



Please Note: This policy is currently under review and is still fit for purpose.

Capability Procedure: Managing Poor Performance

This procedural document supersedes: Capability Procedure: Managing Poor Performance
 - CORP EMP 25 v.3



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| | |
|---------------------------------|---|
| Executive Sponsor(s): | Karen Barnard, Director of People & OD |
| Author/reviewer: (this version) | Anthony Jones, Deputy Director of People & OD |
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| Target audience: | Trust-wide |

Amendment Form

Please record brief details of the changes made alongside the next version number. If the procedural document has been reviewed **without change**, this information will still need to be recorded although the version number will remain the same.

| Version | Date Issued | Brief Summary of Changes | Author |
|-----------|----------------|---|-------------------------------|
| Version 4 | 31 May 2018 | Removal of reference to health impacting on capability Minor amendments for factual accuracy | Sam Francis/ Anthony Jones |
| Version 3 | 17 August 2015 | Minor amendments for factual accuracy | Ruth Cooper |
| Version 2 | February 2011 | <ul style="list-style-type: none"> • Amendment form added • Sections added: <ul style="list-style-type: none"> - Equality Impact Assessment - Monitoring and Compliance - Associated Trust Procedural Documents - References | Keeley Cromwell |
| | | | |

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1 INTRODUCTION

The Trust is committed to providing an excellent standard of patient care. To do this, we rely on staff receiving support to enable them to fully understand their role and the Trust's expectations of them, and on all staff being committed to demonstrating positive and effective behaviours. This commitment will be underpinned by appropriate supportive policies and procedures. This procedure should be regarded as one of mutual and joint working, which enables employees to restore standards of performance to an acceptable level.

This policy and its associated documents apply to all Trust employees, except Medical and Dental staff who should refer to The Conduct, Capability, Ill-Health and Appeals Policies and Procedures for Practitioners CORP/EMP13.

This procedure should not be used to address issues of conduct, which are dealt with under the Trust's Disciplinary Procedure (see CORP/EMP 2).

Capability concerns that are linked to ill health and/or disability, where long term or persistent absence occurs, should be addressed taking guidance from the Trust's Sickness Absence Policy, paying particular attention to Annex 2 (see CORP/EMP 1).

Where there are performance concerns that are linked to health and/or disability but no absence occurs, this should be managed using this policy, with particular attention being paid to the requirements of the Employment Act 2010 on making appropriate modifications and redeployment.

2 PURPOSE

2.1 The primary aim of the Capability Procedure is to support employees to maintain expected levels of performance and to provide a way of supporting an employee if their performance is found to be unacceptable and below the expected standard.

2.2 Upon commencement of employment an employee will learn the expected standard of performance in line with Trust policies and procedures, as well as professional standards and values and behaviours. The importance of careful recruitment, selection and training should not be underestimated, as this will facilitate a reduced risk of unsatisfactory performance. In order to manage performance positively, managers should refer to Appendix 1 for new or newly promoted employees.

2.3 This procedure allows management to deal with capability issues in a fair and consistent manner with respect for the employee as an individual and provides a consistent approach to the management of all issues of competence and capability.

2.4 Should the manager be unclear whether underperformance is a capability or a conduct issue, they should seek advice either from their HR Business Partner or the Case Management Team on which procedure to instigate.

3 DUTIES AND RESPONSIBILITIES

The Trust

Through raising awareness, the Trust aims to have a workforce as a whole who understand the rationale of this procedure. In addition the responsibility of the Trust is:

- To provide education and training for those responsible for operating the procedure.
- To set out standards of performance in line with Trust policies and procedures, as well as professional standards and values and behaviours.
- To evaluate periodically the effectiveness of the procedure.

The Staff Side Organisations and Trade Unions

- To help inform the workforce of the procedure and to encourage employees who may have problems to use the facilities available within the procedure.
- To advise members of their rights and responsibilities under the procedure and to be available to represent employees at appropriate meetings.

The Employee

- To take personal responsibility for understanding and maintaining expected levels of performance and to notify their manager of any issues that may impact on their continued performance.
- To participate in good faith in any action plan initiated by their manager/supervisor in accordance with this procedure.

4 PROCEDURE

4.1 SETTING STANDARDS OF PERFORMANCE

- 4.1.1 The Trust is responsible for setting realistic and achievable standards of work performance and making sure employees understand what is required. Employees have a contractual responsibility to achieve a satisfactory level of performance and should be given help and encouragement to reach it.
- 4.1.2 Standards should be capable of being measured in terms of quality, quantity, time and possibly cost. Any shortfall in performance should be discussed with the

employee concerned, and consideration given to whether this is due to inadequate instruction, training, supervision or some other failing.

4.1.3 The following principles should be observed when the employee starts in the organisation:

- the standard of work required should be explained and employees left in no doubt as to what is expected of them.
- job descriptions should accurately convey the main purpose and scope of each job and the tasks involved;
- the consequences of any failure to meet the required standards should be explained;
- where an employee is promoted within the organisation the consequences of failing to meet the required standards in the new job should be explained.

4.1.4 There should be arrangements in place for regular discussions between managers and employees regarding performance. Employees should be encouraged and supported to be safe and effective in their practice and to overcome shortfalls in performance. Issues should be resolved as close to their point of origin and as soon as reasonably practical after they have been identified, to avoid issues escalating to a point where formal action is unavoidable.

4.2 THE INFORMAL PROCEDURE

Where a member of staff exhibits an inability to perform their duties satisfactorily, the matter will normally be addressed informally in the first instance, following the steps set out in Appendix 2. A meeting will take place and will normally be between the employee and their manager.

The main emphasis of the meeting will be to discuss with the employee where there are shortcomings and areas of concern, to establish the reasons for poor or diminishing performance and also how the individual can be assisted in addressing the problem.

This process should be a transparent one and to inform any discussions with the employee it is essential that any evidence of poor performance is shared with them.

The line manager may wish to discuss these areas of concern beforehand, with their Human Resources Business Partner to clarify the issues raised.

The manager will then agree the expected performance standards with the member of staff and a time period in which an improvement in performance is expected to be achieved. This time period should be reasonable and realistic in the context of the nature of the problem and to allow for any necessary support to be put in place. They will also agree how the employee's performance will be monitored over this time.

The manager will record the outcome of the meeting and confirm this in a letter sent to the member of staff. This will indicate the nature of the unsatisfactory performance, what is expected and how future performance needs to be improved to meet the expected standards. It will also outline the support to be given, how their performance will be monitored and over what time period this will be undertaken.

If the employee opposes the contents of the letter, they should first discuss it with the manager concerned. Advice should be sought from a representative of Human Resources if this cannot be resolved.

If the employee's performance improves adequately over the agreed time scale, then the process will end at this stage. If however the employee's unsatisfactory performance remains or returns, then the manager will initiate the Formal Procedure.

Performance Impaired by Health

It is possible that an underlying health problem, which may not be apparent, could be the cause of an employee's poor performance. This should be considered and if appropriate, the employee referred to their GP or Occupational Health.

Where health is impacting on performance, the manager should explore this and discuss any changes or support necessary before a decision is made. This support could include redeployment, flexible working, reduced hours or workload, or variation of tasks and duties. Each case should be considered individually. Where an employee has a disability and is covered by the Equality Act 2010 the manager should explore making reasonable adjustments to enable the staff member to return and continue working.

However, after changes and/or reasonable adjustments have been made and there is still no likelihood of the employee being able to fulfil contractual obligations, this could lead to dismissal on the grounds of ill health. See Sickness Absence Policy.

4.3 THE FORMAL PROCEDURE

PLEASE NOTE: Prior to commencing or during the formal procedure if it appears that the cause of the performance issue relates to conduct, rather than capability, then it would be appropriate to default to and implement the disciplinary procedure (see CORP/EMP 2).

The Formal Procedure would be implemented, where either the Informal Procedure has proved to be ineffective, or where there appears to be serious concerns about an employee's performance. A table showing the Formal Procedure is at appendix 3.

Where there are serious concerns about an employee's performance, or where their performance presents a risk to patients, the Trust reserves the right to escalate or bypass stages in this formal procedure. Where it is safe to do so, an employee should be provided

with a minimum of one opportunity to demonstrate they can improve their performance before a decision is made about their suitability for continued employment.

If the employee's performance worsens at any stage within the formal procedure, it is acceptable for either party to bring forward the date of the review meeting.

Where an individual has been subject to formal performance management at any stage and has achieved the required standards, they will be removed from the formal process. However, they will continue to be monitored for an agreed period, normally 12 months. Should the underperformance return at any time during this review period, the individual will be placed back in to the formal process at an appropriate stage.

If the required standard is still being achieved after the monitoring period, the formal performance management process will generally be considered to be concluded. This means that the management of any new performance issues would generally start from the beginning of this process. However, the Trust reserves the right to initiate performance management at any of the stages and also to address matters using other Trust policies.

The manager will initially discuss the issues with their Human Resources Business Partner or Case Management Team, before invoking the formal procedure.

1st Stage Meeting

- The employee is informed personally by the manager, wherever possible, and then in writing of a meeting being held under the Formal Stage of the Capability Procedure. The employee is notified of their right to be represented and what the issues of concern are. The manager may be accompanied by a Human Resources representative at this meeting.
- If issues of professional competence are to be addressed at the meeting and the manager is not qualified in that profession, then it is expected that an adviser, qualified in that profession will also be present at the meeting. The purpose of the adviser is to clarify, explain and/or advise on any issues, which are of a professional nature.
- The manager will put forward the issues concerning the employee's performance (e.g. discussions from previous meetings, Performance Appraisal records, training attended, assistance given, etc as well as other sources as appropriate e.g. audit reports etc).
- The manager will remind the employee of the standards of performance that are required.
- Once the issues of concern have been highlighted, the employee and the employee's representative will have an opportunity to put forward the member of staff's point of view and to identify possible reasons for the poor performance.

- The manager will listen to, clarify and discuss the issues and then discuss the appropriate action.

The outcome of the meeting will be either to:

- Take no further formal action and revert back to the informal procedure, informing the employee of this in a letter.

Or

- Indicate to the employee that the current performance level is unacceptable. The employee should give their commitment to achieve the required standards. An action plan should be agreed with the employee that will outline the specific measurable objectives that need to be achieved within a specific timeframe and the **consequences of failing to achieve the objectives within the given timeframe must be made clear**. This will be formally outlined in a letter to the employee.

The letter will indicate how the employee's progress will be monitored and any assistance that will be given to help the employee to improve. This may for example take the form of a development programme, training etc. A time scale will also be set for their performance to improve and a review day set. It will also emphasise the importance of the employee addressing the concerns raised.

2nd Stage Meeting

Following review of the employee's performance, should the poor performance have continued despite the assistance provided at the previous stage, the process set out above will be repeated. If appropriate, on this occasion, the next more senior manager will see the employee.

This meeting will be convened and arranged as before. Discussion at this meeting is likely to centre on performance during the review period.

- If there has been an improvement which still falls short of the required standard the employee will be encouraged to keep trying and the review period will be extended.
- If there has been no improvement the employee will be offered the opportunity to give reasons for this.
- The manager should attempt to identify any additional measures of support. An appropriate level of assistance should once more be given to the employee in order to assist them to reach the required standards.

- A further review period will be set and a date will be set for a meeting. The employee should be advised that if there is no improvement or there are further issues concerning their performance during the agreed review period, stage 3 will be implemented and this is likely to result in their contract of employment being terminated on capability grounds.

A letter will be sent to the employee confirming the points covered at the previous meeting with the employee's line manager as well as the points covered during this most recent meeting. It will also clearly state that if an improvement is not forthcoming, a final meeting will be convened, at which the appropriate manager will consider terminating their contract on the grounds of capability.

Where an individual has achieved the required standards, they will be removed from the formal process. However, they will continue to be monitored for an agreed further period, normally 12 months, and should the underperformance return at any time during this review period, they will be placed back in to the formal process at an appropriate stage.

If the required standard is still being achieved after the further monitoring period, the formal performance management process will generally be considered to be concluded. This means that the management of any new performance issues would generally start from the beginning of this process. However, the Trust reserves the right to initiate performance management at any of the stages and also to address matters using other Trust policies.

3rd Stage Meeting (Final Stage)

- If, at the end of the review period, the required standard has been met, the employee will be told this and they will be encouraged to maintain this standard. They will continue to be monitored for an agreed further period, normally 12 months, and should the underperformance return at any time during this review period, they will be placed back in to the formal process at an appropriate stage.
- If, after the further monitoring period, the required standard is still being achieved, the formal performance management process will generally be considered to be concluded. This means that the management of any new performance issues would generally start from the beginning of this process. However, the Trust reserves the right to initiate performance management at any of the stages and also to address matters using other Trust policies.
- If the standard has not been met, a meeting should be arranged with the appropriate delegated authority to dismiss. A review of all actions and outcomes should take place at this meeting. If the standards have not been met, the employee will be informed and told that a decision will now be made to dismiss him/her from employment. This will generally be with immediate effect with payment made in lieu of notice.

4.4 THE MONITORING PERIOD

A key element of helping the employee to improve is the monitoring period set for them to meet their specific objectives. During this time there may also be specific training or development activities that will need to be undertaken, to enable the employee to improve. The time scale for the monitoring period will be dependent on the circumstances, but will usually last from three to six months.

If the employee maintains a consistent and satisfactory performance level during the monitoring period, the procedure would then come to an end. The employee would then be informed that their performance is satisfactory at that point. The usual performance appraisal process would then take its place.

Once twelve months have elapsed after the end of a satisfactory monitoring period, then the capability procedure would be at an end. Should further concerns regarding the employee's performance be raised at a future date, then the issues would be addressed as appropriate through evoking the capability procedure afresh, or through the disciplinary procedure.

In circumstances, where it appears that the cause of the performance issue relates to conduct rather than capability, then it would be appropriate to refer to the disciplinary procedure.

4.5 DOWNGRADING OR TRANSFER

In certain cases it may be appropriate to use downgrading and/or transfer to address the issues raised, rather than dismissal. Any downgrading and/or transfer will be subject to the agreement of the employee concerned, and subject to a suitable alternative post being available within the Trust. Where agreement is reached with an employee to downgrade or transfer, this may also be accompanied by a programme of reorientation and/or further training. Where agreement is reached with an employee to downgrade and/or transfer, this action is not subject to appeal.

Where staff are downgraded or transferred there is no entitlement to pay protection.

4.6 EMPLOYEE REPRESENTATION

An employee, to whom this formal procedure is applied, will have the right at any stage to be accompanied by either his or her trade union representative or by a fellow employee.

This provision does not preclude an employee seeking advice at any stage from their trade union representative nor should it dissuade managers from inviting employees to be accompanied within the informal procedure if the manager believes that this step would be

conducive to a productive outcome at an earlier stage. However, this should not introduce an unreasonable delay in the process.

4.7 RIGHT OF APPEAL

Given that within the formal procedure, action can only be taken by those officers authorised under the schedule of delegation within the Trust Disciplinary Procedure, the right of appeal in respect of any action taken under the formal part of this procedure mirrors the arrangements in the Disciplinary Procedure (see CORP/EMP 2).

5 TRAINING/SUPPORT

The training requirements of staff will be identified through a training needs analysis. Role specific education will be delivered by the service lead.

Managers should speak to the Case Management Team or their HR Business Partner if they require any further guidance or support.

6 MONITORING COMPLIANCE WITH THE PROCEDURAL DOCUMENT

| What is being Monitored | Who will carry out the Monitoring | How often | How Reviewed/ Where Reported to |
|-------------------------|-------------------------------------|------------------------------------|---|
| All Capability cases | Responsible line manager | Commencement of the informal stage | HR Case Management Team |
| Applicability of policy | HR Business Partners/Senior Mangers | Monthly | As part of Accountability Meetings |
| Currency | HR Case Management Team | Ongoing | Monitor developments in good practice/legislation |

7 DEFINITIONS

Capability: The Employment Rights Act 1996 gives a legal indication of what is meant by capability; ‘capability assessed by reference to skill, aptitude, health or any other physical or mental quality’.

Conduct or Capability:

It is essential that managers identify the underlying cause of an individual's poor performance and whether this relates to conduct or capability at the earliest opportunity, to determine the appropriate way of dealing with the matter. A simple question to ask is "Does the concern relate to skill or willingness?"

Where the underlying problem is related to conduct, such as carelessness, negligence or unwillingness – e.g., the individual could do the work to the required standard if they chose to do so, the Trust's Disciplinary Procedure – CORP/EMP 2 should be initiated.

Concerns regarding capability may arise when a member of staff is failing in a significant or persistent way, to carry out their responsibilities, or duties, in a satisfactory manner. This may be due to issues affecting competence, such as;

- a lack of professional insight;
- an inability to cope with reasonable workloads;
- not being able to meet identified standards;
- an inability to prioritise work;
- a lack of aptitude for the work itself;
- inadequate training;
- inability to achieve changes to the role over time;
- lack of role clarity;
- a lack of experience.

The above list should be regarded as an indication of what may be encountered and is not an exhaustive list.

8 EQUALITY IMPACT ASSESSMENT

The Trust aims to design and implement services, policies and measures that meet the diverse needs of our service, population and workforce, ensuring that none are disadvantaged over others. Our objectives and responsibilities relating to equality and diversity are outlined within our equality schemes. When considering the needs and assessing the impact of a procedural document any discriminatory factors must be identified.

An Equality Impact Assessment (EIA) has been conducted on this procedural document in line with the principles of the Equality Analysis Policy (CORP/EMP 27) and the Fair Treatment For All Policy (CORP/EMP 4).

The purpose of the EIA is to minimise and if possible remove any disproportionate impact on employees on the grounds of race, sex, disability, age, sexual orientation or religious belief. No detriment was identified. (See Appendix 5)

9 ASSOCIATED TRUST PROCEDURAL DOCUMENTS

CORP/EMP 1 - Sickness Absence

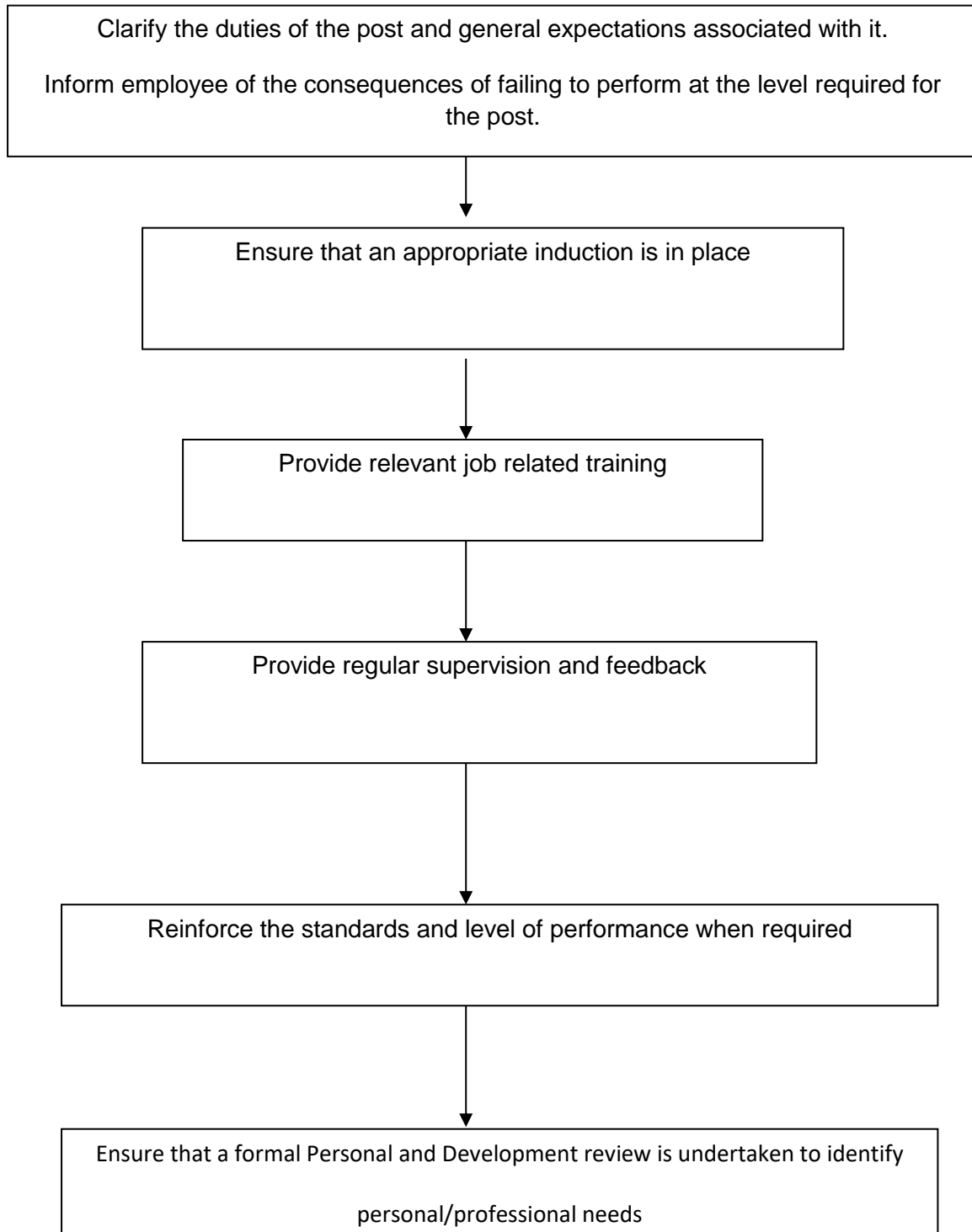
CORP/EMP 2 - Disciplinary Procedure

CORP/EMP 13 - The Conduct, Capability, Ill-Health and Appeals Policies and
Procedures for Practitioners

CORP/EMP 4 – Fair Treatment for All

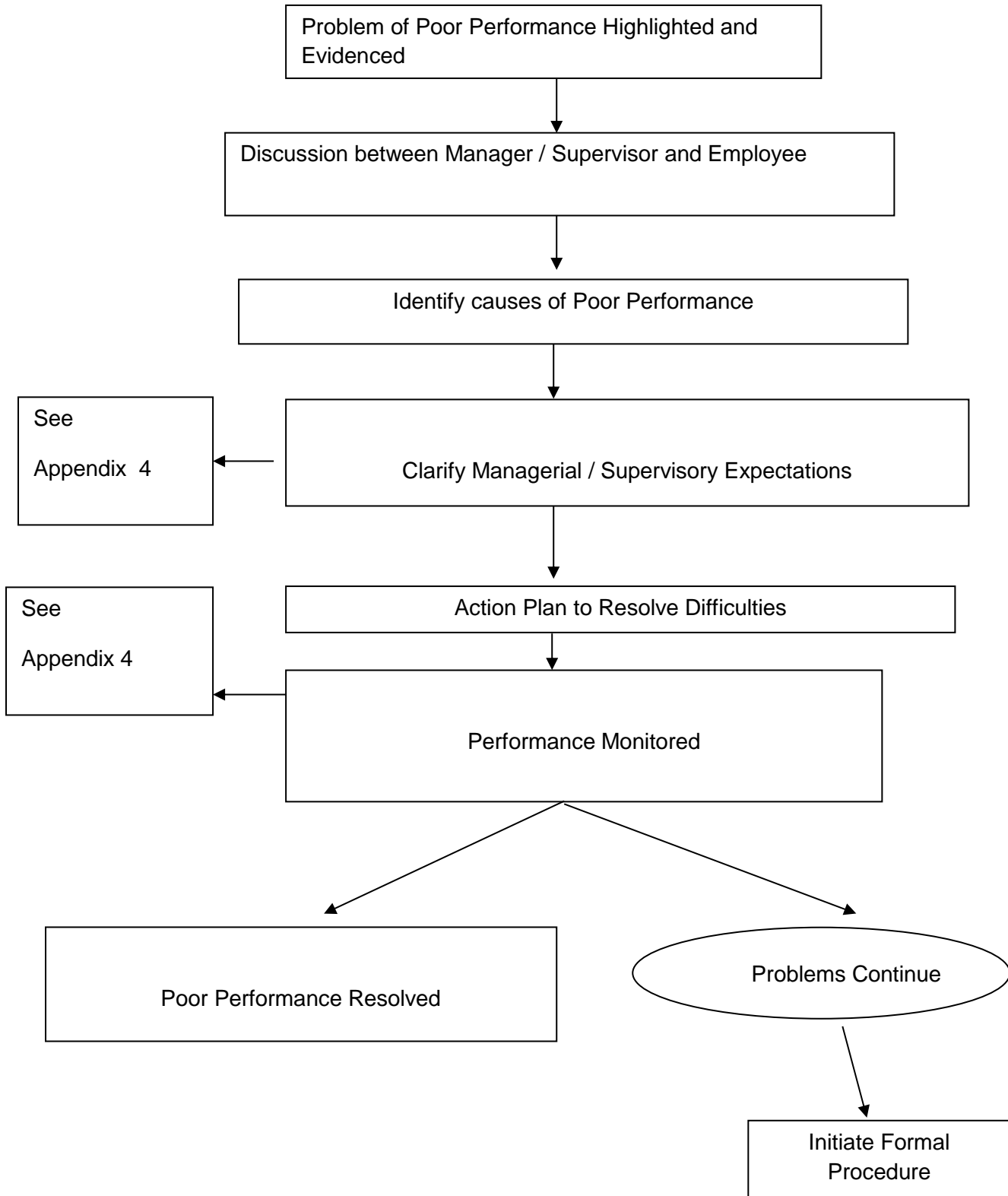
10 REFERENCES

[ACAS Advisory Booklet – How to Manage Performance, October 2014](#)

APPENDIX 1 – MANAGING PERFORMANCE POSITIVELY***Implement upon commencement for all new employees***

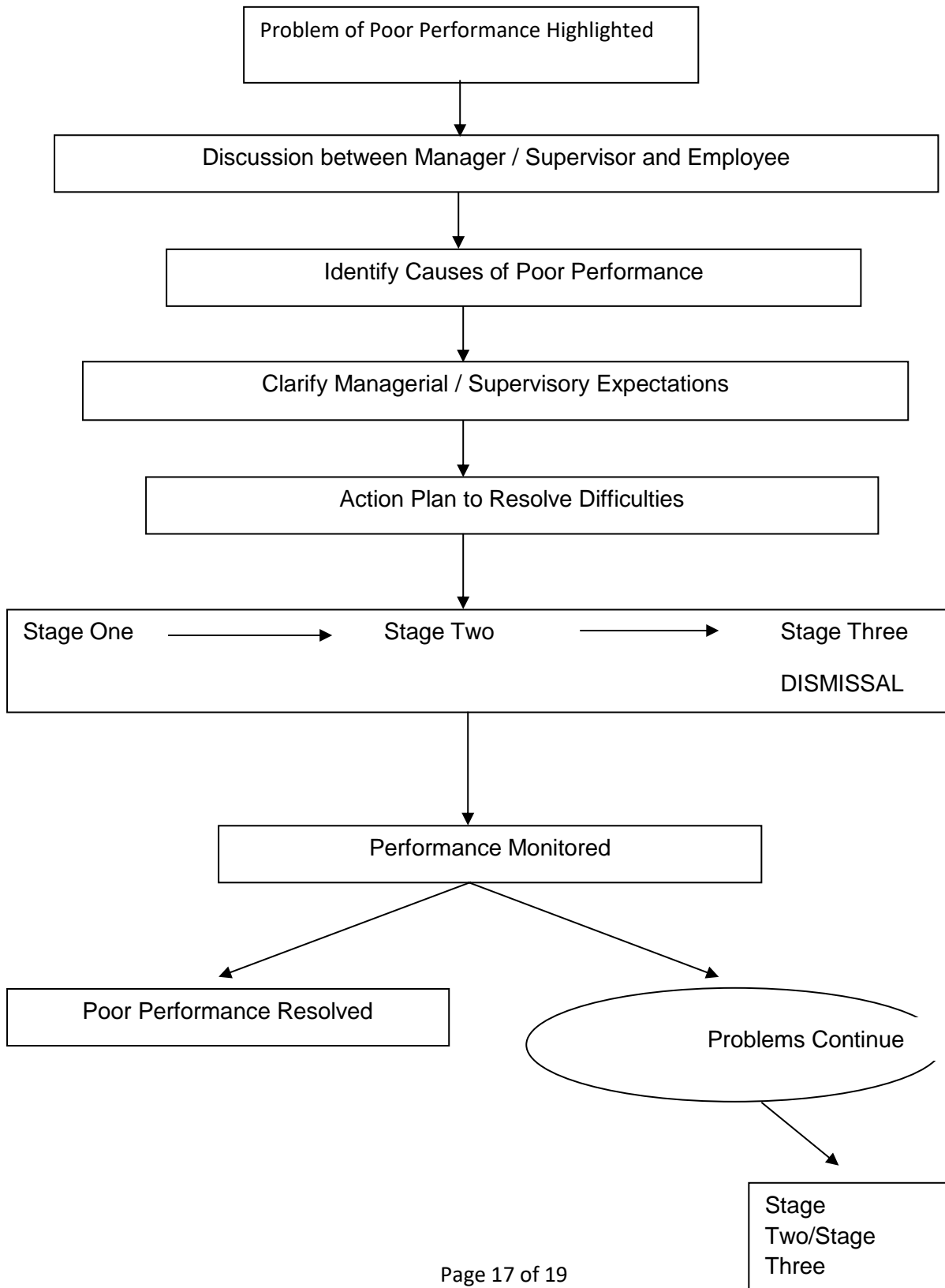
APPENDIX 2 – MANAGING POOR PERFORMANCE INFORMAL

INFORMAL PROCEDURE



APPENDIX 3 – MANAGING POOR PERFORMANCE - FORMAL

FORMAL PROCEDURE



APPENDIX 4 – AIDE MEMOIRE: CAUSES & REMEDIES

In the lists that follow, the examples are illustrative not exhaustive. They are intended to act as an aide memoir, not to constrain the options available to a manager / supervisor in addressing problems of poor performance.

Possible causes of poor performance

- Poor initial selection
- Inadequate understanding of the role
- Lack of appropriate induction
- Insufficient Training
- Lack of Supervision
- Absence of regular feedback
- Physical or mental incapacity
- Personal circumstances
- Relationships at work
- Family/domestic circumstances

Suggested remedies

- Standard Setting
- Work Shadowing
- Coaching / Mentoring
- Re-training
- Secondment
- Alternative employment – temporary or permanent
- Supervised practice
- Modification of duties
- Educational programme e.g. clinical, personal or organisational skills

APPENDIX 5 - EQUALITY IMPACT ASSESSMENT PART 1 INITIAL SCREENING

| Service/Function/Policy/Project/ Strategy | Care Group/Executive Directorate and Department | Assessor (s) | New or Existing Service or Policy? | Date of Assessment |
|--|--|------------------------------|---------------------------------------|--------------------|
| Capability Procedure | People & OD | Anthony Jones | Existing | 29 January 2018 |
| 1) Who is responsible for this policy? People & OD | | | | |
| 2) Describe the purpose of the service / function / policy / project/ strategy? Clarity on processes and procedure for managing poor performance at DBTH | | | | |
| 3) Are there any associated objectives? ACAS code of practice | | | | |
| 4) What factors contribute or detract from achieving intended outcomes? – Capability of line managers | | | | |
| 5) Does the policy have an impact in terms of age, race, disability, gender, gender reassignment, sexual orientation, marriage/civil partnership, maternity/pregnancy and religion/belief? No | | | | |
| <ul style="list-style-type: none"> • If yes, please describe current or planned activities to address the impact n/a | | | | |
| 6) Is there any scope for new measures which would promote equality? no | | | | |
| 7) Are any of the following groups adversely affected by the policy? | | | | |
| Protected Characteristics | Affected? | Impact | | |
| a) Age | No | | | |
| b) Disability | No | | | |
| c) Gender | No | | | |
| d) Gender Reassignment | No | | | |
| e) Marriage/Civil Partnership | No | | | |
| f) Maternity/Pregnancy | No | | | |
| g) Race | No | | | |
| h) Religion/Belief | No | | | |
| i) Sexual Orientation | No | | | |
| 8) Provide the Equality Rating of the service / function /policy / project / strategy – tick (✓) outcome box | | | | |
| ✓ Outcome 1 | Outcome 2 | Outcome 3 | Outcome 4 | |
| <i>*If you have rated the policy as having an outcome of 2, 3 or 4, it is necessary to carry out a detailed assessment and complete a Detailed Equality Analysis form – see CORP/EMP 27.</i> | | | | |
| Date for next review: January 2021 | | | | |
| Checked by: John Scott | | Date: 29 January 2018 | | |