments can be found in the Trust's Sickness / Absence Management Policy CNTW(HR)10. These include, but are not limited to:-

- Hours;
- Base;
- Shifts;
- Breaks;
- Amendments to job role;
- Activities, including supporting patients in the community;

- Patient contact.

5.8.3 For further detail refer to the Policy, Sickness Absence.

5.9 Accommodating Reasonable Adjustments

5.9.1 If a Ward / Department has a number of staff on permanent or temporary exemptions a holistic assessment will need to be made on whether it will be possible to accommodate everyone's needs without compromising the safety of the staff, services user and other members of staff.

5.10 Temporary Exemptions

5.10.1 Any temporary exemptions exceeding a period of 6 months (excluding pregnancy) will be reviewed by the service / departmental Manager and / or professional lead and Workforce Advisor with specialist input / advice as required from, for example:

- Equality and Diversity Lead;
- Patient Safety Manager;
- Occupational Health Advisor.

5.10.2 Consideration will be given to:

- Discontinuation of the exemption and return to normal duties;
- Extension of exemption period;
- Introduction of reasonable adjustments as outlined in the Managing Diversity Policy – Practice Guidance Note 2: The Provision of Reasonable Adjustments;
- The possibility of suitable alternative employment.

Flexible practice in terms of reasonable adjustment cannot be managed if there is an actual or potential risk to safe, effective and economically viable service delivery. The organisation will not be in a position to offer adapted roles that do not fully and effectively enhance care provision or support service delivery.

5.11 Suitable Alternative Employment

- 5.11.1 Where an individual member of staff is unable to perform aspects of the role due to a disability, and it has not been practicable to introduce reasonable adjustments without compromising the safety of the individual, the service users and other members of staff, every effort will be made to identify an alternative role for the individual.

5.12 Termination of Employment

- 5.12.1 When advice is obtained that a staff member is unable to fulfil the requirements of their job description on a permanent basis 3 months' notice of termination will be served. During the notice period all attempts will be carried out to look for suitable alternative employment during this period. If employment is identified the notice of termination will be removed. Employment on the grounds of incapability e.g. due to ill health, be considered. If notice of termination is served on an individual, efforts will continue to be made during the notice period to identify a suitable alternative role.

5.13 Roles and Responsibilities

5.13.1 Individual:

- The member of staff must inform his/her line manager immediately of any condition or disability that affects their ability to perform any of the physical tasks associated with the role, either on a temporary or permanent basis;
- The individual must undergo the necessary physical assessment to identify the range and extent of the physical restrictions;
- The member of staff must attend occupational health and/or specialist appointments as required;
- In cases where redeployment into an alternative role becomes necessary, the member of staff should be flexible in their approach to an alternative post;
- Each member of staff must attend relevant training to equip them to deal with the physical aspects of the role;
- The member of staff will maintain responsibility for their own health, safety and wellbeing.

5.13.2 Line Manager

- The Manager will have responsibility for the health, safety and well-being of each member of staff in their team;

- The Manager will discuss with the member of staff any concerns regarding the individual's ability to perform any physical aspects of the role.
- Where a member of staff is unable to perform any physical aspect of the role, the Manager will make a prompt decision as to whether the individual should be exempt from performing the physical requirements of the role, either on a permanent or temporary basis
- The Manager will refer the member of staff to Occupational Health Department immediately to seek a medical opinion as to the nature, extent and likely duration of the restrictions
- The Manager will carry out a workplace risk assessment, as appropriate. The relevant documentation: Reasonable Adjustments – Task Analysis is in Appendix 2a of this Policy.
- The Manager will keep detailed and accurate records related to each case
- The Manager will conduct a regular review of the situation
- The Manager must ensure that staff are fully trained in the range of skills and techniques necessary to perform the physical aspects of the role;
- The Manager will ensure that all members of the team are aware of any exemptions
- The Manager will ensure that the safety and wellbeing of service users and other members of staff are not compromised

5.13.3 Occupational Health Department

- The Occupational Health Department will be consider the physical requirements of the role and assess the impact of these on an individual's capability to perform that role;
- The Occupational Health Department will advise whether the restrictions are of a temporary or permanent nature in order that exemption may be considered by the Manager;
- The Occupational Health Department will suggest potential reasonable adjustments for consideration by the Trust managers;

- Where the member of staff is unable to perform the role on a permanent basis, the Occupational Health Department will offer advice with regard to the individual's capabilities (as opposed to incapability) so that alternative roles may be explored;
- The Occupational Health Department will seek specialist medical advice where appropriate;
- The Occupational Health Department will continue to review each case as necessary;
- The Occupational Health Department will facilitate case conferences as required.

5.13.4 Training Department

15.3.4.1 The Training Department will provide training for staff in a range of physical skills and competencies. Examples include, but are not limited to:-

- PMVA;
- Moving and Handling People;
- Resuscitation;
- Fire Evacuation;
- Health and Safety.

15.3.4.2 The Training Manager, in consultation with the relevant departmental leads will:

- Draw up a summary of the physical requirements and skills of the role, examples are outlined in Appendix 2c and 2d;
- Ensure this is shared with the Occupational Health Department.

15.3.5 Recruiting Managers

15.3.5.1 Recruiting Managers will:

- Ensure a current summary of the physical skills required for the post is attached to the relevant job description.
- Ensure the physical skills required for the post are discussed at the interview / selection stage (including internal transfers).

15.3.6 Workforce

15.3.6.1 The Workforce Department will:

- Provide advice to managers in relation to application of policy when dealing with issues of physical capability regarding members of staff;
- Collate Group specific information regarding workforce to allow for Trust wide management and opportunities for individuals on a temporary and permanent basis;
- On advice from recruiting managers ensure a current summary of the physical skills required for the post is attached to the relevant job description.

6 Managing Disability

6.1 Disability – Equality Act 2010 Definition

6.1.1 A person has a disability if s/he has a physical or mental impairment which has a substantial and long-term adverse effect on that person's ability to carry out normal day-to-day activities.

6.2 Meaning of 'impairment'

6.2.1 The definition requires that the effects which a person may experience must arise from a physical or mental impairment. The term mental or physical impairment should be given its ordinary meaning.

6.2.2 It is not necessary for the cause of the impairment to be established, nor does the impairment have to be the result of an illness. In many cases, there will be no dispute whether a person has an impairment. Any disagreement is more likely to be about whether the effects of the impairment are sufficient to fall within the definition and in particular whether they are long-term.
Even so, it may sometimes be necessary to decide whether a person has an impairment so as to be able to deal with the issues about its effects.

- 6.2.3 Whether a person is disabled for the purposes of the Act is generally determined by reference to the effect that an impairment has on that person's ability to carry out normal day-to-day activities. An exception to this is a person with severe disfigurement.
- 6.2.4 It is not possible to provide an exhaustive list of conditions that qualify as impairments for the purposes of the Act. Any attempt to do so would inevitably become out of date as medical knowledge advanced.
- 6.2.5 A disability can arise from a wide range of impairments which can be:
- Sensory impairments, such as those affecting sight or hearing;
 - Impairments with fluctuating or recurring effects such as rheumatoid arthritis, myalgic encephalitis (ME), chronic fatigue syndrome (CFS), fibromyalgia, depression and epilepsy;
 - Progressive, such as motor neurone disease, muscular dystrophy, and forms of dementia;
 - Auto-immune conditions such as systemic lupus erythematosus (SLE);
 - Organ specific, including respiratory conditions, such as asthma, and cardiovascular diseases, including thrombosis, stroke and heart disease;
- 6.2.6 What 'substantial' and 'long-term' mean
- 'substantial' is more than minor or trivial – for example, it takes much longer than it usually would to complete a daily task like getting dressed, or the way that the activity is carried out, taking into account the cumulative effects of an impairment, effects of behaviour, effects of environment;
 - 'long-term' means 12 months or more - for example, a breathing condition that develops as a result of a lung infection
- 6.2.7 It is not necessary to consider how an impairment is caused, even if the cause is a consequence of a condition which is excluded. For example, liver disease as a result of alcohol dependency would count as an impairment, although an addiction to alcohol itself is expressly excluded from the scope of the definition of disability in the Act. What it is important to consider is the effect of an impairment not its cause – provided that it is not an excluded condition.

6.2.8 The Duty to provide a reasonable adjustment under the Equality Act therefore only applies if the above conditions are met. Specialist advice can also be sourced from the Trust Equality and Diversity Lead.

7 Related Policies and Procedures

7.1 This document should be read with reference to associated CNTW Policy documents and practice guidance.