



**NORTHERN IRELAND PRACTICE AND EDUCATION COUNCIL
FOR NURSING AND MIDWIFERY**

Capability / Competence Procedure

(based on regional HSC Procedure)

February 2021

Any request for the document in another format or language will be considered

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Contents

	Page
1. Introduction	3
2. Definition	3
3. Purpose and Aims	4
4. Principles	4
5. Process for Addressing Capability Concerns	5
5.1 Informal Process	5
5.2 Formal Process – Step 1	6
5.3 Formal Process – Step 2	7
5.4 Appeal – Step 3	8
5.5 Referral to Professional Body	8
6. Equality Screening	8
8. Review	9
Appendix 1	
Management Levels for Formal and Appeals Process	10

1. INTRODUCTION

In order to deliver a high quality service, all employees are expected to perform the duties of their post to an acceptable standard in accordance with the nature and banding of their role. These standards may be laid down in the Job Description for the post and/or are determined in accordance with the employee's contractual obligations.

It is the aim of NIPEC to ensure that all employees are treated in a fair and equitable manner and are helped and encouraged 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.

Where an employee is not performing in accordance with the required standards, they will be offered support, encouragement, guidance and, if necessary, training to improve their work performance.

This procedure applies where there is a genuine lack of capability, rather than a deliberate failure on the part of the employee to perform to the required standard. In the event of deliberate failure by the employee to perform to the required standard the matter will be dealt with as a conduct matter under the NIPEC Disciplinary Procedure.

NIPEC's Capability/ Competence Procedure is intended to complement the normal process of supervision, allocation of work by management, monitoring of performance, drawing attention to errors and, as importantly, highlighting work done well.

This procedure is not intended to cover concerns that arise in connection with an employee's ill health, which are addressed under the NIPEC Attendance at Work Policy.

The organisation is also aware of its obligations under the Disability Discrimination Act 1995 (as amended) in the implementation of this procedure.

This procedure applies to all NIPEC staff.

2. DEFINITION

Capability in relation to this Procedure is defined by the Employment Rights (NI) Order 1996 which states '*capability (is) assessed by reference to skill, aptitude, health or any other physical or mental quality*'.

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. PURPOSE AND AIMS

This Procedure is intended to complement the normal process of supervision, support and control where managers allocate work, monitor performance, draw attention to errors and poor quality and, as importantly, highlight work well done. This continuing day-to-day process may include informal assistance in achieving improvement to the required standard, in addition to regular KSF development reviews.

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 required duties of their role to an acceptable standard. The aim of this procedure is to ensure that:

- the employee is assisted to improve their performance and that there is on-going monitoring and assistance afforded to them to support them to reach the expected performance standard;
- NIPEC operates effectively as an organisation;
- there is guidance and a protocol through which managers can address employee capability concerns;
- 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:

- It is expected that if issues arise around an employee's performance, these should be addressed at the earliest opportunity by the employee's direct line manager;
- The employee should be issued with a copy of this Procedure at the time;
- Early intervention when poor performance is identified should be encouraged enabling a supportive approach to be taken;
- The employee needs to be fully aware of the performance issues and the standards that need to be met;

- Line managers should seek to establish the type of support that can be offered to assist the employee in reaching the desired performance level. Examples of the types of support that may be considered helpful include:
 - Shadowing other members of staff;
 - Training / development;
 - Time out to concentrate on specific areas of work which require improvement;
 - Mentoring and/or Coaching;
 - Increased supervision.
- It is expected that in the first instance issues are dealt with between the line manager and the individual;
- It is expected that in many cases, informal discussions will resolve most difficulties;
- 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;
- The same principles of natural justice inherent in NIPEC's Disciplinary Procedure should be demonstrated when dealing with an individual's capability.

5. PROCESS FOR ADDRESSING CAPABILITY CONCERNS

This process consists of three stages:

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

5.1 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.

It is important that managers do not only focus on the performance concerns during these discussions but that areas of good performance should be highlighted and complimented. At this session the line manager will attempt 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/coaching.

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.

5.2 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 the continuation of unacceptable performance cannot be supported.

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.

5.3 Formal Process - Step 2

A formal hearing 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 receive notification in writing as to the purpose of the meeting, informed of the capability issues to be discussed, and informed of the possible outcomes of the meeting, e.g. redeployment/alternative employment, downgrading or termination of employment.

The purpose of this hearing 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 (redeployment/alternative employment, downgrading or termination of employment).

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

5.4 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 manager will be present during the appeal to advise on the management action taken to assist the employee reach the required standards of performance.

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

5.5 Referral to Professional Body

Where deemed appropriate, the employee will be advised that in accordance with the requirements of their regulatory body (the Nursing and Midwifery Council or another) or Disclosure & Barring Service, a referral will be made by NIPEC's Chief Executive and/or Chair for consideration.

6. EQUALITY SCREENING

This policy has been screened for equality implications as required by Section 75 and Schedule 9 of the Northern Ireland Act 1998.

The screening has identified specific equality impacts and outlines the way that these will be addressed. No significant equality implications have been identified therefore the policy will not be subject to an equality impact assessment.

The equality screening has been published and can be accessed here
<http://www.hscbusiness.hscni.net/services/2166.htm>

7. REVIEW

We are committed to ensuring that all policies and procedures are kept under review to ensure they remain compliant with relevant legislation and guidance.

This policy is based on a regional HSC policy and will be reviewed periodically in consultation with recognised Trade Union side representatives via the HSC (NI) Joint Negotiation Forum. It will be reviewed in by NIPEC in January 2024, or sooner if a revised HSC policy is issued.

MANAGEMENT LEVELS FOR FORMAL AND APPEAL PROCESSES

	Step 2	Step 3
Staff at below 4 th Level	Level 4	Level 3
Staff at 4 th Level	Level 2 / 3	Level 2
Staff at 3 rd Level	Level 2	Level 1
Staff at 2 nd 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