

Title:	Managing Concerns with Performance at Work Policy
Reference No:	HR/017
Owner:	Chief Officer
Author:	Head of HR
First Issued On:	2-12-13
Latest Issue Date:	
Operational Date:	Current
Review Date:	31-3-15
Consultation Process:	Operational Executive, Staff Chair, Regional TU Reps, Staff
Ratified and Approved by:	Governing Body, 3 rd January 2018
Distribution:	All employees and GP members of the CCG
Compliance:	Mandatory for all permanent and temporary employees of Rotherham CCG.
Equality & Diversity Statement:	In applying this policy, the Organisation will have due regard for the need to eliminate unlawful discrimination, promote equality of opportunity, and provide for good relations between people of diverse groups, in particular on the grounds of the following characteristics protected by the Equality Act (2010); age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation, in addition to offending background, trade union membership, or any other personal characteristic.

SUMMARY	Managing Concerns with Performance at Work Policy
AUTHOR	P Smith
VERSION	Review June 2017
EFFECTIVE DATE	Current Policy
APPLIES TO	Employed RCCG Staff
APPROVAL BODY	OE, AQuA, Governing Body
RELATED DOCUMENTS	Pay Progression Policy, , Managing Absence Management Policy, Alcohol and Substance Misuse Policy, Discipline, Grievance, Capability, Sickness absence
REVIEW DATE	31-3-19 or at an earlier date subject to changes in national or local (where relevant) terms and conditions of service or legislative requirements.

THIS POLICY HAS BEEN SUBJECT TO A FULL EQUALITY IMPACT ASSESSMENT

VERSION CONTROL SHEET

Version	Date	Author	Status	Comment
1	2-12-13	PSmith	Draft	For consultation
2	6-1-14	PSmith	Draft	For consultation and SPF approval
3	June 17	P Smith	Review	2017 review

CONTENTS

Section	Page
1. Purpose	3
2. Scope	3
3. Equality and Diversity	3
4. Accountability	3
5. Implementation and Monitoring	3
6. Responsibilities	4
7. Right to be accompanied	6
8. Procedure - Informal	6
9. Procedure - Formal	7
10. Appeals	10
11. Initial Equality Impact Assessment	12

1.0 PURPOSE

This document sets out the CCG's Policy and Procedure for managing concerns with performance at work. It has been drafted to comply with statutory and other legal requirements.

The CCG is committed to setting high standards for employee performance, providing the appropriate training and support for employees to achieve these standards and dealing fairly and consistently with any concerns with performance.

2.0 SCOPE

The policy applies to all employees of the organisation and replaces all previous agreements on managing concerns with work performance.

3.0 EQUALITY AND DIVERSITY

In applying this policy, the organisation will have due regard for the need to eliminate unlawful discrimination, promote equality of opportunity, and provide for good relations between people of diverse groups, in particular on the grounds of the following characteristics protected by the Equality Act (2010); age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation, in addition to offending background, trade union membership, or any other personal characteristic. A single Equality Impact Assessment is used for all policies and procedures.

4.0 ACCOUNTABILITY

The Chief Officer is accountable for this policy.

5.0 IMPLEMENTATION AND MONITORING

5.1 The CCG Governing Body is responsible for formal approval and monitoring compliance with this policy. Following ratification the policy will be disseminated to staff via the intranet. The policy to be reviewed three years from the date of implementation unless there is good reason to update this more frequently, such as changes in employment law and good practice.

5.2 The policy and procedure will be reviewed periodically by Human Resources in conjunction with the Operational Executive members and Trade Union representatives where applicable. Where review is necessary due to legislative change, this will happen immediately.

6.0 RESPONSIBILITIES

6.1 JOINT RESPONSIBILITY

Good working relations are vital for the CCG to operate successfully and provide its essential services. Management, trade unions and employees accept the responsibility of working together on managing concerns and performance issues in good faith and with goodwill with the shared intention of facilitating good working relationships.

6.2 MANAGEMENT RESPONSIBILITY

The Manager will:-

- agree standards of performance, which are specific, realistic, achievable, measurable and time bound, and ensure that these are communicated effectively.
- provide a comprehensive local induction programme to ensure that employees are clear about the aims of the organisation and department and the standards expected of them.
- discuss and agree with the employee any changes to job role, as appropriate.
- retain appropriate documentation to record training and development to ensure that adequate training has been given prior to an employee undertaking a specific task.
- conduct regular appraisals.
- provide full support, encouragement, training, development and assistance to enable employees to reach and maintain the required standard.
- ensure that employees are aware when they are meeting and exceeding expectations.
- discuss performance problems informally when they arise, in order that the matter may be resolved, and the necessity for taking formal action may be avoided. This discussion will be documented and follow up key points made in writing to clarify performance issues and actions to be taken.
- work in partnership with Employee Representatives to ensure that all performance issues are dealt with fairly and consistently.
- take specific action as required to facilitate disabled employees in meeting performance standards, by making reasonable adjustments to working conditions and work patterns as appropriate.

6.3 EMPLOYEES' RESPONSIBILITY

The Employee will take personal responsibility for:-

- ensuring that they are aware of the standards expected of them, and, ask for assistance, training, guidance and support to enable them to achieve and maintain these standards.
- aiming to achieve high standard of performance as individuals and contribute effectively to the team where appropriate.
- informing their manager (or appropriate third party, i.e. Human Resources / Employee Representative) of any job related or personal issues that may be preventing them reaching the agreed standards, in order that support and assistance may be provided.
- contribute to any discussions about their performance and participate fully in any reasonable action plans aimed at performance improvement.
- comply with their professional code of conduct where applicable.

6.4 TRADE UNION RESPONSIBILITY

The Trade Unions play a vital role in:-

- representing members in the procedure and providing support and advice;
- working in partnership with management, HR, Occupational Health to ensure employees are treated fairly and consistently;
- Articulating the issues and suggesting solutions.

7. RIGHT TO BE ACCOMPANIED

An employee has the right to be accompanied at any formal meetings by a Trade

Union representative or work colleague, not acting in a legal capacity. The role of the representative is to assist and support the employee and to speak on the employee's behalf within the procedure. The representative must not answer questions for the employee or disrupt the process.

The employee is responsible for arranging their own representation for meetings, hearings and appeals. Making such arrangements should not cause undue delay to the process as it is in the interests of everybody to deal with concerns with performance promptly. The unavailability of a particular representative should not be a reason for delaying matters for more than a few days and in line with statutory requirements.

8. PROCEDURE - INFORMAL

At the informal stage meeting the Manager will talk to the employee and draw their attention to the concerns, providing objective evidence. E.g. this could be when performance targets set at appraisal have not been achieved. Wherever possible, the Manager and employee should jointly identify:-

- the underlying cause
- a course of action
- a time scale to overcome the problems
- what support is available
- regular review periods.

Dependent upon discussions with the employee, it may be appropriate to deal with the matter under another procedure, for example:-

- attendance management
- acceptable standards of behaviour
- alcohol and drug misuse.

The review period will typically be four to a maximum of twelve weeks and/or may be linked to the achievement of a particular task or objective. During or at the end of the review period if the performance remains below standard, the matter should progress to the formal stage of the procedure. Where it is clear from the outset of an agreed review period that the performance improvements are not being met the further stages of the procedure may be actioned within the 4 weeks of the review period. It will be necessary to make reference to earlier informal discussions, so a record of the date, time and content of all initial discussions should be kept and any work plan should be confirmed in writing to the employee.

9. PROCEDURE - FORMAL

9.1 FAILURE TO ATTEND

Where failure to attend is with prior notice and reasonable the hearing will be reconvened.

Where failure to attend is not notified prior to the hearing the manager or HR Business Partner will write to the employee requesting a reason for their non attendance. The hearing will be reconvened.

If the reconvened hearing is not attended by the employee or their nominated representative the hearing may proceed in their absence.

Where failure to attend is due to sickness absence from work an occupational health referral may be required to advise if the individual is fit to attend the hearing.

9.2 FORMAL REVIEW

The Manager will write to the employee to arrange a meeting, giving at least five working days' notice of the date and time. The employee will be informed of the nature of the concerns, any informal agreed actions and timescales and their right to representation. The Manager, the HR Business Partner, the employee and the employee's representative, if appropriate, will attend the meeting.

At the meeting the Manager will specify those aspects of the employee's performance, which are of concern, providing evidence and give the employee the opportunity to respond. Previous informal action will be fully discussed at this stage.

Following discussion, the following options are available:-

- a realistic and achievable plan of action will be designed and jointly agreed, to allow the employee to achieve the required standard of performance.
- the plan will have specific targets to be achieved and a date for review.
- the plan will set out how the employee's performance will be monitored, and what type of supervision or support will be provided during the period under review.
- it may be possible to consider a reduction of working hours with appropriate pay reduction to make it possible for the employee to cope on a permanent basis and in line with service needs.

if it is agreed by both parties that the employee is not capable of continuing in their current post then the possibility of alternative employment that matches their level of competence/knowledge/capability, should be considered.

The outcome of the meeting will be confirmed to the employee in writing including the specific action required. The next stage should be explained should the employee fail to achieve the standard required.

9.3 FORMAL REVIEW - CONTINUED UNDERPERFORMANCE

If there are continued concerns with performance following the formal review a further formal meeting will be arranged. The format and agenda of the meeting will be as for the formal review. This further review will consist of a meeting between the line manager, the HR Business Partner and the employee. The employee may be accompanied by a trade union representative or work colleague not acting in a legal capacity.

At the conclusion of the monitoring period a review will be undertaken and the outcome agreed:-

- if performance is deemed to be acceptable, the formal procedure will end.
- if performance has improved but there are still concerns a further period of target setting, monitoring and review should be set.
- if at the end of the second period there has been insufficient satisfactory improvement and no mitigating circumstances exist it will be necessary to refer the matter to a final review hearing.

9.4 FINAL REVIEW

When a decision is taken to hold a final performance review hearing, a panel will be formed consisting of an independent manager(s) from the Operational Executive and

an appropriate Human Resources representative to hear the case, neither of which have had any prior involvement in the previous stage.

The nominated human resources representative will send a letter confirming the concerns, arrangements for the hearing and possible outcomes to the employee giving at least ten working days notice of the hearing

The manager will prepare the management case for the hearing. The management case will typically include the performance report, and copies of any relevant documents and other information.

The employee may also produce a statement of case including any relevant material to support their case.

This information should be provided to the human resources representative five working days prior to the hearing so that an exchange of information between the parties is made. The information will be presented to the panel three working days prior to the hearing.

A failure by either party to disclose written material in accordance with the above guidelines may result in a refusal to admit such information at the meeting. The panel hearing the case will decide whether to admit information following discussion with the individuals present as to the reason(s) for the late disclosure and the possible significance of the information.

9.5 HEARINGS

Performance review hearings should be fair and consistent. The manager will chair the hearing. They will introduce those present and the hearing will proceed usually as follows:-

- the information will be set out by the manager, who will then present their report.
- the panel may question the manager.
- the employee/representative may question the manager.
- the employee/employee representative will outline whether the employee accepts or denies the concerns.
- the employee will give his/her account of the matter.
- the panel may permit questions of the employee by the manager and may ask questions.
- the manager will sum up.
- the employee/employee's representative will sum up.
- the panel will consider the case in private. The panel must be satisfied that they have all the relevant information and advice required to make a decision. If this is not the case an adjournment may be requested by agreement.
- The panel will inform the parties of the decision on the day (under exceptional circumstances and by agreement the outcome may be given at a later date).

The panel will confirm the decision in writing to the employee/representative. The letter will set out the decision and reasons for it and notify the employee of the right of appeal.

9.6 MAKING THE DECISION

The Panel Members will make their decisions on the evidence in front of them to:-

- take no further action.
- undertake a further period of target setting, monitoring and review.
- redeploy the employee if appropriate.
- dismiss the employee.

If it is decided to dismiss the employee, the full contractual period of notice will apply (or payment in lieu if appropriate). The letter should state the reason for dismissal, i.e. “as a consequence of the employee’s incapability to discharge their duties to an acceptable standard”.

10. APPEALS

An employee has the right of appeal against dismissal or against redeployment. In wishing to exercise this right, the employee should write to Chief Officer within ten working days of the date of the letter confirming the decision confirming the grounds for appeal..

An Human Resources representative will be responsible for setting up the appeal hearing and will send a letter confirming the grounds for appeal, arrangements for the hearing and possible outcomes to the employee giving ten working days notice of the hearing.

The manager who considered the matter at the final review stage will prepare the management case for the hearing. The management case will typically include the outcome report, any agreed actions, the rationale for the decisions and copies of any relevant documents and other information.

The employee may also produce a statement of case including any relevant material to support their case.

This information should be provided to the Human Resources representative five working days prior to the hearing so that an exchange of information between the parties is made. The information will be presented to the panel four working days prior to the hearing.

A failure by either party to disclose written material in accordance with the above guidelines may result in a refusal to admit such information at the appeal meeting. The panel hearing the case will decide whether to admit information following discussion with the individuals present as to the reason(s) for the late disclosure and the possible significance of the information.

Appeals will be heard by an Appeal Panel. The composition of the Appeal Panel will normally be:-

An Executive Officer and a Lay Member with the appropriate level of human resources support.

The usual procedure of the appeal is:-

- the employee/representative sets out the reason for the appeal and explains

the case.

- a member of the final review panel explains the reasons for the decision and comments on the Appeal case.
- the Appeal Panel may ask questions of either party or of the employee.
- the Appeal Panel considers the Appeal in private.
- the Appeal Panel informs the parties of the decision (on the day or by letter).

The outcome is confirmed in writing within five working days of the hearing.

The Appeal is the end of the internal process.

10.1. DECIDING THE APPEAL

The Panel Members will make their decisions on the evidence in front of them. They will decide:-

- whether there has been reasonable support for the employee
- the concerns with performance and reasons for them
- whether they believe that the employee is likely to make sustained improvements
- whether the employee is capable of doing his or her job or not
- whether there is any other job that the employee could do, is willing to do and for which there is a vacancy.

The appeal will consider whether termination of employment is fair and reasonable taking into account:

- the performance record
- the reasons for under performance
- the employee's record as a whole
- whether there is other work available for the employee to do
- any other factor the panel considers relevant.

11. RECORDS

Management is responsible for keeping records of performance hearings and appeals. The records will be notes of meetings and/or the appeal outcome letter. The record of the formal stage performance hearing will be made available to the employee, before any appeal.

12. Equality Impact Assessment

<u>Title of policy or service:</u>	<u>Managing Concerns with Performance at Work Policy</u>	
<u>Name and role of officer/s completing the assessment:</u>	<u>Peter Smith(HR Business partner)</u>	
<u>Date of assessment:</u>	<u>20th December 2016</u>	
<u>Type of EIA completed:</u>	<u>Initial EIA 'Screening' <input checked="" type="checkbox"/> or 'Full' EIA process <input type="checkbox"/></u>	<u>(select one option - see page 4 for guidance)</u>

<u>1. Outline</u>	
<p><u>Give a brief summary of your policy or service</u></p> <ul style="list-style-type: none"> • <u>Aims</u> • <u>Objectives</u> • <u>Links to other policies, including partners, national or regional</u> 	<p><u>The purpose of this policy is to outline arrangements for managing and supporting employees where performance within their job role falls short of standards considered acceptable to the organisation. Associated policies include:-</u></p> <ul style="list-style-type: none"> ▪ <u>Acceptable Standards of Behaviour Policy</u> ▪ <u>Disciplinary Policy</u> ▪ <u>Grievance Policy</u> ▪ <u>Whistleblowing Policy</u>

Identifying impact:

- Positive Impact: will actively promote or improve equality of opportunity;
- Neutral Impact: where there are no notable consequences for any group;
- Negative Impact:negative or adverse impact causes disadvantage or exclusion. If such an impact is identified, the EIA should ensure, that as far as possible, it is either justified, eliminated, minimised or counter balanced by other measures. This may result in a 'full' EIA process.

2. Gathering of Information

This is the core of the analysis; what information do you have that might *impact on protected groups, with consideration of the General Equality Duty.*

<u>(Please complete each area)</u>	<u>What key impact have you identified?</u>			<u>For impact identified (either positive or negative) give details below:</u>	
	<u>Positive Impact</u>	<u>Neutral impact</u>	<u>Negative impact</u>	<u>How does this impact and what action, if any, do you need to take to address these issues?</u>	<u>What difference will this make?</u>
<u>Human rights</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Procedure to be applied equally to all staff.</u>	<u>Promotes equality in the workplace.</u>
<u>Age</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Procedure intended to apply to all staff regardless of age</u>	<u>Promotes equality within the workplace.</u>
<u>Carers</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Procedure to be applied equally to all staff.</u>	<u>Promotes equality within the workplace.</u>
<u>Disability</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Procedure intended to apply to all staff.</u>	<u>Promotes equality within the workplace.</u>
<u>Sex</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Procedure intended to apply to all staff regardless of sex</u>	<u>Promotes equality within the workplace.</u>
<u>Race</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Procedure intended to apply to all staff regardless of race</u>	<u>Promotes equality within the workplace.</u>
<u>Religion or belief</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Procedure intended to apply to all staff regardless of religion</u>	<u>Promotes equality within the workplace.</u>
<u>Sexual orientation</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Procedure intended to apply to all staff regardless of sexual orientation</u>	<u>Promotes equality within the workplace.</u>
<u>Gender reassignment</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Procedure intended to apply to all staff.</u>	<u>Promotes equality within the workplace.</u>
<u>Pregnancy and maternity</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Procedure intended to apply to all staff.</u>	<u>Promotes equality within the workplace.</u>
<u>Marriage and civil partnership (only eliminating discrimination)</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Procedure intended to apply to all staff.</u>	<u>Promotes equality within the workplace.</u>

<u>Other relevant groups</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Procedure intended to apply to all staff</u>	<u>Promotes equality within the workplace.</u>
<u>HR Policies only: Part or Fixed term staff</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Procedure intended to apply to all staff.</u>	<u>Promotes equality within the workplace.</u>

IMPORTANT NOTE: If any of the above results in 'negative' impact, a 'full' EIA which covers a more in depth analysis on areas/groups impacted must be considered and may need to be carried out.

Having detailed the actions you need to take please transfer them to onto the action plan below.

<u>3. Action plan</u>				
<u>Issues/impact identified</u>	<u>Actions required</u>	<u>How will you measure impact/progress</u>	<u>Timescale</u>	<u>Officer responsible</u>
<u>No actions have been highlighted</u>	<u>No actions have been highlighted</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>

<u>4. Monitoring, Review and Publication</u>				
<u>When will the proposal be reviewed and by whom?</u>	<u>Lead / Reviewing Officer:</u>	<u>Head of HR</u>	<u>Date of next Review:</u>	<u>January 2020</u>

Once completed, this form must be emailed to Alison Hague Corporate Services Manager for sign off:

Alison.Hague@rotherhamccg.nhs.uk

<u>Corporate Services Manager signature:</u>	
--	--