MANAGING UNSATISFACTORY WORK PERFORMANCE POLICY

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<th>POLICY NO</th>
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POLICY STATEMENT/KEY OBJECTIVES:
To assist employees who fail to meet the required level of performance through the provision of appropriate feedback, training and support and to provide a fair and consistent framework to deal with capability issues.

ACCOUNTABLE DIRECTOR: Director Human Resources

POLICY AUTHOR: Human Resources Manager East Lancashire
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1. POLICY STATEMENT

1.1 Lancashire Care NHS Trust recognises the contribution of its employees to the delivery of quality services and aims to ensure that standards of patient care and service delivery are maintained.

1.2 The aim of this policy is to define how the Trust will:

- Assist employees who fail to meet the required level of performance through the provision of appropriate feedback, training and support.
- Provide a fair and consistent framework to deal with capability issues

2. SCOPE

2.1 The policy applies to all Trust staff with the exception of Medical and Dental staff. Capability issues for these staff should be considered in accordance with Health Service Circular 2003/012 ‘Maintaining High Professional Standards in the Modern NHS’.

2.2 The policy is intended to cover situations where performance is unsatisfactory due to lack of capability. i.e. where there is a lack of ability, skill or aptitude.

2.3 The policy is not intended to cover situations where unacceptable performance is attributable to wilful or deliberate refusal to work satisfactorily. This is an issue of conduct and should be considered in accordance with the Trust’s Disciplinary Policy (HR 014).

2.4 The policy is not intended to cover situations where incapability is due to sickness absence or ill health. These issues should be considered in accordance with the Trust’s Sickness Absence Policy (HR005).

2.5 The policy is not intended to cover situations where an employee’s capability is affected by disability. These issues should be considered in accordance with the Disability Discrimination Act and advice sought from the Human Resources Department.

2.6 This policy should be used in conjunction with the Trust Performance Development Review Process and Gateway Policy.

3. PRINCIPLES

3.1 The policy should always be applied consistently and fairly

3.2 Unsatisfactory performance should be addressed at the earliest opportunity.
3.3 Formal procedures are not intended to replace normal supervisory arrangements and should only be invoked where counselling and informal procedures have been exhausted.

3.4 Employees have the right to be accompanied by a recognised Trade Union representative or work colleague at any formal stage of the procedure.

3.5 The policy should be applied sequentially. However consideration may be given to move to the latter stages of the policy where a serious situation occurs.

3.6 Consideration should be given to identifying other suitable roles.

4. **RESPONSIBILITIES**

4.1 **The Trust** – has responsibility to ensure that through the line management structure, employees have access to adequate support, supervision and training and development opportunities.

4.2 **Line Managers** – have the responsibility to attend Recruitment & Selection Training to ensure the effective application of the Trust’s Recruitment & Selection procedures. Careful recruitment and selection will minimise the risk of unsatisfactory performance.

4.3 To ensure job descriptions accurately convey the main purpose, scope and responsibilities of the role.

4.4 To ensure that all new employees are provided with a comprehensive induction to the role and the expected standards of performance are communicated as part of this programme.

4.5 To carry out Performance Development Reviews with staff on a regular basis

4.6 To address capability issues as they arise

4.7 To attend training on the application of this policy

4.8 To provide regular instruction, training, supervision and support to enable employees to maintain expected levels of performance.

4.9 **Employees** – have the responsibility to recognise when their performance is falling below the required standard and to request assistance from their line manager

4.10 To engage in the Personal Development Review process and to request training, supervision and support.

4.11 To seek clarification of the standard of work required if this is unclear.
4.12 **The Human Resources Department** – has the responsibility to monitor the implementation of the Policy and to ensure procedures are managed fairly across the Trust. The Human Resources Department will provide training, guidance and support to Line Managers on the operation of this Policy.

5. **PROCEDURE FOR DEALING WITH UNSATISFACTORY WORK PERFORMANCE**

5.1 Managers will regularly monitor employee’s performance and will provide regular feedback as part of normal supervision arrangements and the Trust’s Performance Development Review process. However, where a concern develops beyond that and an employee’s work does not reach or falls below the required standard the following procedure shall be adopted.

5.2 **Stage 1 - Informal Stage**

Where an issue concerning performance has been identified it is expected that the Manager will deal with it informally in the first instance.

The Manager should discuss the problem with the employee at the earliest opportunity and in particular: -

- Explain clearly the shortfall between the employee’s performance and the required standard.
- Mutually explore the cause(s) of the unsatisfactory performance. Encourage the employee to describe the situation from their perspective.
- Mutually agree an action plan to address the shortfall. This may include additional training, retraining, or closer supervision and support.
- Establish a realistic timescale for the employee to reach the required standard and agree an appropriate method of monitoring.
- Inform the employee what will happen if the required standard is not met.
- Explain that the concerns about the employee’s performance may result in stage 2 of the procedure being instigated if an improvement is not demonstrated and at this point consideration will be given to the deferral of pay progression at either of the two Knowledge & Skills gateways.
- Following the discussion the manager should confirm the outcome of the discussion in writing, together with a copy of the agreed action plan and review date.
Where, following the review period the employee has reached the required standard of performance, no further action is required. The manager should confirm this in writing to the employee, to recognise this achievement (see appendix 4). Performance should be monitored through supervision and the Performance Development Review Process. If the performance falls below the required standard again, Managers, after seeking advice from the Human Resources Department, may show discretion in determining which stage of this procedure to apply.

5.3 Stage 2 - First Letter of Concern

Where, following the review period and after reasonable opportunity for improvement, the performance remains below the required standard, the manager should consider formal action.

- The manager should inform the employee of the continuing concern and write to the employee giving reasonable notice of a formal meeting (see appendix 1). The employee will be informed of their right to be represented at the meeting and that a Human Resources representative will also attend.

- At the meeting the manager should use the following checklist: -

  - Explain clearly the shortfall between the employee’s performance and the required standard.

  - Explore the reasons for the shortfall

  - Give the employee an opportunity to explain the reasons for the shortfall

  - Identify the remedial action required

  - Identify any training and development needs, or any other assistance that can be offered.

  - Inform the employee that an improvement is required and the potential consequences of not reaching the required standard of performance (i.e. the next stage in the procedure).

  - Set a review date (not exceeding 3 months) and an appropriate method of monitoring.

It may be appropriate at this stage to explore the following options: -

- Revising/reducing duties/ hours of work
- Alternative employment
• Work at a lower grade
• Referral to Occupational Health if appropriate
• Consider deferral for pay progression

The manager should confirm the outcome of the meeting in writing (see appendix 2). This letter will constitute a first letter of concern.

Where, following the review period the employee has reached the required standard of performance, no further action is required. The manager should confirm this in writing to the employee, to recognise this achievement (see appendix 4). Performance should be monitored through supervision and the Performance Development Review Process. If the performance falls below the required standard again, Managers, after seeking advice from the Human Resources Department, may show discretion in determining which stage of this procedure to apply.

5.4 Stage 3 – Second Letter of Concern

Where, following the review period and after reasonable opportunity for improvement, the performance remains below the required standard, the manager should arrange a further formal meeting.

The manager should inform the employee of the continuing concern and write to the employee giving reasonable notice of a further formal meeting (see appendix 1). The employee will be informed of their right to be represented at the meeting and that a Human Resources representative will also attend.

The manager should repeat the checklist and explain that failure to improve their performance to meet the required standard may result in their dismissal.

The manager should confirm the outcome of the meeting in writing (see appendix 3). This letter will constitute a second letter of concern.

Where, following the review period the employee has reached the required standard of performance, no further action is required. The manager should confirm this in writing to the employee, to recognise this achievement (see appendix 4). Performance should be monitored through supervision and the Performance Development Review Process. If the performance falls below the required standard again, Managers, after seeking advice from the Human Resources Department, may show discretion in determining which stage of this procedure to apply.

5.5 Stage 4 – Final Stage – Capability Hearing

Where, following the review period and after reasonable opportunity for improvement, the performance remains below the required standard, the employee will be invited to attend a formal hearing. The hearing will be chaired by a manager with delegated authority to dismiss (see HR014
Disciplinary Procedure), who will be accompanied by a Human Resources Representative.

The employee will be offered the opportunity to be accompanied at the meeting by a recognised Trade Union representative or workplace colleague.

To ensure that the employee is given adequate opportunity to present their case and question management actions, the format for a disciplinary hearing in accordance with the Trust’s disciplinary procedure will be followed.

The following outcomes may be considered:

- Redeployment or alternative employment in the Trust
- Downgrading
- Termination of employment on grounds of capability with the appropriate notice period

The employee will receive written confirmation of the outcome of the hearing.

6. **APPEALS**

6.1 Employees have the right to appeal against dismissal or any other action taken as a result of the final stage in this procedure. The employee must exercise this right by writing to the Director of Human Resources, at Trust Headquarters, Sceptre Point, Sceptre Way, Walton Summit, Bamber Bridge, Preston, PR5 6AW stating the grounds for appeal within 14 days of receipt of the letter confirming the outcome of the hearing.

6.2 The format for an appeal hearing in accordance with the Trust’s disciplinary procedure will be followed.

6.3 An employee aggrieved about decisions or actions at any other point of the procedure may use the Grievance Procedure to seek redress.

7. **ALTERNATIVE EMPLOYMENT**

7.1 Where, at any stage in the procedure, alternative employment is considered, the employee and their representative must be involved fully in the process.

7.2 The Trust is not obliged to create an alternative post but if a suitable alternative is identified the employee will be notified of the post without delay. A meeting should be arranged between the Manager of the section in which the vacancy exists, the employee and their representative. This is not intended to be a full formal recruitment interview. The meeting should be more around establishing a trial period (not exceeding 3
months) and that the employee would be able to demonstrate (with appropriate training) that they would be able to meet the full requirements of the job.

7.3 Where alternative employment is identified and is at a lower grade than the employee’s current post, protection would not normally be afforded and the employee would be subject to the salary, terms and conditions of the new post.

8. OTHER RELATED POLICIES & PROCEDURES

Disciplinary Policy
Sickness Absence Policy
Gateway Policy
Performance Development Review Procedures
Training and Development Policy
Grievance Procedure
Medical Redeployment Policy
Equal Opportunities Policy
Induction Policy
APPENDIX 1

Example of a Letter to Arrange a Formal Review Meeting

PRIVATE & CONFIDENTIAL

Name
Address
Postcode

Dear ............

We met informally/formally on (insert date) to discuss your performance and we agreed the following objectives:

- (insert objectives)
- ......................
- ......................

We also agreed that your progress would be monitored and reviewed after (insert review period). Following the review period I remain concerned that your performance has not improved to the required standard.

Therefore I would like to invite you to attend a formal meeting with me to discuss your performance further. You may be accompanied at the meeting by a recognised Trade Union Representative or Work Colleague. A representative from Human Resources will also attend. This meeting constitutes a Stage (insert stage) meeting in accordance with the Trust’s ‘Managing Unsatisfactory Work Performance Policy’ a copy of which is enclosed for your information.

Please contact me on (insert contact details) to confirm your attendance.

Yours sincerely,

Line Manager

CC Human Resources
APPENDIX 2

Example of a First Letter of Concern

PRIVATE & CONFIDENTIAL

Name
Address

Dear ............

Thank you for attending the meeting with me held on (insert date) where you were accompanied by (insert name of representative). (Insert name) from the Human Resources Department was also present.

The purpose of the meeting was to formally discuss your performance in accordance with Stage 2 of the Trust’s ‘Managing Unsatisfactory Work Performance Policy’.

We discussed that at our informal meeting on (insert date) we had agreed the following objectives, which would be reviewed after (insert review date).

- (insert objectives)
- .........................
- .........................

I explained that despite receiving adequate training and support you have failed to reach the required standard of performance. I am writing formally to express my concern and this letter constitutes a ‘First Letter of Concern’.

We agreed the following action to give you the opportunity to improve your performance to the expected level.

- (insert remedial action required and support identified)
- ..............................................................................
- ..............................................................................

We agreed that I would monitor your performance over the next (insert number) months and we will meet again after then to review your progress. I explained that if a significant improvement is not demonstrated then further formal action (stage 3) will be taken.

If, in the meantime you experience any difficulties or need and further support or advice, please do not hesitate to contact me.

Yours sincerely

Line Manager

CC Human Resources Department
APPENDIX 3

Example of a Second Letter of Concern

PRIVATE & CONFIDENTIAL

Name
Address

Dear .............

Thank you for attending the meeting with me held on (insert date) where you were accompanied by (insert name of representative). (Insert name) from the Human Resources Department was also present.

The purpose of the meeting was to formally discuss your performance in accordance with Stage 3 of the Trust’s ‘Managing Unsatisfactory Work Performance Policy’.

We discussed that at our informal meeting on (insert date) and at the Stage 2 meeting on (insert date) we had agreed the following objectives, which would be reviewed after (insert review date).

- (insert objectives)
- .................
- ..................

I explained that despite receiving adequate training and support you have failed to reach the required standard of performance. I am writing formally again to express my concern and this letter constitutes a ‘Second Letter of Concern’.

We agreed the following action to give you the opportunity to improve your performance to the expected level.

- (insert remedial action required and support identified)
- ..................................................................
- ..................................................................

We agreed that I would monitor your performance over the next (insert number) months and we will meet again after then to review your progress. I explained that if a significant improvement is not demonstrated then a Capability Hearing in line with stage 4 will be arranged. Outcomes of this hearing may include, downgrading, finding alternative employment or ultimately the termination of your employment.

If, in the meantime you experience any difficulties or need and further support or advice, please do not hesitate to contact me.

Yours sincerely

Line Manager

CC Human Resources Department
APPENDIX 4

Example of a letter when the required level of performance has been achieved

PRIVATE & CONFIDENTIAL

Name
Address

Dear ............

I am writing further to the meeting held on (insert date). The purpose of the meeting was to formally discuss your performance in accordance with Stage (insert stage) of the Trust’s ‘Managing Unsatisfactory Work Performance Policy’.

We discussed the following objectives, which would be reviewed after (insert review date).

- (insert objectives)
- ....................
- ....................

I am writing to confirm that following the agreed review period, I am satisfied that you have achieved these objectives and that your performance has now reached satisfactory levels.

Therefore I am intending to take no further action. However, your performance will continue to be monitored through supervision and the Personal Development Review Process.

If, in the meantime you experience any difficulties or need and further support or advice, please do not hesitate to contact me.

Yours sincerely

Line Manager

CC Human Resources Department