

Policy:

HR 025 Capability

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Summary of Policy

This Policy is based on good practice and complies with ACAS and other guidelines.

May/June 2019 – The amendments that have been made to this version of the policy are summarised at Appendix A, page 22 (amendment log).

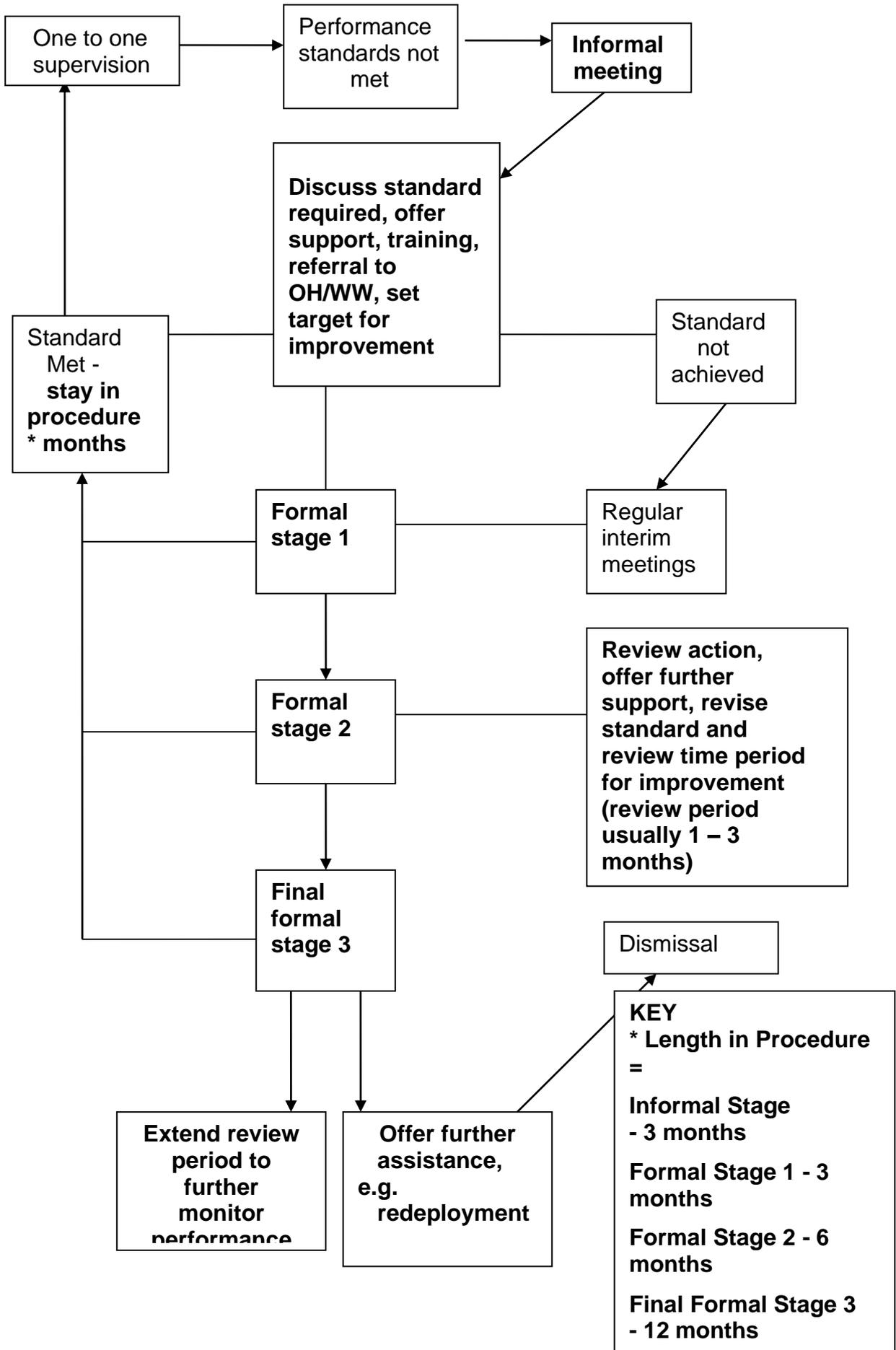
Storage

This is version 4.0 of this policy and is stored and available through the SHSC intranet/internet. This version replaces version 3.0, which was ratified in September 2016 and issued November 2016. Any copies of version 3.0 held separately should be destroyed and replaced with this version.

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Flowchart



1. Introduction

The Trust is committed to supporting and developing its employees in a fair and equitable manner to ensure that they are able to fulfil their roles and responsibilities to a high standard of competence.

Through the Trust's recruitment procedures, every effort is made to ensure that new employees have the appropriate skills and abilities, or a clear, demonstrated potential to achieve these, for the roles to which they are recruited. At the start of employment with the Trust, on promotion or redeployment, employees should be clearly informed of their responsibilities and the standards of work performance required which are relevant to their post.

Where these standards are not met, employees will be offered support, encouragement, guidance and, if necessary, (re)training with effective, regular and constructive feedback relating to their work performance. Managers are responsible for ensuring that performance issues are addressed promptly and fairly.

Although this Policy sets out the process and procedures to follow in cases of incapability and performance issues, each case would need to be considered individually and the approach determined to reflect those needs.

2. Scope

This Policy applies to all employees of the Trust and promotes a fair and consistent approach in accordance with the Trust's Equal Opportunities Policy. In cases of incapability due to ill health, referral should be made to the Trust's Promoting Attendance and Managing Sickness Absence Policy.

3. Definitions

The Employment Relations Act 1996 states that 'capability (is) assessed by reference to skill, aptitude, health or any other physical or mental quality'. It also indicates that 'incapability must relate to the work or the kind of work that the employee was employed by the employer to do'.

4. Purpose

The Capability Policy provides a framework for dealing with cases where employees fail to achieve the performance standards expected of them. The primary objective must be to assist and support the employee to improve to the required standard and every effort must be made to keep the employee at work.

This Policy is designed to deal with those cases where the employee is lacking in some area of knowledge, skill or ability, resulting in a failure to be able to carry out their required duties and responsibilities to an acceptable standard. It is to be used where there is a genuine lack of capability, rather than a deliberate failure on the part of the employee to perform to the standards of which they are capable. Where there is a deliberate failure by the employee, the Trust's Disciplinary Policy will be followed. If during the capability process it becomes apparent that the concerns in question would be more appropriately address under a different policy (e.g. disciplinary) this should be discussed with HR and agreed with the next line manager.

5. Duties

Managers

It is important that managers set out the required standards of performance as part of the workplace induction process and fully explain the duties and responsibilities in the employee's job description.

Line managers will ensure (for employees they manage):

- the employee receives an effective corporate induction into the Trust
- employees have the training and support necessary for them to satisfactorily carry out the requirements of their job and receive appropriate advice, guidance and on-going supervision
- that the work content is appropriate to the banding of the job and that the volume of work is reasonable taking into account the employees contracted hours
- that the expectation of work performance is realistic and the employee has the resources available to allow them to fulfil their job role effectively
- they hold regular (4- 6weekly) management supervision (and where appropriate clinical supervision)
- They conduct yearly Performance Development Plans (PDR's) to ensure that employees have clear agreed objectives
- Objectives are set which are SMART (specific, measurable, achievable, relevant and time-bound)
- Any concerns about the employees work performance are raised in a confidential, supportive and timely manner.
- Where an employee has informed their line manager of any change to their personal circumstances or health that may impact on their performance, the manager works with the employee to ascertain whether any workplace adjustments in line with the Equality Act 2010 need to be made to support the employee in maintaining their performance standards
- promote the value of one to one supervision and team meetings, as appropriate
- ensure awareness of this policy and procedure
- implement this policy fairly consistently and supportively
- advocate, wherever possible, an 'open door' policy

Employees

Employees are contractually obliged and have a responsibility to perform to a satisfactory level.

Employees will:

- meet their contractual obligations
- attend and participate fully in all meetings associated with their capability
- contribute to the development of a relevant Improvement Plan in order to support and improve their performance, requesting clarification if any aspect is unclear.
- raise any work related concerns they have with their line manager, if they are unsure of a particular aspect of their role and/or have concerns about a particular task
- make their line manager aware of any change in their personal circumstances or their health that may impact on their performance so that the necessary support

- can be put in place to help maintain their performance to the required standard.
- engage fully with all aspects of performance management including supervision and Personal Development Plans
- employees who hold professional registration must maintain the level of knowledge and standard of performance required by their code of practice

Human Resources

The Human Resources Department provides support and guidance to managers and employees on the interpretation and application of this Policy.

Human Resources will:

- ensure a fair and equitable process in line with the policy
- provide advice at formal capability meetings and review and advise on any associated correspondence
- ensure the application of the policy does not unlawfully discriminate on the grounds of any protected characteristic under the Equality Act 2010.

Staff Side Representatives

Trade union representatives can be another form of support for employees who are members of a recognised trade union.

Staff Side Representatives will:

- work in partnership with Managers and the Human Resources Department to ensure that employees are treated fairly and consistently within the framework of this Policy represent members in the workplace at the appropriate stages of this Policy

Support

The Trust recognises that being the subject of an informal or formal capability process may be difficult for staff and there are services available which staff are able to access. The Support for Staff page can be accessed via the Health and Wellbeing widget on the Trust's intranet home page. This page provides advice and information to staff as well as signposting to services, groups and networks which are available to support staff with their health and wellbeing.

Workplace Wellbeing Service is a confidential, self-referral counselling service for all employees to discuss concerns related to work or personal circumstances.

The Sheffield Improving Access to Psychological Therapies (IAPT) service offers a range of free psychological therapies to help develop skills to overcome stress, anxiety and depression

Where an employee's underperformance is potentially linked to their health or a disability the line manager should work with the employee to explore Occupational Health support, reasonable adjustments in line with the Equality Act 2010 and where appropriate support from Access to Work.

External support may be identified by the Trust, from time to time, for any part of this policy and procedure. The nature of such support will be identified separately and as appropriate.

Redeployment

If all suitable training, guidance and all forms of reasonable assistance have been put in place and the employee is still unable to perform to the standard required then redeployment may be explored as an option. It would usually be expected that redeployment would be explored within the formal stages of the process to allow sufficient time for improvement, support and adjustments to be put in place. However, if it is clear from an earlier stage that the job role is unsuitable and it is unlikely that, even with support / adjustments, training and development, the employee is unlikely to improve to the required standard then redeployment can be considered at an earlier stage.

Please refer to the Redeployment Policy for more information on the redeployment process.

6. Process

A flowchart of the informal and formal process is shown at page 3. At any time or stage of the Capability Policy, it is advisable to contact Human Resources.

From the Formal Stage¹, level onwards Human Resources should be consulted and/or involved.

The reasons for poor performance should be explored fully to determine the most appropriate procedure, e.g. there may be personal circumstances which are impacting on an individual's performance. A genuine lack of capability, therefore, may come about for a variety of reasons, including:

- lack of aptitude, skill or experience
- inappropriate recruitment, induction or training
- lack of facilities crucial to performance
- changes in the nature/allocation of work, e.g. too heavy workload
- personal/family problems
- reorganisation of structure, role or responsibilities
- poor attendance at work related to genuine ill health

Wherever possible, managers should seek to address any shortcoming(s) or minor performance issues as they occur and without the need to implement this Policy, use of negative criticism and non-specific concerns must be avoided when discussing any shortcomings.

Where the problems are more serious, repetitive or frequent, a more structured support approach should be discussed and agreed, including opportunities for improvement and a series of informal meetings. However, if there is no improvement over a specified period of time, the formal stage of this Policy should be invoked.

The Capability Policy does not apply to situations covered by other Trust policies such as the Promoting Attendance and Managing Sickness Absence and Disciplinary policies.

Timescale

Employees will be made aware of the shortfall in their performance standards and provided with assistance to improve through an initial process of standard setting that will include agreeing an Improvement Plan and reviewing progress against this plan. The improvement plan should be based on SMART objectives. SMART objectives are designed to help managers set objectives in an effective and productive manner. Specific and measurable objectives clearly define what exactly what needs to be achieved (Specific) and you can tell when it has been achieved (measurable) because you have a way to measure completion. Achievable and realistic objectives engage and motivate individuals. Time-bound objectives ensure that time scales for the achievement of objectives are agreed.

In all the stages of this policy, there is reference made to review meetings which are held to evaluate whether the required level of improvement has been made in the employee's performance. There is no specific time period relating to when a review should take place although it is recommended this should normally be between 1 and 3 months. In each case a manager (in conjunction with HR) should decide what is appropriate taking into account the timeframe guidelines provided in this policy, what support is being offered and what is the required improvement. Where possible the review timeframe should be discussed and agreed with the employee, although ultimately this should be determined by the manager.

The employee should be advised at each stage of the process the consequence of not meeting the required improvements outlined in the Improvement Plan and that that they may be moved through the stages of the policy. As part of their considerations managers will need to ensure that any action points that were agreed as part of the Improvement Plan were acted upon before the employee is moved to the next stage.

Where it has been identified that formal training is required before any improvement can be assessed then the timeframe should take this into account and the period for improvement should generally not commence until after the period of necessary training has been completed. The circumstances of each case will need to be considered and any periods for improvement of greater than 3 months will need the approval of the appropriate Service Director or equivalent. This applies to all stages in the process.

The manager, usually the line supervisor, must ensure that other employees who are involved in the process are appropriately briefed and any training/support requirements are clearly outlined. Managers must also ensure that matters are dealt with confidentially.

6.1 Informal Process

Most problems of under-performance may be identified and addressed at the informal stage of the process. This informal stage provides an opportunity to encourage open discussion of the issues involved, and to seek effective solutions, including the involvement of appropriate support services, e.g. Workplace Wellbeing.

The informal process is not intended to replace current supervision or management procedures within the Trust. Indeed, it would be good practice to fully discuss any general performance issues at a supervision meeting and agree to hold an informal meeting following a specified period of time.

However, if an employee does not accept that their performance at work is inadequate they are unlikely to respond constructively to discussions on how to improve. This type of response could justify shortening the period which might otherwise be allowed for improvement, but it will not in any way reduce the need to provide the employee with opportunities to offer an explanation and to listen to their concerns.

An informal meeting, giving at least 7 working days' notice, should be arranged if performance does not meet the required standard.

The letter inviting the employee to the meeting should include the following:

- time, date and who will be attending the meeting;
- the procedure and stage of the Policy being used;
- clear details of the shortfall in performance;
- details of any one to one supervisions to discuss performance etc;
- that the employee will be given opportunities to discuss concerns/issues
- right to representation by a trade union or work colleague from the Trust.

The purpose of the meeting should be outlined at the start of the informal meeting which should include:

- the right to representation by a trade union or colleague from the Trust
- background by outlining details of any one to one supervision where performance has been discussed and outcomes;
- mention previous discussions on support/assistance/adjustments and action taken
- identify any additional support/assistance/adjustments going forward
- acknowledge any improvement, however small;
- detail all aspects of the employee's work which remains unsatisfactory;
- give the employee opportunities to respond, discuss and give any explanations
- discuss, and agree, improvement plan, SMART objectives and timescales;
- the warning that they may be moved to formal stage 1 if there has not been a satisfactory improvement in their performance.
- set dates for regular meetings and a date for the informal review meeting.

Also discussed at the meeting should be the need for further consideration of any additional/refresher training; use of mentor; offer of support, e.g. Workplace Wellbeing and/or Occupational Health.

The Manager should summarise discussions and agreements made at the meeting. The required standards of performance must be stated and an Improvement Plan aimed at enabling the employee to improve and sustain their performance to satisfactory level; agreed. The plan should include objectives (SMART), any support or development required, along with an appropriate timescale for review.

The timescale for the improvements will vary depending on the employee's situation and in proportion to the level of performance standard. As a guideline, a period of between one and three months would normally be reasonable. Regular (weekly or fortnightly) meetings with the appropriate line supervisor/manager should take place throughout this period. Notes and a written record of such meetings must be kept by the manager and shared with the employee.

The employee should be warned that if the performance is still unsatisfactory at the time of the informal review meeting, that they could be moved to Formal Stage 1 of the Capability Policy.

An informal review meeting should be arranged following the agreed specified time period, usually between one and three months. The employee should be invited to the meeting by letter giving 7 working days' notice as detailed above.

The informal review meeting should outline what has happened since the previous meeting and any progress made against the Improvement Plan (any improvements and / or shortfalls in performance) and what assistance/adjustments have taken place to support the employee.

If there is some improvement, new targets and a further time period should be set. The employee should be informed that the required standard of performance is expected to be reached by the end of that time period. The employee should be made aware that if the required standards of improvement are not reached by the end of the time period they could progress to Formal Stage 1 of the policy.

A final, informal review meeting should be held at the end of the new time period at which the employee can be represented by a trade union or supported by an employee of the Trust. At least 7 working days' notice should be given as detailed above.

In cases of satisfactory performance: following the informal / final informal review meeting, it is established that performance has improved and been maintained at an acceptable level. The employee should be informed that no further action will be taken under this process, although their performance will continue to be monitored at the informal stage should any performance issues recur within a 3 months period.

In cases of unsatisfactory performance: If the employee's performance fails to meet the required standard, the manager should progress to the formal stage and the employee warned that the Trust cannot sustain continued unsatisfactory performance.

In cases where performance has fluctuated between an acceptable and unsatisfactory standard, the manager may decide to establish a new timetable for review. This may be appropriate in cases where the manager feels that improvements have been made but are not sufficient to meet the required standard. The manager may allow a further time period for the employee to improve and then maintain that improvement.

A further final informal review meeting should be held at the end of this time period.

Following the informal meetings outlined above an outcome letter should be sent to the employee within 10 working days. The letter should include:

- a detailed summary of the improvements required and standards to be achieved;
- any adjustments/support/assistance which were agreed;
- an Improvement Plan with clear objectives (SMART) and timescales for demonstrable improvements.
- set a date for any regular meetings and an informal review meeting
- the warning that they may be moved to formal stage 1 if there has not been a satisfactory improvement in their performance.

If the employee has been moved to Formal Stage 1 of the policy the letter must clearly state that the employee has been warned and moved onto Formal Stage 1 of the procedure. The employee will be invited to a formal stage 1 meeting in due course.

6.2 Formal Stage

If there is continued, unsatisfactory performance despite the employee being given reasonable support/assistance, objectives to meet and time to improve; a meeting should be arranged at the formal stage of this process.

The employee is entitled to be accompanied by a trade union representative or a colleague employed by the Trust. HR should be consulted and/or involved at this stage of the process.

The letter inviting to the employee to meeting, giving at least 7 working days' notice, should include:

- time, date and who will be attending the meeting;
- the procedure and stage of the Policy being used;
- clear details of the shortfall in performance;
- details of any informal discussions, meetings, etc;
- that the employee will be given opportunities to discuss concerns/issues
- right to representation by a trade union or work colleague from the Trust.

6.3 Formal Stage 1 Meeting

The manager at the formal stage 1 meeting will normally be the employee's line supervisor. However, there may be situations where it is appropriate for the supervisor's manager to attend the meeting.

The purpose of the meeting should be outlined at the start of the formal meeting which should include:

- the right to representation by a trade union or colleague from the Trust
- background by outlining the informal process to date and outcomes;
- mention previous discussions on support/assistance/adjustments and action taken
- identify any additional support/assistance/adjustments going forward
- acknowledge any improvement, however small;
- detail all aspects of the employee's work which remains unsatisfactory;
- give the employee opportunities to respond, discuss and give any explanations
- discuss, and agree, improvement plan, SMART objectives and timescales;
- the warning that they may be moved to formal stage 2 if there has not been a satisfactory improvement in their performance.
- set dates for regular meetings and a date for the formal review meeting.

Also discussed at the meeting should be the need for further consideration of any additional/refresher training; use of mentor; offer of support, e.g. Workplace Wellbeing and/or Occupational Health.

The Manager should summarise discussions and agreements made at the meeting. The required standards of performance must be stated and an Improvement Plan aimed at enabling the employee to improve and sustain their performance to satisfactory level; agreed. The plan should include objectives (SMART), any support or development required, along with an appropriate timescale for review.

The timescale for the improvements will vary depending on the employee's situation and in proportion to the level of performance standard. As a guideline, a period of between one and three months would normally be reasonable. Regular (weekly or fortnightly) meetings with the appropriate line supervisor/manager should take place throughout this period. Notes and a written record of such meetings must be kept by the manager and shared with the employee.

The employee should be warned that if the performance is still unsatisfactory at the time of the formal stage 1 review meeting, that they could be moved to Stage 2 of the Capability Policy and could potentially lead to dismissal if the required improvements are not achieved.

Following this meeting an outcome letter should be sent within 7 working days of the meeting as detailed below.

Formal Stage 1 review

At the end of the improvement period a formal stage 1 review meeting should be held with HR, if appropriate, the employee and their trade union representative or colleague from the Trust.

The formal review meeting should outline what has happened since the previous meeting and any progress made against the Improvement Plan (any improvements and / or shortfalls in performance) and what assistance/adjustments have taken place to support the employee.

If there is some improvement, new targets and a further time period should be set. The employee should be informed that the required standard of performance is expected to be reached by the end of that time period. The employee should be made aware that if the required standards of improvement are not reached by the end of the time period they could progress to the formal stage 2 of the Capability policy and could potentially lead to dismissal if the required improvements are not achieved.

A final formal stage 1 review meeting should be held at the end of the new time period at which the employee can be represented by a trade union or supported by an employee of the Trust. At least 7 working days' notice should be given.

In cases of satisfactory performance: following the formal stage 1 review / final formal stage 1 review meeting, it is established that performance has improved and been maintained at an acceptable level. The employee should be informed that no further action will be taken under this process, although their performance will continue to be monitored at formal stage 1 should any performance issues recur within a 3 months period.

In cases of unsatisfactory performance

If the employee fails to meet the required standard, especially if a revised timescale and action plan was agreed, the manager should warn the employee that they will progress to formal Stage 2 of the Capability policy and ultimately continued unsatisfactory performance may lead to dismissal.

In cases where performance has fluctuated between an acceptable and unsatisfactory standard, the manager may decide to establish a new timetable for review. This may be appropriate in cases where the manager feels that improvements have been made but not sufficient to meet the required standard. The manager may allow a further time period for the employee to improve and then maintain that improvement.

A further final formal stage 1 review meeting should be held at the end of the further time period.

Following the formal meetings outlined above an outcome letter should be sent within 10 working days. Where a further targets and timescales for improvement have been set the letter should include:

- a detailed summary of the improvements required and standards to be achieved;
- any adjustments/support/assistance which were agreed;
- an Improvement Plan with clear objectives (SMART) and timescales for demonstrable improvements.
- set a date for any regular meetings and a formal stage 1 review meeting
- the warning that they may be moved to formal stage 2 if there has not been a satisfactory improvement in their performance and this could potentially lead to their dismissal.

If the employee has been moved to Formal Stage 2 of the policy the letter must clearly state that the employee has been warned and moved onto Formal Stage 2 of the procedure, that ultimately their continued under performance could potentially lead to their dismissal and that they will be invited to a Formal Stage 2 meeting in due course.

6.4 Formal Stage 2 Meeting

In line with the above formal stage 1 process this meeting will normally be the employee's line supervisor. However, there may be situations where it is appropriate for the supervisor's manager to attend the meeting. HR would normally be involved at the start of this stage in the process.

The purpose of the meeting should be outlined at the start of the formal meeting which should include:

- the right to representation by a trade union or colleague from the Trust
- background by outlining the formal stage 1 process to date and outcomes;
- mention previous discussions on support/assistance/adjustments and action taken
- identify any additional support/assistance/adjustments going forward

- acknowledge any improvement, however small;
- detail all aspects of the employee's work which remains unsatisfactory;
- give the employee opportunities to respond, discuss and give any explanations
- discuss, and agree, improvement plan, SMART objectives and timescales;
- the warning that they may be moved to final formal stage 3 if there has not been a satisfactory improvement in their performance.
- set dates for regular meetings and a date for the formal review meeting.

Also discussed at the meeting should be the need for further consideration of any additional/refresher training; use of mentor; offer of support, e.g. Workplace Wellbeing and/or Occupational Health.

The Manager should summarise discussions and agreements made at the meeting. The required standards of performance must be stated and an Improvement Plan aimed at enabling the employee to improve and sustain their performance to satisfactory level; agreed.

The plan should include objectives (SMART), any support or development required, along with an appropriate timescale for review.

The timescale for the improvements will vary depending on the employee's situation and in proportion to the level of performance standard. As a guideline, a period of between one and three months would normally be reasonable. Regular (weekly or fortnightly) meetings with the appropriate line supervisor/manager should take place throughout this period. Notes and a written record of such meetings must be kept by the manager and shared with the employee.

The employee should be warned that if performance is still unsatisfactory at the time of the formal stage 2 review meeting, that they could be moved to final formal Stage 3 of the Capability Policy and this could result in dismissal.

Following this meeting an outcome letter should be sent within 7 working days of the meeting as detailed below.

Formal stage 2 review

At the end of the improvement period a formal stage 2 review meeting should be held with HR in attendance, the employee and their trade union representative or colleague from the Trust.

The formal review meeting should outline what has happened since the previous meeting and any progress made against the Improvement Plan (any improvements and / or shortfalls in performance) and what assistance/adjustments have taken place to support the employee.

If there is some improvement, new targets and a further time period should be set. The employee should be informed that the required standard of performance is expected to be reached by the end of that time period. The employee should be made aware that if the required standards of improvement are not reached by the end of the time period they could progress to the final formal stage 3 of the Capability policy which could potentially lead to dismissal if the required improvements are not achieved.

A Final Formal Stage 2 review meeting should be held at the end of the new time period at which the employee can be represented by a trade union or supported by an employee of the Trust. At least 7 working days' notice should be given.

In cases of satisfactory performance: following the formal stage 2/final formal stage 2 review meeting, it is established that performance has improved and been maintained at an acceptable level. The employee should be informed that no further action will be taken under this process, although their performance will continue to be monitored at formal stage 2 should any performance issues recur within a 6 month period.

In cases of unsatisfactory performance

If the employee fails to meet the required standard, especially if a revised timescale and action plan was agreed, the manager should warn the employee that they will progress to final formal Stage 3 of the Capability Policy and their continued unsatisfactory performance may lead to dismissal.

In cases where performance has fluctuated between an acceptable and unsatisfactory standard, the manager may decide to establish a new timetable for review. This may be appropriate in cases where the manager feels that improvements have been made but not sufficient to meet the required standard. The manager may allow a further time period for the employee to improve and then maintain that improvement.

A further final formal stage 2 review meeting should be held at the end of the further time period.

It may be appropriate to discuss at this meeting, what action needs to be taken as the performance has not improved sufficiently in the current post and within a reasonable timescale. This may include formal career counselling, redeployment into alternative work (at the same or lower pay level), temporarily reducing hours, and possibility of retirement, if appropriate.

Following the formal meetings outlined above an outcome letter should be sent within 10 working days. Where further targets and timescales for improvement have been set the letter should include:

- a detailed summary of the improvements required and standards to be achieved;
- any adjustments/support/assistance which were agreed;
- an Improvement Plan with clear objectives (SMART) and timescales for demonstrable improvements.
- set a date for any regular meetings and a formal stage 2 review meeting
- the warning that they may be moved to final formal stage 3 if there has not been a satisfactory improvement in their performance and this could result in dismissal.

If the employee has been moved to Final Formal Stage 3 of the policy then the letter must clearly state that the employee has been warned and moved onto the final stage of the procedure, that their continued under performance may result in dismissal and that they will be invited to a final formal stage 3 meeting in due course. Explain that an authorising manager, not previously involved with the employee's situation, will chair and review the case and procedures followed. An HR Adviser will support this manager.

6.5 Final Formal Stage 3

If, despite all measures outlined above, the desired improvement has still not been achieved and redeployment has not been utilised or no suitable alternative is available, a meeting must be convened by the manager whereby one option at this final stage is dismissal.

An authorising manager, not previously involved with the employee's situation, will chair and review the case and procedures followed. An HR Representative will support this manager.

The line manager, or other appropriate manager involved with the procedure, will compile a statement of case which includes a timeline and index to any appendices (correspondence, notes from meetings, other relevant documents). The HR Adviser involved with the process will assist the manager in presenting the case at the final formal meeting.

The statement of case is a summary of the process, situation, meetings, etc, and will refer to appended documents. The statement should use clear language and provide adequate information and evidence supporting the manager's case. This should be sent with as much notice as possible but with not less than 7 working days.

The letter informing the employee of the final formal meeting, must include the above information and invite him/her and their representative to submit a statement of case as soon as possible but with not less than 7 working days' notice. It must also state that one option at that meeting is dismissal.

At the final formal meeting, the employee will again be clearly informed of the continued deficiencies or under-performance and given full opportunity to state their case, any mitigating circumstances or present any further information.

Following the meeting, or after an adjournment of the meeting, the authorising manager will make a decision as to whether there is any likelihood of the employee's performance achieving an acceptable level by extending any assistance offered or the timescale agreed at the previous stage; or whether dismissal will be the outcome.

In summary, the following are possible outcomes of a meeting under this final formal stage 3 meeting:

- 1) extend the review period so that performance can be further monitored;
- 2) offer further assistance, e.g. an extended time period to search for an alternative job;
- 3) dismissal.

If the decision to extend the review period and the performance improves to reach an acceptable standard, the employee will be monitored in this stage of the process for the following 12 months.

If all suitable training and guidance and all forms of reasonable assistance have been pursued; there is no suitable redeployment opportunity or the employee declines redeployment; and there has been no satisfactory, sustained performance improvements, then there may be no alternative but to dismiss the employee.

6.6 Employees with less than 24 months Trust service

If a manager highlights capability issues with a new employee it is important that these concerns are addressed early, although consideration should be given as to whether the employee has received a full corporate and local induction and received any appropriate mandatory training.

If capability issues are raised about a new starter the principles of this policy still apply, i.e. an informal meeting is held and the employee is notified in writing giving at least 7 working days' notice. The letter should include:

- time, date and who will be attending the meeting;

- the procedure and stage of the Policy being used;
- clear details of the shortfall in performance;
- details of any informal discussions, meetings, etc;
- that the employee will be given opportunities to discuss concerns/issues
- right to representation by a trade union or work colleague from the Trust.

The employee is entitled to be accompanied by a trade union representative or a colleague employed by the Trust. HR should be consulted and/or involved at this stage of the process.

A review period should be stipulated (usually of between one and 3 months) and where possible agreed with the employee. If at the review meeting it is clear the employee is continuing to fall below the required performance standard needed for the role the manager has the option of moving straight to the Final Formal Stage 3 of this policy. This can only be done in situations where the employee does not have 24 months service and it is clear the employee is markedly short of achieving the required performance. The same right of appeal as at the Formal Stage 3 of this policy will apply.

Following these meetings an outcome letter should be sent within 10 working days and should include (where a further targets and timescales for improvement have been set):

- a detailed summary of the improvements required and standards to be achieved;
- any adjustments/support/assistance which were agreed;
- an Improvement Plan with clear objectives (SMART) and timescales for demonstrable improvements.
- set a date for any regular meetings and informal review meeting
- the warning that they may be moved to final formal stage 3 if there has not been a satisfactory improvement in their performance and this could result in dismissal.

If the employee has been moved to Final Formal Stage 3 of the policy the letter must clearly state that the employee has been warned and moved onto the final stage of the procedure, that their continued under performance may result in dismissal and that they will be invited to a final formal stage 3 meeting in due course. It should also be explained that an authorising manager, not previously involved with the employee's situation, will chair and review the case and procedures followed. An HR representative will support this manager.

6.7 Right of Appeal

The right of appeal exists at all stages of the formal process. The employee must submit their appeal in writing within 5 working days of receipt of the outcome letter giving specific reasons for the appeal.

The employee or their representative must submit a full case within a further 10 working days to the appeal meeting manager (if identified) and the Hearing Manager.

An appeal meeting will normally be held within 25 working days of receiving the full case. In cases of unavailability of the relevant parties a mutually convenient date will be set. The employee will be invited to the meeting formally by letter.

The appeal hearing decision will ideally be made and communicated on the day but within 2 working days of the appeal hearing, and in exceptional circumstances, no later than 1 week after the case has been heard.

Appeals at formal stage 1 and 2 will be heard by a more senior manager to the line manager, or other appropriate manager who has not been involved in the process. The senior manager will be advised by HR. The employee has rights of representation from a trade union or a colleague of the Trust.

Options available to the senior manager at this stage are as follows:

- Uphold the decision made the move to the next stage of the policy
- extend the review period under the informal / formal stages so that performance can be further monitored in line with policy timescales;

Appeal at final formal stage 3 or following dismissal will be heard by an authorised manager, not previously involved in the process, supported by a senior member of HR. Should the appeal follow dismissal, the manager issuing the dismissal notice will present the case. A witness to be used could be the line manager to give evidence/further information at the appropriate time. Following questions, the witness will then withdraw.

The employee and/or their representative will present their case. Should the employee call a witness, s/he will withdraw following their evidence and answering questions.

Both parties will have the opportunity to sum up. The manager first, followed by the employee or their representative.

The decision of the authorised manager will be based on all the relevant evidence and procedures followed and whether the decision to dismiss was reasonable given all the circumstances of the case.

Options available to the authorised manager at this stage are as follows:

- uphold the decision to dismiss.
- extend the review period at final formal stage 3 so that performance can be further monitored in line with policy timescales;
- Offer further assistance, e.g. an extended time period to search for an alternative job

There will be no resulting delay in implementing any management decisions pending an appeal. However, any decisions made may have to be subsequently amended or reversed as a result of an appeal hearing.

The decision of the appeal meeting will be communicated in writing to the employee within 5 working days.

6.8 Monitoring and review

During any monitoring and review periods, notes of regular meetings should be kept by the manager concerned and a record of all actions taken, e.g. training offered or attended. Record and note keeping is especially important where HR has not been involved. This information will remain confidential and will be recorded, in the first instance, by the person dealing with the performance concerns/issues.

6.9 Pay progression

Where an employee's incremental date falls during a period in which they are being managed under the formal stages of this policy, their progression will be deferred until they are no longer being managed under the formal stages of this policy.

7. Dissemination, storage and archiving (Control)

Human Resources policies are referred to in employees' contracts of employment and statement of terms. Policies are available on the SHSC intranet and, if necessary, a paper copy can be provided by the HR Department.

All policies are stored by Policy Governance, including archive copies.

8. Training and other resource implications

Employees would be made aware of this revised Policy by the usual Trust communication systems and by updating the induction programme for new employees, including new managers. The HR Department offers training and support to managers in the implementation of human resources policies.

9. Audit, monitoring and review

This Policy is due to be reviewed at least every 3 years. However, monitoring will be on an ongoing basis pending any amendments which may occur due to revised legislation or release of good practice guidance information from relevant organisations, e.g. ACAS. Overall, HR policies are subject to joint monitoring and review between management and Staff Side at the Joint Policy Group (a sub-group of the Joint Consultative Forum).

Monitoring Compliance Template						
Minimum Requirement	Process for Monitoring	Responsible Individual/group/committee	Frequency of Monitoring	Review of Results process (e.g. who does this?)	Responsible Individual/group/committee for action plan development	Responsible Individual/group/committee for action plan monitoring and implementation
To be reviewed in line with relevant employment changes	Review policy, review employment legislation changes	HR Advisory Team	At least every 3 years	HR Adviser	HR Senior Management Team	HR Senior Management Team

10. Implementation plan

Action / Task	Responsible Person	Deadline	Progress update
New policy to be replaced on the Intranet and Trust website.	Director of Corporate Governance	Within 5 working days of ratification	TBC
A communication will be issued to all staff via Connect.	Director of Corporate Governance		TBC
A communication will be sent to Education, Training and Development to review training provision.	HR Adviser, as appropriate		As necessary

11. Links to other policies, standards and legislation (associated documents)

- Promoting Attendance and Managing Sickness Absence Policy
- Redeployment Policy
- Disciplinary Policy
- Equal Opportunities and Dignity at Work Policy
- Equality Act 2010

12. Contact details

Human Resources employees are available for support and advice, the HR Helpline telephone number is 0114 22 63301.

13. References

There are no specific references.

Appendix A – Version Control and Amendment Log

Version No.	Type of Change	Date	Description of change(s)
3.0	Policy review, consultation, ratified and issued.	January 2016 to November 2016	Policy reviewed by HR, Staff Side and other influential managers in line with policy governance arrangements. Ratified by the Executive Directors' Group. Placed on intranet, internet and a message in Connect.
4.0	Policy review and consultation	January to May 2019	<p>Policy reviewed by HR, Staff Side and other influential managers in line with policy governance arrangements.</p> <ul style="list-style-type: none"> - Section 4 (Purpose) wording has been added that begins: <i>If during the capability process it becomes apparent that</i> - Section 5 (Duties) amended to more closely reflect the duties of managers, employees, HR and Staff Side. - Section 6 (Process) a newly added paragraph making it clear that throughout the process the employee should be informed of the consequences of not meeting the required improvements. - Sections 6.1-6.4 (Informal – Formal Stage 2). For consistency purposes the meetings held at each stage of the process are replicated from informal through to formal stage 2, for example – informal meeting, informal review meeting and if applicable a final informal review meeting. - During consultation it was agreed to reduce (rather than remove) the timescales that an employee would remain in the procedure (following the standard having been met). At the informal and formal stage 1 (reduced from 6 to 3 months) and formal stage 2 (reduced from 9 to 6 months). - Although objective setting was already referenced in the Policy it now includes the use of SMART objectives. - Section 6.6 this was a pre-existing section however it has been amended to reflect current employment rights. Staff Side requested that this section be removed as it would be unfair to 'fast track' employees through the process who have under 24 months service. However after consultation with the HR Director it was agreed this should remain. Process will be followed in line with the Policy and employees with under 24 months service have the right to appeal as do all other employees. - Section 6.9 Pay progression – this is a newly added section and is in accordance with National NHS Staff Council Guidelines. - The Equality Act 2010 and reasonable adjustments in line with this have been referenced throughout the Policy. - The Improvement Plan Objectives Form (appendix G) has been updated to incorporate the SMART objectives. - Following June PGG - amended the front sheet of this version to refer to the Amendment Log at Appendix A and the section on Redeployment at page 7 now refers to the Redeployment Policy.
	Policy ratified	TBC	
	Policy issued	TBC	

Appendix B – Dissemination Record

Version	Date on website (intranet and internet)	Date of communication to all staff	Any other promotion/ dissemination (include dates)
3.0	November 2016	November 2016 via Communications Digest	N/A
4.0	TBC	Message in Connect Date TBC	N/A

Appendix C – Stage One Equality Impact Assessment Form

Equality Impact Assessment Process for Policies Developed Under the Policy on Policies

Stage 1 – Complete draft policy

Stage 2 – Relevance - Is the policy potentially relevant to equality i.e. will this policy potentially impact on staff, patients or the public? If **NO** – No further action required – please sign and date the following statement. If **YES** – proceed to stage 3

This policy does not impact on staff, patients or the public (insert name and date)

See below

Stage 3 – Policy Screening - Public authorities are legally required to have ‘due regard’ to eliminating discrimination , advancing equal opportunity and fostering good relations , in relation to people who share certain ‘protected characteristics’ and those that do not. The following table should be used to consider this and inform changes to the policy (indicate yes/no/ don’t know and note reasons). Please see the SHSC Guidance on equality impact assessment for examples and detailed advice. This is available by logging-on to the Intranet first and then following this link https://nww.xct.nhs.uk/widget.php?wdg=wdg_general_info&page=464

	Does any aspect of this policy actually or potentially discriminate against this group?	Can equality of opportunity for this group be improved through this policy or changes to this policy?	Can this policy be amended so that it works to enhance relations between people in this group and people not in this group?
AGE	No	No	No
DISABILITY	The Trust will always take account of any disability issues when applying the capability process and involve Occupational Health as appropriate.		
GENDER REASSIGNMENT	No	No	No
PREGNANCY AND MATERNITY	No	No	No
RACE	No	No	No
RELIGION OR BELIEF	No	No	No
SEX	No	No	No
SEXUAL ORIENTATION	No	No	No

Stage 4 – Policy Revision - Make amendments to the policy or identify any remedial action required (action should be noted in the policy implementation plan section)

Impact Assessment Completed by (insert name and date)

HR Directorate Partner - 1 st September 2016

Appendix D - Human Rights Act Assessment Form and Flowchart

You need to be confident that no aspect of this policy breaches a person's Human Rights. You can assume that if a policy is directly based on a law or national policy it will not therefore breach Human Rights.

If the policy or any procedures in the policy, are based on a local decision which impact on individuals, then you will need to make sure their human rights are not breached. To do this, you will need to refer to the more detailed guidance that is available on the SHSC web site

<http://www.justice.gov.uk/downloads/human-rights/act-studyguide.pdf>

(relevant sections numbers are referenced in grey boxes on diagram) and work through the flow chart on the next page.

1. Is your policy based on and in line with the current law (including case law) or policy?

Yes. No further action needed.

No. Work through the flow diagram over the page and then answer questions 2 and 3 below.

2. On completion of flow diagram – is further action needed?

No, no further action needed.

Yes, go to question 3

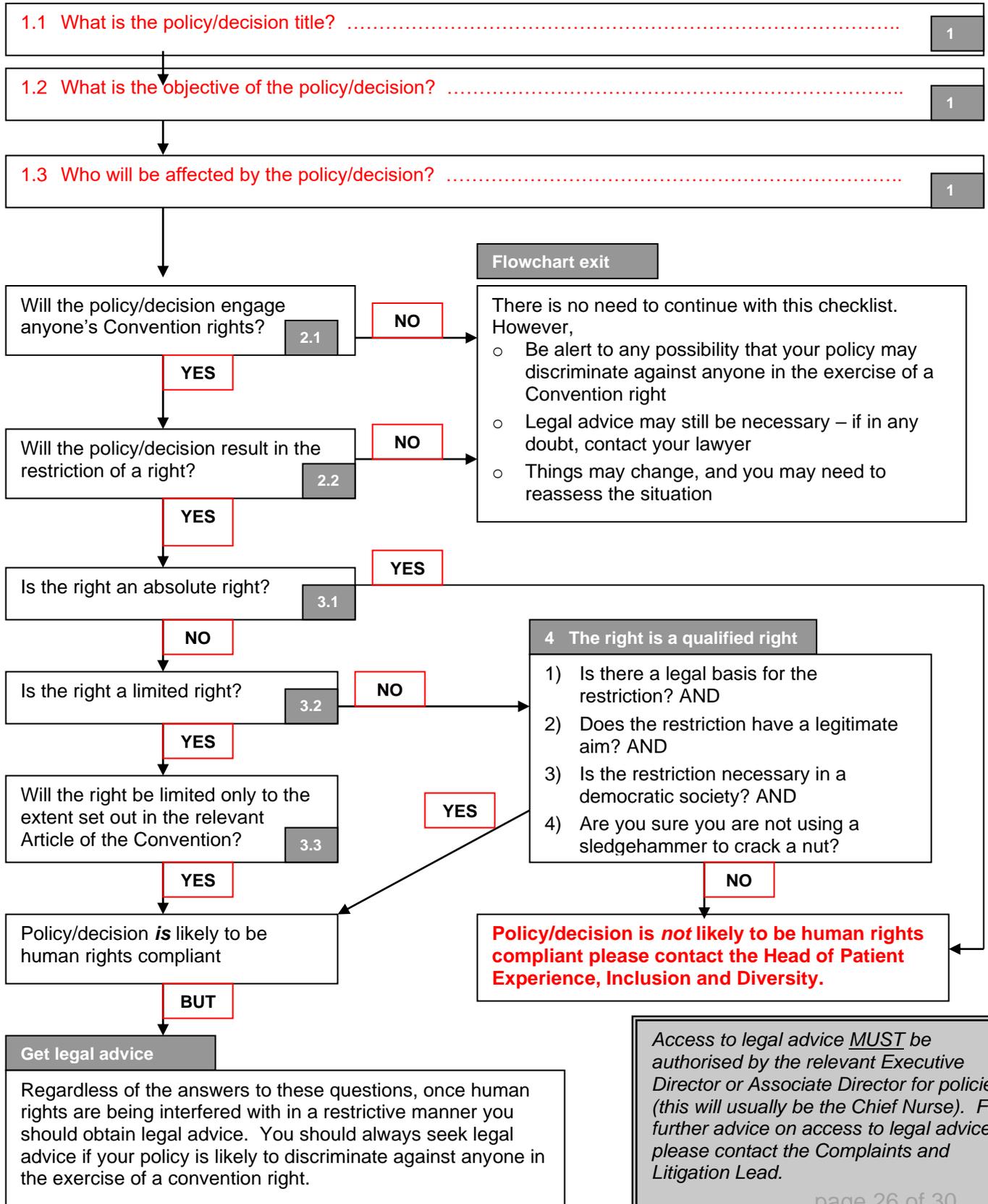
3. Complete the table below to provide details of the actions required

Action required	By what date	Responsible Person

Human Rights Assessment Flow Chart

Complete text answers in boxes 1.1 – 1.3 and highlight your path through the flowchart by filling the YES/NO boxes red (do this by clicking on the YES/NO text boxes and then from the Format menu on the toolbar, choose 'Format Text Box' and choose red from the Fill colour option).

Once the flowchart is completed, return to the previous page to complete the Human Rights Act Assessment Form.



Appendix E – Development, Consultation and Verification

VERSION 3

The review that took place on 1st September 2016 did not recommend any material changes to the document. Therefore the existing policy was maintained and simply placed into the new policy template. As no changes were made to the policy, approval from Staff Side was obtained via email.

This policy was noted as verified, by the Joint Consultative Committee (JCF) on 20 September 2016. Noted, only minor changes i.e. new format, new review date, and a section of duplicated information was removed.

VERSION 4

The review and consultation took place between January and May 2019.

Staff Side were consulted at the Joint Policy Group on 30th May 2019.

Other influential managers and HR colleagues, including the Director of Human Resources, were consulted in May 2019.

Following comments received at June 2019 PGG, the front sheet has been amended to refer to Appendix A (amendment log) and the section on Redeployment at page 7 has also been amended to refer to the Redeployment Policy.

This policy was noted as verified, by the Joint Consultative Committee (JCF) on 5th June 2019.

Appendix F – Policies Checklist

Please use this as a checklist for policy completion. The style and format of policies should follow the Policy Document Template which can be downloaded on the intranet.

1. Cover sheet



All policies must have a cover sheet which includes:

- The Trust name and logo ✓
- The title of the policy (in large font size as detailed in the template) ✓
- Executive or Associate Director lead for the policy ✓
- The policy author and lead ✓
- The implementation lead (to receive feedback on the implementation) ✓
- Date of initial draft policy ✓
- Date of consultation ✓
- Date of verification ✓
- Date of ratification ✓
- Date of issue ✓
- Ratifying body ✓
- Date for review ✓
- Target audience ✓
- Document type ✓
- Document status ✓
- Keywords ✓
- Policy version and advice on availability and storage ✓

2. Contents page



3. Flowchart



4. Introduction



5. Scope



6. Definitions



7. Purpose



8. Duties



9. Process



10. Dissemination, storage and archiving (control)



11. Training and other resource implications



12. Audit, monitoring and review



This section should describe how the implementation and impact of the policy

will be monitored and audited and when it will be reviewed. It should include timescales and frequency of audits. It must include the monitoring template as shown in the policy template (example below).

Monitoring Compliance Template						
Minimum Requirement	Process for Monitoring	Responsible Individual/group/committee	Frequency of Monitoring	Review of Results process (e.g. who does this?)	Responsible Individual/group / committee for action plan development	Responsible Individual/group/committee for action plan monitoring and implementation
A) Describe which aspect this is monitoring?	e.g. Review, audit	e.g. Education & Training Steering Group	e.g. Annual	e.g. Quality Assurance Committee	e.g. Education & Training Steering Group	e.g. Quality Assurance Committee

- 13. Implementation plan ✓
- 14. Links to other policies (associated documents) ✓
- 15. Contact details ✓
- 16. References ✓
- 17. Version control and amendment log (Appendix A) ✓
- 18. Dissemination Record (Appendix B) ✓
- 19. Equality Impact Assessment Form (Appendix C) ✓
- 20. Human Rights Act Assessment Checklist (Appendix D) ✓
- 21. Policy development and consultation process (Appendix E) ✓
- 22. Policy Checklist (Appendix F) ✓

Appendix G – Improvement Plan Objectives Form

Goal (Area to be addressed)					
S pecific (details specific objective)					
M easurable (How the achievement is going to be measured and by who? What evidence is required?)					
A chievable (How will this objective be achieved)					
R ealistic (Is the objective possible to attain and how will progress be recorded?)					
T imed (what is the time period for improvement?)					

Signed by (Line Manager):.....

Print Name:..... Date:

Employee:

Print Name:..... Date: