

**NIPEC/15/21**  
(replacing NIPEC/12/02)



NORTHERN IRELAND PRACTICE AND EDUCATION  
COUNCIL FOR NURSING AND MIDWIFERY

# **Capability / Competence Procedure**

**October 2015**

**Review date: April 2017**

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## **1. INTRODUCTION**

It is NIPEC's aim to help and encourage all staff to achieve high standards of performance. However, situations can arise where it becomes obvious that standards are not being maintained.

Ignoring unsatisfactory performance can have an impact on the quality of service provided, the employee's own sense of satisfaction and enjoyment in their work and that of the team in which they work.

This procedure applies to all NIPEC staff, and is to be used where there is evidence of a genuine lack of capability rather than a deliberate failure on the part of the employee to perform to the standards of which he/she is capable.

## **2. DEFINITION**

The Employment Rights (NI) Order 1996 states that '*capability (is) assessed by reference to skill, aptitude, health or any other physical or mental quality*'. This procedure is designed to deal with those cases where an employee is lacking in some area of knowledge, skill or ability, and is consequently unable to carry out some, or all of the duties required of them to an acceptable standard.

Where the unsatisfactory performance is attributable to the employee's incapacity on the grounds of ill health, this will be dealt with under NIPEC's Managing Attendance Policy and Procedure. NIPEC is also aware of its obligations under the Disability Discrimination Act 1995.

Concerns about capability may arise from a number of factors, including:

- lack of competence, proficiency, poor organisation
- lack of aptitude, skill or experience
- the re-organisation or redefinition of the person's role, which causes performance / problems e.g. organisational change or technology changes
- changes in the nature or allocation of work, including changes to employment such as promotional position which the individual may not be able to undertake to standards required
- an individual being unable to satisfactorily complete their probationary period
- external factors such as personal/family difficulties, work life balance

## **3. AIM**

The aim of this procedure is to ensure that:

- NIPEC operates effectively as an organisation

- there is guidance and a protocol through which managers can address employee's capability
- capability issues are dealt with fairly, appropriately and consistently and all who are involved in the process are treated with dignity and respect
- managers, employees and their representatives are aware of their rights and obligations in dealing with matters of capability under this procedure.

#### **4. PRINCIPLES**

The following general principles are applicable to all capability cases:

- Managers should raise issues of capability concerns with employees as soon as they become aware of them. The employee should be issued with a copy of the Capability / Competence Procedure at this time. It is expected that in the first instance issues are dealt with between the line manager and the individual.
- The same principles of natural justice inherent in NIPEC's Disciplinary Procedure should be demonstrated when dealing with an individual's capability.
- It is expected that in many cases, informal discussions will resolve most difficulties.
- If necessary NIPEC will enable an individual to avail of additional training to assist in meeting the required standards.
- At all formal stages during this process the employee will have the right to be accompanied and/or represented by an employee representative.
- Accurate records should be kept of all meetings.

#### **5. PROCESS FOR ADDRESSING CAPABILITY ISSUES**

This process consists of three stages:

- Informal Process
- Formal Process – Step 1 and 2 meetings with employee
- Appeal

##### **Informal Process**

Unsatisfactory performance should be discussed with the individual and line manager in an informal advisory session. The line manager will remind the employee of the expected standards of performance required.

It should be outlined by the line manager how the individual's performance is unsatisfactory and unacceptable in view of that standard. The problems being caused by the unacceptable performance should be referred to.

At this session the line manager will try to identify any factors contributing to the poor performance and will identify assistance that may lead to improved performance including the provision of additional training or mentoring.

During the discussion an agreed action plan should be drawn up to include details of the improvements expected, with timescales and any support that is to be provided and to also include review periods to assess performance. The individual should be informed that their performance will continue to be monitored over a review period – normally one to three months.

Where an improvement is achieved the individual should be advised in writing by the line manager that required standards have now been met and should continue to be met. In cases of performance there should be a return to normal performance reviews in line with the Knowledge and Skills Framework process. The line manager should inform the employee that any lapse to previous unacceptable levels within six months from the date of the first informal meeting may result in further steps being taken in accordance with this procedure.

In the event that there has been insufficient improvement and there is evidence to support this then the employee should be advised in writing that the formal procedure will be used.

### **Formal Process - Step 1**

In cases where capability issues have not been resolved through the informal procedure, the line manager, following a discussion with Business Services Organisation (BSO) Human Resources Directorate, will write to the employee inviting the employee to attend a formal meeting. This notification should include:

- Date, time and venue
- Confirmation that this is a formal meeting in accordance with the formal steps within the capability procedure
- An outline of the issues to be discussed
- Advice that the employee has the right to be accompanied and / or represented by an employee representative and
- Who will be in attendance

This letter should give the employee at least seven days notice of the meeting and should be sent to the employee as soon as practicable after the conclusion of the informal stage. The employee should be issued with a copy of the Capability/ Competence Procedure with this letter.

### **Formal Meeting**

The continued unacceptable performance should be discussed with the individual by the line manager, in a formal meeting. However, it should be made clear it is not a disciplinary interview. The individual should be informed that despite his/her ability for the work to be done to a satisfactory standard, the continuation of unacceptable performance can not be tolerated.

Reference should be made to the fact that there has been a failure to improve despite a previous informal meeting.

The reasons attributing to the continued unacceptable performance along with any associated difficulties the individual may be experiencing should be discussed. The problems being caused by the unacceptable performance should be referred to.

An indication of the improvement required should be given with an agreed action plan. This action plan should contain objectives, change of behaviour/agreed ways of working that is required, with timescales and clear measurable tasks that can be monitored against the action plan. The individual will also be informed of when this will be reviewed, how often and what the criteria for improvement are within the agreed timescales. Any additional support needed, such as further training or mentoring should be agreed.

An indication should be given that further action will be taken if the improvement required is not forthcoming within the agreed timescales.

A formal record will be made of the meeting. A copy of the record should also be issued to the employee.

Timescales will be agreed by all parties and they will not be longer than 3 months.

### **Review Meeting**

The purpose of this will be to have a formal review meeting between manager and the employee to discuss progress and determine if the requirements and objectives have been fully achieved.

If after review and discussion the capability improves and is maintained this will be confirmed in writing to the employee, with no further requirements. In cases of improvement in performance there should be a return to normal performance reviews in line with the Knowledge and Skills Framework process. If there is a relapse within 6 months the matter will be dealt with at the appropriate point within the formal process.

If after review and discussion the capability concern remains and the objectives have not been achieved the employee would be informed of this and the need for the matter to be referred to Step 2 in the process.

The outcome of the review meeting should be notified in writing to the employee.

### **Formal Process - Step 2**

A formal meeting should be arranged with the next level manager as set out in Appendix 1 and in accordance with the guidance above. A member of BSO Human Resources staff may be in attendance. Furthermore the employee must be informed of the capability

issues to be discussed, and informed of the possible outcomes of the meeting, eg. redeployment/alternative employment, downgrading or termination of employment.

The purpose of this meeting will be to:

- Discuss the continuing capability concern and the failure to achieve agreed objectives.
- Consider the employee's response to the capability concerns. (The individual's line manager may attend if required).
- Reach a decision on appropriate action.

The employee will be advised of the decision in writing within 7 days and their entitlement to seek an appeal.

### **Appeal – Step 3**

If dissatisfied with the outcome the employee will be entitled to appeal against the decision. The purpose of any appeal would be to consider whether the decision reached was fair and reasonable under the circumstances.

The employee who wishes to lodge an appeal should write to BSO's Director of Human Resources stating the grounds of their appeal within 7 working days of receipt of the letter informing them of the decision.

The Appeals Panel, set up in accordance with Appendix 1, will comprise 2 members from NIPEC who have had no previous involvement in the case.

The employee will have the entitlement to be represented at this appeal.

The decision of the appeal panel will be confirmed in writing to the individual within seven days of the decision being taken.

### **Referral to Professional Body**

Where deemed appropriate a referral should be made by NIPEC's Chief Executive and/or Chair to the Nursing and Midwifery Council for consideration in accordance with the Standards of Conduct Performance and Ethics for Nurses and Midwives.

## **6. EQUALITY AND HUMAN RIGHTS COMPLIANCE**

This policy has been screened for equality implications as required by Section 75 and Schedule 9 of the Northern Ireland Act 1998. Equality Commission guidance states that the purpose of screening is to identify those policies which are likely to have a significant impact on equality of opportunity so that greatest resources can be devoted to these.

Using the Equality Commission's screening criteria, no significant equality implications have been identified. The policy will therefore not be subject to an equality impact assessment.

Similarly, this policy has been considered under the terms of the Human Rights Act 1998, and was deemed compatible with the European Convention Rights contained in the Act.

## **7. REVIEW OF THE PROCEDURE**

NIPEC will monitor complaints to assess trends and the operational effectiveness of this policy. This policy will be reviewed periodically in consultation with NIPEC's Joint Consultative Committee (JCC).

**Signed:** \_\_\_\_\_  
**Chief Executive**

**Date:** \_\_\_\_\_

## MANAGEMENT LEVELS FOR FORMAL AND APPEAL PROCESS

	<b>Step 2</b>	<b>Step 3</b>
Staff at below 4 <sup>th</sup> Level	Level 4	Level 3
Staff at 4 <sup>th</sup> Level	Level 2 / 3	Level 2
Staff at 3 <sup>rd</sup> Level	Level 2	Level 1
Staff at 2 <sup>nd</sup> Level	Level 1	Level 1

Level 1 – NIPEC Chair / NIPEC Council

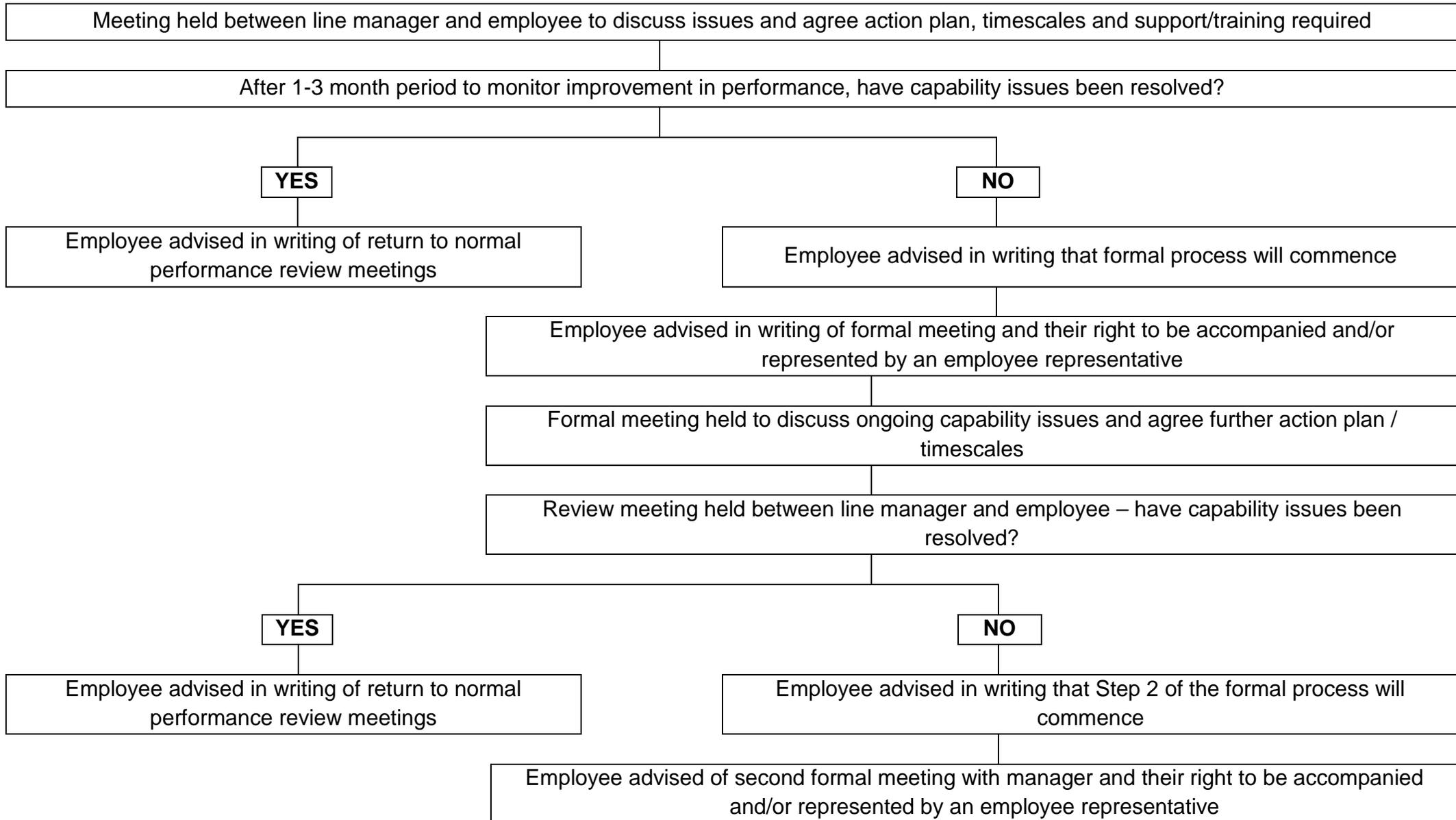
Level 2 – Chief Executive

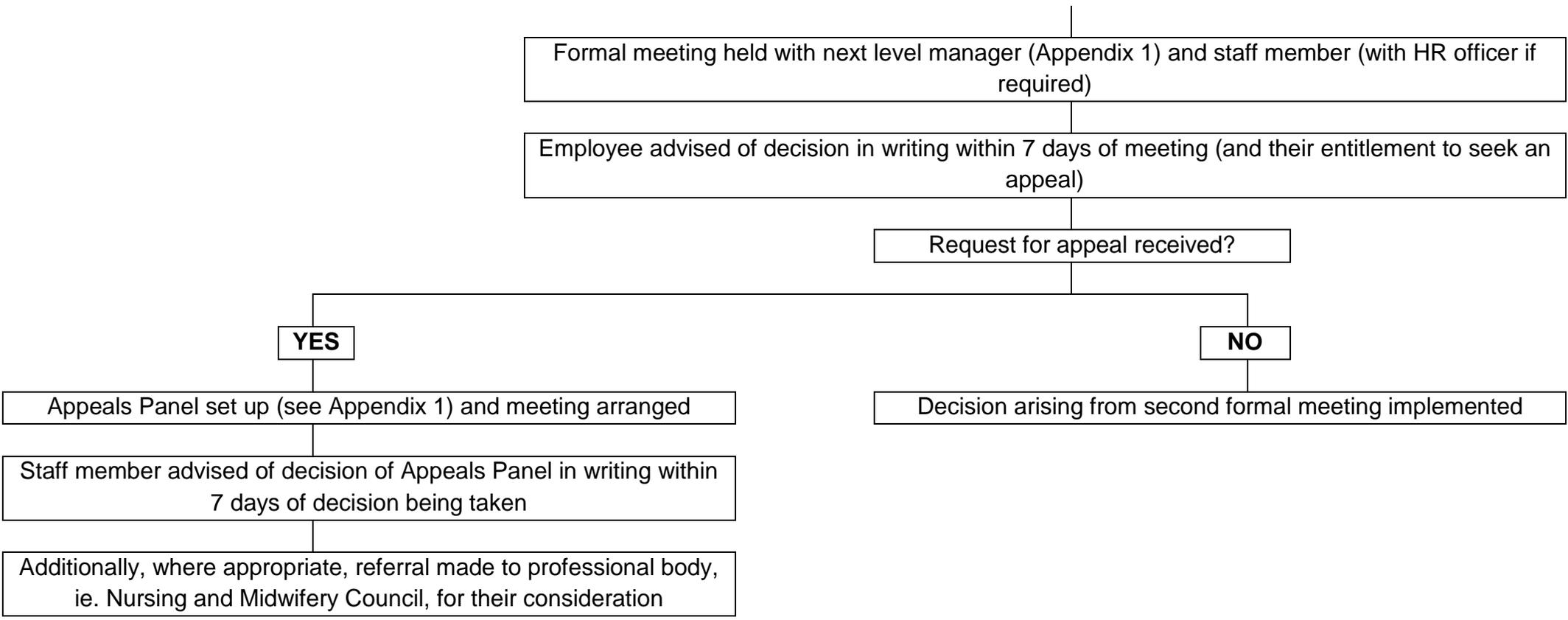
Level 3 – Head of Corporate Services / Senior Professional Officer

Level 4 – Line Manager level reporting to Chief Executive or Head of Corporate Services /  
Senior Professional Officer

# Flowchart depicting the process for addressing capability issues

(please refer to procedure for full detail)





**NB – a written, agreed and signed record of all meetings should be kept**