

IMPROVING PERFORMANCE POLICY (H17)

**To be used in conjunction with Improving Performance Management Resource
Pack**

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H17 – Improving Performance Policy

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Approved By:		Date Approved:	
JCNC		23 November 2015	
Cost Imps Meeting		10 December 2015	
Staff Side Chair		April 2018	
Links or overlaps with other policies:			
Management Resource Pack - Improving Performance Policy			
Disciplinary Policy (H1)			
Acceptable Behaviour Policy (H4)			
Achievement Review Policy (H6)			
Attendance Policy (H33)			

Amendment History

Issue	Status	Date	Reason for Change	Authorised
1.1	Approved	December 2015	Amendment to panel members for appeals (appendix 6) - reduction from three with Exec chair to a minimum of two.	Yes
1.2	Approved	April 2018	General Review – change to new EIA template	
1.3	Approved	July 2021	Updated wording around People Hub Team & People Directorate / contact details / logo / Version / date	People Hub
1.4	Approved	March 2025	General review and publication of a management resource pack as a separate document.	ER team

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Rapid (E)quality Impact Assessment (EqIA) (for use when writing policies)

Please contact the Equalities team for guidance: For Torbay and South Devon NHS Trusts, please call 01803 656676 or email pf.dshct@nhs.net This form should be published with the policy and a signed copy sent to your relevant organisation.

Policy Title (and number)	Improving Performance Policy (H17)	Version and Date	1.4 - March 2025
Policy Author	Employee Relations Team		
An (e)quality impact assessment is a process designed to ensure that policies do not discriminate or disadvantage people whilst advancing equality. Consider the nature and extent of the impact, not the number of people affected.			
Who may be affected by this document?			
Patients/ Service Users ☐	Staff ☒	Other, please state... ☐	
Could the policy treat people from protected groups less favourably than the general population?			
<i>PLEASE NOTE: Any 'Yes' answers may trigger a full EIA and must be referred to the equality leads below</i>			
Age	Yes ☐ No ☒	Gender Reassignment	Yes ☐ No ☒
Race	Yes ☐ No ☒	Disability	Yes ☐ No ☒
Gender	Yes ☐ No ☒	Pregnancy/Maternity	Yes ☐ No ☒
Sexual Orientation			Yes ☐ No ☒
Religion/Belief (non)			Yes ☐ No ☒
Marriage/ Civil Partnership			Yes ☐ No ☒
Is it likely that the policy could affect particular 'Inclusion Health' groups less favourably than the general population? (substance misuse; teenage mums; carers ¹ ; travellers ² ; homeless ³ ; convictions; social isolation ⁴ ; refugees)			Yes ☐ No ☒
Please provide details for each protected group where you have indicated 'Yes'.			
VISION AND VALUES: Policies must aim to remove unintentional barriers and promote inclusion			
Is inclusive language ⁵ used throughout?			Yes ☒ No ☐ NA ☐
Are the services outlined in the policy fully accessible ⁶ ?			Yes ☒ No ☐ NA ☐
Does the policy encourage individualised and person-centered care?			Yes ☒ No ☐ NA ☐
Could there be an adverse impact on an individual's independence or autonomy ⁷ ?			Yes ☐ No ☐ NA ☒
EXTERNAL FACTORS			
Is the policy a result of national legislation which cannot be modified in any way?			Yes ☒ No ☐
What is the reason for writing this policy? (Is it a result in a change of legislation/ national research?) To ensure that there is a fair, non-discriminatory, consistent, effective and prompt approach to managing performance concerns throughout the organisation.			
Who was consulted when drafting this policy?			
Patients/ Service Users ☐	Trade Unions ☒	Protected Groups (including Trust Equality Groups) ☐	
Staff ☒	General Public ☐	Other, please state... ☐	
What were the recommendations/suggestions?			
Does this document require a service redesign or substantial amendments to an existing process?			Yes ☐ No ☒
<i>PLEASE NOTE: 'Yes' may trigger a full EIA, please refer to the equality leads below</i>			
ACTION PLAN: Please list all actions identified to address any impacts			
Action	Person responsible	Completion date	
None required			
AUTHORISATION:			
By signing below, I confirm that the named person responsible above is aware of the actions assigned to them			
Name of person completing the form	ER Team Lead		
Validated by (line manager)	ER Service Manager		

¹ Consider any additional needs of carers/ parents/ advocates etc, in addition to the service user

² Travelers may not be registered with a GP - consider how they may access/ be aware of services available to them

³ Consider any provisions for those with no fixed abode, particularly relating to impact on discharge⁴ Consider how someone will be aware of (or access) a service if socially or geographically isolated

⁵ Language must be relevant and appropriate, for example referring to partners, not husbands or wives

⁶ Consider both physical access to services and how information/ communication is available in an accessible format

⁷ Example: a telephone-based service may discriminate against people who are d/Deaf. Whilst someone may be able to act on their behalf, this does not promote independence or autonomy

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1 Policy statement

- 1.1 This policy is designed to set out Torbay and South Devon NHS Foundation Trust's, (hereinafter referred to as the Trust), policy and procedure where an employee's performance falls short of the expectations of the role
- 1.2 The purpose of this policy is to ensure that all employees (regardless of their level of performance) are subject to fair and consistent treatment.
- 1.3 The fundamental consideration for both explicit and implied expectations and standards is that if an individual is not aware of them, then they cannot be measured by them.

2 Scope

- 2.1 This policy applies to all staff employed by the Trust, except Medical and Dental staff for whom separate provisions apply, together with those on a joint contract with the Trust and another employer.

3 Equality and diversity statement

- 3.1 The Trust is committed to preventing discrimination, valuing diversity and achieving equality of opportunity. No person (staff, patient or public) will receive less favourable treatment on the grounds of the nine protected characteristics (as governed by the Equality Act 2010): sexual orientation; gender; age; gender re-assignment; pregnancy and maternity; disability; religion or belief; race; marriage and civil partnership. In addition to these nine, the Trusts will not discriminate on the grounds of domestic circumstances, social-economic status, political affiliation or trade union membership.
- 3.2 The Trust is committed to ensuring all services, policies, projects and strategies undergo equality analysis.

4 Introduction

- 4.1 The Trust aims to provide high quality services to its patients and service users by recruiting high calibre staff and training them to carry out their work to the appropriate standard of performance. However there may be occasions where an employee is unable to meet the required performance standards and this is referred to interchangeably as an employee having capability or performance issues. For the purposes of this policy, an employee is felt to have performance issues when their ability, skills or experience are insufficient as to allow them to carry out the role to the expected standards.
- 4.2 For the purposes of this policy, a performance issue may be, but not exclusively, characterised by:
 - An employee failing to meet expected and communicated performance quality and/or quantity standards in respect of their day to day work
 - An employee working too slowly
 - An employee failing to meet required communicated standards in respect of attitude
 - An employee requiring continual close supervision (more than would otherwise be expected at their pay band) from the manager in order to maintain performance levels

- An employee failing to self-manage their emotions appropriately
 - An employee failing to meet appraisal objectives set for 'development' or for 'performance'
 - An employee's inability to meet developmental objectives, in order to cope with the changes taking place in the environment
 - An employee demonstrating less than acceptable interpersonal style (although separate procedures exist for matters of unacceptable behaviour) where an employee's behaviour impacts negatively on another individual or a complaint is raised.
- 4.3 Nothing in this procedure is intended to prevent normal line manager conversations (in one-to-one or supervision meetings) from taking place; meetings whereby line managers allocate work, monitor performance, highlight work well done and draw attention to errors or poor quality. Normal management meetings should include assistance in achieving improvements in performance.
- 4.4 A manager managing a performance issue may experience difficulties in the on-going working relationship with the employee and the Trust is committed to supporting both manager and employee in their professional relationship.
- 4.5 Separate procedures apply where poor performance is related to conduct (Disciplinary Policy H1) or is due to ill-health (Attendance Policy H33).

5 Job expectations

- 5.1 Generic expectations of a role are documented in job descriptions, person specifications, and local procedures.
- 5.2 During induction, a new starter should have the expectations of the job explained to them. The line manager must ensure that the employee understands the standards of performance expected. These standards should be realistic and reasonable in relation to the length of time the employee has been in the role.
- 5.3 The Trust recognises that there are times during an individual's career where personal issues may affect an individual's ability to perform to the required standard at work. Individuals whether in the improving performance process or not, may from time to time need additional levels of support because of difficulties in their personal lives. A line manager investigating concerns over performance will consider the impact of the employee's personal circumstances as well as lifestyle issues (for example whether there is any evidence of potential misuse of alcohol or drugs).
- 5.4 It is recognised that cultural differences or language difficulties may also present as performance issues which the line manager will bear in mind when speaking with the employee about the improvements required.

6 Roles and responsibilities

- 6.1 Each employee has a responsibility to:
- Comply with Trust policies and procedures

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- Undertake their role as described in the job description and perform those duties to an acceptable standard
- Work towards achieving any objectives as agreed with their line manager
- Identify to their line manager at the earliest opportunity, any issues that may impede their ability to perform to the required standards
- Treat their colleagues with respect
- Comply with common law principles relevant to employment (e.g. to follow reasonable instructions, to be trustworthy and honest, safeguard the employer's property)

6.2 Managers have a responsibility to:

- Communicate effectively with employees, including listening and receiving feedback through supervision
- Actively support, guide and train employees to enable them to effectively fulfil the duties required of them, as defined by the job description
- Review employees regularly and ensure that objectives are realistic and relevant to the individual's role
- Discuss and agree any changes to the job role and job description with the individual
- Communicate realistic and measureable standards of performance and ensure that each individual understands what is required of them
- Comply with common law principles relevant to employment and to the role of a manager (e.g. to ensure a safe working environment, free from discrimination, harassment and bullying)
- Ensure they have the understanding and tools to follow Trust policies and procedures
- Follow good practice in terms of ensuring equality of opportunity and management of diversity in relation to all policies and procedures (including in relation to this policy, the introduction of appropriate reasonable adjustments for any employee protected under the Equality Act 2010)

7 Informal improving performance process

- 7.1 Before consideration is given to entering the formal stages of this process, shortfalls in performance should be discussed informally between the line manager and the employee. It may also be appropriate to have a conversation with the employee about why shortfalls have occurred and the line manager will be mindful of any personal problems an employee may currently have, and offer or sign post support.
- 7.2 The line manager may wish to speak with the People Hub team to discuss any possible solutions to the individual's performance issue, prior to the formal stages.
- 7.3 The informal improving performance process will be tailored to meet the performance needs of the individual employee. Meetings and other support will be determined in frequency and nature by the needs of the employee. However it is not anticipated that the informal process will exceed 3 months.
- 7.4 Supervision or one-to-one meetings should be scheduled at regular and frequent intervals in order to best support the employee whilst they attempt to address the performance shortfalls. Conversations at such meetings should be noted and kept on file.

- 7.5 The purpose of meetings held under the informal improving performance process is to help the employee understand the full remit of the role they are carrying out. The expectations of any role are defined with reference to one or more of the following:
- The job description
 - The person specification
 - The Personal Development Review (PDR) documentation
 - Change (consultation) documentation
 - Local Policies & Procedures
 - National Guidance
 - Standard Operating Procedures
- 7.6 In addition, this broad information may be supplemented by the department/ward/directorate's specific needs, commensurate with the employee's pay band, skills and ability.
- 7.7 As an informal supportive measure, the manager may need to offer closer supervision to the employee, address training needs, resolve problems in the organisation of work or address communication issues. These micro-management techniques are designed to be implemented in the short term, in order that the employee's work can improve. Where micro-management techniques are required permanently (except where the pay band of the role prescribes it) this in itself is an indication of a performance shortfall.
- 7.8 At the informal meetings, goals and short-term objectives should be agreed and minuted to help determine whether the support is working. An action plan may be a helpful way of recording the objectives (template at appendix 2).
- 7.9 It is essential that a line manager provides a clear explanation to the employee of the expectations of the role and that they explain where the employee is not meeting such expectations. It may be helpful to use the job description and focus on the job purpose and key duties and responsibilities, whilst ensuring the individual understands the key objectives of the service.
- 7.10 An appropriate timeframe for making the required improvements will be agreed between the line manager and employee so that the employee is made aware of the date by which the improvements must be instilled in their practice. When it is clear that an employee is not reaching expectations, they should be informed that the consequence of this will be to enter the formal improving performance process. (Record of meetings template at Appendix 3)

8 Implementing the formal improving performance process

- 8.1 If the line manager engages with the employee in the informal process to improve performance, and the improvements are not achieved and/or deadlines for objectives are not met, it may be necessary for the line manager to consider implementing the formal improving performance process.
- 8.2 The formalisation of the process is helpful to the employee, the line manager and the Trust because:
- The employee has the right of representation at each performance review meeting from Stages 1 – 3

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- The line manager has the option of issuing formal warnings to ensure the employee understands the gravity of the continuing under-performance
- The Trust identifies the organisational risk of an employee in a post who is unable to fully deliver its objectives.

8.3 It may be that during the improving performance process, the manager wishes to change the policy under which they are reviewing the employee's standard of work. What initially presented as a capability issue may reveal itself to be a conduct issue which would require a different process (Disciplinary Policy H1). Decisions about any change in policy and at what stage of the process it may be appropriate to enter will be taken with proper consideration of the facts as they appear at the time.

9 Formal improving performance process – initial meeting

- 9.1 The employee should initially be met with by the line manager to agree objectives for the coming performance review period. A review period should not be less than a month, but may be as long as three months, depending on the duties of the post and/or the improvements required.
- 9.2 An initial meeting may also take place within the normal line manager and employee supervision (or one-to-one) meeting.
- 9.3 The employee should be made aware of the nature of the improvements required within the review period. The employee should be advised of these in the meeting and it should be documented and given to the employee (refer to management resource pack for template documentation)
- 9.4 Although part of the overall improving performance process, the initial meeting is **informal** in nature and as such takes place between the line manager and employee.
- 9.5 The employee should be informed of the consequences of failure to make the improvements within the review period. These should be clearly stated at the meeting and documented for the employee.
- 9.6 Documented informal review meetings may also take place in between formal performance review meetings to provide support to the employee. The manager will always make it clear to the employee where a meeting is a formal performance review meeting and where it is a mid-stage review conversation, or a one-to-one. The date and time of every formal performance review meeting will be written down and communicated to the employee.

10 Formal improving performance process - stages 1 – 3

- 10.1 The purpose of the formal performance review meetings is to review whether the employee has met the targets set at the previous meeting and what action will be taken where these have not been achieved.
- 10.2 Following the initial meeting above a stage 1 performance review meeting should be arranged to review the targets and expectations discussed.
- 10.3 An employee will be written to inviting them to the performance review meeting (refer to management resource pack for template documentation). The information will:

- Say what stage from 1 to 3 the process is at;
 - Clearly lay out the purpose of the review meeting, stating the targets and expectations the employee's performance will be reviewed against;
 - Clearly state the date, time and venue of the review meeting;
 - Inform the employee of their entitlement to be accompanied at the formal review meeting by a trade union representative or work based colleague;
 - State the potential outcome of the meeting where the employee is not being able to demonstrate having met the targets or expectations agreed during the review period.
- 10.4 The manager may be supported by a member of the Employee Relations team at the performance review meeting to provide advice and guidance on the policy
- 10.5 The line manager should have a conversation with the employee to gather all the facts to show whether the employee has achieved the necessary improvements/objectives.
- 10.6 It may be appropriate to adjourn the review meeting after the conversation with the employee, to enable the line manager to decide whether the employee has met their objectives to the required standard.

11 Sanctions

- 11.1 Line managers convening the performance review process will be able to review performance with the following sanctions open to them:

Stage 1 performance review meeting

- Consideration of a first written warning which would remain on the employees file for 12 months, or
- No warning given and refer the employee back to repeat the stage.

Stage 2 performance review meeting

- Consideration of a final written warning which would remain on the employee's file for 24 months, reducing to a first written warning after 12 months, or
- Extension of the pre-existing first written warning, or
- No further warning given and refer the employee back to repeat the stage.

Following stage 1 and stage 2 a further review period should be set this should not exceed 3 months.

Stage 3 performance review meeting

The stage 3 performance review meeting will be chaired by an independent manager who has the authority to dismiss. The independent manager will review the overall performance process and the support and development that the individual has been given to improve. Both the manager and individual will have an opportunity to comment and provide any information in support of their position. A stage 3 meeting will have the following sanctions open to it:

- Consideration of dismissal from the Trust on the grounds of capability (performance), or
- Extension of the existing final written warning, or
- Take action short of dismissal (refer to section 11.2), or

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- Give the employee no further sanction and refer them back to repeat the stage.
- 11.2 **Action short of dismissal** - where an alternative role (including down-banding) is considered an option as an alternative to dismissal on the grounds of capability, an appropriate position **must** be available and identified as being a role where the employee will be able to perform effectively.
- 11.3 Where the employee refuses the alternative role, or if an appropriate post is not available the Chair will have no alternative other than to dismiss the employee with notice.
- 11.4 Where an employee accepts an alternative role in line with this policy, the changes to terms and conditions will be a permanent change. There is no entitlement to any pay protection and the employee will be placed on the appropriate pay point in the band of the new post as per Agenda for Change terms and conditions. This may not necessarily be at top of the band. Normal incremental rules will apply and increments will be awarded in line with Trust policy.
- 11.5 Where the employee is informed that a warning is being issued they will be written to and the letter will include confirmation of the following information:
- The date the warning is issued and its duration;
 - A description of the reason for the warning and the policy it was issued under;
 - The level of the warning issued;
 - Failure to improve (or sustain improvements) may ultimately result in dismissal;
 - Details of the right of appeal.
- 11.6 If any employee is dismissed at a stage 3 performance review final meeting, the notice period will start to run from the day following the stage 3 meeting. A payment in lieu of notice may be made.

12 Improvement in performance

- 12.1 Where an individual achieves their objectives at a performance review meeting, and no (further) warning is issued, the improving performance process may however continue because of ongoing management concerns or because a warning for capability is still in force.
- 12.2 Where the manager feels that there is no longer any need for formal performance review meetings, the process will be ended by letter to the individual acknowledging the improvements made and encouraging them to sustain their achievements.
- 12.3 In order for an employee to exit the formal improving performance process, they must have completed all the objectives agreed, and made every improvement required. An individual will also need to demonstrate a normal level of autonomy and speed of work, as well as the expected quality and quantity of work.

13 Appeals

- 13.1 An individual may wish to exercise their entitlement to appeal against the formal outcome at stages 1 – 3 of the performance review process.
- 13.2 An employee who wishes to lodge an appeal must do so in writing to the designated manager within 14 calendar days' of the date of the letter confirming the outcome and clearly state the grounds for the appeal.

13.3 The employee must provide details under the grounds for their appeal as follows:

- **New evidence comes to light**
The grounds of the appeal must detail the nature of new evidence.
- **They believe the procedure was not followed correctly**
Summary of why the process was not followed correctly.
- **They believe the manager was incorrect in reaching their findings**
Details concerning the reason why there is a belief the finding was incorrect.

13.4 Failure to provide details of the grounds for appeal as described above may lead the Trust to decline the appeal. The decision of the appeal panel is final.

13.5 The appeal process will be conducted as described in the management resource pack used in conjunction with this policy.

13.6 Where a warning is overturned by the appeal, the employee will re-enter the process at the previous stage, with the normal review period to run following the appeal date.

13.7 At a stage 3 appeal hearing, the appeal Chair will have the authority to withdraw the previous manager's discretionary offer of action short of dismissal.

13.8 Unless agreed otherwise, a request for an appeal hearing which is received later than the 14 calendar days' timeframe allowed will not be arranged, and the employee written to explaining that this is because they were out of time with their request. This will include circumstances where, following a review meeting where a sanction or warning was issued, the employee takes leave from the Trust. For clarity this will include annual leave, sick leave, maternity or a career break/sabbatical, for example.

14 Stage at which the improving performance process is entered

14.1 Under normal circumstances, the process will be entered at stage 1. The stages will be undertaken in order until the employee is able to either exit the process through improved performance, or where a stage 3 meeting is held.

14.2 If an individual has been on leave from the organisation for an extended period, they will re-join the improving performance process at the stage where they left it. This will include leave such as maternity leave and sickness absence (although the improving performance process will not re-commence until after any phased return is completed). By way of example, this may result in an individual with a lapsed warning rejoining the process at stage 2 because of a period of sickness absence following a stage 1 warning.

14.3 Where it is identified there is potentially a performance matter that could be described as either **significant** or **dangerous** the process may be started at stage 2 or 3. This may occur in restricted circumstances for example where:

- An external investigation has taken place and a potential critical performance shortfall has been brought to light; one where the issues are significant and where a service (or services) has seriously or dangerously underperformed as a result;

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- A risk assessment indicates that it is dangerous for an employee to continue in the role, and where reasonable risk controls and/or reasonable adjustments are unable to safely mitigate the risk;
- A grievance investigation has resulted in there appearing to be a significant case to answer on the part of an employee for their performance or leadership.
- An investigation under the Disciplinary Policy (H1) has taken place and it is determined that the most appropriate policy under which to manage and progress the case is under the improving performance Policy (H17);
- A 'tipping point' has been reached in terms of an employee's deteriorating ability to perform the job, even despite reasonable adjustments having been made to the role.

15 Implications on pay

15.1 An individual in the formal stages of the improving performance review process may have their annual increment deferred if a formal warning has been issued this provision will be in accordance with the Achievement Review Policy (H6).

15.2 Where an employee accepts an alternative role in line with this policy, the changes to terms and conditions will be a permanent change. There is no entitlement to any pay protection and the employee will be placed on the appropriate pay point in the band of the new post that is fair and equitable. This may not necessarily be at top of the band. Normal incremental rules will apply and increments will be awarded in line with Trust policy.

15.3 Cost of living rises will be unaffected by this policy.

16 Contact details

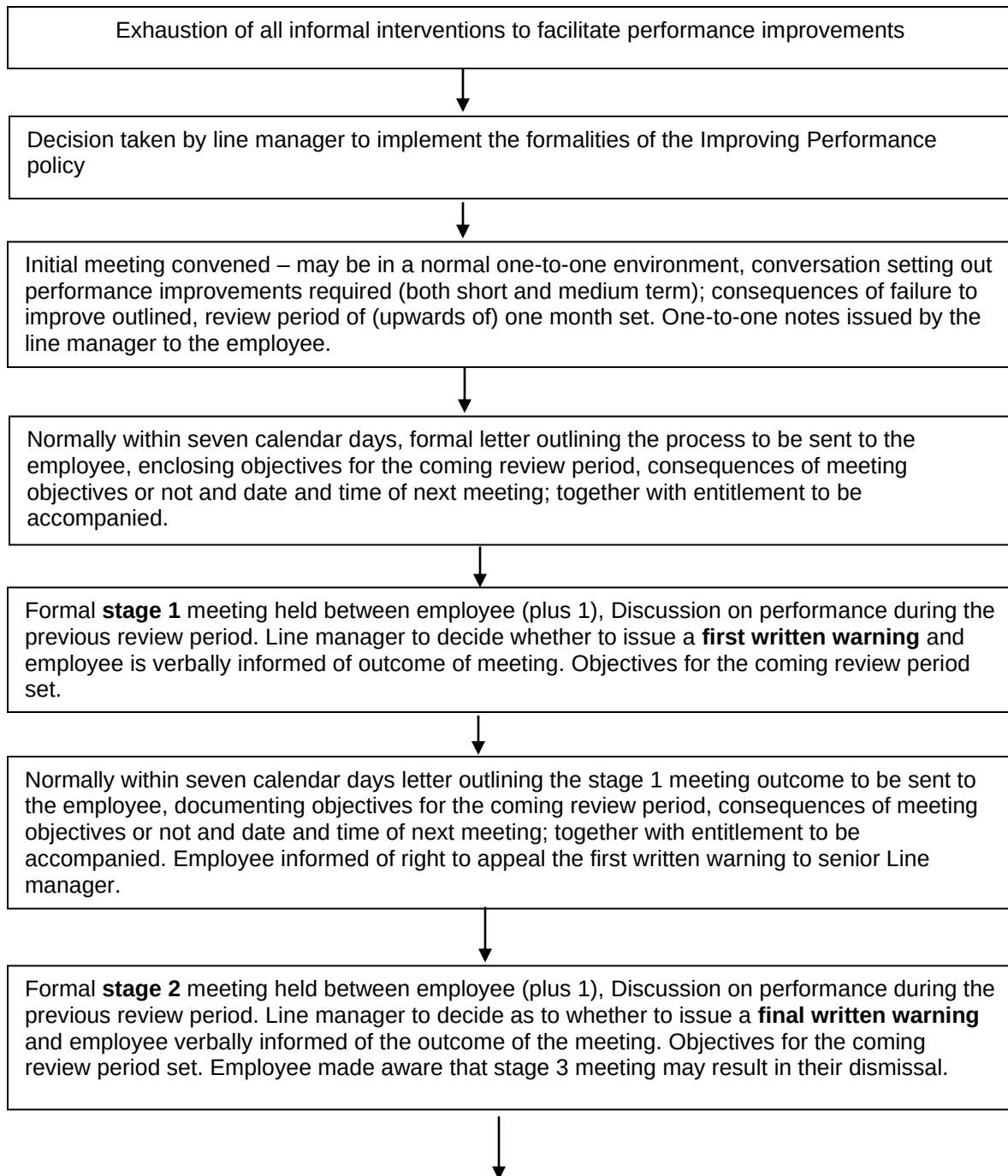
16.1 Any queries regarding this policy should be directed to the People Hub team in the People Directorate.

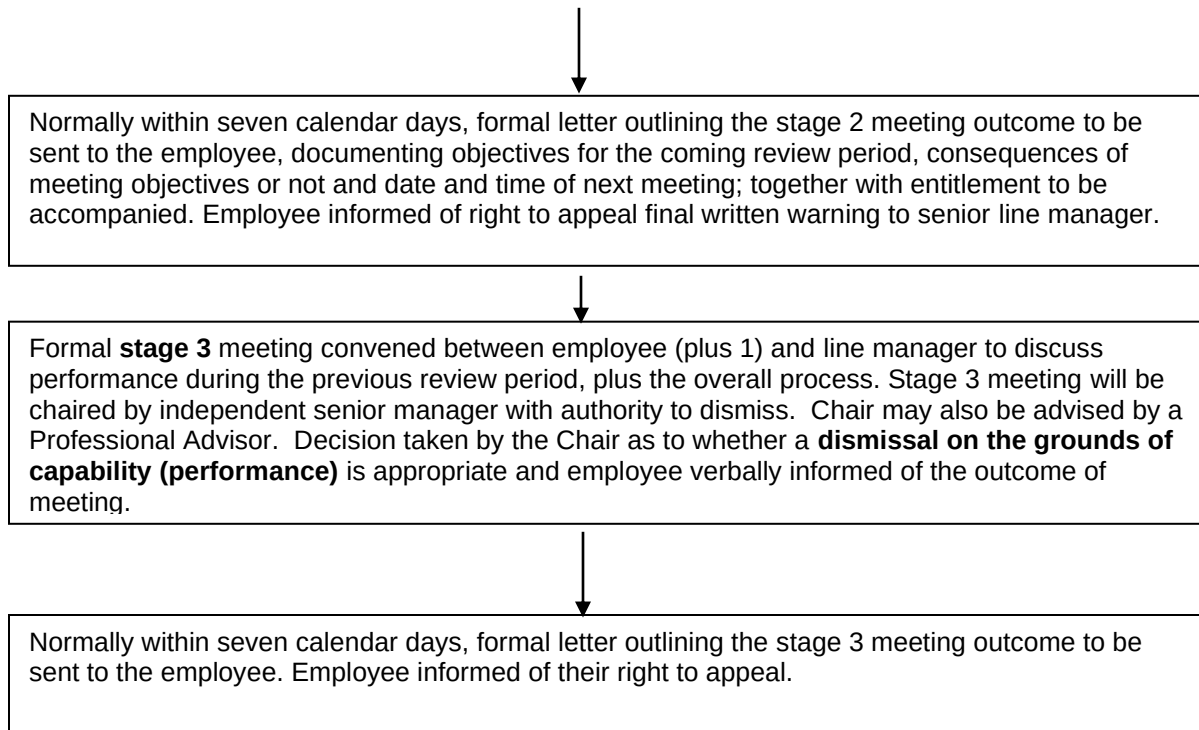
- Employee Relations Advice Line – 01803 655754 (ext. 55754) or tsdft.employeerelations@nhs.net

17 Monitoring, audit and review procedures

17.1 This policy will be monitored and audited on a regular basis. A full review will take place every two years by the People and Education Directorate unless legislative changes determine otherwise.

18 Appendix 1 – Flow chart for improving performance process





19 Appendix 2 – Posts authorised to hear appeals

Formal Action	Appeal
First written warning	• Higher level of management; • Professional advisor (if applicable) • Employee Relations representative providing advice and guidance to the panel.
Final written warning	• Higher level of management; • Professional advisor (if applicable); • Employee Relations representative providing advice and guidance to the panel.
Dismissal	Higher level of management, not previously involved in the case to include a minimum of two individuals from the list opposite. In addition: • Professional Advisor (if applicable); • Employee Relations representative providing advice and guidance to the panel. • Chief Executive • Executive Directors • Other Directors • Clinical Directors • Care Group Directors • Heads of Service • Matrons • Associate Directors • Deputy Directors • Assistant Directors • Chief Pharmacist