

Performance & Capability Procedure

Issued by HR – March 2014



If you require this procedure in another format please go the end of this document for details.

Purpose

The Performance and Capability Procedure provides a framework for managers to work with employees to improve performance or to achieve and maintain required levels of attendance, where a structured approach is required.

This document sets out the procedure KCC will apply to managing performance and capability issues. It should be read in conjunction with KCC's Performance & Capability Policy.

The procedure is divided into 4 sections:

- (A) Performance issues unrelated to health - page 2
- (B) Performance issues related to health - page 7
- (C) Performance issues related to job requirements or qualifications - page 14
- (D) Performance issues related to drugs & alcohol - page 15

Capability relating to Poor Performance

What is poor performance

Poor performance that is unrelated to health occurs when an individual falls below the standards that have been set or that could reasonably be expected of a member of staff.

An employee's performance can be assessed by reference to skill, aptitude, ability or capacity, for example, lack of skills or ability to meet business targets or the requirements of the role.

Expected standards of performance can be found in a variety of sources including KCC policies, career grades, professional standards, person specifications, Kent Manager and the KCC Behaviours framework.

Gross incompetence

This is where an individual's performance places others at risk or brings KCC into disrepute due to fundamental incapability to do the relevant work, or the inability to undertake the role satisfactorily.

In the case of gross incompetence, a management investigation will be undertaken within 8 weeks and, if a case to answer is found, a hearing will be convened. These cases, if proven, are likely to result in dismissal or action short of dismissal e.g. downgrading. This process would apply as opposed to the normal Poor Performance process outlined below. Further information is available in KCC's Hearings Procedure.

Consideration of suspension

In exceptional circumstances it may be necessary to suspend or allocate alternative work for an employee temporarily whose performance at work is placing others at risk. The decision to suspend must be made by the Director or delegated senior officer in consultation with HR, and only when alternative working arrangements are not feasible.

Informal Action

Good management practice should ensure all staff receive an appropriate level of supervision at which issues about performance can be raised informally and additional support or training needs can be identified.

The manager will raise performance concerns with the employee as soon as possible after they are identified. The manager will be clear with the employee about any shortfalls in performance, explaining the standard of work and skills required.

The manager will have an informal discussion with the employee to obtain their views of the cause or reasons for the shortfall in performance.

The manager will set clear standards for performance and the improvement expected. The manager will also ensure that any necessary learning, development, help, support and guidance are in place to enable the employee to meet the standards.

If appropriate, the manager will agree an informal performance improvement plan with the employee so it is clear what is expected and set a realistic timeframe for improvement to

be demonstrated. Ideally this should be no longer than 4 weeks. The manager will detail clear, specific, measurable and realistic objectives and the support available for the employee.

The manager will summarise the discussion in writing and send this to the employee along with a copy of the performance improvement plan.

Formal Action

If the performance issue cannot be resolved informally, the formal procedure should be implemented. At this point, the manager should contact the HR Advisory Team for advice. The maximum period an employee should be monitored under this process is 3 months. There may be exceptional circumstances where it is necessary to extend the period of review.

Performance & capability meetings

STEP 1 – First formal performance & capability meeting (standard setting)

Prior to the meeting the manager will confirm the details in writing to the employee, giving at least 5 working days' notice of the meeting and the opportunity to bring a trade union representative or a work place colleague. The employee must make their own arrangements to be represented. There is no right to legal representation at any stage of the procedure. During the meeting the individual should be given the opportunity to contribute fully.

At the meeting the employee will be made fully aware of the following:

- The areas of performance that are cause for concern
- The expected standards of performance
- The period for improvement and a date to review progress
- The ongoing support that will be made available i.e. advice, guidance and appropriate training
- Arrangements for the monitoring / assessment of improvement
- That failure to reach and sustain the required standards may lead to escalation of the procedure.

A full record of the meeting should be made, with details of points raised and actions arising. At the end of this meeting a review date should be agreed.

STEP 2 – Review meetings

Review meetings can be a one to one meeting between the manager and the employee, or a planned formal review meeting with HR. The review is to assess progress and improvements during the period of formal monitoring.

Possible outcomes include:

Improvement Levels	Action
Sufficient improvement achieved	Procedure is closed (but informal monitoring continues)
Some improvement	Consider extending improvement target date a holding a further review, or move to formal hearing if appropriate

Insufficient or no improvement	Move to formal hearing

There can be one or more review meeting/s in the period of monitoring to assess progress before either moving to the next level within the procedure or concluding the formal procedure.

Attendance

If an employee or their trade union representative is unable, for good reason, to attend the formal meeting on the date proposed, the employee may request that the meeting is rescheduled. Alternatively the individual can submit a written statement/case for consideration at the meeting; there may also be the facility available to conduct the meeting via a telephone conference call. The rescheduled meeting will take place as soon as possible within 5-10 days of the original date. No further rescheduling will be considered unless the reason for non attendance is considered exceptional. If the meeting is to be held in the absence of the employee, the individual will be notified in advance.

Performance & capability hearings

Formal hearings are held where:

- an employee has made insufficient improvement following review of performance
- an employee's level of performance or competence presents a risk to service users, other colleagues or the public or brings KCC into disrepute.

The purpose of the hearing is to:

- Discuss the improvement levels and deficits in performance
- Identify and discuss the support given and additional support needed to assist the individual to improve
- Consider the impact of the individual's performance on the service
- Consider the views of the individual
- Determine the action to be taken.

Further information regarding formal hearings is available within KCC's Hearings Procedure.

Performance & capability sanctions

Warnings may be issued at performance & capability hearings if the Chair deems this an appropriate sanction.

Warnings should detail:

- areas of performance that are not satisfactory
- the targets to be achieved
- any necessary training, supervision or support where appropriate with monitoring arrangements
- date at which a review will take place.

The warning periods reflect those described in KCC's Disciplinary Procedure.

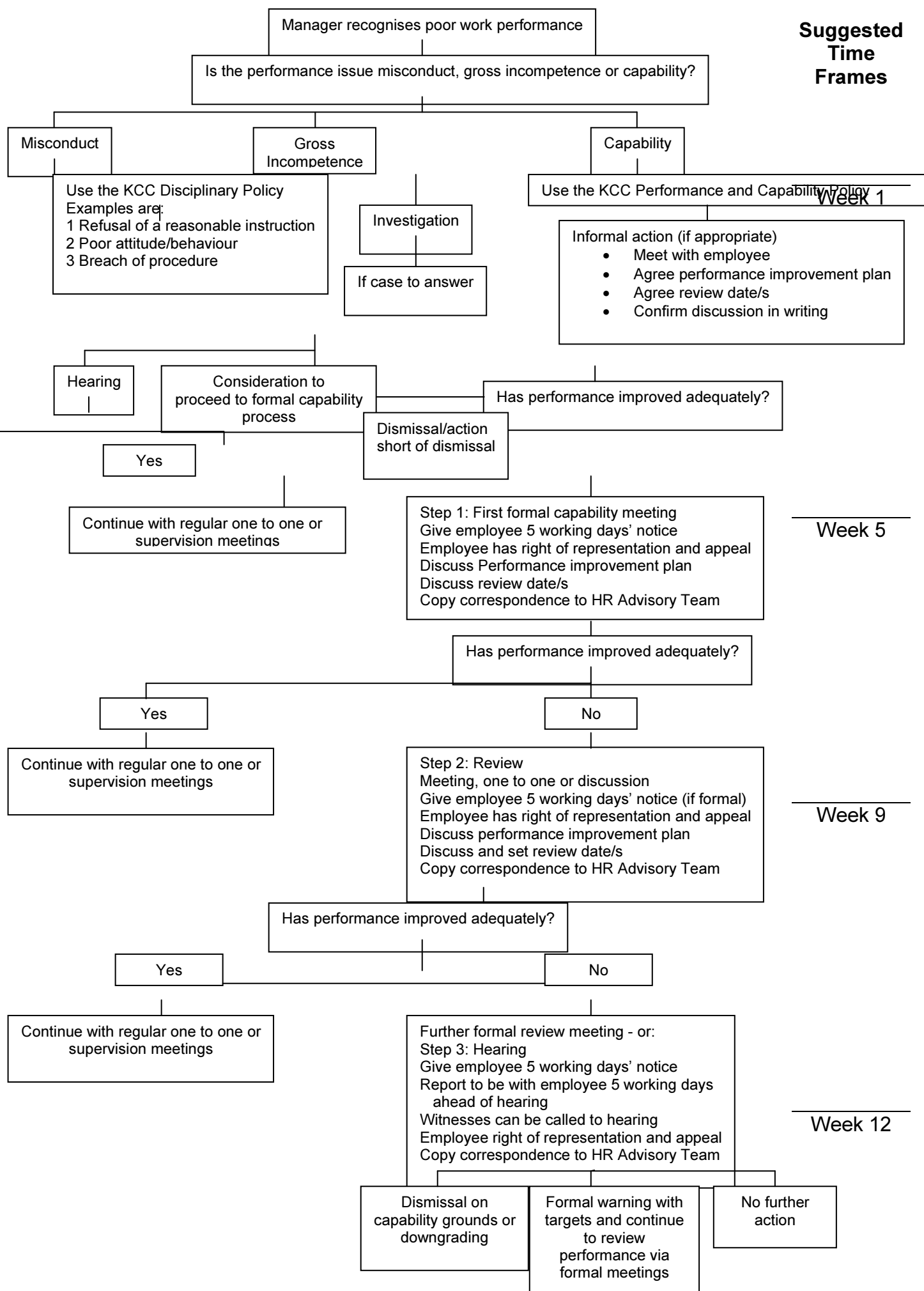
Performance Problem	Action
Failure to sustain consistent levels of improvement following standard setting meetings	First or Second Level Warning issued by line manager (appeal to more senior manager)
Poor or inconsistent levels of improvement following previous Serious performance problems	Final Warning issued by senior manager (appeal to more senior manager)
Failure to make sufficient improvement following Capability Meeting/s and Review/s or Gross Incompetence	Dismissal/Downgrading or Transfer issued by Director or Senior Officer (appeal to Senior Officer Appeal Panel)

Appealing against sanctions

If a sanction is issued as an outcome of a formal Performance & Capability Hearing, employees have a right of appeal against this sanction; information regarding the appeals process is available within KCC's Hearings Procedure.

Improving Poor Performance procedure flow chart

**Suggested
Time
Frames**



Capability relating to ill health

Capability relating to ill health occurs if an employee is not well enough to meet the required levels of attendance at work, is unable to fulfil the requirements of their role or cannot demonstrate the appropriate standards of behaviour, as a result of ill health.

Each employee has a personal responsibility to take all reasonable measures to ensure their fitness for work and to strive for positive attendance.

The trigger point for formally managing short term absence is 3 periods of sickness absence in a 6 month period and for long term absence is 28 consecutive days of sickness absence. However, any sickness that is cause for concern can be managed using this procedure.

Return to work reviews

The manager should hold return to work reviews in line with KCC's Attendance Management Policy and Guidance each time an employee returns to work after a period of sickness absence. Any issues raised or actions agreed are recorded at the return to work review meeting and will form the basis of discussion where capability at work is affected by ill health.

Occupational health

The manager should seek specialist advice to inform decisions in relation to staff whose attendance is affected by ill health or disability.

A referral to Occupational Health (OH) should be sought:

- for all employees who are absent from work for a period of 4 weeks continuously.
- when an individual is or becomes disabled, or when a new health condition (e.g. stress) is identified to obtain advice on reasonable adjustments in the workplace that need to be considered.
- when an employee has an unacceptable level of persistent short-term absence.

Employees have a responsibility to be proactive in raising their concerns about work-related causes of absence as part of the normal staff/manager relationship. It may be appropriate in some circumstance to make an immediate referral to OH.

Where an employee refuses consent for a referral to OH to be obtained or disclosed the manager will make a decision as to the appropriate course of action using the information available at the time. Generic OH advice will still be sought in these circumstances, and there is the potential for decisions to be made which may be to the employee's detriment.

It is not necessary to have specialist advice available before holding an initial capability meeting.

Short term absence

The trigger point for action is 3 periods of sickness absence in a 6 month period.

However, any sickness that is cause for concern can be managed using this procedure

Informal action

Good management practice ensures all staff have an appropriate level of supervision at which issues relating to sickness absence can be raised informally, if appropriate.

The manager should have a one to one discussion with the employee about the concerns they have with regards to their sickness absence, which could be as part of the return to work interview. During the meeting the manager should discuss the sickness absence record, establishing the background, nature, reasons and patterns of the absences. Support available should also be discussed.

The manager can issue a managerial warning if there is no underlying medical reason for the absence and it has reached the trigger point.

At this informal stage, the manager should make the employee aware that if the level of attendance remains unsatisfactory, progression to the formal procedure will follow.

Formal action

If the ill health capability issue cannot be resolved informally, the formal procedure should be implemented. At this point, the manager should contact the HR Advisory team for advice.

STEP 1 – First formal capability meeting

Prior to the meeting the manager will confirm the details in writing to the employee, giving at least 5 working days' notice of the meeting and the right to bring a trade union representative or a work place colleague. During the meeting the individual should be given the opportunity to contribute fully.

The meeting should take place as soon as it is clear there is an impact on the individual's attendance or performance and the service.

At the meeting, the following could be discussed:-

- The impact of the health or disability issue on the role or service and any steps that have been taken to support the employee to date
- Any specialist advice already available, for example GP's advice or Occupational Health advice
- The expected standards of attendance and targets
- Identification of further support that would assist the employee
- A date to review the position (e.g. 4 weeks).

STEP 2 - Review

The review could be a one to one meeting with the employee, or a planned formal review meeting with HR. This review is to assess progress and improvements during the period of formal monitoring.

At the review meeting the manager should consider all the information and advice available concerning the individual, their health/disability and job performance.

There could be one or more review meetings in the period of monitoring to assess the situation and consider next steps, before either moving to the next level within the procedure or concluding the formal procedure.

Performance Capability	Outcome
Employee meeting attendance level standard within review period with or without reasonable adjustments	Procedure is closed (but informal monitoring continues)
Employee has demonstrated some improvement but not reaching the required attendance levels standards	Consider extending review period or move to formal hearing, if appropriate
Employee not able to maintain acceptable attendance levels	Capability Hearing

STEP 3 – Formal capability hearing

If the employee has not been able to maintain acceptable attendance levels, a formal capability hearing should be convened.

The purpose of a formal capability hearing relating to health is to consider:

- The reason for absence and the impact on the role and service
- Steps taken to seek advice, adjustments considered/made and other support provided
- The continuation of the contract of employment.

If it is found that an individual is no longer able to work in their job and there is no suitable alternative work or reasonable adjustments possible to enable them to work, the authorised manager may decide to dismiss on the grounds of capability due to ill health.

For further information on the format of a hearing, please see KCC's Hearings Procedure.

Long Term Absence

The trigger point for action is 28 consecutive days of sickness absence. However, any sickness that is cause for concern can be managed using this procedure.

Informal Action

The manager should have a discussion with the employee to discuss the concerns they have about their sickness absence. The manager should discuss the background to the sickness absence, the nature of the absence and the reasons for the absence and the support available.

At this informal stage, the manager should make the employee aware that if the absence continues, the formal procedure will be initiated.

Formal Action

If the ill health capability issue cannot be resolved informally, the formal procedure should be implemented. At this point, managers should contact the HR Advisory team for advice.

STEP 1 – First formal capability meeting

Prior to the meeting the manager will confirm the details in writing to the employee, giving at least 5 working days' notice of the meeting and the opportunity to bring a trade union representative or a work place colleague. If an employee or their trade union representative is unable, for good reason, to attend the formal meeting on the date proposed, the employee may request that the meeting is rescheduled. Alternatively the meeting may be able to be conducted via a telephone conference call. If the employee is unable to attend the rescheduled meeting and no alternative ways of conducting the meeting can be found, the manager can hold the meeting in the employee's absence and the individual can submit a written statement/case for consideration at the meeting.

During the meeting the individual should be given the opportunity to contribute fully. The meeting should take place as soon as it is clear there is an impact on the service as a result of the absence.

At the meeting, the following could be discussed:

- The expected standards of attendance
- The impact of the health or disability issue on the role or service
- Any steps that have been taken to support the employee to date
- Any specialist advice already available, for example GP's advice or Occupational Health report
- Identification of further support that would assist the employee in returning to work
- Consideration of redeployment options based on Occupational Health Advice
- A review of any adjustments in place for a disabled member of staff if appropriate
- A date to review the position (e.g. 4 weeks)

STEP 2 – Review meeting

The review could be a one to one meeting between the manager and employee, or a planned formal review meeting with HR. The purpose of the review is to assess the current position and any progress during the period of formal monitoring.

At the review meeting the manager should consider all the information and advice available concerning the individual, their health/disability and job performance.

There could be one or more review meetings in the period of monitoring to assess the situation and consider next steps, before either moving to the next level within the procedure or concluding the formal procedure.

Performance Capability	Outcome
Employee able to return to role with or without reasonable adjustments	<ul style="list-style-type: none">• Procedure is closed (but informal monitoring continues)
Employee unable to return to work in current post but able to work in alternative post with reasonable adjustments, based on OH advice	<ul style="list-style-type: none">• Alternative work sought through redeployment. If redeployment not found within given time then progression to Capability Hearing
Employee unable to return to role or any broadly similar role and will be unable to return to work within a given period of time	<ul style="list-style-type: none">• Permanent ill health retirement (IHR) considered by OH
Employee unable to work in current role and not able to work in alternative role but not suitable for IHR or	<ul style="list-style-type: none">• Capability Hearing

employee unable to return to work within reasonable timescale	
Employee not able to maintain acceptable attendance levels, following a return to work	<ul style="list-style-type: none"> • Capability Hearing

STEP 3 – Formal capability hearing

The purpose of a formal capability hearing relating to health is to consider:

- The reason for absence and the impact on the role and service
- Steps taken to seek advice, make adjustments and other support provided
- The continuation of the contract of employment.

If it is found that an individual is no longer able to work in their role and there is either no suitable alternative work or reasonable adjustments feasible to enable them to work, the authorised manager may decide to dismiss on the grounds of capability due to ill-health,

For further information on the format of a hearing, please see KCC's Hearings Procedure.

Mutual termination of employment contact

An employee's contract of employment may be ended by agreement between the individual and KCC.

In certain circumstances an employee may prefer to be able to agree to terminate the contract of employment in this way rather than attending a hearing which may result in dismissal.

The employee/manager will agree the termination date.

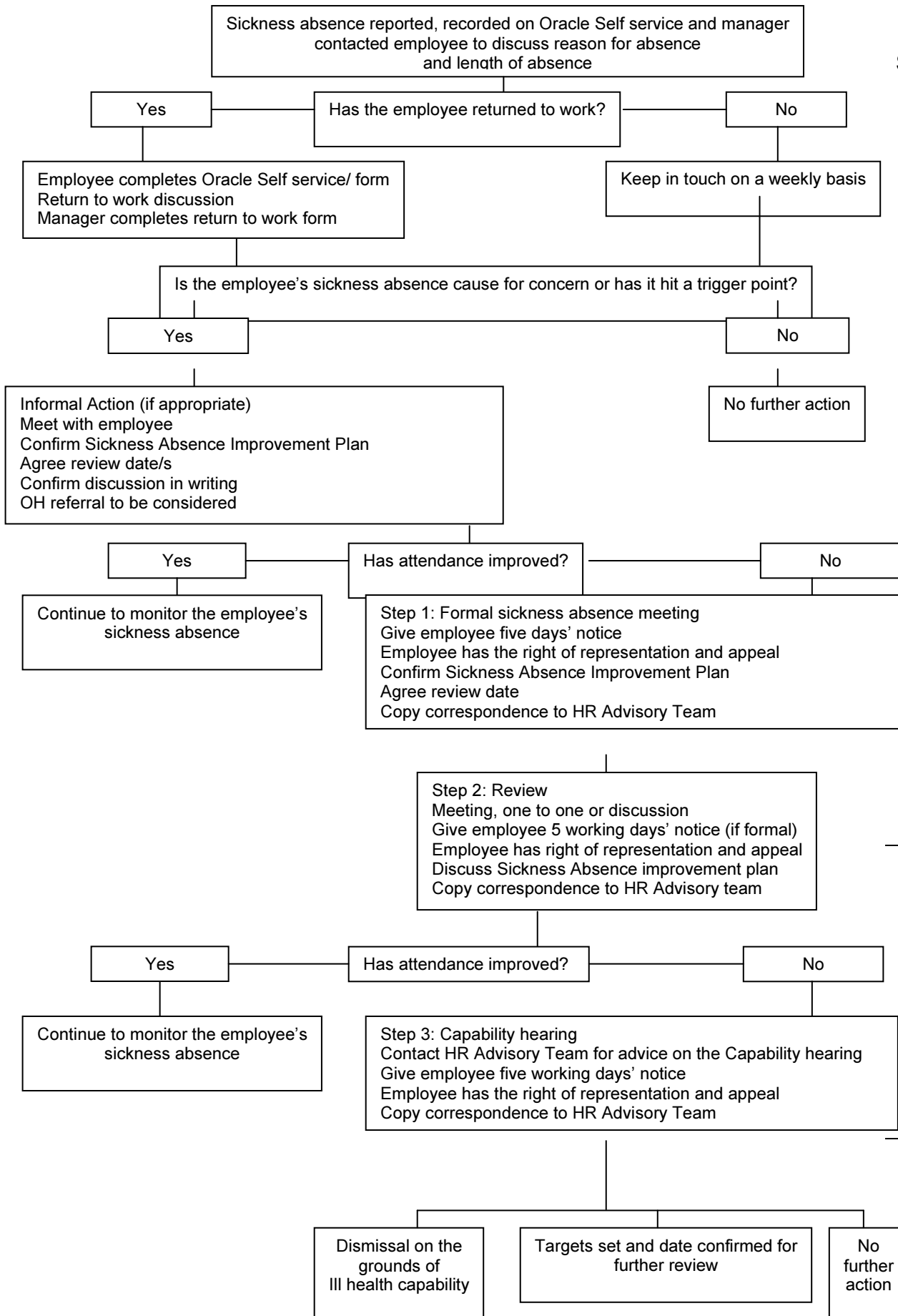
Circumstances where this may be an option include where:

- an employee is incapacitated through ill health and can no longer work in their role nor any other role but is not considered permanently unfit for work
- an employee is not eligible for ill health retirement as they are not a member of a pension scheme, however may be incapable of working
- there is no indication, by the employee or OH, of a return to work in the foreseeable future.

If this employee indicates that this is an option that they wish to explore, a discussion/meeting should take place where this is fully discussed with all parties, with trade union representation if necessary.

Sickness absence procedure flow chart

**Suggested
Time
Frames**
Day 1



Mutual Termination can be discussed as any time in this process

Capability – Job requirements or qualifications

What is incapability due to job requirement or qualifications?

This is capability caused by the loss or failure to obtain specific requirements, qualifications, or registrations necessary to undertake the role. This may include achievement or maintenance of professional qualifications, registration with professional bodies or possession of a valid driving licence where appropriate. This list is not exhaustive.

Driving requirements

When an employee is required to drive for the whole or part of their job and:

- has not gained a licence (in a specified timescales) or
- has had a licence suspended or lost due to conviction or ill health

The appropriate manager should investigate to establish:

- the individual's circumstances
- the impact on the individual's ability to undertake the full duties of the role
- the circumstances under which the individual could feasibly continue in post
- whether redeployment due to ill health is appropriate.

If there is any element of misconduct the matter reverts to KCC's Disciplinary Procedure.

Following a management investigation, a hearing will be convened if there is a case to answer. These cases, if proven, could result in dismissal.

Qualifications and registrations

Some areas of work require employees to obtain specific qualifications within a given period following appointment or following promotion. In addition, some areas of work require employees to register with a professional body, by annual renewal.

Employees who do not achieve, lose or fail to comply with the relevant qualifications or registration as specified by their profession, directorate or KCC will be subject to an investigation. The appropriate manager should investigate to establish:

- the circumstances of the individual failing to achieve the required qualification or registration, or the loss/non renewal of a qualification or registration
- the impact on the individual's capacity to perform in post
- any circumstances under which the individual could feasibly continue in post
- whether flexible deployment is possible and appropriate
- whether any redeployment due to ill health is appropriate
- whether employment can continue in current post.

Following a management investigation, a hearing will be convened if there is a case to answer. These cases, if proven, could result in dismissal.

Reporting concerns to professional bodies

At the point where serious allegations arise, the manager has a duty to consider reporting any concerns to the appropriate professional body. In addition, employees have a responsibility to inform this professional body regarding their fitness to practice.

Following a management investigation, a hearing will be convened if there is a case to answer. These cases, if proven, could result in dismissal.

For further information on the format of a hearing, please see KCC's Hearings Procedure.

Ill-health – drugs and alcohol

Absence relating to drugs or alcohol dependency is normally treated by KCC as an ill health issue in the first instance. Through the referral process OH will be able to advise the manager on the individual fitness for work and the employee on appropriate contacts and resources.

Misconduct, gross misconduct, or gross incompetence resulting from the use or abuse of alcohol or drugs should be investigated formally.

For more information please refer to KCC's Drugs and Alcohol Policy.

Alternative Formats

This document is available in other formats. Call 01622 694778 or email Employment Policy Team for further details.

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For Text Relay please call 18001 03000 41 41 41.

Performance/Capability Review

Directorate and Team: (Block Capitals)

Nature of Meeting and Date: (Block Capitals)

Employee Details: (Block Capitals)
Name

Represented by: (Please stated name and union if union steward) (Block Capitals)

Manager: (Block Capitals)

Performance Issue:

Discussion / Issues raised in
Meeting:

Action Agreed:

OH Advice available: Yes / No

Review Date:

Employees Signature:

Managers Signature: