



# EBOR ACADEMY TRUST

Policy Number

27

Staff Capability Policy

**Approved By:** Ebor Academy Trust Board of Trustees

**Approval Date:** 11<sup>th</sup> October 2020

**Review Period:** Three years

**Review Date:** 11<sup>th</sup> October 2023

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**Date Created/updated:** July 2020

**Version Number:** 1

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## **1. POLICY PURPOSE**

Ebor Academy Trust is committed to providing high-quality education to its pupils, which can only be achieved when its employees perform their job well. Therefore it is vital that under-performance is identified and tackled appropriately and as promptly as possible to minimise any negative impact upon educational provision.

The Trust's Appraisal Policy is used to agree individual colleague's targets and review progress against them, as well as discussing more general work performance and any support and development required. This will usually be supplemented by informal one-to-one discussions. Where instances of underperformance are identified, these will mostly be resolved through appropriate support, facilitated by the individual's line manager as described in section 4 below. However, if sufficient improvement is not made through informal support, or if significant concerns arise, the formal part of this Policy will apply.

## **2. POLICY PRINCIPLES**

2.1 This policy aims to:

- a) Help employees who are not doing so, to improve their job performance to meet the required standards
- b) Enable the Trust to deal with cases of underperformance as quickly and effectively as possible
- c) Promote fairness and transparency by providing written procedures that are specific, clear and applied consistently.

2.2 The Trust recognises that there will be occasions when a colleague is unable to meet the required standard of work performance, despite his or her best efforts. This could be because the employee is lacking in knowledge, skill or ability, or it could be due to personal circumstances. Whatever the reason, the line manager will discuss the issues openly and sensitively with the individual and work collaboratively with them to put appropriate support in place. Where appropriate, the line manager will make the individual aware of the Trust's employee assistance programme, which includes access to free and independent counselling services, telephone counselling and financial wellbeing services and also the Education Support Network.

2.3 Capability is assessed by reference to the skills and aptitude relevant to the position compared to that held by the employee and their competence to perform their duties and responsibilities. In situations where poor performance is due to an employee's willful or deliberate carelessness, negligence or lack of effort, then this will be dealt with under the Trust's Disciplinary Policy, following consideration of any underlying reasons. Cases involving capability issues due to ill-health will be dealt with through the Trust's Sickness Management Policy and if there is a reasonable likelihood that poor performance may be linked to illness, injury or other physical or mental impairment, advice will be obtained from the Trust's Occupational Health Adviser before actions are taken under this policy.

2.4 The Trust's Capability Policy will be applied fully and consistently to ensure that individuals have regular feedback on their performance, with positive affirmation given as well as any concerns about performance being raised at an early stage.

2.5 In the first instance, appropriate action will be taken under the informal stage of this policy to address issues of under-performance. It is anticipated that most cases of under-performance on the grounds of capability will be resolved at this stage and no further action will be required. Only

where the informal stage has been exhausted and not led to the required improvement will the formal stage be invoked. However, in exceptional circumstances, where there are significant and serious concerns regarding the employee's performance, it may be appropriate to proceed straight to the formal stage of this Policy, for example, where the perceived lack of capability had, or could reasonably lead to, a safeguarding incident occurring.

- 2.6 Employees will have the right to be accompanied at all stages of the Capability Policy by their trade union representative or a workplace colleague. If the representative cannot attend on the proposed date, the employee will be required to suggest a reasonable alternative time and date not more than five working days after the original date.
- 2.7 The person chairing any meeting under this Policy will not be involved in the monitoring of the individual's performance, to provide greater objectivity of assessment.
- 2.8 If a concern or grievance is raised regarding any matter being dealt with under this Policy, it should be considered as promptly as possible within this process. Issues should only be referred to the Resolving Issues at Work policy (available on the Trust website or through the school office or HR team) where they are not related to the performance issues being considered, i.e. a separate matter. Concerns relating to the case in question should be raised at the meetings outlined in this policy for the independent meeting chairperson to consider.
- 2.9 This policy should always be applied in a conscientious way whilst minimising the impact on workload for teachers, line managers, headteachers, local governing bodies and the colleague to whom the policy is being applied.
- 2.10 This policy applies to all employees of the Trust except those who are within their probationary period and teachers in the induction period of Newly Qualified Teachers (NQTs), unless serious capability issues occur. This policy will also apply to an employee who is a trade union representative. However, the school will discuss the matter with an official employed by the union at the commencement of the procedure, after obtaining the employee's agreement.
- 2.11 Details of any cases arising under this policy and any documents pertaining to them will be treated in strict confidence and any records kept in accordance with the Trust's data protection policies.

### **3. ROLES AND RESPONSIBILITIES**

*The Trust will:-*

- a) Set clear targets for the Trust and its schools, which can then be cascaded down to each team member.
- b) Take all reasonable steps to try to avoid capability problems amongst staff by ensuring that there are clear and robust practices in place around recruitment, performance management, job design and work allocation, induction, appraisal and ongoing professional development.

*Line Managers will:*

- a) Ensure that roles are clearly defined through up to date, accurate job descriptions and that standards of performance are clearly articulated through one-to-one meetings, team meetings and appraisals.
- b) Discuss concerns about performance with the relevant member of staff honestly and promptly and with a view to facilitating improvement informally, keeping notes where necessary.
- c) Actively engage in training on how to facilitate this policy.
- d) Where an individual's performance does not improve following informal discussions, make HR aware of the situation and take advice about how the issue should be progressed.
- e) Ensure that their team members have access to the appropriate time, support and development to enable them to succeed in their work.

*HR will:-*

- a) Provide advice, guidance and training to managers on the implementation of this policy.
- b) Administer any meetings held under the formal stage.
- c) Provide training for staff on performance review and management processes as required.
- d) Collate data on performance review outcomes and also of any meetings held under the formal stage.
- e) Undertake periodic review of the policy with Trust managers and trade union colleagues.

*Individuals will:-*

- a) Listen to constructive feedback given by colleagues and managers with aim of continuously improving performance.
- b) Acknowledge that good job performance is a critical part of any employment relationship and is accepted as the norm. As such, they must take whatever action is necessary to improve their performance and be open to and act upon constructive feedback.
- c) Act openly, asking for help and/or support at work if needed.

#### **4. INFORMAL ACTION**

- 4.1 At any stage, where there are aspects of an employee's performance that cause some concern, the line manager will work with the employee to address the issues as part of the usual performance management process. Concerns should always be raised when they arise, or as soon as practical thereafter, so that the employee can be given an opportunity to address the issue. It is envisaged that most concerns can be resolved in this way. It is advisable for line managers to keep a file note of what was discussed and shared with the individual.
- 4.2 However, where the concerns warrant it, an informal Performance Improvement Plan may be used. Such a plan identifies the areas for improvement, the timeframe, any associated actions and the support that will be offered. An example template is available at Appendix 1 - this may be adapted to suit the individual circumstances.
- 4.3 The Performance Improvement Plan will be developed and shared with the individual. If the individual is not clear about any of the contents, or has any concerns about it, they should ask for clarity at the earliest possibility. If the required improvements are not met in the timescale outlined in the Plan, or it is becoming clear that it is likely that this will be the case, a meeting will be convened to discuss the situation. This meeting is still under the remit of the informal stage of the policy, but will be convened in a formal manner. The employee will be given at least 10

working days' notice in writing of the meeting and will be notified of their right to be accompanied by a trade union representative or workplace colleague.

4.4 The purpose of the meeting is to:

- a) reiterate the concerns about the individual's performance which still exist, providing supporting evidence
- b) give the employee the opportunity to comment on and discuss the concerns
- c) set clear objectives for required improvement
- d) agree any support (e.g. coaching, mentoring, structured observations or counselling), that will be provided to help address those specific concerns
- e) make clear how, and by when, the line manager will review progress
- f) explain the implications and process if no, or insufficient, improvement is made e.g. impact on pay progression and the potential for the situation to move to the formal capability process. For the avoidance of doubt, what insufficient improvement looks and feels like will be outlined to the individual.

4.5 A documented formal Performance Improvement Plan will be produced following this meeting and a copy provided to the employee within 5 working days of the meeting. The line manager will ensure that the individual has the opportunity to ask any questions they may have about the plan in a timely manner, to maximise the likelihood of meeting the required standard, and where an individual would like to have a further meeting to clarify any aspect of the plan, this will be arranged without delay.

4.6 The employee's progress will continue to be monitored as part of the process and a reasonable time given for performance to improve. The time for improvement will depend upon the circumstances and will be clearly specified, along with appropriate support as agreed in the Performance Improvement Plan, in order that the aim of recovering and improving performance can be achieved. During this monitoring period at least one interim meeting will be arranged at which feedback on progress will be given to the employee and the Performance Improvement Plan may be modified, if appropriate. The date of the interim meeting will be arranged at the earlier meeting.

4.7 At the end of the period specified in the Performance Improvement Plan, a review meeting with the line manager will be convened to evaluate performance. The possible outcomes are as follows:

- i. If **sufficient progress has been made**, such that the employee is performing at a level that indicates there is no longer a possibility of formal capability procedures being invoked, the employee will be informed of this. Following this review meeting, normal performance management will continue.
- ii. If **significant progress** has been made, such that the employee might reasonably be expected to achieve the required standard of performance within a short time period, then the monitoring period under the Performance Improvement Plan may be extended. This should only happen once and will usually be for a maximum of four weeks.
- iii. If **no, or insufficient improvement** has been made over the period, the employee will be advised of this at the review meeting. The individual will also be notified that the informal stage of the policy will no longer apply and that their performance will be managed under the formal stage of the Capability Policy; as such they will be invited to a formal capability meeting. This will be confirmed to the employee in writing within 5 working days of the meeting.

- 4.8 The individual will receive a letter within 5 working days of the meeting outlining the conclusion reached and next steps, if any, or confirming that the process has come to an end.
- 4.9 See Appendix 2 for a flowchart setting out an example of informal action.

## 5. FORMAL ACTION

- 5.1 Where, at the end of the informal process, the line manager considers that insufficient improvement in the staff member's performance has been made, formal action will commence. Formal action may also be deemed necessary where informal action has not taken place, but where something happens that is sufficiently serious that it needs to be dealt with formally.
- 5.2 The first stage of the formal process is that the individual will be invited to attend a formal capability meeting.
- 5.3 An individual will be given a minimum of ten working days' notice of any formal capability meeting. In addition to providing the time, date and venue of the meeting, the communication will also contain the nature of the issues to be discussed, explaining how the person's performance is not reaching the required standard, as previously discussed. Any evidence to be considered at the meeting will also be sent with the letter, so that the individual has the time to be able to consider their response. The communication will make it clear that this is a meeting under the formal stage of the Policy. The member of staff will be advised of their right to be accompanied by a workplace colleague or recognised trade union representative.
- 5.4 A formal capability meeting will usually be chaired by the line manager's manager, or another person of similar seniority in the Trust. An HR representative will attend the meeting to advise the manager.

## 6. FORMAL CAPABILITY MEETINGS

6.1 The purpose of the meeting is to:

- a) Discuss the issues of under-performance which have been identified and ensure there is common understanding regarding the areas of concern and the standard of performance which is required.
- b) Consider any mitigation or other factors affecting the employee's performance.
- c) Determine the next steps in the formal process and, if applicable, agree a further formal action plan including timescales, targets and standards and how these will be monitored.
- d) Agree appropriate support arrangements for the employee including relevant training and guidance if required, and how this will be provided, as well as any personal support such as counselling, that may be beneficial.

The HR representative will advise the manager as to the recommended procedure for the meeting and will also take notes of the meeting, a copy of which will be sent to the member of staff within 5 working days.

- 6.2 The line manager may adjourn the meeting, for example if they decide that further investigation is needed, or that more time is needed in which to consider any additional information.
- 6.3 The possible outcomes of the formal capability meeting are as follows:
- a) **Insufficient grounds for pursuing a capability issue**

Where the manager chairing the meeting believes there are insufficient grounds for pursuing the formal capability issue and that it would be more appropriate to continue to address the remaining concerns through the informal process, then the employee will be notified and this will be confirmed to them in writing within 5 working days of the meeting.

**b) Sufficient grounds for pursuing capability**

Where there is a continued concern about the standard of performance, a formal support plan and review period will be instigated (see appendix 1 for a template). Every attempt will be made to agree the formal action plan with the employee and they will be asked to contribute their views on the support which would help them achieve the required improvement. The individual may discuss this with their trade union representative or workplace colleague at an adjournment of the meeting.

The duration of the review period will be considered on a case-by-case basis. Whilst it will not be excessively long, the timetable for improvement will be reasonable and proportionate, taking into account the concerns raised with the employee and the nature of any support and training required, providing them with sufficient opportunity for an improvement to take place. The timescale may also reflect the amount of time and support an employee has already received. It is not anticipated that the timescale will exceed 6 weeks. In order to give the employee every chance of meeting the required standard, an interim meeting with the line manager, HR and the individual's representative may take place at which feedback can be shared.

The implications of failing to make the required improvement will be discussed with the employee and they will be notified that failure to improve within this timescale could ultimately lead to dismissal. They will also be notified of any impact of the process on their pay.

The employee will be issued with a letter following the meeting which details the discussions held, the outcome reached and full details of the associated formal action plan and the date of the formal review meeting.

One or more meetings may be held during the review period to review the progress made and amend the formal action plan if required. The number and timing of these meetings will be agreed when the formal action plan is put in place.

## **7. FORMAL REVIEW MEETINGS**

- 7.1 At the end of the review period, a meeting will be held to assess performance against the action plan. This meeting will have been arranged at the formal capability meeting. Where possible, the meeting will be chaired by the person who chaired the original formal capability meeting.
- 7.2 The employee will be asked to demonstrate what steps they have taken and the improvements against the plan they believe they have made. They may also wish to discuss any mitigating circumstances or personal factors which they feel are relevant to their performance at work.
- 7.3 The line manager will discuss the employee's progress against the action plan and may ask other staff involved in undertaking monitoring and providing support under the plan to attend the meeting to provide feedback.
- 7.4 Once all relevant information has been considered, the manager chairing the meeting will confirm if the employee's performance has reached the required standard or not.
- 7.5 The possible outcomes of the formal review meeting are as follows:



**a) Improvement to the required standard**

If the level of performance has been satisfactory and there is confidence that it can be sustained, the capability procedure will end and usual monitoring will ensue.

In such cases, it may be appropriate to continue some of the support arrangements which were put in place under the action plan, to ensure that the employee can sustain their improvement. This will be discussed at the final review meeting and any ongoing arrangements agreed with the employee.

If the employee's performance subsequently dips within a timescale appropriate to the job role and work cycles (not normally less than a term), the manager may determine that the employee will return to the formal stage of the Capability Policy. rather than initially dealing with the concerns under the informal stage of the Policy. In such cases, the headteacher will arrange a formal capability meeting to discuss the concerns with the employee and their representative. At this meeting the headteacher may determine either that the employee will be subject to a further formal review period or progress directly to a capability hearing.

**b) Significant improvement made but standards not fully achieved**

If the employee has demonstrated significant improvement but has not reached the required standard but there is a realistic probability that they will be able to do so in a reasonable timescale, a further period of support and monitoring will take place with an updated formal action plan, followed by a further formal review meeting and subsequent decision. At this further stage it is likely that the decision taken will be either that improvement has been made to the required standard or there has been a failure to reach the required standard, with a third period of support and monitoring being appropriate only in exceptional cases.

**c) Failure to reach the required standard**

If the employee has failed to show sufficient improvement towards achieving the targets to satisfy the manager that they are capable of achieving and maintaining the required standards of performance in the post, the case will be referred to a Capability Hearing.

The decision and main points of the formal review meeting will be recorded in a letter issued to the employee within 5 working days of the meeting.

## **8. CAPABILITY HEARING**

- 8.1 The Capability Hearing will be convened to consider the continued employment of the member of staff and will be held with a panel consisting of no fewer than three members, which will comprise of Trust staff of sufficient seniority (e.g. headteachers, executive headteachers), trustees or members of the local governing body who have had no prior involvement in the case. The hearing panel will be advised by a member of the HR team who will also take notes. If the employee fails to attend the capability hearing without good reason, the panel will decide whether to proceed in the employee's absence or to reconvene the hearing at another time. Before such a decision is taken, attempts should be made to contact the employee to ascertain the reason for their absence
- 8.2 The employee will be notified of the hearing in writing and given at least 10 working days' notice. The notification letter will confirm:

- a) The arrangements for the hearing, including the date, time, location and who will be present
- b) The fact that the hearing is being held under the Trust's Capability Policy and how a copy of this can be accessed by the employee
- c) The employee's right to be accompanied by a trade union representative or workplace colleague
- d) That a possible outcome of the hearing will be the termination of the individual's employment
- e) In addition, the employee will also be provided with any documentary evidence which will be considered at the hearing regarding the identified areas of underperformance and the actions which have been taken including under the formal action plan.

8.3 Other staff involved in a monitoring or supporting role within the capability process may be asked to attend the hearing if required to answer questions or present information. The employee and their representative will be asked to present their views at the hearing. Should the employee wish to have any written evidence considered by the panel then this must be submitted to the HR adviser at least 48 hours prior to the hearing.

8.4 At the hearing the panel will consider all the evidence relating to the case, reviewing the actions taken and support provided at previous stages, the impact of the employee's performance on other employees and service delivery and any information and mitigation provided by the employee.

8.5 The possible outcomes of the capability hearing are as follows:

- a) **Improvement to the required standard** - If the panel believes that performance has been satisfactory and there is confidence that it can be sustained, the capability procedure will end and the employee will re-enter the informal performance review process.

If the employee's performance subsequently dips within a timescale appropriate to the job role and work cycles, the school may determine that the employee will return to the formal stage of the Capability Policy rather than initially dealing with the concerns under the informal stage. In such cases, the line manager will either arrange a formal capability meeting, or the capability hearing will be reconvened.

- b) **Significant improvement made but standards not fully achieved** - The employee has demonstrated significant improvement but has not reached the required standard though there is a realistic probability that they will be able to do so in a reasonable timescale. In such cases the review period may be extended by a reasonable period, usually within the range of 4 – 6 weeks, and the capability hearing will reconvene at the end of this period to consider progress against the action plan.
- c) **Failure to reach the required standard** - In such cases the employee is likely to be dismissed on the grounds of incapability with notice – see para 9. below.

8.6 The employee will be notified of the decision of the capability hearing in writing within 5 working days of the meeting. In the event of failure to reach the required standard, the letter will specify the reasons for dismissal, the arrangements for notice and the right of appeal.

## 9. NOTICE

9.1 A member of staff who is dismissed will normally be entitled to contractual notice or pay in lieu of notice. However there are exceptional circumstances where staff members may be liable to be dismissed without notice and without pay in lieu of notice, e.g. where the staff member has failed to attend formal meetings/hearings/dismissal hearings without adequate explanation or good reason, nor made reasonable efforts to engage with the support or training offered.

## 10. APPEALS

- 10.1 Appeals will be heard by an appeal panel. The panel should contain three people, comprising members of the local governing body, trustees, or senior managers, none of whom have been involved in any previous action or decision connected with the case. The Panel hearing the appeal has the authority to uphold or dismiss the appeal.
- 10.2 HR representation will be available to advise the appeal panel.
- 10.3 Staff members must lodge an appeal in writing to the HR Director within **10 working days** of receiving written confirmation of the formal warning or dismissal, setting out the reasons for their appeal. Notification of the arrangements for the appeal will be the same as with formal capability and review meetings. As with other formal meetings, notes will be taken and a copy sent to the member of staff within 5 working days of the meeting.
- 10.4 The appeal will take the form of a review of the meeting at which the sanction was issued. The Chairperson from that meeting will present the reasons for reaching their decision, including a response to the staff member's grounds for appeal, and the staff member and their representative will set out their reasons why they believe the decision is wrong.

**APPENDIX 1**

**PERFORMANCE IMPROVEMENT PLAN**

<b>Employee name:</b>	<b>Line manager name:</b>	<b>Mentor name (if applicable):</b>
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**Reason for the PIP:**

**Overall aims of the PIP:**

**Methods of support:**

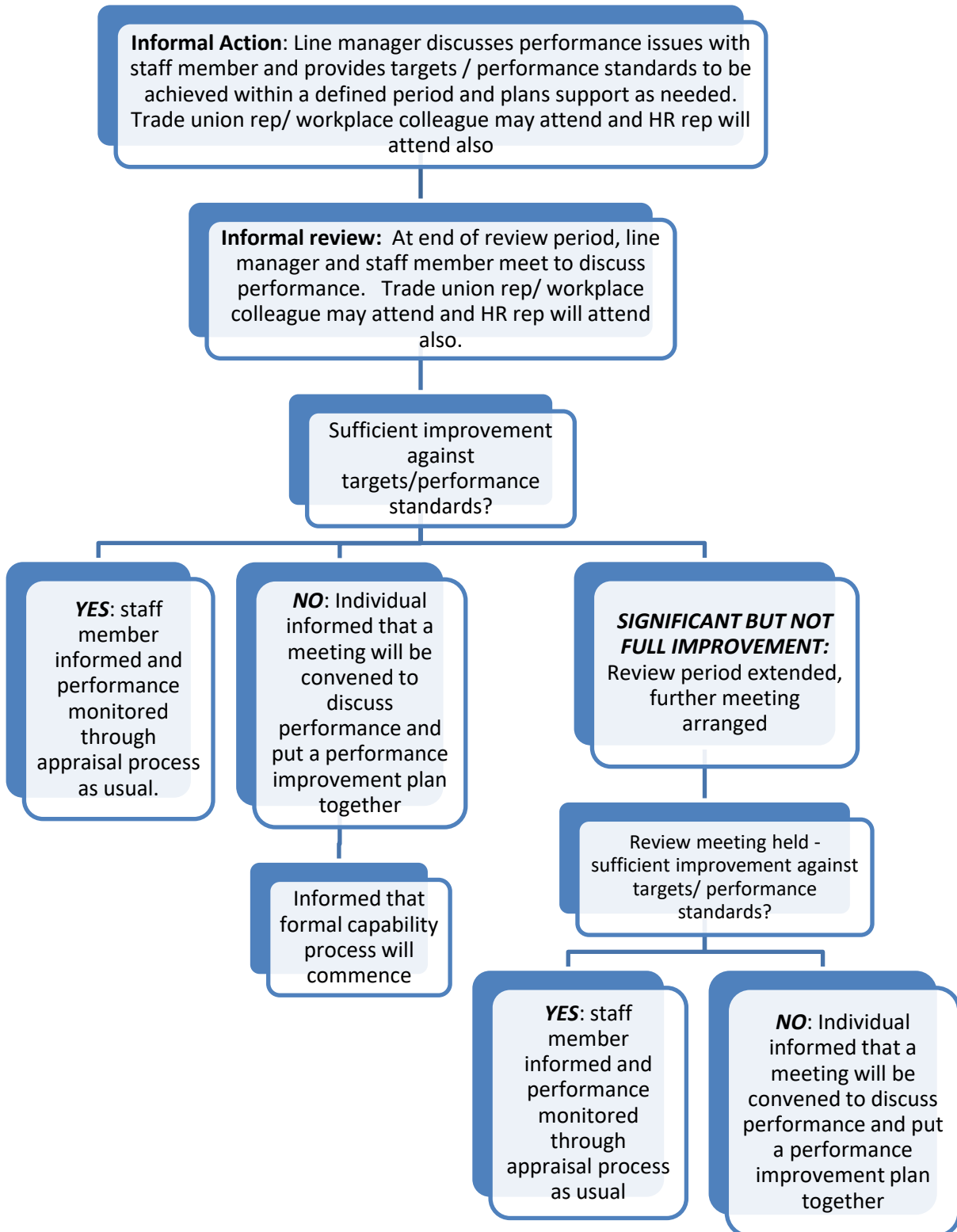
**Key meeting dates:**

Key Issue	Areas for improvement	Timescale	Actions to be taken	Additional support /resources required	Monitoring /Assessment arrangements and timetable for achievement to review	Success Criteria

**Any other relevant information, e.g. plan of support etc.**

APPENDIX 2

INFORMAL PERFORMANCE MANAGEMENT FLOW CHART



PERFORMANCE MANAGEMENT FLOW CHART

