Managing Capability Policy

1. Policy Statement
The University is committed to a culture of high performance and to supporting employees to do their jobs well and to meet the standards expected of them. This policy aims to support employees who are not managing to meet these standards. It ensures employees are treated fairly and consistently and given timely and appropriate support to help them achieve these standards.

2. Scope
This policy and procedure applies to all employees, except those who are on probation\(^1\). It will be used when an employee’s performance is falling short of the standards expected of them and the underperformance is related to capability, i.e. to the skills, knowledge, physical or mental abilities they need to do their job.

The disciplinary procedure should be used when an employee’s underperformance is related to their conduct i.e. to their behaviour or to breaches of University policy, e.g. health and safety. The absence management policy should be used to address concerns which relate to an employee’s ability to attend work.

In some cases, it may be more appropriate for issues to be dealt with using a combination of policies. Managers should seek early advice from their local College/Support Group HR Advisor to determine which policy should be used.

3. Principles
The University recognises that the management of underperformance can be a stressful process for all concerned so the attached procedure is based on the following principles:

3.1 Everyone involved will be treated with dignity and respect

\(^1\) Please refer to the Interim Guidance for Managing Probation
3.2 Managers will be offered guidance and support to enable them to manage capability issues fairly and effectively

3.3 There will be due respect for the privacy of everyone involved and all information will be shared on a confidential, need to know basis

3.4 Employees will be made aware of acceptable standards of performance and will be given regular feedback

3.5 Employees will be given support and guidance to help them achieve and maintain the standards of performance expected of them

3.6 Employees will be made aware of any concerns about their performance as and when issues arise and will be given time to address these before any formal action is taken

3.7 Employees will be given appropriate, additional support should underlying personal or work-related factors be contributing to their underperformance

3.8 Employees have the right to be accompanied to formal meetings by a trade union representative or workplace colleague.

4. Procedure – high level summary

4.1 Informal action
Managers must deal with performance issues as and when they arise. In most cases, informal discussion between a manager and an employee should be all that is required to resolve matters.

Note: Managers may, after seeking advice from their College/Support Group HR Advisor, initiate the formal procedure if they consider the employee to be performing significantly below the standards expected of them, or if the employee’s actions could have, or have damaged the University’s operations and/or reputation.

4.2 Formal action
Managers must contact their local College/Support Group HR Advisor for advice before taking any formal action. The formal procedure has three stages:

- **Stage 1 Meeting** between the employee and their manager; this could result in the employee being placed on a formal Performance Improvement Plan (PIP) and issued with a formal written warning. If performance does not improve to the standard(s) required, this will lead to:

- **Stage 2 Meeting** between the employee and their manager; this could result in the PIP being extended and the employee being issued with a final written warning. If performance does not improve to the standard(s) required, this will lead to:
– **Stage 3 Performance Hearing**, chaired by a more senior manager, in most cases the manager’s line manager; this could result in the employee being dismissed.

4.3 **Timescales for improvement**
The duration of each PIP will be case specific and will be determined by the manager. The timescales set for an employee to improve their performance will take into account the nature, impact and extent of their underperformance. They will also reflect the type and complexity of the employee’s role.

**Note:** The above is a simple, high level summary and managers must familiarise themselves with the full procedure as detailed below and in the accompanying process flow at Appendix I.

5. **Pay Progression and Promotion**
Employees with an active formal Performance Improvement Plan in place will not be eligible for an incremental increase in pay or considered for promotion.

6. **Policy History and Review**
Approval Date: 19 June 2017  Approved By: CJCNC
Review Date: December 2019
Managing Capability Procedure

1. Informal Action to Manage Underperformance

1.1 Raising awareness of issues and providing the opportunity to improve

Before taking formal action, the employee’s manager\(^2\) must normally ensure that they have met with the employee and made them aware that their performance is falling short of the standards expected of them.

**Note:** The manager may, after seeking advice from their College/Support Group HR Advisor, initiate Stage 1 of the formal procedure if they consider the employee to be performing significantly below the standards expected of them, or if the employee’s actions could have, or have damaged the University’s operations and/or reputation. The HR Advisor will inform the trade unions of any case which is escalated to Stage 1 of the formal procedure.

During informal discussion(s), the manager must:

- provide clear examples of the employee’s underperformance
- sensitively explore any possible underlying reasons for the employee’s poor performance
- explore what, if any, additional training and/or other support could be put in place to help the employee improve their performance
- clearly establish what the employee needs to do to improve their performance.

The manager must also:

- allow the employee a reasonable, specified amount of time to improve and to benefit from any training and/or support which may be put in place
- review the action(s) taken by the employee, and the impact of any training/support put in place
- provide feedback to the employee on their progress.

If progress is slow or limited, the manager must make it clear to the employee that they may take formal action if the employee’s performance does not improve to the standard(s) required.

1.2 Keeping and sharing notes

The manager must note the outcomes of these discussions and share these with the employee in good time so the employee is clear what they need to do, by when, to improve their performance. Where

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\(^2\) For the purposes of this process the term 'manager' will be defined so as to include the nominated or line manager or another designated person of suitable seniority and responsibility within the relevant work unit or group.
appropriate, the notes should also make clear the consequences for the employee if their performance does not improve.

1.3 Disclosure of underlying, contributory factors
Other factors can contribute to an employee’s underperformance. These may be personal in nature, e.g. disability, health or personal circumstances/difficulties. Or, they may be work-related, e.g. working relationships, nature and/or volume of work.

Managers must seek early advice from their local College/Support Group HR Advisor should an employee disclose a disability, or raise a health issue which could be affecting their performance.

2. Formal Procedure: Stage 1
Managers must contact their local College/Support Group HR Advisor for advice before taking any formal action. Managers should also seek advice from their local College/Support Group HR Advisor on what, if any, alternative action could be taken, for example the potential to redeploy/demote the employee to a role more suitable to their knowledge, skills and abilities.

2.1 Written Notice of Stage 1 Meeting
The manager will write to the employee asking them to attend a meeting with the manager to formally discuss concerns relating to their performance. Any documents to be discussed at the meeting, e.g. evidence of the employee’s continuing underperformance, notes of informal discussions, must be included with the letter. To allow the employee to prepare for the meeting, at least one calendar week’s notice of the meeting will normally be provided.

The letter will also make it clear that:
– an HR Advisor will be present at the meeting to provide advice and guidance on process
– the employee has the right to be accompanied to the meeting by a trade union representative or workplace colleague
– any documents which the employee wishes to use to support their case should be provided to the manager at least 2 working days in advance of the meeting; and
– the meeting could result in formal action being taken.
2.2 Stage 1 Meeting between Manager and Employee

During the meeting, the manager will:
- reconfirm the standards of performance expected of the employee
- explain, using examples, where and how the employee continues to underperform
- allow the employee to respond to the manager’s concerns and issues raised
- seek to establish if there are any other factors which are contributing to the employee’s performance, e.g. an underlying health/personal or work related factor; and
- explore what can be done by both the employee and manager to help the employee improve their performance.

The meeting will be adjourned to allow the manager time to consider the employee’s responses, take advice from the HR Advisor and decide on appropriate action.

The meeting will then resume, where possible on the same or following working day, and the manager will inform the employee of the outcome of the Stage 1 Meeting.

Should the employee have disclosed an underlying factor, e.g. a health or personal matter, or work-related issue, the manager will inform the employee of the actions to be taken to explore these issues further. (See Section 7, Support for Employees: Underlying Issues)

2.3 Outcome from Stage 1 Meeting

The Stage 1 Meeting will result in one of the following outcomes:

a) No formal action: the manager will continue to review the employee’s performance on an informal basis

b) Formal Action: the manager will formally manage the employee’s performance through putting in place a Performance Improvement Plan (PIP) (see Section 2.3.1) and will issue a formal written warning (see Section 2.3.2).

2.3.1 Performance Improvement Plan

The Performance Improvement Plan (PIP) must clearly set out:
- the individual actions the employee needs to take to improve to the required standard, including milestones which must be reached if the employee is to achieve the overall PIP objective(s)
- timescales for improvement (see Note, below)
- what success looks like
- what training, support or development will be put in place, by whom, and when
- the duration of the PIP, and progress review dates.

Note: Timescales for improving performance will reflect the nature, impact and extent of the employee’s underperformance, and the type and complexity of their role.

A template PIP form (see Appendix II) is available at http://www.docs.csg.ed.ac.uk/HumanResources/Policies/Performance_Improvement_Plan.doc Where the PIP requires the support of other people (e.g. a more senior manager) to help the employee succeed, the manager must ensure that these people are appropriately briefed and engaged.

### 2.3.2 Formal Written Warning

When putting in place a formal PIP, the manager will also issue the employee with a formal written warning. The manager may decide to issue a final written warning if they consider the employee to be performing significantly below the standards expected of them, or if the employee’s actions have had, or could have had, serious consequences, e.g. damaged the University’s operations and/or reputation. The HR Advisor will inform the trade unions of any final written warning issued at Stage 1.

### 2.4 Communication

The manager will write to the employee within one calendar week of the Stage 1 meeting to confirm the outcome of the meeting. If formal action is taken, the letter will confirm the process for developing the PIP, the issue of the formal warning, and the employee’s right to appeal the formal warning. It will also make clear the potential consequences should the employee fail to meet the PIP objectives and timescales.

### 3. Review of Progress

The PIP will detail the individual actions the employee needs to take to improve their performance. These will include the milestones which must be reached if the overall PIP objectives are to be met by the employee.

The PIP must include review meeting dates, which will help the manager and employee to discuss and assess the employee’s progress, and a PIP end date.
3.1 PIP objective(s) met by PIP end date

Should the employee achieve the PIP objective(s) before or by the PIP end date, this should be confirmed to them in person, normally during a PIP progress review meeting, and in writing. The manager must:

- acknowledge the improvement in performance and the effort made by the employee
- confirm the component parts of the PIP and overall objective(s) have been met and that the PIP is no longer in place
- discuss what the employee should do to sustain the improvement they have made
- remind the employee of the duration of their formal warning (See Section 9), and
- make it clear to the employee what will happen if their performance starts to fall below the standard(s) required (see Section 11).

3.2 Failure to achieve a component part of the PIP or to reach key milestones

Should the employee fail to achieve a component part of the PIP/to reach a key milestone, and so be unable to achieve the overall PIP objective(s), the manager should normally proceed to Stage 2 of the formal process before the PIP end date. The employee must be forewarned of this, normally during a PIP progress review meeting.

If the employee was issued with a final warning at Stage 1, the manager should proceed to Stage 3 of the procedure – a Performance Hearing (See Section 6) - before the PIP end date.

3.3 Unforeseen circumstances

Should the employee be unable to achieve a component part of the PIP/reach a key milestone due to unforeseen circumstances when the PIP was put in place, the manager should extend the PIP and set a new end date. This will normally take place during a PIP progress review meeting and must be confirmed in writing.

Unforeseen circumstances could include an employee’s long-term absence from work; the absence/turnover in key staff involved in providing support; delayed/cancelled training.
3.4 Deterioration in performance once PIP in place

Should the employee’s performance deteriorate further, the manager should proceed to Stage 2 of the formal process before the PIP end date. The employee must be forewarned of this, normally during a PIP progress review meeting.

If the employee was issued with a final warning at Stage 1, the manager should proceed to Stage 3 of the procedure – a Performance Hearing (See Section 6) - before the PIP end date.

3.5 PIP objectives not met by PIP end date

Should an employee fail to meet the PIP objective(s) by the PIP end date, the manager should progress to the next stage of the formal process. The employee must be forewarned of this at their final PIP progress review meeting.

If the employee was issued with a final warning at Stage 1, the manager should proceed to Stage 3 of the procedure – a Performance Hearing (See Section 6).

4 Formal Procedure: Stage 2

4.1 Written Notice of Stage 2 Meeting

Following PIP Review Meeting(s), if underperformance continues, the manager will write to the employee asking them to attend a meeting with the manager to formally review how they have performed against the Performance Improvement Plan (PIP). To allow the employee to prepare, at least one calendar week’s notice of the meeting will normally be provided.

Any documents to be discussed at the Stage 2 meeting will be sent with the letter.

The letter will also make it clear that:
- an HR Advisor will be present at the meeting to provide advice and guidance on process
- the employee has the right to be accompanied to the meeting by a trade union representative or workplace colleague
- any documents which the employee wishes to use to support their case should be provided to the manager at least 2 working days in advance of the meeting.

The letter will make it clear that the meeting could result in further formal action being taken.
4.2 Stage 2 Meeting between Manager and Employee

During the meeting, the manager will review the progress made by the employee against each part of the PIP, and the employee will be given the opportunity to respond.

The meeting will be adjourned to allow the manager to consider the employee’s response, take advice from the HR Advisor, and decide on appropriate action. The meeting will then resume, where possible on the same or following working day, and the manager will inform the employee of the outcome of the Stage 2 meeting.

4.3 Outcome from Stage 2 Meeting

The Stage 2 Meeting will result in the one of the following outcomes:

a) No further formal action: the employee has sufficiently improved their performance and is consistently performing to the standards expected of them; the manager will continue to review the employee’s performance on an informal basis

b) Revision of PIP and issue of final written warning: there has been insufficient, or no improvement in the employee’s performance. The PIP will be updated, with new progress review dates and PIP end date. The manager will also issue a final written warning.

4.4 Communication

The manager will write to the employee within one calendar week of the Stage 2 Meeting to confirm the outcome of the meeting and next steps.

**No further formal action** - the letter will confirm the PIP is no longer in place, remind the employee of the remaining duration of the formal warning (see Section 9) and make clear what will happen if their performance starts to fall below the standard(s) required (see Section 11).

**Revision of PIP and issue of final written warning** - the letter will confirm the revisions to the PIP, its revised duration and make clear the potential consequences should the employee fail to meet the objectives and timescales of the updated PIP.

The letter will also advise the employee of their right to appeal the final written warning.
5 Review of Progress – Revised PIP

The revised PIP will detail the individual actions the employee needs to take to improve their performance. These will include the revised milestones which must be reached if the overall PIP objectives are to be met by the employee.

The revised PIP must include review meeting dates, which will help the manager and employee to discuss and assess the employee’s progress, and a new PIP end date.

5.1 PIP objective(s) met by revised PIP end date

Should the employee achieve all of the PIP objective(s) before or by the revised PIP end date, this should be confirmed to them in person, normally during a PIP progress review meeting, and in writing. The manager must:

- acknowledge the improvement in performance and the effort made by the employee
- confirm the component parts of the PIP and overall PIP objectives have been met and that the PIP is no longer in place
- discuss what the employee should do to sustain the improvement they have made
- remind the employee of the duration of their final written warning (see Section 8), and
- make it clear to the employee what will happen if their performance starts to fall below the standard(s) required (see Section 11).

5.2 Failure to achieve a component part of the revised PIP or to reach key milestones

Should the employee fail to achieve a component part of the PIP, or reach a key milestone, and so be unable to achieve the overall PIP objective(s), the manager should normally proceed to Stage 3 – Performance Hearing before the PIP end date. The employee must be forewarned of this, normally during a PIP progress review meeting.

5.3 Unforeseen circumstances

Should the employee be unable to achieve a component part of the PIP/reach a key milestone due to new, unforeseen circumstances when the PIP was revised, the manager should extend the PIP and set a new end date. This will normally take place during a PIP progress review meeting and must be confirmed in writing.
Unforeseen circumstances could include an employee’s long-term absence from work; the absence/turnover in key staff involved in providing support; delayed/cancelled training.

5.4 **Deterioration in performance once revised PIP updated**
Should the employee’s performance deteriorate further, the manager should proceed to Stage 3 – Performance Hearing before the PIP end date. The employee must be forewarned of this, normally during a PIP progress review meeting.

5.5 **PIP objectives not met by revised PIP end date**
Should an employee fail to meet the PIP objective(s) by the new PIP end date, the manager should progress to Stage 3 – Performance Hearing. The employee must be forewarned of this at their final PIP progress review meeting.

6 **Formal Procedure – Stage 3 - Performance Hearing**

6.1 **Hearing Chair**
The College/Support Group Head of HR will appoint a Chair to hear the case. The Chair will be at a grade equal to, or more senior than the manager who recommended progressing to a Hearing. In most cases, the manager’s line manager will chair the Hearing.

6.2 **Panel membership and Preparation**
The Chair will appoint one or two other members of staff to hear and decide on the case. These staff members will have had no prior involvement in the case and will ideally have relevant knowledge of the work the employee is employed to do.

At least one Panel member must be from the same job category as the employee. For example, where the employee is an Academic\(^3\), at least one Panel member (who may be the Chair) must be an Academic; where the employee holds a non-academic role\(^4\), at least one Panel member (who may be the Chair) must be a non-academic.

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\(^3\) An ‘Academic’ for the purposes of this policy, is defined as a Professor, Reader, Senior Lecturer, Senior Teaching Fellow or Lecturer and any other person engaged in teaching, the provision of learning or research.
\(^4\) E.g. from professional services, technical or administrative support within the Colleges or Support Groups.
The manager who recommended progressing to a Performance Hearing will prepare a short report for the Panel. The report will describe the performance issues and the actions taken to help the employee improve.

6.3 Written Notice of Performance Hearing
The Chair will write to the employee asking them to attend a Hearing. To help the employee to prepare, at least one calendar week’s notice of the meeting will normally be provided. The manager’s report will be sent with the letter.

The letter will explain the make-up of the Panel and also make it clear that:
- an HR Advisor will be present at the meeting to provide advice and guidance on the process; this will usually be the same HR Advisor who attended the Formal Stage 1/Stage 2 Meeting.
- the employee has the right to be accompanied to the Hearing by a trade union representative or workplace colleague
- any documents which the employee wishes to use to support their case should be provided to the Chair at least 2 working days in advance of the Hearing
- the Hearing could result in the employee being dismissed.

6.4 Performance Hearing
The manager will attend the Hearing to present their report and explain their concerns about the employee’s performance.

The employee will have the opportunity to respond to these concerns, to generally state their case and will be asked questions by Panel members.

The Hearing will be adjourned to allow the Panel to consider the case, take advice from the HR Advisor and decide on appropriate action.

6.5 Outcome of Performance Hearing
The Panel may decide to:
a) ask the manager to return to Stage 2 of the formal procedure, with a further period of review, and to take on board any recommendations made by the Panel, or
b) dismiss the employee.
6.6 Communication

The Panel’s decision will be verbally communicated to the employee, wherever possible on the same or following day, and will be confirmed in writing within one calendar week of the Hearing. Should the Panel decide to dismiss the employee, the employee will be advised of their right to appeal against their dismissal. The employee will be dismissed with immediate effect, and will be paid in lieu of their contractual notice along with any outstanding contractual entitlements.

7 Support for Employees: Underlying Issues

7.1 Disability

If an employee has, or discloses a disability which is contributing to their underperformance, the development of the PIP, its duration and the timing of PIP progress review meetings will allow:

- the manager time to seek and consider relevant, specialist advice
- the manager and the employee an opportunity to discuss any reasonable adjustments; and
- reasonable time for any such adjustments to be put in place and to take effect before the employee’s performance is formally reviewed.

7.2 Underlying health condition(s)

If an employee’s health is considered to be affecting their performance, the development of the PIP, its duration and the timing of PIP progress review meetings will allow:

- the manager time to refer the employee to Occupational Health (OH), and consider the report from OH
- the manager and the employee an opportunity to discuss the OH report and consider any additional support recommended by OH which might help the employee to improve their performance; and
- reasonable time for appropriate additional support to be put in place and take effect before the employee’s performance is formally reviewed.

7.3 Personal difficulties

Managers will be supportive of any employee who discloses that they are coping with significant difficulties in their personal life, for example, a close family illness, bereavement or a relationship breakdown. The duration of the PIP and timing of PIP progress review meetings will take into account these difficulties.
7.4 Workplace factors

If workplace factors are considered to be affecting the employee’s performance, for example working relationships, nature and volume of work, the development of the PIP will allow the manager time to investigate the issues raised and, if appropriate, to take alternative action.

8 Right to be accompanied

Employees have the right to be accompanied to formal meetings\(^5\) by a trade union representative or workplace colleague. The employee is responsible for informing their chosen companion of the arrangements for the meeting. The employee must also notify the manager (or Performance Hearing Chair) in advance of the meeting if they will be accompanied and the name of their companion.

The employee’s companion can address the meeting and confer with the employee during the meeting, but cannot answer questions on behalf of the employee.

9 Warning periods

A formal written warning will remain current for 12 months. A final written warning will remain current for 24 months.

After the warning period has expired, a note of the warning’s existence will remain on the employee’s record. However, this will not be used towards the escalation of warnings but may be used to provide context where relevant. This expired warning will be kept in accordance with the University Data Retention Schedule for HR Records.

10 Appeals

Employees have the right to appeal the issue of any formal warning and the termination of their employment. The appeal processes are outlined in the ‘Employment Related Appeals Procedures’.

11 Recurring underperformance

Following successful completion of a PIP, an employee's performance will be managed in the normal way.

\(^5\) Formal meetings within this procedure are: Stage 1 Meeting, Stage 2 Meeting, and Performance Hearing.
Formal action will resume should an employee's performance once again fall short of the standard(s) expected of them.

Should this happen while a warning is current (see Section 9), the manager will progress to the next stage of the procedure. For example, should the employee have received a written warning and then successfully completed their PIP at Stage 1, the manager should alert the employee to the deterioration in their performance and restart formal action at Stage 2.

If the warning is no longer current, the manager will normally restart formal action at Stage 1.

Managers should seek early advice from their College/Support Group HR Adviser before re-instituting the formal procedure.

12 Records

College/Support Group HR will record the number of cases being managed through the formal Capability procedure, including the stage reached in the process. The number of cases by stage will be made available to the University’s Joint Unions Liaison Committee (JULC). All records will be held in accordance with the University’s records management policy framework.

Attachments:

Appendix I – Managing Capability Flow Chart
Appendix II – Template Formal Performance Improvement Plan
**Appendix I - Managing Capability: Formal Procedure**

**Formal Procedure: Stage 1 Meeting**
- Manager contacts local College/Support Group HR Advisor
- Manager writes to employee to invite them to the Stage 1 Meeting
  - Stage 1 Meeting
    - Decide action to be taken
    - Formal Action: Written warning issued
      - Appeal against warning
      - PIP Review Meeting(s)*
      - Progress to Stage 2 if there is a written warning on record
        - Manager confirms PIP no longer in place & remaining duration of warning
        - PIP objectives met?
          - Progress to Performance Hearing if a final written warning is on record
            - Manager confirms PIP no longer in place & remaining duration of warning

**Formal Procedure: Stage 2 Meeting**
- Manager writes to employee to invite them to the Stage 2 Meeting
  - Stage 2 Meeting
    - Decide action to be taken
      - Further Formal Action: Final written warning issued
        - Appeal against warning
        - PIP Review Meeting(s)*
        - Progress to Performance Hearing
          - PIP objectives met?
            - Progress to Performance Hearing

**Formal Procedure: Stage 3 - Performance Hearing**
- Hearing Chair writes to employee to invite them to the Performance Hearing
  - Performance Hearing
    - Decide action to be taken
      - Extension to Stage 2 with further period of review
        - Appeal against dismissal
          - Dismissal

**Formal Action**
- Final written warning issued
- PIP created

**Further Formal Action**
- Final written warning issued
- PIP updated

**KEY**
- PIP Review Meeting(s) with manager and employee
- Formal meeting: employee has right to be accompanied; HR Advisor will be present

*If the employee meets the PIP objectives before or by PIP end date, the manager can end the formal procedure and confirm the PIP is no longer in place. If during the PIP review period the employee’s performance deteriorates further or key milestones are not met, the manager should proceed to the next stage before the PIP end date. If unforeseen circumstances, such as long-term absence, mean key milestones on the PIP will not be met, the manager should extend the PIP and set a new review date.
## FORMAL PERFORMANCE IMPROVEMENT PLAN (PIP)

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<tbody>
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### PERFORMANCE OBJECTIVE(S): Detail the overall improvement required by the PIP Formal Review Date

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<th>Expected Standard</th>
<th>Improvement Actions</th>
<th>Training and Support</th>
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<td>Describe what ‘satisfactory’ performance looks like / how manager and employee will recognise the objective has been met</td>
<td>Detail the step-by-step actions (the milestones) the employee needs to take to meet the performance objective(s), and timescales for improvement</td>
<td>Detail the training and support required to meet the objective(s) – what, by whom and when</td>
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Page 1 of 2
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<thead>
<tr>
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