

Capability Policy

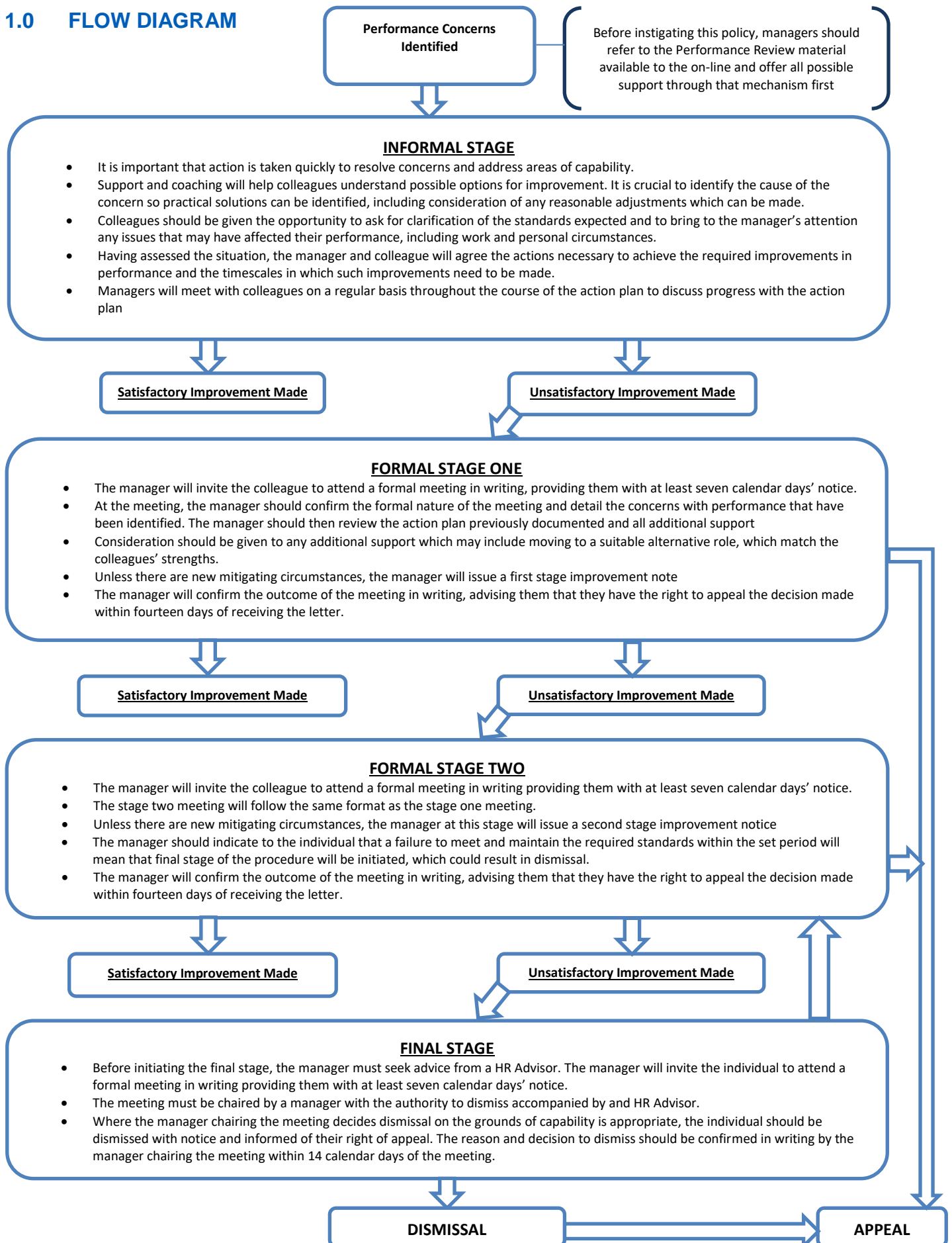
Policy

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1.0 FLOW DIAGRAM



2.0 INTRODUCTION

- 2.1 This policy has been produced and agreed in partnership between management and Trade Union representatives of both Taunton and Somerset NHS Foundation Trust and Somerset Partnership NHS Foundation Trust to ensure all colleagues are treated fairly if a performance concern is identified. It is acknowledged that not all situations will necessitate the need to implement this policy and in assessing whether a formal approach is required, many factors will need to be considered.
- 2.2 This policy applies to all colleagues, with the exception of doctors and dentists. Any cases involving their performance or capability must be dealt with in accordance with the Trusts' policy on Maintaining High Professional Standards/Managing Performance Concerns.
- 2.3 The Trusts set and expect high standards from all colleagues, regardless of their role. This is reflected in our Trust values and behaviours.
- 2.4 The Trusts are committed to supporting colleagues in their work. However, also recognise that there are times when colleagues need more focussed support from their managers.
- 2.5 Regular dialogue between managers and colleagues through one to ones, supervision and clinical supervision is essential to providing support.
- 2.6 This policy provides a supportive framework for all colleagues to understand the processes that will be applied.
- 2.7 This policy does not cover capability due to ill health absence or unwillingness or refusal to carry out duties properly rather than the capability to do so, in these circumstances the disciplinary policy or the supporting attendance policy would provide the appropriate framework.
- 2.8 There are a series of helpful guides referenced in this policy and these are available in the People Toolkit on the Intranet.
- 2.9 Where Trust is written in the singular, it is intended that this is applicable to both Trusts and that this policy will apply to any successor organisation of the two Trusts. It may be reviewed at the request of management or staff side and will remain in force until its renewal. We may also vary this procedure, including any time limits, as appropriate, to support any case.
- 2.10 The Trusts recognise that some sections of society experience prejudice and discrimination. The Equality Act of 2010 recognises protected characteristics and gives consideration to socio-economic factors including pregnancy/maternity and marriage/civil partnership.
- 2.11 The Trusts are committed to equality of opportunity and inclusive practices in both the provision of services and our role as an employer. All people have the right to be treated with dignity and respect and the Trusts are committed to the elimination of unfair and unlawful discriminatory practices

3.0 DEFINITIONS

3.1 **Capability** - relates to the skill, ability, aptitude and knowledge of colleagues in relation to the job for which they are employed to do.

3.2 **Supervision/Clinical Supervision/one to one** - Supervision is about sharing, showing and giving support to help another person make progress and feel comfortable in their work. It involves making time and developing a practical structure to provide this support

4.0 ROLES and RESPONSIBILITIES

4.1 **Colleagues** have a responsibility for:

- familiarising themselves with the policies and procedures applying to their employment and areas of work.
- achieving and maintain the standards that have been set
- identifying development needs and to act upon them
- suggesting reasonable adjustments to support performance

4.2 **Managers** have a responsibility for:

- ensuring that capability concerns are addressed with colleagues in a timely and sensitive manner
- taking into account an individual's protected characteristics which may affect their work performance or competence
- making reasonable adjustments for colleagues and review as appropriate
- consult the HR advisory team prior to the instigation of any formal stage of the policy

4.3 **The HR advisory team** has a responsibility for:

- providing support and guidance on the process
- ensuring a fair and consistent process is followed
- advising on the application of this policy
- supporting resolution of any issues through providing advice and guidance.
- providing support to individuals/parties during capability procedures
- maintaining the central record of activity (case management system)

4.4 **Trade Unions** are responsible for:

- acting as a representative/advocate to their members
- providing their members with advice and support on matters relating to colleague capability
- representing members at informal and formal stages of the process.
- ensuring that this policy is applied fairly and consistently on an individual and organisational level.

5.0 PROCESS DESCRIPTION

5.1 INFORMAL STAGE

It is important that action is taken quickly to resolve concerns and address areas of capability. Support and coaching will help colleagues understand possible options for improvement. It is crucial to identify the cause of the concern so practical solutions can be identified, including consideration of any reasonable adjustments which can be made.

5.2 The manager will explore with the colleague the underlying cause so the relevant solution can be put in place to address the issue/s. The meeting should be held in a positive and supportive manner and consideration should be given to any reasonable adjustments requested.

5.3 Colleagues should be given the opportunity to ask for clarification of the standards expected and to bring to the manager's attention any issues that may have affected their performance, including work and personal circumstances. This may also help the manager in assessing whether advice is required from occupational health and to remind colleagues about the Trusts' employee assistance programme and other internal and external support networks/groups. Consideration should also be given to a variety of support which may be beneficial, including but not limited to:

- Formal training programmes
- Mentoring
- Coaching
- Shadowing
- Self-reflection and appraisal
- 360 degree feedback

5.4 Having assessed the situation, the manager and colleague will agree the actions necessary to achieve the required improvements in performance and the timescales in which such improvements need to be made. This will be documented using the Action Plan Template, a copy of which will be provided to them. An example plan can be found on the intranet. An effective and collaborative action plan will be agreed wherever possible and should include:

- clear detail of the issues requiring improvement
- specific, measurable, achievable and realistic targets of what is required and when they need to be achieved by
- what support and training has been identified as required and when it will be delivered
- anything that successful performance is dependent on (for example a new piece of equipment), as delays in that being made available will need to be taken into account when reviewing targets.
- any areas of disagreement should be clearly noted.
- As a guide, the informal stage will last between four and six weeks.

- 5.5 The manager must inform the colleague that a failure to meet the required standards within the set period may mean that they will move to the formal stages of the policy.
- 5.6 The manager will advise that the decision to move to the next stages of the policy can be made at any time if serious problems arise during the agreed timescales. This and a summary of the meeting will also be recorded on the action plan documentation.
- 5.7 Managers will meet with colleagues on a regular basis throughout the course of the action plan to discuss progress with the action plan.
- 5.8 In many cases these early interventions will prove successful and there may be learning for all parties to consider and share, regarding what has gone well and if there is an opportunity to apply these good practices into inductions or appraisal reviews for others.
- 5.9 Managers must not proceed to any formal stages without having had adequate progress updates with colleagues.
- 5.10 If the informal stage is unsuccessful in supporting colleagues to meet the action plan, the manager should move to the first formal stage.
- 5.11 Managers need to ensure they have taken all reasonable steps to support the colleague to improve their performance through the informal route. HR Advisors will be available to support all colleagues whenever necessary.

6.0 Formal Stage One

- 6.1 The manager will invite the colleague to attend a formal meeting providing them with at least seven calendar days' notice confirmed in writing. The letter will detail the reasons for the meeting; include copies of any documents to be referred to at the meeting and reminding the individual of the right to be accompanied by a work colleague or union representative.
- 6.2 At the meeting, the manager should confirm the formal nature of the meeting and detail the concerns with performance that have been identified. The manager should then review the action plan previously documented and all additional support which has been provided. A new time table to meet the action plan should be set and documented on an updated action plan. This should allow sufficient time to meet the standards, but it should not be unduly prolonged. This would usually be between four and eight weeks, depending upon the circumstances.
- 6.3 Consideration should be given to any additional support which may include moving to a suitable alternative role, which matches the colleagues' strengths. As part of reviewing the underlying cause of the concerns it may be appropriate to carry out a skills assessment to help define if suitable alternative roles are available/would be more appropriate.
- 6.4 Unless there are new mitigating circumstances, the manager will issue a first stage improvement note which will specify the performance concern, the improvements and standards required, the time scale for achieving this, details of any additional support, supervision or training to be given and the frequency of review meetings to be held during the improvement period set.

- 6.5 If a colleague successfully meets the action plan within the set period, the manager should meet the individual at the end of the period to confirm that this is the case, this will be confirmed in writing to the individual.
- 6.6 If the first formal stage is unsuccessful in supporting colleagues to meet the action plan, the manager should move to the second formal stage, which could ultimately lead to dismissal. A letter will also confirm to colleagues that they have the right to appeal the decision made within fourteen days of receiving the letter
- 6.7 Managers need to ensure they have taken all reasonable steps to support the colleague to improve their performance through the informal route. HR Advisors will be available to support all colleagues whenever necessary.

7.0 **Formal Stage Two**

- 7.1 The manager will invite the individual to attend a formal meeting in writing providing them with at least seven calendar days' notice. The notification of the meeting will outline the reasons for the meeting; include copies of any documents to be referred to at the meeting and reminding the individual of the right to be accompanied by a work colleague or union representative.
- 7.2 The stage two meeting will follow the same format as the stage one meeting. As a guide stage two will last between four and eight weeks. Consideration should be given to any additional support the manager or colleague feel could be beneficial in empowering the colleague to meet the required standards outlined. Both the manager and colleague may consider if moving to a suitable alternative role, which may match the individual's strengths, would be a viable option. As part of reviewing the underlying cause of the concerns it may be appropriate to carry out a skills assessment to help define if suitable alternative roles are available/would be more appropriate.
- 7.3 The manager at this stage will issue a second stage improvement notice which should specify the improvements and standards required, details of any additional support, supervision or training to be given and the frequency of review meetings to be held during the improvement period set.
- 7.4 The manager should indicate to the colleague that a failure to meet and maintain the required standards within the set period will mean that final stage of the procedure will be initiated, which could result in dismissal. The manager will confirm the outcome of the meeting in writing, advising them that they have the right to appeal the decision made within fourteen calendar days of receiving the letter.
- 7.5 If the colleague adequately meets the required standards within the set period, the manager should meet them at the end of the period to confirm that this is the case and that the action plan has successfully been achieved.
- 7.6 If it becomes evident to the manager that the required standards have not been met then it may be necessary to commence final stage of the policy.

8.0 **Final Stage**

- 8.1 Before initiating the final stage, the manager must seek advice from a HR Advisor

- 8.2 The manager will invite the colleague to attend a formal meeting in writing providing them with at least seven calendar days' notice. The notification of the meeting will outline the reasons for the meeting; include copies of any documents to be referred to at the meeting and reminding the colleague of the right to be accompanied by a work colleague or union representative.
- 8.3 The meeting must be chaired by a manager with the authority to dismiss (HR will advise in accordance with Appendix 1), who will be independent and not have been involved in the process up to and including formal stage two of the process. Any actual or perceived conflicts of interest should be made known and a view taken on whether a different chair should be appointed to ensure impartiality and independence. A member of the HR advisory team must also be present.
- 8.4 The manager chairing the meeting should confirm its formal nature.
- 8.5 Where agreed by all parties, final stage capability hearings may be recorded digitally in addition to transcripts being taken.
- 8.6 Full details of the performance concerns that have been identified, any improvements that have been made and any mitigating circumstances will be presented by the colleague's line manager.
- 8.7 Colleagues should be given every opportunity to bring to the chairing manager's attention, any challenges, issues or mitigation that may have affected performance, including work, personal matters and unfulfilled training needs.
- 8.8 Where the manager chairing the meeting decides dismissal on the grounds of capability is appropriate, the individual should be dismissed with notice and informed of their right of appeal. The reason and decision to dismiss should be confirmed in writing by the manager chairing the meeting within fourteen calendar days of the meeting.
- 8.9 If the chairing manager decides not to dismiss, an action plan and a second stage improvement notice may be set again. This could include reviewing if suitable redeployment opportunities are available.
- 8.10 Any appeal needs to be addressed in writing to the next appropriate manager in line with the authority levels' schedule (Appendix 1) and received within fourteen calendar days of the date of the dismissal letter.
- 8.11 The appeal must be on the grounds that the individual can demonstrate that they have reached the required standards, that a longer time frame should be given due to extenuating circumstances and that the colleague is likely to attain the appropriate objectives/targets if a longer time period is given or if there have been serious procedural flaws.
- 8.12 Any appeal must state the grounds upon which it is based. Any new evidence that the colleague wishes to present at the appeal hearing should be provided to the chair at least 7 calendar days prior to the appeal meeting.

9.0 Referrals to professional bodies

9.1 Concerns regarding colleagues whose practice is covered by a professional body will be brought in the first instance to the attention of the Associate Director of Patient Care. (S)he will bring this to the attention of the appropriate Director of Patient Care.

10.0 Failure to maintain required standards of performance

10.1 If similar performance concerns are identified within twelve months of successful completion of the formal stage then the manager may resume that stage. If new performance concerns are identified then the process should commence from the informal stage and not influenced by the previous concerns.

11.0 Removal of warnings

11.1 It is the HR advisory team's responsibility to inform the line manager to remove any centrally recorded warnings from the personal file when expired in line with the timescale detailed in the action plan.

12 TRAINING/COMPETENCE REQUIREMENTS

12.1 There are no specific training requirements in the application of this policy but one to one support and coaching is available from the HR Advisory Team on a case by case basis.

13.0 MONITORING

Element of policy for monitoring	Section	Monitoring method - Information source (eg audit)/ Measure / performance standard	Item Lead	Monitoring frequency / reporting frequency and route	Arrangements for responding to shortcomings and tracking delivery of planned actions
Processes set out within the flowchart		The HR Advisor team will review all the cases that have been captured by the Case Management System and have reached a formal stage including where dismissal has resulted to determine any organisational themes, including learning, checking that a sequential approach has been adopted.	HR Advisor supporting	Six monthly to People Governance Committee	Feedback provided to relevant managers.
		The HR Advisor team will carry out an audit of all the cases that have reached a formal stage to determine whether there are indications of any potential bias in terms of equality, or over-representation of any protected characteristic.	HR Advisor	Six monthly to People Governance Committee	If the People Governance Committee identifies a concern they will oversee the development of an action plan or escalate as appropriate to the Director of People

14.0 DOCUMENT CONTROL

Document custodian	<i>Elaine Edwards HR Specialist</i>		
Lead executive	<i>Isobel Clements Director of People and OD</i>		
This Version	1	Status	Final
Replaces	Capability (Sompar and TST previous policies)	Where	Somerset Operational Partnership
Approval Date	11 December 2019	Where	Joint PRG
Ratification Date	November 2019 December 2019	Review due	6 January 2023
Date of issue	6 January 2020	Exclusions	Doctors and Dentists
Applies to	All Colleagues (see exclusions)		

15.0 REFERENCES

- 15.1 The Equality Act 2010
- 15.2 ACAS: www.acas.org.uk
- 15.3 A copy of the Agenda for Change Terms and Conditions Handbook can be found on the NHS Employers website: www.nhsemployers.org

Appendix 1 - Level of authority for dismissal and dismissal appeal panels

Colleague under Investigation	Commissioning Manager / Chair of Disciplinary Hearing / Authority to Suspend	Appeal stage	HR support
Executive Director	Chief Executive	Trust Chair	Executive Director of People and OD
Direct reports to Executive Directors	Relevant Executive Director	Chief Executive	Executive Director of People and OD
Clinical Director	Medical Director	Chief Executive	HR Advisor and Head of Medical Workforce
Direct reports to Clinical Manager / Directorate Manager	Relevant Clinical Director / Directorate Manager	Executive Director or Director from another function	HR Advisor
Nursing Staff	Assistant Director of Nursing / Matron / Clinical Service Manager	Director of Nursing or Deputy Director of Nursing	HR Advisor
Non Nursing Staff	Head of Department / Service	Directorate Manager / Assistant Director of Service	HR Advisor

The Chair of the panel would usually be the manager with the authority to dismiss the colleague if dismissal is a likely outcome. This responsibility can be handed to a designated deputy who is formally acting in the role of another manager at the same/equivalent level.

Delegated authority will be given in writing ahead of any hearing. It may be appropriate to involve a “professional/specialist” panel member for certain hearings, who may be external to the Trust.