Managing Performance Policy

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| Impact Assessments Undertaken  *(Delete if non-applicable)* | * Equality and Health Inequalities Impact Assessment |

# Version History

| Version | Date | Author (Name and Title) | Summary of amendments made |
| --- | --- | --- | --- |
| 0.1 | Feb 2022 | Senior HR Business Partner | First draft ICB Policy |
| 0.2 | April 2022 | Viv Barnes, Governance Lead | Review of compliance with policy template |
| 0.1 | June 2022 | Senior HR Business Partner | Final draft for ICB approval |
| 1.0 | 9/8/2022 | Senior HR Business Partner | Final Review of Version 1.0 |
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## Introduction

Performance of every employee is crucial to the success of the Integrated Care Board (ICB) and each employee is encouraged to maximise their potential within a role and to continuously strive to deliver their best. Managing performance should be a continual process of feedback and review; however, there will be occasions when an employee’s ability and performance fall below the required standard for their role and they are unable to meet their contractual obligations. In these instances management intervention is required to provide an enhanced level of support, development and feedback.

This policy aims to provide a framework for overcoming such difficulties with the focus on encouraging improvement through clear objective setting, development, support and monitoring from employees starting in post and at all stages of their employment. This policy provides a framework for resolving the issue, ideally through the improvement of the employee's performance.

## Purpose

The organisation is committed to supporting and developing its employees in a fair and equitable manner to ensure that they are able to fulfil their roles and responsibilities to a high level competence standard. The primary aim of this policy is to provide a way of supporting staff in cases where an employee cannot achieve an acceptable level of competence due to lack of ability or skill rather than an act of misconduct.

## Scope

This policy applies to all levels of employees. It does not include workers, contractors, agency staff or volunteers.

If the employee is currently under a period of probation, performance concerns should be dealt with in accordance with the [Probationary Policy and Guidelines](https://www.midandsouthessex.ics.nhs.uk/publications/?publications_category=icb-policies&page_no=3).

The policy should also be followed for Medical Staff on any Medical or Dental contract. However, Maintaining High Professional Standards within the NHS should also be referred to when this policy is applied to Medical Staff. HR advice is should be sought

## Definitions

* **Capability** - The Employment Relations Act (ERA) 1996 states that ‘capability is assessed by reference to skill, aptitude, health or any other physical or mental quality’.
* **Incapability** - The ERA states that ‘incapability must relate to the work or the kind of work that the employee was employed by the employer to do’.

See Section 6.1 below for further information on these definitions.

## Roles and Responsibilities

### Integrated Care Board

* + 1. The ICB Board is accountable and responsible for ensuring that the ICB has effective processes for the management of performance at work in accordance with relevant legislation and best practice guidance.

### Chief Executive

* + 1. The Chief Executive is accountable for the policy and procedure being in place to ensure fair and equitable approach to managing performance at work for employees.

### Policy Authors

* + 1. Policy authors are responsible for ensuring that this document is updated when any changes are made to legislation or best practice.

### Executive Chief People Officer

* + 1. The Executive Chief People Officer oversees the implementation of this policy and is responsible for ensuring that managers take action to meet the organisation’s obligations to ensure equity and consistency.

### Line Managers

* + 1. Line managers are responsible for:
* Ensuring staff are treated fairly and equitably.
* Providing regular supervision meetings, giving feedback on performance and conducting an annual appraisal.
* Early intervention when poor performance is identified is essential, enabling a supportive approach to be taken.
* Enabling employees to undertake training relevant to their role.
* Ensuring that the ICB policies and procedures are complied with.
* Informing the Human Resources department when incidents arise and working with them to progress each case.
* Arranging meetings in line with this policy.
* Providing a fair and reasonable outcome for staff in line with this policy.
* Ensuring all timescales in the policy are adhered to.
* Maintaining confidentiality during and after the application of this policy.

### Employees

* + 1. The Employee is responsible for:
* Maintaining a good level of performance at work,
* Informing their line manager of any reason why their performance at work may be affected eg health/disability, bullying.
* Taking up training and development opportunities provided over and above those legally required of the post.
* Fully participating in the process of managing performance in order to address any performance issues identified including attending meetings as requested under this policy.
* Arranging the attendance of their staff representative or companion at meetings.
* Maintaining confidentiality during and after the application of this policy.

## Policy Detail

### Definitions

* + 1. The Employment Relations Act (ERA) 1996 states that ‘capability is assessed by reference to skill, aptitude, health or any other physical or mental quality’. It also indicates that ‘incapability must relate to the work or the kind of work that the employee was employed by the employer to do’.
    2. Incapability is where the employee has received all necessary training to undertake the role but still cannot achieve a satisfactory level of performance. Poor performance could be as a result of the following;
* Any unreasonable expectations.
* Lack of training / further training needs.
* Lack of skills.
* Working environment impacting adversely on the employee.
* Any health or personal issue that may be impacting on the employee.
  + 1. If the employee fails to reach the required standard of performance as a result of carelessness, negligence or lack of effort, this will be treated under the Disciplinary Policy. HR advice should be taken as appropriate.

### Key Principles

* + 1. This policy is based upon the following key principles:
* Managers and employees should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions.
* Managers should ensure that new staff are supported and monitored during their first year of employment, particularly during the Probationary period (refer to [Probationary Policy](https://www.midandsouthessex.ics.nhs.uk/publications/?publications_category=icb-policies&page_no=3)).
* Managers and employees should act consistently.
* Managers should carry out any necessary investigatory work, to establish the reasons for poor performance/facts of the case.
* The manager should inform the employee of the basis of the problem and give them the opportunity to put their case in response before any decisions are made.
* The ICB allows employees to be accompanied at any formal capability meeting by either a Trade Union Representative or work colleague. Legal representation is not permitted at any stage. The employee is responsible for making their own arrangements for any representation required.
* The ICB should allow an employee to appeal against any formal outcome at Stage 3 of this policy.
  + 1. Employees are responsible for being proactive in achieving a satisfactory performance which should include regular communication with their line manager, attending and requesting training and ensuring they have all the necessary skills to perform the duties expected of them.
    2. Before this procedure is engaged, the employee should receive feedback from their line manager setting out the concerns about their performance. Informal discussions should already have taken place between the employee and their line manager about how their performance can be improved.
    3. This procedure is designed to be used when such informal discussions do not lead to the employee improving their performance to an acceptable level; or where concerns are that performance is seriously below the required standard, and that formal (as opposed to informal) action is required to remedy the situation immediately.
    4. Where an employee's poor performance is believed to be the result of deliberate negligence, or where serious errors have been made by them to the detriment of the organisation, the ICB may decide to use the [Disciplinary Policy](https://www.midandsouthessex.ics.nhs.uk/publications/?publications_category=icb-policies&page_no=3) instead.
    5. Upon the conclusion of an employees’ monitoring review under the [Performance Management Policy](https://www.midandsouthessex.ics.nhs.uk/publications/?publications_category=icb-policies&page_no=3) it is the employees’ responsibility to ensure that they sustain their performance at an acceptable level.
    6. In the following 12 months, should the employees’ performance then drop below that of an acceptable level from the conclusion of the last performance review meeting and as such warrants a further review under the [Managing Performance Policy](https://www.midandsouthessex.ics.nhs.uk/publications/?publications_category=icb-policies&page_no=3), the ICB reserves the right to commence from the stage at which the previous Performance Management review was concluded.
    7. A written record of all meetings conducted under this procedure will be made, either by the manager holding the meeting or by an additional person arranged by the ICB to take notes.

## Procedure

### Stage 1 – Informal

* + 1. The employee's line manager will inform the employee of the nature of the problem and confirm this in writing. The employee will be invited to an informal meeting to discuss concerns regarding performance. The meeting will be conducted by the employee's line manager.
    2. The line manager should outline any training, mentoring or coaching that is available to the employee in order to meet the standards of performance required.
    3. Consideration should also be given to the employee’s health wellbeing and where appropriate referral made to Occupational Health. Occupational Health will provide a report, for management, which will give recommendations and signpost any advice/support available for the employee. The employee should be made aware of any psychological support that is available.
    4. Following discussion of the problem, the line manager may choose to:
* Take no further action.
* Issue guidance to the employee on what they need to do to improve their performance. A reasonable timeframe for improvement should be set (as a guide 4-6 weeks may be appropriate) with agreed meetings during this period to review progress.
* Refer the matter for investigation under the disciplinary procedure.
  + 1. The employee must be informed, at the meeting and in writing, that failure to meet the standards of performance required may lead to the termination of their contract of employment.
    2. The outcome of the Stage 1 meeting should be confirmed in writing within 7 calendar days.

### Stage 2 – Implementation of Formal Procedure

* + 1. A formal approach to addressing an employees’ performance concerns will be used when:-
* Stage 1 does not lead to a satisfactory improvement in the employee's performance.
* Where it is identified that there are serious concerns over an individual’s performance which need to be addressed immediately and as such warrant formal action immediately.
* Where the employee has previously been through a formal Stage 2 review which concluded less than 12 months ago and the individuals performance has subsequently dropped below an acceptable level for the same performance concerns as previously addressed.
  + 1. The employee will be invited to a formal performance review meeting. This should be confirmed in writing and the employee given the right to be accompanied to the meeting by a work colleague or Trade Union representative. The employee must also be informed that failure to meet the standards of performance required may lead to the termination of their contract of employment.
    2. The purpose of a performance review meeting is to discuss the employee's performance and decide what measures should be taken, with a view to securing the required improvement in the employee's performance. The meeting will be conducted by the employee's line manager.
    3. Where it is considered appropriate by the organisation, a member of the HR department may also be present.
    4. The employee will be given an opportunity to respond to any comments / observations around their performance and to put forward any explanation for the matters identified by the manager as amounting to poor performance.
    5. The outcome of the meeting may be:
* A decision to take no further action.
* The implementation of a formal Performance Improvement Programme designed to bring the employee's performance up to an acceptable level.
* A decision to refer the matter for investigation under the disciplinary procedure.
  + 1. Where a formal Performance Improvement Programme is implemented, this should include:
* Clear evidence of the issues and the improvement required.
* Timescales for improvement (as a guide 6 to 12 weeks may be appropriate).
* Regular meetings to review progress review period.
* Any additional support or training that may be required to enable improvement to be made.
* The consequences of a lack of improvement should be clearly communicated to the employee.
  + 1. The outcome of the Stage 2 meeting/review should be confirmed in writing within 7 calendar days.
    2. A formal review meeting should be arranged to take place at the end of the timescale outlined at Stage 2. This review meeting will seek to look at what improvements have been made, namely:
* Some improvement, which would warrant a further extension (maximum of 4 weeks) to enable completion.
* The employee has completed and achieved all targets / improvements set out in the Performance Improvement Programme at Stage 2 and no further action is required.

### Stage 3 - Contractual Review Hearing

* + 1. If there has been no improvement in the performance of the employee this should be considered at a Contractual Review Hearing, which would consider the continuation of the employee’s contract of employment with the organisation.
    2. If the Performance Improvement Programme has not led to sufficient improvement in the employee's performance within the timescale set at Stage 2 of the procedure and it is not anticipated that achievement would be reached within a further reasonable timescale (4 weeks), the employee will be invited to attend a Contractual Review Hearing, to consider the performance issues as they currently stand, and whether continued employment can be sustained.
    3. The line manager will be required to compile a report detailing all aspects of the performance issue, including the performance improvement programme, review meeting notes and progress reports, all support and training offered/undertaken etc. The report should be presented to the Director who can commission a Contractual Review Hearing and appoint a panel.
    4. The contractual review hearing notification letter will set out the respects in which the employee's manager believes that the employee's performance still falls short of an acceptable standard and a copy of the report will be sent to the employee.
    5. Contractual Review Hearing arrangements will be made in accordance with timescales and process outlined below.
    6. A contractual review hearing will normally be held by a panel consisting of a manager of appropriate level (see scheme of delegation), who has not been previously involved in the matter, who will act as the Panel Chair. They will be accompanied by another appropriate manager and a HR representative.

**Scheme of Delegation**

| **Stage** | **Responsible Manager** |
| --- | --- |
| Dismissal Hearings | Chaired by a manager at grade 8B or above plus one other manager (which may be a HR representative) |
| Appeal against dismissal | Chaired by a manager at Executive level or above plus one other manager and a HR representative |

* + 1. The HR representative role will be to provide advice on Human Resources policies and employment legislation and to ask questions to obtain clarification on any issues that are discussed or new relevant information disclosed.
    2. To ensure fairness and impartiality, where reasonably practicable, the panel should consist of no less than two members. The meeting will be led by a manager of sufficient authority to dismiss, who has not been previously involved in the matter, in consultation with an HR representative.
    3. Before the contractual review hearing the employee will be advised in writing of:
* The purpose of the meeting and specify detail of the performance issues being considered,
* All issues to be discussed and the employee’s right to be accompanied by a trade union representative or work colleague.
  + 1. The individual will be given a minimum of 5 working days’ notice of the contractual review hearing.
    2. Should either party wish to call any witnesses to the contractual review hearing they must give at least 2 working days’ notice to the Panel Chair, and will have full responsibility for arranging the attendance of these witnesses.
    3. All relevant facts and evidence (including a copy of the management report) will be made available to the employee (and their representative if applicable) at least 5 working days prior to the contractual review hearing.
    4. Additional information gathered by the employee, that they wish to present at the meeting, must also be made available to the panel at least 2 working days prior to the meeting. The employee should also confirm the name of the representative accompanying them to the hearing (if applicable).
    5. Either party may present evidence including witness statements, call witnesses and have the opportunity to ask questions.
    6. Adjournments may be called by the panel at any time during the hearing should new facts emerge which require investigation or clarification. If the employee becomes distressed an adjournment may be called in order for them to regain their composure.
    7. Once the panel has heard all evidence and have completed discussions an adjournment will be held in order that there can be a period of dispassionate reflection by the panel to consider what action, if any, is to be taken. Where possible, both parties will be verbally informed of the outcome after the adjournment.
    8. A panel can consider action other than dismissal eg deployment to another role more suitable to the employee’s skills (there is no obligation to create a role), further training/coaching/mentoring, or an additional period of time during which the employee may be able to demonstrate the standards required.
    9. If termination of the contract of employment is considered necessary on the grounds of capability, the employee will be informed of this by the Chair of the Panel and in writing.
    10. The employee will be advised in writing of the outcome of the hearing within 5 working days unless a longer period is specified and can be justified. The letter must include the date of the hearing, the reason for issuing the warning as well as details of any sanctions which may be imposed. It should also be noted whether the employee invoked their right to be accompanied.
    11. The employee will be entitled to be accompanied by a work colleague a trade union representative. If the employee, or their chosen companion, is not available to attend on the date proposed, the ICB will endeavour to offer an alternative reasonable date within 10 working days of the original date wherever possible. Note: This meeting will normally only be re-arranged once, except in exceptional circumstances.
    12. The employee will have the right of appeal against any outcome of the Contractual Review Meeting. This will be explained to the employee at the Contractual Review Meeting. The details of how to appeal will also be provided to the employee and will include timeframe for the appeal and who the appeal should be submitted to.

## Monitoring Compliance

The HR Team will be responsible for monitoring that this procedure is followed and may be consulted at any stage through the process to offer advice to those involved.

Monitoring information will be published and reported as appropriate.

Should the monitoring uncover any shortfalls in the implementation of the policy, the HR team will work with the relevant management team to draw up an action plan for improvement. This action plan may include, for example:

* training for line managers
* A risk assessment
* It is also anticipated that any issues in respect of the implementation of the policy may be identified as a result of staff exercising their right of appeal.

## Staff Training

No essential (including mandatory) learning and development requirements have been identified for any staff groups, in order to fulfil the requirements stated within this policy.

Guidance can be sought from the Human Resources team.

## Arrangements for Review

This policy will be reviewed no less frequently than every two years. An earlier review will be carried out in the event of any relevant changes in legislation, national or local policy/guidance, organisational change or other circumstances which mean the policy needs to be reviewed.

If only minor changes are required, the sponsoring Committee has authority to make these changes without referral to the Integrated Care Board. If more significant or substantial changes are required, the policy will need to be ratified by the relevant committee before final approval by the Integrated Care Board.

## Associated Policies, Guidance and Documents

#### [Associated Policies](https://www.midandsouthessex.ics.nhs.uk/publications/?publications_category=icb-policies&page_no=3):

* Disciplinary Policy
* Grievance Policy
* Probation Policy

## References

* ACAS Code of Practice on Disciplinary and Grievance Procedures.

## Equality Impact Assessment

The EIA has identified no equality issues with this policy.

The EIA has been included as Appendix A.

## Appendix A - Equality Impact Assessment

**INITIAL INFORMATION**

|  |  |
| --- | --- |
| **Name of policy:** Managing Performance    **Version number (if relevant): 1.0** | **Directorate/Service**: People Services |
| **Assessor’s Name and Job Title:**  Justina Harrison, Interim HR Business Partner | **Date:** 28th April 2022 |

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| --- |
| **OUTCOMES** |
| *Briefly describe the aim of the policy and state the intended outcomes for staff* |
| The organisation is committed to supporting and developing its employees in a fair and equitable manner to ensure that they are able to fulfil their roles and responsibilities to a high level competence standard. To provide a standard framework to address issues of staff performance in a fair and consistent manner, so staff are aware of the level of performance expected from them. |
| **EVIDENCE** |
| *What data / information have you used to assess how this policy might impact on protected groups?* |
| The ICB monitors the composition of its workforce under the nine protected equality characteristics and reports on this annually. This information helps the ICB to assess the potential impact of its policies upon staff. |
| *Who have you consulted with to assess possible impact on protected groups? If you have not consulted other people, please explain why?* |
| Relevant Trade Unions have been consulted on the policy and any comments will be taken into consideration when the policy is published. |

**ANALYSIS OF IMPACT ON EQUALITY**

The Public Sector Equality Duty requires us to **eliminate** discrimination, **advance** equality of opportunity and **foster** good relations with protected groups. Consider how this policy / service will achieve these aims.

N.B. In some cases it is legal to treat people differently (objective justification).

* ***Positive outcome*** *– the policy/service eliminates discrimination, advances equality of opportunity and fosters good relations with protected groups*
* ***Negative outcome*** *–**protected group(s) could be disadvantaged or discriminated against*
* ***Neutral outcome***  *–**there is no effect currently on protected groups*

Please tick to show if outcome is likely to be positive, negative or neutral. Consider direct and indirect discrimination, harassment and victimisation.

| Protected  Group | Positive  outcome | Negative  outcome | Neutral  outcome | Reason(s) for outcome |
| --- | --- | --- | --- | --- |
| Age |  |  | √ | This policy ensures all staff are treated equally, consistently and in accordance with best practice guidelines. |
| Disability  (Physical and Mental/Learning) |  |  | √ |  |
| Religion or belief |  |  | √ |  |
| Sex (Gender) |  |  | √ |  |
| Sexual  Orientation |  |  | √ |  |
| Transgender / Gender Reassignment |  |  | √ |  |
| Race and ethnicity |  |  | √ |  |
| Pregnancy and maternity (including breastfeeding mothers) |  |  | √ |  |
| Marriage or Civil Partnership |  |  | √ |  |

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| --- |
| **MONITORING OUTCOMES** |
| Monitoring is an ongoing process to check outcomes. It is different from a formal review which takes place at pre-agreed intervals. |
| *What methods will you use to monitor outcomes on protected groups?* |
| It is anticipated that any issues in respect of the implementation of the policy will be identified as a result of staff exercising their right of appeal. |

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| --- |
| **REVIEW** |
| *How often will you review this policy / service?* |
| This policy will be reviewed in 18 months or if there are any significant changes in legislation, policy or good practice. |
| *If a review process is not in place, what plans do you have to establish one?* |
| N/A |

## Appendix B – Union Representative or Work Colleague

Employees are entitled to be accompanied by a union representative or workplace colleague, at any/all formal meetings held under this Policy. It is the employee’s responsibility to make arrangements to be accompanied.

The employee must be informed of this right at the commencement and all subsequent stages of this procedure.

A workplace colleague must always be an employee of the ICB.

Reasonable time off should be afforded to the workplace colleague, in

discussion with their Line Manager.

The representative or workplace colleague may address the meeting and confer with the employee, during the meeting, put forward the employee’s case, summarise the employee’s case and/or respond on the employee’s behalf to any view expressed at the hearing.

The representative or workplace colleague may not answer questions on behalf of the employee or prevent the employee from explaining their case.

Any union representative or workplace colleague must maintain confidentiality during and after the application of this policy.

If the reason given for failing to attend a meeting is due to the non-availability of a trade union representative or workplace colleague and there have been no earlier adjournments in the process for this reason, on only one occasion the meeting will be postponed and a new meeting will be arranged within reasonable time; normally 5 working days. Exceptional circumstances will always be considered.