

Improving Performance (Capability) Policy - Non Medical Staff UHL Policy

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REVIEW DATES AND DETAILS OF CHANGES MADE DURING THE REVIEW

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| 31 May 2013 | V1 | Sent to all HR Generalist Team gain comments and views. |
| 10 August 2013 | V2 | Sent to Staff Side and HR generalist team again for comments and views. |
| 19 September 2013 | V3 | Meeting with Staff Side on 19 September 2013. |
| 7 November 2013 | V4 | Further meeting with Staff Side 7 November 2013. |
| 2 October 2017 | V5 | 2 October 2017 – all template letters removed; reference to Midwives' Statutory provision removed as no longer applicable. |
| | V6 | Reviewed with Staff Side – change to format of level 2 hearings and clarity around redeployment. |

KEY WORDS

Capability, supportive, performance, performance management, standards, competence, hearing, improvement, dismissal.

1 INTRODUCTION AND OVERVIEW

- 1.1** In order to provide safe, efficient and quality services to patients, the Trust is responsible for setting measurable, realistic and achievable standards of performance and behaviour. The Trust also has a responsibility to ensure that employees understand what is required of them as part of their role.
- 1.2** This policy and procedure compliments that of the Trust's Appraisal and Pay Progression Policy (B16/2015), which seeks to develop the potential of employees and so to improve their performance through planned development and feedback.
- 1.3** If employees are clear about their role and responsibilities, with associated objectives and how the attainment of those objectives contributes to the overall success of the Trust, their efforts will be more appropriately directed and their motivation improved.
- 1.4** If an employee's performance is considered to be below the required standard as identified in their job description, through their annual appraisal and/or regular one to one meetings with their manager, then action must be taken to address this.
- 1.5** The Employment Rights Act 1996 states that capability is assessed by reference to skill, aptitude, health or other physical or mental quality. It also indicates the 'incapability must relate to the work or the kind of work that the employee is employed by the employer to do'. The Act identifies capability or qualification as one of the six potentially fair reasons for dismissal. As such this policy and procedure and the potential actions to be taken as part of it are supported by employment law.
- 1.6** Managers may find it useful to also refer, where applicable; to the employee's Professional Bodies own Code of Conduct when managing employees under this policy.

2 POLICY SCOPE

- 2.1** This combined policy and procedure sets out the Trust's commitment to ensuring all staff, , are encouraged and supported to perform at an effective level. The policy outlines the process to be followed for resolving performance concerns in a supportive and consistent manner.
- 2.2** This policy does not apply to medical staff or agency staff (see 2.4 and 2.7).
- 2.3** The policy provides a clear formal framework for managers to apply in order to address issues of poor performance which arise in relation to:
 - An inability to perform and sustain the required standard for a role because of a shortfall in competency, skill, knowledge or understanding.
- 2.4** This policy excludes staff employed under Medical and Dental contracts. Capability procedures for Doctors and Dentists are covered by 'Maintaining High Professional Standards in the Modern NHS'. Please refer to Conduct, Capability, Ill Health and Appeals Policies and procedures for Medical Practitioners A2/2005. If performance issues relate to a Doctor in training please also refer to the relevant Education Body/Deanery.
- 2.5** Where alcohol and/or substance misuse are an over-riding factor causing poor performance this should be managed with close reference to the Trust's Alcohol and Substance Misuse Policy'B6/2004.
- 2.6** Where ill health is an over-riding factor in causing poor performance this should be dealt with through the Trust's UHL Sickness Absence Management Policy and Procedure

B29/2006.

- 2.7** If there are capability concerns regarding an individual working via an agency then the agency must be informed of the concerns when they are informed that the individual is not required.
- 2.8** If there are capability concerns regarding a student, then individuals practice lead should be informed immediately, who will liaise with the education establishment.
- 2.9** If there are capability concerns regarding an individual who only works as part of UHL bank then in the first instance the Trust's Bank Manager should be notified immediately.
- 2.10** Distinction must be drawn between incapability to undertake the role for which the employee is employed to carry out and poor performance that is attributable to a wilful/deliberate refusal to work to the required standards. In these circumstances this is a matter of conduct and should be dealt with under the Trust's Disciplinary Policy and Procedure.

3 DEFINITIONS AND ABBREVIATIONS

Key definitions in this document are as follows:

Capability: The Employment Rights Act 1996 identifies capability or qualifications as one of the six potentially fair reasons for dismissal. It states that "capability is assessed by reference to skill, aptitude, health or any other physical or mental quality". It also indicates the "incapability must relate to the work or kind of work that the employee was employed by the employer (Trust) to do".

Competence: Minimum standards for performance outcomes as described in the employee's job description, agreed objectives for the role and any other standards and competences which are clearly identified to the employee.

Employee: Refers to all employees of the Trust with the exception of medical and dental staff and non Executive Directors.

4 ROLES

4.1 Director of People and Organisational Development

4.1.1 The Chief Executive has nominated the Director of People and Organisational Development as having the lead responsibility for strategic management of capability of the workforce within the organisation.

4.2 Clinical Management Groups/Directorate Management Teams/Managers

4.2.1 Clinical Management Group and Directorate Management teams are responsible for implementing this policy and ensuring that all staff are aware of this policy and adhere to its requirements.

4.3 Management of capability is a fundamental responsibility of all managers, they:

4.3.1 must ensure that recruitment of staff is carried out in line with the Trust's Recruitment and Selection policy and procedure B43/2009. Careful recruitment and selection will minimise the risk of unsatisfactory performance and ensure that employees are appointed with the appropriate qualifications/skills for the role which they will undertake.

- 4.3.2 must ensure that all new employees receive adequate local induction into the role which they have been appointed, this must include the employee being made aware of the standards expected for the role. It should also include the location and explanation/impact of relevant policies and procedures and the Trust's values.
- 4.3.3 must ensure that all employees have a job description (JD) and person specification (PS) for their role to ensure that they are aware of the knowledge and skills required to undertake the role to the required standards. Additional training should be provided as identified in line with the requirements of the role, JD and PS.
- 4.3.4 must refer the employee to the Occupational Health Department if it is suspected that the poor performance may be due to ill health or related to a disability.
- 4.3.5 must ensure that all employees have a meaningful annual appraisal with a personal development plan and associated reviews. The Line Manager must set objectives that are:
- Specific
 - Measurable in terms of what is to be achieved
 - Agreed with the employee
 - Realistic
 - Timed, with specific milestones and/or end dates for achievement
- 4.3.6 must approve and support the employee with their Personal Development Plan (PDP) and Continuing Professional Development (CPD). All employees' PDP should include the relevant mandatory/ statutory training required for their role.
- 4.3.7 must provide regular feedback to employees on their work performance (for example through one to one meetings and the appraisal cycle) and manage any action plans to support the employee in meeting the required standards.
- 4.3.8 Identify appropriate support for employees such as: AMICA, Training and Development, Occupational Health, Human Resources

4.4 Employees

- 4.4.1 All employees have an individual responsibility to ensure that they:-
- Meet their contractual obligations
 - Know where to locate the Trust policies and procedures and Trust values; be familiar with these and adhere to them.
 - Be aware of how policies and procedures impact on their practice and must be able to follow the specified requirements.
 - Ensure that an appraisal with their manager takes place annually.
- 4.4.2 must achieve and maintain the standards that are required of them and to co-operate with their managers in identifying development needs and to act upon them.
- 4.4.3 must ensure that they keep their knowledge up to date in line with the requirements of their role and professional registration as appropriate.
- 4.4.4 must take responsibility for meeting their objectives, PDP, including core statutory and mandatory training and CPD and where appropriate ask for the support of their Line Manager to achieve these.
- 4.4.5 must attend essential role training to achieve and maintain competence in their role within agreed timescales.

5. POLICY IMPLEMENTATION AND ASSOCIATED DOCUMENTS

5.1 There are many ways in which capability issues can be identified in the workplace, which should be substantiated, such as:

- Patient, relative or visitor complaints
- Complaints from colleagues
- Observation of performance by line Management
- Observations by other management
- Observation of behaviours by line management
- Audits and Inspections
- Documentary/Data evidence, reports, policies, pro-formas completed
- Comparison with colleagues or departmental performance

This is not an exhaustive guide and HR advice may be sought if a Line Manager believes that an employee has a capability issue.

Any performance/capability issues should be addressed as soon as possible after they are identified and not only through the appraisal process.

5.2 Levels of the Procedure

The levels of this procedure and the range of actions are as follows (see flow chart at appendix 1):

Informal: Line Manager discusses poor performance and agrees appropriate objectives to support the employee to reach the required standards.

- Performance continues to be monitored against the required standards, with timescales for improvement.
- If performance improves to the required standards, no further action is required at this point.
- Proceed to Level 1 of formal procedure if there is no improvement /improvement is not sustained.

Level 1: First Level formal hearing

- May result in a First Written Warning with first improvement notice
- Right to request a review.
- Performance continues to be monitored against the required standards, with timescales for improvement.

Level 2: Second Level formal hearing

- May result in a Final Written Warning with improvement notice
- Right to request a review
- Performance continues to be monitored against the required standards, with timescales for improvement.

- Level 3: Final Level panel hearing
- May result in a dismissal
 - Right to request an appeal

- 5.3 Appraisers should be Band 4 staff and above; where appropriate Band 3 staff maybe involved in appraisals to support the process
- 5.4 In exceptional circumstances it may be appropriate to implement the procedure at a later level (ie 1, 2 or 3), with consultation with the next in line manager, HR and Staff Side (if appropriate), for example in a case of gross incompetence or where the issues of performance are too serious to be dealt with at an informal level.
- 5.5 This policy is supported by the following procedure found in the associated documents as detailed in appendices 1 - 8, which must be used in conjunction with this policy.

6 EDUCATION AND TRAINING REQUIREMENTS

- 6.1 The policy will be implemented via the People and Organisation Development department, and support provided to managers as required.

7 PROCESS FOR MONITORING COMPLIANCE

- 7.1 The policy compliance will be monitored with spot audits by the Employee Relations Team Manager.

8 EQUALITY IMPACT ASSESSMENT

- 8.1 The Trust recognises the diversity of the local community it serves. Our aim therefore is to provide a safe environment free from discrimination and treat all individuals fairly with dignity and appropriately according to their needs.
- 8.2 As part of its development, this policy and its impact on equality have been reviewed and no detriment was identified.

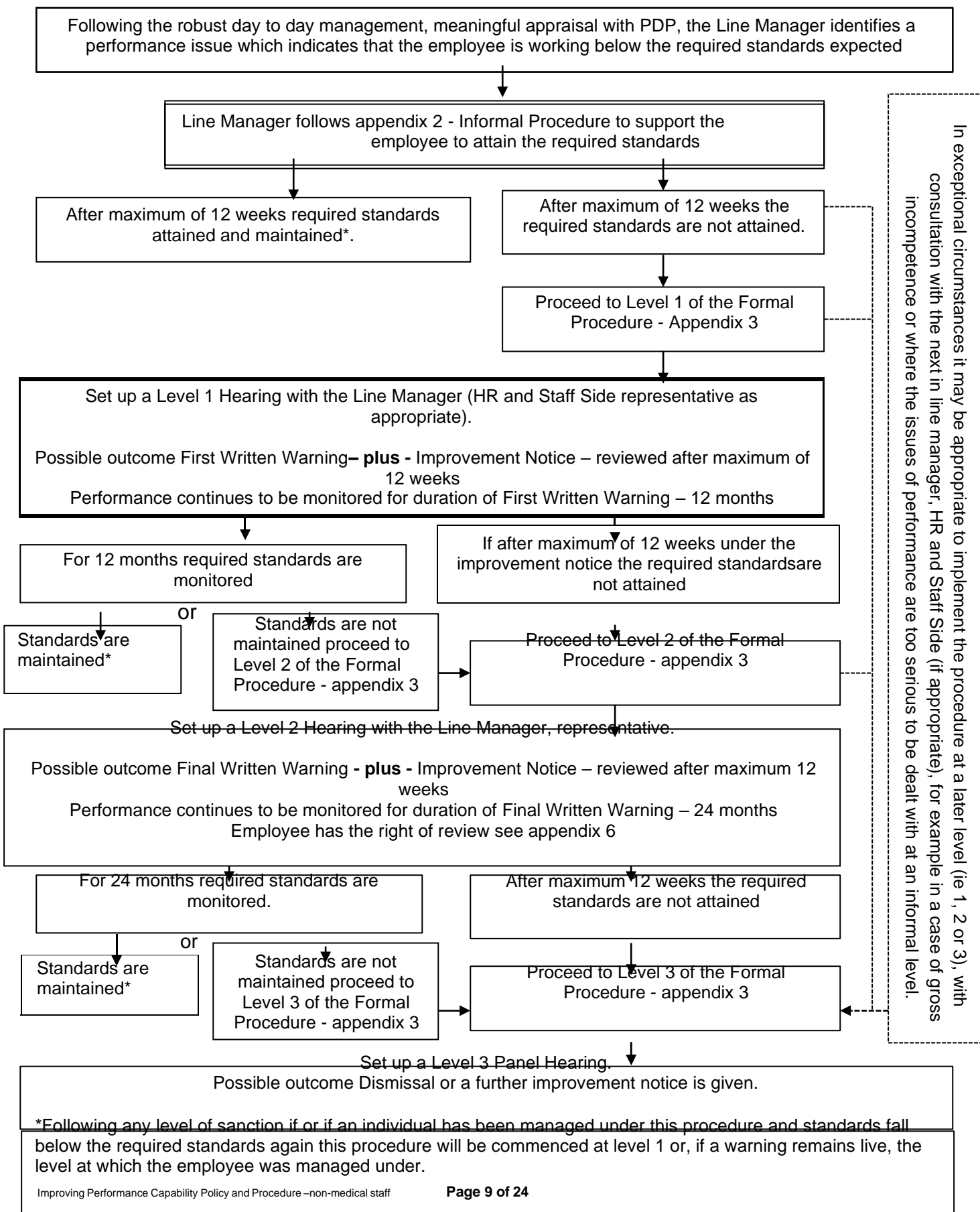
9 SUPPORTING REFERENCES, EVIDENCE BASE AND RELATED POLICIES

- 9.1 Employments Rights Act 1996
- 9.2 Equality Act 2010
- 9.3 www.acas.org.uk
- 9.4 Professional /Regulatory Body Codes of Conduct (updated by professional body check relevant websites for up to date versions)
- 9.5 Agenda for Change Terms and Conditions Handbook
- 9.6 Chartered Institute of Personnel and Development
- 9.7 Related UHL policies:**
- Appraisal and Pay Progression Policy B16/2015
 - Sickness Absence Management Policy and Procedure B29/2006
 - Guidance Supporting Staff Subject to Domestic Violence B43/2011
 - Alcohol, Drug and other Substance Misuse in Employment Policy B6/2004
 - Disciplinary Policy and Procedure A6/2004
 - Recruitment and Selection Policy and Procedure B43/2009
 - Conduct, Capability, Ill Health and Appeals Policies and Procedures for Medical Practitioners A2/2005
 - Core Training Policy for Statutory, Mandatory and Essential to Job Role Training. B21/2005
 - Corporate and Local Induction Policy

10 PROCESS FOR VERSION CONTROL, DOCUMENT ARCHIVING AND REVIEW

- 10.1 The updated version of the policy will then be uploaded and available through INsite Documents and the Trust's externally-accessible Freedom of Information publication scheme. It will be archived through the Trusts SharePoint system
- 10.2 This policy will be reviewed every three years and it is the responsibility of the policy HR Lead to commence this process in a timely manner to ensure a revised version is approved by the review date.

Procedure Flowchart



*Following any level of sanction if or if an individual has been managed under this procedure and standards fall below the required standards again this procedure will be commenced at level 1 or, if a warning remains live, the level at which the employee was managed under.

INFORMAL PROCEDURE

1. Wherever possible managers should seek to address performance issues as they occur, without the need to implement this policy and procedure.
2. Where the problems are more serious, repetitive or frequent a more structured support approach should be discussed and agreed. The Line Manager must meet with the employee to explain where and how the performance falls short of the required standard and clarify the required standards in a clear and understandable way.
 - 2.1. There should be “no surprises”, with the employee being informed, and able to acknowledge that there are performance issues through discussion of specific examples, e.g. lack of delivery, missed deadlines, substandard work etc.
 - 2.2. The Line Manager must record, share and agree all discussions that take place with the employee relating to their poor performance at 1-1 meetings, appraisals etc as they will form part of any future discussions/meetings.
 - 2.3. The Line Manager should ask the employee for their views on their performance and ask for confirmation that they are clear what the expected standards are.
 - 2.4. The Line Manager must ask the employee if there are any factors which may be affecting their performance, within the work environment and/or personal circumstances.
 - 2.5. The Line Manager must refer the employee to the Occupational Health Department if it is suspected that the poor performance may be due to ill health or related to a disability and take action, as advised by the Occupational Health assessment.
 - 2.6. A copy of this policy and procedure should be provided to the employee and a record made of this.
3. The employee must be set clear, achievable objectives, which may include further training or identifying a mentor. The objectives set should be Specific, Measured, Agreed, Reasonable and Timed. The objectives should be reviewed at regular intervals through an agreed review period and progress and additional guidance provided documented. A review period at this point is usually between 4 to 8 weeks, but this can be agreed to be longer or shorter where appropriate, depending on the extent of failure to meet the required standards.
 - 3.1. The final review period may be shortened if the severity of the underperformance is deemed to affect patient/client safety or impact severely on service delivery. In these circumstances it may be appropriate to implement the procedure at a later level, with consultation with the next in line manager, HR and Staff Side (if appropriate).
 - 3.2. The review period may be extended to take account of any delays in providing training, Occupational Health assessments or other support/assessments agreed as part of any action plan.
4. The Line Manager must inform the employee that a failure to meet the required standards within the timescale set may result in recourse to the formal procedure.
 - 4.1. If the employee fails to meet the objectives set to improve their performance the Line Manager must inform the employee at the “last” informal meeting that they will be pursuing the matter via the formal procedure outlined at Appendix 3, of this policy and procedure.

5. If the above guidance is followed, in most cases performance concerns should be resolved. However, if informal approaches have failed to achieve the required improvement, the formal procedure should be followed. (NB If a manager is unsure when to make the transition from informal approaches into the more formal, the case should be discussed with HR.
6. If, at any level of the process, the employee and the Line Manager conclude that the employee is not suitable for the role, and/or that further training and support will not enable the employee to achieve the required standard, then in discussion with HR they can agree to look for suitable alternative employment (SAE) for a period of 6 weeks, into a different role, that does not require the same expected standards, skills, experience or knowledge. Any search for SAE must not be an alternative to managing the poor performance of the employee.
7. Suitable alternative employment usually includes roles from one band above to one band below the individual's current role, for which they meet the essential criteria. In certain cases this may involve some retraining in order to accommodate the employee, but the Trust is not under any obligation to provide such retraining in every instance. A role more than one band below the current position may be deemed to be a suitable alternative at the request of the employee. Pay protection will not apply if the employee's redeployment attracts reduced remuneration. Where suitable alternative employment is identified, it should be offered to the employee. However, if the individual is to be considered for redeployment into a higher-banded role, a competitive selection process will usually be required.
8. Dependent on the poor performance issues and the type of role an individual is redeployed to, it may be appropriate to continue the performance management process once successfully redeployed in to a new role.
9. It is also very important especially prior to and also throughout this process that the employee is provided with the appropriate support. This should include:
 - Role clarity between Line Manager and employee
 - Appropriate training for the member of staff to succeed in the role.
 - Agreed regular communication between the line manager and the employee
 - Performance concerns should be highlighted on a timely basis with examples
 - Staff Side representative if appropriate
 - colleague
 - AMICA
 - Occupational Health
10. Advice can be sought from Human Resources during the informal levels of the process and must be taken before a decision is made to follow the formal process.

FORMAL PROCEDURE - Improving Performance (Capability) Hearings Process

1. In exceptional circumstances it may be appropriate to implement the procedure at a later level, with consultation with the next in line manager, HR and Staff Side (if appropriate), for example in a case of gross incompetence or where the issues of performance are too serious to be dealt with at an informal level, including Level 3.
 - 1.1 Suspension from duty may be considered in such circumstances. Suspension in relation to this policy should be rare and advice from a Senior HR representative must be sought before any decision to suspend is made.
 - 1.2 Suspension is not a sanction; it is a neutral act and does not imply any proposed outcome following a hearing.
 - 1.3 Suspension from duty will be on full pay and it must have a clear timelimit.
2. If the employee does not attend the first capability hearing date, for reasons which the panel accept as reasonable, a second date will be offered. However, if the employee declines or does not attend the second date, the hearing may be held in their absence and they will be informed of this in writing.
 - 2.1 Staff Side would not attend any hearing without the member being in attendance.

Level 1 and 2

1. The Line Manager will conduct the Level 1 and Level 2 Formal hearing . A member of the HR team will support the Line Manager during Level 2 hearings as appropriate. The staff member should be given the opportunity to be accompanied by an accredited Trade Union representative or work colleague not otherwise involved in the matter.
2. The Line Manager will write to the employee to invite them to a formal Level 1 Improving Performance (Capability) hearing giving them at least 5 working days' notice.
 - 2.1 The letter to the employee will contain the following information:
 - The date, time and venue of the hearing.
 - A written statement from the manager summarising the performance concerns to be discussed, including documentary evidence to be used at the hearing, (usually notes from informal meetings, action plans, statements from 3rd parties, training records etc)
 - Any witnesses attending.
 - A reminder of their right to be represented at the hearing.
 - The date by which the employee/representative is required to submit any documentary evidence to be considered at the hearing.
 - Clarification of the possible outcome of the hearing
3. The aim of any hearing is to:
 - enable the manager to confirm the discussions that took place at an informal level
 - Review evidence collected to describe why the employee has not met the required standard during the informal procedure
 - or explain why the issue of capability is so significant that it has been submitted directly to a level 1 hearing.

4. The employee will have the opportunity to comment on this and state their case including any mitigation. None of the evidence provided by the manager should be a surprise to the employee as it will have been discussed during the informal procedure.
5. If it can be evidenced that:
 - The required standards have been made clear
 - The employee has been given realistic, appropriate objectives, support and time to improve during the informal levels of the process
 - The employee has not achieved the required standards
 - The issues are as a result of capability rather than conduct or sickness

Then the employee will be given a First Written Warning for Capability which will remain current for 12 calendar months from the date of the Level 1 hearing (Level 1) or the employee will be given a Final Written Warning for Capability which will remain current for 24 calendar months from the date of the Level 2 hearing (Level 2).

6. The employee will also be given an Improvement Notice with further targets for improvement and timescales in which these are to be monitored and achieved. Please refer to section 9 (page 14 of this policy) for more details. It is suggested that a 12 week timescale is allowed for the employee's performance to improve and then be reviewed, although a longer period may be deemed appropriate if agreed by both parties. In exceptional circumstances and in conjunction with the next in line Manager, HR and Staff Side representative (if appropriate) a shorter period may be agreed if circumstances are sufficiently serious/impacting on patient care or service delivery.
7. The First Written Warning and Improvement Notice will be confirmed in writing within 7 working days from the date of the Level 1 hearing.

The letter will:

- Be signed by the Line Manager.
 - Contain a summary of the facts as presented at the hearing.
 - State the reasons for the issue of the First Written Warning for capability.
 - State the likely consequence of further unsatisfactory performance.
 - Give details of the Improvement Notice to improve with timescales.
 - State details of any training or supplementary action, together with timescales.
 - State the employee's right of review of this decision.
 - Clarify that if the employee is absent from work for an extensive period (e.g. for reasons of maternity leave, career break, more than four weeks sickness absence etc.), the "clock" will pause and resume on their return to work (please see Section 12, page 16 of this policy).
8. There is a right of review against a First and Final Written Warning. (See Appendix 6).

Level 3

1. The manager will write to the employee to invite them to a Level 3 Formal Improving Performance (Capability) panel hearing giving them at least 5 working days notice.
2. The panel may alter the level of the hearing set up if they judge the evidence to be serious enough to warrant a higher sanction.

3.1 The letter to the employee will contain the following information:

- The date, time and venue of the panel hearing
- Details of the Performance Improvement (Capability) panel.

- A written management case from the manager summarising the performance concerns to be discussed, including documentary evidence to be used at the hearing, (usually notes from informal meetings, outcome and notes from any level 1 hearing, witness statements, training records etc)
 - Any witnesses called.
 - A reminder of the employee's right to be represented at the panel hearing.
 - The date by which the employee/representative is required to submit any documentary evidence to be considered at the panel hearing and confirm whether or not they intend to call any witnesses.
 - Clarification of the possible outcome of the hearing.
4. Guidance on the order of events at an improving performance (capability) panel hearing can be found at Appendix 5.
5. The aim of the panel hearing is to enable the panel to hear and understand the full extent of the evidence from both management and the employee.

It is therefore important for the panel to allow the management case to be presented, but also to ensure the employee (and their representative if they bring one) has a full opportunity to present evidence in support of their case, including any mitigating circumstances.

The hearing pack should include:

- Details from the Manager explaining the expected standards required and the areas of performance considered unacceptable and why, using clear examples.
 - A summary by the manager of the informal and formal steps taken to support the individual to improve their performance and any documentary evidence presented at any previous Level 1 and/or Level 2 hearing, including the outcome letter and subsequent documentary evidence.
6. If the panel are satisfied that all of the criteria below have been met:
- The required standards have been made clear
 - The employee has been given realistic and appropriate objectives, support and time to improve during the period of a level 1 or 2 Improvement Notice (or informal procedure if formal procedure has commenced at level 2 or 3)
 - The employee has not achieved the required standard
 - The issues are as a result of capability rather than conduct or sickness

If the decision is made that the employee will be dismissed on the grounds of Performance (capability), they will be given notice and paid for any outstanding annual leave entitlement.

In exceptional circumstances a final improvement notice may be given for a period of no more than 12 weeks as an alternative to dismissal. Failure to meet this final improvement notice will result in dismissal without recourse to a further hearing.

The Dismissal will be confirmed in writing within seven working days from the date of the Performance Improvement (Capability) Hearing.

The letter will:

- Be signed by the Chair of the Panel.
- Contain a summary of the facts as presented at the hearing.
- State the reasons for the dismissal on the grounds of performance/capability.

- State the employee's right of appeal against this decision.

7. There is a right of appeal against a Dismissal. (See Appendix 6)

LEVEL 1 and 2 IMPROVEMENT NOTICE

1. Action plans/objectives/work plans for the Improvement Notice must be recorded on the relevant template available and can be requested from HR.
2. At the end of the review period, (normally but not always 12 weeks as a maximum) a meeting will be held with the employee to formally advise them whether or not they have achieved and sustained the required performance standards. (This will not be a surprise as they will have received on-going feedback during the review period).
3. Where the employee's performance has reached and remained at a satisfactory level, the employee will be given positive feedback and reminded that their performance will continue to be monitored for the remaining duration of the Written Warning for either 12 months for level 1 sanction and 24 months for level 2 sanction from the date of the hearing when it was given.
 - 3.1 At any level while the warning is current, where the employee's performance is not sustained, the employee will be told that they will be referred for the next level hearing and it will be made clear to them the possible outcomes and that they would be issued with a further improvement notice.
 - 3.2 If the employee's performance has not improved following the 12 week review period, to the required standards, then the employee will be told that they will be referred the next level and it will be made clear to them the possible outcomes.
4. They will be informed of the outcome in writing.
5. In exceptional circumstances it may be appropriate to implement the procedure at a later level, with consultation with the next in line manager, HR and Staff Side (if appropriate), for example in a case of gross incompetence or where the issues of performance are too serious to be dealt with at an informal level, including level 3.
6. At the end of either 12 months for a level 1 sanction and 24 months for a level 2 sanction, if the employee's performance has been satisfactory there will be a meeting to confirm this to the employee, giving them positive feedback and to be clear that it is expected that their performance will be sustained in the future.
7. If standards fall below the required standards following the maintenance of standards following any level of sanction the procedure will be commenced at level 1.

SPECIAL APPLICANTS' REGISTER

Employees who are dismissed will be entered onto a register for 7 years, which is accessed by nominated individuals only, in the University Hospitals of Leicester NHS Trust. The purpose of the register is to ensure that all prospective employees are considered "suitable" to work within the environment for which they have applied. This **does not** mean that staff who are dismissed will not be considered for any posts they choose to apply for in the future; however, it does mean that the Trust will have to evaluate their circumstances at that time against the post applied for. To comply with the General Data Protection Regulations 2018 and Data Protection Act 2018, only limited information will be held for a period of no more than 7 years, unless there are specific circumstances why this should be longer.

NOTIFICATION

In certain situations, the Trust is obliged to advise certain bodies of the dismissal of individuals. For example Professional Registration bodies in cases of serious relevant concern regarding the conduct or performance of registered individuals. If it is appropriate for the Trust to refer a case to these or other bodies in addition to any action taken by the Trust, then the employee will be informed of this.

SUBSTANTIAL ABSENCE OF EMPLOYEE DURING THE LIFETIME OF CAPABILITY WARNINGS

If a member of staff is absent from work (e.g. for reasons of maternity leave, career break, more than four weeks sickness absence etc.) for an extensive period during the period when a capability warning has been given and before the date on which it expires, the warning will be suspended during the absence and will recommence once the employee returns to work. The employee will be informed of this in writing.

RECORDS

In line with the Francis Report it is essential that a complete employment record for all members of staff is held. Therefore although improving performance (capability) outcome letters will be 'live' for a fixed period as confirmed within the outcome letter, expired letters will remain on an individual's personal file. Informal documentation and action plans will also remain on an individual's personal file.

Information pertaining to performance issues relating to matters being considered or having been considered at a formal level, such as witness statements and other documentary evidence used in a summary report, will be held separately within the HR Employee Relations Team.

Levels of Authority within the Improving Performance (Capability) policy and procedure

| Category of Employees | Level I First Written Warning (Hearing of one or two people including notetaker) | Level II Final Written Warning (Panel of two people including HR support) | Level III Dismissal (Panel of three people including HR support) |
|--|--|---|---|
| Chief Executive | Trust Chairman or Non-Executive Director | Trust Chairman or Non-Executive Director | Trust Chair and Non-Executive Director |
| Executive Directors and Other Directors | Chief Executive or one Non-Executive Director | Chief Executive or one Non-Executive Director | Chief Executive and Non-Executive Director |
| Consultant Medical | CMG Director or Medical Director | CMG Director or Medical Director | Independent managers of appropriate level |
| Specialty Doctors and Training Grade Medical/Dental | CMG Lead or Head of Service (with advice of Postgraduate Dean as appropriate) | CMG Lead or Head of Service (with advice of Postgraduate Dean as appropriate) | Independent managers of appropriate level (with advice of Postgraduate Dean as appropriate) |
| Managers second in line to Directors e.g. CMG Managers, Assistant and Deputy Directors | Line manager | Line manager | Independent managers of appropriate level |
| Managers third in line to Directors, e.g. Service Managers | Line Manager | Line manager | Independent manager of appropriate level |
| All other employees | Line Manager | Line manager | Independent managers of appropriate level |

Note 1 Action may be delegated to designated officers for all levels within grid, as appropriate.

Note 2 A direct line manager can be substituted by an independent line manager from a different area (with authority given in advance by either the CMG Director / CMG Manager or CMG Nurse).

Note 3 The panel will comprise of one of the above. HR Support for panels will include a post at an appropriate senior level.

Guidance on Order of Events at Improving Performance (Capability) Panel Hearings

1. Explain the purpose of the meeting and introduce those present.
2. Explain the format of the hearing and ensure everyone has received relevant papers.
3. Ensure the individual understands the potential outcome from the hearing – especially if this could include their dismissal.
4. Invite Manager to present the case for Management and to call Witnesses (if required.)
5. Panel to question presenting Manager and Witnesses.
6. Individual/Staff Side to question presenting Manager and Witnesses
7. Each Witness to leave the room after giving evidence.
8. Staff Side/employee to present case in response and call any witnesses
9. Presenting Manager to question Staff Side/employee and witnesses
10. Panel to question Staff Side/Employee and witnesses.
11. Each witness to leave the room after giving evidence.
12. Presenting Manager asked to summarise case.
13. Staff Side/Employee asked to summarise case.
14. Panel to question staff side/employee as to whether there are any mitigating factors.
15. Adjourn for a decision (Presenting Manager and Staff Side /Employee asked to leave the room)
16. Reconvene (Panel, Staff Side/Employee and Presenting Manager) and announce decision.

RIGHTS OF REVIEW/APPEAL

1. The levels of authority for reviews and appeals are given at Appendix 7.

2. Right of Review (Level 1 and 2)

2.1. There is a right to a review of a First Written Warning and Final Written Warning. Should the member of staff consider that they have substantial reason to request this, they should put their request for a review in writing to the employee's next in linemanager.

2.2. NB The review letter must set out in writing the specific grounds upon which the employee wishes to base their review, otherwise the review may not be allowed.

2.3. While the review will usually be a table-top discussion, the individual, plus their representative, are able to request to attend. In these circumstances the manager who gave the outcome at that Level should also attend. Once the review date has been set, if the individual is unable to attend, one further date will be arranged.

2.4. The request for a review does not suspend the conditions of the First Written Warning or review period and required actions relating to an Improvement Notice.

2.5. Individuals should be aware that the review panel can decide to:

- Confirm/uphold the original decision
- downgrade or cancel the original decision
- upgrade or strengthen the original decision

2.6. The review will be undertaken by the appropriate manager indicated in Appendix 7. The depth and format of the review will be at the discretion of the reviewing manager, but will as a minimum include the following points:

- A thorough review of the evidence considered by the panel which issued the warning, and
- An opportunity for the member of staff or their representative to explain the reasons for dissatisfaction with the decision.

2.7. There is no need for witnesses to be recalled unless the reviewing manager feels that it is necessary to clarify matters in dispute and this cannot be achieved from the information already available.

2.8. The review will be complete when the reviewing manager is satisfied that all of the relevant information has been considered.

2.9. The decision of the reviewing manager will be advised in writing to the employee, his or her representative (where appropriate) of Human Resources as soon as reasonably possible after the completion of the review.

3. Right of Appeal (Level 3)

3.1. There is a right to appeal against Dismissal. Should the member of staff consider that they have substantial reason to request this, they should put their request for appeal in writing to the Director of People and Organisational Development, University Hospitals of Leicester NHS Trust. The request must be received within fifteen working days of the date of the hearing.

- 3.2. NB The appeal letter must set out in writing the specific grounds upon which the employee wishes to base their appeal, otherwise the appeal may not be allowed.
- 3.3. Once an appeal date has been set, if the individual is unable to attend, one further appeal date will be arranged.
- Individuals should be aware that the review/appeal panel can decide to:
 - confirm the original decision
 - downgrade, amend or cancel the original decision
 - upgrade or strengthen the original decision
- 3.4. In instances where the appeal is in relation to a dismissal decision, three options are available to the panel:
- a. confirm/uphold the original decision
 - b. re-instate the individual (i.e. with effect from the date of the dismissal)
 - c. re-engage the individual (i.e. with effect from a date following the appeal hearing)
- 3.5. NB if either of options b. or c. is the decision of the appeal panel, this will typically be in conjunction with other actions which may include downgrading, a change of role/base/ward, re-training, supervision etc.
- 3.6. The Procedure to be used at the appeal is set out in Appendix 8 attached.
- 3.7. Dismissal - The lodging of an appeal will not suspend the notice of dismissal or the actual dismissal.
- 3.8. In the event of reinstatement/re-engagement following appeal, the employee will be compensated for loss of income between the date of dismissal and the date of reinstatement/re-engagement.

Levels of Authority for Reviews and Appeals

| Category of Employees | Level I First Written Warning Review (Panel of two including HR support) | Level II Final Written Warning Review (Panel of two, one from list below and HR support) | Level III Dismissal Appeal (Panel of three, two from list below and HR support) |
|--|---|---|---|
| Chief Executive | Non-Executive Director | Non Executive Director | Panel of two Non-Executive Directors |
| Executive Directors and other Directors | Trust Chairman | Trust Chairman | Trust Chairman and Non-Executive Director |
| Consultant Medical | Chief Executive (or Medical Director if Deputy Medical Director; Deputy Medical Director or Medical Director if CMG Director has given warning) | Chief Executive (or Medical Director if Deputy Medical Director; Deputy Medical Director or Medical Director if CMG Director has given warning) | Two appropriate independent managers |
| Specialty Doctors and Training Grade Medical/ Dental | Medical Director or Deputy Medical Director | Medical Director or Deputy Medical Director | Two appropriate independent managers |
| Managers second in line to Directors e.g. CMG Managers, Assistant and Deputy Directors | Appropriate independent manager | One appropriate independent manager | Two appropriate independent managers |
| Managers third in line to Directors e.g. Service Managers | Appropriate independent manager | One appropriate independent manager | Two appropriate independent managers |
| All other employees | Appropriate independent manager | One appropriate independent manager | Two appropriate independent managers |

- Note 1** Appropriate senior employees may substitute for Directors where appropriate, and where delegated authority is given by the relevant Director
- Note 2** No person previously involved in the decision about or investigations into the matter previously will be a panel member
- Note 3** HR Support for panels will include a post at an appropriate senior level.

APPEALS PROCEDURE FOR APPEALS AGAINST DISMISSAL

The appeal will be heard wherever possible within fifteen clear working days of the receipt of the request for appeal. The appellant will receive at least five clear working days' notice of the date of the hearing.

On receipt of the appeal, the Director of People and OD will set up the appropriate appeals panel.

No person previously involved in the decision or investigations into the matters to be considered will be a panel member.

The individual appealing will have the right of appearing personally before the appeal panel, either alone or accompanied by an accredited representative of a Trade Union or Professional organisation, or by a fellow work colleague.

Both parties must submit a summary of their case to the Director of People and OD, to be received at least five working days before the hearing. These cases will be distributed to the panel and to the other party.

If no case is received by the appellant at least five working days prior to the date of the hearing (or as a minimum, confirmation that they do not intend to submit any further information beyond what was submitted as their grounds of appeal,) it will be assumed they no longer wish to appeal and the hearing will not proceed.

Witnesses whether for the appellant or management should be notified to the Director of People and OD at least five working days before the hearing.

The appeal procedure will be conducted in the following way. (No aspect in the following procedure will prevent the person hearing the appeal from inviting either party or their witnesses to clarify or amplify any statement made, or from asking him/her such questions, or to present such evidence as may be felt necessary in the interests of hearing all relevant information.)

- a. The appellant or his/ her representative will put his/ her case in the presence of the management representative and may call witnesses.
- b. The Management representative will have the opportunity to ask questions of the appellant, his/ her representative and his/ her witnesses
- c. The members of the panel will have the opportunity to ask questions of the appellant, his / her representative and his/ her witnesses.
- d. The appellant or his / her representative will have the opportunity to re-examine his/ her witnesses on any matter referred to in their examination by members of the appeal panel or management's representative.
- e. Witnesses leave.
- f. The management representative will state management's case in the presence of the appellant and his/ her representative and may call witnesses.
- g. The appellant or his/ her representative will have the opportunity to ask questions of the management representative and witnesses
- h. Members of the appeal panel will have the opportunity to ask questions of the management representative and witnesses
- i. Management's representative will have the opportunity to re-examine his/ her witnesses on any matter referred to in their examination by members of the appeal panel , the appellant or his/ her representative.
- j. Witnesses leave.
- k. The appellant of his/ her representative and the management representative will have the opportunity, if they wish, to sum up their case. The appellant or his/ her representative will have the right to speak last. In their summing up neither party may produce any new matter.

- l. Panel members may ask any party to clarify any matter on which they have questions
- m. New evidence will not normally be admissible on the day. If new evidence is produced on the day by either the management representative or the appellant, the panel may at their discretion adjourn the appeal in order to consider whether the new evidence is admissible. The panel may at their discretion adjourn the appeal for any other reason. Adjournments during the course of the appeal will not normally exceed 15 minutes except in exceptional circumstances as agreed by the panel.
- n. The management representative, the appellant and his/ her representative will withdraw.
- o. The panel (with any appropriate advisors), will reach their conclusions and make their decisions in private only recalling both parties to clear points of uncertainty on evidence already taken. If recall is necessary, both parties will return even if only one is concerned with the point.
- p. The panel has the power to rescind or confirm management's decision, to refer the case back to management for further enquiries or reconsideration or to change management's decision in favour of a lesser penalty.

The decision will be confirmed in writing to both parties

If the employee does not attend the first appeal hearing date, for reasons which the appeal panel accept as reasonable, a second date will be offered. However, if the employee declines the second date, the hearing may be held in their absence and he/ she will be informed of this in writing.

The top row of the table provides information and descriptors and is to be removed in the final version of the document

| What key element(s) need(s) monitoring as per local approved policy or guidance? | Who will lead on this aspect of monitoring? Name the lead and what is the role of other professional groups | What tool will be used to monitor/check/observe/asses/inspect Authenticate that everything is working according to this key element from the approved policy? | How often is the need to monitor each element? How often is the need complete a report ? How often is the need to share the report? | How will each report be interrogated to identify the required actions and how thoroughly should this be documented in e.g. meeting minutes. |
|---|--|--|---|---|
| Element to be monitored | Lead | Tool | Frequency | Reporting arrangements Who or what committee will the completed report go to. |
| <p>Review relevant procedure followed</p> <p>Review use of other HR policies in managing the case.</p> <p>Review outcome of case.</p> | <p>HR Lead for the policy</p> <p>Feedback to management to take place as appropriate</p> | <p>See Appendix 10</p> | <p>Spot check audit twice a year.</p> <p>Outcome comments on audit grid to be completed after each audit.</p> | <p>Monthly WF & OD Meeting chaired by the Deputy Director of Workforce & OD or appropriate representative</p> <p>Audit outcome and any actions identified from the audit will be recorded in the minutes of this meetings and action outcomes are monitored</p> |
| | | | | <p>Recommendations will be taken forward by Management and the HR representative for the case as appropriate</p> |