

## **Nene Clinical Commissioning Group**

# **MANAGEMENT OF UNSATISFACTORY WORK PERFORMANCE POLICY**

NENE CCG: HR14

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Ratified by:	CCG Governing Body
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Name of responsible committee/individual:	CCG Corporate Services
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Target audience:	All Staff

## ASSISTANCE WITH THE APPLICATION OF THIS POLICY AND UPDATES

This policy has been prepared so as to reflect the law as at 1 June 2013. The policy will require periodic review to reflect subsequent changes to the law. Changes to employment law have generally been made on 1 February, 1 April and 1 October in any given year.

For advice and assistance in relation to the application of this policy and to obtain updates please contact:

Your line manager in the first instance or Corporate Services, Nene Clinical Commissioning Group, Francis Crick House, Summerhouse Road, Moulton Park, Northampton, NN3 6BF

### VERSION CONTROL SHEET

VERSION NO.	DATE	WHO	STATUS	COMMENT
1	16.07.13	Stephen Wright	Draft	
2	21.08.13	Julie Fitzpatrick	Draft	
3	30.12.13	Julie Fitzpatrick	Final	Post Union Consultation
4	06.02.14	Julie Fitzpatrick	Final	Post Equality review

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## **POLICY STATEMENT**

- 1.1 The primary aim of this procedure is to provide a framework within which managers can work with employees to maintain satisfactory performance standards and to encourage improvement where necessary.
- 1.2 It is our policy to ensure that concerns over performance are dealt with fairly and that steps are taken to establish the facts and to give employees the opportunity to respond at a hearing before any formal action is taken.
- 1.3 This procedure has been agreed following consultation with the CCG Board members and staff side representatives. This procedure does not form part of your contract of employment and it may be amended at any time. We may also vary any parts of this procedure, including any time limits, as appropriate in any case.

## **2. WHO IS COVERED BY THE POLICY?**

- 2.1 This procedure applies to all employees regardless of length of service. It does not apply to agency workers or self-employed contractors.

## **3. WHAT IS COVERED BY THE POLICY?**

- 3.1 This policy is used to deal with poor performance. Poor performance can include, but is not limited to, any of the following:
  - slow work;
  - work of inadequate quality;
  - attitude problems;
  - failure to meet objectives; or
  - failure to carry out the role effectively.

- 3.2 The policy does not apply to cases involving genuine sickness absence, proposed redundancies or misconduct. In those cases, reference should be made to the appropriate policy or procedure. A copy of these can be obtained from CCG Corporate Services or via CCG Internet.

#### **4. IDENTIFYING PERFORMANCE ISSUES**

- 4.1 In the first instance, performance issues should normally be dealt with informally between the member of staff and their line manager as part of day-to-day management. Where appropriate, a note of any such informal discussions may be placed on your personnel file. The formal procedure should be used for more serious cases, or in any case where an earlier informal discussion has not resulted in a satisfactory improvement. Informal discussions may help:
- (a) clarify the required standards;
  - (b) identify areas of concern;
  - (c) establish the likely causes of poor performance and identify any training needs;
  - (d) set targets for improvement and a time-scale for review and/or
  - (e) identify and support any training as appropriate
- 4.2 Employees will not normally be dismissed for performance reasons without previous warnings. However, in serious cases of gross negligence, or in any case involving an employee who has not yet completed their probationary period (where applicable), dismissal without previous warnings may be appropriate.
- 4.3 If we have concerns about your performance, we will undertake an assessment to decide if there are grounds for taking formal action under this procedure. The procedure involved will depend on the circumstances but may involve reviewing your personnel file including any appraisal records, gathering any relevant documents, monitoring your work and, if appropriate, interviewing you and/or other individuals confidentially regarding your work.

#### **5. DISABILITIES**

- 5.1 Consideration will be given to whether poor performance may be related to a disability and, if so, whether there are reasonable adjustments that could be made to your working arrangements, including changing your duties or

providing additional equipment or training. We may also consider making adjustments to this procedure in appropriate cases.

- 5.2 If you wish to discuss this or inform us of any medical condition you consider relevant, you should contact your line manager or a member of the GEM CSU Human Resources Business Partner team.

## 6. CONFIDENTIALITY

- 6.1 Our aim is to deal with performance matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with a matter which is subject to this capability procedure.
- 6.2 You, and anyone accompanying you (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure and doing so may amount to a disciplinary offence.
- 6.3 You will normally be told the names of any witnesses whose evidence is relevant to your capability hearing, unless we believe that a witness's identity should remain confidential.

## 7. NOTIFICATION OF A CAPABILITY HEARING

- 7.1 If we consider that there are grounds for taking formal action over alleged poor performance, you will be required to attend a capability hearing. We will notify you in writing of our concerns over your performance, the reasons for those concerns, and the likely outcome if we decide after the hearing that your performance has been unsatisfactory. We will also include the following where appropriate:
- (a) A summary of relevant information gathered as part of any investigation.
  - (b) A copy of any relevant documents which will be used at the capability hearing.
  - (c) A copy of any relevant witness statements, except where a witness' identity is to be kept confidential, in which case we will give you as much information as possible while maintaining the confidentiality.
- 7.2 We will give you written notice of the date, time and place of the capability hearing. The hearing will be held as soon as reasonably practicable, although

you will be given at least 10 working days to prepare your case based on the information we have given you.

## **8. RIGHT TO BE ACCOMPANIED AT HEARINGS**

- 8.1 You may bring a companion to any capability hearing or appeal hearing under this procedure. The companion may be either a trade union representative or a work colleague. You must tell the manager conducting the hearing who your chosen companion is, 5 working days before the hearing.
- 8.2 A companion is allowed reasonable time off from duties without loss of pay but no-one is obliged to act as a companion if they do not wish to do so.
- 8.3 If your choice of companion is unreasonable we may require you to choose someone else, for example:
- (a) if in our opinion your companion may have a conflict of interest or may prejudice the hearing; or
  - (b) if your companion works at another site and someone reasonably suitable is available at the site at which you work; or
  - (c) if your companion is unavailable at the time a hearing is scheduled and will not be available for more than five working days within the date of the scheduled hearing.
- 8.4 We may, at our discretion, allow you to bring a companion who is not a colleague or union representative (for example, a member of your family) where this will help overcome a particular difficulty caused by a disability, or where you have difficulty understanding English.
- 8.5 If you or your companion cannot attend the hearing you should inform us immediately and we will arrange an alternative time. You must make every effort to attend the hearing, and failure to attend without good reason may be treated as misconduct in itself. If you fail to attend without good reason on two or more occasions the hearing may proceed in your absence and we may also take a decision in your absence based on the evidence available at the time.

## **9. PROCEDURE AT CAPABILITY HEARINGS**

- 9.1 The hearing will be held by your line manager or a more senior manager and will also be attended by a member of the GEM CSU Human Resources

Business Partner team. You may bring a companion with you to the hearing (see paragraph 8). Your companion may make representations, ask questions, and sum up your case, but will not be allowed to answer questions on your behalf. You may confer privately with your companion at any time during the hearing.

- 9.2 You may ask relevant witnesses to appear at the hearing, provided you give us no less than 5 working days advance notice to arrange their attendance. You will be given the opportunity to respond to any information given by a witness. However, you will not normally be permitted to cross-examine witnesses unless, in exceptional circumstances, we decide that a fair hearing could not be held otherwise.
- 9.3 The aims of a capability hearing will usually include:
- (a) Setting out the required standards that we believe you may have failed to meet, and going through any relevant evidence that we have gathered.
  - (b) Allowing you to ask questions, present evidence, call witnesses, respond to evidence and make representations.
  - (c) Establishing the likely causes of poor performance including any reasons why any measures taken so far have not led to the required improvement.
  - (d) Identifying whether there are further measures, such as additional training or supervision, which may improve performance.
  - (e) Where appropriate, discussing targets for improvement and a time-scale for review.
  - (f) If dismissal is a possibility, establishing whether there is any likelihood of a significant improvement being made within a reasonable time and whether there is any practical alternative to dismissal, such as redeployment.
- 9.4 A hearing may be adjourned if we need to gather any further information or give consideration to matters discussed at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.
- 9.5 We will inform you in writing of our decision and our reasons for it, usually within 10 working days of the capability hearing. Where possible we will also explain this information to you in person.

## 10. STAGE 1 HEARING: [FIRST WRITTEN WARNING OR IMPROVEMENT NOTE]

10.1 Following a Stage 1 capability hearing, if we decide that your performance is unsatisfactory, we will give you a first written warning, setting out:

- (a) The areas in which you have not met the required performance standards.
- (b) Targets for improvement.
- (c) Any measures, such as additional training or supervision, which will be taken with a view to improving performance.
- (d) A period for review.
- (e) The consequences of failing to improve within the review period, or of further unsatisfactory performance.

10.2 The warning will normally remain active for six months from the date of the letter confirming the decision to you.

10.3 There will be regular meetings between you and your line manager where your performance will be monitored during the six month review period. After the conclusion of this review period, we will inform you of the outcome:

- (a) If your line manager is satisfied with your performance, no further action will be taken;
- (b) If your line manager is not satisfied that your performance has been acceptable, the matter may be progressed to a Stage 2 capability hearing; or
- (c) If the manager feels that there has been a substantial but insufficient improvement, the review period may be extended which will be at your line manager's discretion.

## 11. STAGE 2 HEARING: FINAL WRITTEN WARNING

11.1 If your performance does not improve within the review period set out in a first written, or if there is further evidence of poor performance while your first written warning is still active, we may decide to hold a Stage 2 capability hearing. We will send you written notification as set out in paragraph 7.

11.2 Following a Stage 2 capability hearing, if we decide that your performance is unsatisfactory, we will give you a final written warning, setting out:

- (a) the areas in which you have not met the required performance standards;
- (b) targets for improvement;
- (c) any measures, such as additional training or supervision, which will be taken with a view to improving performance;
- (d) a period for review; and
- (e) the consequences of failing to improve within the review period, or of further unsatisfactory performance.

11.3 A final written warning will normally remain active for 12 months from the date of the letter confirming the decision to you.

11.4 There will be regular meetings between you and your line manager where your performance will be monitored during the 12 month review period. After the conclusion of this review period, we will inform you of the outcome:

- (a) if your line manager is satisfied with your performance, no further action will be taken;
- (b) if your line manager is not satisfied, the matter may be progressed to a Stage 3 capability hearing; or
- (c) if the manager feels that there has been a substantial but insufficient improvement, the review period may be extended which will be at your line manager's discretion.

## 12. STAGE 3 HEARING: DISMISSAL OR REDEPLOYMENT

12.1 We may decide to hold a Stage 3 capability hearing if we have reason to believe:

- (a) your performance has not improved sufficiently within the review period set out in a final written warning;
- (b) your performance is unsatisfactory while a final written warning is still active; or
- (c) your performance has been grossly negligent such as to warrant dismissal without the need for a final written warning.

We will send you written notification of the hearing as set out in paragraph 7.

12.2 Following the hearing, if we find that your performance is unsatisfactory, we may consider a range of options including:

- (a) Dismissing you.
- (b) Redeploying you into another suitable job at the same or a lower grade. (remuneration will be at new band)
- (c) Extending an active final written warning and setting a further review period (in exceptional cases where we believe a substantial improvement is likely within the review period).
- (d) Giving a final written warning (where no final written warning is currently active).

12.3 Dismissal will normally be with full notice or payment in lieu of notice, unless your performance has been so negligent as to amount to gross misconduct the CCG Disciplinary Policy will be invoked, in which case we may dismiss you without notice or any pay in lieu.

### **13. APPEALS AGAINST ACTION FOR POOR PERFORMANCE**

- 13.1 If you feel that a decision about poor performance under this procedure is wrong you may appeal in writing, stating your full grounds of appeal (enclosing any relevant documents), to Chief Officer within 10 working days of the date on which you were informed in writing of the decision. Appeals may only be made on the basis of a failure to follow the proper procedure or where new evidence becomes available that could not reasonably have been available at the original hearing.
- 13.2 If you are appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if your appeal is successful you will be reinstated with no loss of continuity or pay.
- 13.3 If you raise any new matters in your appeal, we may need to carry out further investigation. If any new information comes to light we will provide you with a summary including, where appropriate, copies of additional relevant documents and witness statements. You will have a reasonable opportunity to consider this information before the hearing.
- 13.4 We will give you written notice of the date, time and place of the appeal hearing. This will normally be within 5 working days after we receive your full grounds of appeal in writing.
- 13.5 Where possible, the appeal hearing will be conducted by a more senior manager who has not been previously involved in the case. A member of the

GEM CSU Human Resources Business Partner team and the manager who conducted the capability hearing will also usually be present. You may bring a companion with you to the appeal hearing (see paragraph 8).

- 13.6 A hearing may be adjourned if we need to gather any further information or give consideration to matters discussed at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.
- 13.7 Following the appeal hearing we may:
- (a) confirm the original decision;
  - (b) revoke the original decision; or
  - (c) substitute a different penalty.
- 13.8 We will inform you in writing of our final decision as soon as possible, usually within 10 working days of the appeal hearing. Where possible we will also explain this to you in person.
- 13.9 The decision taken at the appeal hearing will be final and you will have no further right of appeal.

## **14. HELP AND ADVICE**

- 14.1 If you need more information about this performance management policy you should ask your line manager or a member of the GEM CSU Human Resources Business Partner team who will be pleased to help.

## **15. DUE REGARD**

This policy has been reviewed in relation to having due regard to the Public Sector Equality Duty (PSED) of the Equality Act 2010 to eliminate discrimination, harassment, victimisation; to advance equality of opportunity; and foster good relations. These can be evidenced at sections 2 and 8.

## **16. EQUALITY STATEMENT**

Nene Clinical Commissioning Group (CCG) aims to design and implement policy documents that meet the diverse needs of our services, population and workforce,

ensuring that none are placed at a disadvantage over others. It takes into account current UK legislative requirement, including the Equality Act 2010 and the Human Rights Act 1998, and promotes equal opportunities for all. This document has been designed to ensure that no-one receives less favourable treatment due to their personal circumstances, i.e. the protected characteristics of their age, disability, sex (gender), gender reassignment, pregnancy and maternity. Appropriate consideration has also been given to gender identity, socio-economic status, immigration status and the principles of the Human Rights Act.

In carrying out its functions, Nene CCG must have due regard to the Public Sector Equality Duty (PSED). This applies to all the activities for which Nene CCG is responsible, including policy development, review and implementation.

**Appendix A**

**Performance Analysis Form (Form A)**

Performance analysis plan

To be completed by the employee's manager where the employee is not reaching the required standards and there is cause for concern. The form will be used at an informal meeting with the employee to discuss performance.

**Employee's Name:** \_\_\_\_\_

**Job Title:** \_\_\_\_\_

**Length of service in current role:** \_\_\_\_\_

**Name of reviewer:** \_\_\_\_\_

**Disciplinary record in last 12 months** \_\_\_\_\_

(state sanction and reason) \_\_\_\_\_

**Details of performance issue and objective not being met** \_\_\_\_\_

Provide summary and examples, insert dates where possible. Attach documents as examples. \_\_\_\_\_

If improvement plan set indicate how performance has met target and objectives set. \_\_\_\_\_

**Resulting impact on role** \_\_\_\_\_

**Perceived causes of problem** \_\_\_\_\_

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**Individual's awareness of problem**

Is employee aware of problem, if so how?

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When was the last time the issue was raised? If so by whom, when and what was said? – **[attach document if complaint in writing]**

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Signed by Employee

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Signed by Manager

Dated \_\_\_\_\_

Dated \_\_\_\_\_

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**Appendix B**

**Performance Review Meeting Notes (Meeting Notes Form)**

This form is to be completed with the employee at a formal meeting.

**Employee's Name:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Name of reviewer:** \_\_\_\_\_

**Employee's comments on the performance issues identified:** \_\_\_\_\_  
\_\_\_\_\_

**Employee's comments on resulting impact on role:** \_\_\_\_\_  
\_\_\_\_\_

**Employee to indicate their opinion on causes of problem:** \_\_\_\_\_  
\_\_\_\_\_

**Employee to comment on their awareness of problem:** \_\_\_\_\_  
\_\_\_\_\_

**What training does the employee consider appropriate?** \_\_\_\_\_  
\_\_\_\_\_

**Manager to indicate if there are any relevant personal circumstances** \_\_\_\_\_

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**Discussion on appropriate targets and objectives for improvement plan**

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Signed by Employee

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Signed by Manager

Dated \_\_\_\_\_

Dated \_\_\_\_\_

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**Appendix C**

**Performance Improvement Plan (Form B)**

This form is for completion by the employee's manager following the informal or formal review meeting with the employee.

**Employee's Name:** \_\_\_\_\_

**Job Title:** \_\_\_\_\_

**Name of reviewer:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Targets and objectives for [insert period]** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Training to be undertaken** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Changes to duties and/or responsibilities**      Review period

4 weeks       tick as appropriate

6 Weeks

8 Weeks

Other       please state

**Signed by Manager:-**

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**Dated:**

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**Signed by Employee:-**

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**Dated:**

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