

Worcestershire Acute Hospitals NHS Trust Performance Management Policy

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Target Organisation	Worcestershire Acute Hospitals Trust

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Key amendments to this Document:

Date	Amendment	By:
May 2012	Re-write to clarify process – replaces the previous Performance Management Procedure	Julia Cross
October 14	Review in line with the 2 year period set and amended appendix 1 applied	Julia Cross
Dec 2016	Document extended for 12 months as per TMC paper approved on 2 nd July 2015	TMC
Nov 2017	Document extended whilst under review	TLG
March 2018	Document extended for 3 months as approved by TLG	TLG
June 2018	Document extended for 3 months as approved by TLG	TLG
June 2019	Document extended for 12 months whilst review process takes place	Rachel Morris/Tina Ricketts
June 2020	Document extended for 6 months during COVID-19 period	
February 2021	Document extended as per Trust agreement 11.02.2021.	
August 2021	Document extended until 1st September 2022	TME and JNCC
September 2022	Document reviewed for minor changes eg job titles, legislation and inclusive language. Document noted at JNCC, extended for 18 months	Anne Green
August 2024	New format document approved	JNCC

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What this Policy Covers

Worcestershire Acute Hospitals Trust is committed to creating a workplace where colleagues are treated fairly, equally and with respect. This Policy is designed to ensure that the practice of reflection and improvement is embedded; and to help and encourage colleagues to achieve and maintain high standards of conduct, protecting the interests of, patients, colleagues, and the Trust.

This policy will:

- clarify the responsibilities of all those involved in managing performance
- outline the procedure to be followed in respect of performance concerns
- encourage and ensure the attainment of the highest possible standards of performance and value all efforts by providing a fair, clear, and consistent method of handling capability issues at all stages of the process.

Responsibilities

Managers

Managers are responsible for ensuring the effective and fair implementing and operating of this procedure. In addition, all managers will be responsible for ensuring:

- That they seek advice from HR when considering implementation of this policy and procedures.
- That you are informed of this procedure and its operation
- That you have been made aware of any concerns in relation to your performance before moving to both informal and formal stages
- That you are informed of the required standards of work performance (roles and responsibilities are clearly communicated)
- That you are kept informed of your progress in meeting the required standards
- That you are given adequate training to equip them to carry out your duties through the use of the appraisal scheme and personal development plans
- That you are provided with adequate help and support where necessary
- That they manage all personal data acquired through this process confidentially and in line with legal and Trust compliance with General Data Protection Regulations

Employees

You are expected to meet the required Trust standards of performance (including but not limited to undertaking mandatory and essential to role training, maintaining clinical and non-clinical competences, and abiding by the code of conduct of a professional body where applicable). If you are having difficulties with your performance, or you have concerns with the management of your performance, this should be discussed with your Manager, HR, or Staff Side representative as soon as the concern arises. In addition, you will be expected to:

- Fully engage in the process.
- Arrange your own appropriate workplace colleague and staff side representation.
- Maintain confidentiality and data protection in line with legal and Trust compliance with General Data Protection Regulations.
- A commitment to maximising your potential and continuously striving towards delivering your best performance.

HR Advisory Team

HR will remain impartial and will be available to support all parties to ensure fair and consistent application of this procedure. In dealing with issues which may lead to capability action, Managers must seek HR advice at the earliest opportunity and a HR representative will be present at all the formal stages. HR should also:

- Provide advice to colleagues and Managers concerning individual issues
- Provide training for Managers on the application of this policy
- Provide support for staff throughout the process of this policy
- Offer and provide support via the Trust's Occupational Health service

Policy in practice

Key Principles

The Trust recognises that standards of performance are necessary for the provision of quality care to patients. A key priority in our People and Culture Strategy is to support managers and colleagues through the process with the aim to improve performance through collective achievement, be accountable for their actions, and transform care at every opportunity. The contribution and performance of each individual is crucial to achieving this aim.

Managing performance should be a continual process of feedback and review. The spirit of this policy is to ensure that all reasonable steps are taken to address and resolve concerns regarding performance at the informal stage wherever possible.

In recognition of this, this policy has been developed to ensure concerns over performance are dealt with fairly and that steps are taken to establish the facts. The policy should work in symmetry with other HR policies; in particular, our recruitment and induction procedure to ensure that we develop, support, and retain a skilled workforce.

If there is no improvement in your performance after a period of support and/or training, then it could lead to you not continuing in the role. This may include the termination of your employment in cases where the procedures have been followed and exhausted.

If you have any concerns or questions around the commencement of this policy, please contact the HR Advisory Team on 01905 760410 or email wah-tr.hrenquiries@nhs.net.

Health and Wellbeing: We understand that going through performance management procedures can be very upsetting and we want to ensure you are properly supported throughout. Signposting and access to wellbeing services will be provided at all stages, further information is available [here](#).

Fairness: The application of this procedure will be supportive, consistent, transparent, fair, prompt (within defined timescales), impartial, reasonable, and applied without discrimination of any kind.

Confidentiality: Information relating to performance concerns will not be divulged to any parties not involved in the performance management process. Statements, letters, and other communications will be strictly confidential to those involved and records will be kept in accordance with the General Data Protection Regulations 2018 and in line with the Trust Corporate Records Management Policy and Procedure.

Right to be accompanied at all formal meetings and Hearings: You have the right to be represented by your accredited workplace trade union representative, or official employed by your trade union. Alternatively, you can be accompanied by a work colleague.

Professional bodies: The Trust also reserves the right, if appropriate, to report the matter to the relevant professional body or regulator (e.g. Disclosure and Barring Service (DBS), Nursing and Midwifery Council (NMC), Health and Care Professionals Council (HCPC), Counter Fraud), which may also take additional action.

Scope

This policy is applicable to WAHT employees only, in all stages of employment. This policy will not apply to Medical and Dental employees where specific arrangements apply in cases of professional conduct or competence.

If performance concerns are raised with colleagues who are not employees (e.g. agency workers), their employer should be informed.

The procedure is set against the legal framework of the Employment Rights Act 1996 and the ACAS Code of Practice.

There may be situations where a colleague is under performing due to a specific problem and therefore it may be more appropriate for action to be taken under another Trust policy as follows:

Area of concern	Appropriate policy
Misconduct	Disciplinary Policy
Absenteeism or ill-health capability	Managing Sickness Absence Health and Wellbeing policy
Alcohol or drug dependency	Substance Misuse Policy
Harassment and bullying	Dignity at Work policy

Definitions

Capability: Defined in the Employment Rights Act 1996 as- 'capability assessed by reference to skill, aptitude, or any other physical or mental capacity'. Capability is an enabler to performance; it is about a colleague's ability to do either part of, or all of their contracted role. Capability concerns due to ill-health are managed under the Trust's Sickness Absence, Health, and Wellbeing policy.

Performance concerns: Refers to an employee not meeting specific requirements that their job entails, such as objectives, contractual obligation, service, and standards to uphold organisational culture.

Performance Capability Warning: A formal warning that if you fail to improve within the agreed Formal Review Period, or if similar performance concerns are raised within 12 months of the Performance Capability Warning being issued, the case will progress to Stage 3 under this policy. Where a Performance Capability Warning is issued, this will remain active on your file for 12 months.

Attendance at Meetings

For all meetings within this procedure, if you, or your companion, are unable to attend they should notify the appropriate Manager immediately. You must make every effort to attend any formal or informal meetings at the reasonable request of management. If non-attendance is for a sound reason, an alternative date will be arranged within seven calendar days after the date of the originally proposed meeting unless otherwise mutually agreed. However, if you fail to attend without good reason, or you are persistently unable to attend (two or more occasions), the meeting may proceed in your absence on the basis of the available evidence. Failure to attend without good reason may be treated as misconduct.

Process

A decision to invoke this process, even at the preliminary Informal Stage, should not be a surprise to you; any issues with performance should have been discussed with your Manager previously as a continual process of feedback and review. For example, discussions may be held in informal 121 meetings, PDRs, or any coaching/mentoring meetings. An open and honest conversation about performance can start at any time, but the sooner the better.

There may be occasions when it will be appropriate to initiate this process at any stage. This is likely to be due to concern about your performance arising out of a particular incident or event. It may also be appropriate, where there are serious concerns, for the Manager to proceed immediately to Stage Two. In exceptional circumstances, it may be necessary to invoke the Stage 3 Final Stage of the performance process.

If the required improvement has been achieved, but your performance subsequently drops below the required standard within 12 months, your Manager will exercise appropriate judgement and may progress to any stage of this process.

In cases where the process is entered at Stage 2 or Stage 3, HR advice should have been sought and it must be demonstrated that there have been at least informal discussions/meetings with you concerning your performance.

You will not normally be dismissed for performance reasons without previous warnings. However, in serious cases of gross negligence or situations that constitute gross misconduct, concerns will be dealt with under the Trust Disciplinary Policy and dismissal without previous warnings may be appropriate.

Stage 1- Informal Stage

In many cases, an informal discussion is all that is needed to improve performance.

The Informal Stage involves a one-to-one meeting between you and your Line Manager/Supervisor ('Manager') where concerns about performance are discussed. The aim of this meeting is to have a two-way conversation to identify whether there is a capability issue,

to discuss your well-being and explore whether the capability issue may be related to a health reason, to clarify the standards of performance expected, and to identify areas where training is absent or falling below the accepted standard. Where improvement is required, appropriate support should be discussed and provided to you.

Procedural guidance for the Informal Meeting can be found in the Appendices.

Although the meeting is informal, your Manager must put in writing the agreed outcome and develop an appropriate Improvement Action Plan, including specific, measurable, achievable, and relevant objectives relating to the specific areas of improvement, with an agreed review period. Further guidance on developing a SMART Improvement Action Plan can be found [HERE](#).

At this Informal Meeting the consequences of failing to achieve the plan within the agreed review period must be made clear to you.

During the Informal Review Period, Progress Monitoring Meetings should take place.

At the end of Stage 1- Informal Review Period

At the end of the Informal Review Period, the Manager will make an assessment, based on fact and evidence, as to whether you have achieved the standards required as set in the Improvement Action Plan. Managers must be satisfied that all the agreed support actions as part of the Improvement Action Plan have been implemented. If this is not the case, then it may be necessary to extend the review period under this Informal Stage before progressing any further. If an extension to the review period is required due to external circumstances, this will be for an agreed, reasonable time period. It should be made clear to you whether the process will be reviewed or stopped if certain elements such as training are not available within the agreed time period.

Possible outcomes of this assessment are:

- a) If all improvement areas within the Improvement Action Plan have been achieved at this stage, then you should be informed that there will be no further reviews, other than annual PDRs, provided the required level of performance is sustained. This outcome should be confirmed in writing.
- b) If improvement areas within the Improvement Action Plan have not been met, then the management of the performance concerns should progress to Stage 2- Formal Stage. The outcome will be communicated to you in writing.

The commencement of the Formal Stage will usually follow after Stage 1- Informal Stage has been completed.

In the case where an Informal Stage assessment has not taken place, the Manager must undertake a review, with HR, of all the evidence related to the performance concern (i.e. informal discussions, review meetings, any witness statements, and all supporting documents) before deciding on taking formal action under this Formal Stage.

Stage 2- Formal Stage

At the Stage 2 - Formal Stage, you will be invited to a Formal Meeting. The written invitation should set out the performance concerns, the reasons for the concerns, and the likely outcome if the Trust decides that the performance is unsatisfactory.

You will receive the invitation and all relevant evidence/information related to the performance concern at least 7 calendar days' prior to the meeting. Your Manager will advise you of your right to representation.

The Stage 2 Formal Meeting will normally be chaired by your Manager with an impartial HR representative.

At the Stage 2 Formal Meeting:

- You will be provided with the reasons why your performance has not met the required standards (using the Improvement Action Plan if the Informal Stage was carried out).
- You will have the opportunity to respond to the concerns.
- The reasons for the underperformance will be explored; and
- If appropriate, an Improvement Action Plan will be developed with you and an agreed Formal Review Period set. The consequences of failure to improve must be made clear to you.

If the Formal Meeting is adjourned to consider further evidence before reaching a decision, you will be asked whether you want to receive the outcome in writing, or a reconvened meeting can be arranged.

In determining the outcome, consideration will be given to your views and the documentation presented and reviewed. Your Manager will reach their decision based upon the evidence and documentation considered. Outcomes of a Stage 2 Formal Meeting could be:

- a) A written Performance Capability Warning, plus Formal Review Period, and Improvement Action Plan agreed*.
- b) (Extended) Informal Review Period; or
- c) No further action taken.

* Further details on a Performance Capability Warning is detailed in 'Definitions'.

You will have the right to appeal.

The outcome of the Stage 2 Formal Meeting will be given verbally as well as in writing. The written outcome of the meeting, and a copy of the Formal Improvement Action Plan (if appropriate), will be sent to you within 7 calendar days from the date of meeting.

During the Formal Review Period, Progress Monitoring Meetings should take place.

At the end of Stage 2- Formal Review Period

At the end of the Formal Review Period your Manager will make an assessment, based on fact and evidence, as to whether you have achieved the standards required as set in the Improvement Action Plan. Managers must be satisfied that all the agreed support actions as part of the Improvement Action Plan have been implemented. If this is not the case, then it may be necessary to extend the review period under this Formal Stage before progressing any further. If an extension to the review period is required due to external circumstances, this will be for an agreed, reasonable time period. It should be made clear to you whether the process will be reviewed or stopped if certain elements such as training are not available within the agreed time period.

Possible outcomes of this assessment are:

- a) If all improvement areas within the Improvement Action Plan have been achieved, you should be informed that there will be no further reviews provided the required level of performance is sustained. This outcome should be confirmed in writing; or
- b) If improvement areas within the Improvement Action Plan have not been met, then the management of the performance concerns will progress to Stage 3. The outcome will be communicated to you in writing.

Your manager must undertake a review of all the evidence related to the performance concern (i.e. informal discussions, meetings, any witness statements, and all supporting documents) with HR before deciding on taking formal action under the next stage in the process, Stage 3.

Stage 3- Final Review Meeting

If there is evidence that your performance has not improved to the standard required and consideration is being made for a referral to a Capability Hearing, your manager will arrange a Stage 3- Final Review Meeting. You will have the right to be represented and HR will also be in attendance. You will receive 7 calendar days' notice of the meeting.

At the Final Review Meeting:

- You will be provided with the evidence that your performance has not met the required standards.
- You will have the opportunity to respond to the concerns.
- The reasons for the performance concerns will be explored, to include (but not limited to) a discussion on your health and wellbeing and the effectiveness of the support you've previously been provided in this process.

Where it is established that your performance has not met the required standards despite all reasonable support being put in place, your case will be referred to a Capability Hearing.

Other possible outcomes from the Final Review Meeting may be ongoing management at Stage 2- Formal Stage, or the case may progress under an alternative Trust policy where appropriate.

The outcome of the Stage 3- Final Review Meeting will be given verbally as well as in writing. The written outcome of the meeting will be sent to you within 7 calendar days from the date of meeting.

Stage 3 – Capability Hearing

The commencement of Stage 3- Capability Hearing will usually follow after Stage 2- Formal Stage and a Stage 3- Final Review Meeting.

Your Manager will prepare a Performance Assessment Report and a Panel will be convened. The independent panel will consist of a Chair, a HR representative and, where necessary, an expert advisor/senior manager in your area of work e.g. a Matron if it is a professional competence issue. You will have the right to representation.

You will receive a written invitation to the Hearing, which will include all relevant documentation, at least 14 calendar days prior to the Hearing. The invitation will include:

- The date, time and venue of the hearing
- The names and job titles of those who will be present (or called upon)
- Copies of all written documents to be referred to at the Hearing
- The concerns about your performance, the reasons for the concerns, and the likely outcome if the Trust decides that the performance is unsatisfactory (to include dismissal).

The Panel will thoroughly explore the performance concerns in an open and constructive manner to ensure they understand the situation and, if deemed necessary, may call in other relevant people to give clarity and independent advice.

The Panel will then reach a decision on the most appropriate way forward. The options considered at this stage are:

- A (revised) Performance Capability Warning, Formal Improvement Action Plan, and Formal Review Period*
- Offer of redeployment to another role which may include down-banding
- Dismissal with contractual notice
- No formal action taken

* Further details on a Performance Capability Warning is detailed in 'Definitions'.

The outcome of the Capability Hearing will be given verbally during the meeting as well as in writing, to include your right of appeal where appropriate. A written outcome of the meeting, and (if appropriate) a copy of the Improvement Action Plan, will be sent to the employee within 7 calendar days from the date of meeting.

The decision to terminate an individual's employment is a serious one and should be considered after all the facts of each case have been considered. If the decision has been made, you will be entitled to contractual notice plus payment for any outstanding accrued annual leave; however, it may be more appropriate to offer pay in lieu of notice. You will be informed of the reasons for the dismissal, and the date on which the contract between parties terminated.

In the case where further management under Stage 2- Formal Review Period is decided, Progress Monitoring Meetings should take place.

Redeployment

If a decision is made to offer you redeployment, the Trust's procedure for redeployment will be followed. The Trust is not required to create a role and if you decide not to be redeployed or a suitable alternative post is not identified within the agreed redeployment period, your case will be re-referred back to the Stage of the process you were at prior to commencing the redeployment process.

Redeployment will be considered at all formal stages of this policy with agreement from the line manager and colleague.

Progress Monitoring Meetings

Progress Monitoring Meetings should be held informally in a supportive environment, normally with your Manager, on a one-to-one basis during the agreed Review Period. Discussions should be held professionally and in line with the Trust's Behavioural Charter ensuring the respect and dignity of all involved. These meetings should occur on a regular basis (e.g. fortnightly or as agreed) and will be arranged within your working hours. Where the Improvement Action Plan is being monitored by another person, your Manager must ensure that they receive regular feedback regarding your progress. These meetings should occur at each stage of this procedure.

The Outcome from the Progress Monitoring Meetings should be documented and shared with you.

If changes to the Improvement Action Plan have been agreed (i.e. different measures, timeframe, or support), a revised version should be drafted and shared with you (Previous versions must still be retained).

Appeals Procedure

You have the right to appeal against any formal capability sanction. The appeal must be made within 14 calendar days of receipt of the outcome letter.

Should you wish to exercise this right, you must submit your appeal in writing and be specific about the grounds of the appeal. You will need to demonstrate:

- your formal sanction is too severe
- any part of your performance management process was wrong or unfair
- you've been dismissed for an unfair reason
- you have new evidence to show

To lodge an appeal against a formal sanction issued at Stage 2- Formal Stage you must write to your next in line Manager. The Appeal Panel will comprise of a Senior Independent Manager not previously involved in the case, who is, or equivalent to, your next in line Manager and a HR representative.

To lodge an appeal against a formal sanction issued at Stage 3- Capability Hearing you must write to the Director of People and Culture. Appeals against Dismissal will be heard by a Panel comprising at least one Director, a Senior Manager, and a Senior HR Representative.

An Appeal Hearing will be arranged, and the process and timescales will mirror those of the Capability Hearing detailed above. The Appeal Panel will have had no prior involvement in any aspects of the current case.

The Appeal Hearing will not be a rerun of the Capability Hearing.

The decision of the Appeal Hearing will be final. An Appeal Hearing Panel may overturn the Capability Hearing Panel's decision in full or part and can increase a sanction, up to and including Dismissal.

Grievance raised during process

If a grievance is raised by you during any stage in this policy, a decision will be made as to whether the proceedings should be suspended to determine a reasonable approach until such time that the grievance is resolved.

A suspension in proceedings will be dependent on the seriousness of the grievance and the appropriateness of continuing with the process concurrently.

Implementation Plan

This policy will be available on the Trust Intranet.

A policy briefing will be developed for Divisional Management Boards, Directorate Meetings and Worcestershire weekly.

[HR Key Documents](#)