

Performance Improvement Procedure

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1 Introduction

- 1.1 University Hospitals Birmingham NHS Foundation Trust ('the Trust') will support staff to achieve and maintain effective standards of job performance.
- 1.2 A performance issue arises if a member of staff is unable to reach satisfactory competence, or there is a decline in performance below a satisfactory level. It relates to a member of staff's skill, aptitude, ability or knowledge for their role.
- 1.3 Most performance issues can be identified and managed informally through normal day-to-day local management processes. However, there may be occasions when problems relating to an individual's performance may require a more structured approach. This procedure sets out a fair and consistent approach to improving the performance of staff when the required performance standard or level of competence is not being achieved.
- 1.4 Performance issues will be handled sensitively and in a supportive but performance-focused approach. The ultimate aim is to improve the member of staff's performance to an acceptable standard.

2. Reducing the Risk of Performance Issues Arising

- 2.1 Line managers must ensure that:
 - i. New staff receive appropriate induction training (local and corporate), supervision and mentoring;
 - ii. Job Descriptions/Person Specifications are clear, up to date, and roles are defined. These should specify the member of staff's duties and responsibilities, and the knowledge, skills, training and experience required for the post;
 - iii. Staff are aware of the standard of work required;
 - iv. Workloads are manageable and resources available to complete objectives;
 - v. Reviews of performance take place through regular contact; and
 - vi. Agreed training which is identified on a member of staff's Personal Development Plan (PDP) takes place unless non-attendance had been agreed.

3. Supporting Staff to Improve Performance

- 3.1 Where a performance issues arises, the line manager must have a discussion with the member of staff and offer them assistance and support to improve their performance. The member of staff must be

given the opportunity to raise any concerns they have. A summary of the discussion must be put in writing. Examples of assistance and support include:

- i. Review of job plan/ duties of the role;
- ii. Offering relevant training opportunities or coaching/mentoring;
- iii. Providing closer supervision by a more experienced member of staff;
- iv. Change to working practices e.g. moving from night shifts to day shifts;
- v. Any reasonable adjustments relevant to a disability where it is impacting on an individual's ability to perform in the role;
- vi. Occupational Health referral / signposting to Staff Support, Access to Work;
- vii. Practice restrictions while support, training and development is undertaken.

3.2 The member of staff may choose to seek advice from their Trade Union representative, or personal support from a workplace colleague.

4 Formal Management of Performance Issues

4.1 First Formal Management of Performance Issues – Stage 1

4.1.1 Any performance concerns will be raised and documented as part of normal day to day management, with the member of staff given a copy. Every effort should be made to improve performance informally.

4.1.2 If the member of staff's performance does not reach a satisfactory level through informal support mechanisms, the manager will verbally/ by email arrange to meet the member of staff for a First Formal Meeting, providing at least 7 calendar days' notice. The arrangements for the meeting will then be confirmed in writing. A representative from HR will be present at the meeting. The member of staff can be accompanied by a Trade Union representative or workplace colleague.

4.1.3 Prior to any decision to move to Stage 1 the line manager must contact Human Resources for advice.

4.1.4 There can be a number of reasons for a decline in performance, the most common being that either the job changes over a period of time and the member of staff fails to keep up with the changes, or the member of staff changes (i.e. because of health reasons) and can no longer cope with the work. Potential underlying reasons, i.e. health,

work/life balance, poor working relationships, will be explored with the member of staff.

- 4.1.5 The line manager will take into account of departmental factors outside of the control of the member of staff that have contributed to the under-performance issues.
- 4.1.6 The line manager will verbally/ by email arrange to meet with the member of staff to discuss the performance concerns, providing at least 7 calendar days' notice. This will be followed up in writing. This discussion will establish the reasons, obtain the member of staff's perspective, clarify expected standards and identify possible solutions. The member of staff may be accompanied by a trade union representative or a workplace colleague.
- 4.1.7 Realistic and measurable objectives will be set out in a Performance Improvement Plan issued to the member of staff in writing. A Performance Review period in which time the member of staff will be expected to reach satisfactory performance levels will be determined by what is reasonable for the objectives set and any support or training required. This will typically be set over a 6-week period, and no more than 12 weeks. It will be made clear that this is a **First Performance Improvement Notice**, and that further formal action could be taken if satisfactory performance is not achieved and sustained. This improvement notice will remain 'live' for a period of 6 months from the date the First Improvement Notice is issued. The First Performance Improvement Notice will be given in writing to the member of staff and a copy put on the member of staff's personal file.
- 4.1.8 Regular interim review meetings will be scheduled with the member of staff during the Performance Review period, to provide feedback on progress, to support the member of staff and to encourage improved performance. A written summary of all interim meetings will be given to the member of staff and a copy kept on the member of staff's personal file.
- 4.1.9 At the end of the Stage 1 Performance Review period, the manager will meet with the member of staff to discuss progress and conclude that:
 - i. Specified levels of performance have been achieved and no further discussions are necessary; or
 - ii. There has been a marked improvement but still below an acceptable standard, extending the review period for up to an additional 6 weeks; or
 - iii. There has been little or no improvement and formal action is required.

4.1.10 The outcome of the meeting will be followed up in writing with a copy sent to the member of staff and a copy kept on their personal file.

4.2 Final Formal Management of Performance Issues – Stage 2

4.2.1 If the member of staff's performance does not reach a satisfactory level by the end of the Stage 1 review period, the manager will verbally/ by email arrange to meet the member of staff for a Final Formal Meeting, providing at least 7 calendar days' notice. The arrangements for the meeting will then be confirmed in writing. A representative from HR will be present at the meeting. The member of staff can be accompanied by a Trade Union representative or workplace colleague.

4.2.2 During the meeting the steps taken in the Stage 1 management of performance concerns will be discussed and the continuing under-performance explained. Reasons for the performance standard not being achieved will be explored, and any contributory reasons or underlying causes will be taken into account.

4.2.3 Dependent upon the nature of the concerns, alternative actions may be explored, e.g. redeployment to an alternative post (possibly lower banded without pay protection). Permanent redeployment to an alternative post will only be actioned at this stage if it is agreed to by the manager and the member of staff. The Performance Improvement process would stop if the redeployment process commenced, and all further actions would be as set out in the Trust's Redeployment Procedure.

4.2.4 Discussions could include down-banding; the member of staff can request to be permanently down-banded as an alternative to continuing the Performance Improvement process or the manager may propose it.

4.2.5 If the outcome of the meeting is that there is continued under-performance and no alternative actions identified, a **Final Performance Improvement Notice** will be issued to the member of staff, in writing, stating that if there is insufficient improvement in their performance within an agreed period an outcome could be dismissal. This formal warning will remain 'live' for a period of 12 months from the date the Final Improvement Notice is issued.

4.2.6 The Performance Improvement Plan will be updated and issued to the member of staff. Realistic and measurable objectives will be set. A Performance Review period by which the member of staff will be expected to reach satisfactory performance levels will be determined by what is reasonable for the objectives set and any support or training

required. This will typically be a 6-week period, and no more than 12 weeks. It will be made clear that further formal action will be taken if satisfactory performance is not achieved and sustained.

4.2.7 At the end of the Formal Performance Review period the manager will verbally/ by email arrange to meet with the member of staff, giving at least 7 calendar days' notice. These arrangements will be confirmed in writing, to discuss progress and conclude that:

- i. The specified levels of performance have been achieved and no further discussions are necessary; or
- ii. There has been a marked improvement in performance but still below an acceptable standard, in which case the informal review period can be extended for up to an additional 6 weeks; or
- iii. There has been little or no improvement and the performance issues must now be considered at a Stage 3 Hearing.

4.3 Capability Hearing – Stage 3

4.3.1 If, despite a Performance Review period and having been offered appropriate support, the member of staff is unable to reach or sustain the required standard of performance, a Hearing will take place. At Stage 3, dismissal is a potential outcome. The Hearing will be chaired by a dismissing level manager (see Appendix A), supported by a HR representative, neither previously involved in the performance management.

4.3.2 The member of staff will be given at least 14 calendar days' notice of the Hearing and be provided with the line manager's statement of case within the same timeframe. The member of staff will be advised that they can be accompanied at the meeting by a Trade Union representative or work colleague.

4.3.3 The member of staff can provide a written response to the management statement of case, submitted at least 7 calendar days before the Hearing.

4.3.4 The Hearing will be held as set out in Appendix B. It will be digitally recorded and retained, and a CD copy can be provided upon request.

4.3.5 The Hearing will thoroughly explore the problems in an open and constructive manner to ensure the issues, causes and consequences are understood, and if necessary call witnesses to give clarity and perspective.

4.3.6 If the panel is satisfied that the member of staff's performance is now satisfactory, the process will be stopped and the member of staff taken

off review. The Improvement Notice issued in Stage 1 or 2 will remain on file and if there is a further decline in performance within the 'live' warning period, the manager will recommence the performance management.

4.3.7 The Chair may dismiss a member of staff if satisfied that it is reasonable to conclude that, despite appropriate opportunity and support, the member of staff is unable to achieve or sustain satisfactory standards of performance in their role. Dismissal will be with notice, paid in lieu at whichever is the greater of the statutory minimum or contractual notice entitlement. The member of staff will also be paid for any outstanding annual leave entitlement accrued to the date of dismissal.

4.3.8 Alternatives to dismissal

- i. **Extended review period at Stage 2:** the Stage 2 review period may be extended for a further period of up to 6 weeks, and/or additional support or training to be put in place to improve performance. If at the end of the extended review period there is still insufficient improvement, the panel will reconvene the Hearing.
- ii. **Down-Banding:** this can be considered within the same department, taking in to account factors including the needs of the department, the availability of and funding for suitable work at a lower band, and the ability to manage the member of staff in that circumstance. Pay protection will not apply.
- iii. **Redeployment to another post:** the panel will consider the strengths and skills of the member of staff to assess if there is a possibility of redeployment to another post within the Trust. This could be at the same or a lower band (without pay protection). If redeployment is not successful, then the panel must reconvene the Hearing in order to consider dismissal.

4.3.9 The considerations and decision of the Hearing Panel will be confirmed in writing to the member of staff within 7 calendar days of the Hearing and a copy kept on the personal file

4.4 Appeal Against Dismissal

4.4.1 A member of staff can appeal against a decision to dismiss, or action short of dismissal. The appeal must be submitted in writing to the Deputy Director of HR – Operations within 14 calendar days of receipt of the outcome letter. The Deputy Director of HR Operations will convene an Appeal Panel.

- 4.4.2 The appeal will be heard by a senior manager who is impartial and where possible more senior than the original Chair, with independent HR support. An appeal against dismissal will be heard by a panel of 2 Board Directors and the Director/Deputy Director of Human Resources/ Head of HR Operations. The Trust will make reasonable efforts to ensure timely hearing of appeals.
- 4.4.3 The member of staff will submit their written statement of case to the Appeal Chair, including copies of all documentation they wish to rely on at the hearing, at least 14 calendar days before the Appeal Hearing. This will be forwarded to the original Chair who will prepare with their HR representative a response to the appeal, forwarded to the Appeal Panel Chair and the member of staff and their Trade Union representative or workplace colleague at least 7 calendar days before the Appeal Hearing.
- 4.4.4 The purpose of the Appeal Hearing is to review whether the decision was reasonable and proportionate based on the evidence available at the original hearing, and to consider whether the procedure was followed correctly. It is not a re-hearing of the case. The structure of the Appeal Hearing can be found at Appendix C.
- 4.4.5 The Appeal Panel can: confirm the original decision; make additional recommendations to improve performance where a Stage 3 outcome was to continue reviewing at Stage 2; reinstate where dismissal has taken place and extend the review period for up to 12 weeks or take off review.
- 4.4.6 The Appeal Panel will in most cases confirm a decision on the same day, but there may be occasions when an adjournment is necessary. Written confirmation of the outcome will be provided within 7 calendar days. The decision is final, with no further right of appeal.

5. Exceptions to the Performance Improvement Procedure

- 5.1 Where a new practitioner is unable to successfully complete their Clinical Induction or Care Certificate due to incapability, a fast track process to Stage 3 will be followed as set out in Appendix D.
- 5.2 To minimise risks to patients the Trust has a defined process to address concerns about omissions in patient care (Appendix E). Any member of staff found to have made one care omission will be given an opportunity to improve. Where a second care omission occurs and it is deemed to be due to performance issues, the matter will be managed at Stage 1.
- 5.3 The Trust also reserves the right to move directly to any stage of the Procedure where the poor performance is so serious and its impact so

significant as to pose a potential risk to patients, staff, service delivery or Trust reputation. Such circumstances would be risk assessed to determine whether the level of risk justifies fast-tracking the matter, and the decision will be taken in conjunction with advice from Human Resources.

6. Representation

- 6.1 A member of staff may be accompanied at formal stages by a trade union representative or a workplace colleague. If unable to attend on a proposed date, an alternative date must be provided which is within 7 calendar days of the original date.
- 6.2 If during a formal hearing the member of staff so directs, a Trade Union representative/work colleague can explain their case, respond on their behalf and confer, but cannot answer questions put directly to the member of staff or try to stop management asking relevant questions or outlining its views.

7. Support for staff

- 7.1 It is vital that all staff involved have their health and wellbeing maintained and protected as far as possible. Staff can seek support from their manager, Trade Union Representative, Human Resources, the Freedom to Speak Up Guardian, Confidential Contacts or through Occupational Health who can provide access to counselling services.

8. General Procedural Practices

- 8.1 In circumstances where this procedure is applied and the member of staff makes satisfactory improvement such that they are taken off review, if this improvement is not sustained during a 12-month period management of performance improvement can start back at the stage that the member of staff was previously at.
- 8.2 All documentation relating to the performance improvement process will be retained on the member of staff's personal file for the duration of their employment. Where a formal improvement notice is issued it will be 'live' for the duration of the notice. Following this it will remain on the personal file however it will not be active for any future performance concerns with the exception of section 7.1 above.
- 8.3 Staff will have pay progression suspended whilst under a formal notice of improvement. The member of staff will be informed of any impact on pay progression in writing as part of the outcome letter at the formal stages of the procedure.

8.4 A digital recording is made and retained of hearings and appeals. A CD copy can be provided to the member of staff, upon request.

9. References

Employment Rights Act 1996

NHS Terms and Conditions of Service Handbook

Nursing and Midwifery Council Guidelines for preceptorship

10. Associated Policy and Procedural Documentation

Appraisal Procedure

Employee Relations Policy

Pay Protection Policy

Redeployment Procedure

Sickness Absence and Attendance at Work Procedure

Appendix A

Dismissing Level Officers

Authorised Dismissing Officers

Chief Executive
Board Chief Officers and Directors
Directors
Associate/Deputy Directors
Deputy Chief Nurses
Chief Pharmacist

Procedure to be followed at a Stage 3 Capability Hearing

1. Chair of Panel to introduce all present and confirm the role each will play in the proceedings.
2. Chair to ensure that any member of staff who appears at the hearing unrepresented or unaccompanied is happy to proceed with the hearing alone (this needs to be minuted).
3. Chair to clarify if either party intends to call witnesses in support of their case.
4. Chair to explain the process to be followed, conducted in accordance with the Trust Performance Improvement Procedure:
 - 4.1 The Manager will state the management case and call any management witnesses;
 - 4.2 The member of staff can question the management witnesses and the Manager;
 - 4.3 The Panel can question the management witnesses and the Manager;
 - 4.4 The Manager may re-examine witnesses on points raised;
 - 4.5 The member of staff or their representative will state their case and call any witnesses;
 - 4.6 The Manager can question the member of staff's witnesses and the member of staff;
 - 4.7 The Panel can question the member of staff's witnesses and the member of staff;
 - 4.8 The member of staff or their representative may re-examine witnesses on points raised;
 - 4.9 Chair to confirm with the Manager and member of staff that they are satisfied they have had sufficient opportunity to state their respective cases. If so, both parties should be offered the opportunity of a short adjournment to produce a summing up statement;
 - 4.10 Manager to sum up their case (no new evidence is to be presented);
 - 4.11 The member of staff or their representative to sum up their case (no new evidence is to be presented);

- 4.12 Adjournment for the Panel to deliberate and reach a decision;
- 4.13 Panel may seek points for clarification if necessary.
- 5. The hearing is re-convened for the Chair of the Panel to deliver the panel's findings and decision, or notified of timescale for decision if further deliberation required.
- 6. The member of staff will be advised that the outcome will be confirmed to them in writing within 7 calendar days.

Note 1: It is not appropriate for 'character' witnesses to be called; any witnesses should be relevant and support the member of staff's case.

Procedure to be followed at an Appeal Hearing

1. Chair of Panel to introduce all present and confirm the role each will play in the proceedings.
2. Chair to ensure that any Appellant who appears at the hearing unrepresented or unaccompanied is happy to proceed with the hearing alone (this needs to be minuted).
3. Chair to confirm the reason for the Hearing i.e. "this is an Appeal Hearing convened at the request of xxxxx following their sanction/dismissal for xxxxx".
4. Chair to clarify if either party intends to call any witnesses in support of their case.
5. Chair to confirm that this is not a re-run of the previous Hearing.

***NB No new evidence can be tabled at the hearing unless agreed by all parties**

6. Chair to explain the process to be followed, conducted in accordance with the Trust Performance Improvement Procedure.

7. **The Appellant**

- 7.1 The Appellant or their representative will state their case and provide reasons for appeal, presenting the witnesses they wish to call;
- 7.2 Management can question the Appellant, their representative and any witnesses called in support of their case;
- 7.3 The Panel can question the Appellant, their representative and any witnesses called in support of their case;
- 7.4 The Appellant or their representative may re-examine the witnesses before the witness leaves the hearing;

8. **Management**

- 8.1 Management state their response to the reasons for appeal, presenting any witnesses they wish to call;
- 8.2 The Appellant or representative can question Management and any witnesses called in support of their case;

- 8.3 Panel members can ask questions in relation to the Management case and question any witnesses called in support of their case;
- 8.4 Management can re-examine the witnesses before the witness leaves the hearing;
9. Chair to confirm with the Appellant and Management that they are satisfied they have had sufficient opportunity to state their respective case. If so, both parties should be offered the opportunity of a short adjournment to produce a summing up statement. A reasonable timeframe should be agreed to reconvene and hear their summing up statements.
10. **Summing Up**
 - 10.1. The **Appellant** or their Representative to sum up their case.
 - 10.2. **Management** to sum up their case.
11. **Decision Making**
 - 11.1. Adjournment for the Panel to deliberate and reach a decision.
 - 11.2. The hearing is re-convened for the Chair of the Panel to deliver the panel's findings and decision.
 - 11.3. The Appellant should be advised that this will be confirmed to them in writing within 7 calendar days.
12. **Additional Points**
 - 12.1. At any point during the hearing an adjournment may be called by the Chair to seek points of clarity, or as a comfort break.
 - 12.2. Management or the Appellant may request a short adjournment for a variety of reasons, and this should not be unreasonably withheld.
 - 12.3. Any other party present at the hearing must be identified and an explanation given as to the reason for their presence e.g. note taker.
 - 12.4. Witnesses are only present whilst giving their evidence.

Fast-track procedure for healthcare staff failing to successfully complete the Clinical Induction and/or Care Certificate required for their role.

- A1 This fast-track procedure will apply to staff who are required to successfully complete the Clinical Induction and/or Care Certificate as part of their terms and conditions of employment and as outlined in their offer of employment. Such appointments are conditional upon the successful completion of the Clinical Induction and/or Care Certificate. This fast-track procedure provides a framework for managing individuals in the event that s/he does not reach the required standard within the designated timeframe, despite the efforts of the Trust and the individual.
- A2 Staff undertaking the Clinical Induction /Care Certificate will be provided with full training and support to help them meet the required competence and standards. Any concerns in relation to meeting the required competence and standards will be raised with the individual as soon as they are identified.
- A3 Where there are concerns as to whether a member of staff will be able to reach the required standard, appropriate additional support will be offered prior to them undertaking a formal assessment. Concerns discussed and support offered will be documented.
- A4.1 Staff will be given a maximum of three attempts to pass any element of the Clinical Induction .
- A4.2 Consideration will be given as to whether a third attempt at the Clinical Induction or an element of it is reasonable, taking in to account the previous attempt and the likelihood of improvement with appropriate support as follows:
- Where the member of staff has narrowly missed the standard required, another attempt will be granted;
 - Where the member of staff has unexpectedly failed an assessment, having previously demonstrated consistent competence during tuition (e.g. where a member of staff demonstrates clear extenuation through personal circumstances), another attempt may be granted.
- A4.3 Where the member of staff has failed an attempt by a large margin, and/or has been involved in previous review meetings or re-attempts at other elements, it will be considered (in usual circumstances) inappropriate for a third attempt to be granted.
- A4.4 This decision will be taken by the Head of Non-Medical Education or a Deputy, or non-Nursing equivalent, in conjunction with supporting evidence

from the clinical educator/session facilitator responsible for the assessment, using the guidelines in A4.1.

- A4.5 Any re-attempts at completing the Clinical Induction must be within two weeks of the previous assessment or at the next available assessment point after the previous assessment, whichever is the sooner.
- A5 Completion of the Clinical Induction, including any and all possible re-attempts, and completion of the Care Certificate, must be within 12 weeks from the end of the first week of employment for full-time staff, within 60 shifts for part-time staff and within six months for those working exclusively via UHB+.
- A6 Where a member of staff fails the Clinical Induction for a second or a third time, or where a third attempt is considered inappropriate in accordance with A4.1, or where the Care Certificate has not been successfully completed, a final formal meeting will be heard by a panel who have not previously been involved in the individual's assessment. A potential outcome of this final formal meeting is dismissal and so at least one of the panel members will be a dismissing level officer; in the case of a Registered Nurse, this will be a Deputy Chief Nurse. The member of staff will have the right to be accompanied at the formal hearing by their trade union representative or a work companion.
- A7 The purpose of the final formal meeting is for an appropriate senior manager, who is not related to the case, supported by an HR representative, to consider and discuss the individual's induction record, assessment marks, supervision notes, any records of meetings/discussions and the individual's own response to performance concerns and any mitigation as to why they should be allowed a further attempt if three attempts have not been provided. An outcome of this meeting may be that one further attempt at successfully completing the Care Certificate or Clinical Induction is offered, provided it does not exceed a third attempt at the Clinical Induction, or it may result in termination of employment if appropriate and reasonable in all the circumstances.
- A8 The final formal meeting will take place either at the end of the 12-week completion period where it is the Care Certificate that is outstanding, or sooner within that 12-week completion period where the Clinical Induction and any permitted re-attempts have been failed. (As per A5, the completion timeframe for the Care Certificate is different for part-time and UHB+ staff).

Process for Quality of Care Omissions

1st occasion of care omission

Informal meeting with Senior Sister/Charge Nurse to explore the omission and any reason why it happened. Where appropriate the Senior Sister/Charge Nurse will remind them of their responsibilities/ accountability for patient care. Member of staff must complete within 7 calendar days a reflective piece to demonstrate their understanding of their responsibilities /accountability for patient care. A letter following the meeting detailing the discussion will be placed on personal file. The Senior Sister/Charge Nurse and individual will identify any further support needed and develop a plan at the meeting to prevent further care omissions. One further omission occurring in six months of the meeting will result in a meeting with Matron and escalation to the formal stages of performance management.



2nd occasion of care omission

Informal meeting with Matron will take place to explore reasons for continued omission in patient care. A Letter will be sent to the individual member of staff recording the content of the meeting and plan going forward. This is to run in conjunction with instigation of the Formal Stage of Managing Poor Performance Procedure.

N.B If there are concerns at any stage that omissions are due to the individual's conduct/behaviour and are impacting on patient care, consideration may need to be given to referral to the Disciplinary process.

Examples of care omissions include (but not exclusively):

- Risk assessments – Waterlow, MUST, Falls
- 6 hours observation and pain, 12 hour observations
- Infection prevention monitoring – device checks
- Nurse In Charge responsibilities – including PICS archive, controlled drug checks, resuscitation trolley check