

1. Policy Statement

Our policy provides details of the process that we follow if your manager identifies that you are unable to effectively carry out your role. It encourages free and open communication between you and your manager to ensure that any issues with performance can be discussed quickly and the necessary support is put in place. In this process, we are committed to providing you with the right level of support, development and training for you to be able to carry out your duties successfully. If this cannot be resolved when you initially talk to your manager, it may be necessary to review your performance through a formal process. Our commitment to inclusion across race, gender, age, religion, identity, and experience drives us forward every day.

2. The Process

Review

If there are concerns with your performance or with your ability to carry out your duties, you and your manager will meet to discuss this. Your manager will give you the details of the areas/duties they are concerned about and explain to you what you need to do and how you need to improve your performance. You may not realise that there are any issues with your performance and therefore the meeting gives you both an opportunity to discuss any concerns with your work.

Prior to commencing any corrective action, your manager must ensure the following:

- Your PDPR and Mandatory Training are up to date
- Your objectives have been reviewed and feedback has been provided for any objectives that relate to the area/s of performance you aren't achieving
- You have attended all of the training identified within your PDPR within the agreed timescales which relate to the area/s of performance you aren't achieving
- You have discussed any health issues or concerns that may be affecting your work and where necessary consider any short or long term reasonable adjustments required by the Equality Act. This will be managed through the Attendance Policy
- You have discussed any personal issues you may have that could be impacting on your work, and consider any changes to your working conditions, e.g. through Flexible Working Policy
- Your manager has recently discussed with you their concerns over the area/s of performance where you are not achieving the required standards, so you have had an opportunity to improve your performance.

Should there be any gaps in the above, this must be completed within an agreed timescale before progressing to a formal review see 'Guidance for review timescales and support Action Plan'

If at any stage a serious error occurs due to an issue with your capability, then your manager will meet with you straight away on a formal basis either under this policy and/or the Disciplinary Policy, whichever is appropriate.

Formal Review

If after discussion and review, your manager has reason to believe that your performance is still not at the level required, they will organise to meet with you on a formal basis. This meeting will be held with no unreasonable delay and you will receive reasonable notice to attend. The letter will outline the areas of your performance that remain unsatisfactory and will include any paperwork your manager will be referring to during the meeting. You have the right to be accompanied by an NHSBT employee or representative of a Trade Union you belong to for the formal review, end review meetings.

During any formal meetings your manager may be supported by an internal manager.

At the meeting your manager will discuss with you the continuing issues or concerns, providing specific examples. You will be able to discuss any ongoing concerns you have and explain any personal reasons that might be affecting your performance.

If you feel you are unable to achieve the required standards it is important that you tell your manager. You can then discuss the options available to you.

You and your manager will explore the support that can be offered to help improve your performance and will agree an Action Plan (see Templates) linked to the duties expected of the job, these will include the detailed performance issues, the expected standard, support and/or training required, the period for review and how your performance will be reviewed. See 'Guidance and checklists' for 'Guidance for review timescales and support'. Your manager will confirm the outcome of the Formal Review meeting, including the Action Plan, in writing within 7 calendar days of the meeting.

During the review period your manager will meet with you regularly to check your progress, and keep a record of the discussions which have taken place. It is important that you also keep a record of your Action Plan to follow and update it with your progress so this can be discussed during your regular review meetings.

End of Formal Review

At the end of the formal review period you and your manager will meet to review your progress against the Action Plan. The meeting will confirm whether or not you have fully achieved the standard required. If you have, the formal review period will end. At this point you and your manager should review your PDPR to ensure you have the right level of continuing support to enable you to remain focused, motivated, and clear on the job requirements and your objectives. Both parties need to ensure that your confidence is unaffected and therefore you should both consider continuing to communicate regularly about your performance.

If you have not achieved the expected standard required but you have made significant progress, you and your manager may agree an extension of the review period. As part of this you may both need to agree an updated or revised Action Plan to support you to achieve those areas where you are still not meeting the required standards.

Alternatively, if you have not achieved either of these then you will proceed to a Final Review. Your manager will send a letter to you within 7 calendar days confirming the outcome.

Final Review

If at the end of the formal review stage you have still not achieved the required standards of performance a panel will be arranged to consider the options for your employment, one of which will be to end your employment on the grounds of capability.

This meeting will be held without unreasonable delay and you will receive reasonable notice to attend. This meeting will be chaired by a manager with dismissing authority, supported by a member of Human Resources in an advisory capacity. The manager who has been supporting you through the formal review will present details of the reasons for their decision to refer to a final review, including any supporting documents.

You will have an opportunity to provide details of any issues you have had with achieving the performance standards and/or any mitigating circumstances that you wish to be taken into consideration by the panel. You have the right to be accompanied by an NHSBT employee or representative of a Trade Union you belong to.

The possible outcomes from this meeting will be:

- Dismissal with contractual notice on grounds of capability
- Extension of the formal review period
- Refer you and your manager back to the original considerations at the start of the process to be completed before any corrective action is started
- Remove you from capability review

The outcome of the Final Review meeting will be confirmed in writing by the Chair of the panel to you within 7 calendar days of the meeting. The letter will confirm the reason for their decision, the effective date, and it will also include details of your right to appeal.

Redeployment

Redeployment support will be considered if you have a medical condition covered by the Equality Act or where relevant, if occupational health assess you and recommend that you have a medical condition which would be covered by the Equality Act. Redeployment will be offered during the 'end of formal review' meeting process.

Appeal

If you are not satisfied with the outcome of the Final Review meeting, you can appeal against the outcome and decisions taken by the chair.

- This needs to be in writing (e.g letter, email etc) within 7 calendar days of the date of the letter confirming the outcome, and should be sent to the Appeals secretary
- Within 21 calendar days from the date of the outcome letter, you will be required to provide full details of your grounds for appeal
- This will then be provided to the chair of the Final Review meeting for them to prepare their response to your grounds of appeal, which will be provided to you a minimum of 7 calendar days before the appeal hearing

An appeal panel will be held, again without unreasonable delay. The letter notifying you of the appeal panel will contain or confirm what documents and information have been provided to you and to the appeal panel. The appeal panel will be led by someone more senior than the manager who chaired the Final Review meeting and not previously involved in the process. It will also be supported by a HR representative and a nominated National Senior Staff Side representative.

You and the chair of the Final Review, can separately present information to the appeal panel about the process followed so far. The panel will make a final and binding decision, normally on the same day if this is possible but on occasion may be provided at a later date, without unreasonable delay. You will receive confirmation in writing of the appeal outcome within 7 calendar days of the appeal hearing.

Dealing with Recurring Lapses in Performance

There may be certain circumstances where you have been able to achieve the desired level of performance previously but then you experience further persistent lapses in performance, it may be necessary to refer the matter to the Disciplinary Policy rather than reactivating the formal stages of this policy. This will be to investigate whether the reasons why you are unable to sustain the desired level of performance is due to misconduct.

Pay Progression

As part of the Pay Progression criteria, if you are in the Formal Stage of Capability at the time of the Pay Progression discussion, this will impact on you progressing to the next pay step. Details can be found on People First and in the [NHS Terms and Conditions/Pay Progression](#).

Special Cases

New Joiners

All new employees joining the organisation are subject to a 6 month probation period. The process for this is outlined in the Recruitment and Induction Policy. Should probation not be passed, and your case referred to a panel to consider your future with us, this will be conducted under this Capability policy and process.

Capability issues involving Medical Staff

If you are a medical practitioner, concerns will be dealt with in the first instance by reference to the Managing Concerns about Medical Practitioners Policy (MCaMP). MCaMP takes precedence over this Capability Policy.

Trade Union Representative

If you are a Trade Union representative, then the same policy and process will be followed, however we will discuss or inform the National Officer for NHSBT within the union you represent, prior to moving to the formal review stage.

Professional Bodies

NHSBT has a duty to report serious instances of unsatisfactory performance to the appropriate body. If you are part of a professional body your manager will advise you that they will be reporting the details.

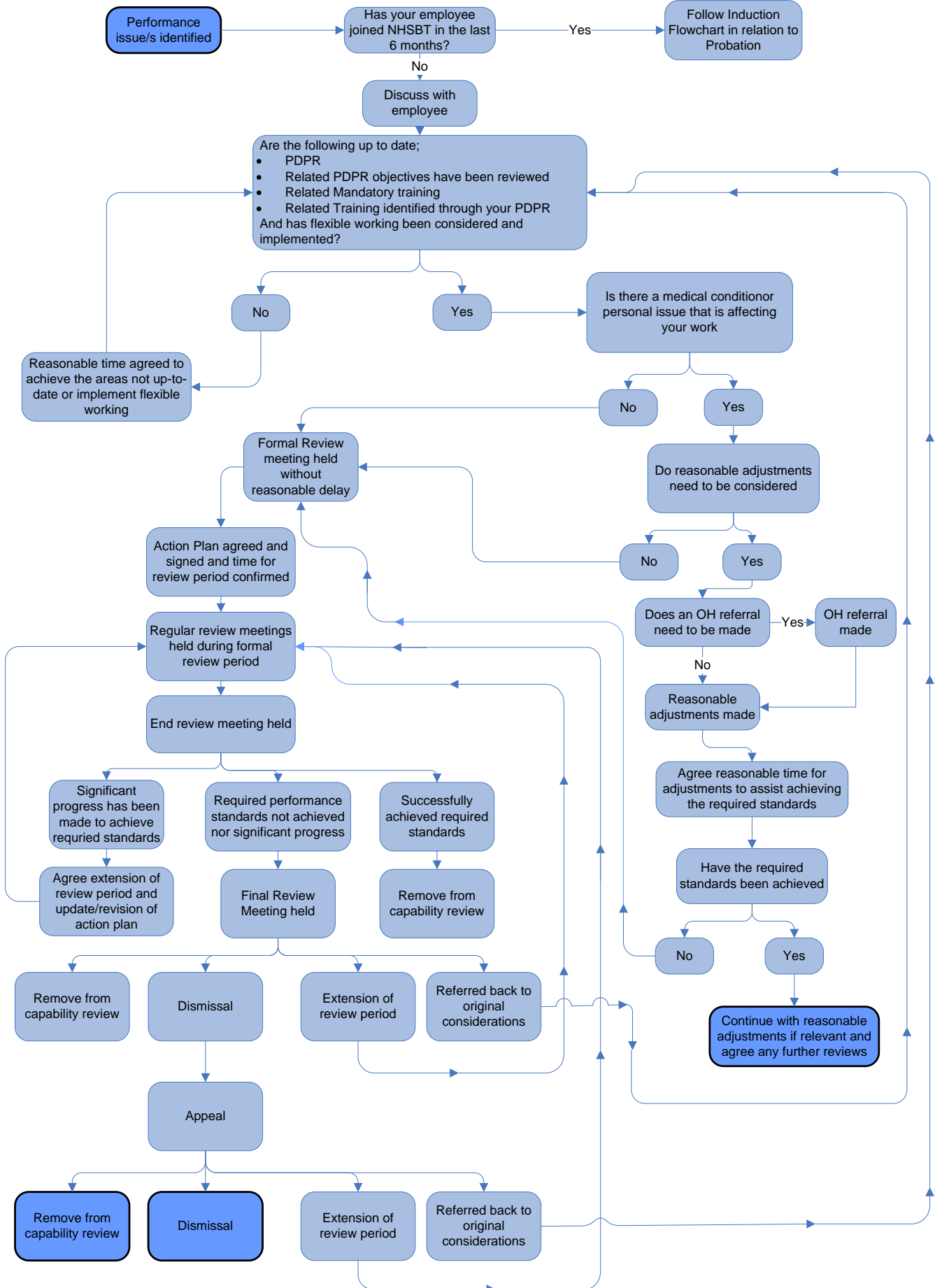
Senior Managers

Some flexibility may need to be given in this case and a higher level manager is either not available or not able to support the capability process or Chair a capability hearing. In these cases a senior manager from outside the function will support the process.

Confidentiality

All conversations, be it informal or formal, meetings, witness statements, investigations etc, must be kept confidential by all parties involved. We appreciate that this can sometimes be difficult when working in a small team or close environment; however, so that the issue raised can be brought to a swift conclusion and everyone feels able to move on, confidentiality must be maintained. Any breaches in confidentiality will be taken seriously.

3. Flowchart



4. Policy Approval and Review

Policy version	UCD/People/Capability/004v2.2
Title	Capability Policy
Approved by SPC	October 2021
EIA completed	22 nd July 2022
Counter Fraud Check	18 th November 2021
This document replaces	UCD/Workforce/Capability/004v2.1
Effective Release Date	July 2022
Review Date	November 2022
Author	Daryl Hall
Filepath	G/HR/HR/Everyone/Policies
Distribution	Available on People First