



MANAGING CONCERNS WITH PERFORMANCE POLICY

Policy reference – HR11

| | |
|-------------------|--|
| SUMMARY | To provide a process and framework to manage work performance of employees and offer support and development where this can be identified. |
| AUTHOR | Human Resources |
| VERSION | Version 3 - FINAL |
| EFFECTIVE DATE | 17 th July 2017 |
| APPLIES TO | Single shared management policy revised, amended and applicable to all NHS Airedale, Wharfedale and Craven, Bradford City and Districts CCGs employees |
| APPROVAL BODY | CCG Senior Management Team |
| RELATED DOCUMENTS | Pay Progression Policy Equal Opportunities & Diversity Employment Policy, Managing Sickness Absence Policy, Grievance Policy Alcohol and Substance Misuse Policy Recruitment and Selection Policy. Education, Training and Development Policy |
| REVIEW DATE | July 2020 |

CCGs working together

Airedale, Wharfedale and Craven CCG
Bradford City CCG
Bradford Districts CCG

THIS POLICY HAS BEEN SUBJECT TO A INITIAL EQUALITY IMPACT ASSESSMENT

VERSION CONTROL SHEET

| Version | Date | Author | Status | Comment |
|---------|------------|--------------|---------|--|
| Draft | 16.07.2014 | Alison Ewart | HR Lead | Consultation with Trade Unions via the Collaborative Social Partnership Forum (SPF) |
| Final | 13.08.2014 | Alison Ewart | HR Lead | Updated with comments from the SPF and Ratified. |
| Final | Sept 2014 | Alison Ewart | HR Lead | SMT |
| Revised | July 2015 | Tazeem Hanif | HR Lead | Amendments made to the policy and taken to the West Yorkshire Policy Sub Group on 25.08.2015 to consult on changes. |
| Final | 02.12.2015 | Tazeem Hanif | HR Lead | Ratified at the Social Partnership Forum |
| Draft | 28.06.2017 | Tazeem Hanif | HR Lead | AWC CCG and Bradford City and Districts policies merged to reflect single shared management arrangements. Change in logo, front sheet and section 11 Amended policy consulted with Trade Unions at the HR Policy Workshop and comments incorporated. |
| Final | 17.07.2017 | Tazeem Hanif | HR Lead | Ratified at SMT |

CONTENTS

| Section | Page |
|--|-------------|
| 1. Purpose | 4 |
| 2. Scope | 4 |
| 3. Equality Statement | 4 |
| 4. Accountability | 4 |
| 5. Implementation and Monitoring | 4 |
| 6. Responsibilities | 4 |
| 7. Procedure – Informal | 6 |
| 8. Procedure – Formal | 7 |
| 9. Appeals | 10 |
| 10. Records | 11 |
| 11. Consultation, Approval and Ratification | 11 |
| | |
| Appendices | |
| Appendix 1 Managing Informal Performance Flowchart | 12 |
| Appendix 2 Managing Formal Performance Flowchart | 13 |
| Appendix 3 Equality Impact Assessment | 14 |

1. PURPOSE

- 1.1 This document sets out the organisation's policy and procedure for managing concerns with performance. It has been drafted to comply with statutory and other legal requirements.
- 1.2 The organisation is committed to setting high standards for employee performance, providing the appropriate guidance, training and developmental support for employees to achieve these standards and dealing fairly and consistently with any concerns with performance. Where there is an identified failure in performance, the organisation will, as part of the process of encouragement and support, discuss with the employee the reasons giving rise to that situation and any action taken formally will be in line with the procedures outlined in this policy.

2. SCOPE

- 2.1 This policy will apply to all employees.

3. EQUALITY STATEMENT

- 3.1 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 reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. A single Equality Impact Assessment is used for all policies and procedures.

4. ACCOUNTABILITY

- 4.1 The Chief Officer is accountable for this policy.

5. IMPLEMENTATION AND MONITORING

- 5.1 The CCGs SMT is responsible for formal approval and monitoring compliance with this policy. Following ratification the policy will be disseminated to staff via the intranet and internal communication methods.
- 5.2 The policy and procedure will be reviewed periodically by the Senior Management Team in conjunction with managers, Human Resource representatives and Trade Union representatives where applicable. Where review is necessary due to legislative change, this will happen immediately.

6. RESPONSIBILITIES

- 6.1 Good working relations are vital for the organisation to operate successfully and provide services. There is a joint responsibility for management, trade unions and employees to accept the responsibility of working together on issues in good faith and with the shared intention of facilitating good working relations.

6.2 Employees

6.2.1 It is the responsibility of employees 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.

6.3 Line Managers

6.3.1 It is the responsibility of line managers to ensure that they:

- Agree standards of performance, which are specific, realistic, achievable and measurable, and ensure that these are communicated effectively.
- Provide an 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 against the agreed framework and in line with the Pay Progression Policy.
- 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 (where applicable) to ensure that all performance issues are dealt with fairly and consistently.
- Where performance of an employee is affected by a disability, as defined in accordance with the Equality Act 2010, to 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 and in accordance with the Equal Opportunities & Diversity Employment Policy.
- Occasionally concerns with performance can be indicative of an employee's inability to perform a role due to lack of experience or qualifications. Where this is the case, there may be concerns around the suitability of the employee and particularly the recruitment and selection process. If there is a suspicion that an employee does not possess the essential criteria upon which they were appointed, this should be referred to the Local Counter Fraud Specialist. If there is evidence that an employee made false declarations during the recruitment process the matter may be subject to a criminal investigation and/or disciplinary proceedings in accordance with the Recruitment and Selection Policy.

6.4 Human Resources Team

- 6.4.1 The Human Resource representative will provide advice and support on all aspects of this policy to ensure application and support.

7. PROCEDURE - INFORMAL

- 7.1 At the informal stage meeting the Manager will talk to the employee and draw their attention to the concerns, providing objective evidence in their performance. The manager should ensure that they have confidential discussions with the employee and any underlying causes which may be covered by the Equality Act and protected characteristics with employment (reference to 3.1 of the policy). E.g. this could be when performance targets set at appraisal or one to one's have not been achieved. A record of any action and/or agreed training requirements will be documented together with a timescale for the expected improvement to be achieved. When considering reasonable timescales, consideration must be given to the nature of the post, the level of support and training required and the standards to which the employee is working below at. 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 e.g. mentoring, counselling, coaching or other training.
 - Regular review periods.
- 7.2 The employee must be given an opportunity to express their opinion and for the Line Manager to take into account any external factors which may be contributing to poor performance.
- 7.3 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.
- 7.4 The review period for monitoring performance will typically be four to a maximum of twelve weeks. At the end of the review period if the performance remains below standard, the matter should progress to the formal stage of the procedure. 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.
- 7.5 During the informal stage of the Managing Concerns with Performance Policy, employees do not have the statutory right to be accompanied by a Trade Union representative or workplace colleague.

8. PROCEDURE - FORMAL

8.1 Right to be accompanied

8.1.1 An employee has the right to be accompanied by a Trade Union representative or work colleague, not acting in a legal capacity at any formal stage. 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.

8.1.2 The employee is responsible for arranging their own representation for meetings, hearings and appeals whether this is with a local or regional representative. Making such arrangements should not cause undue delay to the process as it is in the interests of everybody to deal with performance concerns 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.

8.2 Formal review

8.2.1 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, a Human Resources representative, the employee and the employee's representative, if appropriate, will attend the meeting.

8.2.2 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.

8.2.3 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 that makes 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. Refer to the any current redeployment procedure which may be in operation by NHS England.

8.2.4 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.

8.3 Formal Review Continued

- 8.3.1 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.
- 8.3.2 If there is continued concerns with performance the format and agenda of the meeting will continue at the formal review stage and defined as Formal Review continued under performance. This further review will consist of a meeting between the line manager, an appropriate Human Resources representative and the employee. The employee may be accompanied by a trade union representative or work colleague not acting in a legal capacity.
- 8.3.3 The outcome of the meeting will be confirmed to the employee in writing including the specific action required. If at the end of the second monitoring 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.

8.4 Final Review Hearing

- 8.4.1 When a decision is taken to hold a final performance review hearing, a panel will be formed consisting of a manager(s) at a senior level (of a higher grade to the employee concerned) and a Human Resources representative to hear the case, neither of which have had any prior involvement in the previous stage.
- 8.4.2 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
- 8.4.3 The manager who supported the employee through the informal and formal stages 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.
- 8.4.4 The employee may also produce a statement of case including any relevant material to support their case.
- 8.4.5 This information should be provided to the human resources representative 10 working days prior to the hearing so that an exchange of information between the parties is made.

8.4.6 Performance review hearings should be fair and consistent. The independent 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 the 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 employee/employee's representative will sum up.
- the manager will sum up.
- the panel considers 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 informs the parties of the decision on the day (under exceptional circumstances and by agreement the outcome may be given at a later date).

8.4.7 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".

8.4.8 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.

8.5 **Failure to Attend**

8.5.1 Where failure to attend is with prior notice the hearing will be reconvened. Where failure to attend is not notified prior to the hearing a Human Resources representative 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. APPEALS

- 9.1 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 fifteen working days of the date of the letter confirming the decision.
- 9.2 A 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 10 working days' notice of the hearing.
- 9.3 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.
- 9.4 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.
- 9.5 Appeals will be heard by an Appeal Panel. The composition of the Appeal Panel will normally be the Chief Officer or nominated deputy in addition to another independent senior manager with a Human Resources Representative. An additional professional advisor will also be on the panel as appropriate.
- 9.6 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.

- 9.7 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.

- 9.8 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.

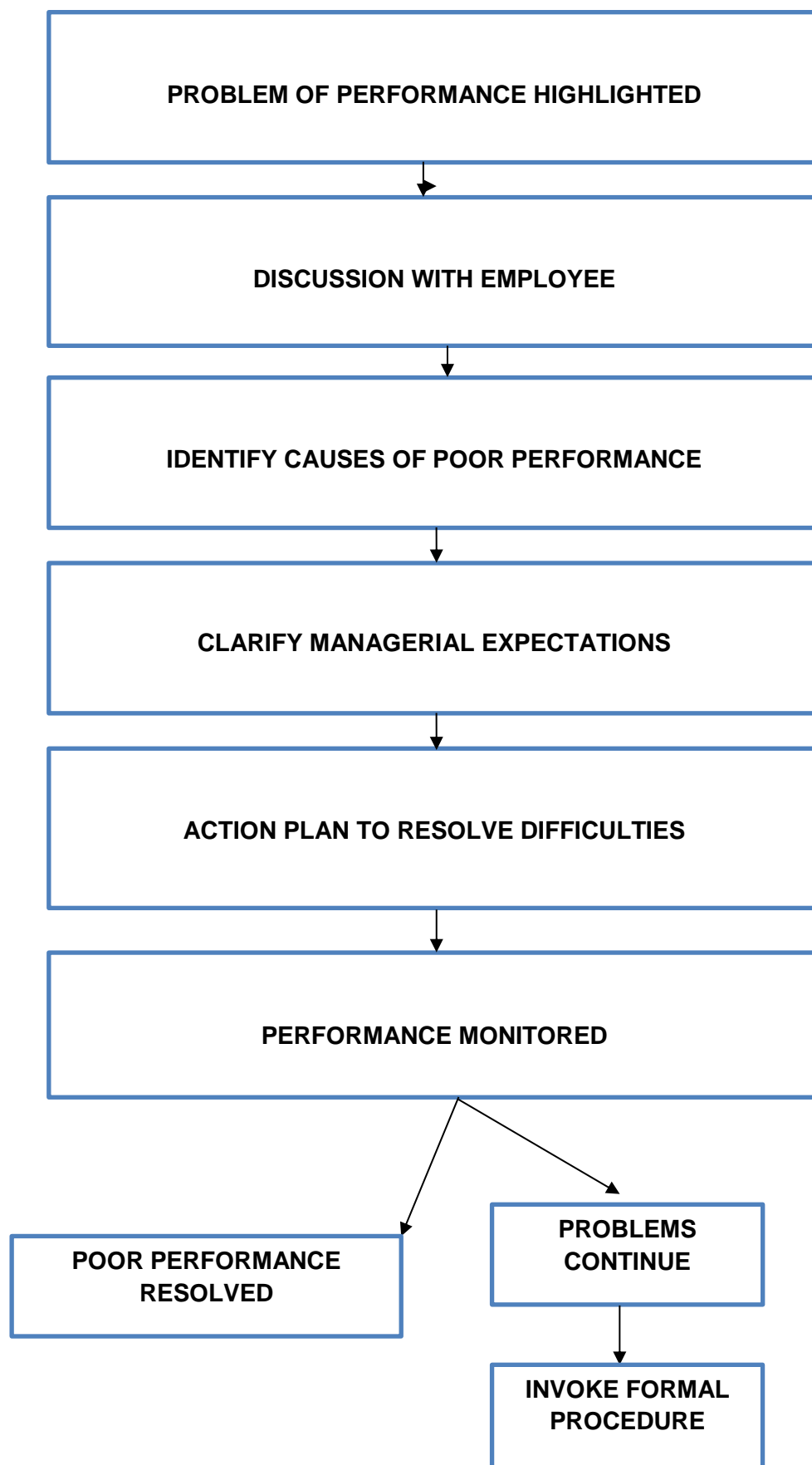
10. RECORDS

- 10.1 Management is responsible for keeping records of performance meetings at all levels. The records will be notes of meetings. The record of the formal stage performance hearing will be made available to the employee, before any appeal.

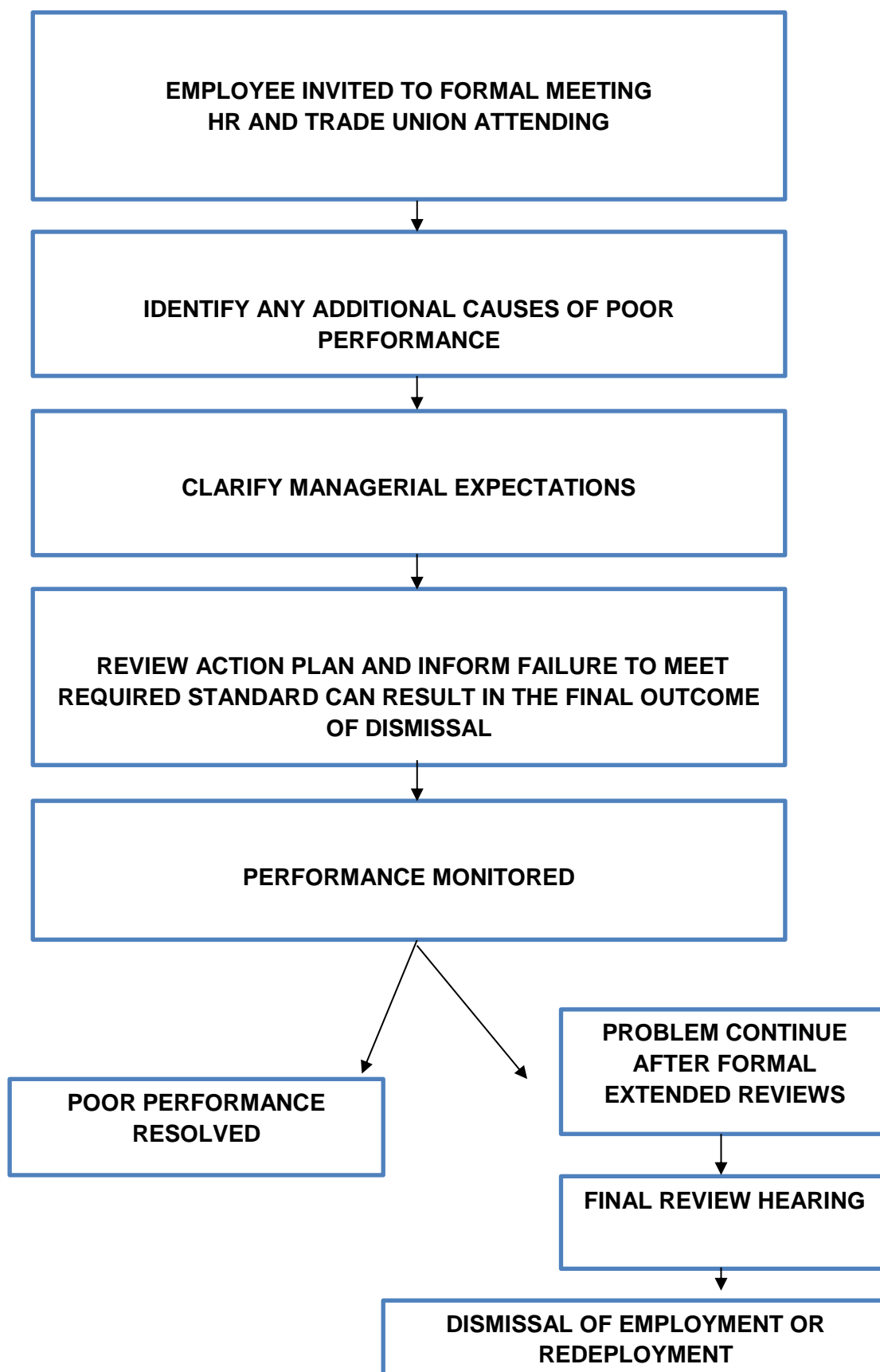
11. CONSULTATION, APPROVAL AND RATIFICATION

- 11.1 The HR Policy Workshop which is composed of management, staff side and HR representatives considers all draft HR policies and guidance. All members have the opportunity to make comments and suggestions on the document content which is debated within the group and amendments made and agreed.
- 11.2 The CCGs Senior Management Team and/or other relevant Committees ratify the final HR policies. The role of the Staff Partnership Forum is to discuss and minute the policies and procedures that are submitted to the HR Policy Workshop.

MANAGING POOR PERFORMANCE - INFORMAL PROCESS



MANAGING POOR PERFORMANCE - FORMAL PROCESS



Equality Impact Assessment

| | | |
|--|--|-----------------------|
| Title of policy | Managing Concerns with Performance Policy | |
| Names and roles of people completing the assessment | Alison Ewart – HR Business Partner Nadeem Murtura – Senior Associate E &D | |
| Date assessment started/completed | 11/02/14 | Review date July 2020 |

| 1. Outline | |
|---|---|
| Give a brief summary of the policy | The policy provides an informal and formal staged procedure for line managers to support staff with any performance concerns in a fair and consistent approach. The policy adheres to the NHS LA standards and best practice. Makes all reasonable provision to ensure equity of access to all staff. There are no statements, conditions or requirements that disadvantage any particular group of people with a protected characteristic. |
| What outcomes do you want to achieve | A clear and fair approach for line managers to follow should they have concerns with any aspect of performance from a member of staff. A policy which is supportive in nature to all members of staff. |

| 2. Analysis of impact | | | |
|---|--|--|--|
| This is the core of the assessment, using the information above detail the actual or likely impact on protected groups, with consideration of the general duty to; eliminate unlawful discrimination; advance equality of opportunity; foster good relations | | | |
| | Are there any likely impacts? Are any groups going to be affected differently? Please describe. | Are these negative or positive? | What action will be taken to address any negative impacts or enhance positive ones? |
| Age | | | |
| Carers | Staff who have caring responsibilities may have | Negative if not | A specific 'leave' policy to support staff with caring |

| | | | |
|---------------------------------------|--|----------------------------------|---|
| | more time away from the workplace which may impact on their performance. | managed properly | responsibilities. Every member of staff will be dealt with individually and should mitigation be submitted by the employee this will be considered by the line manager. |
| Disability | Yes, disabled staff may potentially experience a higher sickness absence rate or may not be able to perform their role to its full capacity due to impairment. | Negative if not managed properly | <p>A separate 'Absence' policy will be put in place to support staff with a disability.</p> <p>Every member of staff will be dealt with individually and should mitigation be submitted by the employee this will be considered by the line manager including a referral to Occupational Health.</p> <p>In those circumstance reasonable adjustments would be considered and implemented.</p> |
| Sex | No | | |
| Race | No | | |
| Religion or belief | No | | |
| Sexual orientation | No | | |
| Gender reassignment | No | | |
| Pregnancy and maternity | No | | |
| Marriage and civil partnership | No | | |
| Other relevant group | No | | |
| | | | |

| | |
|---|--|
| <p>If any negative/positive impacts were identified are they valid, legal and/or justifiable?</p> <p>Please detail.</p> | <p>This policy makes all reasonable provision to ensure equity of access to all employees. Measures have been identified and will be taken where there is a potential disadvantage to groups with a protected characteristic. These are in line with Equality best practice.</p> |
|---|--|

| 3. Monitoring, Review and Publication | | | |
|--|---|----------------------------|------------------|
| <p>How will you review/monitor the impact and effectiveness of your actions</p> | <p>The policy takes into account for individual circumstances and makes reasonable adjustment for staff who are carers and those with a disability. Line manager training will be in place once the policy has been ratified to ensure equity in application to these protected groups.</p> | | |
| <p>Lead Officer</p> | <p>Tazeem Hanif</p> | <p>Review date:</p> | <p>July 2020</p> |

| 4. Equality and Diversity Sign off | | | |
|------------------------------------|-----------------------|------------------------------|-------------------|
| <p>Equality Lead Officer</p> | <p>Nadeem Murtuja</p> | | |
| | | <p>Date approved:</p> | <p>April 2014</p> |

| 5. Sign off | | | |
|----------------------------|--|------------------------------|------------------|
| <p>Lead Officer</p> | <p>Fiona Jeffrey</p> | | |
| <p>Director</p> | <p>Associate Director of Corporate Affairs</p> | <p>Date approved:</p> | <p>July 2015</p> |