



EMPLOYEE CAPABILITY POLICY

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Change

Reviewer:

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Signature**Signature****Signature****Identifier:**

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This policy will
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Forum.

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APPLICATION: The provisions of this policy, which was developed by a partnership group on behalf of Grampian Area Partnership Forum, apply to all staff except Medical and Dental staff who have their own arrangements for dealing with such matters.

**NHS GRAMPIAN
EMPLOYEE CAPABILITY POLICY**

If you have difficulty understanding the English language, this policy can be made available to you in a language of your choice.

This policy can also be made available, on request, in other formats e.g. in large print or on a computer disk.

For all requests for copies of this policy in another language, or in an alternative format, please call the Corporate Communications Team on 01224 554400.

NHS GRAMPIAN EMPLOYEE CAPABILITY POLICY

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NHS GRAMPIAN EMPLOYEE CAPABILITY POLICY

1 POLICY STATEMENT

NHS Grampian accepts responsibility to ensure that all staff are adequately trained to undertake the duties of their post and that all employees are treated in a fair and equitable manner.

All employees are required to perform the duties of their post to an acceptable standard. For all employees except Doctors, Dentists and Senior/Executive Managers each post will have a Knowledge and Skills Framework outline for use at the Foundation and/or Second Gateway which details the levels of competence required.

Where it is felt that an employee's lack of performance is related to a capability issue, the primary objective must be to assist and support the employee to improve their performance to the required standard and every effort must be made to keep the employee at work.

Where employees fail to meet the required standard, they will be offered training and support to improve their work performance. A distinction must be drawn between capability issues and when an employee is capable of meeting the required performance standard but fails to do so. This may be addressed using the Standard Setting Support Policy or if deemed to be a matter of conduct the Employee Conduct Policy.

This policy is not intended to replace the normal process of performance management, where managers allocate work, agree and monitor standards of performance, draw attention to errors and poor quality and highlight work done well. Such processes are not part of this policy and do not require formal interviews and representation.

Employees have the right to state their own case and to be represented by a Trade Union or Staff-Side Organisation representative (including full-time Trade Union Officers), or be accompanied by a colleague, friend, or relative not acting in a legal capacity at all stages of the procedure.

Special attention should be paid to communications with employees who have limited experience of working life, employees with learning difficulties, employees with physical disabilities or mental health issues which may impact on their ability to understand or express themselves and employees whose first language is not English.

2 DEFINITION

The Employment Relations Act (ERA) 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". This must be determined in accordance with the employee's contractual obligations.

This policy is designed to deal with those cases where the employee is lacking in some area of knowledge, skill or ability which results in an inability to be able to carry out the required duties to an acceptable standard.

A genuine lack of capability may come about for a variety of reasons, examples of which are shown below:

- Inadequate training and development
- Ill health, or changes in health status
- Personal circumstances
- Lack of Qualifications
- Changes in the workplace environment
- Career change
- Bullying and/or harassment
- Intrinsic lack of ability e.g. skill or aptitude

3 AIMS OF THE POLICY

This policy will ensure that capability issues are dealt with in a fair and consistent manner and provides for:

- assisting employees to improve their performance where deficiencies exist
- a range of options to address capability issues where improvement in the current job has not been achieved, following support through the use of other Staff Management Policies.

In order to achieve this, the following principles and values are required:

- the management of capability must always be carried out in a way that shows respect for the employee as an individual and recognises diversity

- the encouragement of early intervention, which enables a supportive approach to be taken, when poor performance is identified.
- Consideration of all the support mechanisms available e.g. Occupational Health Services, Trades Union etc.

There are links to these in a range of other NHS Grampian Policies/Services/Professional Standards, as recorded at Appendix 1.

Summarised details on how to respond to Capability issues and the Employee Capability flow charts are attached at Appendices 2, 3, 4 and 5.

4 PROCEDURE - INFORMAL APPROACH

If action to secure an improvement in employee's performance has already been initiated using the Standard Setting Support Policy, and this has not secured the desired improvement due to an identified capability issue, the manager should progress to Formal Stage 1 of the Capability Policy.

Is there a Capability Issue?

In order to determine whether there is a capability issue which should be dealt with under this procedure, the manager should consider the following questions:

- what indications are there that the employee is not meeting the requirements of the job?
- have there been substantiated complaints about, or criticisms of, the employee's work from colleagues, patients or visitors?
- are there factual grounds which indicate inadequate performance e.g. poor results?
- Does the manager's observations of the employee indicate dissatisfaction with the employee's performance?

The way forward in the informal stages of the procedure will be determined by the answers to the above questions.

An informal discussion, which focuses on the particular performance issue(s), should take place with the employee. This should be a positive discussion during which the manager will offer the employee constructive support and assistance to improve their performance.

The manager must always bear in mind that the aim is to assist the employee to improve to an acceptable standard. It is crucial, therefore, that as many aspects as possible of the issue are explored. This will require a sensitively handled discussion, conducted in an atmosphere of trust and openness, which is free from interruption and which conveys the manager's undivided attention.

The manager should:

- Explain to the employee the purpose of the meeting
- encourage the employee to describe the situation from their perspective
- be alert to possible contributing factors, e.g. relationships with colleagues, fears of inadequacy/failure, lack of promotion, insufficient training, domestic/health reasons etc
- avoid criticism
- shape the discussion in order to allow:
 - (i) the real issue to be identified
 - (ii) contributing factors to be highlighted and taken into account
 - (iii) possible solutions to be discussed and agreed and
 - (iv) an agreed action plan with time-scales and a review mechanism to be put together

In order to achieve required improvement one or more of the following options may assist:

- Provision of training
- Flexible working (temporary or permanent changes)
- Referral to Occupational Health Service
- Relocation (temporary or permanent, nature and duration to be agreed between individual and manager)
- Consider other Policies e.g. Standard Setting Support Policy, Employee Conduct Policy, KSF Gateway Review Policy

Outcome of Meeting

The manager should record the outcome of the meeting in a letter to the employee.

(See Flowchart at **APPENDIX 2**)

5 FORMAL PROCESS

If, following the agreed review of the employee's performance, there has been inadequate improvement within an agreed period of time, a more formal approach should be adopted.

5.1 Stage 1

5.1.1 Approach

The line manager should arrange a meeting with the employee and must give the employee at least five working day's notice of the meeting.

The written confirmation of the meeting will include:

- the procedure and stage being used
- clear details of the shortfall in performance
- all necessary supporting documentation
- details of any informal discussion which has already taken place
- the employee's right to be represented at the meeting

5.1.2. The purpose of the meeting

The purpose of the meeting will be for the manager and employee to discuss the following:

- the areas in which their performance remains unsatisfactory
- the improvement in performance which is required and how it will be measured
- an action plan for addressing the performance issues with an agreed time-scale for improvement to take place
- the date their performance will be reviewed again and
- the action which may follow if the required improvement in performance is not achieved

There must be an opportunity for the employee to answer these points and to explain any difficulties which they may be having. There must also be a discussion on the ways and means by which the desired improvement may be achieved.

Where the member of staff is subject to professional regulations, due regard to the necessary capability/competency procedures for the profession must be considered.

It may be felt appropriate at this stage to discuss formal career counselling or whether a permanent redeployment would be possible, and if so, whether it is an agreeable option for the employee. If redeployment is being considered the manager should ensure HR involvement.

Where redeployment is agreed as an option the provisions of the Redeployment Policy will apply.

If the employee is successfully redeployed, the matter will be considered to have been resolved.

While the employee is on the Redeployment Register and remains in their substantive role, they will undertake limited duties on a mutually agreed basis.

In line with the KSF Gateway Policy, managers and employees need to be aware of the implications when an employee is not meeting the required competency level, this will affect their ability to progress through the Foundation and Second Gateways within their pay band.

5.1.3 **Outcome of meeting**

The manager will formally record the outcome of this meeting in a letter to the employee, within five working days of the meeting.

This letter will include:

- details of the areas where performance remains unsatisfactory
- details of the improvement(s) which is required
- a copy of the action plan, underpinned by regular monitoring meetings, which has been decided upon to achieve improvement
- details of the agreed time-scale for improvement with a date for overall review appropriate to the circumstances.
- details of the right of appeal (see section 6) and the possible consequences if the necessary improvement is not achieved

If, at the agreed review date the desired improvement has been achieved, this will be confirmed and followed up in writing to the employee within five working days of the review.

If the manager is of the view that the employee is capable of meeting the required level of performance but fails to do so, then this may become a conduct issue and the manager can consider whether it is more appropriate to switch to the Employee Conduct Policy. This should be discussed with the employee, staff-side and HR representative prior to decision being reached

(See Flowchart at **APPENDIX 3**)

5.2 Stage 2

If, at the overall review of Stage 1 or if during Stage 1 it becomes apparent that the employee is unlikely to meet the agreed level of performance a further meeting with the employee and involving a member of the HR Team will be arranged.

The format, time-scales, process and purpose of this meeting will be as already detailed in Stage 1, paragraphs 5.1.1, 5.1.2 and 5.1.3.

In addition, the support measures previously identified will also be reviewed and there will be discussion as to whether they should continue or if additional measures might be helpful. The employee will again be given the opportunity to answer the points raised and provide any other relevant information.

Where redeployment is agreed as an option the provisions of the Redeployment Policy will apply.

If the manager is of the view that the employee is capable of meeting the required level of performance but fails to do so, then this becomes a conduct issue and the manager can consider whether it is more appropriate to switch to the Employee Conduct Policy. This should be discussed with the employee, staff-side and HR representative prior to decision being reached

The manager will formally record the outcome of this meeting in a letter to the employee, within five working days of the meeting.

If, at the agreed review date the desired improvement has been achieved, this will be confirmed and followed up in writing to the employee within five working days of the review.

(See Flowchart at **APPENDIX 4**)

5.3 Stage 3

5.3.1 Approach

If, despite all the measures outlined above, the desired improvement has still not been achieved, the manager must convene a meeting notice of and information about which will be as recorded in paragraph 5.1.1.

This meeting will involve the relevant manager, a member of the HR Team, the employee and their representative. Where the member of staff is subject to professional regulations, due regard to the necessary capability/competency procedures for the profession must be considered from the outset. The employee will again be clearly told of the continued deficiencies and given the opportunity to answer the points made.

5.3.2 Outcome

Following the meeting the manager will make a decision as to whether there is a likelihood of the employee's performance achieving an acceptable level by extending the assistance already provided, or the time-scale agreed under the previous stage.

If the manager believes adequate improvement is possible within a reasonable time-scale, this should be agreed in line with the provisions set out in Stage 2.

If it is decided that the employee's performance will not become acceptable in the current post, further consideration will be given to whether permanent redeployment (at the same, or lower, pay level, depending on the grade of the post – see para (b) below) is possible and to whether the employee is likely to perform the alternative job to the required standard.

The manager will formally record the outcome of this meeting in a letter to the employee, within five working days of the meeting.

Possible outcomes

- (a) Where the manager believes adequate improvement is possible within a reasonable time-scale, the letter will include:
- details of the areas where performance is unsatisfactory
 - details of the improvement(s) which is required

- a copy of the action plan, underpinned by regular monitoring meetings, which has been agreed to achieve improvement
- details of the agreed time-scale for improvement with a date for overall review (normally within 6 months) and
- details of right of appeal (see section 6) and the possible consequences if the necessary improvement is not achieved

If, at the agreed review date the desired improvement has been achieved, this will be confirmed and followed up in writing to the employee within five working days of the review.

If, at the agreed review date the desired improvement has not been achieved, the manager will convene a further meeting with the employee. Notice of and information about, this meeting will be as recorded in paragraph 5.1.1.

- (b) Where it has been decided that the most appropriate course of action is to redeploy the employee, the provisions of the Redeployment Policy will apply.

If the employee is successfully redeployed, the matter will be considered to have been resolved.

While the employee is on the Redeployment Register and remains in their substantive role, they will undertake limited duties on a mutually agreed basis.

- (c) In the event that the employee is offered but declines redeployment or where the manager does not consider redeployment appropriate or considers that adequate improvement is not possible within a reasonable time-scale, a Hearing will be convened in line with the provisions contained in the Employee Conduct Policy. It should be noted that a possible outcome might be dismissal on the grounds of capability.

(See Flowchart at **APPENDIX 5**)

6 APPEAL PROCEDURE

The right to an appeal exists at the outcome level of each stage of the formal procedure. An employee who is aggrieved at a decision following any of the formal stages has the right to appeal to a manager at a more senior level as detailed in the outcome letter. Any appeal must be in writing and should be received within 10 working days of receipt of the confirmation letter.

There will be no delay in implementing management decisions pending an appeal, but they may be subsequently amended, or reversed, as a result of an appeal hearing.

LINKS TO OTHER NHS GRAMPYAN POLICIES/SERVICES/PROFESSIONAL STANDARDS

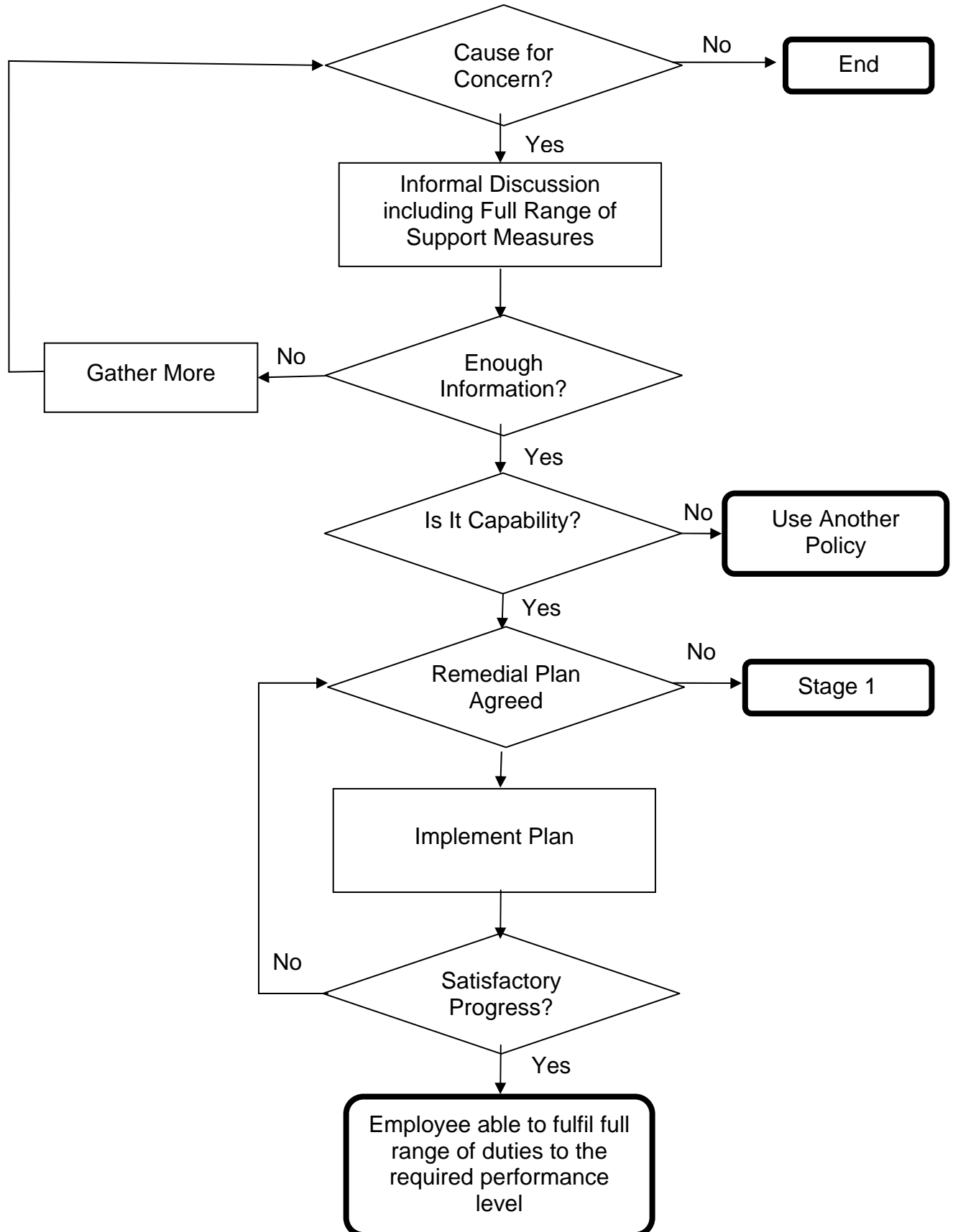
When dealing with issues relating to capability managers should be aware of the links to other relevant policies, services and professional standards. For example:

- Procedures relating to Attendance Management
- Alcohol and Drug Policy
- Policies relating to leave arrangements for staff e.g. Parental Leave, Career Breaks, Special and Carer Leave.
- The Dignity at Work Policy
- The Employee Conduct Policy
- Flexible Working Policies
- The Redeployment Policy
- KSF Gateway Policy
- Referral to the Occupational Health Service
- Professional Codes of Conduct e.g. NMC etc., where applicable

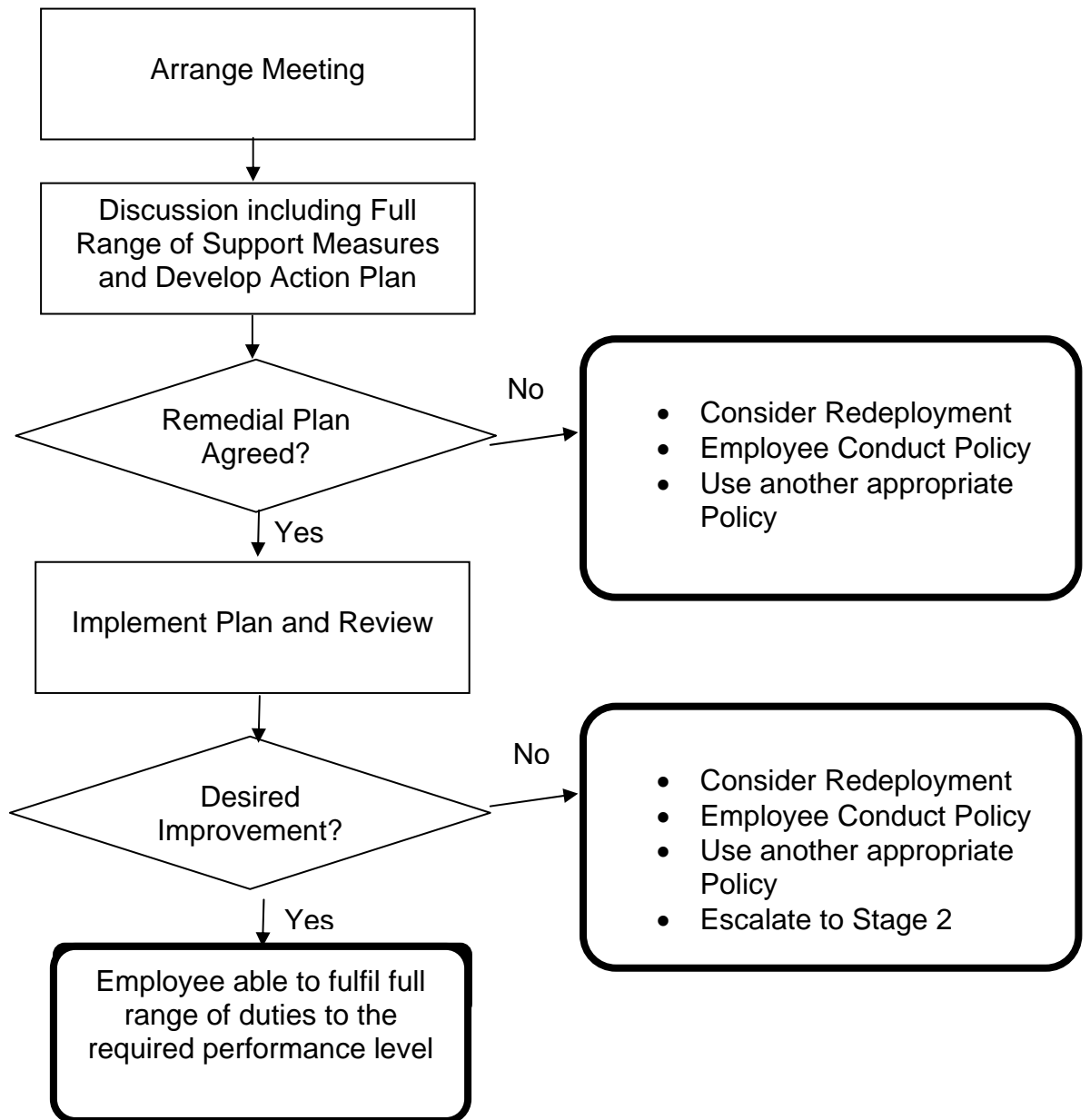
It may be that during the course of considering the procedure these policies are felt to offer the most appropriate way forward.

N.B. All of NHS Grampian's current staff management policies can be found under Policies and Procedures on the HR pages of the intranet. Alternatively, employees can obtain a copy from their manager, their Staff Side representative or Human Resources Department.

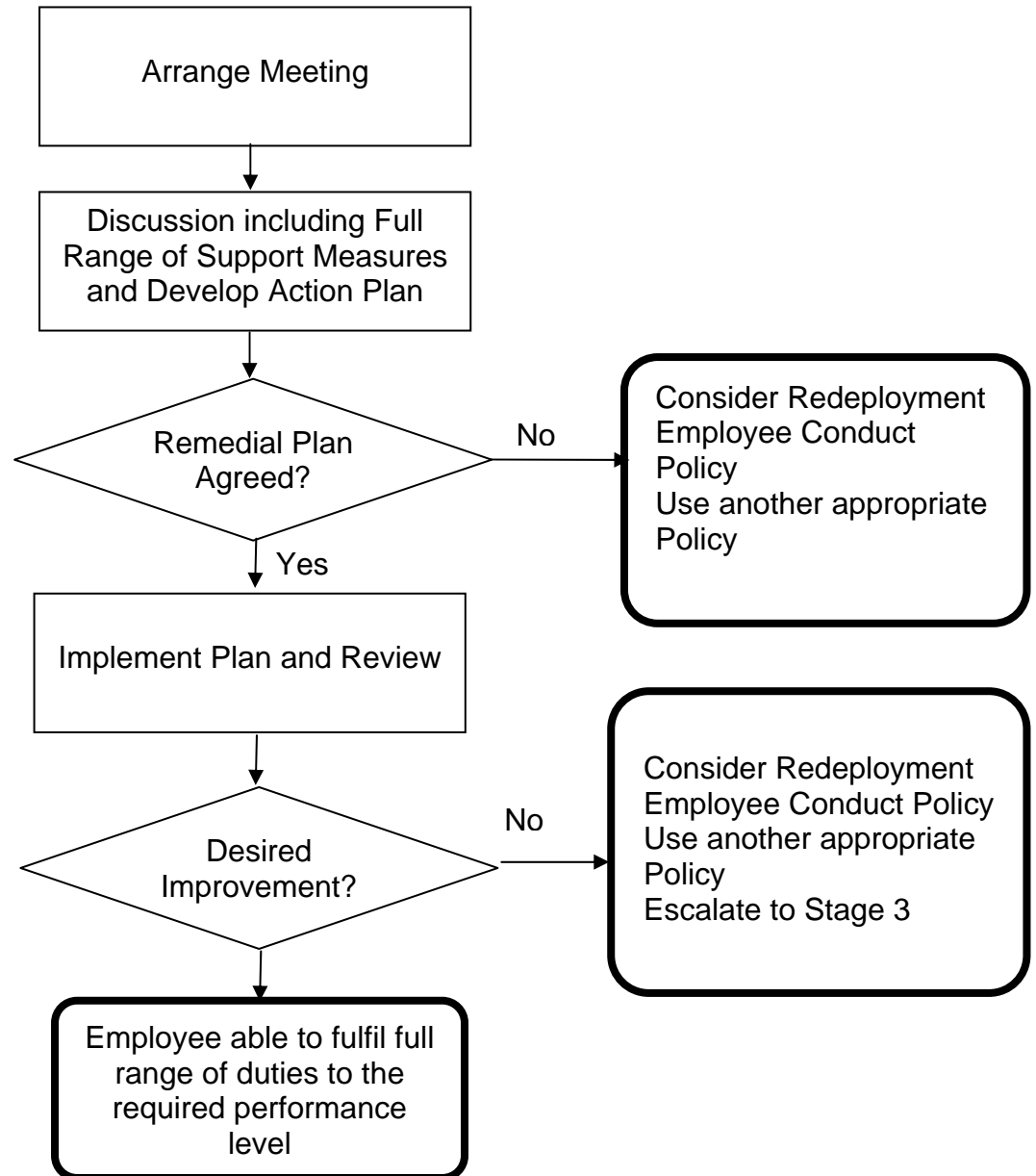
NHS Grampian – Employee Capability Policy – Informal Stage



NHS Grampian – Employee Capability Policy – Stage 1 (Formal)



NHS Grampian – Employee Capability Policy – Stage 2 (Formal)



NHS Grampian – Employee Capability Policy – Stage 3 (Formal)

