

Capability Policy

(Not applicable to Medical Staff covered by policy No. 4)

1. Introduction and benefits

The purpose of this policy is to support staff and managers in dealing with problems of poor performance which may arise from time to time. It aims to:

- 1.1. ensure that any concerns about an employee's ability to achieve acceptable standards of work are addressed effectively through a clear and supportive procedure
- 1.2. ensure that supervision, training, counselling and support measures are deployed appropriately to help employees to achieve acceptable standards of work
- 1.3. provide a clear procedure for the termination of employment in cases where it does not prove possible to secure a satisfactory and acceptable level of performance and it would reasonably be expected that this procedure would be conducted within six months.

2. Application of Capability policy

- 2.1. Capability is defined for the purposes of this procedure as all matters related to an employee's skills, aptitudes or competences and their application.
- 2.2. Where poor performance is due to a failure to maintain adequate standards of behaviour rather than a lack of skills or application, it is expected that this behaviour will be dealt with through the Performance and Conduct procedure No. 3.
- 2.3. Where poor performance is linked partly or wholly to a qualifying disability under the Disability Discrimination Act, the requirements of that Act for reasonable adjustments to the workplace or the job will be taken into account.
- 2.4. Where poor performance is linked partly or wholly to medical problems, the Trust's procedures for dealing with absence from work due to ill-health will be used where appropriate (policy No.17).
- 2.5. The Alcohol, Drugs and Substance Misuse Policy is currently under review - relevant aspects will be incorporated into the Capability Procedure, and the Absence Management Policy No. 17 will also refer.

- 2.6. Where an employee commits a single error and the actual or potential consequences of that error are extremely serious, this policy will not normally be appropriate. The Trust's Performance and Conduct Procedure no 3 will normally be invoked in these circumstances.
- 2.7. Employees on probationary periods will be managed in accordance with Probationary Periods policy no 28.

3. Purpose

- 3.1. The Capability Policy and Procedure deals with situations in which the employee is unable to perform his or her job satisfactorily.

4. General Provisions

Setting performance standards:

- 4.1. Employees have a contractual responsibility to achieve an acceptable level of performance at work and will be supported and encouraged to reach that level. Managers are expected to set realistic and achievable standards consistent with the employee's contract. Employees are expected to understand what those standards imply in terms of the quality and quantity of work and the time and costs associated with the expected outputs. Any shortfalls in performance will be discussed promptly with the employee concerned and the causes of the shortfall identified. Consideration should be given to whether it is due to inadequate training, supervision or guidance and if appropriate measures should be taken to provide additional support.

New Employees.

- 4.2. New employees will receive a structured induction to the Trust, their department and to their job. During the first six to nine months of employment, the line manager must hold regular meetings with a new employee to review progress and to identify any weaknesses and development needs. Where performance problems are identified, appropriate measures to address them should be discussed with the employee as quickly as possible.

Personal development and review

- 4.3. The Trust promotes a structured approach to personal review which operates on an annual cycle. New employees will be given appropriate targets and support training on a shorter time scale, such that managers and employees alike can be satisfied that adequate progress is being made towards the expected performance levels.

5. Principles of the capability procedure

Capability Policy and Procedures No 11

Version 6, August 2009. Approved by Workforce Committee , August 2009

Sponsor Sue Donaldson, Director of Human Resources & Organisational Development

Author Jeanette Preston, HR Consultant, Kay Clayton HR Business Partner.

Review August 2010

Approved at Workforce Committee

- 5.1. Problems of poor performance will be dealt with promptly and equitably.
- 5.2. At each point in the procedure, the employee will be given a full explanation of the perceived weaknesses or deficiencies in performance.
- 5.3. An employee has the right to be accompanied by a fellow employee or trade union representative at each stage of the formal procedure.
- 5.4. Documentation relating to the use of this procedure will be treated as confidential and will only be made available to those directly involved and where relevant and requested to registration bodies.
- 5.5. Human Resources will be informed about the progress of any case which reaches the formal procedure and may offer advice and/or guidance in order to maintain consistency and fairness in the application of the procedure.
- 5.6. Throughout the procedure, the work of the employee will be considered in the light of any adjustments that have been agreed by their manager.

6. Responsibilities

- 6.1. Line management is responsible for ensuring that this policy is implemented.
- 6.2. The Director of HR is responsible for implementing, monitoring and updating this policy.
- 6.3. It is each manager's responsibility to operate this procedure objectively, consistently and fairly and to ensure that they and their staff know about the procedure and how to use it.
- 6.4. All employees have a duty to comply with management investigations and failure to provide information when requested to do so may result in disciplinary action being taken.
- 6.5. Human Resources are responsible for guiding and training managers on the operation of this procedure, and advising on the fairness and consistency of any action taken.

7. Steps to Managing Performance

Stage 1 – Informal

Stage 2 – Formal - potential Written Warning

Stage 3 – Formal - potential Final Written Warning

Stage 4 – Formal Hearing - potential Dismissal or downgrading

Appeal

8. Monitoring and Review

8.1. The HR Policy Group will review this policy in one year unless changes in legislation prompt an earlier review.

9. Training and Development

9.1. Training will be provided by the Learning and Development team.

10. Associated Documents and Policies

This policy links to:

Performance & Conduct Policy No. 3

Absence Management Policy No. 17

Probationary Periods Policy No. 28

Capability Procedure

11. Dealing informally with issues of capability – Stage 1

The manager will:

- 11.1. let the employee know the nature of the perceived problems and the date and time of a meeting to discuss how they should be addressed.
- 11.2. at that meeting, explain why the expected standards of performance do not appear to have been met, and identify occasions when deficiencies have occurred.
- 11.3. endeavour to establish the reasons for the unsatisfactory level of performance, taking account of all the factors which might have had an effect on the employee's performance, including the volume of work, the available resources, training, personal matters, ill health and changes in management or working practices.
- 11.4. the employee's views and perception of all the matters involved should be taken fully into account, and any additional or alternative evidence considered in good faith.
- 11.5. seek to establish an agreed programme to address the problems, which may involve additional supervisory support, further training, additional resources, organisational changes, changes to workload, or where a personal issue is identified, counselling. A clear monitoring and feedback review procedure must also be agreed.
- 11.6. caution that failure to improve performance will result in a formal Stage 2 meeting.
- 11.7. Before agreeing a programme of action, the employee may wish to consult with a trade union representative or colleague.
- 11.8. The manager and the employee may agree mutually to involve others in reaching an agreement on a programme of action.
- 11.9. A programme of remedial action should set targets and dates for meeting objectives a competent holder of the post could reasonably be expected to meet.
- 11.10. For most issues, targets of one week to four weeks duration will be the norm. Longer-term targets may need to be set in exceptional circumstances.

-
- 11.11 risk assessment will be undertaken regarding the potential implications of reduced capability, the complexity of the job and the improvements required. Assessment of risk to patients, potential breach of Health and Safety regulations, impact on staff and impact on finances will be undertaken and the timescale for improvements will be prescribed.
- 11.12 the consequences of not meeting the required standards within these time-scales should be outlined.
- 11.13 Specify when monitoring meetings will be held and how standards will be re-assessed. Appendix 1
- 11.14 The programme will normally be a written document, a copy of which is to be retained by the manager and the employee.
- 11.15 Where a trade union representative has been involved, they will also receive a copy of the programme.
- 11.16 If agreement cannot be reached, the manager should consult with HR. The manager may then impose a programme of action or refer the matter immediately to the formal stages of the procedure. The employee may have recourse to the grievance procedure if they consider the programme to be unacceptable.
- 11.17 If the necessary improvement in performance is achieved within the set time-scale, no further action will be necessary.
- 11.18 However, if there is a subsequent recurrence of similar problems within one year of the end of action under this procedure, action may be resumed at an appropriate point of the procedure as determined by the manager.
- 11.19 If performance continues to be unsatisfactory, the manager should initiate the formal procedure set out below,

12 Formal capability procedure

Formal capability review-Stage 2

- 12.1 The manager will inform the employee in writing as to the aspects of their performance that are considered to be unsatisfactory, and will arrange a meeting to discuss how they should be addressed. At least five working days notice of the meeting should be given, and the employee may be accompanied by a colleague, or trade union representative.
- 12.2 At the meeting, the manager will:

- remind the employee that this is a formal step in the Trust's capability procedure
 - indicate how the expected performance standards are not being met
 - endeavour through discussion to establish the causes for the continued unsatisfactory performance
 - invite the employee to put forward evidence and explanation in their support
- 12.3 The only evidence admissible under the Capability Procedure is evidence from an identified individual regarding matters of which they have first-hand experience. Hearsay evidence is not acceptable, whatever its source. It is expected that individuals who have provided evidence will normally be available to answer questions.
- 12.4 Action against a trade union representative can lead to a dispute if it is seen as an attack on the trade union's functions. Therefore no action will be taken against a trade union officer/representative until the circumstances of the case have been discussed with a full-time officer of the union or senior trade representative.
- 13 Following the meeting, if the manager is satisfied that there are grounds for seeking to secure improvements in performance; he/she will formally notify the employee covering the following points:
- 13.1 The areas in which performance has been deficient;
- 13.2 Specific individual targets or standards that a competent holder of the post could reasonably be expected to meet and the dates by which they should be achieved;
- 13.3 Monitoring and review arrangements;
- 13.4 Any changes in working arrangements and practices designed to support the achievement of the required standard of performance
- 13.5 Any further training or personal development measures that will be undertaken, including counselling or advice from an external source.
- 13.6 Issue a written warning and explain that failure to improve performance will result in a Stage 3 procedure.
- 13.7 The option of a transfer to another post, if available, may be considered at the meeting where this might offer an effective means of securing an appropriate level of performance and/or contribution from the employee concerned. This may be at a lower band post and will not attract pay protection. In these circumstances the employee should

seek advice on pension implications where applicable. The details of the discussion of this option which is implemented via mutual agreement and any outcome should be covered in the letter including any performance management plan which may accompany the transfer.

- 14 Subsequent performance will be monitored as set out in the letter, and periodically reviewed in meetings between the employee and the manager. The manager will keep notes of these meetings detailing the assessment of progress and any further agreed actions. A copy of these notes will be forwarded to the employee, their representative and HR.
- 15 If performance improves within the agreed time-scale, no further action is necessary and all copies of the documentation should be sent to the HR Consultant for retention on the employee's personnel file for 12 months. At the end of this period it will be removed.

Formal Capability Review – Stage 3

- 16 If performance remains unsatisfactory a full and thorough review of the continuing poor work performance will take place and the measures described at Stage 2 are repeated.
- 17 Where the employee fails to meet the objectives set a final written warning may be issued and the employee advised that failure to improve may result in a Capability hearing and possible redeployment to an alternative post, downgrading or termination of employment.
- 18 A clear action plan identifying the improvements required, targets and timescales must be specified in writing.

Final Formal capability review-Stage 4

Capability Hearing

19. If an employee fails to meet the objectives set in the final warning stage the manager should write to the employee and give five working days notice of a Hearing and include the names of the panel hearing the case and that of any witnesses.
20. The letter of notification will identify the areas in which the manager considers that performance continues to fall short of the expected standards and the supporting evidence and advise of the possible outcomes from the Hearing including compulsory transfer to another post and dismissal.

-
21. The employee should be reminded of their entitlement to be accompanied by a trade union representative or colleague and to call witnesses in support of his or her case.
 22. If an employee is absent from work due to sickness at the time of the hearing, advice will be sought from the Occupational Health Department as to fitness to attend a formal hearing. If appropriate, such advice will be sought at regular intervals to determine when the employee may be fit to attend a hearing. If the employee is not deemed fit to attend a hearing within a reasonable time frame e.g. 10 working days then they may be invited to provide written submissions and the hearing will proceed in their absence.
 23. The purpose of the Hearing
 - 23.1. Take evidence from the manager and the employee concerning the deficiencies in performance and the steps that have been taken to secure improvements.
 - 23.2. Review the outcomes of any training that has been undertaken to secure an improvement in performance.
 - 23.3. Review the written documentation from the Stages 1 – 3.
 - 23.4. Call for any other evidence which they feel is necessary to establish whether the employee is failing to meet the reasonable expectations of performance for the post.
 - 23.5. If the failure to meet the expectations of the post may have been influenced by illness or disability the Panel will consider whether all appropriate adjustments have been made.
 - 23.6. The employee and the manager may call witnesses and the panel, the manager and the employee may all ask questions of these witnesses. See Appendix 2 & 3.

Panel Membership.

24. The composition of the panel is described at Appendix 2.

The outcomes of the Hearing.

25. The panel may take one or more of the following courses of action, according to the circumstances of the case:
 - 25.1. Take no further action
 - 25.2. In consultation with the manager they may set further performance targets appropriate to the post and to the deficiencies that have been

identified, setting a time period in which the improvement in performance is required. This will normally be between one week and three months.

- 25.3. Recommend changes to the working practices, working arrangements and patterns of work for either the individual employee, and/or the department in which he/she is employed. Detail support and training provisions that are available to the employee concerned
- 25.4. Recommend consideration of the scope for redeployment to a post elsewhere in the Trust that would be appropriate to the skills and capabilities of the employee. Redeployment could be to a post at a lower salary and on different terms and conditions of service (downgrading). Where a recommendation for redeployment is made, the period during which the case should be considered will be set and ought not to exceed eight weeks.
- 25.5. Dismiss in cases where redeployment is not a realistic option
- 25.6. The written decision of the panel will be provided to the employee, representative and to the manager, within five working days of the hearing.

Appeals

26. Employees should be advised of their right of Appeal and must do so within 10 working days of receiving written notification of the outcome of the hearing.
 - 26.1. Staff may appeal against an outcome awarded at Stage 2 to Stage 4 of the Capability procedure.
 - 26.2. At Stage 2-3 an appeal against outcome, the appeal should be made in writing to the line manager. At Stage 4 Capability Hearing outcome, the appeal should be made in writing to the Chair person of the Panel. In either case, appeal should be registered within 10 working days of receiving written notification of the outcome. The letter of appeal should also state the grounds for appeal.
 - 26.3. In the case of an appeal against all actions at Stage 2-3, (excluding dismissal) a manager senior to the one who made the original decision will hear the appeal. On occasions where this is not possible, alternative arrangements will be agreed with the employee and their representative
 - 26.4. Where an employee is appealing at Stage 4 against a dismissal, the appeal will be heard by a panel. Appendix 4

-
- 26.5. Where the dismissing officer at the Stage 4 hearing was the Chief Executive, two of the Trust Board Directors on the appeals panel shall be Non-Executive Directors
- 26.6. A Human Resources representative who has not been involved in the case previously will be nominated as secretary to the appeal panel.
- 26.7. The purpose of an appeal is to consider whether the decision was fair and reasonable in the light of the evidence.
- 26.8. An appeal hearing will not usually involve a repeat of the details that led to the action being taken but will focus on factors connected with the decision, such as:
- 26.9. Procedural correctness
- 26.10. Review of the conclusion in the light of the evidence on which the decision was made
- 26.11. Whether the penalty was appropriate to the circumstances
- 26.12. Extenuating circumstances
27. New evidence which has a substantial bearing on the case
- 27.1. Appeals against action other than dismissal should be heard, if possible, within four weeks of the appeal being lodged and appeals against dismissal should normally be heard within six weeks.
- 27.2. The line manager or in the case of a capability hearing the Chair of the panel who made the original decision should prepare a statement setting out the details of the case, appended to which should be any written statements from witnesses, and a list of witnesses that the manager intends to call to the appeal hearing. The employee appealing or his/her representative should in addition to indicating the grounds for appeal, make a written statement. This together with a list of any witnesses that they may wish to call, should be submitted to the appeal secretary in time for them to be circulated to the Appeals Panel. It is for each side to arrange for the presence of their witnesses.
- 27.3. Statements will be submitted by both sides in advance of the hearing, copies will be exchanged 5 working days in advance of the hearing.
- 27.4. An employee has the right to appeal against the formal warnings relating to capability to a senior manager. In the case of appeals against a First/Final Warning this should be made to the supervisor of the manager who issued the original warning. In the case of an Appeal against Dismissal, the employee must register appeal in writing. The appeal will be heard by a panel of three which will include Executive

Directors/Non-Executive Trust Board members who have no previous knowledge of events and supported by an HR representative. The Appeal panel may confirm the decision made previously or substitute an alternative decision.

Appendix 1

Employee's Name:	Employee's Job Title:
Department:	Manager:

Detail areas of performance to be improved: be specific, dates, examples

Detail level of performance expected: be specific, dates, examples

Specify any additional support, training or development agreed to improve performance:	
Review meeting arranged for:	
Employee's signature:	Date:
Manager's signature:	Date:

Office useCopies to be given to: HR Employee

Appendix 2

The Conduct of the Hearing (suggested framework)

1. The following should be present throughout the hearing:-
 - The Chair person
 - The employee's line manager will present the case.
 - The employee
 - The employee's representative or work colleague
 - A Human Resources representative appointed to advise the Chair person on the process.
 - If the matter is related to a professional issue another manager, with relevant experience, should also be present to advise the Chair person.
 - For staff directly accountable to the Chief Executive, a non- Executive Director should also be appointed to be present at the hearing.
2. It is the responsibility of the Chair person to:-
 - Ensure that that all the relevant facts available pertaining to the case has been obtained
 - Ensure that the hearing is conducted fairly
 - Consider new evidence if necessary
 - Decide what action, if any, is reasonable based on the facts and evidence presented
 - Ensure that accurate notes of the hearing are taken.
 - Witnesses may be asked to attend the hearing and may be questioned about their statement. However, there may be situations where this may not be deemed necessary or appropriate for example where the evidence of the witness is uncontested. In such situations the manager will seek to agree the position with the employee or the employee's representative in advance and the witnesses may not be required to attend.
3. If witnesses are to be called to give evidence, they should only be present at the hearing during the time that they are actually giving evidence. Witnesses may be re-called if required.

4. The line manager will present his/her case. Witnesses in support of the management case may then be called. Each witness:
 - Will be questioned by the manager
 - Can be cross-examined by the employee or his/her representative
 - Can be questioned again by the line manager presenting the case on any point that has been raised during the questioning
 - The Chair person may ask questions at any time during the proceedings.
5. The employee or his/her representative will present their case, and may be questioned by the line manager. Witnesses in support of the employee case will then be called. Each witness will be questioned as set out above in paragraphs.
6. The line manager will be given the opportunity to summarise their case followed by the employee or his/her representative.
7. A request for an adjournment may be made at any time. This is particularly relevant where new facts emerge requiring further investigation.
8. After both parties have summarised their cases an adjournment will then be made to consider the facts.

Appendix 3

The Trust views a decision to dismiss as being exceptional. Therefore the authority to take such an action is limited to the following;

The Chief Executive

The Chief Operating Officer

The Director of Human Resources.

The Director of Nursing and Clinical Leadership

The Director of Planning and Information

The Director of the Horton Hospital

The Medical Director

Capability Policy and Procedures No 11

Version 6, August 2009. Approved by Workforce Committee , August 2009

Sponsor Sue Donaldson, Director of Human Resources & Organisational Development

Author Jeanette Preston, HR Consultant, Kay Clayton HR Business Partner.

Review August 2010

Approved at Workforce Committee

The Director of Finance and Procurement

The Director of Estates and Facilities

A Director of Operations

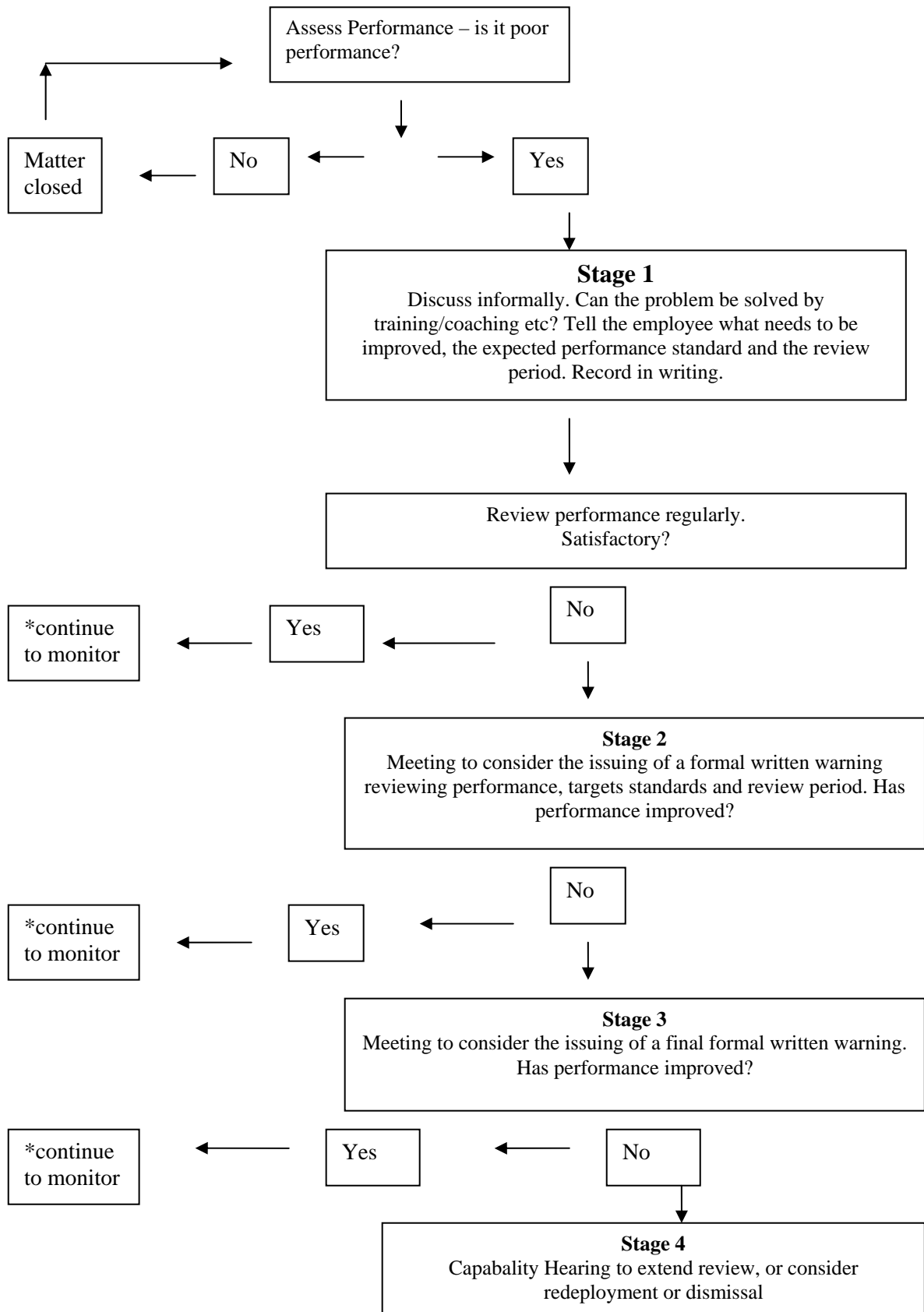
If as a result of a dismissing officer not being available to attend a hearing, the Director may ask an Assistant Director/Directorate Manager to Chair the hearing. Should this manager decide that dismissal is the appropriate action, this decision must be ratified by the Director before action to dismiss is taken.

Appendix 4

The Appeal Hearing

1. The following should be present throughout the appeal hearing:
 - The Appeal Panel
 - The line manager or in the case of an appeal against Stage 4 the Chair person of the panel who made the original decision
 - The employee appealing (and representative if applicable)
 - The appeal secretary – a member of Human Resources.
 - If witnesses are to be called to give evidence at the appeal, they should only be present at the hearing during the time that they are actually giving evidence. Witnesses may be re-called if required.
2. The employee appealing or his/her representative will be given full opportunity to state the grounds on which the appeal is made.
3. The line manager or in the case of an appeal against Stage 4 the Chair person who took the decision will explain his or her decision. They may then be questioned by the employee appealing or his/her representative. Witnesses in support of the management case may then be called.
4. Each witness:-
 - May be cross-examined by the employee appealing or his/her representative
 - May be re-examined by the manager presenting the management case on any point that has been raised during the cross examination

-
- The appeals panel may ask questions at the appropriate juncture.
5. The employee appealing or his/her representative will present their case, and may be questioned by the manager presenting the management case. Witnesses in support of the appeal case will then be called. Each witness will be questioned as set out above in Appendix 2.
 6. The line manager or (in the case of an appeal against Stage 4) the manager presenting the management case will have the opportunity to sum up, during which no matter that has not been considered earlier in the hearing may be introduced.
 7. The employee appealing or his/her representative will have the opportunity to sum up, during which no matter that has not been considered earlier in the hearing may be introduced.
 8. The appeals panel having heard all the evidence will adjourn the hearing. The appeals panel will consider the merits of the appeal, in private, before reaching a decision.
 9. The employee appealing should be informed about the decision and the reasons for it, as soon as possible. The employee should also receive written confirmation of the decision in writing within 10 working days. The letter should also make clear that the decision is the final stage of the Trust's procedure.



All review periods must be confirmed with the member of staff.

* Should employees performance fall below a satisfactory level at a future date with twelve months of review, re entry into the Capability Procedure at appropriate stage will be initiated dependent on previous action, stage reached and timescale.