

Improving Performance Policy and Procedure

Policy number:	005
Version:	3
Purpose:	The purpose of this policy is to provide clear, fair and consistent methods of addressing performance
Consultation:	This policy has been developed in consultation with staff side colleagues via the JNCF
Approved by:	JNCF and Resources Committee
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Author:	HR Operations Team
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Audience:	All Trust employees
Dissemination:	Trust intranet
Impact assessments:	This policy has been equality impact assessed using the Trust's agreed process, and the assessment has not identified any significant adverse impact on people with one or more protected characteristic

Version History

Version	Date	Reason for change
1	April 2019	Creation of a harmonised policy for the 2gether and Gloucestershire Care Services NHS Trusts
2	April 2022	Agreed with Staff Side to extend review date until end of September 2022
3	January 2023	Agreed with Staff Side to extend review date May 2023

PART 1

SUMMARY

This policy and procedure sets out the process for supporting and encouraging improvement in an employee's performance. In dealing with poor performance the Trust distinguishes between where the reason is within the employee's control and where the reason is outside the employee's control.

There stages within the process are:

- Informal performance management;
- Formal performance management: Stage 1;
- Formal performance management: Stage 2;
- Capability hearing: Stage 3.

The processes are designed to support an improvement in performance at the earliest level. However, in certain circumstances it may be necessary for the Trust to commence the performance management process without undertaking an earlier stage.

At all formal meetings associated with the policy and procedures employees have the right to be accompanied by a trade union representative or a colleague who is an employee of the Trust.

The Trust has a duty to report serious instances of sub-standard performance to the appropriate body for employees who are subject to the standards of performance set by professional bodies. Any employee affected by this will be advised by their manager that such a report is being recommended.

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PART 2

1. INTRODUCTION

- 1.1 The Trust recognises its responsibilities in encouraging and promoting effective performance on a continuous basis for all its employees.
- 1.2 The policy aims to support and encourage improvement of individuals' performance. Working to ensure employees have adequate resources to fulfil their role, the opportunity to develop skills and meet all the required standards of the role.
- 1.3 Poor performance is defined as the gap between the Trust's expectations of the employee in respect of their role as defined by their job description and other relevant documents (i.e. policies, terms and conditions and codes of practice) and an employee's actual performance within their role.
- 1.4 Where poor performance is caused by carelessness, negligence, wilfulness or attitude this may be dealt with in accordance with the Trust's disciplinary policy and procedure. Where poor performance is outside of the employee's control, performance may be dealt with in accordance to the Trust's Sickness Absence Management policy. Where poor performance is not connected to one of these reasons this policy will apply.
- 1.5 Where performance is related to professional registration, reference will be made to the appropriate professional code of conduct.

2. PURPOSE

- 2.1 The purpose of this policy is to support employees to improve performance and ensure a consistent approach is maintained by the Trust.

3. SCOPE

- 3.1 This policy applies to employees who are directly employed by the Trust and for whom the organisation has a legal responsibility. This will also be applied to any employee on an external secondment with another organisation whilst undertaking duties on behalf of that organisation which forms part of their arrangements under the secondment.
- 3.2 For performance issues relating to doctors and dentists 'Maintaining High Professional Standards in the Modern NHS' applies and any performance issues should be referred to the Medical Director.
- 3.3 For non-Trust individuals covered by a letter of authority, honorary contract or work experience, this policy is applicable whilst undertaking duties on behalf of the Trust.
- 3.4 Bank and agency workers are also required to abide by this policy and other policies and procedures as appropriate.

4. DUTIES

- 4.1 **Line managers** are responsible for ensuring that:

- All new employees have attended the Trust's corporate and local induction programme;
- The required standards and expectation of their role are explained to and understood by employees;
- Employees complete their mandatory training and receive the appropriate training required for their role;
- Employees have regular appraisals/Personal Development Reviews and 1:1 meetings, ensuring that employees are given clear SMART (specific, measurable, achievable, realistic and timely) objectives and have a personal development plan (PDP);
- Poor performance is recognised and addressed in a timely, fair and non-biased way;
- All performance matters are dealt with confidentially and sensitively with due respect for the privacy of individual involved;
- They understand the implications of this policy in conjunction with the Pay Progression Policy.

4.2 Employees are responsible for ensuring that they:

- Perform the tasks and responsibilities of their role to the best of their ability in order to achieve the standards of performance requires by the Trust and their team/service;
- Raise any issues which may affect their performance with their line manager as soon as possible so support can be given;
- Cooperate with any measures introduced to support issues with work performance;
- Attend corporate and local inductions;
- Comply with the Trust's policies and procedures;
- Maintain their professional registration (if appropriate);
- Fully participate in appraisals/personal development reviews (PDRs) and 1:1s;
- Understand the implications of this policy in conjunction with the Pay Progression Policy.

4.3 Human Resources are responsible for:

- Advising managers and supporting managers throughout the performance process, as required;
- Signposting support mechanisms for employees;
- Ensure there is a consistent approach and application of this policy.

5. PROCEDURE

5.1 The list below identifies some factors that may need to be taken into consideration

during the implementation of this process. This list is not exhaustive.

- Personal issues;
- Work overload;
- Unrealistic deadlines;
- Health (physical or mental);
- Organisational change;
- Lack of supervision / level of supervision needed;
- Equipment and resources available;
- Inadequate or insufficient training / induction;
- Lack of understanding of roles and responsibilities.

5.2 Reasonable Adjustments

- 5.2.1 Appropriate consideration should be given to reasonable adjustments which may be required where an employee is deemed to have a disability in line with the provisions of the Equality Act 2010. Advice should be sought from a HR representative/ Working Well if appropriate.

5.3 Accelerating the Process

- 5.3.1 The Trust aims to support employees with issues relating to their performance and therefore the following processes are designed to support an improvement in performance at the earliest level. However, in certain circumstances it may be necessary for the Trust to commence the performance management process without undertaking the informal process, or to escalate to Stage 2 or Stage 3 (for example, where the issues are very serious, or where warnings have already been issued).

5.4 Informal Performance Management

- 5.4.1 When it is clear that an employee may need support with their performance, managers should attempt to resolve any issues relating to the employee's performance informally through a 1:1 discussion or at a supervision session. The discussion about the performance concerns should be documented in writing.

- 5.4.2 When discussing performance informally, the employee should be advised of the area(s) that require improvement. There should be a discussion about the support that will be offered and timescales so the individual is aware of the length of time they have to improve their performance. The employee should also be advised that if they do not meet the requirements of the informal review period that the matter may be progressed to the formal stages of this policy.

- 5.4.3 Although it is encouraged to support employees through an informal process first, managers have the discretion to go straight to a formal depending on the severity of the issue.

- 5.4.4 If following the discussion the employee's performance meets the required

expectations, they should be informed and advised that should their performance fall below the required standards again within 12 months the informal procedure may be re-instigated or the matter may progress to Stage 1 of the formal procedure.

- 5.4.5 If the required improvement in performance is not achieved the manager should proceed to Stage 1 of the formal performance management process. The manager should seek advice from the HR department at this point.

5.5 Formal Performance Management: Stage 1

- 5.5.1 If informal measures have failed to address the issues or for more serious cases the manager may proceed through the formal steps of this policy. Before starting any formal stage the manager should seek advice and guidance from their HR representative.

- 5.5.2 The manager must arrange a formal meeting with the employee:

- The employee should be given at least 7 calendar days' written notice of the Stage 1 formal meeting. A copy of this policy should accompany the letter;
- The invite letter should advise the employee of the right to be accompanied by a colleague who is an employee of the Trust or a trade union representative;
- If the employee's trade union representative or colleague cannot attend the proposed date one alternative date will be suggested. Reasonable efforts will be made to accommodate availability but reasonable timescales must be adhered to.

- 5.5.3 At the Stage 1 meeting:

- The manager will clearly explain the areas or the issues and the consequences of these continuing. This will include clear examples of where performance has not met the required standards;
- The employee will be given the opportunity to comment and respond on their performance and to provide an explanation. The employee will also be able to indicate what assistance they feel they need, if any, to improve their performance;
- The manager will identify the improvement required and a performance plan will be developed (Improving Performance Plan – see Appendix 1);
- The employee and the manager will agree a reasonable timescale for reaching the required improvement and a review date will be set. A reasonable timescale for improvement will vary depending on circumstances and therefore the manager will take this into account;
- It may not be appropriate for the employee to work on the staff bank for the duration of the Improving Performance Plan. This will be discussed with the manager and employee at the meeting and it may be appropriate to disclose the performance issues to the bank line manager;
- The employee will be informed that failure to improve their performance may result in moving to the next stage of the process and may eventually result in

dismissal on the grounds of capability;

- The employee should be informed that in accordance with Agenda for Change Terms and Conditions, pay progression may be suspended at this point until the manager is satisfied that the employee's performance has reached a satisfactory level.

5.5.4 Following the meeting:

- The manager will write to the employee confirming the actions agreed at the meeting and the review arrangements. The employee will also be provided with a copy of the Improving Performance Plan. The employee will be informed within the letter that failure to improve may eventually result in dismissal based on the grounds of capability;
- The manager should ensure that any support measures they have agreed to arrange are put in place and followed up;
- The manager should ensure that regular feedback is given and ongoing support is made available during the period of the Improving Performance Plan.

5.5.5 Stage 1 review meeting:

- The manager should have arranged a formal meeting review date with the employee at the Stage 1 meeting or shortly after to ensure the employee is aware of the review date;
- The employee should be given at least 7 calendar days' written notice of the stage 1 formal review meeting;
- The letter should explain the purpose of the meeting is to review the Improving Performance Plan and to agree the appropriate next steps; one possible outcome of the meeting could be the implementation of Stage 2 of the process. It will also offer the employee the right to be accompanied at the meeting as detailed in section 5.5.2 above;
- If the employee's representative cannot attend the proposed date, one alternative date will be suggested. Reasonable efforts will be made to accommodate availability but reasonable timescales must be adhered to.

5.5.6 At the Stage 1 review meeting:

- The employee's progress and the Improving Performance Plan will be discussed.
- If the level of performance has reached a satisfactory standard:
 - The employee will be advised that no further action needs to be taken and they will be removed from the performance process and encouraged to maintain this level of performance;
 - Details of the improved performance will be noted on the Review Meeting Record (see Appendix 2) and confirmed to the employee in writing;
 - The employee should be informed that should their performance fall below the required standards again within 12 months consideration will be given as to whether Stage 1 of the formal process will be re-instigated or the

matter progressed to Stage 2 of the formal performance process.

- If satisfactory improvement has not been achieved:
 - At the manager's discretion an extension may be considered to extend Stage 1 and a further review meeting arranged and held;
 - The meeting will continue in accordance of Stage 2 of the formal performance process, as detailed below, including a review of the performance plan and support and setting new timescales.

5.6 Formal Performance Management: Stage 2

5.6.1 If formal measures at Stage 1 have failed to address concerns about an employee's unsatisfactory and/or unacceptable performance, or for very serious cases, the manager may proceed to Stage 2 of this policy. The manager should seek advice and guidance from the HR department at this point.

5.6.2 For serious cases where the process is starting at Stage 2, the employee should be invited to an initial meeting following the procedure set out in section 5.2.3 above.

5.6.3 At the Stage 2 meeting:

- The manager will review the employee's progress against the Improving Performance Plan and explain where the required standards of performance have not been met (where the matter has progressed from a Stage 1 Improving Performance Plan);
- If a decision has been made to accelerate directly to Stage 2 then the reasons for this will be clearly explained;
- The employee will be given the opportunity to respond, comment and/or provide an explanation;
- The manager will agree an Improving Performance Plan with the employee (see Appendix 1). This could include expanded or additional areas for improvement that may have come to light during Stage 1;
- Assistance and support will be discussed to help improve performance;
- The manager and the employee will agree a reasonable timescale for reaching the required improvement and agree regular review meetings, if appropriate. A reasonable timescale for improvement will vary depending on circumstances and therefore the manager will take this into account;
- A Stage 2 review date should be set at the meeting if possible;
- It may not be appropriate for the employee to work on the staff bank for the duration of the Improving Performance Plan. This will be discussed with the manager and employee at the meeting and it may be appropriate to disclose the performance issues to the bank line manager;
- The employee will be informed that failure to improve performance may result in moving to the next stage of the process and may eventually result in dismissal on the grounds of capability;

- The employee should be informed that in accordance with Agenda for Change Terms and Conditions, pay progression may be suspended at this point until the manager is satisfied that the employee's performance has reached a satisfactory level.

5.6.4 Following the meeting:

- The manager will write to the employee confirming the actions agreed at the meeting and the review arrangements. The employee will also be provided with a copy of the Improving Performance Plan. The letter will advise the employee that failure to improve performance may eventually result in dismissal based on the grounds of capability;
- The manager should ensure that any support measures they have agreed to arrange are put in place and followed up;
- The manager should ensure that regular feedback is given and ongoing support is made available during the period of the Improving Performance Plan.

5.7 Stage 2 review meeting:

- The employee's progress and the Improving Performance Plan will be discussed.
- If the level of performance has reached a satisfactory standard:
 - The employee will be advised that no further action needs to be taken and they will be removed from the performance process and encouraged to maintain this level of performance;
 - Details of the improved performance will be confirmed to the employee in writing;
 - The employee should be informed that should their performance fall below the required standards again within 12 months consideration will be given as to whether Stage 2 of the formal process will be re-instigated or the matter progressed to Stage 3 of the formal performance process.
- If satisfactory improvement has not been achieved:
 - The manager will discuss this with the employee and the employee will be given an opportunity to respond;
 - The manager will then consider the position and can take one of the following courses of action:
 - 1) Further time for improvement will be allowed or new objectives will be provided. The Improving Performance Plan will be amended accordingly and a timescale for an extension will be agreed, a date for a further review meeting should be arranged if possible. A usual extension of timescale is 4 weeks.
 - 2) Progress to Stage 3 of the formal performance process. The employee will be informed that this process is now being referred to an appropriate senior manager with delegating authority to hear potential dismissal cases (Band 8a or above). The manager will be required to submit a report to the delegated senior manager and the employee will receive a copy.

- 3) The manager will send a letter confirming the actions agreed or decisions made at the meeting, and if appropriate, any review arrangements.

5.8 Stage 3 Capability Hearing

- 5.8.1 The capability hearing will be arranged and chaired by an appropriate manager who has the authority to dismiss. There will also be a second panel member and/or HR representative who has not previously been involved in the case. If the final review hearing is held to consider a case against a Director, the panel will be convened in accordance with the constitution.
- 5.8.2 The employee will be given at least 7 calendar days' notice of the capability hearing and will be provided with a copy of the management report. The employee will also be informed in writing that a possible outcome of the hearing could be dismissal on the grounds of capability. If a decision has been made to accelerate directly to Stage 3 then the reasons for this will be clearly explained.
- 5.8.3 The employee will be given the opportunity to submit a statement of case to be considered at the capability hearing. This should be submitted at least 2 calendar days before the hearing.
- 5.8.4 The employee will be entitled to be accompanied by an employee who is an employee of the Trust or a trade union representative. If the employee's employee or trade union representative is unable to attend on the proposed date, one alternative date will be suggested. Reasonable efforts will be made to accommodate availability but reasonable timescales must be adhered to.
- 5.8.5 The employee should be informed that in the event of their non-attendance at the capability hearing, and in the absence of any mitigating circumstances submitted prior to the hearing, the hearing may continue and a decision may be reached in their absence.
- 5.8.6 At the Stage 3 capability hearing:
 - The purpose of this meeting will be to objectively consider the facts of the matter and to hear comments from the employee and the manager before a final decision is made about the employee's continued employment;
 - The report provided by the manager and the employee's statement of case will be reviewed and both sides will be given the opportunity to comment;
 - The hearing will be adjourned for a decision to be made and the employee will then be advised of the outcome and any associated arrangements;
 - Possible outcomes include:
 - 1) Allow further time for improvement and/or provide new objectives. A further review meeting to consider the employee's performance will be arranged to consider if further action is necessary.
 - 2) Redeployment due to capability, should an alternative post be available that is within the employee's skill set. In these circumstances pay protection will not apply should the redeployment be to a lower band. In such circumstances the employee's starting salary in the redeployed post will be dictated by

relevant number of years' experience not your previous salary.

3) Dismissal on the grounds of capability.

- 5.8.7 The outcome of the hearing will be confirmed in writing to the employee and will include the details of their right to appeal. Should the decision of the panel be to dismiss the employee on the grounds of capability, payment in lieu of notice according to the employee's contract of employment will normally be made.

5.9 Appeals

- 5.9.1 If an employee is dismissed as a result of a Stage 3 capability hearing they have the right to appeal in accordance with the Appeal Policy and Procedure.
- 5.9.2 The appeal must be made in writing and clearly set out the reasons for the appeal. This must be sent to the Director of Human Resources and Organisational Development within 7 calendar days of the letter detailing the outcomes of the Stage 3 capability hearing.
- 5.9.3 If an appeal is lodged against dismissal, the dismissal will still stand until the appeal is heard. If an appeal on a decision is taken to re-instate the employee, any loss of pay shall be paid. However, where dismissal is rescinded but replaced by a lower sanction, there is no further right to appeal.
- 5.9.4 Should the employee feel that this policy has been applied incorrectly at any stage (excluding the capability hearing outcome where the appeals policy should be used) employees should raise this under the Trust's Resolution Procedure.

5.10 Pay Progression

- 5.10.1 Under the national NHS Terms and Conditions 2018 there are pay progression implications where there is a formal capability process in place. The Trust's Pay Progression Policy should be referred to for further information.

5.11 Professional bodies and registration

- 5.11.1 Employees who are subject to the standards of performance set by professional bodies (e.g. NMC) should be advised that the Trust has a duty to report serious instances of sub-standard performance to the appropriate body. Any employee affected by this will be advised by their manager that such a report is being recommended.
- 5.11.2 Where this is to be considered, the matter will be referred to the appropriate head of profession.

5.12 Voluntary Change in Role

- 5.12.1 It is accepted that there may be times when an employee who is being supported with their performance through this policy chooses to apply for, and is successful in obtaining another role. If this is with another employer, a factual reference will be provided. If this is within the Trust, the current line manager will seek advice from HR regarding whether the Trust believes that the change in role is likely to support /

improve the performance issue. If so then a discussion will be had with the prospective line manager and providing the prospective line manager is able to support the performance plan, the employee will move with the performance plan in place. If it is considered that the move is unlikely to support / improve the performance issue then a meeting will be held to explain this to the employee, the move into the new role will not proceed, and the employee will remain in their current post under their performance plan.

PART 3

6. PROCESS FOR MONITORING COMPLIANCE

- 6.1 This policy will be reviewed once every three years or as determined by changes in legislation.
- 6.2 The Trust will maintain a list of all employees whose performance is being managed under this policy and associated procedure. Details will also be maintained within the ESR system and all cases will be monitored by Human Resources to ensure that the policy is being complied with.
- 6.3 The Trust reserves the right to make changes outside of the normal review and consultation process where there are legislative imperative outside of the control of the Trust. All changes will be communicated to JNCF/JNCC.

7. TRAINING

- 7.1 The HR department will facilitate workshops or sessions for managers as required.

8. ASSOCIATED DOCUMENTS

- 8.1 The policy should be used in conjunction with, and meet the requirements of the following Trust policies and procedures, this list is not exhaustive:
 - Promoting Dignity and Work Policy
 - Disciplinary Policy
 - Resolution Policy
 - Supporting Attendance Policy
 - Pay Progression Policy
 - Appeals Policy

APPENDICES

APPENDIX 1: IMPROVING PERFORMANCE PLAN

Name:

Performance is being managed at stage:

Date of meeting:

Target date for completion of plan:

A copy of this should be completed at every review meeting held with the employee and signed both by the manager and the employee.

Area identified for improvement	Expected outcomes / actions	Support required to meet expected outcome	Date to be achieved by	Date completed / evidence of improved performance
<i>Brief heading for objective – it is helpful to number these and then the numbers can be carried through to expected outcomes and referenced.</i>	<i>Details of the expected outcomes that should be linked to the objective (number each point for ease of reference e.g. 1a, 1b, 1c)</i> <i>Evidence should be included on how the employee and manager will be able to evidence the satisfactory completion of the objective (e.g. timesheets, supervision notes, reflective work etc.).</i>	<i>Examples: Training / mentor/ shadowing, etc.</i> <i>This will detail what support will be offered and by whom to ensure that the employee is supported to achieve the objective set.</i>	<i>This should be realistic and achievable and take things such as timing of training into account.</i>	<i>To be completed when objective is achieved – if extension agreed, ensure this is recorded appropriately with the reasons.</i>
Additional comments:				

Signed (Manager):

Date:

Signed (Employee):

Date:

APPENDIX 2 – REVIEW MEETING RECORD

Name:

Performance is being managed at stage:

Date of review meeting:

Area identified for improvement from previous meeting	Evidence of improvement / completion	Notes from review meeting

Signed (Manager):

Date:

Signed (Employee):

Date: