



## 1. Purpose

- 1.1 To ensure that Serendipity Healthcare Ltd takes a fair and consistent approach to any issues of capability.
- 1.2 To allow Serendipity Healthcare Ltd to endeavour to ensure that employees achieve and maintain a high standard of performance in their work so as to deliver the best possible service for Service Users.
- 1.3 To attempt to resolve issues of capability or poor performance due to lacking skill and/or ability, informally if at all possible.
- 1.4 To ensure that all employees are aware of what is expected of them in terms of performance and attendance.
- 1.5 To support Serendipity Healthcare Ltd in meeting the following Key Lines of Enquiry:

SAFE	S3: How does the service make sure that there are sufficient numbers of suitable staff to support people to stay safe and meet their needs?
SAFE	S6: Are lessons learned and improvements made when things go wrong?

- 1.6 To meet the legal requirements of the regulated activities that Serendipity Healthcare Ltd is registered to provide:
  - Equality Act 2010
  - Equality Act 2010: Chapter 1 (Protected Characteristics) Chapter 2 (Prohibited Conduct) and Chapter 3 (Services and Public Functions)
  - General Data Protection Regulation 2016
  - Data Protection Act 2018

## 2. Scope

**2.1** The following roles may be affected by this policy:

- All staff

**2.2** The following Service Users may be affected by this policy:

- A Service User whose whereabouts cannot be established and where the circumstances are out of character, or the context suggests the person may be a subject of crime or at risk of harm to themselves or another

**2.3** The following stakeholders may be affected by this policy:

- Family
- Advocates
- Commissioners
- External health professionals
- Local Authority



- NHS

### 3. Objectives

- 3.1 To ensure that there is a clear process for the management of capability issues which gives the best opportunity to resolve any issues whilst protecting the needs of the Service Users.
- 3.2 To ensure that Serendipity Healthcare Ltd understands the reasons for any capability issues and investigates and addresses them where necessary.
- 3.3 To address any skill shortages to deliver the best possible service for Service Users.
- 3.4 To make it clear that dismissal is a last resort and that a proper process will be carried out before it will be deemed necessary for Serendipity Healthcare Ltd to dismiss any employee for capability reasons.

### 4. Policy

- 4.1 This policy is designed to provide a framework within which managers can work with employees to maintain satisfactory performance standards and to encourage improvement where necessary.
- 4.2 This policy is not to be used in circumstances of misconduct where the Discipline Policy and Procedure applies, i.e., in circumstances of poor behaviour, deliberate wrongdoing or omissions. Although long term sickness absence is also a capability issue, these will be dealt with separately under the Absenteeism. Policy and Procedure.
- 4.3 Any data collected as part of this policy will be processed in accordance with current data protection legislation, the Privacy Notice issued to staff and the Data Security and Data Retention Policy and Procedure. Serendipity Healthcare Ltd appreciates that certain health data and medical reports will be Special Category Data and they will process this data accordingly.
- 4.4 It is essential that steps are taken to address poor performance or other capability issues as soon as possible. Staff should understand that it is critical that this action is taken, given that we are responsible for the health of members of the public. We will, therefore, comply with all best practice and regulatory guidelines in this respect.

### 5. Procedure

- 5.1 Serendipity Healthcare Ltd will look to apply this policy when it has identified that an employee is failing to achieve the levels of performance standards that are expected of them either through a lack of skill, knowledge, experience, or medical/health issues.

Given the nature of the business of Serendipity Healthcare Ltd, it is essential that poor levels of performance are managed correctly and appropriately to ensure that standards of care do not fall below the requisite levels.



Where Serendipity Healthcare Ltd establishes that an employee's performance is below the standards of performance which are expected, they will look to take steps to establish the facts and reasons for this and to identify ways to address the issues.

### **Stage 1 – Welfare check**

- 5.2 Where the manager/supervisor first establishes that an employee's performance is unacceptable, a welfare check will be held with the employee to try to establish the reason. Serendipity Healthcare Ltd and the employee will then work together to bring the employee's performance back to the required level.

To ensure that these performance targets can be measured against what has been agreed, a plan will be agreed which will include areas of improvement, the timescale for this improvement and what steps Serendipity Healthcare Ltd can take to assist the member of staff in improving their level of performance.

- 5.3 Where issues cannot be resolved informally, or where the informal process has not received the desired outcome, Serendipity Healthcare Ltd will commence the formal capability process set out below. Serendipity Healthcare Ltd may, within reason, skip any stage set out below where the circumstances permit this.

### **5.4 Stage 2 – Formal Procedure**

If Serendipity Healthcare Ltd considers that there are grounds for taking formal action over alleged poor performance issues/standards, the employee will be required to attend a Performance Review Meeting. The employee will be notified in writing of their requirement to attend a meeting to discuss the concerns and the likely outcome if it is decided after the hearing that the employee's performance has been unsatisfactory.

### **5.5 Stage 2 Performance Review Meeting**

If an employee's performance does not improve following informal discussions, the organisation may decide to hold a Stage 1 Performance Review Meeting. During the meeting a detailed discussion will take place with the individual to identify why there has been no improvement since the initial welfare check. The employee will agree a Performance Improvement Plan. Following the meeting a copy of the agreed plan will be sent to the staff member.

Following a review of the Improvement Plan and the staff members performance, if the staff member has not improved the organisation may decide to go to Stage 3 – Investigatory Meeting.

### **5.6 Stage 3 Investigatory Meeting**

The employee will be notified in writing of their requirement to attend an investigatory meeting to address the concerns and the likely outcome if it is decided after the meeting that the employee's performance has been unsatisfactory.

The employee will be entitled to bring a work colleague/trade union representation to accompany them at the hearing. The employee must tell the manager conducting the hearing who their chosen companion will be at least 24 hours before the hearing. If the member of staff or companion is unable to attend the hearing, the member of staff must notify the manager dealing with the capability hearing immediately. If the member of staff



or the companion are persistently unable to attend the hearing, Serendipity Healthcare Ltd reserves the right to make a decision in the member of staff's absence giving consideration to the evidence which is in front of it.

## **5.7 Outcome of Investigatory Meeting:**

### **First Written Warning**

Following a stage 3 Investigatory, if the employee's performance is unsatisfactory the employee may be issued with a written warning setting out:

- The areas which have not met the required performance standards
- Targets for improvement
- Any measures, such as additional training or supervision, which will be taken with a view to improving performance
- A period for review
- The consequences of failing to improve within the review period, or of further unsatisfactory performance

A written warning will normally remain active for 6 months (though may be extended up to 12 months) from the date it is issued. After the active period, the warning will remain permanently on the personnel file but will be disregarded in deciding the outcome of future capability proceedings. If Serendipity Healthcare Ltd are not satisfied, the matter may be progressed to a Stage 4 Capability Meeting or if Serendipity Healthcare Ltd feels that there has been a substantial but insufficient improvement, the review period may be extended.

## **5.8 Final Written Warning**

If there is no improvement in the member of staff's performance or the required standard has not been met by the required timescale or where there is further evidence of poor performance during the period where the first written warning is active, the member of staff will be issued with a final written warning which will set out the following:

- The areas which have not met the required performance standards
- Targets for improvement
- Any measures, such as additional training or supervision, which will be taken with a view to improving performance
- A period for review
- The consequences of failing to improve within the review period, or further unsatisfactory performance

A final written warning will normally remain active for 12 months from the date it is issued. After the active period, the warning will remain permanently on the personnel file but will be disregarded in deciding the outcome of future capability proceedings. If Serendipity Healthcare Ltd is not satisfied, the matter may be progressed to a stage 4 Capability Meeting; or if Serendipity Healthcare Ltd feels that there has been a substantial but insufficient improvement, the review period may be extended.



#### 5.9 Stage 4 Capability Meeting

Serendipity Healthcare Ltd may decide to hold a Stage 4 Capability Meeting if it is reasonable to believe:

- The employee's performance has not improved sufficiently within the review period set out in a final written warning
- An employee's performance is unsatisfactory while a final written warning is still active, or
- An employee's performance has been grossly negligent such as to warrant dismissal without the need for a final written warning

Following the meeting if Serendipity Healthcare Ltd finds that an employee's performance is unsatisfactory the following outcome may be:

- Final written warning
- Dismissal
- Redeployment, or
- Extending a final written warning and setting a further review period

#### Final Written Warning

If there has been no improvement in the member of staff's performance or the required standard has not been met by the required timescale or where there is further evidence of poor performance during the period where the first written warning is active, the member of staff will be issued with a final written warning which will set out the following:

- The areas which have not met the required performance standards
- Targets for improvement
- Any measures, such as additional training or supervision, which will be taken with a view to improving performance
- A period for review
- The consequences of failing to improve within the review period, or of further unsatisfactory performance

#### Dismissal

Where dismissal is appropriate, this will normally be on full notice and/or payment in lieu of notice unless the member of staff's performance has been so negligent to amount to gross misconduct.

#### 5.8 Appeals Against Action for Poor Performance

Where an employee feels that a decision about poor performance under this procedure is wrong or unjust, they should appeal in writing within 7 days of the written decision stating their full grounds of appeal to the appropriate appeal manager who will be confirmed to the employee within one week of the date of dismissal.

Where further investigation is required due to the issues raised in an appeal, the employee will be provided with any additional information that has come to light prior to the meeting taking place.



Where possible, the appeal hearing will be conducted by a more senior manager who has not been previously involved in the case. The employee may bring a companion with them to the appeal hearing. Following the appeal hearing Serendipity Healthcare Ltd may:

- Confirm the original decision
- Revoke the original decision, or
- Substitute a different penalty

Serendipity Healthcare Ltd will inform the employee in writing of the final decision as soon as possible, usually within one week of the appeal hearing. Where possible, the organisation will also explain this to the employee in person. There will be no further right of appeal.

In the event that the employee has been dismissed, the date of dismissal will not be delayed pending the outcome of an appeal. In the event that the appeal is successful and the decision to dismiss the employee is revoked, the employee will suffer no loss of continuity or pay.

## 6. Definitions

### 6.1 Capability

- Whether an employee can perform their role by reference to skill, aptitude, health or any other physical or mental quality

### 6.2 Performance Improvement Plan (PIP)

- A formal plan which sets out the improvement in performance which is expected along with the method required and the timescale for improvement

### 6.3 Negligence

- A wilful or reckless disregard for duties which causes or has the potential to cause harm to a Service User or to the property of Serendipity Healthcare Ltd

### 6.4 Special Category Data

- Special Category Data is a category of data which is more sensitive than normal personal data. This includes data which relates to:
  - Race
  - Ethnic origin
  - Politics
  - Religion
  - Trade union membership
  - Genetics
  - Biometrics (where used for ID purposes)
  - Health
  - Sex life
  - Sexual orientation

**POL68 – Capability Policy and Procedure**  
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**Lisa Ward – HR Manager**