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VERSION CONTROL

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**AT ALL TIMES, STAFF MUST TREAT PATIENTS WITH RESPECT
AND UPHOLD THEIR RIGHT TO PRIVACY AND DIGNITY.**

1 INTRODUCTION

The aim of this policy is to promote high standards of performance for everyone working in the Trust and to take appropriate corrective action when those standards are not met. Adherence to the policy ensures that everyone is treated fairly, reasonably and consistently in all matters relating to performance.

2 POLICY STATEMENT

- 2.1 This policy explains how performance (capability) issues will be managed fairly, reasonably and consistently.
- 2.2 This policy applies to everyone employed by the Trust on a permanent or temporary basis. Issues relating to performance of Medical and Dental staff should be managed under the Trust's Maintaining High Professional Standards Policy.

3 KEY PRINCIPLES

- 3.1 The purpose of this policy is to support staff to perform their duties to the expected standard.
- 3.2 There may occasions when it is necessary to escalate issues to the appropriate regulatory/professional body. Staff will be made fully aware if this is the case.
- 3.3 The Trust expects staff to perform their required duties as set out in their job description, or as directed by their Manager to a high standard.
- 3.4 This policy does not replace the normal system of monitoring performance, which is an ongoing process and should take place throughout the year.
- 3.5 Everyone has the right to be treated fairly, with equity, dignity and respect in the application of the performance management process.
- 3.6 If staff members are subject to the performance management process, they can be represented at all formal stages of the process by a recognised trade union/professional body representative. Alternatively they can be accompanied by a work colleague. In the event of the colleague being legally qualified, they will not act in this capacity during the performance management process.
- 3.7 Where appropriate, advice will be sought from relevant professional advisors in relation to professional codes of practice.
- 3.8 Sickness absence following the instigation of this process will not automatically extend the monitoring and review periods.

- 3.9 Audio or visual recording of any meeting held under this process is not permitted. Any person caught covertly recording any meetings under this process may be subject to disciplinary action.

4 RESPONSIBILITIES

4.1 Trust Board

- 4.1.1 Responsible for the initiation of this policy under its commitment to promote a culture of quality, encompassing safety, efficiency and care.

4.2 Responsibility of Managers

- 4.2.1 Ensure staff members are made aware of the Performance Management Policy;
4.2.2 Manage issues of performance in accordance with this policy;
4.2.3 Undertake training/coaching in the application of this policy;
4.2.4 Ensure that accurate but non verbatim written records are maintained.

4.3 Responsibility of Human Resources

- 4.3.1 Ensure the policy is compliant with current legislation;
4.3.2 Ensure appropriate training/coaching is provided to Managers regarding the application of this policy;
4.3.3 Co-ordinate hearings as required;
4.3.4 Support management representatives in the performance management process;
4.3.5 Ensure that accurate but non verbatim written records are maintained.

4.4 Responsibility of Employees

- 4.4.1 Perform their duties as set out in their job description, or as directed by their Manager, to acceptable standards;
4.4.2 Ensure they are aware of the Performance Management Policy and its implications;
4.4.3 If the employee has any underlying health problems which may impact on their ability to fulfil their role, the staff member should discuss this with their manager as soon as possible so that appropriate support can be put in place. This information should be treated confidentially.

5 EXCEPTIONS

- 5.1 Deliberate or wilful under performance of duties will be addressed through the Disciplinary Policy.
- 5.2 Poor attendance levels due to ill health will be addressed through the Attendance Management Policy.
- 5.3 Under performance as a result of substance misuse will be addressed under the Substance Misuse Policy.
- 5.4 Grievances cannot be raised in relation to the instigation of the performance management process.

6 CONFIDENTIALITY

- 6.1 All correspondence and information accessed/used during the performance management process must be treated confidentially.
- 6.2 When a decision is taken to proceed to a performance hearing, all information gathered during the process will be provided to the member of staff.

7 CONTRIBUTING FACTORS

7.1 Managers should be aware that there are many factors which can contribute to an employee underperforming. These include:

- 7.1.1 Poor selection methods.
- 7.1.2 Inadequate training.
- 7.1.3 Working conditions.
- 7.1.4 Lack of clarity regarding the role requirements.
- 7.1.5 Relationship with colleagues.
- 7.1.6 Domestic circumstances.
- 7.1.7 Lack of skills, knowledge or experience.
- 7.1.8 Health problems (reference to TW10 – 055 Attendance Management Policy).
- 7.1.9 Alcohol and Substance Misuse (reference to TW11 – 013 Alcohol and Substance Misuse Policy).

8 DEALING WITH UNDER PERFORMANCE

8.1 Informal

- 8.1.1 If a member of staff is under performing against their agreed essential objectives, their Manager will have a conversation with them, outlining the issues.
- 8.1.2 They will be given the opportunity to give their perspective on the situation and offer any explanation.
- 8.1.3 If an improvement in their performance is required, they will work with their Manager to develop a realistic action plan (Appendix 2).
- 8.1.4 A review period of no more than three months will be set. Progress review meetings will take place at least monthly.

8.2 Stage 1 – First formal

- 8.2.1 If the staff member's performance has not improved to expected standards, their Manager will progress the case to a first formal performance hearing.
- 8.2.2 Their Manager will chair the meeting. There will be HR support at this hearing. The member of staff may be represented by a trade union/professional body or accompanied by a work colleague at the hearing.
- 8.2.3 They may be issued with a first written improvement notice, along with an updated improvement action plan (Appendix 2).
- 8.2.4 A review period of no more than three months will be set. Progress review meetings will take place at least monthly.

8.3 Stage 2 – Second formal

- 8.3.1 If performance has not improved to expected standards, the Manager will progress the case to a second formal performance hearing.
- 8.3.2 The Manager will chair this meeting. There will be HR support at this hearing. The member of staff may be represented by a trade union/professional body or accompanied by a work colleague at the hearing.
- 8.3.3 They may be issued with a final written improvement notice, along with an updated improvement action plan (Appendix 2).
- 8.3.4 A review period of no more than three months will be set. Progress review meetings will take place at least monthly.

8.4 Stage 3 – Final formal

- 8.4.1 If performance has not improved to expected standards, the Manager will progress the case to a final formal performance hearing.
- 8.4.2 The hearing will be chaired by a Manager who has had no prior involvement in the case. HR support will be provided to the Panel. The staff member may be

represented by a trade union/professional body or accompanied by a work colleague at the hearing.

- 8.4.3 Managers of the Trust who can chair this hearing are: Directors, Deputy Directors, Heads of Nursing and Heads of Department.
- 8.4.4 The decision may be taken to terminate employment with notice on the grounds of capability.
- 8.4.5 If the individual has disclosed any health concerns that may be impacting on their ability to fulfil the role, the Manager should consider seeking Occupational Health advice on the matter as soon as possible, and at the very latest before escalating to a final formal hearing.

9 SANCTIONS

- 9.1 The outcome of any Performance Hearing or Appeal Hearing will be followed up and confirmed in writing within 14 days of the Hearing.
- 9.2 Managers chairing Performance Hearings may also consider implementing revised duties/ hours of work, suitable alternative employment or supervised practice if appropriate and will support the individual to improve their performance. These actions can be implemented in addition to issuing written improvement notices and pay protection does not apply.
- 9.3 Written improvement notices will be removed from file and will no longer be live when the improvement action plan has been achieved. It is expected that the individual will continue to maintain a satisfactory level of performance. Regular monitoring will continue, although this will form part of the normal appraisal process. If performance falls below the required standard, the Trust retains the discretion to direct the individual towards a stage in the procedure as considered appropriate. In most cases, this will mean re-entry to the formal stage of the policy. If the same issues of under-performance arise within 12 months of an improvement notice being removed from file, the manager has the discretion to direct the employee back to the stage of the formal policy that they had reached before the improvement notice was removed.

10 ESCALATION

- 10.1 In the most exceptional circumstances, that justify dismissal without following a lengthy procedure, an individual may be managed immediately under stage 3 – Final Formal. This may be appropriate, for example:
 - 10.1.1 If the problem becomes apparent during the first six months of employment with the Trust;
 - 10.1.2 If the underperformance places the Trust at severe risk, (i.e. health and safety defect, serious financial consequences or serious risk to patients);
 - 10.1.3 If there is no possibility whatsoever that the individual can respond to any intervention (e.g. formal improvement notices, training and remedial support) and achieve acceptable levels of performance;
 - 10.1.4 Where there is an irredeemable incapacity or inadequacy on the employee's part;
 - 10.1.5 The circumstances are such that an improvement notice is unnecessary e.g. the employee refuses to accept that there is a problem with performance and refuses to co-operate with attempts to help the individual to improve;
 - 10.1.6 If the individual is grossly incompetent.
- 10.2 In these situations, there is no requirement for an action plan, review meeting(s) or monitoring period to take place prior to the final stage hearing. The individual will be escalated immediately to a final formal hearing. This should apply only in the most exceptional cases.

11 APPEALS

- 11.1 The employee will be entitled to one appeal at each formal stage of the policy, where they are issued with an improvement notice, or where they are dismissed.
- 11.2 All appeals must be lodged on the Appeal Form (Appendix 3) and submitted to the Deputy Director of HR within 14 days of the Performance Hearing outcome being confirmed.
- 11.3 The acceptable grounds of appeal are:
 - 11.3.1 Procedure was not adhered to;
 - 11.3.2 An inappropriate sanction was implemented;
 - 11.3.3 Additional information/evidence has become available.
- 11.4 Appeals will normally be chaired by a Manager of higher seniority than the initial Performance Hearing. The Panel should not have had any prior involvement in the case. The Panel will receive advice and support from a member of the HR Department.
- 11.5 Appeals against dismissal will be heard by two Senior Managers who are eligible to chair Final Stage Formal Performance Hearings. At least one of the Panel members will be a Director of the Trust.

12 PERFORMANCE HEARING FORMAT

- 12.1 A performance hearing will be undertaken in the following format:
 - 12.1.1 The Management side will present their case;
 - 12.1.2 The individual (and/or their Trade Union representative or professional body) can ask questions of the Management side;
 - 12.1.3 The Panel can ask questions of the Management side;
 - 12.1.4 The individual (and/or their Trade Union representative or professional body) presents their case;
 - 12.1.5 The Panel can ask questions regarding the case;
 - 12.1.6 Summary presented by the Management side;
 - 12.1.7 Summary presented by the individual (and/or their Trade Union representative or professional body);
 - 12.1.8 The Hearing is adjourned whilst the Panel considers their decision;
 - 12.1.9 The Hearing is reconvened and the Chair confirms their decision;
 - 12.1.10 The outcome is confirmed in writing.

13 APPEAL HEARING FORMAT

- 13.1 An appeal hearing will be undertaken in the following format:
 - 13.1.1 The individual (and/or their Trade Union representative or professional body) presents their case;
 - 13.1.2 The Panel can ask questions regarding the case;
 - 13.1.3 Questions are asked of any witnesses the individual has called;
 - 13.1.4 The Management side will present their case;
 - 13.1.5 The individual (and/or their Trade Union representative or professional body) can ask questions of the Management side;
 - 13.1.6 The Panel can ask questions of the Management side;
 - 13.1.7 Questions are asked of witnesses called by the Management side;
 - 13.1.8 Summary presented by the individual (and/or their Trade Union representative or professional body);
 - 13.1.9 Summary presented by the Management side;
 - 13.1.10 The Hearing is adjourned whilst the Panel considers their decision;
 - 13.1.11 The Hearing is reconvened and the Chair confirms their decision;
 - 13.1.12 The outcome is confirmed in writing.

14 RE-SCHEDULING HEARINGS

- 14.1 If the individual, or their representative, is unable to attend a Hearing and a good reason for failing to attend is provided, the Hearing will be adjourned to another date which will be mutually agreed.
- 14.2 If an individual is unable to attend the re-arranged hearing, it may take place in their absence unless an acceptable explanation is provided. They will also be provided with the opportunity to make a written submission. In cases where the delay is caused through ill health the advice of the Occupational Health & Well-being department will be sought.

15 GRIEVANCES

The Grievance Procedure does not apply to issues relating to performance management cases. Any concerns regarding the performance management process should be raised during the meetings and a hearing convened under this Policy.

16 HUMAN RIGHTS ACT

Implications of the Human Rights Act have been taken into account in the formulation of this document and they have, where appropriate, been fully reflected in its wording.

17 INCLUSION AND DIVERSITY

The document has been assessed against the Equality Impact Assessment Form from the Trust's Equality Impact Assessment Guidance and, as far as we are aware, there is no impact on any protected characteristics.

18 MONITORING AND REVIEW

- 18.1 This policy will be reviewed periodically in partnership with staff side and monitored by HR Committee.
- 18.2 An annual report will be presented to the HR Committee, analysing the implementation and impact of this policy.

19 ACCESSIBILITY STATEMENT

This document can be made available in a range of alternative formats e.g. large print, Braille and audio cd.

For more details, please contact the HR Department on 01942 77 3766 or email equalityanddiversity@wwl.nhs.uk

Appendix 1

REFERENCES

Employment Rights Act 1996
Employment Relations Act 1999
Employment Act 2002 & 2008
ACAS Code of Practice
Policy for maintaining high professional standards
Pay progression policy
Grievance Procedure

Appendix 2

Performance Management Appeal Form

Name	
Department	
Job Title	
Pay Band	
Date of Performance Management hearing	
Performance Management sanction	

Grounds of appeal

<input type="checkbox"/>	Inappropriate sanction
<input type="checkbox"/>	Process was not followed
<input type="checkbox"/>	New evidence is to be considered

Reasons for appeal

Signature	
Date	

Performance improvement action plan

Issue	Objective	How will this be measured	Support required	Target Date	Outcome / Date
Manager Name:				Manager signature:	
Staff Name:				Staff signature:	
Date of meeting					

Equality Impact Assessment Form

STAGE 1 - INITIAL ASSESSMENT

For each of the protected characteristics listed answer the questions below using Y to indicate Yes and N to indicate No	Sex (male / female / transgender)	Age (18 years+)	Race / Ethnicity	Disability (hearing / visual / physical / learning disability / mental health)	Religion / Belief	Sexual Orientation (Gay/Lesbian/ Bisexual)	Gender Re-Assignment	Marriage / Civil Partnership	Pregnancy & Maternity	Carers	Other Group	List Negative / Positive Impacts Below
Does the policy have the potential to affect individuals or communities differently in a negative way?	N	N	N	N	N	N	N	N	N	N	N	
Is there potential for the policy to promote equality of opportunity for all / promote good relations with different groups – Have a positive impact on individuals and communities.	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
In relation to each protected characteristic, are there any areas where you are unsure about the impact and more information is needed?	N	N	N	N	N	N	N	N	N	N	N	If Yes: Please state how you are going to gather this information.
Job Title	HR Business Partner								Date	November 2023		

IF 'YES an NEGATIVE IMPACT' IS IDENTIFIED - A Full Equality Impact Assessment STAGE 2 Form must be completed. This can be accessed via <http://intranet/Departments/Equality Diversity/Equality Impact Assessment Guidance.asp>

Please note: As a member of Trust staff carrying out a review of an existing or proposal for a new service, policy or function you are required to complete an Equality Impact Assessment. By stating that you have **NOT** identified a negative impact, you are agreeing that the organisation has **NOT** discriminated against any of the protected characteristics. Please ensure that you have the evidence to support this decision as the Trust will be liable for any breaches in Equality Legislation..

POLICY MONITORING AND REVIEW ARRANGEMENTS

Para	Audit / Monitoring requirement	Method of Audit / Monitoring	Responsible person	Frequency of Audit	Monitoring committee	Type of Evidence	Location where evidence is held
8	Under performance is appropriately managed	Annual report	Head of HR	Annual	Workforce Committee	Case files	Employee relations files