
Capability Policy



Policy Title:	Capability
Policy Number:	B106
Version Number:	1
Ratified By:	B3, Board Of Trustees
Date Of Issue:	June 2016
Date Of Review:	June 2017
Cross References:	Discipline Policy
Additions/Amendments:	

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Capability Policy

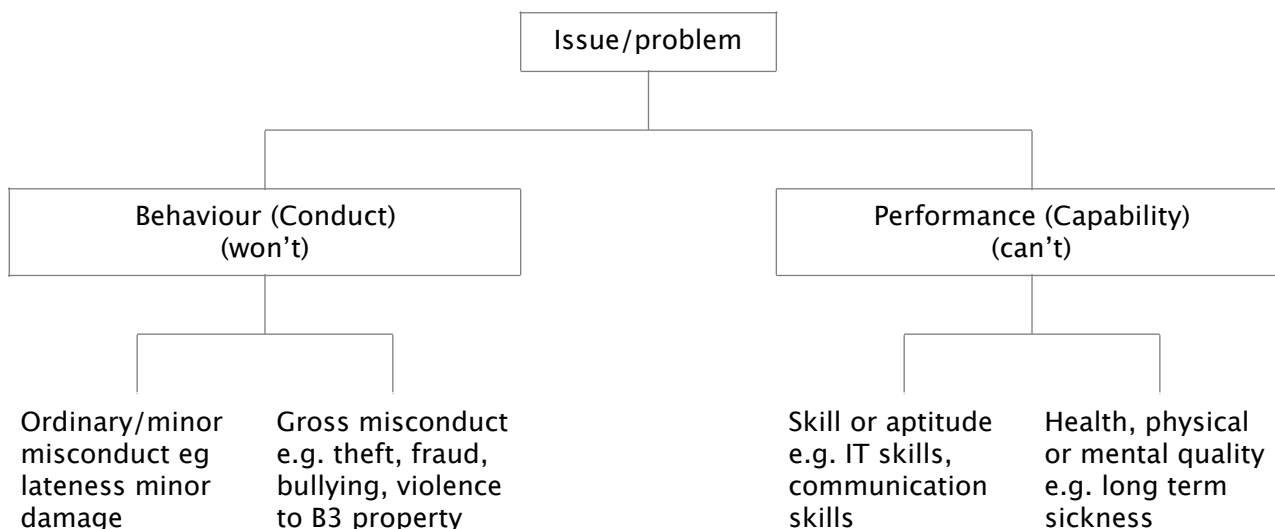
1. Introduction

- 1.1. B3 recognises that due to the nature of our business, to be successful we are dependent on you having the appropriate skills, knowledge, competence and aptitude linked to a positive attitude and commitment to undertake your role in an effective and efficient way. As an organisation it is essential for all of our employees to embrace our values, this in turn will help us to achieve our aim and strategic direction.
- 1.2. This policy and procedure applies to all employees who are employed directly by B3, with the following exceptions:
 - 1.2.1. If you are currently within your probationary period (the probationary process will apply in these circumstances);
 - 1.2.2. If you are employed by B3 on a fixed term contract of six months or less;
 - 1.2.3. If you are employed by B3 on a casual or sessional basis.

If you belong to one of these groups of employees and you are invited to a meeting where your continued employment is to be discussed, you will have the right to be accompanied by a trade union representative or a work colleague at this meeting.
- 1.3. Any employee performing below the standards expected for their role will have a detrimental effect on service provision. In these circumstances it is the responsibility of your manager to bring this to your attention and to work closely with you to improve performance to an acceptable level. During any such period the emphasis will be on supporting you to improve your performance and/or attitude/commitment with cooperation between you and your manager in planning for improvements and evaluating the outcomes.
- 1.4. All employees have monthly supervision to ensure that you know what is expected of you. This process makes sure that you are clear in terms of the objectives which you need to deliver, the positive attitude and performance you should bring to your role within the organisation and the level of performance that you need to achieve.
- 1.5. Where your performance falls below the standard B3 reasonably expects of you then it is important that a fair and consistent process is followed. This policy and procedure will:
 - 1.5.1. Ensure that a fair and reasonable process exists where you are experiencing performance difficulties (including attitude and commitment);
 - 1.5.2. Ensure that any cases of poor performance and attitude and lack of commitment are handled appropriately with any underlying reasons taken into account;

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- 1.5.3. Ensure that ill health and absence is managed in an appropriate and supportive manner;
 - 1.5.4. Ensure that you are offered support and adequate training within our performance review framework.
 - 1.6. You will be entitled to be accompanied by a trade union representative, or a work colleague, at all formal stages of the procedure. There is no right to be accompanied at any informal stage such as in a fact finding investigation.
 - 1.7. Whilst every effort will be made to help you improve your performance and to retain you in your post, B3 cannot guarantee to maintain your employment if you do not achieve the expected level of performance following exhaustion of the capability procedure.
 - 1.8. The best way to prevent issues of capability is to ensure effective and robust recruitment and a comprehensive and clear induction where you are advised of the standards and level of work required, in addition to fully participating in regular supervision.
 - 1.9. Reference to manager throughout this policy implies a member of B3 staff with responsibility for managing other staff, for example: Service Manager, trustees, etc.
- 2. Responsibility**
- 2.1. Management has overall responsibility for the appropriate usage of Capability policy.
- 3. Definition Of Capability**
- 3.1. Capability is defined in employment law as “capability assessed by referenced to skill, aptitude, health or any other physical or mental quality” considered against “the work of the kind which the employee is employed to do”.
 - 3.2. For the purposes of this policy, capability is assessed with reference to skill, aptitude, competence, knowledge and ability, for example, adequacy of skills, professional insight and ability to cope with reasonable workloads, identified standards or to distinguish appropriate priorities.
 - 3.3. In addition, B3 recognises that performance can also be affected by the attitude and the commitment that you bring to your job. The most skilled and competent employee can fail to perform if their attitude and commitment to the job is negative.
 - 3.4. In extreme cases, this might lead to you being dealt with under the disciplinary policy, for example, if you refused to carry out a reasonable and lawful instruction of your manager or if you swear or are rude to a manager or service user.
 - 3.5. In less serious cases, it may be possible to deal with problems of negative attitude or commitment by working through this capability policy.

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- 3.6. This policy runs in parallel with, but is not part of the disciplinary procedure. B3 recognises that poor job performance and/or attendance should not be treated as misconduct for the purposes of disciplinary.
- 3.7. It is important to be clear about what capability is and what misconduct is. Misconduct is about what an employee “will not do,” while capability is at least initially about what an employee “cannot do”. To assist you, the following diagram, may help.



- 3.8. If you or your manager needs any further guidance to recognise the distinction between capability and misconduct, please do not hesitate to contact the Service Manager or Board of Trustees.
- 3.9. Managers should note that if an employee is underperforming due to a training need, i.e., they have not had the relevant training to enable them to perform their job at the same standard as colleagues who have had the training; this should be addressed before introducing the Capability procedure. A reasonable period of time to embed the training should then be given. Please note this only relates to urgent job specific training necessary for the employee to perform the basics of the role, i.e., to ensure they have the right tools to do their job.

4. Informal Stage Of Procedure

- 4.1. Where your manager believes that your work performance is giving cause for concern as a result of not reaching the required standards, they should have a discussion with you to try to establish the reasons. It is likely that this will take place during a pre-arranged supervision meeting.
- 4.2. At this meeting, your manager will discuss the following with you:
- 4.2.1. The standards of work performance or attendance that is required.
 - 4.2.2. The areas that have been identified as areas for improvement.
 - 4.2.3. Identify what are the reasons for the shortfall.

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- 4.2.4. How and when you might achieve these improvements in performance or attendance, in addition to what support you require and whose responsibility it is to provide you with that support.
 - 4.2.5. Agree a reasonable review period with you (this is usually a maximum period of three months and in many cases a far shorter period of up to one month). The review period will normally be tied into a normal supervision meeting.
 - 4.2.6. How feedback during the review period is to be provided to you regarding your progress.
 - 4.2.7. The consequences of you failing to improve to the required standards (i.e., the formal stages of this policy and procedure).
 - 4.2.8. Agree a further date to meet with you to review progress.

During this discussion, your manager will take into account your work circumstances as well as any external influences that could be impacting on your performance or attendance in the workplace.

- 4.3. Where the issues being addressed with you are related to ill health and poor attendance, your manager will consider referring you to occupational health and/or EAP.
- 4.4. A written record of any discussions and meetings, along with the agreements reached will be kept and any agreed outcomes will be confirmed to you in writing. Where this forms part of a normal supervision meeting, it will be recorded in your supervision notes.
- 4.5. If at your review meeting it is evident that the required improvements have been made, this will be confirmed to you along with the need for you to sustain that level of improvement.
- 4.6. Where some improvement has been observed, but the required standard has not yet been achieved, then your manager will make a decision on whether an extension of the review period would be appropriate and they will discuss this with you. If you are still not meeting the required standard then it is likely the review period will not be extended and the process will move to the formal stage.
- 4.7. At the end of the informal procedure, if you have not met the required standards and there are no mitigating circumstances for this, then your manager will follow the formal procedure following consultation with the Board of Trustees.
- 4.8. At both the informal and formal stages of the procedure, should your performance improve so you are no longer being managed under the policy and, within a year, your performance returns to giving cause for concern then the procedure will be re-instigated at the stage where it was halted.

5. Formal Procedure

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- 5.1. When it becomes apparent that the informal approach is unsuccessful, you will be advised of this and your manager will inform you that the formal procedure will be followed. This will also be confirmed to you in writing.
- 5.2. Your manager will consult with the Board of Trustees before taking any action under the formal procedure. Your manager will provide clear evidence and examples of the areas where you are not performing to the required standards. After consultation with the Board your manager will decide whether or not to continue to the formal stage of the procedure.
- 5.3. If it is clear that the reasons given by your manager for the poor work performance or attendance are unacceptable, then we will support your manager to arrange a Stage One Meeting under the formal procedure to discuss this with you.
- 5.4. Stage One Meeting
- 5.4.1. Your manager will inform you in writing of the purpose of this meeting and the issues to be discussed. You will have the right to be accompanied at this meeting by a trade union representative or a work colleague. A representative from the Board will also be present. You will be given at least five working days written notice of the meeting.
- 5.4.2. The purpose of the Stage One Meeting is to:
- Identify clearly and fairly the areas in which you are underperforming.
 - Identify the support which has been provided to you as part of the informal procedure.
 - Ensure that you are clear about the concerns, the standards that are required and where there is a shortfall.
 - Identify possible causes for the shortfall.
 - Discuss and agree a programme of support and monitoring for you. This may include:
 - Extra support and supervision from your manager.
 - Retraining or further training on or off the job.
 - Setting and reviewing specific targets agreed with you.
 - A temporary or permanent change of hours and/or duties subject to the agreement of all parties.
 - A temporary placement in another section, department or service.
 - Counselling and welfare assistance depending upon the nature of the problem.

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- An appropriate referral to occupational health or EAP if this has not already taken place and then relevant action taken on the advice of any subsequent report.
 - A mentor, buddy or other peer support provided for you.
- Allow you to have the opportunity to challenge or give an explanation for the causes relating to the unacceptable levels of performance or attendance. You will also have the opportunity to comment on your work and put forward any facts and evidence for consideration.
 - Agree with your manager a review period in which you will be closely monitored. The timescale will relate to the work cycle, the length of time required to measure the affect of any training and a reasonable length of time to allow you to improve (this is usually a maximum period of three months and in many cases a far shorter period of up to one month).
 - Explain that your performance will be monitored throughout the review period and outline the consequences of you failing to achieve a significant and sustained improvement, the next stage being a Stage Two Meeting of the formal procedure.
- 5.4.3. Your manager will write to you within five working days of the meeting to confirm in writing the action to be taken following the meeting and the agreements made during the meeting. This must include:
- Areas where you are required to make an improvement.
 - The level of improvement required and the standards that must be achieved by you.
 - Measures and support that will be available to give you every opportunity to reach the required level of performance.
 - Any other action that you or your manager will take to help to resolve the situation.
 - The consequences of you failing to achieve and sustain the level of performance required.
 - The agreed timescales for improvement and agreed review periods.
- 5.4.4. If at the end of the review period or earlier if there is clearly no improvement, or if your work performance has deteriorated, your manager will consult with the Board regarding how to move to a Stage Two Meeting of the formal procedure.

5.5. Stage Two Meeting

- 5.5.1. You will be advised that your work performance is still unsatisfactory and you will be given five working days notice of a Stage Two Meeting.

You will have the right to be accompanied at this meeting by a trade union representative or a work colleague. A representative from the Board of Trustees will also be in attendance at this meeting.

5.5.2. The purpose of a Stage Two Meeting is to:

- Allow your manager to clearly explain where your performance continues to fall below the required standards.
- For the reasons for the continued satisfactory performance to be discussed and identified between you and your manager. You will be given every opportunity to give your point of view and to state your case.
- Agree any additional measures to improve performance. This could include training or counselling. It could also entail you having your duties altered or you changing job roles, in which circumstances this could result in temporary changes to your terms and conditions.
- Set a further review period if appropriate, during which your progress will be closely monitored and at the end of which (or earlier if there is clearly no improvement or your work performance has deteriorated) a final formal review meeting will be held. You will be informed that failure to achieve the required standards by the end of this period may result in your dismissal from the organisation.

5.5.3. If there is no discernible improvement or if it is clear for operational reasons that it would be impracticable for you to remain in your post, every effort will be made to find you an alternative role that you will be competent to fill. If such a vacancy exists you will be offered the post in writing. This will be subject to there being no other employee deemed as “at risk” who may also be suitable for this role. Should you accept such a position, you will be offered new terms and conditions (which may include a change in salary). Any offer of alternative employment will initially be on a three month basis, to be reviewed monthly and will involve, where appropriate, retraining. You will be made aware of the potential consequences should you fail to perform in the alternative role, i.e., to proceed to a Stage Three Meeting of the formal procedure. This may result in your dismissal from the organisation.

5.5.4. If it is not possible to find you an alternative post that you are competent to fill, the matter will proceed to a Stage Three Meeting of the formal procedure.

5.6. Stage Three Meeting

5.6.1. If following the end of the review period, or earlier if there is clearly no improvement or if your work performance has deteriorated, your manager in consultation with the Board of Trustees, will decide

whether or not there has been a sustained improvement to the required standard.

- 5.6.2. If there has been a sustained improvement but you still have not reached the required level of performance then your manager will give consideration to whether or not the review period can be extended by a short period.
- 5.6.3. If there has been no sustained improvement or if your work performance has deteriorated, then a Stage Three Meeting will be arranged at which a senior manager will chair. You will be advised of this meeting in writing, no less than five working days beforehand. You will have the right to be accompanied at this meeting by either a trade union representative or a work colleague. A representative from the Board will also be in attendance at this meeting. The letter will also confirm details of your work performance issues.
- 5.6.4. At the Stage Three Meeting, your manager will explain the detail of where your performance continues to fall below the required standard. Your manager will set out the events that have led to the Stage Three Meeting and will indicate the following:
- The standards and expectations required;
 - The areas where you have failed to meet the required standards;
 - The steps that have been taken to assist you;
 - The consequences for the service of your unsatisfactory performance.

You will have every opportunity at this meeting to express your views and to make any constructive suggestions.

- 5.6.5. After hearing all evidence, the senior manager chairing the meeting will make a decision based on one of the following four possible outcomes:
- That your manager's case is not upheld.
 - That you will be given a further final period of review to determine if you are able to meet the standards of performance set by your manager. Where this occurs, you will be informed that failure to reach a satisfactory level of performance will lead to a further hearing at which the senior manager will consider dismissing you from the organisation.
 - That there will be consideration given to the possibility of redeployment within B3 as an alternative to dismissal. If alternative work is not found within your notice period from the date of the decision or if you refuse a reasonable offer of alternative employment then the hearing will be reconvened and you will be

dismissed from B3's employment. A suitable alternative role may be at a lower grade and in this case will be offered on the terms and conditions appropriate to the role which may mean a reduction in salary or other contractual terms.

- That you are dismissed from B3's employment on the grounds of capability. In these circumstances, it may be agreed for you to leave immediately and to receive payment in lieu of notice, rather than for you to be expected to work your notice period.

5.6.6. Once the chairing manager has reached their decision, both you and your manager will be informed of the outcome. The decision will also be confirmed to you in writing within five working days, along with details of the reason for their decision. You will be given the right of appeal if you are dismissed.

5.7. Appeal

5.7.1. If you are dismissed you will be given the right to appeal against the decision of the chairing manager from the Stage Three Meeting. In the written confirmation of the decision, you will be informed of the right to appeal which needs to be received by the Board of Trustees within ten days from receipt of that letter. In your letter of appeal, you must set out in writing the full grounds for your appeal.

5.7.2. An appeal hearing will be convened as soon as reasonably practicable and will be heard by a representative/s of the Board of Trustees. You will be advised in writing of the date and time of the appeal hearing and you will have the right to be accompanied at this meeting by either a trade union representative or a work colleague.

5.7.3. Appeal hearings will be conducted in accordance with the following terms of reference:

- To review whether the matters relating to your unsatisfactory performance were adequately investigated and substantiated.
- To review whether B3's procedures were correctly and fairly implemented.
- To consider whether the standards of performance that you were required to meet were fully explained to you and whether they were achievable and realistic in the circumstances.
- To consider whether you were given adequate time and opportunity to improve your performance and whether the sufficient support mechanisms were put into place.
- Whether the sanction was reasonable in the circumstances known at the time of the Stage Three Meeting.

5.7.4. Following the appeal hearing the senior manager will make a decision based on one of the following four possible outcomes:

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- To uphold your appeal and return you to your original post within B3, with no further action.
 - To uphold your appeal and return you to your original post but with a further period of review to determine whether you can meet the standards of performance set by your manager. Where this occurs, you will be informed that failure to reach a satisfactory level of performance will lead to a further hearing, at which your continued employment with B3 will be considered.
 - To consider redeployment as an alternative to dismissal. If alternative work cannot be found or if you refuse a reasonable offer of alternative employment, the appeal hearing will be reconvened and your dismissal will be confirmed. Where it is possible to find you alternative employment, then you will be informed of any grounds or requirements that are placed on your redeployment.
 - To confirm the decision made by the chairing manager at the Stage Three Meeting to dismiss you from B3's employment.

5.7.5. In cases where your employment is terminated and the decision is made not to uphold the dismissal, then your employment will be treated as continuous and there will be no gaps in your service. You will have your pay reinstated subject to a deduction based on an assessment of any income which you may have received from other employment whilst not employed by B3.

5.7.6. Once the senior manager has made their decision, both you and your manager will be informed of the outcome. The decision will also be confirmed to you within five working days.

5.7.7. Any appeal decision is final and there is no further right of appeal.

6. Principles

- 6.1. The primary objective of the procedure is that you should be assisted as far as practicable to achieve acceptable standards of performance or attendance.
- 6.2. At every stage, there should be full consultation and exchange of information between you and your manager so that difficulties can be discussed, so that you can identify any areas where you require further training and other relevant factors are considered as necessary.
- 6.3. Where a routine supervision review is due, this should proceed as normal, irrespective of whether the capability procedure is being followed. If you or your manager has any queries about this, they are advised to consult with the Board of Trustees.
- 6.4. Under normal circumstances, matters will be dealt with as quickly and as fairly as possible within the time limits specified. However, where management are of the view that your case would be compromised by the need to comply with time limits, these may be extended. You and your representative will be kept

informed at all times if this occurs and you will be given the reasons for the extension, together with details of any steps to be taken to resolve the unsatisfactory performance within this period.

- 6.5. A record of discussions and agreed actions must be retained (a copy of which should be provided to you) at all stages of the procedure. These records should be kept on your personal file and kept in accordance with the requirements of the Data Protection Act 1998 and any future amendments.
- 6.6. Should action under this policy be withdrawn, you will be notified in writing and any written reference to it will be removed from your personal file.
- 6.7. At all stages of the formal procedure, a written confirmation of discussions, agreed actions and if applicable, warnings, should be provided to you by your manager.
- 6.8. If at any stage of the process, it is established that your unsatisfactory performance is due to either a personal or domestic difficulty, or a short term health problem, your manager will consider if any support can be provided to you. You may be referred to occupational health and/or EAP via the Service Manager, however, it will be made clear to you that while reasonable assistance can be provided, standards for improved performance will be established and must be met.
- 6.9. In circumstances where your manager is dealing with a case of unsatisfactory performance, if you have a disability, they will consult with the Board of Trustees to ensure that all reasonable adjustments have been made.
- 6.10. You will have the right of appeal against dismissal on capability grounds.
- 6.11. While it is envisaged that if your actions mean that B3 is required to refer you to the Disclosure and Barring Service (DBS) it will be managed via the disciplinary process, B3 reserves the right to refer you to the DBS should such actions be managed through the Capability Policy. If the Stage 3 Hearing Manager feels that a DBS referral may be made if the case is proven, then your representation will be managed in line with the procedure in the Disciplinary Policy.

7. Variation To The Procedure

- 7.1. In exceptional circumstances it may be required to deviate from the procedures laid down. If this is the case, then it will be discussed with you and your representative (where appropriate).
- 7.2. It is imperative that the Board of Trustees is consulted at any point and in all cases where your manager considers invoking the capability procedure.

8. Role Of The Board Of Trustees

- 8.1. The role of the Board of Trustees is to provide information to you on this policy and to ensure that there is a clear understanding of the policy and procedure and when it is appropriate to invoke it.

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- 8.2. The role of the Board of Trustees is to provide advice and support to your manager when dealing with issues of capability and to ensure that the policy and procedure is followed.
 - 8.3. The Board of Trustees will advise all concerned parties on process and documentation and will assist your manager to monitor issues of capability. A representative from the Board of Trustees will also be present at any formal meetings and they will provide your manager with relevant advice and support at these meetings.
 - 8.4. Your manager will remind you of your right to access the Employee Assistance Programme (EAP). The contact telephone number for the EAP is 0800 030 5182. It is available 24/7 and can be contacted to provide you with advice, information and support.