

CAPABILITY POLICY AND PROCEDURE

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(Procedural document version numbering convention will follow the following format. Whole numbers for approved versions, e.g. 1.0, 2.0, 3.0 etc. With decimals being used to represent the current working draft version, e.g. 1.1, 1.2, 1.3, 1.4 etc. For example, when writing a procedural document for the first time – the initial draft will be version 0.1)

Date of Issue	Version No.	Date Approved	Director Responsible for Change	Nature of Change	Ratification / Approval
Mar 12	3.0	12 Apr 12	Director of HR		Logo and wording updated for new organisation
Aug 12	3.1		Director of HR & OD		Consultation at Partnership Forum
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23 Nov 15	4.1		Executive Director of Financial and Human Resources	Policy reviewed. Flow chart added at appendix A.	Partnership Forum Draft Policy site Emailed to CBU/Corporate management teams E-bulletin insert
15 Dec 15	4.1		Executive Director of Financial and Human Resources		Partnership Forum – consultation closed
19 Jan 16	5	19 Jan 16	Executive Director of Financial and Human Resources	For Approval	Policy Management Group
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23 April 2019	6	23 April 2019	Director of HR and OD	Approved at	Policy Management Group

NB This policy relates to the Isle of Wight NHS Trust hereafter referred to as the Trust

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1 Executive Summary

The Isle of Wight NHS Trust (The Trust) strives to achieve a culture where employees receive equitable and reasonable treatment in line with an ethos that supports and promotes trust and mutual respect.

The purpose of the Capability Policy and Procedure is to help employees achieve and maintain acceptable standards of performance. To achieve this aim, it is vital that a culture exists within the Trust whereby employees know and understand what is expected of them and that concerns about performance including non-attendance will be addressed promptly and effectively.

The Capability Policy and Procedure aims to provide a robust, fair and objective framework for dealing with issues of performance that arise within the Trust.

2 Introduction

The Trust is committed to supporting and developing its employees in a fair and equitable manner to ensure that they are able to fulfil their roles and responsibilities to a high standard of competence.

Where these standards are not met, employees will be offered support, encouragement, guidance and, if necessary and appropriate, (re)training with effective, regular and constructive feedback relating to their work performance. Managers are responsible for ensuring that performance issues are addressed promptly and fairly.

The reasons for poor performance should be explored fully as a genuine lack of capability may come about for a variety of reasons, including:

- poor standards of performance that fall short of clearly defined and communicated levels
- failure to meet personal objectives set at appraisal without valid reason
- lack of aptitude, skill or experience
- inappropriate recruitment, induction or training
- lack of facilities crucial to performance
- changes in the nature/allocation of work
- personal/family problems
- reorganisation of structure, role or responsibilities
- incapability to perform aspects of, or the entire role, through ill health or medical reasons
- poor standard of attendance
- complaints from staff, patients or service users
- concerns raised by a professional body
- not remaining professionally up to date in respect of skills, knowledge and practice
- dependency on drugs / alcohol that is impairing an individual's day to day ability to perform their role.

Where possible the manager will resolve minor issues with a staff member informally and swiftly; the maintenance of standards and performance do not necessarily require formal procedures.

Where the problems are more serious, repetitive or frequent, a more structured support approach may be required. The procedure provides a range of options to aid improvement.

3 Definition and Scope

This policy applies to all non-medical staff employed by the Isle of Wight NHS Trust. For the avoidance of doubt, this policy does not apply to Medical and Dental Practitioners and/or those individuals engaged on a Provision for Services contract via the Staff Bank or Agency staff. Where capability concerns are identified for Medical and Dental Practitioners this will be managed in line with the Trust's Conduct, Capability, Ill Health and Performance for Medical Staff policy.

This policy applies where there is a genuine lack of capability displayed in some or all of the work that the employee is asked to deliver, e.g. lack of skills, aptitude, knowledge, ability, ill health/lack of attendance and/or values/behaviours (this list is not exhaustive).

4 Purpose

The purpose of this policy is to enable line managers to address with employees where they fail to achieve the performance standards expected of them and/or failure to deliver specific deliverables. The primary objective must be to assist and support the employee to improve to the required standard.

This policy is designed to deal with those cases where the employee is lacking in some area of knowledge, skill or ability, resulting in a failure to be able to carry out their required duties and responsibilities to an acceptable standard. It is to be used where there is a genuine lack of capability, rather than a deliberate failure on the part of the employee to perform to the standards of which they are capable. Where there is a deliberate failure by the employee, the Trust's Disciplinary and Dismissal Policy will be followed.

This policy enables line managers and employees the opportunity to discuss performance concerns in a timely way to encourage employees to improve performance wherever possible. In circumstances where performance does not improve, this policy outlines the procedure that must be followed to address these concerns and ultimately poor performance can result in dismissal.

5 Roles and Responsibilities

5.1 Line manager responsibilities

It is important that managers set out the required standards of performance as part of the workplace induction process and fully explain the duties and responsibilities in the employee's job description. Line managers will;

- ensure that employees understand the expected level of performance and objectives as outlined in their job descriptions and annual objectives
- ensure that performance is monitored via regular supervision, one-to-ones, and the annual appraisal
- ensure that supervision/appraisal discussions are documented

- ensure that employees are given appropriate training and support to meet the requirements of their job roles
- provide constructive feedback and address concerns in a timely and professional manner
- be fair, consistent and supportive
- consider whether there is a concern relating to fitness to practice for registrants and whether a referral to the relevant professional body is required

5.2 Employee responsibilities

It is the duty of an employee to provide satisfactory service in line with the required standards of their job description, objectives and the values/behaviours of the organisation. It is a condition of employment that employees follow policies and procedures and attend work regularly at the agreed time(s). Employees will;

- deliver the tasks required as per their job description, or such tasks that are reasonable and commensurate with their skills, knowledge and experience
- inform their manager and seek support should they feel there are certain competencies/objectives within their role that they are not fulfilling
- participate in discussions/meetings in relation to their own performance

6 Policy detail/Course of Action

Most problems of underperformance may be identified and addressed at the informal stage of the process. This informal stage provides an opportunity to encourage open discussion of the issues involved and to seek effective solutions, including the involvement of appropriate support services.

Formal capability action is based on 3 stages. Where sustained improvements in capability are not identified, the staff member will progress through each stage. Ultimately, failure to reach the identified satisfactory standards, after agreed support has been provided, will result in dismissal of the staff member.

In certain circumstances, where the standard of performance is considerably below what is required and the consequences of the performance has had a significantly adverse effect, it may be decided to commence the capability policy within the formal stage of the process without using the informal stage. Line Managers should give full consideration to the circumstances when determining whether it is appropriate to commence capability procedures within the formal stage and at which stage. Additionally, commencement of the Capability Procedure may be required following the outcome of a grievance/disciplinary or other investigation or hearing.

Monitoring periods should be reasonable and proportionate to the concerns relating to the performance of an employee. The line manager toolkit provides further guidance on how to set and monitor SMART objectives.

For registrants, consideration must be given to whether a fitness to practice referral is appropriate. Advice can be sought from the Director of Nursing and/or the relevant professional body.

If at any stage an employee does not attend a meeting/appeal hearing, the Trust reserves the right to continue with the meeting/appeal hearing in the employee's absence and will make any decisions based on the evidence available.

6.1 Informal Stage

Where a line manager considers that an individual's performance is less than reasonably expected, the line manager must meet with the individual in a confidential setting to discuss their current performance. The line manager must ensure that this is a two way discussion to explore the concerns related to their current performance, the discussion should aim to;

- identify any reasons/contributing factors
- discuss how improvements can be made and reinforce what level of performance is expected
- discuss relevant support that is needed including any training requirements
- set clear objectives ensuring that these are SMART i.e. specific, measurable, attainable, realistic and time limited
- agree a review date
- to inform the individual that persistent failure to deliver the standards required may result in formal capability action

The line manager should document the discussion and confirm the outcome of the meeting in writing to the individual. The Capability Policy Line Manager's Toolkit provides further guidance and templates.

During the informal stage, there is no statutory right for the employee to be accompanied at any meeting.

If there is continued, unsatisfactory performance despite the employee being given reasonable support/assistance, objectives to meet and time to improve; the employee should be invited to a Formal Stage 1 Meeting.

The line manager will need to engage with an HR representative before taking any next steps.

6.2 Formal Stage 1 Meeting

In situations where performance has not adequately improved, or where it has been deemed appropriate to commence the process at this stage, the employee will be invited to attend a Formal Stage 1 Meeting. The meeting will be conducted by the employee's line manager.

The employee is entitled to be accompanied by a trade union representative or workplace friend/colleague (acting in a non-professional capacity).

A HR representative will be able to provide advice and guidance prior to the meeting, although their attendance at a Formal Stage 1 Meeting is not mandatory and will be considered on a case by case basis. The individual should be given reasonable notice of the meeting. A template letter is provided in the Capability Policy Line Manager Toolkit.

The purpose of this meeting is to review and determine whether there has been sufficient improvement in the performance of the individual.

The meeting should cover as a minimum the following;

- a summary outlining the informal/formal process to date and outcomes
- acknowledgement of any improvement, however small
- details of all aspects of the employee's performance or attendance which remain unsatisfactory
- discussion and agreement of an action plan for improvements that are required and the timescale
- opportunities for retraining (if appropriate)
- consideration of any mitigating factors

The outcome of this meeting may be that;

- a) Performance remains below the required level and **a first written warning** is issued. Performance objectives continue to be monitored for a defined period of time (usually for between 1-3 months).
- b) There has been partial achievement of performance objectives, no first written warning is issued and the monitoring period is extended (usually for no more than 1 month). At the end of the review period, a second meeting at Stage 1 will be convened to formally review the achievement of the performance objectives and a decision will be made as to whether the employee's performance is now satisfactory or, if not, to issue the employee with a first written warning.
- c) Performance is satisfactory and no written warning is necessary. However, if at any stage during the following 6 months, the employee's performance falls below the standard required, the Trust reserves the right to recommence the procedure at Stage 1.

An outcome letter will be sent to the employee within a reasonable period of time following the meeting and the employee has a right of appeal against a sanction of a first written warning being issued.

A first written warning will remain live for a maximum period of 6 months. If the employee's performance does not improve or is not sustained whilst the first written warning is live, then the employee will be invited to a Formal Stage 2 Meeting.

6.3 Formal Stage 2 Meeting

At the end of the monitoring period, or where it has been deemed appropriate to commence the process at this stage, the line manager will convene a meeting in line with Stage 2 of the formal procedure. The meeting will be conducted by the employee's line manager. A HR Representative will also be in attendance at this meeting.

The employee is entitled to be accompanied by a trade union representative or workplace friend/colleague (acting in a non-professional capacity).

The individual should be given reasonable notice of the meeting. A template letter is provided in the Capability Policy Line Manager's Toolkit.

The purpose of this meeting is to review and determine whether there has been sufficient improvement in the performance of the individual. The meeting should cover as a minimum the following;

- the background, outlining the informal/formal process to date and outcomes
- acknowledgement of any improvement, however small
- details of all aspects of the employee's work which remain unsatisfactory
- discussion and agreement of an action plan for improvements that are required and the timescale
- opportunities for retraining (if appropriate)
- consideration of any mitigating factors

The outcome of this meeting may be that;

- a) Performance remains below the required level and **a final written warning** is issued. Performance objectives continue to be monitored for a defined period of time (usually for between 1-3 months).
- b) There has been partial achievement of performance objectives; no formal warning is issued and the monitoring period is extended for a defined period of time (usually for no more than 1 month). At the end of the extended monitoring period, a second meeting at Stage 2 will be convened to formally review the achievement of the performance objectives and a decision will be made whether the employee's performance is now satisfactory or, if not, to issue the employee with a final written warning
- c) Performance is satisfactory and no final written warning is necessary. However, if at any stage during the following 12 months, the employee's performance falls below the standard required, the Trust reserves the right to recommence the procedure at the stage the employee had previously reached.

An outcome letter will be sent to the employee within a reasonable period of time following the meeting and the employee has a right of appeal against a sanction of a final written warning being issued.

A final written warning will remain live for a maximum period of 12 months. If the employee's performance does not improve or is not sustained whilst a final written warning is live, then the employee will be invited to a Formal Stage 3 Meeting.

6.4 Formal Stage 3 Meeting

At the end of the monitoring period, or where it has been deemed appropriate to commence the process at this stage, the line manager will convene a hearing in line with Stage 3 of the formal procedure.

The Stage 3 meeting will be chaired by a manager of the same band or a more senior manager who has had no previous involvement with the case.

The employee is entitled to be represented by a trade union representative or workplace friend/colleague (acting in a non-professional capacity). A HR representative will also be in attendance at this meeting.

The individual should be given reasonable notice of the meeting. A template letter is provided in the Capability Policy Line Manager's Toolkit.

The purpose of this meeting is to review and determine whether there has been sufficient improvement in the performance of the individual. The meeting should cover as a minimum the following;

- the background, outlining the informal/formal process to date and outcomes
- acknowledgement of any improvement, however small
- details of all aspects of the employee's work which remain unsatisfactory
- discussion and review of the action plans for improvements that are required and the timescale
- consideration of any mitigating factors
- whether redeployment or demotion might be a suitable alternative to dismissal

The outcome of this meeting may be;

- a) performance remains below the required level; the employee is **dismissed** for the reason of capability
- b) There has been partial achievement of performance objectives; no dismissal takes place, however, the SMART objectives and the monitoring period will be extended for a defined period of time. At the end of the extended monitoring period a Stage 3 meeting will be convened to formally review the achievement of the performance objectives and a decision made whether the employee's performance is now satisfactory or, if not, to dismiss the employee
- c) Performance is satisfactory; no dismissal is necessary, however, if at any stage during the following 12 months, the employee's performance falls below the standard required, the Trust reserves the right to recommence the procedure at the Stage 3.

An outcome letter will be sent to the employee within a reasonable period of time following the meeting and the employee has a right of appeal.

6.5 Right of appeal

At each stage in the formal procedure, when a formal sanction has been issued, the employee will have the right to appeal the decision.

The appeal should be made in writing within 10 working days of the outcome letter decision being received. The appeal should be addressed to the Manager who has issued the sanction.

The appeal must outline the grounds of the appeal. An appeal may be based on;

- The severity of the action given the circumstances of the case, and/or
- A failure to adhere to agreed procedure

6.5.1 Appeal procedure

On receipt of an appeal, the manager will acknowledge receipt.

An Appeal Hearing Manager will be appointed and an appeal hearing will be convened.

Appeals will be heard by either a manager of the same band or a more senior manager who has not previously been involved.

An HR representative may also be in attendance at this meeting and will be considered on a case by case basis.

The employee will be given reasonable notice of the appeal hearing. The employee is entitled to be represented by a trade union representative or workplace friend/colleague (acting in a non-professional capacity).

6.5.2 Jurisdiction of the appeal

The Appeal Hearing Manager may, at any juncture, and at their discretion, postpone an appeal in order that either party produces further evidence. Any postponement will be kept to a minimum.

The Appeal Hearing Manager can downgrade a decision of a previous stage but cannot upgrade it, e.g. Upgrade a formal warning to a final warning. The Appeal Hearing Manager can also direct the staff and/or management sides to apply recommendations resulting from the hearing.

7 Consultation

This policy has been consulted on via the following mechanisms;

- Partnership Forum membership
- published on the draft policy website
- communicated via the weekly e-bulletin
- communicated to the management teams of the Business Divisions and Corporate Divisions

8 Training

This Capability Policy does not have a mandatory training requirement but the following non mandatory training is recommended:

- Management Development modules provided internally by the Human Resources Team.

9 Monitoring Compliance and Effectiveness

The overall responsibility for the monitoring of effectiveness of this policy lies with the Executive Director of Human Resources and Organisational Development.

Responsibility for monitoring and effectiveness at business divisions and Corporate Directorate level sits with the management teams of those divisions and departments.

The policy's effectiveness is monitored by:

- monthly Employee Relations Reports to the Board including Non-Executive Directors

- monthly reporting of Employee Relations issues to Business Divisions/Corporate Management Teams
- HR officers providing consistent risk based advice in line with the policy
- maintaining accurate records in HR through Case Management
- escalation of issues to the Senior HR Management Team with issues of concern and where policy has not been followed

10 Links to other Organisational Documents

- Capability Policy Line Manager Toolkit
- Emotional Wellbeing Policy
- Equality, Diversity and Human Rights Policy

11 References

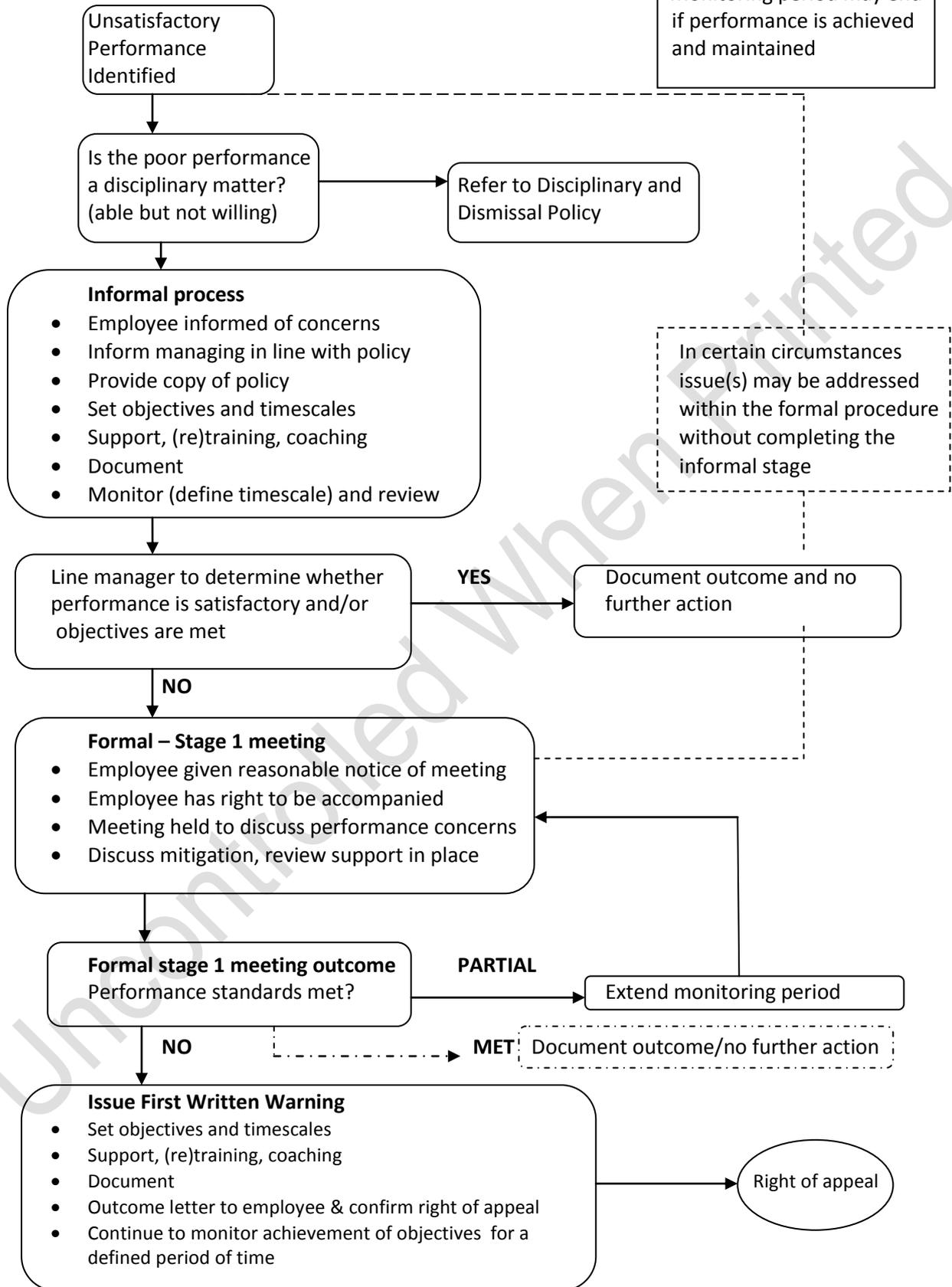
- ACAS Code of Practice on disciplinary and grievance procedures

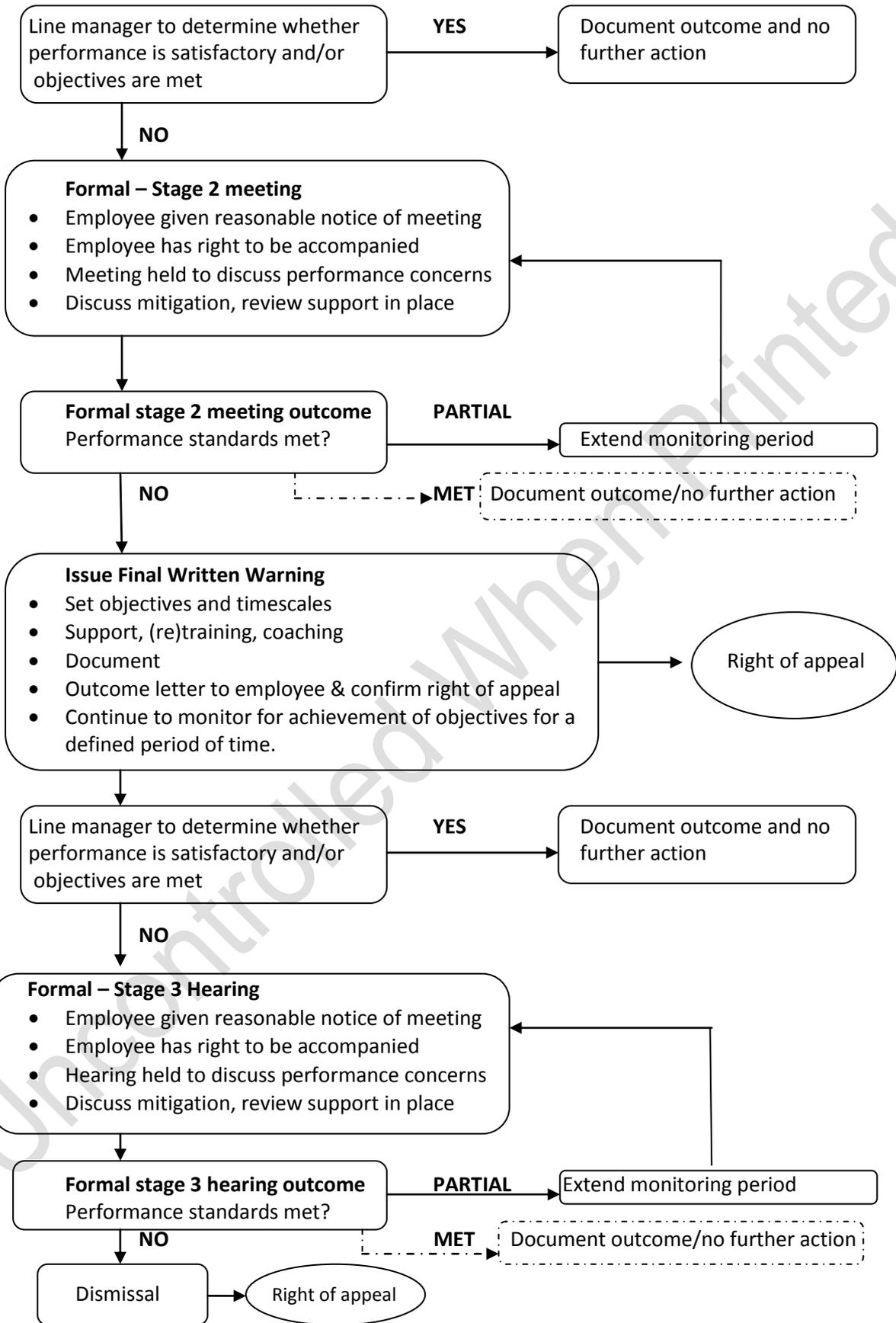
12 Appendices

- Appendix A Capability Procedure Flow Chart
- Appendix B Financial and Resources Impact Assessment
- Appendix C Equality Impact Assessment

Capability Procedure Flow Chart

Note: If partial achievement;
Monitoring period may end if performance is achieved and maintained





Financial and Resourcing Impact Assessment on Policy Implementation

NB this form must be completed where the introduction of this policy will have either a positive or negative impact on resources. Therefore this form should not be completed where the resources are already deployed and the introduction of this policy will have no further resourcing impact.

Document title	Capability Policy
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Totals	WTE	Recurring £	Non Recurring £
Manpower Costs	0	0	0
Training Staff	0	0	0
Equipment & Provision of resources	0	0	0

Summary of Impact: There will be a manpower impact of this policy; however this is necessary in order to safely deliver the services of the Trust. The Trust employs a number of staff who within their primary role have responsibility for maintenance of an effective risk management system. In addition staff across the Trust will have specific responsibilities; however this will fluctuate depending on the number and nature of risks.

Risk Management Issues: This policy is document is designed to support effective riskmanagement across the Trust.

Benefits / Savings to the organisation: Effective risk management will support the Trust to deliver its service efficiently, effectively with due regard to the financial envelope and quality agenda.

Equality Impact Assessment

- Has this been appropriately carried out? **YES/NO**
- Are there any reported equality issues? **YES/NO**

If "YES" please specify:

Use additional sheets if necessary.

Please include all associated costs where an impact on implementing this policy has been considered. A checklist is included for guidance but is not comprehensive so please ensure you have thought through the impact on staffing, training and equipment carefully and that ALL aspects are covered.

Manpower	WTE	Recurring £	Non-Recurring £
Operational running costs	0	0	0
Totals:	0	0	0

Staff Training Impact	Recurring £	Non-Recurring £
	0	0
Totals:	0	0

Equipment and Provision of Resources	Recurring £ *	Non-Recurring £ *
Accommodation / facilities needed	0	0
Building alterations (extensions/new)	0	0
IT Hardware / software / licences	0	0
Medical equipment	0	0
Stationery / publicity	0	0
Travel costs	0	0
Utilities e.g. telephones	0	0
Process change	0	0
Rolling replacement of equipment	0	0
Equipment maintenance	0	0
Marketing – booklets/posters/handouts, etc	0	0
Totals:	0	0

- Capital implications £5,000 with life expectancy of more than one year.

Funding /costs checked & agreed by finance:	
Signature & date of financial accountant:	
Funding / costs have been agreed and are in place:	
Signature of appropriate Executive or Associate Director:	



Equality Impact Assessment (EIA) Screening Tool

Document Title:	Capability Policy
Purpose of document	The purpose of this policy is to enable line managers to address with employees where they fail to achieve the performance standards expected of them and/or failure to deliver specific deliverables. The primary objective must be to assist and support the employee to improve to the required standard
Target Audience	Non-medical employees of the IW NHS Trust
Person or Committee undertaken the Equality Impact Assessment	Senior HR Manager

1. To be completed and attached to all procedural/policy documents created within individual services.
2. Does the document have, or have the potential to deliver differential outcomes or affect in an adverse way any of the groups listed below?
3. If no, confirm underneath in relevant section the data and/or research which provides evidence e.g. JSNA, Workforce Profile, Quality Improvement Framework, Commissioning Intentions, etc.
4. If yes, please detail underneath in relevant section and provide priority rating and determine if full EIA is required.

		Positive Impact	Negative Impact	Reasons
Gender	Men			<i>Policy framework aims to provide consistent management of an individual's performance when it falls below the expected standards to ensure that all employees are treated fairly and in a non-discriminatory manner</i>
	Women			<i>As above</i>
Race	Asian or Asian British People			<i>As above</i>

	Black or Black British People			<i>As above</i>
	Chinese people			<i>As above</i>
	People of Mixed Race			<i>As above</i>
	White people (including Irish people)			<i>As above</i>
	People with Physical Disabilities, Learning Disabilities or Mental Health Issues			<i>As above</i>
Sexual Orientation	Transgender			<i>As above</i>
	Lesbian, Gay men and bisexual			<i>As above</i>
Age	Children			<i>As above</i>
	Older People (60+)			<i>As above</i>
	Younger People (17 to 25 yrs)			<i>As above</i>
Faith Group				<i>As above</i>
Pregnancy & Maternity				<i>As above</i>
Equal Opportunities and/or improved relations				<i>As above</i>

Notes:

Faith groups cover a wide range of groupings, the most common of which are Buddhist, Christian, Hindus, Jews, Muslims and Sikhs. Consider faith categories individually and collectively when considering positive and negative impacts.

The categories used in the race section refer to those used in the 2001 Census. Consideration should be given to the specific communities within the broad categories such as Bangladeshi people and the needs of other communities that do not appear as separate categories in the Census, for example, Polish.

3. Level of Impact

If you have indicated that there is a negative impact, is that impact:		
	YES	NO
Legal (it is not discriminatory under anti-discriminatory law)		
Intended		

If the negative impact is possibly discriminatory and not intended and/or of high impact then please complete a thorough assessment after completing the rest of this form.

3.1 Could you minimise or remove any negative impact that is of low significance? Explain how below:	
3.2 Could you improve the strategy, function or policy positive impact? Explain how below:	
3.3 If there is no evidence that this strategy, function or policy promotes equality of opportunity or improves relations – could it be adapted so it does? How? If not why not?	
Scheduled for Full Impact Assessment	Date:
Name of persons/group completing the full assessment.	Senior HR Manager
Date Initial Screening completed	November 2015