



Workforce

Capability Policy : guide for managers

The following guide forms part of the standard for workforce policies that apply to all staff within NHSScotland regardless of which Board they are employed by.

As a Manager you need to consider whether there is a performance issue. Indications that an employee is not performing to the required standards of the job may arise in a variety of different ways:

- There may be complaints about, or criticisms of, the employee's work from colleagues, patients or visitors
- There may be factual grounds to indicate unsatisfactory performance, such as poor results
- your own observations of the employee's performance may give rise to concerns or
- The employee may have requested help to overcome a problem

As a Manager you must review available documentation which may include:

- Training Records
- Job Description
- Record of previous conversations
- Appraisal Documentation
- Standard Operating Procedures

Early Resolution

You should meet with the employee, informally in the first instance, to discuss the particular performance concerns and whether the employee accepts there is a problem. It is important that you have a [supportive conversation](#)¹ with the employee to explore and discuss:

- As many aspects of the problem as possible as perceived by you
- The employee's situation from their perspective
- How you can assist the employee to improve their work performance to an acceptable standard

In order to ensure that you and the employee achieve the best possible outcomes during the early resolution stage, the following steps should be followed:

1. Set up a meeting with the employee to discuss the possible cause or causes of the substandard job performance, making sure that they know the meeting is not investigatory in nature, and not part of the conduct procedure
2. At the meeting, clearly state the nature of the problem and explain why it is a problem, for example the consequences for the service when the employee makes mistakes or misses deadlines

3. Give the employee specific examples of instances where their performance has fallen below the required standard or where tasks have not been completed on time or satisfactorily
4. Remind the employee that they are not being blamed for the problem and that you are there to support them
5. Ask the employee what they enjoy about the job. This may help to make the discussion easier and reduce any defensiveness on the employee's part
6. Seek the employee's agreement that there is a problem with certain aspects of their performance
7. Ask the employee what they think the root cause of the problem is
8. Consider any mitigating factors put forward, for example problems in the employee's personal life
9. Restate what is expected in terms of job duties, outputs and targets. Avoid assuming that the employee knows everything that is expected of them
10. Ask the employee's opinion on what they can do to achieve improvement in performance
11. Seek to agree on specific action points with the employee, the details of which will depend on whether or not any specific cause of unsatisfactory performance has been identified. It may be appropriate to agree a supported improvement plan at this stage
12. Agree on a timescale for the improvement to be achieved
13. Arrange training where appropriate
14. Schedule a follow-up meeting to review the employee's performance and make sure that the meeting takes place. Review meetings should consider the progress made, any further support required and / or the necessity to progress to an investigative process
15. Keep a record of the meeting and what has been agreed

Investigative Process

It may be necessary to undertake an investigation in order to determine the nature and extent of the performance concerns and whether the matter is one of capability or conduct. You should refer to the [NHSScotland Workforce Policies Investigation Process](#)² for further guidance.

Formal Procedure

It may be necessary, due to the nature of the issues of concern, to remove the employee from certain duties or to put in place additional supervision in order to mitigate risk. In exceptional circumstances it may be necessary to place the employee on a short period of paid leave until such times as a supported improvement plan can be agreed and implemented.

If the employee has more than one post with the same employer, consideration should be given on a case by case basis as to whether there is a requirement to inform the relevant line manager given potential risks to the alternate posts. If the concerns are relevant to both posts this should be considered as part of one process, as any decisions taken may apply to both.

You must have sufficient evidence in order to carry out either of these actions and have sought advice from Human Resources before doing so.

The expectation is that in the majority of cases, the employee would progress through each stage of the process. However there will be exceptional circumstances where due to the nature of the capability issue and / or the seriousness of the performance deficiency, that it is deemed necessary to move straight to a more appropriate stage of the formal procedure. Matters should not however, be progressed to the formal stages if it is established that the employee has not had the necessary training, guidance and support required to undertake the job. You must have the evidence in order to carry out this action and have sought advice from Human Resources in advance.

Stage 1

You will be responsible for the following aspects of the Formal Stage 1:

1. Writing to the employee and their representative, no later than 14 calendar days in advance of the meeting providing all relevant supporting documentation from the early resolution stage
2. Chairing the meeting with support from Human Resources
3. Making a decision based on the information and evidence provided, taking into account any mitigating circumstances
4. Confirming the outcome of the meeting in writing to the employee within 7 calendar days, using the [standard letter template](#) ³.
5. Implementing the agreed [Supported Improvement Plan](#) ⁴ and ensure regular reviews, prior to the final review meeting
6. Facilitating any training required
7. Chairing the final review meeting which will be the same as steps 1 to 4 above with the exception that the supporting documentation will be on progress made during Stage 1

Stage 2

As the line Manager, you will be responsible for the following aspects of the Formal Stage 2:

1. Attending the Stage 2 Meeting and presenting the decisions made during the Stage 1 process
2. Providing continued support and line management of the employee ensuring regular review meetings take place

3. Continuing to monitor the actions contained within the supported improvement plan
4. If appropriate, supporting the individual through the redeployment process
5. At the final review meeting, attending and presenting the progress made to date

Stage 3

As the line manager, you will be required to attend the Stage 3 Hearing as a witness to give evidence on the support given to the employee and the areas of performance concern. If the decision is a further period of support or redeployment, you will be responsible for managing this process.

Loss / Suspension of Registration or required qualifications

In cases where the employee loses a key requirement for their employment (e.g. professional registration or driving licence) either for health reasons or due to an incident which was not related to the workplace, this should be referred to a Stage 3 Hearing. The panel will consider whether continued employment is appropriate through redeployment to a post which does not require registration or a driving licence. If not, termination of employment may be considered. In cases where the cause of loss / suspension of registration / driving licence happened within the workplace or as a result of criminal conviction this will be considered under the conduct policy as the employer is in a position to investigate these matters fully.

Maintaining relationships

There is an expectation that people will continue to work together at all stages wherever possible. You should offer appropriate support to enable this to happen.

Failure to Engage

There may be occasions where the employee feels unable to attend a hearing. Where this is for health reasons, you should refer the employee to the Occupational Health Service to obtain advice as to when the employee will be in a position to do so or if there are alterations to the process which can be made to support their attendance.

If the employee intends to be supported or represented then the availability of all parties will be considered to agree on a suitable date. If the employee's

representative is unavailable, you should offer further dates to allow the hearing to happen.

Where the employee decides not to attend and there is no reasonable explanation for this, a second meeting should be offered. If the employee fails to participate, the panel will consider any reasons for this and whether to progress the hearing in their absence.

Concurrent Policy Issues

If further concerns arise during the formal process you should consider whether the issues are related. If so, these may be dealt with as part of the same process.

Grievances / Bullying and Harassment Complaints

Where an employee raises a grievance or bullying and harassment complaint during the capability process, the process may be temporarily suspended in order to deal with the grievance or complaint. Where the grievance or complaint and matters under consideration are related, it may be appropriate to deal with both issues concurrently.

References

¹ Guide to supportive and difficult conversations

<https://workforce.nhs.scot/supporting-documents/guides/guide-to-supportive-and-difficult-conversations/>

² NHSScotland Workforce Policies Investigation Process

<https://workforce.nhs.scot/policies/workforce-policies-investigation-process-overview/>

³ Capability Policy : supporting documents

<https://workforce.nhs.scot/policies/capability-policy-overview/capability-policy/#supporting-documents>

⁴ Capability Policy : supported improvement plan form

<https://workforce.nhs.scot/supporting-documents/form/capability-policy-supported-improvement-plan-form/>