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| **BARNSLEY CLINICAL COMMISSIONING GROUP** **MANAGING CONCERNS WITH PERFORMANCE AT WORK POLICY** |

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| Version: | 1.3 |
| Approved By: | Governing Body |
| Date Approved: | 13 February 2014 (approved)January 2015 (reviewed)December 2016 (reviewed)December 2020 (reviewed) |
| Name of originator / author: | HR & OD Business Partner |
| Name of responsible committee/ individual: | Governing Body (Approval)Equality & Engagement Committee (review) |
| Name of executive lead: | Chief Officer  |
| Date issued: | December 2020 |
| Review Date: | 3 years from review |
| Target Audience: | Barnsley CCG staff |

**THIS POLICY HAS BEEN SUBJECT TO A FULL EQUALITY IMPACT ASSESSMENT**

**Amendment Log**

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| **Version No** | **Type of Change** | **Date**  | **Description of change** |
| DRAFT  |  | January 2014 | For consultation with CCG/Staff Side. Amendments included. With CCG consultation will go to next SPF. |
| 1 |  | 13 February 2014 | Approved by Governing Body |
| 1.1 | Approved | January 2015 | Minor changes following planned review at ESG |
| 1.2 | Approved | January 2017 | Minor changes following planned review at Equality and Engagement Committee |
| 1.3 | Approved | September 2020 | Updated to include some minor changes following planned review at Equality and Engagement Committee |

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1. **PURPOSE**

This document sets out the CCG’s Policy and Procedure for managing concerns with performance. 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.

1. SCOPE

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

**3. 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.

1. **ACCOUNTABILITY**

The Chief Officer is accountable for this policy.

**5. IMPLEMENTATION AND MONITORING**

* 1. The Governing Body is responsible for formal monitoring of this policy. Following ratification the policy will be disseminated to staff via the intranet. The policy is to be reviewed two years from the date of review unless there is good reason to update this more frequently, such as changes in employment law and good practice. Monitoring and review will be via the Equality and Engagement Committee.
	2. The policy and procedure will be reviewed periodically by Human Resources in conjunction with managers and Trade Union representatives where applicable. Where review is necessary due to legislative change, this will happen immediately.

6. RESPONSIBILITIES

6.1 JOINT RESPONSIBILITY

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

6.2 MANagement Responsibility

 The Manager will:-

* agree standards of performance, which are specific, realistic, achievable and measurable, 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 in line with the appraisal process.
* 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 and in accordance with the Equality & Diversity policy.

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 standards 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.
* contributing to any discussions about their performance and participate fully in any reasonable action plans aimed at performance improvement.
* complying 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

At each formal stage of the procedure an employee has the right to be accompanied 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.

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. A reasonable extension of time should be considered for TU representation to be arranged in line with statutory requirements.

**8.** **IDENTIFYING POOR OR DIMINISHING PERFORMANCE**

There may be occasions when a line manager needs to have a discussion with an employee regarding their performance or standard of work. Where such incidents are isolated, this does not constitute poor performance.

Where such occurrences become more frequent or more significant and it becomes apparent that this is a cause for concern, the line manager should commence the process identified in the following paragraphs for managing poor performance.

Work performance issues may be identified by the individual employee who is experiencing difficulty, colleagues and/or the line manager. Where the individual recognises that they are having problems, they should discuss with their line manager as soon as possible. If a work colleague notices there may be problems, this should be referred on to the individuals line manager. In this case and where the problems are identified by the line manager, the first, and the most important step is to make the employee aware of the concerns.

9. Procedure – INFORMAL

An informal meeting should be held with the employee to try and establish the reason for the poor performance. 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, or could include specific pieces of work or situations. 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.

Some of the potential reasons for the performance issues and the possible courses of action are as follows:

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| **Reason for Poor Performance** | **Possible Outcome**  |
| Worries or problems at home or work. | Counselling or practical hep may resolve the issue. |
| Difficulty with one particular aspect of the role. | Constructive supervision, training, education or secondment, either singularly or in combination may overcome the difficulty.Expectations in relation to performance and personal objectives should be reviewed. |
| An underlying medical condition or illness. | Advice may be sought from Occupational Health Services in accordance with the Sickness Absence Policy. |
| Unsuitability of working pattern. | Flexible Working options can be explored in accordance with the Flexible Working Policy. |
| Feelings of being bullied or harassed. | Advice should be sought from Human Resources in accordance with the Harassment and Bullying Policy and the appropriate support mechanism put in place. |
| Work Related Stress. | A stress risk assessment should be undertaken and advice sought from Human Resources in accordance with the Managing Occupational Stress Policy and may include advice from Occupational Health Services. Expectations in relation to performance and personal objectives should be reviewed. |
| Workload – either too much or too little. | A review of the working pattern should be undertaken and the levels of autonomy/delegation reviewed. |
| Alcohol/Drug/Substance Misuse. | Immediate advice should be sought from Human Resources in accordance with the Alcohol/Drug/Substance Misuse Policy. This will include advice from Occupational Health Services and may result in disciplinary proceedings. |
| Secondary employment | If the poor performance may be due to a relevant conflict of interest such as secondary working or running their own business, the matter should be reported to the Counter Fraud Specialist at the earliest possible opportunity either by the employee’s line manager or HR. The employee must not be advised of the referral until the issue has been discussed with Counter Fraud and agreement given that the CCG may disclose to the employee that a referral has been made.  |

 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 also be linked to the completion of actions/objectives at specific times. 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.

**10. PROCEDURE – FORMAL**

**10.1 FORMAL REVIEW**

 This mode of action pre-supposes that either the informal counselling has failed to address the poor performance or that the nature and severity of the poor performance warrants the formal level of action being initiated at the outset. The process is outlined in the following paragraphs.

 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 Trade Union representative or work colleague not acting in a legal capacity, if appropriate, will attend the meeting.

 The purpose of the meeting will be to:

* Make the employee aware of the shortfall(s) in performance
* Remind the employee of the standards which are required
* Identify the reasons for the problem
* Obtain the commitment of the employee to achieve the required standard
* Explore ways of improving performance to achieve the required standard and agree an action plan
* Set an appropriate period of time for the employee to improve and agree how this will be measured and monitored. The timescales that are allowed for performance to improve will vary from case to case depending upon the nature of the problem and the solutions chosen
* Inform the employee what the consequences of not meeting the standard will be, ie. the case may be referred to a formal panel and a warning issued.

 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.

 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 REVIEW - CONTINUED UNDERPERFORMANCE**

 Following a review of the actions agreed at the initial formal review, if there are continued concerns with performance a second review will take place. The format and agenda of the meeting will be as at 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 meeting an additional improvement plan will be agreed with specific actions, targets and review dates.

 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 at the level of Head of Service or Director 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 a 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 will be invited to produce a statement of case, should they wish to, including any relevant material to support their case.

This information should be provided to the Human Resources representative no later than 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 no later than 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 disciplinary 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

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Performance review hearings should be fair and consistent. The independent manager appointed to the panel 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 management report.
* the panel may question the manager.
* the employee/representative may question the manager.
* the 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 (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 and available.
* 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 giving the grounds for appeal.

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

The independent 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 no later than 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 no later than 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 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:**

Two Directors 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 or not the employee is capable of doing his or her job
* 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.

# RECORDS

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

**Equality Impact Assessment**

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| **Title of policy or service:** | Managing Concerns with Performance in the Workplace |
| **Name and role of officer/s completing** **the assessment:** | HR & OD Business Partner |
| **Date of assessment:** | September 2020 |
| **Type of EIA completed:**   | **Initial EIA ‘Screening’** [x]  ***or*  ‘Full’ EIA process** [ ]   | *(select one option - see page 4 for guidance)* |

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| **1. Outline** |
| **Give a brief summary of your policy or service*** Aims
* Objectives
* Links to other policies, including partners, national or regional
 | 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:-* Acceptable Standards of Behaviour Policy
* Disciplinary Policy
* Grievance Policy
* Whistleblowing Policy
 |

**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.

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| **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*.  |
| **(Please complete****each area)** | **What key impact have you identified?** | **For impact identified (either positive** **or negative) give details below:**  |
|  | **Positive****Impact**  | **Neutral****impact** | **Negative****impact** | **How does this impact and what action, if any, do you need to take to address these issues?** | **What difference will this make?** |
| **Human rights** |[ ] [x] [ ]  Procedure to be applied equally to all staff. | Promotes equality in the workplace. |
| **Age** |[ ] [x] [ ]  Procedure intended to apply to all staff regardless of age | Promotes equality within the workplace. |
| **Carers** |[ ] [x] [ ]  Procedure to be applied equally to all staff. | Promotes equality within the workplace. |
| **Disability** |[ ] [x] [ ]  Procedure intended to apply to all staff. | Promotes equality within the workplace. |
| **Sex** |[ ] [x] [ ]  Procedure intended to apply to all staff regardless of sex | Promotes equality within the workplace. |
| **Race** |[ ] [x] [ ]  Procedure intended to apply to all staff regardless of race | Promotes equality within the workplace. |
| **Religion or belief** |[ ] [x] [ ]  Procedure intended to apply to all staff regardless of religion | Promotes equality within the workplace. |
| **Sexual orientation** |[ ] [x] [ ]  Procedure intended to apply to all staff regardless of sexual orientation | Promotes equality within the workplace. |
| **Gender reassignment** |[ ] [x] [ ]  Procedure intended to apply to all staff. | Promotes equality within the workplace. |
| **Pregnancy and maternity** |[ ] [x] [ ]  Procedure intended to apply to all staff. | Promotes equality within the workplace. |
| **Marriage and civil partnership** (only eliminating discrimination) |[ ] [x] [ ]  Procedure intended to apply to all staff. | Promotes equality within the workplace. |
| **Other relevant groups** |[ ] [x] [ ]  Procedure intended to apply to all staff  | Promotes equality within the workplace. |
| **HR Policies only:****Part or Fixed term staff**  |[ ] [x] [ ]  Procedure intended to apply to all staff. | Promotes equality within the workplace. |

***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.

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

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| **4. Monitoring, Review and Publication** |
| **When will the proposal be reviewed and by whom?** | **Lead / Reviewing Officer:** | HR & OD Business Partner | **Date of next Review:** | September 2023 |