



SURREY

Performance Capability Procedure

March 2019

Purpose

The Performance Capability Policy and Procedure should be used when an employee has failed to make the necessary performance improvements within the timescales agreed within the [Performance Improvement Plan \(PIP\)](#).

Has a Performance Improvement Plan (PIP) been completed during normal performance conversations/supervision?

Yes continue to read on

No Refer to the guidance on Performance Improvement Plans

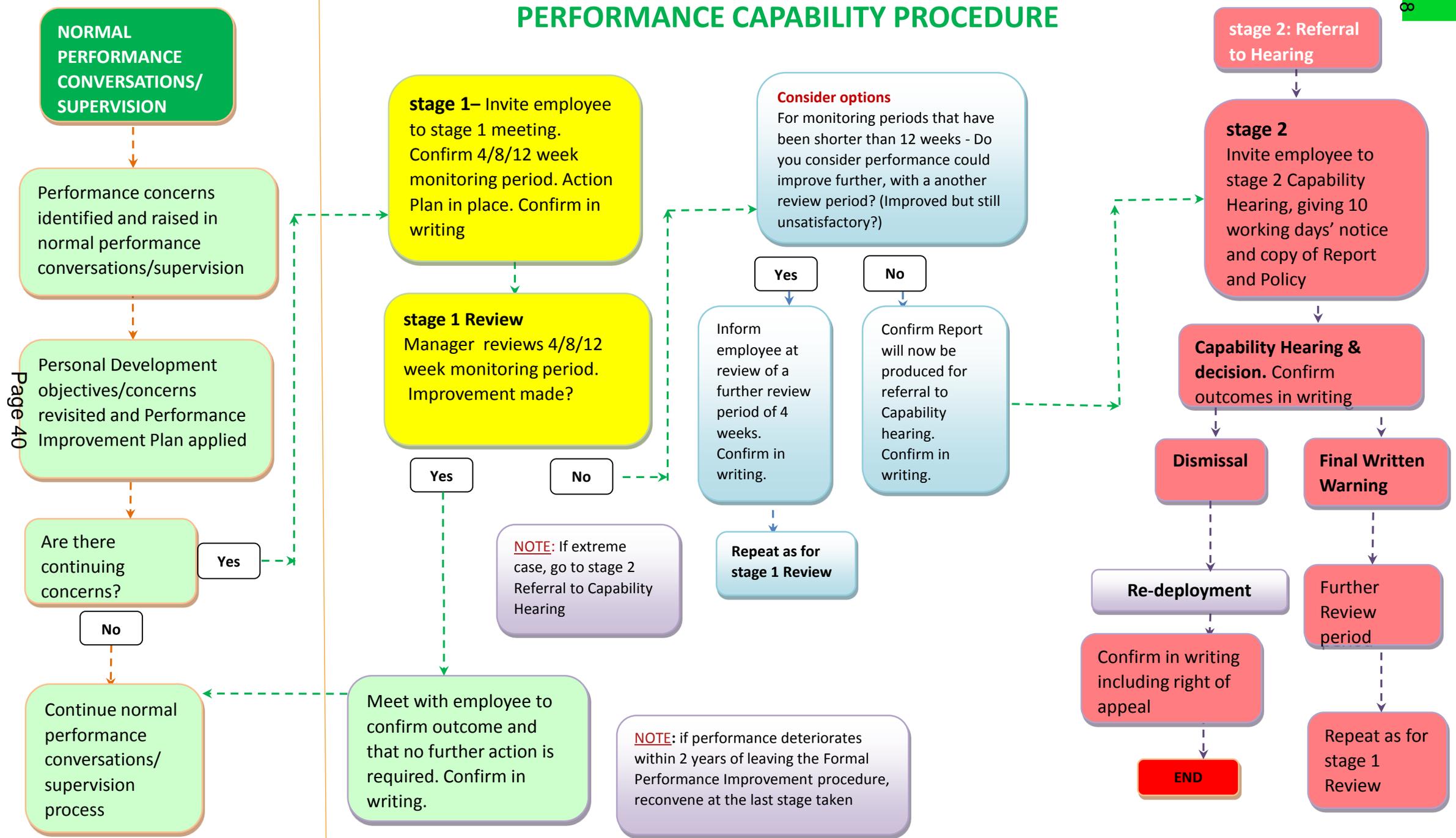
Performance is how we approach work and relationships, individually and collectively, to deliver the right outcomes. Our performance conversations have this at the heart of its design.

It is expected that a manager will seek to resolve concerns regarding performance capability, as part of the normal performance conversations/supervision process. Managers should not unreasonably refuse a request from the employee to be accompanied by a trade union representative or work colleague for such a meeting.

Normal performance conversations and supervision are designed to encourage open communication between employees and their managers, and to allow concerns to be addressed through supportive measures such as a performance improvement plan (PIP), with both parties working together to achieve this. Guidance on supporting the employees through **this** process can be found in the [Performance Improvement Plan Guide](#).

The [Performance Improvement Plan \(PIP\)](#) should be applied in the first instance, prior to progressing through the formal stages of this procedure to enable support during normal performance/supervision conversations to be exhausted.

PERFORMANCE CAPABILITY PROCEDURE



Stage 1 Meeting (formal right to be accompanied by a trade union representative or colleague)

Stages	Purpose	Outcomes when further action is required	Important considerations for Managers
Stage 1 Performance Capability meeting (Includes review of PIP)	<ul style="list-style-type: none"> To advise the employee whose performance has not improved following the Performance Improvement Plan (PIP) that the Performance Capability Policy and Procedure will now be applied. For the line manager to review the PIP and state concerns. Advise employee that a 4, 8 or 12 week performance improvement plan will be applied. Managers will inform employees that failure to reach appropriate standards may ultimately result in dismissal. The manager will prepare a progress report at the end of the review period and a stage 1 review meeting will then be held to discuss this report. Enable employee to raise any points they wish to be considered. 	<ul style="list-style-type: none"> A performance action plan designed to bring the employee's performance up to an acceptable level. This should be linked to the employee's Performance Improvement Plan. Confirm dates of the 4, 8 or 12 week performance monitoring period. Employee is advised that a failure to improve their performance by the end of the agreed timescale could lead to Stage 2. 	<ul style="list-style-type: none"> Managers are required to contact HR prior to the commencement of this stage.

Stage 1 – Review Meeting/start of Stage 2 (formal right to be accompanied by a trade union representative or colleague)

Stages	Purpose	Outcomes when further action is required	Other information
<p>stage 1 Review meeting/ start of stage 2</p> <p>Page 42</p>	<ul style="list-style-type: none"> To review the last 4, 8, or 12 week monitoring period (which began following the stage 1 meeting), and assess the level of improvement made and to determine the appropriate outcome, which may result in a referral to a Performance Capability hearing. <p>The manager will either:</p> <ul style="list-style-type: none"> Acknowledge that sufficient improvements have been made and confirm a return to normal performance conversations/ supervision; <p>OR</p> <ul style="list-style-type: none"> Confirm that there has been insufficient improvement in their performance and advise the employee that their case will proceed to stage 2 of the performance capability procedure; referral to the Performance Capability Hearing. <p>OR</p> <ul style="list-style-type: none"> Confirm, for cases where the hearing outcome has been deferred following an additional review, that the employee will be invited to attend a reconvened hearing for a final outcome. 	<p>The manager meets with the employee to confirm the outcome which is either:</p> <ul style="list-style-type: none"> That satisfactory performance improvement has been achieved therefore no further action will be taken and the normal performance management process will continue to be followed i.e. normal performance conversations/ supervision. This means stage 1 of the performance capability procedure has ended. (Confirm this in writing); <p>OR</p> <ul style="list-style-type: none"> If the employee’s performance does not improve to the required standard, as set out in the Performance Action Plan (PAF) for stage 1, inform the employee that they will be required to attend a formal Capability Hearing at stage 2 which could result in dismissal. <ul style="list-style-type: none"> The manager is required to produce a management report to make a case for a referral to a Performance Capability hearing. This should include a summary of the employee’s performance progress to date and any related papers (such as the action/improvement plans) 	<ul style="list-style-type: none"> In exceptional circumstances, the review meeting may take place before the agreed end of the review period. For those whose performance is considered sufficient at this stage, failure to maintain an acceptable level of performance within a 24 month period may result in the manager, returning immediately to this stage of the procedure. Employees whose hearing outcome has been deferred will still be expected to attend a hearing for a final outcome regardless of the review period outcome. For extenuating circumstances, where there has been some improvement, advise the employee that an exceptional further 4 week review period is recommended as part of stage 1 Employee informed that a potential outcome of stage 2 is dismissal

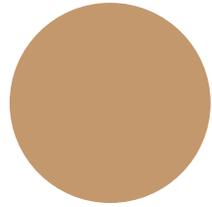
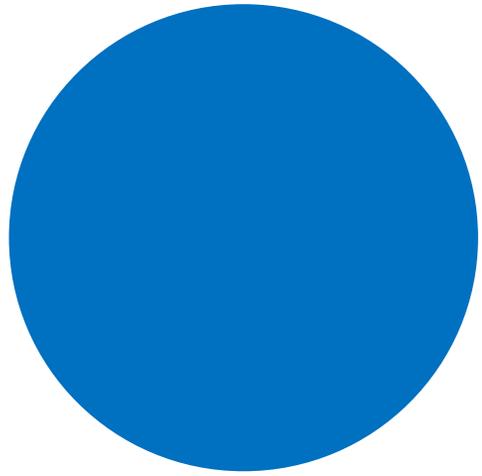
Stage 2 – Performance Capability Hearing (formal right to be accompanied by a trade union representative or colleague)

Stages	Purpose	Outcomes when further action is required	Other information
<p>Stage 2</p> <p>Performance Capability Hearing</p>	<p>Following the recommendation and completion of a Capability Stage 2 hearing report, a hearing, chaired by a senior manager, will be arranged and convened to hear the case put forward.</p>	<p>The possible outcomes of the Hearing are:</p> <p>Where the Chair decides that the level of performance is such that the employee can no longer fulfil the requirements of the job they can either :</p> <ul style="list-style-type: none"> • dismiss the employee from the current role but seek to find suitable alternative work during the notice period. This will only apply in extenuating circumstances e.g. promoted beyond capability but performed exceptionally in previous role; <p>or</p> <ul style="list-style-type: none"> • dismiss the employee without recourse to seeking alternative employment. <p>Any dismissal will be with notice or with payment in lieu of notice.</p> <p>b. Where the Chair decides that the level of performance does not warrant dismissal, they can issue a warning and refer the employee for a final performance review period (of between 4 to 12 weeks).</p>	<ul style="list-style-type: none"> • Typically chaired by a manager senior to the employee’s manager. • Employee informed before the meeting that one of the potential outcomes could be dismissal/termination of contract of employment. • Redeployment should only be considered where there has not been a sustained improvement in performance in the current role but the employee may be able to perform other roles within the council. • If the decision is to allow further time for improvement, the meeting may be reconvened on one further occasion following completion of a further review period with a progress report following the same process for stage 1.

Appeal

Employees have the right of appeal following an outcome at stage 2.

- If an employee wishes to exercise their right of appeal, they must do so by lodging a notice stating the grounds of the appeal within 10 working days of being notified of a decision.
- The appeal will be heard by a senior manager, appointed by the Director, who has not previously been involved in the proceedings. The Director will chair any appeal against dismissal. The decision of the chair is final.
- A decision will normally be given verbally and confirmed in writing within five working days of the appeal hearing.



Other helpful bits

This next page has useful stuff



Appendices

- Appendix A – Summary Checklist
- Appendix B - Formal Performance Improvement Plan **and guidance**
- Appendix C – First Written Warning letter template
- Appendix D – Final Written Warning letter template
- Appendix E – Invite to formal hearing
- Appendix F - Action short of dismissal/demotion/redeployment letter template
- Appendix G – Dismissal letter template
- Appendix H – Performance Capability FAQs
- Appendix I – **Performance Action Plan (PAF)**