



# Policy:

## Performance and Capability Policy

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### Summary of policy

Process for supportive management of performance, including management of performance impacted by ill-health.

<b>Target audience</b>	All SHSC staff
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<b>Keywords</b>	Performance, capability, improvement plan
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### Storage & Version Control

This is version 5.0 of this policy and is stored and available through the SHSC intranet/internet Jarvis. This version replaces version 4.0, which was ratified in June 2019 and issued June 2019. Any copies of version 4.0 held separately should be destroyed and replaced with this version.

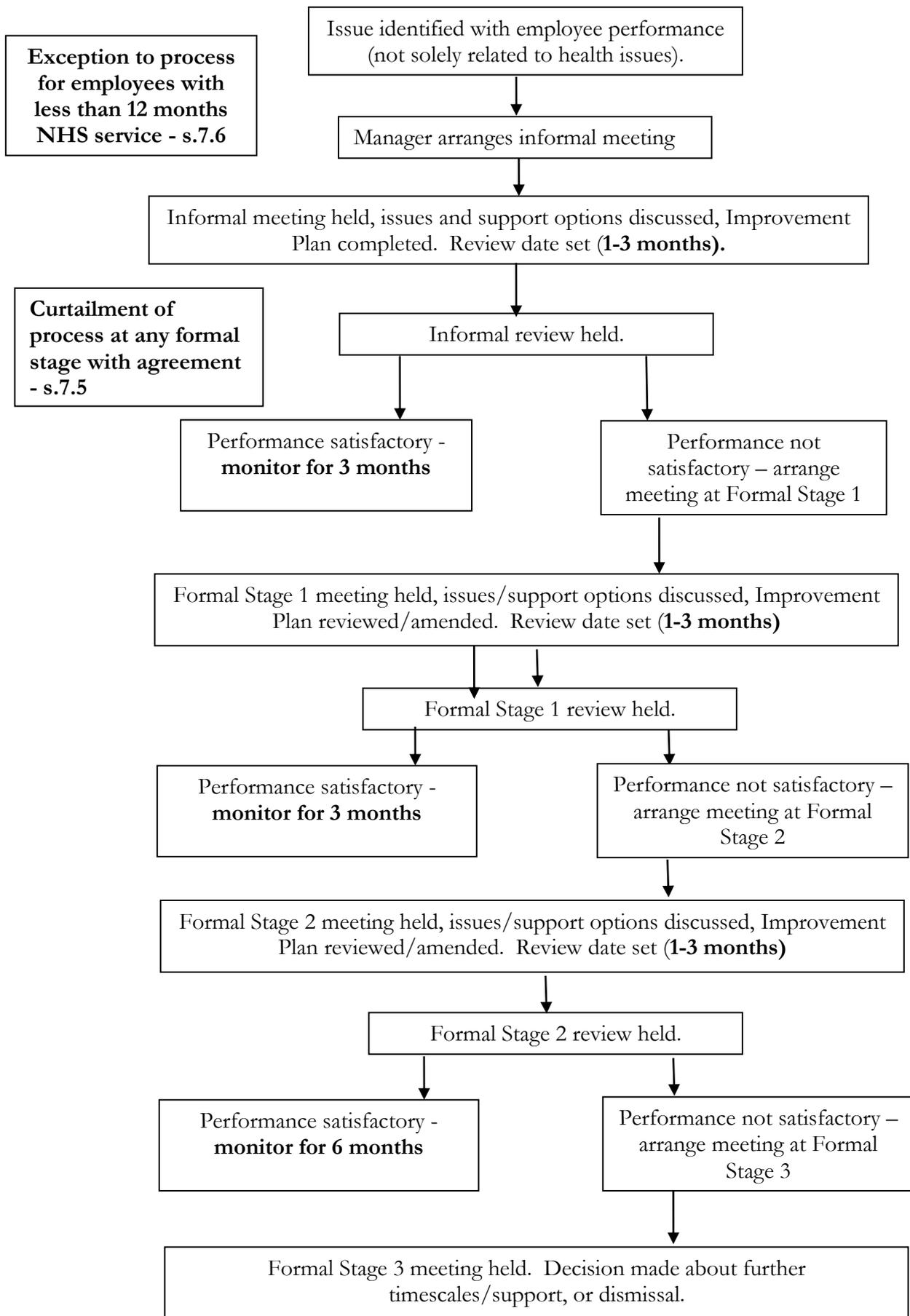
## Version Control and Amendment Log

Version No.	Type of Change	Date	Description of change(s)
3.0	Policy review, consultation, ratified and issued.	January 2016 to November 2016	Policy reviewed by HR, Staff Side and other influential managers in line with policy governance arrangements. Ratified by the Executive Directors' Group. Placed on intranet, internet and a message in Connect.
4.0	Policy review and consultation	January to May 2019	<p>Policy reviewed by HR, Staff Side and other influential managers in line with policy governance arrangements.</p> <ul style="list-style-type: none"> <li>- Section 4 (Purpose) wording has been added that begins: <i>If during the capability process it becomes apparent that .....</i></li> <li>- Section 5 (Duties) amended to more closely reflect the duties of managers, employees, HR and Staff Side.</li> <li>- Section 6 (Process) a newly added paragraph making it clear that throughout the process the employee should be informed of the consequences of not meeting the required improvements.</li> <li>- Sections 6.1-6.4 (Informal – Formal Stage 2). For consistency purposes the meetings held at each stage of the process are replicated from informal through to formal stage 2, for example – informal meeting, informal review meeting and if applicable a final informal review meeting.</li> <li>- During consultation it was agreed to reduce (rather than remove) the timescales that an employee would remain in the procedure (following the standard having been met). At the informal and formal stage 1 (reduced from 6 to 3 months) and formal stage 2 (reduced from 9 to 6 months).</li> <li>- Although objective setting was already referenced in the Policy it now includes the use of SMART objectives.</li> <li>- Section 6.6 this was a pre-existing section however it has been amended to reflect current employment rights. Staff Side requested that this section be removed as it would be unfair to 'fast track' employees through the process who have under 12 months service. However after consultation with the HR Director it was agreed this should remain. Process will be followed in line with the Policy and employees with under 12 months service have the right to appeal as do all other employees.</li> <li>- Section 6.9 Pay progression – this is a newly added section and is in accordance with National NHS Staff Council Guidelines.</li> <li>- The Equality Act 2010 and reasonable adjustments in line with this have been referenced throughout the Policy.</li> <li>- The Improvement Plan Objectives Form (Appendix G) has been updated to incorporate the SMART objectives.</li> </ul>

	<ul style="list-style-type: none"> <li>- Following June PGG - amended the front sheet of this version to refer to the Amendment Log at Appendix A and the section on Redeployment at page 7 now refers to the Redeployment Policy.</li> </ul>		
	Policy ratified	June 2019	
	Policy issued	June 2019	
5.0	Policy review & consultation.	March 2022 – March 2023	<ul style="list-style-type: none"> <li>- Policy reviewed by HR Advice Team, Staff Side and other influential managers in line with policy governance arrangements.</li> </ul>
	<ul style="list-style-type: none"> <li>- New name: Performance and Capability Policy. Amended references throughout.</li> <li>- Inclusion of simplified flowchart. Grammar checked and formatting modified for consistency throughout</li> <li>- Amended references throughout: updated name of Human Resources Advice Team and People Directorate.</li> <li>- Amended references throughout: updated references to 'SHSC'.</li> <li>- Amended references throughout: removal of letter inclusion details, replacement with references to Template letters, which are to be loaded on the intranet separately to allow fast amendment in line with any changes (such as further feedback on improved supportive language or newly available/amended support options).</li> <li>- Section 6: prompts to consider protected characteristics and to use the supportive tools that are available, to ensure managers approach cases in a holistic and supportive manner</li> <li>- Section 6: include reference to menopause</li> <li>-Section 7: Guidance on capability and ill-health. Signpost to HR Advice Team</li> <li>- Section 7: requirement for managers to ensure the staff member's mandatory training is up to date before beginning a formal process under this policy.</li> <li>- Section 7.5: Inclusion of a curtailment process to avoid situations where the ongoing length of the process is, for example, distressing to the staff member. Must be subject to a case conference and include representative where the employee is a member of a union.</li> <li>- Section 7.6 Staff Side requested that this section be removed as it would be unfair to 'fast track' employees through the process who have under 24 months service. After consultation with the HR Director, it was agreed that this section should remain but that the length of service required should be reduced to 12 months. Process will be followed in line with the Policy and employees with under 12 months service have the right to appeal as do all other employees.</li> <li>- Section 8. Development, Consultation and Approval updated.</li> <li>- References throughout: where meetings are held, manager to take notes at meetings, provide to the employee and keep on employee's personal file.</li> </ul>		

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## **1. Introduction**

Sheffield Heath and Social Care (SHSC) is committed to supporting and developing its employees in a fair and equitable manner to ensure that they are able to fulfil their roles and responsibilities to a high standard of competence.

Through SHSC's recruitment procedures, every effort is made to ensure that new employees have the appropriate skills and abilities or a clear, demonstrated potential to achieve these for the roles to which they are recruited. At the start of employment with SHSC, on promotion or redeployment, employees should be clearly informed of their responsibilities and the standards of work performance required which are relevant to their post.

Where these standards are not met, employees will be offered support, encouragement, guidance and, if necessary, (re)training with effective, regular and constructive feedback relating to their work performance.

Although this Policy sets out the process and procedures to follow in cases of unsatisfactory performance, each case would need to be considered individually and the approach determined to reflect any individual needs, including issues relating to health or protected characteristics.

## **2. Scope**

This Policy applies to all employees of SHSC and promotes a fair and consistent approach in accordance with the organisation's Equal Opportunities and Dignity at Work Policy.

## **3. Purpose**

The Performance and Capability Policy provides a framework for dealing with situations where an employee fails to achieve the performance standards expected of them. The primary objective must be to assist and support the employee to improve to the required standard, and every effort must be made to keep the employee at work.

This Policy is designed to deal with those cases where the employee is lacking in some area of knowledge, skills or abilities, resulting in a failure to be able to carry out their required duties and responsibilities to an acceptable standard. It is to be used where there is a genuine lack of capability affecting performance, rather than a deliberate failure on the part of the employee to perform to the standards of which they are capable. Where there is evidence of a deliberate failure by the employee to perform the duties of their role to a sufficient standard, this should be explored using the Fact-finding and Investigation procedure, which may ultimately result in the use of SHSC's Disciplinary Policy. If it becomes apparent during the performance management process that the concerns in question would be more appropriately addressed under a different process (e.g. through the Promoting Attendance and Managing Sickness Absence Policy), this should be discussed with the HR Advice Team and agreed with the Senior Manager for the service in which the employee works.

## **4. Definitions**

Performance relates to an individual's demonstrated ability to fulfil their job role and the duties within it. This includes skill, aptitude, health or any other physical or mental quality.

Any issues raised by a manager about a staff member's performance must relate to the type of work that they were employed to do.

## **5. Details of the Policy**

This policy outlines the process for managing performance at work through a supportive process which includes an Improvement Plan and SMART objectives that will assist all parties in assessing what improvements and support are needed.

## **6. Duties**

### Managers

It is important that managers set out the required standards of performance as part of the workplace induction process and that they fully explain the duties and responsibilities outlined in the employee's job description.

Line managers will ensure, for those employees they manage:

- that each employee receives an effective corporate induction into SHSC.
- that all employees have the training and support necessary for them to satisfactorily carry out the requirements of their job and that they receive appropriate advice, guidance, and ongoing supervision.
- that the work content is appropriate to the banding of the job and that the volume of work is reasonable, taking into account the employee's contracted hours.
- that the expectation of work performance is realistic, and the employee has the resources available to allow them to fulfil their job role effectively.
- that they hold regular management supervision (and where appropriate clinical or other supervision) in line with the timescales outlined in the Supervision Policy.
- that they conduct yearly Performance Development Reviews (PDRs) to ensure that employees have clear agreed objectives.
- that any objectives which are set are SMART objectives (specific, measurable, achievable, relevant, and time-bound).
- that any concerns about the employee's work performance are raised in a confidential, supportive and timely manner.
- that where an employee has informed their line manager of any change to their personal circumstances or to their health which may potentially impact their performance, the manager works with the employee to decide whether any workplace adjustments need to be made to support the employee in maintaining their performance standards, including making any necessary referrals to the Occupational Health service.
- that they promote the value of one-to-one supervision and team meetings, as appropriate.
- that employees have awareness of this policy and procedure.
- that they implement this policy fairly, consistently, and supportively.
- that they promote, wherever possible, an 'open door' policy so that employees can come to them to discuss any concerns they may have or problems they may be experiencing in relation to their own role and performance.

## Employees

Employees are contractually obliged and have a responsibility to perform their duties to a satisfactory level.

Employees will:

- Meet their contractual obligations.
- ensure they stay up to date with the mandatory training requirements for their role and notify their manager of any difficulties they may have in achieving this.
- attend and participate fully in all meetings associated with their performance.
- contribute to the development of a relevant Improvement Plan where this is needed to support and improve their performance and will ask for clarification if any aspect of that plan is unclear.
- raise any work-related concerns they may have with their line manager if they are unsure of a particular aspect of their role and/or have concerns about a particular task.
- make their line manager aware of any change in their personal circumstances or their health that may impact on their performance, so that any necessary support can be put in place to help maintain their performance to the required standard.
- engage fully with all aspects of performance management including supervision and Personal Development Reviews.
- where they hold professional registration, maintain the level of knowledge and standard of performance required by their Code of Practice.

## People Directorate

The People Directorate, through the Human Resources Advice Team, provides support and guidance to managers and employees on the interpretation and application of this Policy.

The Human Resources Advice Team will:

- advise on a fair and equitable process in line with the policy.
- provide advice at formal performance management meetings.
- review and advise on any associated correspondence where this is required.
- ensure that the application of the policy does not unlawfully discriminate on the grounds of any protected characteristic under the Equality Act 2010.

## Trade Union Representatives (Staff Side)

Trade union representatives can be another form of support for employees who are members of a recognised trade union.

Union Representatives will:

- work in partnership with managers and the Human Resources Advice Team to ensure that employees are treated fairly and consistently within the framework of this Policy.
- represent their members in the workplace at all stages of this policy.

## Support

SHSC recognises that being the subject of an informal or formal performance management process may be difficult, and there are services available which all SHSC staff are able to access. Advice and information on a range of different support options is available on the Health and Wellbeing page on Jarvis (SHSC's intranet). This page also offers signposting to services, groups and networks which are available to support everyone at SHSC with their health and wellbeing.

The Workplace Wellbeing Service is a confidential, self-referral counselling service for all employees to discuss concerns related to work or personal circumstances.

The Sheffield Improving Access to Psychological Therapies (IAPT) service offers a range of free psychological therapies to help develop skills to overcome stress, anxiety and depression.

Where an employee's underperformance is potentially linked to their health, menopause, a disability, or another protected characteristic, the line manager should work with the employee to explore Occupational Health support, reasonable adjustments in line with the Equality Act 2010 and, where appropriate, support from Access to Work. Where necessary, the line manager may also explore appropriate support through the SHSC Stress Management at Work Policy, use of a WRAP Plan, or other support as identified.

External support may be identified by SHSC, from time to time, for any part of this policy and procedure. The nature of such support will be identified separately and as appropriate.

## Redeployment

If all suitable training, guidance and other forms of reasonable support have been put in place and the employee is still unable to perform to the standard required, redeployment may be explored as an option. It would usually be expected that redeployment would be explored within the formal stages of the process to allow sufficient time for any support and adjustments to be put in place. However, if it is clear from an earlier stage that the job role is unsuitable for this employee and that it is unlikely that, even with support and/or suitable reasonable adjustments, training and/or development, the employee is unlikely to be able to improve to the required standard, redeployment may be considered at that earlier stage.

Please refer to the Redeployment Policy for more information on the redeployment process.

## **7. Procedure**

A flowchart of the informal and formal processes within this policy is shown at page 5. Managers are encouraged to contact the Human Resources Advice Team at any time or stage of this policy. However, from Formal Stage1 of the process onwards, the Human Resources Advice team should always be consulted and/or involved.

The reasons for poor performance should be explored fully to determine the most appropriate procedure, e.g. there may be personal circumstances which are impacting on an individual's performance.

Poor work performance may be the result of a variety of reasons, including:

- lack of aptitude, skill or experience
- inappropriate recruitment, induction or training
- lack of facilities crucial to performance
- changes in the nature/allocation of work, e.g. overly heavy workload
- personal/family problems
- reorganisation of structure, role or responsibilities
- poor attendance at work related to ill-health
- acquired disability-related issues
- menopause

Wherever possible, managers should seek to address any shortcoming(s) or minor performance issues as they occur and without the need to implement this policy. Use of negative criticism and non-specific concerns must be avoided when discussing any shortcomings.

Where the problems are more serious, repetitive, or frequent, a more structured support approach should be discussed and agreed, including opportunities for improvement and a series of informal meetings. However, if there is no improvement over a specified period of time, the formal stage of this policy should be used.

This policy does not apply to situations covered by other SHSC policies such as the Promoting Attendance and Managing Sickness Absence and Unacceptable Behaviours policies.

### Capability and ill-health

Where an employee is unable to perform their duties to a satisfactory standard due to health reasons over a prolonged period, management should ensure all appropriate support has been offered and that Occupational Health have been consulted for guidance on potential reasonable adjustments before pursuing the formal performance management process. For further guidance please contact the HR Advice Team

### Using an Improvement Plan

Employees should be made aware of the shortfall in their performance standards and provided with assistance to improve through an initial process of standard-setting that will include agreeing an Improvement Plan and reviewing progress against this plan. There is a template for an Improvement Plan at Appendix 3. As part of this process, managers will need to ensure that any action points for them that were agreed as part of the Improvement Plan were fully acted upon before moving the employee to the next stage of the process.

### SMART Objectives

The Improvement Plan should be based on SMART objectives, which are designed to help managers set work-related goals in an effective and productive manner. SMART objectives clearly define what exactly what needs to be achieved (**Specific**) and provide a mechanism by which it is possible to know when this has been achieved (**Measurable**) by requiring a method by which to measure completion. **Achievable** and **Realistic** objectives engage and motivate individuals. **Time-bound** means ensuring that timescales for achieving the objectives are also agreed.

## Timescales

Throughout every stage of this policy, review meetings must be held to evaluate whether the required level of improvement in the employee's performance has been reached. There is no specific timescale for when each review should take place, although it is recommended this should normally be between 1 and 3 months. In each case a manager (in discussion with an HR Adviser and the trade union representative, if the staff member is a union member) should decide what is appropriate, taking into account the following:

- the timescale guidelines provided in this policy.
- what support is being offered.
- what the required improvement may be.

Where possible, the review timescale should be discussed and agreed with the employee, although ultimately this timescale should be determined by the line manager.

## The need for training

**Line managers should always ensure that all employees they line manage have received an adequate induction into their role, and that the employee's mandatory training is up to date before starting a formal process under this policy.**

Where it has been identified that formal training is required before any improvement can be assessed, the timescale being set should take this into account, and the period for improvement should generally not begin until after the necessary training has been completed.

The circumstances of each case will need to be considered, but any timescales for improvement greater than 3 months will need the approval of the appropriate Service Lead. This applies to all stages in the process.

## Communication

The employee should be advised at each stage of the process about the consequences of not meeting the required improvements as outlined in the Improvement Plan, and that they may be moved through the stages of the policy if they don't achieve those improvements to the expected standard.

The line manager or immediate supervisor must ensure that other employees who are in any way involved in the support process (for example, in a support or work assessment capacity) are appropriately briefed, and that any training/support requirements are clearly outlined. The manager must also ensure that these matters are dealt with confidentially.

### **7.1 Informal Process**

Many problems of underperformance may be identified and addressed at the informal stage of the process. This informal stage provides an opportunity to encourage open discussion of the issues involved and to seek effective solutions, including the involvement of appropriate support services, e.g. Workplace Wellbeing.

The informal process is not intended to replace current supervision or management procedures within the Trust. It is always good practice to fully discuss any general performance issues at a supervision meeting initially, and then to agree to hold an informal meeting following a specified period of time.

### Arranging an informal meeting

An informal meeting should be arranged if performance does not meet the required standard. The employee must have at least 7 working days' notice of this meeting. A template letter for inviting an employee to an informal meeting under this policy is available on Jarvis. This template contains all the required information that the employee needs for notification, and it is recommended that this used.

The employee has a right to bring an SHSC colleague or a union representative to this meeting.

### The content of the informal meeting

The purpose of the meeting should be outlined at the start. The meeting should then include the following:

- information about the right to representation by a trade union or to be accompanied by an SHSC colleague.
- the background to the situation, including details of any one-to-one supervision
- where performance has been discussed, and any outcomes.
- an outline of any previous discussions that have taken place on support/ assistance/ adjustments, and any actions taken as a result of those discussions.
- any additional support/assistance/adjustments that may be needed going forward.
- acknowledgement of any improvements, however small.
- details of all aspects of the employee's work which remains unsatisfactory.
- opportunities for the employee to respond, discuss and give any explanations for the issues that have been identified.
- discussion of, and agreement on, an Improvement Plan with SMART objectives and appropriate timescales (including consideration of any protected time that may be needed to achieve them.
- the warning that the employee may be moved to Formal Stage 1 of the Performance Management Policy if there is not satisfactory improvement in their performance by the date of the informal review meeting.
- dates for regular meetings.
- a date for the informal review meeting.

The need for further consideration of any additional/refresher training, the use of a mentor and offers of other support, e.g. Workplace Wellbeing and/or Occupational Health, should also be discussed where appropriate.

At the close of the meeting, the manager should summarise the discussions that have taken place, and any agreements that have been made.

The timescale for improvements at the informal stage of this process will vary depending on the employee's situation and in proportion to the level of performance standard. As a guideline, a period of between one and three months would normally be reasonable. Regular

(weekly or fortnightly) meetings with the appropriate line supervisor/manager should take place throughout this period.

Notes will need to be taken by the manager so that a written record of such meetings is kept on the employee's personal file. This written record must also be shared with the employee (as well as their union representative, if relevant). A template outcome letter is available on Jarvis which contains prompts for including the relevant information, and it is recommended that this is used.

#### Arranging and conducting an informal review meeting

An informal review meeting should be arranged following the specified timescale that was agreed at the informal meeting. (This is usually between one and three months.) The employee should be invited to the meeting by letter giving 7 working days' notice as detailed above. A template invitation letter for an informal review meeting is available on Jarvis which contains prompts for including the relevant information, and it is recommended that this is used.

The informal review meeting should outline what has happened since the previous meeting and any progress made against the Improvement Plan (any improvements and/or shortfalls in performance) and what assistance/adjustments have been put in place to support the employee.

#### **In cases of satisfactory performance**

Following the informal/final informal review meeting, if it is established that performance has improved and been maintained at an acceptable level the employee should be informed that no further action will be taken under this process. They must be made aware, however that their performance will continue to be monitored at the informal stage should any performance issues recur within a 3 month period.

#### **In cases of unsatisfactory performance**

If the employee's performance fails to meet the required standard, the manager should progress to the formal stage and the employee should be warned that the organisation cannot sustain continued unsatisfactory performance. A formal meeting will then need to be arranged (see s.7.2).

However, the Improvement Plan should be reviewed and adjusted if there are extenuating circumstances. The employee should also be made aware that if this standard is not achieved by the end of the adjusted timescale, they could progress to Formal Stage 1 of the policy. A final, informal review meeting should then be held at the end of that adjusted timescale. Again, the employee has a right to be represented by a trade union or supported by an SHSC colleague at the final informal review meeting. At least 7 working days' notice should be given as detailed above.

#### **In cases where performance has fluctuated between an acceptable and unsatisfactory standard**

In these circumstances, the manager may decide to establish a new timescale for review. This may be appropriate in cases where the manager feels that improvements have been

made but are not sufficient to meet the required standard. The manager may allow a further timescale for the employee to improve and then to maintain that improvement.

A final, informal review meeting should then be held at the end of the new timescale. Again, the employee has a right to be represented by a trade union or supported by an SHSC colleague at the final informal review meeting. At least 7 working days' notice should be given as detailed above.

Following the informal meetings outlined above, an outcome letter should be sent to the employee within 10 working days. A template outcome letter for an informal review meeting is available on Jarvis which contains prompts for including the relevant information, and it is recommended that this is used.

## **7.2 Formal Stage 1**

If there is continued unsatisfactory performance despite the employee being given reasonable support and assistance, SMART objectives to meet and sufficient time to improve, a meeting should be arranged at the first formal stage of this process.

The employee is entitled to be accompanied by a trade union representative or a colleague employed by SHSC. The HR Advice Team should be consulted and/or involved at this stage of the process, especially if they have not already been involved in this case

A letter inviting to the employee to a formal meeting should be sent, giving at least 7 working days' notice. A template for a Formal Stage 1 meeting invitation is available on Jarvis which contains prompts for including the relevant information, and it is recommended that this is used.

### Formal Stage 1 Meeting

The manager at the Formal Stage 1 meeting will normally be the employee's line manager. However, there may be situations where it is appropriate for the line manager's manager to attend the meeting.

The purpose of the meeting should be outlined at the start, and should include:

- information about the right to representation by a trade union or to be accompanied by an SHSC colleague.
- an outline of the informal process to date and any outcomes.
- an outline of previous discussions on support/assistance/adjustments and any actions already taken.
- identification of any additional support/assistance/adjustments required.
- acknowledgement of any improvement, however small.
- details of all aspects of the employee's work which remains unsatisfactory.
- an opportunity for the employee to respond, discuss any issues or concerns and give any explanations.
- discussion and agreement of an amended Improvement Plan containing SMART objectives, timescales, and any development that may be required.
- the warning that they may be moved to Formal Stage 2 if there has not been a satisfactory improvement in performance by the date of the Formal Stage 1 review meeting.

- dates for regular meetings and a date for the Formal Stage 1 review meeting.

Additional/refresher training, use of a mentor and any other possible offers of support, e.g. Workplace Wellbeing and/or Occupational Health, should also be considered at the meeting.

The timescale for the improvements in performance will vary depending on the employee's situation and in proportion to the level of performance improvement required. As a guideline, a period of between one and three months would normally be reasonable, but this may be adjusted if there are extenuating circumstances. Regular (weekly or fortnightly) meetings with the appropriate line supervisor/manager should take place throughout this period. Notes and a written record of such meetings must be kept by the manager and shared with the employee.

The employee should be warned that if their performance is still unsatisfactory at the time of the Formal Stage 1 review meeting, they could be moved to Stage 2 of the Performance and Capability Policy, and that ultimately this process could potentially lead to dismissal if the required improvements are not achieved.

Following this meeting an outcome letter should be sent to the employee within 7 working days of the meeting. A template for a Formal Stage 1 meeting outcome letter is available on Jarvis which contains prompts for including the relevant information, and it is recommended that this is used.

### Formal Stage 1 review meeting

At the end of the specified improvement period, a Formal Stage 1 review meeting should be held with the manager, an HR Adviser, the employee and their trade union representative or SHSC colleague.

The Formal Stage 1 review meeting should outline what has happened since the Formal Stage 1 meeting and any progress made against the Improvement Plan, including any improvements and/or shortfalls in performance, as well as what assistance/adjustments have been put in place to support the employee.

If there is some improvement, new targets and a further timescale should be set. The employee should be informed that if performance is still unsatisfactory at the end of that timescale, they could be moved to Formal Stage 2 of the Performance and Capability Policy and that continuing through this process could potentially result in dismissal.

A final Formal Stage 1 review meeting should be held at the end of the new time period at which the employee can be represented by a trade union or supported by an employee of SHSC. At least 7 working days' notice should be given.

### **In cases of satisfactory performance**

Following the Formal Stage 1 review / final Formal Stage 1 review meeting, if it is established that performance has improved and been maintained at an acceptable level, the employee should be informed that no further action will be taken under this process. However, they must be made aware that their performance will continue to be monitored at Formal Stage 1 in case any performance issues recur within a 3 month period.

### **In cases of unsatisfactory performance**

If the employee fails to meet the required standard, especially if a revised timescale and action plan was agreed, the manager should inform the employee that they will now progress to Formal Stage 2 of the Performance and Capability Policy and that ultimately, continued unsatisfactory performance may lead to dismissal. A formal Stage 2 meeting will then need to be arranged (see s.7.4).

### **Where performance has fluctuated between an acceptable and unsatisfactory standard**

In these circumstances, the manager may decide to establish a new timescale for review. This may be appropriate in cases where the manager feels that some further improvements have been made but that these are not sufficient to meet the required standard. The manager may then allow a further timescale for the employee to improve and to then maintain that improvement.

A further final Formal Stage 1 review meeting should be held at the end of this further time period.

Following the formal meetings outlined above, an outcome letter should be sent within 10 working days. A template for a Formal Stage 1 review meeting outcome letter is available on Jarvis which contains prompts for including the relevant information, and it is recommended that this is used.

### **7.3 Formal Stage 2**

In line with the above Formal Stage 1 process, the Formal Stage 2 meeting meeting will normally be with the employee's line manager. However, there may be situations where it is appropriate for the line manager's own manager to attend the meeting. A member of the HR Advice Team would normally be involved at this stage in the process.

The purpose of the meeting should be outlined at the start of the formal meeting, and the content of the meeting should then include:

- information about the right to representation by a trade union or to be accompanied by an SHSC colleague.
- an outline of the Formal Stage 1 process to date and any outcomes.
- an outline of previous discussions on support/assistance/adjustments and any actions taken.
- identification of any additional support/assistance/adjustments going forward.
- acknowledgement of any improvement, however small.
- details of all aspects of the employee's work which remains unsatisfactory.
- opportunities for the employee to respond, discuss and to give any explanations.
- discussion and agreement of an adjusted Improvement Plan, including SMART objectives and timescales.
- the warning that they may be moved to final Formal Stage 3 if there has not been a satisfactory improvement in their performance by the end of the Formal Stage 2 timescale.
- dates for regular meetings in the meantime, and a date for the formal Stage 2 review meeting.

Consideration of any additional/refresher training, the use of a mentor; or any other offers of support (e.g. Workplace Wellbeing and/or Occupational Health) should also take place at the meeting.

The timescale for the improvements will vary depending on the employee's situation and in proportion to the level of performance standard. As a guideline, a period of between one and three months would normally be reasonable but this may be adjusted if there are extenuating circumstances. Regular (weekly or fortnightly) meetings with the appropriate line supervisor/manager should take place throughout this period. Notes and a written record of such meetings must be kept by the manager and shared with the employee.

The employee should be warned that if performance is still unsatisfactory at the time of the Formal Stage 2 review meeting, they could be moved to final Formal Stage 3 of the Performance and Capability Policy and that this could potentially result in dismissal.

Following this meeting an outcome letter should be sent within 7 working days of the meeting. A template for a Formal Stage 2 meeting outcome letter is available on Jarvis, which contains prompts for including the relevant information, and it is recommended that this be used.

### Formal Stage 2 review meeting

At the end of the specified improvement timescale a Formal Stage 2 review meeting should be held with an HR Adviser, the employee and their trade union representative or SHSC colleague.

The Formal Stage 2 review meeting should outline what has happened since the previous meeting and any progress made against the Improvement Plan (any improvements and / or shortfalls in performance), and what assistance/adjustments have been put in place to support the employee.

If there is some improvement, new targets and a further timescale should be set. The employee should be informed that if performance is still unsatisfactory at the end of that timescale, they could be moved to Final Formal Stage 3 of the Performance and Capability Policy and that this could potentially result in dismissal.

A Final Formal Stage 2 review meeting should be held at the end of the new timescale, at which the employee can be represented by a trade union or supported by an SHSC colleague. At least 7 working days' notice should be given for this meeting.

### **In cases of satisfactory performance**

Following the Formal Stage 2/Final Formal Stage 2 review meeting, if it is established that performance has improved and been maintained at an acceptable level, the employee should be informed that no further action will be taken under this process. However, they will also need to be notified that their performance will continue to be monitored at Formal Stage 2, should any performance issues recur within the following 6 month period.

### **In cases of unsatisfactory performance**

If the employee fails to meet the required standard, especially if a revised timescale and action plan was agreed, the manager should notify the employee that they will now be moved

to Final Formal Stage 3 of the Performance and Capability Policy and that this means that their continued unsatisfactory performance could lead to dismissal. A Final Formal Stage 3 meeting will then need to be arranged (see s.6.5).

### **Where performance has fluctuated between a satisfactory and an unsatisfactory standard**

In cases where performance has fluctuated between a satisfactory and an unsatisfactory standard, the manager may decide to establish a new timetable for review. This may be appropriate in cases where the manager feels that improvements have been made but that these are not sufficient to meet the required standard. The manager may allow a further time period for the employee to improve and then maintain that improvement.

A further Final Formal Stage 2 review meeting should be held at the end of the further time period.

It may be appropriate to discuss at this meeting what action needs to be taken given that performance has not improved sufficiently in the current post and within a reasonable timescale. This may include discussion of redeployment into an alternative role (at the same or lower pay level) or temporarily reducing hours.

Following the formal meetings outlined above an outcome letter should be sent within 10 working days. A template for a Formal Stage 2 review meeting outcome letter is available on Jarvis which contains prompts for including the relevant information, and it is recommended that this is used.

If the employee has been moved to Final Formal Stage 3 of the policy, the letter must clearly state that the employee has been notified of this and moved onto the final stage of the procedure, that their continued underperformance may result in dismissal, and that they will be invited to a Final Formal Stage 3 meeting in due course, where a senior manager with the authority to dismiss (Authorised Manager), not previously involved with the employee's situation, will review the case and the procedures followed

### **7.4 Final Formal Stage 3**

If, despite all measures outlined above, the desired improvement has still not been achieved and redeployment has not been utilised or no suitable alternative role is available, a Final Formal Stage 3 meeting must be arranged. One option at this final stage of the policy is dismissal.

An Authorised Manager, not previously involved with the employee's situation, will chair the meeting and review the case and the procedures followed. An HR Representative will support this manager.

The line manager, or other appropriate manager involved with the procedure, will compile a Statement of Case which includes a timeline and an index to any relevant documents as appendices (correspondence, notes from meetings, other relevant documents). The HR Adviser involved with the process will assist the manager in presenting the case at the final Formal Stage 3 meeting.

The Statement of Case should be a clear summary of the full process, the employee's situation, the meetings held, all support offered, and any other actions taken, and will refer to

appended documents. The Statement of Case should use clear language and provide adequate information and evidence supporting the manager's case. This should be sent with as much notice as possible but with not less than 7 working days.

The letter informing the employee of the Final Formal Stage 3 meeting must include the above information and invite them and their union representative (if relevant) to submit a statement of case as soon as possible but with not less than 7 working days' notice. It must also state that one option at that meeting may be dismissal. A template for a Final Formal Stage 3 meeting invitation letter is available on Jarvis which contains prompts for including the relevant information, and it is recommended that this is used.

At the final Formal Stage 3 meeting, the employee will again be clearly informed of the continued deficiencies or underperformance and given full opportunity to state their case including any mitigating circumstances, and to present any further information which they deem relevant.

Following the meeting, or after an adjournment of the meeting, the Authorised Manager will make a decision as to whether there is any likelihood of the employee's performance achieving a satisfactory level by extending any assistance offered or extending the timescale agreed at the previous stage; or whether dismissal will be the outcome.

In summary, there are 3 possible outcomes of a meeting at Final Formal Stage 3:

- extend the review period so that performance can be further monitored.
- offer further assistance, e.g. an extended time period to search for an alternative job.
- dismissal.

If the decision is to extend the review period and the employee's performance then improves to reach an satisfactory standard, the employee will be monitored in Formal Stage 3 of the process for the following 12 months.

If all suitable training and guidance and all forms of reasonable assistance have been pursued, and there is no suitable redeployment opportunity or the employee declines redeployment, and there has been no satisfactory, sustained performance improvement, then there may be no alternative but to dismiss the employee.

## **7.5 Curtailment of the Procedure**

SHSC intends that this policy shall be observed in the handling of all performance management cases. In exceptional circumstances, however, there may be cases in which it will be fair and reasonable to decide to curtail the procedure in full.

Examples of circumstances in which the procedure may be curtailed are:

- evidence clearly confirms the manager has explored all avenues of support.
- evidence confirms the employee has been given reasonable opportunity/training to improve their performance in order for them to achieve the required standard.
- evidence demonstrates that the employee will not achieve the standard required, and by not doing so could cause an adverse effect on the business of the organisation and/or pose a clinical risk to service users.
-

**N.B. In a case of poor performance by an employee with less than 12 months NHS service, see s.7.7.**

The line manager, after seeking advice from the Human Resources Advice Team to ensure a fair and reasonable process has taken place, should convene a case conference to consider curtailing the procedure set out in this policy. The case conference will normally involve the employee or their advocate, union representative or colleague, and a member of the Human Resources Advice Team to discuss an appropriate plan.

All reasonable attempts to ensure the employee is involved in the case conference will be taken. However, if it is deemed not appropriate – for example, due to health reasons – the employee’s representative will be invited, where relevant, and the outcome of the case conference will be forwarded to the employee in writing.

Consideration can also be given to curtailing the process outlined in this policy where the employee or their union representative makes a direct request for this in writing.

## **7.6 Employees with less than 12 months NHS service**

If a manager highlights performance issues with a new NHS employee (someone who has been employed by the NHS, including other organisations outside SHSC) for less than 12 months), it is important that these concerns are addressed early, although consideration should be given to whether the employee has received a full corporate and local induction and whether they have received all appropriate mandatory and other necessary training.

If performance issues are raised about a new NHS starter the principles of this policy will still apply, i.e. an informal meeting will be held and the employee will be notified in writing giving at least 7 working days’ notice. The template invitation letter for an informal meeting, which is available on Jarvis, should be used to invite them to that meeting.

The employee is entitled to be accompanied by a trade union representative or an SHSC colleague at that meeting. The HR Advice Team must be consulted and/or involved at this stage of the process.

A review period should be stipulated (usually of between one and 3 months) and where possible agreed with the employee. If it is clear at the review meeting that the employee is continuing to fall below the required performance standard needed for the role, the line manager has the option of moving straight to Final Formal Stage 3 of this policy. This can only be done in the following situation:

- where the employee does not have 12 months NHS service AND
- it is clear the employee is markedly short of achieving the required standard of performance.

The same right of appeal as at Final Formal Stage 3 of this policy will apply to the employee in this circumstance.

Following these meetings, the relevant an outcome letter should be sent within 10 working days, and should include (where a further targets and timescales for improvement have been set):

- a detailed summary of the improvements required and standards to be achieved.

- any adjustments/support/assistance which were agreed.
- an Improvement Plan with clear objectives (SMART) and timescales for demonstrable improvements.
- set a date for any regular meetings and informal review meeting.
- the warning that they may be moved to final formal stage 3 if there has not been a satisfactory improvement in their performance and this could result in dismissal.

If the employee has been moved to Final Formal Stage 3 of the policy the letter must clearly state that the employee has been warned and moved onto the final stage of the procedure, that their continued under performance may result in dismissal and that they will be invited to a Final Formal Stage 3 meeting in due course. It should also be explained that an Authorised Manager, not previously involved with the employee's situation, will chair and review the case and procedures followed, and that a representative from the HR Advice Team will support this Authorised Manager.

## **7.7 Right of Appeal**

The right of appeal exists at all stages of the formal process. The employee must submit their appeal in writing within 5 working days of receipt of the outcome letter giving specific reasons for the appeal. The appeal will normally be to the next line manager for the line manager who made the decision.

The employee or their representative must submit a full case within a further 10 working days to the next line manager or senior manager who will hear the appeal (this must be outlined in the outcome letter from the meeting) and a copy to the manager against whose decision they are appealing.

An appeal hearing will normally be held within 25 working days of receiving the full case. Where there are issues around availability of the relevant parties to the appeal hearing, a mutually convenient date will be set. The employee will be formally invited to the appeal hearing by letter.

The appeal hearing decision will ideally be made and communicated on the day but otherwise within 2 working days of the appeal hearing, and in exceptional circumstances, no later than 1 week after the case has been heard.

### Appeals at formal stage 1 and 2

The appeal hearing will be normally be chaired by the line manager's next line manager, or by another appropriate manager who has not been involved in the process. The senior manager will be advised by a representative from the HR Advice Team. The employee has the right to be accompanied by a representative from a trade union or by an SHSC colleague.

Options available to the senior manager at the appeal hearing are as follows:

- uphold the decision to move to the next stage of the policy,

OR

- extend the review period under the informal / formal stage so that additional support can be given/performance can be further monitored in line with policy timescales.

### Appeal at Final Formal Stage 3 or following dismissal

The appeal hearing will be chaired by a further Authorised Manager, not previously involved in the process, supported by an HR Business Partner. Should the appeal follow dismissal, the manager issuing the dismissal notice will present the case. The employee's line manager may be required to attend the appeal hearing in the capacity of a witness, to answer questions/give evidence/provide further information, but would only be present for this part of the process, and would not attend the full hearing.

The employee and/or their representative will present their case. Should the employee call a witness, the witness would then be required to withdraw after being questioned and giving their evidence.

Both parties will have the opportunity to sum up; the manager first, followed by the employee or their representative.

The decision of the Authorised Manager will be based on all the relevant evidence and the procedures followed, and whether the decision to dismiss was reasonable given all the circumstances of the case.

Options available to the Authorised Manager at this stage are as follows:

- uphold the decision to dismiss.
- extend the review period at Final Formal Stage 3 so that performance can be further monitored in line with policy timescales.
- offer further assistance, e.g. an extended time period to search for an alternative role.

There will be no resulting delay in implementing any management decisions pending an appeal. However, any decisions made may have to be subsequently amended or reversed as a result of an appeal hearing.

The decision of the appeal meeting will be communicated in writing to the employee within 5 working days.

## **7.8 Monitoring and Review**

During any monitoring and review periods, notes of regular meetings should be kept by the manager concerned and a record of all actions taken, e.g. training offered or attended. Record-keeping and note-keeping is especially important where a member of the HR Advice Team has not been involved. Any information will remain confidential and will be recorded, in the first instance, by the person dealing with the performance concerns/issues.

## **7.9 Pay Progression**

Where an employee's incremental date falls during a period in which they are being managed under the formal stages of this policy, their progression will be deferred until they are no longer being managed under the formal stages of this policy.

## **8. Development, Consultation and Approval**

Review and consultation on this policy took place March 2022 - March 2023.

HR Advisers and HR Business Partners provided feedback based on experience of supporting cases during the previous two years and on their broader discussions with line managers and Senior Managers on the process across the organisation during that time.

Staff Side were consulted through the Joint Policy Group in March 2023.

Future date for review: January 2026

## 9. Audit, monitoring and review

This Policy is due to be reviewed at least every 3 years. However, monitoring will be on an ongoing basis pending any amendments which may occur due to revised legislation or release of good practice guidance information from relevant organisations, e.g. ACAS. Overall, People Directorate policies are subject to joint monitoring and review between management and Staff Side at the Joint Policy Group (a sub-group of the Joint Consultative Forum).

<b>Monitoring Compliance Template</b>						
Minimum Requirement	Process for Monitoring	Responsible Individual/group/committee	Frequency of Monitoring	Review of Results process (e.g. who does this?)	Responsible Individual/group/committee for action plan development	Responsible Individual/group/committee for action plan monitoring and implementation
To be reviewed in line with relevant employment changes	Review policy, review employment legislation changes	HR Advisory Team	At least every 3 years	HR Adviser	HR Senior Management Team	HR Senior Management Team

## 10. Implementation plan

Action / Task	Responsible Person	Deadline	Progress update
New policy to be replaced on the Intranet and SHSC website.	Director of Corporate Governance	Within 5 working days of ratification	April 2023
A communication will be issued to all staff via Connect.	Director of Corporate Governance		April 2023
The HR Advice Team will review training provision.	HR Adviser, as appropriate		As necessary

## 11. Dissemination, Storage and Archiving (control)

Human Resources policies are referred to in employees' contracts of employment and statement of terms. Policies are available on the SHSC intranet and, if necessary, a paper copy can be provided by the People Directorate.

All policies are stored by Policy Governance, including archive copies.

## 12. Training and Other Resource Implications

Employees will be made aware of this revised Policy by the usual SHSC communication systems. The People Directorate offers training and support to managers in the implementation of relevant staff management policies

## 13. Links to Other Policies, Standards, References, Legislation and National Guidance

- Promoting Attendance and Managing Sickness Absence Policy
- Redeployment Policy
- Fact-Finding and Investigation Toolkit
- Disciplinary Policy
- Stress Management at Work Policy
- Equal Opportunities and Dignity at Work Policy
- Equality Act 2010

## 14. Contact details

<b><i>Title</i></b>	<b><i>Name</i></b>	<b><i>Phone</i></b>	<b><i>Email</i></b>
HR Advice Team		0114 2263301	HRAdvisors@shsc.nhs.uk

## Appendix 1

### Equality Impact Assessment Process and Record for Written Policies

**Stage 1 – Relevance** - Is the policy potentially relevant to equality i.e. will this policy potentially impact on staff, patients or the public? This should be considered as part of the Case of Need for new policies.

**NO** – No further action is required – please sign and date the following statement.  
**I confirm that this policy does not impact on staff, patients or the public.**

***I confirm that this policy does not impact on staff, patients or the public.***

Name/Date:

**YES, Go to Stage 2**

**Stage 2 Policy Screening and Drafting Policy** - Public authorities are legally required to have 'due regard' to eliminating discrimination, advancing equal opportunity and fostering good relations in relation to people who share certain 'protected characteristics' and those that do not. The following table should be used to consider this and inform changes to the policy (indicate yes/no/ don't know and note reasons). Please see the SHSC Guidance and Flow Chart.

**Stage 3 – Policy Revision** - Make amendments to the policy or identify any remedial action required and record any action planned in the policy implementation plan section

SCREENING RECORD	Does any aspect of this policy or potentially discriminate against this group?	Can equality of opportunity for this group be improved through this policy or changes to this policy?	Can this policy be amended so that it works to enhance relations between people in this group and people not in this group?
Age	No	N/A	N/A
Disability	No	N/A	N/A

Gender Reassignment	No	N/A	N/A
Pregnancy and Maternity	No	N/A	N/A

<b>Race</b>	<b>No</b>	<b>N/A</b>	<b>N/A</b>
<b>Religion or Belief</b>	<b>No</b>	<b>N/A</b>	<b>N/A</b>
<b>Sex</b>	<b>No</b>	<b>N/A</b>	<b>N/A</b>
<b>Sexual Orientation</b>	<b>No</b>	<b>N/A</b>	<b>N/A</b>
<b>Marriage or Civil Partnership</b>	<b>No</b>		

Please delete as appropriate: - Policy Amended / Action Identified (see Implementation Plan) / no changes made.

Impact Assessment Completed by:  
HRBP Team 15/03/2023

## Appendix 2

### Review/New Policy Checklist

This checklist to be used as part of the development or review of a policy and presented to the Policy Governance Group (PGG) with the revised policy.

		Tick to confirm
<b>Engagement</b>		
1.	Is the Executive Lead sighted on the development/review of the policy?	
2.	Is the local Policy Champion member sighted on the development/review of the policy?	
<b>Development and Consultation</b>		
3.	If the policy is a new policy, has the development of the policy been approved through the Case for Need approval process?	
4.	Is there evidence of consultation with all relevant services, partners and other relevant bodies?	
5.	Has the policy been discussed and agreed by the local governance groups?	
6.	Have any relevant recommendations from Internal Audit or other relevant bodies been taken into account in preparing the policy?	
<b>Template Compliance</b>		
7.	Has the version control/storage section been updated?	
8.	Is the policy title clear and unambiguous?	
9.	Is the policy in Arial font 12?	
10.	Have page numbers been inserted?	
11.	Has the policy been quality checked for spelling errors, links, accuracy?	
<b>Policy Content</b>		
12.	Is the purpose of the policy clear?	
13.	Does the policy comply with requirements of the CQC or other relevant bodies? (where appropriate)	
14.	Does the policy reflect changes as a result of lessons identified from incidents, complaints, near misses, etc.?	
15.	Where appropriate, does the policy contain a list of definitions of terms used?	
16.	Does the policy include any references to other associated policies and key documents?	
17.	Has the EIA Form been completed (Appendix 1)?	
<b>Dissemination, Implementation, Review and Audit Compliance</b>		
18.	Does the dissemination plan identify how the policy will be implemented?	
19.	Does the dissemination plan include the necessary training/support to ensure compliance?	
20.	Is there a plan to <ol style="list-style-type: none"> <li>i. review</li> <li>ii. audit compliance with the document?</li> </ol>	
21.	Is the review date identified, and is it appropriate and justifiable?	

**Appendix 3 – Improvement Plan Template**

<b>Goal</b> (Area to be addressed)					
<b>Specific</b> (Give details of specific objective.)					
<b>Measurable</b> (How the achievement is going to be measured and by whom. What evidence is required?)					
<b>Achievable</b> (How will this objective be achieved?)					
<b>Realistic</b> (Is the objective possible to achieve, and how will progress be recorded?)					
<b>Timed</b> (What is the exact time period for improvement?)					

**Line Manager signature:**.....

**Print Name:**..... **Date:** .....

**Employee signature:** .....

**Print Name:**..... **Date:** .....