

HR19

Performance Capability Policy

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Attachments

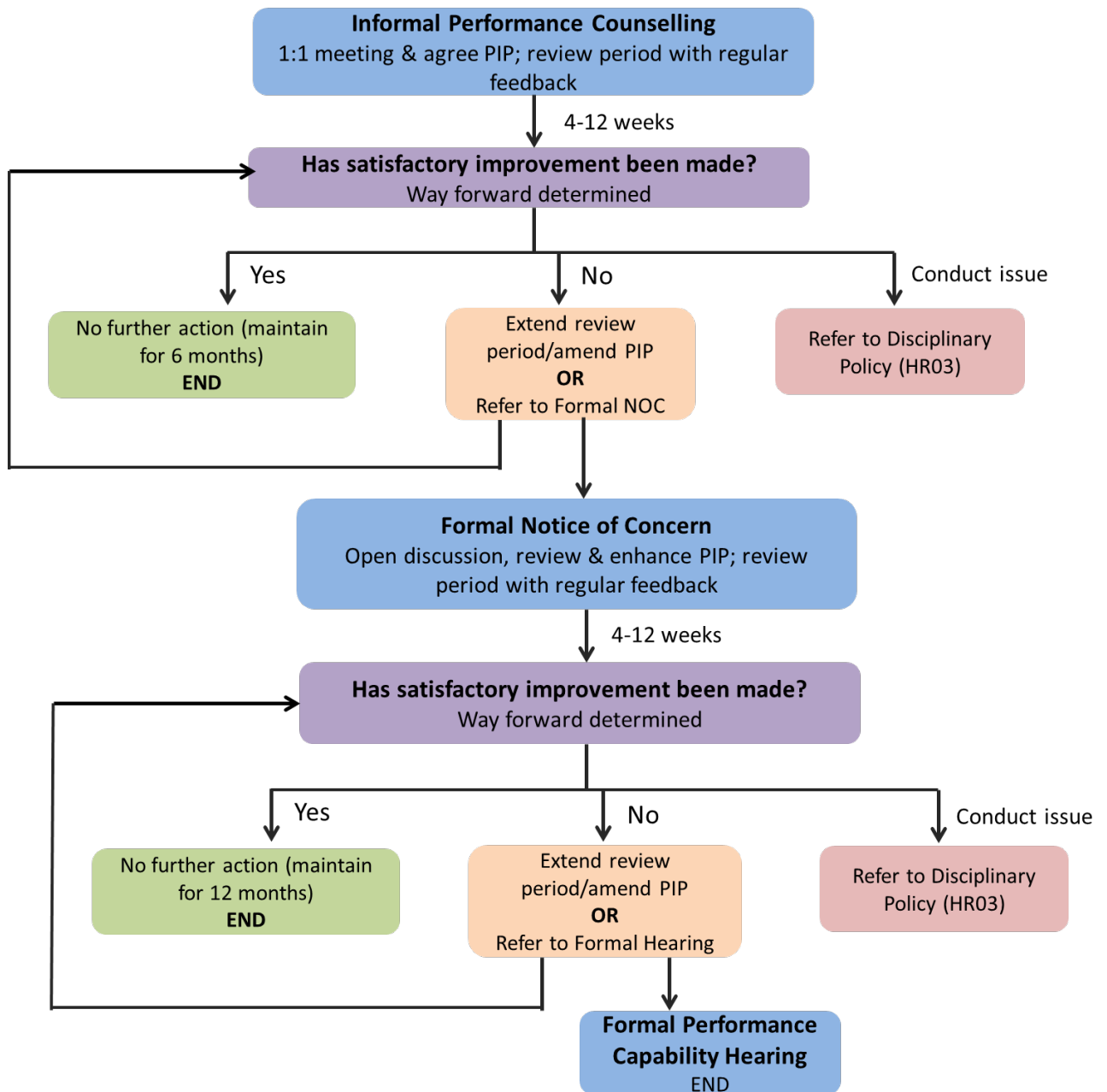
[Attachment 1](#) [Performance Capability Procedure](#)

In addition the [HR Advisory toolkit](#) provides a range of additional resources including guidance, tools and templates.

Policy on a page

This policy and its associated procedure will be used when an employee’s performance has been identified as falling below an acceptable level. Its purpose is to provide a framework for resolving the issue, ideally through the improvement of the employee’s performance. As a last resort, the policy specifies the circumstances in which the employee may be redeployed to more suitable work or dismissed on the ground of performance capability.

The [HR Advisory Toolkit](#) also contains a range of guidance documents and templates designed to support the implementation of this policy.



1.0 Policy Statement

- 1.1 The Royal Wolverhampton NHS Trust supports the NHS Constitution, and the patient is at the centre of everything we do, and this includes having a workforce with the right skills, knowledge, and competence to carry out their roles to enable the best outcomes for our patients and their families. Our vision is to be an NHS organisation that continually strives to improve the outcomes and experiences for the communities we serve. In delivering this vision, everyone will uphold the Trust values: *Safe and Effective, Kind and Caring, and Exceeding Expectation*.
- 1.2 This policy and its associated procedure will be used when an employee's performance has been identified as falling below an acceptable level. Its purpose is to provide a framework for resolving the issue, ideally through the improvement of the employee's performance. As a last resort, the policy specifies the circumstances in which the employee may be redeployed to more suitable work or dismissed on the ground of capability.
- 1.3 The procedure also outlines the process where an employee's poor performance is believed to be the result of gross incompetence or deliberate negligence, or where serious errors have been made to the detriment of patients, colleagues and, or the Trust.

2.0 Definitions

- 2.1 Capability refers to an employee's ability to perform the work expected of them to the required standards. This may be measured according to the Trust's legal, professional, and values-based standards by reference to an employee's skill or aptitude in relation to the job they are employed to do and/or health or any other physical or mental quality which may impact upon to the job that they are employed to do.
- 2.2 It can often be difficult to decide whether an employee's poor performance should be handled as a conduct or capability issue. In some cases, a problem may appear at first to be a conduct issue, but later transpires to be one of capability or vice versa.
 - Capability is where an employee is identified as lacking in knowledge, skill or ability and cannot carry out their duties to the standard required; in which case the Trust will operate this Performance Capability Policy.
 - Conduct is where there is a deliberate failure on the part of an employee to perform to the standards of which they are capable; matters of conduct should be managed under the Trust's [Disciplinary Policy HR03](#).

3.0 Accountabilities

- 3.1 The **Director Sponsor** will be accountable for the revision of this policy which will be necessary from time to time as a result of changes in legislation or in the light of experience when applying the policy and its associated procedures. Any revisions will be agreed through the Trust's Joint Negotiating Committee.
- 3.2 The **Executive Directors, Deputy Directors, Deputy Chief Operating Officers, Divisional Managers, Group Managers, Department Managers, Heads of Service and Directorate Managers** will be responsible for ensuring that this policy is fairly and consistently applied within their areas of responsibility in the Trust.

- 3.3 **Line managers** will be responsible for undertaking appropriate learning in order to comply with this policy and for the accurate maintenance of records in line with this policy.
- 3.4 **Employees** will be responsible for their competency and performing their role in an acceptable way. Where performance concerns are identified, employees are expected to actively engage in the performance improvement process.
- 3.5 **Employees** who are managed under this policy will not be precluded from accessing the Trust Freedom to Speak up Guardian.
- 3.6 The **HR Advisory Department** will be responsible for supporting the implementation of these processes, including the provision of relevant training and support for managers.

4.0 Policy Detail

- 4.1 This policy applies to all staff employed by the Trust. In cases of performance concerns relating to medical and dental staff, this policy must be read in conjunction with [HR28 Disciplinary and Management of Performance Policy and Procedure for Medical and Dental Staff](#). No formal performance capability management action will be taken against a member of medical or dental staff before seeking advice from the HR Department. With regard to Doctors in Training, referral and close liaison with the Deanery is required.
- 4.2 This procedure applies to disabled employees, including those with learning difficulties, who have been identified as not performing to an acceptable standard. Managers are required to take any disability into account when applying this policy and to make reasonable adjustments that remove any disadvantage. The primary purpose of a reasonable adjustment under this procedure would be to remove any barriers to good performance. Adjustments will be determined on an individual basis, by considering the needs of the service and seeking appropriate medical and, or specialist advice.
- 4.3 No formal action under this policy shall be taken against an accredited representative of a Trade Union or Professional Organisation (other than suspension from duties when thought to be necessary) until the circumstances of the case have been discussed with a full-time official of the Trade Union or Professional Organisation by a representative of the HR Department. This policy would only apply to the substantive post held and not the Trade Union or Professional Organisation role.
- 4.4 This policy does not form part of the contract of employment.
- 4.5 It is essential that all managers are careful in following the detailed procedure set out in this document. If in doubt the HR Department must be contacted for advice.
- 4.6 Nothing in the policy will preclude any employee of the Trust from raising concerns about their own capability with their line manager.
- 4.7 This policy is supported by the following attachments:
Attachment 1 [Performance Capability Procedure](#).

4.8 In addition the [HR Advisory Toolkit](#) provides additional resources including guidelines and template letters / documents.

5.0 Financial Risk Assessment

1	Does the implementation of this policy require any additional Capital resources	No
2	Does the implementation of this policy require additional revenue resources	No
3	Does the implementation of this policy require additional manpower	No
4	Does the implementation of this policy release any manpower costs through a change in practice	No
5	Are there additional staff training costs associated with implementing this policy which cannot be delivered through current training programmes or allocated training times for staff.	No
	Other comments	

6.0 Equality Impact Assessment

An initial equality impact assessment has been carried out and it indicates that there is no likely adverse impact in relation to Personal Protected Characteristics as defined by the Equality Act 2010.

7.0 Maintenance

This policy will be reviewed every three years or earlier if warranted by a change in standards or if changes are deemed necessary from internal sources.

8.0 Communication and Training

8.1 The HR Advisory Department will provide advice on the policy to staff, and advice and support to managers in the fair and equitable application of this policy as appropriate.

8.2 A manager training programme is available and will be advertised through staff bulletins and Divisional HR representatives.

8.3 A [HR Advisory Toolkit](#) is available to provide further guidance and support to managers.

8.4 All Group Managers, Matrons, Departmental/Directorate Managers are responsible for the communication of this policy to their staff.

9.0 Audit Process

9.1 The Chief People Officer has overall responsibility for the update and maintenance of this policy.

9.2 The Divisional Team, as well as the People and Organisational Development Committee will be responsible for monitoring its implementation and reviewing this policy to ensure it reflects national standards and best practice.

Criterion	Lead	Monitoring method	Frequency	Committee / Group
Fair and consistent application of this policy	HR Manager/ Line Manager	Audit of actions taken by gender, race, age, and disability Feedback from staff side and managers	Annual Prior to next policy review	POD Committee

Part A - Document Control

Policy number and Policy version: HR19 v6	Policy Title: Performance Capability Policy		Status: Final	Author: HR Manager - Advisory Director Sponsor: Chief People Officer
Version / Amendment History	Version	Date	Author	Reason
	V1	Feb 2005	Terms and Conditions Working Group	Introduction
	V2	April 2008	Terms and Conditions Working Group	Review and update
	V3	May 2009	Terms and Conditions Working Group	Update
	V4	May 2016	Terms and Conditions Working Group	Substantial amends made
	V4.1	July 2016	HR Manager - Advisory	Minor amendment
	V5	July 2019	Divisional HR Manager	Substantial review and update
	V6	June 2022	HR Manager - Advisory	Policy review date
Intended Recipients: All staff				
Consultation Group / Role Titles and Date: Staff Side – February and March 2022				
Name and date of Trust level group where reviewed			Joint Negotiating Committee – June 2022 Trust Policy Group – June 2022	
Name and date of final approval committee			Trust Management Committee – July 2022	
Date of Policy issue			July 2022	
Review Date and Frequency (standard review frequency is 3 yearly unless otherwise indicated)			July 2025 (then every 3 years)	
Training and Dissemination: Information sharing and engagement at manager's meetings, launched via Divisional Management forums. Training programme available for line managers. Advice and guidance available from the HR Advisory Department as and when required by managers and staff.				
To be read in conjunction with: HR03 Disciplinary Policy HR28 Supporting Doctors to Provide Safer Healthcare Policy and Procedure (for medical and dental staff) HR51 Pay Policy (AfC staff) HR13 Supporting and Managing Staff Attendance at Work Policy HR Advisory Toolkit				
Initial Equality Impact Assessment (all policies):			Completed Yes	

Full Equality Impact assessment (as required): Completed No If you require this document in an alternative format e.g., larger print please contact Policy Administrator 8904.	
Monitoring arrangements and Committee	People and Organisational Development Committee (POD)
Document summary/key issues covered: This policy and its associated attachments provide support and guidance to manage employees whose performance has been identified as falling below an acceptable level. This policy will be applied when performance concerns have not been resolved through day-to-day line management and feedback.	
Key words for intranet searching purposes	Capability Competence Gross incompetence Improvement Plan Incompetence Performance PIP
High Risk Policy?	No

Part B

Ratification Assurance Statement

Name of document: HR19 Performance Capability Policy

Name of author: Jenni Smith

Job Title: HR Manager - Advisory

I, _____ the above named author confirm that:

- The Strategy/Policy/Procedure/Guidelines (please delete) presented for ratification meet all legislative, best practice and other guidance issued and known to me at the time of development of the said document.
- I am not aware of any omissions to the said document, and I will bring to the attention of the Executive Director any information which may affect the validity of the document presented as soon as this becomes known.
- The document meets the requirements as outlined in the document entitled Governance of Trust- wide Strategy/Policy/Procedure/Guidelines and Local Procedure and Guidelines (OP01).
- The document meets the requirements of the NHSLA Risk Management Standards to achieve as a minimum level 2 compliance, where applicable.
- I have undertaken appropriate and thorough consultation on this document, and I have detailed the names of those individuals who responded as part of the consultation within the document. I have also fed back to responders to the consultation on the changes made to the document following consultation.
- I will send the document and signed ratification checklist to the Policy Administrator for publication at my earliest opportunity following ratification.
- I will keep this document under review and ensure that it is reviewed prior to the review date.

Signature of Author: *J Smith*

Date: May 2022

Name of Person Ratifying this document (Director or Nominee):

Job Title:

Signature:

- I, the named Director (or their nominee) am responsible for the overall good governance and management of this document including its timely review and updates and confirming a new author should the current post-holder/author change.

To the person approving this document:

Please ensure this page has been completed correctly, then print, sign and email this page only to: The Policy Administrator

IMPLEMENTATION PLAN

To be completed when submitted to the appropriate committee for consideration/approval

Policy number and policy version HR19 v6	Policy Title Performance Capability Policy	
Reviewing Group	People and Organisational Development Committee	Date reviewed: May 2022
Implementation lead: JENNI SMITH, HR MANAGER - ADVISORY		
Implementation Issue to be considered (add additional issues where necessary)	Action Summary	Action lead (Timescale for completion)
Strategy; Consider (if appropriate) 1. Development of a pocket guide of strategy aims for staff 2. Include responsibilities of staff in relation to strategy in pocket guide.	Policy will be communicated through the Divisional/ Department Meetings and Trust communication channels.	Upon policy approval HR Advisory Team
Training; Consider 1. Mandatory training approval process 2. Completion of mandatory training form	Line manager training programme available	Immediately available HR Advisory Team
Development of Forms, leaflets etc; Consider 1. Any forms developed for use and retention within the clinical record MUST be approved by Health Records Group prior to roll out. 2. Type, quantity required, where they will be kept / accessed/stored when completed	Tools and templates will be available on the HR Advisory Toolkit	Immediately available HR Advisory Team
Strategy / Policy / Procedure communication; Consider 1. Key communication messages from the policy / procedure, who to and how?	Launched via management forums, communicated through the chairs of approving committees, via the Intranet and Trust communication channels, and guidance provided by the HR Advisory team.	Upon policy approval HR Advisory Team
Financial cost implementation Consider Business case development	None	
Other specific Policy issues / actions as required e.g. Risks of failure to implement, gaps or barriers to implementation	n/a	

Performance Improvement Procedure

1.0 Procedure Statement

- 1.1 This document sets out the procedure for addressing an employee’s performance when it is identified as falling below an acceptable level due to the employee’s capability. Poor performance related to a conduct issue should be managed in line with the Trust’s [Disciplinary Policy HR03](#).
- 1.2 The table below will assist in categorising the underperformance issue.

Capability	Conduct
The person is making an effort, but is not achieving the required improvement.	The person does not make enough effort.
They have received relevant training, but they do not appear to have acquired the necessary skills.	They are not applying skills they have.
They accept that they are not achieving the required standards.	They do not agree on the problem identified.
They cannot obtain relevant qualifications.	They are not interested in obtaining relevant qualifications.
They do not seem able to get there.	They are not willing to get there.
Low output of work.	They do not seem interested in improving.

- 1.3 This procedure specifies the circumstances in which the employee may be redeployed to more suitable work or dismissed on the ground of capability. This action would be as a last resort, and only once the employee has been provided with a reasonable amount of time, support, and training to improve their performance but has failed to do so.
- 1.4 Managers should work with employees to address under performance in a private, positive non-adversarial way, with an emphasis on developing and supporting staff to help them achieve satisfactory standards of performance. Whenever possible it is therefore intended that managers and staff work through problems of underperformance in an informal way.
- 1.5 A written record of all meetings conducted under this procedure, and other associated documents will be maintained on the individual’s personal file. Any information and, or data collected will be held securely and accessed by, and disclosed to, individuals only for the purposes of completing the performance improvement procedure.
- 1.6 **Gross incompetence or negligence**
- 1.6.1 Gross incompetence is defined as an act of poor performance that constitutes a very serious or significant case of negligence endangering the health and safety of patients or colleagues, and, or has a detrimental impact on the Trust.
- 1.6.2 In these cases it is likely that an investigation process would be required and suspension or restriction of duties considered; therefore it may be necessary to

refer immediately to a Formal Performance Capability Hearing or, dependent on the circumstances, apply the Trust's [Disciplinary Policy \(HR03\)](#) instead.

1.7 Incremental pay progression

- 1.7.1 Where an employee is being formally managed under this procedure, pay progression will be deferred for the current year, in line with the Trust's [Pay Policy \(HR51\)](#). An employee can submit an appeal if they are unhappy with a decision to withhold pay progression; details of how to do this are outlined under Section 6.0 of [Pay Policy \(HR51\)](#).
- 1.7.2 Pay progression will resume at the employee's next pay progression anniversary date, provided that the required level of performance has been achieved and sustained. Incremental pay dates and payments will not be backdated.

2.0 Accountabilities

- 2.1 As detailed within the main policy document, HR19.

3.0 Procedure Detail / Actions

- 3.1 The Royal Wolverhampton NHS Trust expects its employees to be competent and perform their role in an acceptable way.
- 3.2 This procedure is not designed to address minor performance concerns, nor does it replace the normal day to day communication between line managers and employees where managers allocate work, monitor performance, and draw attention to errors and poor quality work.
- 3.3 It is expected that before this procedure is engaged, the employee will have already received feedback from their line manager setting out the concerns about their performance and how it can be improved.
- 3.4 This procedure is designed to be used when such informal discussions do not lead to the employee improving their performance to an acceptable level.
- 3.5 Where an employee's performance has not been addressed previously; this does not preclude the Trust from applying this procedure. However, it is acknowledged that where an employee's underperformance has been tolerated for a prolonged period of time, the poor performance is likely to be more entrenched and therefore more support, training and time to improve performance should be given to an employee in these circumstances.

Sickness absence, ill health, and disability

- 3.6 Where there are concerns that an employee's health may be affecting performance, advice should be sought from the Occupational Health and Wellbeing Team, and where an employee has a learning disability it may be necessary to seek advice from an appropriate specialist resource.
- 3.7 Where an employee has a disability, managers are required to make reasonable adjustments that remove any disadvantage. The primary purpose of a reasonable adjustment under this procedure would be to remove any barriers to satisfactory performance. Adjustments will be determined on an individual basis, by considering the needs of the service and seeking appropriate medical and/ or specialist advice.

- 3.8 Where an employee is absent from work due to sickness at any stage of this procedure being applied, in addition to normal interventions taking place under the Trust's [Supporting and Managing Staff Attendance at Work Policy \(HR13\)](#) , the following will apply.
- **Short-term sickness absence** Where an employee has an episode of short-term sickness absence it is likely that the performance improvement procedure can continue uninterrupted. However, it may also be appropriate to extend any monitoring period if there are lots of occurrences of short-term sickness or if the timing of the absences have had an impact on the employee being able to make progress against their performance improvement plan.
 - **Long-term sickness absence** Where an employee's absence is ongoing, the performance improvement procedure, and any associated warnings, will be suspended at whichever stage had been reached (i.e. informal performance counselling or first notice of concern). Consideration should be given as to whether it is appropriate to resume the performance improvement procedure upon an employee's return to work from long term sickness absence. Where it is determined that the performance improvement procedure will recommence, this must not happen until such a time as the employee has returned to work and resumed normal duties, having completed any phased return to work process.

3.9 Procedure for informal performance counselling

- 3.9.1 Where a manager considers that a more structured approach is required to support an employee in improving their performance, the informal performance counselling procedure will apply.
- 3.9.2 It is recognised that there may be situations where an employee has already been supported with regards to improving their performance through existing alternative routes, such as clinical supervision and preceptorship. In such instances, and where the requirements outlined in the informal performance counselling procedure have been met, the Trust reserves the right to refer the performance management of the employee to the formal notice of concern stage of this procedure.

Informal performance counselling

- 3.9.3 The employee's line manager will inform the employee of the nature of the problem and invite the employee to an informal one-to-one meeting to discuss concerns regarding their performance.
- 3.9.4 The Trust will not unreasonably reject having a Union Representative accompany the individual during the informal performance counselling stage, providing doing so will not result in unreasonable delay.
- 3.9.5 The discussion will be handled with sensitivity and in confidence, and it is an important opportunity for the employee to raise any matters which they feel may be affecting their performance.
- 3.9.6 A structure for the informal counselling meeting is given below.
- **Step 1:** the manager will inform the employee that the meeting is being held in accordance with the Performance Capability Policy.
 - **Step 2:** the manager will outline the performance concerns, providing supporting evidence, as necessary.
 - **Step 3:** the employee is given the opportunity to respond.

- **Step 4:** a discussion will take place to attempt to identify the causes of the poor performance.
- **Step 5:** a discussion will take place to identify any training and development requirements which will support the employee in improving their performance, this may also include any team training requirements*.
- **Step 6:** a commitment will be sought from the employee to improve their performance and the employee will be invited to contribute to creating a performance improvement plan.

* It may be appropriate to also refer to the Trust's [Dispute Resolution in the Workplace Policy \(HR06\)](#) where team disputes or work based conflict is identified.

3.9.7 Where poor performance is potentially linked to the employee's health or a disability, referral to the Occupational Health and Wellbeing Team or to a specialist is required to determine what support and, or reasonable adjustments may be appropriate to enable the employee to achieve the required level of performance. It may therefore be necessary to adjourn the meeting until such advice is received.

3.9.8 The content of the meeting will be documented by the manager and, together with the employee, a performance improvement plan will be developed.

Performance improvement plan

3.9.9 A performance improvement plan is a series of measures designed to help improve the employee's performance. Each measure will ideally be agreed with the employee, although the Trust reserves the right to insist on any aspect of the performance improvement plan in the absence of such agreement at any stage of this procedure. The performance improvement plan will include the following elements.

- **Timescale** The overall timescale in which the necessary improvement must be achieved will be set out together with the timescale for reaching individual milestones where appropriate. This will usually be between 4 to 12 weeks, depending on the complexity of the role, the experience of the employee and the level of improvement required. Additionally, the length of time for which the employee will be monitored upon reaching the required level of performance will be set out so that they must maintain the improvement. The monitoring period will usually be for a period of 6 months once the required level of performance has been achieved during the informal performance counselling stage.
- **Targets** The performance improvement plan will specify the areas in which improved performance is needed and set out how, and on what criteria, the employee's performance will be assessed. Where appropriate, specific targets will be set that will need to be achieved either by the end of the informal performance counselling stage or at identifiable stages within it. Targets should be objective and measurable.
- **Supportive Measures** The performance improvement plan will specify what measures will be taken by the organisation to support the employee in improving their performance. Such measures may include training; additional supervision; the reallocation of other duties; or the provision of additional support from colleagues.

3.9.10 During the informal performance counselling stage, the employee will be given regular feedback from their manager indicating the extent to which the employee is on track to deliver the improvements set out in the plan.

- 3.9.11 If, at any stage, the manager feels that the performance improvement plan is not progressing in a satisfactory way, a further meeting should be held with the employee to discuss the issue, identifying, and removing any barriers to success. As a result of such a meeting, the manager may amend or extend any part of the plan.
- 3.9.12 At the end of the monitoring period, the manager will review the progress made against the performance improvement plan in a meeting with the employee. Potential outcomes of this meeting are below.
- **Take no further action** Where the required level of performance has been reached, no further action will be necessary, and the employee will be advised. This will be confirmed in writing, setting out that the improved performance is expected to be maintained and that the employee's performance will continue to be monitored for a period of 6 months. If the employee's performance again starts to fall short of an acceptable standard at any stage during the 6 month period, their line manager may decide to initiate the formal notice of concern stage of this procedure.
 - **Extend or amend the performance improvement plan and informal counselling stage** This would be appropriate where the employee has made significant improvement and the manager considers an extension will fully resolve the underperformance issue and, or where the necessary supportive measures have not been put in place.
 - **Refer the matter to the formal notice of concern stage of this procedure** This would be appropriate where the manager considers that there has been unsatisfactory performance improvement.
 - **Refer the matter for investigation under the disciplinary policy** This would be appropriate where the manager considers that the underperformance is due to a conduct issue, rather than a capability issue.

3.10 Procedure for Formal Notice of Concern

- 3.10.1 Where informal performance counselling has not led to a satisfactory improvement of the employee's performance, the formal notice of concern stage of this procedure will apply.
- 3.10.2 The employee will be invited to a formal notice of concern meeting in writing, clearly setting out that there are serious performance capability concerns. The letter will include a summary of the key performance issues, and the employee will be provided with copies of relevant documentation (i.e. from the informal counselling stage).
- 3.10.3 The employee will be given 5 working days' notice and will be informed of their right to be accompanied by a trade union representative or work colleague.
- 3.10.4 The purpose of the formal notice of concern meeting is to discuss the employee's performance in more detail and decide what measures should be taken with a view to securing the required improvement in the employee's performance. The employee will be given an opportunity to respond to any criticisms of their performance and to put forward any explanation they may have for the matters identified by the manager as amounting to poor performance.

Discussion points

- 3.10.5 The points below are areas for discussion during the meeting, this is not an exhaustive list.
- Areas of continued under performance.
 - The impact of on-going poor performance on the individual, colleagues and the service or department.
 - Any contributing factors: these may be work related or personal, or both; consider how these might be alleviated.
 - Whether the underperformance is related to a disability, long term health condition, or an underlying health issue.
 - Any requirement for an Occupational Health and Wellbeing referral or for feedback from an appointment, and whether reasonable adjustments are required.
 - Review the support and training that has already been in place and the effectiveness of this.
 - Consider what further supportive measures might improve the employee's performance.
 - Review the performance improvement plan and amend, as necessary.
 - If appropriate, inform the employee that if satisfactory performance is not achieved, they may wish to consider redeployment.
 - The employee should be informed that pay progression will be deferred from the date of the notice of concern meeting.
- 3.10.6 At this stage of the procedure the employee must be informed of the requirement to improve and maintain satisfactory performance, and that should they fail to do so a formal performance capability hearing may be convened which could result in the termination of their employment.
- 3.10.7 Where poor performance is potentially linked to the employee's health or a disability, referral to the Occupational Health and Wellbeing Team is required to determine what support and, or reasonable adjustments may be appropriate to enable the employee to achieve the required level of performance. It may therefore be necessary to adjourn the meeting until such advice is received.
- 3.10.8 The manager will write to the employee confirming the discussions that have taken place and the expectations that have been set, including the potential consequences should the employee fail to improve and maintain satisfactory performance.
- 3.10.9 The overall timescale in which the necessary improvement must be achieved will be set out together with the timescale for reaching individual milestones where appropriate. This will usually be between 4 to 12 weeks, depending on the complexity of the role, the experience of the employee and the level of improvement required.
- 3.10.10 Additionally, the length of time for which the employee will be monitored upon reaching the required level of performance will be set out so that they must maintain the improvement. The monitoring period will be for a period of 12 months once the required level of performance has been achieved during the formal notice of concern stage.

- 3.10.11 The employee will be given regular feedback from their manager indicating the extent to which the employee is on track to deliver the improvements set out in the plan.
- 3.10.12 If, at any stage, the manager feels that the performance improvement plan is not progressing in a satisfactory way, a further meeting should be held with the employee to discuss the issue, identifying, and removing any barriers to success. As a result of such a meeting, the manager may amend or extend any part of the plan.
- 3.10.13 At the end of the monitoring period, the manager will review the progress made against the performance improvement plan in a meeting with the employee. Potential outcomes of this meeting are as follows.
- **Take no further action** Where the required level of performance has been reached, no further action will be necessary, and the employee will be advised. This will be confirmed in writing, setting out that the improved performance is expected to be maintained and that the employee's performance will continue to be monitored for 12 months. If the employee's performance again starts to fall short of an acceptable standard at any stage during the 12 month period, their line manager may decide to re-initiate the formal notice of concern stage of this procedure or escalate to a formal performance capability hearing.
 - **Extend or amend the performance improvement plan and formal notice of concern stage** This would be appropriate where the employee has made significant improvement and the manager considers an extension will fully resolve the underperformance issue.
 - **Refer the matter to the formal capability performance hearing stage** This would be appropriate where the manager considers that there has been unsatisfactory performance improvement.
 - **Redeploy the employee into an alternative role** This would be appropriate where the employee accepts that they are unable to achieve the required improvement in performance and they agree to be considered for redeployment in an alternative role.
 - **Refer the matter for investigation under the disciplinary policy** This would be appropriate where the manager considers that the underperformance is due to a conduct issue, rather than a capability issue.

3.11 Procedure for Formal Performance Capability Hearing

- 3.11.1 The formal performance capability hearing will be convened where an employee has failed to achieve or sustain the required improvement in their performance. At the hearing, the facts of the case will be considered, and an appropriate outcome determined.
- 3.11.2 The line manager will inform the employee in writing that they have escalated the employee's performance capability case to be considered at a formal hearing and will prepare a written report.
- 3.11.3 The performance capability hearing will take place in line with the Trust's guidance document for [Conducting Hearings in line with HR Policies](#).
- 3.11.4 As detailed within the hearing guidance, the outcome of the hearing will be confirmed to the employee in writing within 7 calendar days of the hearing completion date. In all cases the outcome letter will outline:

- The nature of the key issues concerned;
- Any mitigating circumstances taken into account;
- The conclusions drawn;
- Details of any sanction given, if applicable including:
 - The reasons for the issuing of a sanction, and
 - The length of the sanction and that after this time it will be deemed spent unless a further sanction has been issued in the interim;
- The right of appeal against the decision where a First or Final Formal Warning has been issued or against termination of employment.

Hearing outcomes

3.11.5 The panel chair will consider the facts of the case, and there will be a number of possible outcomes available including:

- Take no further action;
- Implement a further period of the formal notice of concern stage;
- Issue a First or Final Formal Warning for unsatisfactory performance; this will include a further period of monitoring in line with the Formal Notice of Concern stage;
- Redeployment;
- Termination of employment on the ground of performance capability;
- Refer the matter for consideration under the [Disciplinary Policy \(HR03\)](#).

3.11.6 It is not a requirement of this procedure that all possible outcomes have to be gone through in sequence e.g. First Formal Warning, followed by Final Formal Warning, followed by termination of employment. It is at the discretion of the manager chairing the Hearing to omit lesser warnings if they believe it is justifiable to do so.

3.11.7 The table below outlines the level of authority to act and appeal rights with regards to sanctions issued in line with this procedure.

Warning Level	Duration	Level of Authority to Act	Appeal Rights
First Formal Warning	12 months	Member of the Management Team for the relevant group/ department. Delegation will not take place to a position less senior than band 7.	Right of appeal to next level manager above decision-maker.
Final Formal Warning	18 months	Minimum of member of the Management Team for the relevant group/ department. Minimum band 8a	Right of appeal to next level manager above decision-maker.
Dismissal	n/a	Minimum of member of the Management Team for the relevant group/ department. Minimum band 8a	Right of appeal to next level manager above decision-maker.

Redeployment

3.11.8 An employee may request to be redeployed at any stage of this procedure and it will be considered.

- 3.11.9 Where there is a health issue, advice should be sought from the Occupational Health and Wellbeing Team and, or a relevant specialist in respect of redeployment.
- 3.11.10 Where a hearing panel has concluded that an employee will be dismissed from the Trust due to capability; as an alternative to dismissal and subject to the agreement of the individual concerned, redeployment can be explored.
- 3.11.11 Redeployment will take place in line with the Trust's guidance document available on the [HR Advisory Toolkit](#). The redeployment process will be facilitated by the HR Advisory Team.
- 3.11.12 Employees should be advised that redeployment is a time limited process and where an employee has been unable to secure alternative employment within the set period (usually 4 weeks) then dismissal is likely to take place.
- 3.11.13 Employees will be employed on the terms and conditions applicable to the new role into which they are redeployed. The Protection of Pay and Conditions Procedure does not apply in cases of redeployment due to performance capability.

Termination of employment

- 3.11.14 Termination of employment will not be a decision that is taken lightly. This action would be as a last resort, and only once the employee has been provided with a reasonable amount of time and support to improve their performance but has failed to do so. All aspects of the case will be considered, taking into account all circumstances.
- 3.11.15 Where the poor performance may be related to a health issue, advice must have been sought from the Occupational Health and Wellbeing Team. Where an employee has refused to provide medical evidence, the Trust will have no alternative than to act upon the information available.
- 3.11.16 Where the employee's performance has continued to fail to meet the required standard, the Trust will have no option but to terminate the employment contract. Any dismissal will be with full notice or payment in lieu of notice.

Right of Appeal

- 3.11.17 An employee may appeal against a First or Final Formal Warning or against termination of employment.
- 3.11.18 An employee may appeal on a variety of grounds, for example:
- The severity of the penalty imposed;
 - Procedural irregularities;
 - The employees perceived unfairness of the judgment.
- 3.11.19 An employee wishing to appeal must write to the next level of manager above the decision maker within 15 calendar days of the decision, setting out in full the reasons for appeal and enclosing any documents that they wish to rely on. This will be used as the employee's Statement of Case.

- 3.11.20 As a result of the right to appeal being exercised a formal appeal hearing will take place. The hearing will be held to consider the facts of the case and will conclude either:
- To uphold the original decision, or
 - To allow the appeal.
- 3.11.21 Where the appeal is allowed, this may result in there being a decision to withdraw the sanction or for the level of action previously taken being reduced.
- 3.11.22 Please refer to the guidance document for the [Conducting of Appeal Hearings in line with Human Resources Policies](#) for further details on the appeal process.

Statutory regulating / Professional bodies

- 3.11.23 Where employees are registered with a professional body, they should be aware that the Trust has a duty to report serious instances of substandard performance and, or fitness to practice concerns to the appropriate professional body, in addition to the Disclosure and Barring Service. The latter referral duty also applies to employees that are not registered with a professional body.

4.0 Equipment Required

A template letter pack is available from the [HR Advisory Toolkit](#).

5.0 Training

A manager training programme is available and will be advertised through staff bulletins and Divisional HR representatives.

6.0 References

As detailed within the main policy document, HR19.