



# **Performance Improvement/ Capability Policy and Procedure**

**January 2023**

## History of Changes

Version	Description of Change	Authored by	Date
1.1	Clarification that the PIP process will be supported by HR throughout the process and that stage one is a formal process with the individual having the right to be accompanied.	D Kerr	March 2014
1.2	No Changes	D Kerr	March 2017
1.3	Change to procedure to provide staff members with fair representation and impartial hearing with line manager not now managing the whole process. Process based on investigation and hearing.	D Kerr	December 2018
1.4	Dates and job title changes	D Kerr	January 2023

## 1. Introduction

- 1.1 The purpose of this policy is to ensure consistent and equitable treatment of employees who are considered to be experiencing difficulties in satisfactorily performing the duties required of their post. Borders College will assist and encourage all employees to achieve and maintain standards of job performance, in order to deliver a high-quality student experience.
- 1.2 The aim of the College is to ensure that, in the performance of their role, all staff contribute, as intended, to the successful delivery of the mission and objectives of the College. Most staff will perform all their duties satisfactorily and to a high standard. However, a small minority of staff may experience difficulties in performing satisfactorily. The College is committed to providing them with appropriate support, direction and encouragement, whilst ensuring that the services of the College are not negatively impacted on. The College also recognises the impact on other staff that can result from working with a colleague who is not performing to the required level. This Policy therefore ensures consistent and equitable treatment of employees who are considered to be experiencing difficulties in satisfactorily performing the duties required of their post.
- 1.3 The Performance Improvement Policy is designed to deal with those cases where a College employee is lacking in some area of knowledge, skill or ability and is unable to carry out all or a significant element of the required duties to an acceptable standard.
- 1.4 This policy aims to assist staff to attain and maintain the required level of performance which is the anticipated outcome of the application of this policy. However, the College recognises that, even with a full range of support, it is possible that this might not be the outcome on occasions, and a process for managing this scenario is therefore also contained within the Performance Improvement Policy and Procedures. Whilst it will normally be the case that the process will be entered at the informal stage, in cases where serious performance issues are raised the People Services Department may determine that it is appropriate to move directly to the formal procedures.
- 1.5 The Principal has the right to delegate responsibility to other members of the Senior Leadership Team (SLT) with regard to this policy.
- 1.6 Where reference in this document is made to 'manager' this shall be taken to mean an individual's Line Manager as advised by People Services Department. Where reference is made to senior manager this will be the line managers, Manager. Managers should seek the advice of People Services at all stages of this policy. A member of People Services should be present at all formal meetings, including appeals, held under this policy.
- 1.7 This policy provides for a right of appeal at all formal stages, including the dismissal stage.

## **2. Scope**

- 2.1 This policy applies to all employees of Borders College.
- 2.2 The policy does not apply to:
  - 2.2.1 Unsatisfactory performance resulting wholly or mainly from, negligence, wilful lack of application or wilful disregard for performance standards which will be dealt with under the College's Disciplinary Policy.
  - 2.2.2 Unsatisfactory performance identified as resulting from alcohol and/or substance misuse. Such instances will be dealt with under the College's Alcohol and Substance Misuse Policy
  - 2.2.3 Unsatisfactory performance due to frequent, persistent and short-term absence which will be dealt with under the College's Absence Management Policy.

## **3. Key Principles**

- 3.1 A full investigation into the circumstances surrounding the performance issue should be undertaken and any protected characteristics and/or adverse personal circumstances taken into consideration.
- 3.2 On occasions, it shall be appropriate to move from the performance improvement procedure to the relevant policy and procedure e.g. Discipline Policy and Procedure. Examples of such would include conduct, allegations of unlawful discrimination on grounds of sex, race, disability, age, religion and belief, sexual orientation or equal pay (this list is not exhaustive and serves merely as a guide). In such circumstances, action and support already undertaken or provided shall be taken into account in determining the appropriate level at which to enter the other procedure. The same shall apply should an employee be referred from another procedure to this one. Where the manager dealing with the case feels that it is appropriate to move to another procedure advice will be sought from People Services and the employee will be advised of this decision in writing.
- 3.3 It is expected that the support and assessment carried out under this policy should result in the employee being able to sustain the required level of performance on a continued basis following the end of the review period. If the improvement in performance is not sustained, then the employee may be put back on the Performance Improvement Policy at Stage 2.
- 3.4 All formal documentation relating to the formal stage of this Procedure will be held within People Services and in accordance with the College's Data Protection Policy.

## **4. Responsibilities**

- 4.1 The Regional Board is responsible for approving this policy and for overseeing compliance with its principals.
- 4.2 The Director of People Services is responsible for the implementation of this policy.
- 4.3 All staff are responsible for ensuring compliance with this policy.

## **5. Related Documents**

- 5.1 Discipline Policy
- 5.2 Grievance Policy
- 5.3 Performance Improvement Procedure
- 5.4 Safeguarding Children and Adults at Risk of Harm
- 5.5 Contract of Employment

## **6. Review**

This Policy will be reviewed in 3 years' time unless otherwise required.

## **1. Introduction**

- 1.1 The purpose of this procedure is to support the Performance Improvement/Capability Policy.
- 1.2 Where reference in this document is made to 'manager' this shall be taken to mean an individual's Line Manager as advised by People Services Department. Where reference in this document is made to 'senior manager' this shall be taken to mean an individual's Line Manager's Manager as advised by People Services Department. Managers should seek the advice of People Services at all stages of this procedure. A member of People Services should be present at all formal meetings, including appeals, held under this procedure.
- 1.3 This procedure provides for a right of appeal at all formal stages, including the dismissal stage.

## **2. Scope**

- 2.1 This procedure applies to all employees of Borders College and will be supported by a member of People Services staff, as advisor and note taker, at all stages.

## **3. Key Principles**

### **3.1 Informal Procedure**

Line Managers will meet regularly with staff and will inform the individual staff member on an on-going basis of any concerns with regard to performance in the job role. The staff member should be aware of any performance improvement needs prior to the Formal Procedures being invoked, through informal meetings and discussions.

### **3.2 Stage 1 – Formal Procedure:**

Where an employee of the College exhibits an inability to perform their duties satisfactorily, the College will attempt to resolve the matter via a meeting between the Line Manager and the member of staff. The nature and date of the meeting will be recorded and a letter sent to the member of staff indicating the nature of their unsatisfactory performance and how such performance can be improved to the satisfaction of the Line Manager. The member of staff should be informed that they may be accompanied at any meetings by a trade union representative or work colleague.

At this meeting, the line manager will agree performance standards with the member of staff, and a time period (normally three months) over which improvement will be expected. They will also agree how the individual's performance will be monitored (see appendix 1).

If the individual's performance improves adequately over the timescale, then the process will terminate at this stage. If performance remains unsatisfactory, then the formal procedure will be invoked by the Line Manager as set out in stage 2.

### **3.3 Stage 2 – Formal Procedure – Information Collection:**

The senior manager of the Line Manager concerned may call on the support of an external advisor or another member of the Senior Leadership Team, to undertake collecting the necessary information. This would only happen in circumstances where it is deemed necessary to move the investigation to an independent investigator. They would be expected to interview the member of staff concerned and the Line Manager, as well as any other appropriate individuals. The member of staff should be informed that they may be accompanied at any meetings by a trade union representative or work colleague.

A written report based on evidence gained e.g. by interviews and monitoring performance will be prepared by the advisor / Manager. The report should be precise and specific in the remarks and comments it makes and shall contain clear information on:

1. areas where the member of staff is failing to perform adequately
2. actions already taken by management to address these failings and whether these actions were reasonable – i.e. were clear performance standards set and monitored
3. whether the member of staff acknowledges a problem and shows a willingness to improve
4. the impact of the individual's failings on colleagues and work output
5. any other mitigating factors

The report should be given to the member of staff concerned and to the Line Manager. Both may record in writing any comments on the remarks contained within the report.

The senior manager will consider the report, and may opt to take one of the following options:

- no further action
- instruct the line manager to set reasonable performance standards for the individual and monitor these for a set period of time. (This option should be chosen if this has not previously been carried out adequately and at least three months given to improve)
- convene a formal capability hearing to consider the matter further

### **3.4 Stage 3 – Capability Hearing**

The senior manager will write to the member of staff informing them of the date of the hearing, attaching any relevant documentation. The letter shall contain:

- The performance deficits in sufficient detail to ensure that the member of staff fully comprehends their nature, extent and seriousness.
- The time, date and venue of the interview.
- The person who will conduct the interview, usually the senior manager
- A statement that all employees have the right to be accompanied by a trade union representative or work colleague at any interview or hearing held under the provision of these procedures.
- At least 10 days' notice of the hearing.

At the hearing, the member of staff will be given the opportunity to put forward a defence, to bring witnesses in support of their defence, to present mitigating circumstances and to make a full statement. A written copy of the procedure, which will mirror the procedure as for a disciplinary hearing, to be adhered to during the hearing should be made available to the member of staff before the hearing takes place.

If the allegation is found to be justified, then a decision on the action to be taken must be made. Depending on the nature, frequency and seriousness of the allegation(s) it is expected that at this stage a Warning will be given, and this will be confirmed in writing, in line with the timescales as per the Discipline Policy and Procedure.

A letter should be sent to the member of staff confirming the decision and the reason(s) why it was made. The letter will also indicate that the member of staff's progress will continue to be monitored and how this will be carried out. A reasonable time scale for performance to improve and a review date(s) will be specified.

If the failings are found to be not sufficiently serious to warrant a formal warning or where there are mitigating circumstances, then monitoring should be discontinued subject to a clear indication to the member of staff that it may be reintroduced if the problem(s) reappear.

### **3.5 Stage 4 – Second Capability Hearing:**

If poor performance continues, the process set out in stage 3 should be repeated. The time scale for improvement will depend on the nature of the duties and responsibilities of the employee concerned and the seriousness of the complaint(s).

If the conclusion of the second hearing is that performance has not sufficiently improved and that there is still evidence of incapability despite support and prior warnings, a final warning should be issued.

The letter confirming the decision as well as covering the points made at Stage 3, should clearly state that if an improvement is not forthcoming, the College will convene a final meeting at which it will consider terminating the contract of the member of staff involved on the grounds of capability.

### **3.6 Stage 5 – Third Capability Hearing:**

The Principal or Vice Principal will conduct the third hearing at which if previous advice, training and warnings have not had the desired effect, he/she will terminate the contract of the employee concerned or agree another suitable outcome. The procedures outlined in Stage 3 will be followed.

**3.7** If at any time performance declines, which has already been subject to this procedure, the procedures will be re-entered at stage 4.



### **3.8 APPEALS:**

The member of staff will have the right of appeal at all formal stages of the procedure.

An appeal against any decision to terminate the employee's contract of employment on the grounds of capability may be made in writing to the People Services Department within 14 days of the decision. The employee's appeal will be heard by the Chair's Committee of the Regional Board. Decisions made on appeal shall be final.

## **4. Responsibilities**

- 4.1 The Regional Board is responsible for approving this policy and for overseeing compliance with its principals.
- 4.2 The Director of People Services is responsible for the implementation of this policy.
- 4.3 All staff are responsible for ensuring compliance with this policy.

## **5. Related documents**

- 5.1 Performance Improvement Procedure
- 5.2 Discipline and Grievance Policy
- 5.3 Safeguarding Children and Adults at Risk of Harm
- 5.4 Alcohol and Drugs Policy
- 5.5 Equality, Diversity and Inclusion Policy

## **6. Review**

This Policy will be reviewed in 3 years' time unless otherwise required.

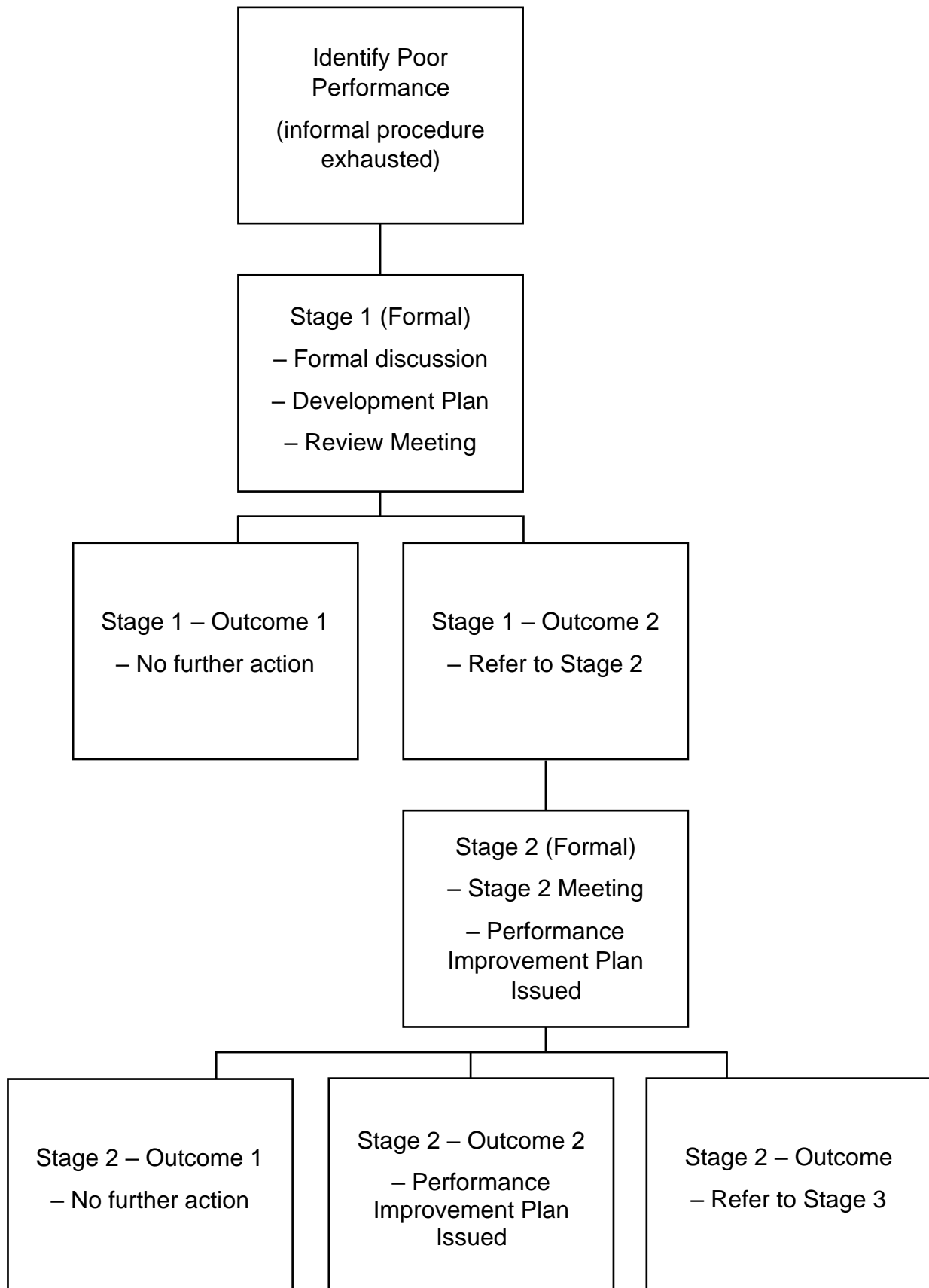
## Borders College Performance Improvement Plan

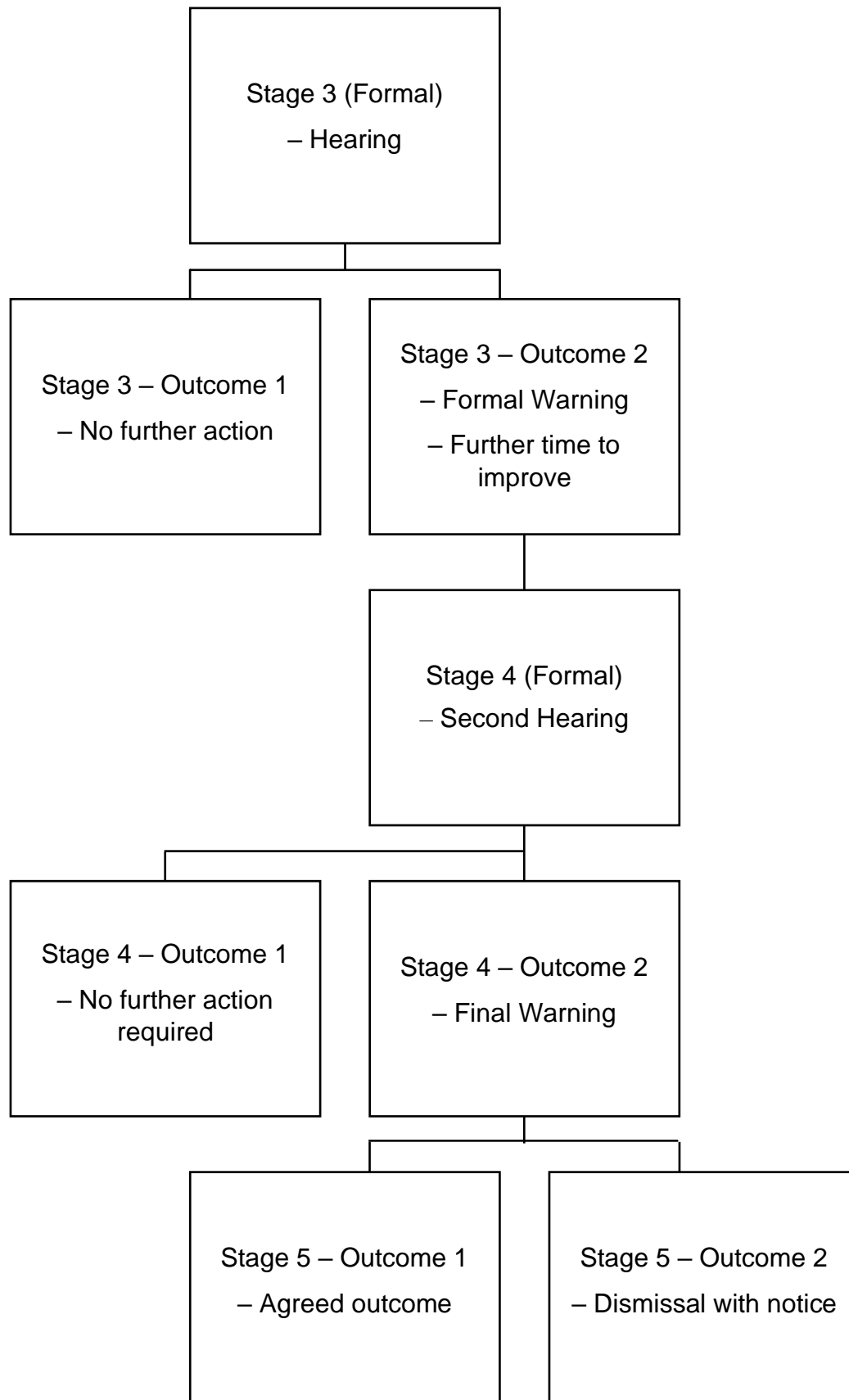
Improvement Area	Action	Evidence	Review Method	Review Timescale (eg 1 month, 3 months)

Signed: \_\_\_\_\_ (Manager)

Signed: \_\_\_\_\_ (Employee)

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





Status:  
Policy Dated: January 2023  
Author: Director of People Services  
Review Date: January 2026  
Equality Impact Assessed: January 2023