



Workforce

Capability Policy : guide for employees

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.

Indications that you are 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, your work from colleagues, patients or visitors
- There may be factual grounds to indicate unsatisfactory performance, such as poor results
- Your manager's own observations of your performance may give rise to concerns or
- You may have requested help to overcome a problem

When a concern is raised your manager will review available documentation relating to you as an employee which may include:

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

Early Resolution

Your manager should meet with you, informally in the first instance, to discuss the particular performance concerns and whether you accept there is a problem. It is important that your manager has a supportive conversation with you to explore and discuss:

- As many aspects of the problem as possible as perceived by your line manager
- The situation from your perspective
- How your manager can assist you to improve your performance to an acceptable standard

In order to ensure the best possible outcomes during the early resolution stage, the following steps should be followed:

1. A meeting will be set up with you to discuss the possible cause or causes of the job performance concerns, making sure that you know that the meeting is not investigatory in nature, and not part of the disciplinary procedure
2. At the meeting, your manager will clearly state the nature of the problem and explain why it is a problem, for example the consequences for the service if you have made mistakes or missed deadlines

3. You should be provided with specific examples of instances where your performance has fallen below the required standard or where tasks have not been completed on time or satisfactorily
4. You should be asked what you enjoy about the job. This may help to make the discussion easier and reduce any defensiveness that you may have
5. The manager should identify and where possible seek your agreement that there is a problem with certain aspects of your performance
6. Your manager may ask you what you think the root cause of the problem is
7. Your manager will consider any mitigating factors put forward, for example problems in your personal life
8. Your manager will restate what is expected in terms of job duties, outputs and targets They will not assume that you know everything that is expected of you
9. You will be asked for your opinion on what you can do to achieve improvement in performance
10. Your manager will seek to agree on specific action points with you, 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 on a supported improvement plan at this stage
11. In agreement with your manager a timescale will be set for the improvement to be achieved
12. Training will be arranged where appropriate
13. A follow-up meeting will be scheduled to review your performance. Review meetings will consider the progress made and any further support required. In some circumstances the necessity to progress to an investigative process may be considered
14. Your manager will 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. Individuals should refer to the [NHSScotland Workforce Policies Investigation Process](#) ¹ for further guidance.

Formal Procedure

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

If you have more than one post with the same employer, consideration may be given as to whether your line manager is required to inform your other line managers of 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.

The expectation is that in the majority of cases, you 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 it's seriousness, 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 you have not had the necessary training, guidance and support required to undertake the job.

Stage 1

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

1. Attending any meetings convened under the Stage 1 process
2. Providing any relevant information including any reasons for the performance concerns
3. Agreeing on a [Supported Improvement Plan](#) ² and attending regular reviews with your line manager, prior to the final review meeting
4. Making every effort to improve the areas agreed to be a concern
5. Attending the final review meeting

For details of the responsibilities of your line manager see the [Guide for managers](#) ³.

Stage 2

You will be responsible for the following aspects of the Formal Stage 2:

1. Attending any meetings convened under the Stage 2 process
2. Providing any relevant information including any reasons for the performance concerns
3. Agreeing a [Supported Improvement Plan](#) ² and attending regular reviews with your line manager, prior to the final review meeting
4. Making every effort to improve the areas agreed to be a concern
5. Participating in the redeployment process if this is presented as an option
6. Attending the final review meeting

Stage 3

You will be responsible for the following aspects of the Formal Stage 3:

1. Attending any meetings convened under the Stage 3 process
2. Providing any relevant information including any reasons for the performance concerns

Ill-health Retirement

If the reasons why you are unable to maintain the necessary standards of your post relate to a health condition, you may be eligible to apply for retirement on the grounds of ill-health. This should be discussed with you but it is your responsibility to apply for ill-health retirement pension benefits. This will usually follow a discussion with [Occupational Health](#)⁴.

This is normally linked with a hearing at Stage 3 of the process and you will be advised that the decision to terminate your employment is not linked to or subject to ill health retirement. The decision to support retirement on ill-health grounds lies with the [Scottish Public Pensions Agency](#)⁵ (SPPA) and not the employer. This means the termination of your employment will continue even if retirement on the grounds of ill-health is not approved.

On that basis, the ending of your employment will not be delayed in order for an ill-health retirement application to be made and processed. It is therefore important that you do not delay making an application once appropriate medical advice has been received and / or the decision to terminate employment is made.

Details are available from [Scottish Public Pensions Agency](#)⁵ (SPPA).

Maintaining relationships

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

Failure to Engage

There may be occasions where you feel unable to attend a hearing. Where this is for health reasons, Occupational Health advice will be obtained to consider when you will be in a position to do so or if there are alterations to the process which can be made to support your attendance.

If you intend to be supported or represented then the availability of all parties will be considered, in order to agree on a suitable date for all parties. If your representative is unavailable, further dates will be agreed to allow the hearing to happen.

Where you decide not to attend and there is no reasonable explanation for this, you will be offered a second meeting and if you fail to participate, the

panel will consider any reasons for this and whether to progress the hearing in your absence.

Other Capability Issues

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

Grievances / Bullying and Harassment Complaints

If you raise 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 at the same time.

References

¹ NHSScotland Workforce Policies Investigation Process

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

² Capability Policy : supported improvement plan form

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

³ Capability Policy : guide for managers

<https://workforce.nhs.scot/supporting-documents/guides/capability-policy-guide-for-managers/>

⁴ Attendance Policy : Guide to Occupational Health Service referrals

<https://workforce.nhs.scot/supporting-documents/guides/attendance-policy-guide-to-occupational-health-service-referrals/>

⁵ Scottish Public Pensions Agency, Ill-health Retirement

<https://pensions.gov.scot/nhs/retiring-nhs/ill-health-retirement>