

Capability Policy and Procedure

March 2021

Policy control

Reference	Capability Policy and Procedure
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Author	Denise Walker, HR Officer
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Benchmarking	Abertay University, Dundee University, University of Edinburgh, Glasgow Caledonian University, University of Glasgow

1. PURPOSE AND SCOPE

This purpose of the policy is to support and encourage employees in dealing with problems, which may arise from time to time and which can lead to an employee not fulfilling the expected requirements of their role. It aims to:

- ensure that any concerns about an individual's ability to fulfil the required duties in accord with his/ her role are addressed effectively through a clear and supportive procedure;
- ensure that supervision, training, counselling and any other relevant support measures are deployed appropriately to help employees to fulfil their role;
- provide a clear procedure for the termination of employment in cases where it does not prove possible to secure a positive outcome. Termination of employment would only be considered as a last resort and having exhausted other alternative options such as re-deployment.

The Capability Policy and Procedure applies to all employees of the Glasgow School of Art (GSA) except those who are within a probationary period of service and who are subject to the probation review process.

The Director of HR has overall responsibility for ensuring the consistent application of this policy.

The policy and procedure will be applied with reference to the principles of fairness, reasonableness and underpinned by the relevant legislation.

Where there is evidenced failure to maintain adequate standards of conduct this should be dealt with through the Disciplinary Policy and Procedure.

Matters relating to incapability due to ill health or disability should not be dealt with through this procedure and advice should be sought from the HR department in these cases. Where perceived problems are linked partly or wholly to a qualifying disability under the Equality Act 2010, the requirements of that Act for reasonable adjustments to the workplace or the role will be taken into account.

2. DEFINITIONS

2.1 Capability

GSA considers 'Capability' in the context of this policy to relate to an employee's ability or qualification to do their job.

Capability is defined in Section 98(3) (a) of the Employment Rights Act 1996 as 'by reference to skill, aptitude, health or any other physical or mental quality', and Qualifications is defined in section 98(3) (b) of the Employment Relations Act 1996 as 'any degree, diploma or other academic, technical or professional qualification relevant to the position which is held'.

2.2 Performance

'Performance' in this procedure refers to an individual fulfilling reasonable designated duties relative to his/her role. The line manager should deal promptly and fairly with concerns relating to an individual's performance. Such issues may be attributed to compromised capability relative to an individual's role, which may arise from a wide number of factors and impediments including:

- lack of facilities or unsatisfactory working environment crucial to the execution of the role;
- lack of aptitude, skill or experience, which may be the result of inappropriate recruitment, selection, induction or training, lack of proficiency and unsatisfactory overall organisation relative to the role;
- changes in the nature and allocation of work and/or workload;
- personal/family difficulties/health problems, perhaps associated with low attendance at work;
- changes in technology;
- reorganisation or redefinition of role.

This list is not exhaustive. Understanding the possible causes when issues arise is fundamental, and can enable the line manager and employee to engage in constructive discussion regarding appropriate support, so that all reasonable efforts are made to aid improvement and elicit a positive outcome. For example, lack of capability to meet role requirements may be due to inability caused by another factor such as lack of knowledge, or clarity of what is required. In these circumstances further training or better clarification of objectives may resolve the issues. Line managers should always seek to understand the nature and cause of the problem, not make assumptions, and should agree what support they will provide to their employee.

If it is determined that issues have arisen from a change in GSA's standards or expectations of the role, the revised standards and/or expectations will be discussed with the employee and appropriate support, and training will be offered to reach and maintain these changes.

3. GENERAL PROVISIONS

3.1 Setting standards

GSA in accordance with the Staff Recruitment Policy and Procedure aims to recruit an employee into their role having given full consideration to the job description. This should accurately reflect the duties and responsibilities of the post as well as stating the criteria in terms of skills, aptitudes, knowledge, qualifications and experience required for the post.

Employees have a contractual responsibility to fulfil their duties and will be supported and encouraged to do so. Line managers are responsible for setting clear, realistic and achievable standards consistent with the employee's job description. Any problems should be discussed promptly with the employee concerned and the causes of the shortfall identified. Consideration should be given to whether these factors include inadequate training, supervision or guidance and whether appropriate measures should be taken to provide additional support consistent to the role.

3.2 Employee Induction

Employees and line managers are expected to adhere to the GSA Staff Induction Process.

3.3 Employee Probation

The Capability Policy and Procedure will not be used during an employee's probationary period. The line manager should therefore ensure that the probationary review process is followed during this period.

3.4 Career Review and Development (CRD)

GSA has established a structured approach to career review and development which operates on an annual cycle. The CRD meeting is not an appropriate meeting to raise capability/performance concerns for the first time. However, it may be appropriate to refer to on-going concerns of either employee or line manager during such a meeting as part of constructive discussion about work, career and development. The CRD process should seek to address development needs and offer relevant support.

3.5 Regular communication

Line managers should meet regularly with their employees on an individual basis as part of ongoing managerial support to discuss current workload planning and priorities, which may include capability and performance issues plus any other relevant topics. Any matters of concern should be raised at these meetings. The frequency of one to one meeting should be determined by the line manager and employee, but where there is a performance concern the regularity of these meetings is likely to increase.

3.6 Responsibilities and Rights

The responsibilities and rights of the parties involved in the Capability Procedure are detailed in Appendix 1. In cases involving staff at senior level, Lay Governors (including the Chair) may be asked to become involved in the capability and appeals processes.

4. PROCEDURE

4.1 Informal Procedure

Where possible, an informal approach will be used to resolve minor performance issues as opposed to through the formal procedure. Examples of performance issues are provided in Appendix 2.

During the usual course of employment line managers should discuss any issues at or around the time they arise. This could be an informal conversation as part of day to day management.

The line manager should ensure that an employee has been advised of the issues and support and assistance offered so that the employee has the opportunity to improve. Support may include the provision of training, development, general advice, guidance or other support.

4.1.1 The Employee Support Procedure

When informal discussions have not achieved the required improvements then the line manager and employee should utilise the Employee Support Procedure as a mechanism for dealing with issues of this nature. It is the responsibility of the line manager and the employee to ensure that every effort is made to improve the situation informally. The Employee Support Procedure and employee support plan provides a more structured form of support and should be documented as per the procedure. The line manager and employee are encouraged to consider the many types of support as outlined in Appendix 3.

If there are minor shortcomings at issue, support will be considered to enable the employee to meet them. The employee will be made aware of the improvements required, how this could be achieved, what support will be put in place, the timescales for review and the implications of failing to fulfil the required duties. An Employee Support Plan will be agreed between the employee and the line manager. The timescales set for an improvement at the informal stage can vary, although as a guide the informal procedure would usually not exceed 6 months.

No formal action will be taken at the informal stage. However, should it become clear during an informal meeting(s) that the matter is more serious and should be dealt with through the formal stage of this procedure; the line manager should terminate the meeting and contact the HR department for guidance on proceeding through the formal stage.

As part of this procedure the line manager will advise the employee that failure to improve may result in the formal procedure being instigated under the relevant procedure.

Only where informal support does not achieve the necessary improvements should the formal procedure be implemented.

4.2 The formal procedure

If the matter is not resolved through the informal stage, the line manager may proceed to the formal stages of this procedure. For ease of reference this procedure is outlined diagrammatically in Appendix 4.

Before commencing the formal procedure, the line manager will review all relevant information examples of which may include:

- The job description relevant to the role;

- Contractual obligations;
- Relevant GSA procedures;
- Any other records relating to job performance, such as comments, records and evidence from either employee or line manager. E.g. employee support plan.

4.2.1 Improvement Plan

An improvement plan is a support tool for line managers and employees to use at each stage. A template is provided in Appendix 5.

This tool, along with the guidance provides for the structured recording and monitoring of agreed objectives, logging support provided, and with set timescales.

At each stage of the formal procedure, the employee and line manager will work together to create an improvement plan, taking into account the review periods set and any recommendations made as a consequence of a formal review meeting and should include the following:

- Specific and achievable objectives clearly stating the improvement required;
- Appropriate measures of success and achievement;
- Support measures agreed;
- Review date(s).

Review timescales for improving performance within the formal procedure may vary, depending on the level of unsatisfactory performance, the nature of the work and the amount of support required to help an employee make the required improvements.

If an employee reaches the required standard within the review period as outlined in the improvement plan, the line manager will take no further formal action. In these circumstances the line manager must confirm to the employee that no further action will be taken and agree any ongoing support.

The formal procedure is structured to enable a line manager and employee to focus at each stage on improvements in order to facilitate a positive outcome. There may be circumstances where the employee and line manager during the course of the formal procedure discuss alternatives to moving through the process such as re-deployment opportunities which would then not necessitate the full process up to stage 3 should an alternative be mutually agreed.

4.2.2 Meetings

The following format for meetings should be followed for stage 1 and 2 of the Capability Procedure.

STAGE 1 AND STAGE 2

Formal Capability Meeting

The employee will be invited to attend a formal capability meeting. At the meeting, the line manager should:

- clarify the required dimensions and standards of the role;
- explain clearly the deemed shortfall(s);

- give the employee concerned an opportunity to respond to the issues raised about their capability to fulfil his/her defined duties and whether there are any contributory circumstances that could be impacting on the employee's performance (e.g. as instanced in 2.2);
- seek to establish the cause of any problems relative to the role, and any action which can be taken to help to improve the situation;
- identify any support services or investment which might be required;
- seek to identify any adjustments to the working environment which could assist the employee in meeting the requirements of their role;
- obtain commitment from all concerned to assist in resolving the problems;
- agree a reasonable time-scale for the situation to improve;
- set a date for a review meeting to ensure that progress is being made.

For clarity, at any point during the procedure where it becomes evident that issues may relate to incapability due to ill health or disability advice must be sought from the HR department.

Improvement Plan

The line manager and employee should agree an improvement plan which sets out clear and achievable targets and timescales for demonstrable improvement. Input should be sought from the employee concerned and the improvement plan should be agreed. A copy of the agreed improvement plan will be confirmed in writing and be held by the employee and line manager.

Formal Capability Review Meeting

At the end of the monitoring period, the line manager will meet with the employee to review progress against the targets set. At the meeting, the line manager should:

- give a clear indication of the outcomes of the monitoring process, and identify any progress made and any further improvements needed;
- give the employee concerned the opportunity to ask questions for clarification and ensure that the employee is provided with every opportunity to respond, make comment and present evidence as part of two-way dialogue;
- discuss the outcomes of the monitoring process, including raising any relevant factors that should be taken into account when deciding on any action. It may be possible that circumstances outside the employee's control have caused or contributed to their effectiveness over the period monitored and this may result in an extension to the monitoring period, or alternatively the procedure may be brought to an end.

Outcomes of the formal capability review meeting

The line manager holding the formal capability review meeting should decide, in relation to the issues discussed what action is appropriate and may adjourn the meeting in order to consider the issues and reach a decision. Wherever possible the line manager should inform the employee of the outcome orally at the conclusion of the meeting.

STAGE 1

The following are possible outcomes:

- Satisfactory improvement, no further action under the capability procedure;
- Further timescale for review and monitoring under stage 1;
- To issue a **Stage 1 Improvement Note (equivalent to a Written Warning on file for 6 months)** for unsatisfactory performance and move to **Stage 2** in the procedure.

STAGE 2

*using the same format of meetings as in Stage 1 see 4.2.2

The following are possible outcomes:

- Satisfactory improvement, no further action under the capability procedure however; the Stage 1 Improvement Note (equivalent to a Written Warning on file for 6 months) for unsatisfactory performance will remain live on the employee's file for the defined period;
- Further timescale for review and monitoring under stage 2;
- To issue a **Stage 2 Improvement Note (equivalent to a Final Written Warning on file for 12 months)** for unsatisfactory performance and move to **Stage 3** in the procedure.

STAGE 3

The line manager responsible for chairing the meetings at stage 1 and 2 when deciding to progress to stage 3 shall inform the Director of HR confirming the decision to progress to stage 3 of the Capability Procedure.

The line manager should agree the improvement plan for stage 3 and support the employee as in previous stages. However, in such cases the Director of HR will appoint a panel to hear the case at the stage 3 review meeting. The panel will usually include the line manager's superior, or another senior member of management with no previous involvement in the matter to conduct the stage 3 formal capability review meeting. Along with one further independent manager of at least the same grade as the employee's line manager. The panel will be provided the opportunity to review documented evidence prior to the meeting.

At the stage 3 capability review meeting the panel should:

- be given a clear indication of the outcomes of the monitoring process by the line manager, and discuss and identify any progress made and any further improvements needed;
- give the employee concerned the opportunity to ask questions for clarification, be provided every opportunity to respond, make comment and present evidence as part of two-way dialogue;
- discuss the outcomes of the monitoring process, including raising any relevant factors that should be taken into account when deciding of any action. It may be possible that circumstances outside the employees control have caused or contributed to their effectiveness over the period monitored and this may result in an extension to the monitoring period, or alternatively the procedure may be brought to an end.

STAGE 3

The following are possible outcomes:

- Satisfactory improvement in performance, no further action under the capability procedure however; the Stage 2 Improvement Note (equivalent to a Final Written Warning on file for 12 months) for unsatisfactory performance will remain live on the employee's file for the defined period;
- Further timescale for review and monitoring and opportunity to improve under stage 3;
- The possibility of redeployment will be considered to a more suitable post/role (if one is available), on a trial basis. Where the proposal is that the employee is transferred to a lower grade role, this shall be considered under the Redeployment Policy and Procedure; and advice sought from HR;
- To **dismiss** the employee on grounds of capability with due notice, where sufficient support and time has been given, but the employee has failed to make the required improvements.

4.2.3 Notification of outcomes

All decisions following capability review meetings at stage 1, 2 and 3 will be confirmed in writing usually within 5 working days of the date of the meeting and should include:

- Confirmation where the required improvements are achieved and no further action under the capability procedure;
- Confirmation of the areas in which the employee's performance relative to the role has been found to be unsatisfactory and the nature of the improvement required;
- The employee should be advised that if their unsatisfactory performance fails to improve this may result following a review in a further improvement note and either:
 - Final Written Warning (stage 2) or ultimately dismissal at (stage 3)
- Right of appeal;
- Indicate the length of the assessment period and the intervals at which the employee's performance shall be reviewed during this period;
- At stage 3, should the decision be to dismiss the employee on grounds of capability the employee will be provided with, in writing, the reasons for the dismissal.

Throughout the formal stages, the timing and locations of the meetings will be reasonable and the location will be accessible to all parties. Meetings will be conducted in a manner which allows the employee to explain their case appropriately. All parties must take reasonable steps to attend meetings that they are requested to attend. If they are unable to attend they should explain this without unreasonable delay to a member of the HR department.

Throughout the formal stages, at any meeting the employee attends they have the right to be accompanied by a single representative who must be either:

- a colleague who works at GSA; or
- a recognised trade union representative (local or full time).

A member of the HR department will also be in attendance at all formal meetings as a support.

4.2.4 APPEALS

Appeals up to but not including Dismissal

If the employee wishes to appeal against the outcome of stage 1 or 2 of the Capability Procedure they should write to the HR department outlining their reason(s) for appeal, within ten working days from the date of the letter having been received at the conclusion of stage 1 or 2. A senior member of the HR department will designate an appropriate senior member of staff to lead the appeal stage. The senior member of staff hearing the appeal will not have had any previous involvement in the case. In cases involving staff at senior level, it is possible that Lay Governors (including the Chair) may be asked to become involved in the capability and appeals processes.

Appeals against Dismissal

In cases where the outcome of stage 3 of the Capability Procedure is dismissal, the appeal will be heard by an Appeal Panel, which will be determined by the Director of HR. The appeal panel will normally include a member of staff more senior to the line manager who conducted the stage 3 meeting. The Appeal Panel will also include at least one other independent member of senior staff. The panel members will not have any previous involvement in the case. In cases involving staff at senior level, it is possible that Lay Governors (including the Chair) may be asked to become involved in the appeals processes.

Appeal Process

In all cases, GSA will invite the employee concerned, to attend an Appeal Hearing to be held within 20 working days of receipt of the appeal letter, at which stage the grounds for appeal can be considered in more detail.

At the Appeal Hearing, the employee will have an opportunity to put forward:

- grounds of appeal;
- any new information if that was not available at the original meeting;
- any complaints of a failure in the original decision making process e.g. a failure to follow procedures or a failure to provide a fair hearing.

The employee concerned has the right to be accompanied by a work colleague or recognised trade union representative at the Appeal Hearing.

The employee concerned may be advised of the decision orally at the conclusion of the Hearing, if considered appropriate, although usually appeal decisions will be confirmed in writing, within five working days of the meeting. The senior member of staff (if appeal is at stage 1 or 2) or panel hearing the appeal (stage 3) may either:

- uphold the original decision and confirm the original outcome
- overturn the original capability decision e.g. remove sanction

There is no right of appeal from this decision. The Grievance Policy and Procedure may not be used as a mechanism for appealing against the decision of the Capability Procedure appeal outcome.

5. RELATIONSHIP TO THE GRIEVANCE POLICY AND PROCEDURE

In the course of capability proceedings an employee may choose to raise a grievance about the behaviour of the line manager handling the case. Where this occurs, the Director of HR will give consideration as to whether it is appropriate to suspend the capability procedure for a short period until the grievance can be considered.

Consideration might also be given by the Director of HR to engaging an alternative senior staff member to deal with the capability case. However, generally the raising of a grievance will not automatically suspend any capability hearing or action. The final decision about such matters rests with the Director of HR.

The appeal procedure detailed in section 4.2.4 should be utilised to appeal any sanction issued at each stage in this procedure.

6. CONFIDENTIALITY

Confidentiality will be maintained throughout the course of the procedures outlined in this policy and procedure. Documentation relating to the use of this policy and procedure will be treated as confidential and will only be made available to those directly involved.

7. MONITORING

This policy will be monitored and reviewed regularly to ensure it meets the needs of the School and its staff and to comply with relevant legislation.

8. STAFF SUPPORT

Any staff member or line manager who is subject to the provision of this policy may seek advice from the following:

- Their line manager
- The HR team
- Trade Union Representative

Rights and responsibilities

Employee

Employees are responsible for:

- ensuring that they are aware of their responsibilities;
- fulfilling reasonable duties and requirements relative to their role;
- engaging in any reasonable training and development that will enable them to reach the required level of competence for the role;
- understanding that if their work performance or capability falls below requirements that line managers will be obliged to address this;
- responding to support/remedial measures that are identified;
- familiarising themselves with GSA procedures relating to their employment;
- informing their line manager of any issues which the employee considers to be relevant and affecting their work performance, this could include personal issues outside the workplace; health or disability issues or changes in the nature or allocation of work.

Employees have a right to:

- be informed of the duties and requirements of their role on appointment, and during employment;
- seek help from their line manager if they have their own concerns about anything which may be affecting their performance, without prejudice;
- be treated with dignity and respect at all times;
- be accompanied or represented at all formal stages of the Capability Procedure, by a work colleague or trade union representative. The chosen companion will be allowed to participate fully in the meeting, and has the right to address the meeting, but not to answer questions on the employee's behalf;
- request a postponement of a meeting if the chosen work colleague/trade union representative cannot attend on the date proposed and a suitable alternative person cannot be found. In this instance, the employee must offer an alternative date and time so long as it is reasonable and falls usually no later than five working days after the date first proposed by GSA;

- be treated in accordance with the principles of natural justice. This includes representation, the right of appeal and the provision of evidence and relevant documentation.

Line Managers

Line Managers are responsible for:

- recruiting, selecting, training and managing staff appropriately, thereby enhancing capability and performance;
- setting reasonable standards relative to an individual's role and ensuring that these are communicated and understood. Standards should be outlined at the start of employment and then reinforced through the induction process, training and on-going career review cycle;
- ensuring that staff have a reasonable workload in line with the duties of the role;
- providing induction as per the Institutional Staff Induction Policy to:
 - new recruits
 - staff transferring from another school or department
 - staff who have been redeployed
 - staff promoted within the school or department
- providing feedback on work performance to every member of staff for whom they are responsible;
- providing appropriate support and assistance to help staff reach, maintain and fulfil the required duties commensurate to their role;
- ensuring that they receive appropriate advice and training relating to the operation of the Capability Procedure;
- dealing with capability issues which may relate to unsatisfactory performance as it becomes apparent at an early stage and informally where possible to avoid this having a detrimental impact on the workplace, or on employee morale;
- ensuring that matters relating to an employee's work performance are dealt with sensitively and consistently, maintaining confidentiality, dignity and equality of opportunity.

Line Managers have a right to:

- enquire, where appropriate, and with sensitivity, of issues that may be affecting an employee's member of staff's work performance;
- be treated with dignity and respect at all times;

Human Resources

The HR department is responsible for:

- training and advising line managers on the Capability Procedure;
- ensure that employees are aware of this policy;
- monitoring the use of the Capability Procedure across GSA;
- attending and keeping a formal record of meetings at all formal stages of the procedure;
- Ensuring the consistent, fair and reasonable application of the capability policy and procedure. The Director of HR is responsible for ensuring the consistent application of this policy.

Performance Issues

Examples Minor:

The following is a non – exhaustive list of examples of minor performance issues:

- quality of work being produced
- quantity of work being produced
- inability to meet reasonable role requirements
- failure to fulfil contractual obligations

Examples Serious:

The following is a non – exhaustive list of examples of serious performance issues:

- persistent unsatisfactory quality of work being produced
- persistent unsatisfactory performance/quantity of work being produced
- persistent work errors
- persistent inability to meet reasonable role requirements
- persistent carelessness, negligence or incompetence in performing normal duties

The Line Manager and employee should refer to the employee's job description

Support Tools

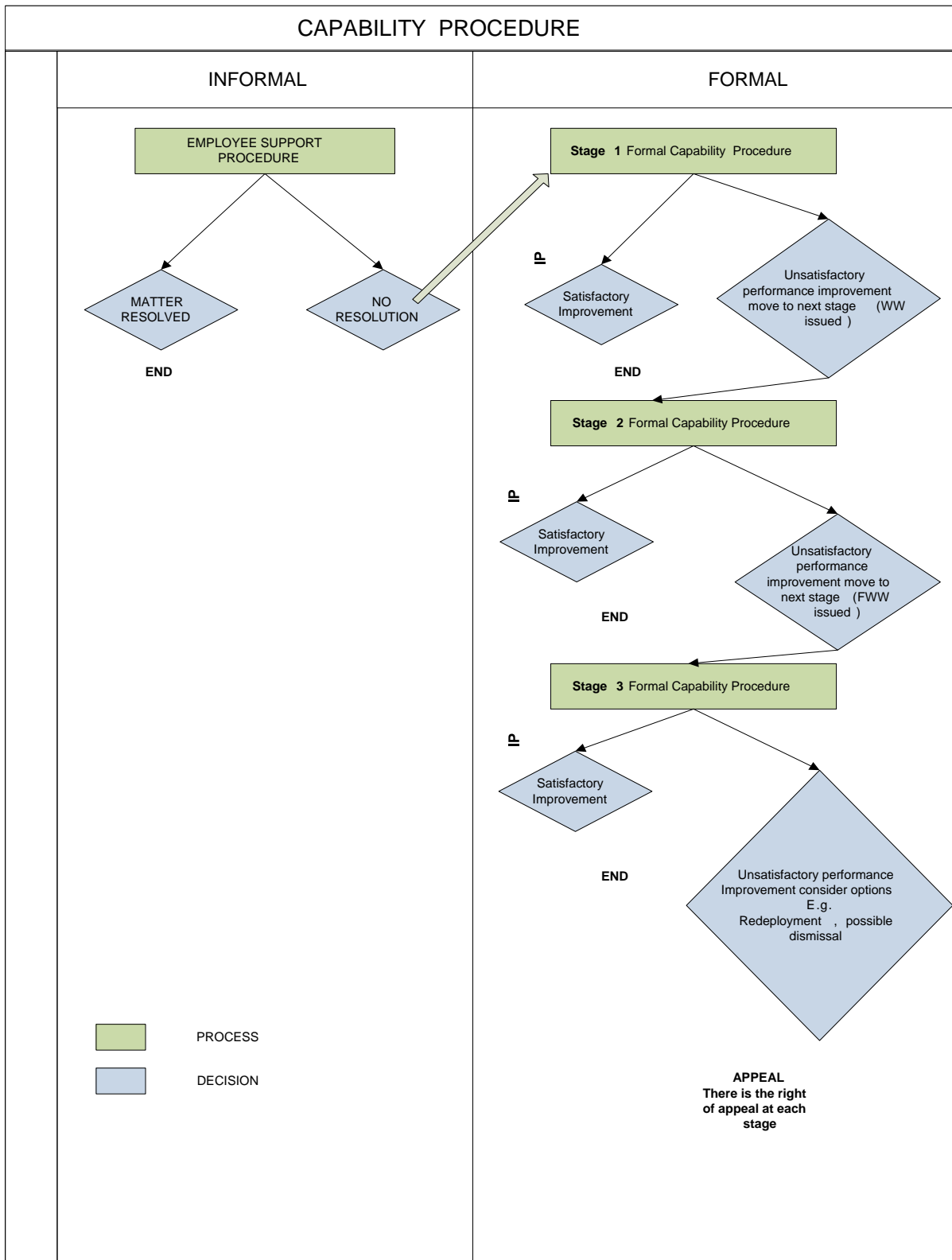
There are many tools employees and their line managers can make use of to support performance improvement. Some of these are listed below although not exhaustive, and should be considered by both parties when deciding how performance improvement can be supported:

- Using the Employee Support Action Plan set out in the Employee Support Procedure;
- Appropriate adjustments to workload. However, care should be taken by line managers to ensure that any adjustments to workload do not have untoward impact on other employees' wellbeing or on service delivery;
- On the job training. This could be provided by a suitably qualified colleague, or self-managed;
- Arranging coaching or mentoring to take place. Information and support can be obtained from the HR department on coaching and mentoring;
- Experience in other areas to develop specific skills or knowledge, or to gain insight into other ways of working;
- Providing additional equipment or resources to enable the employees to perform their role more effectively, taking into account what provision is reasonable in practical and cost terms;
- Providing closer supervision and guidance to employees in a structured and supportive way;
- Identifying and providing access to training courses or professional development activities which will help employees learn or further develop skills;
- Considering a referral to Occupational Health or Staff Counselling where health or personal issues may be affecting performance.

Advice can be sought from the HR department regarding support mechanisms.

APPENDIX 4

Diagram of informal/ formal capability procedure



Improvement Plan

This Improvement Plan is a tool which is aimed to provide a supportive approach to helping individuals improve in areas of work. The improvement plan should be developed through discussion between the line manager and the staff member. Any issues which may be identified as a contributory factor in the performance issue should be included in the development of this document.

During the period of the improvement plan, the employee's performance will be monitored to assess if appropriate improvement (s) are being made. If the expected outcomes are not achieved then further action may be initiated under the Capability Procedure. Line Managers are encouraged to consult HR at an early stage, and throughout.

By the end of the review period set out within the improvement plan, with the support and time provided it is hoped that the staff member's performance will have reached the required standard in relation to reasonable duties as designated for their role. If this is the case, the manager will still work closely with the staff member to ensure that this standard is maintained beyond the cessation of the improvement plan. This is part of the normal managerial practice through regular discussion between and employee and their line manager.

Name of employee:

Manager:

Improvement Plan

What? What is the objective? What is the improvement required?	How? Steps needed to achieve it	Support Required/agreed support	When? Timescale / review dates	Outcomes What are the results and measures of success?

Employee Signature:

Date:

Line Manager Signature:

Date: