

# Managing Performance Policy

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<b>Author &amp; Title:</b>	David Mawdesley, HR Business Partner
<b>Responsible Directorate:</b>	Human Resources
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<b>Related Policies and Guidelines</b>	Managing Health & Sickness Policy Managing Conduct Policy Appraisal Policy Appeal Policy Maintaining High Professional Standards in the Modern NHS for Doctors and Dentists (Department of Health publication).
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## Amendment History

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Issue	Status	Date	Reason for Change	Authorised
3	Approved	June 2011	Planned Review	Management Board
4	Approved	March 2013	Planned Review and new formatting applied	Strategic Workforce Committee
5	Approved	September 2018	Change to Redeployment process	Strategic Workforce Committee

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## 1. Policy Summary

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It is important that each member of staff employed by the Trust is able to contribute effectively in line with their job description to the required standard of competence. This policy sets out the framework by which individual performance will be managed within the Trust and the responsibilities of those involved in this process.

This policy supersedes all previous versions of the Managing Performance Policy.

## 2. Policy Statements

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This procedure applies to the performance of all employees of the Trust except for medical and dental staff. Maintaining High Professional Standards in Modern NHS for doctors and dentists must be followed for this staff group alongside the Procedures for the Prevention of Harm and Professional Conduct and Competence for Medical Dental Staff (and any updates to that Procedure in accordance with Health Service Circular 2003/012 and any future guidance).

Managers have responsibilities for the careful selection and induction of new members of staff, for ensuring that all employees are aware of the standards required of them in terms of work performance and for ensuring they are adequately trained for the jobs they are employed to perform. Managers are also responsible for evaluating learning opportunities with the members of their team, so that any deficiency or omissions identified may be corrected.

Employees have a responsibility to achieve and maintain the standards that have been outlined to them, to co-operate with their managers in identifying development needs and to act on them.

Employees undergoing a formal work-related training program would not normally have any performance issues dealt with under this policy. There may, however, be circumstances in which an approach which mirrors this policy would need to be adopted.

Performance is assessed by reference to the skill, aptitude and knowledge of the employee in regard to the job they are employed to perform. This procedure is designed to assist where poor performance indicates a lack of ability or skill and to provide an environment in which such issues can be addressed constructively in the interests of all parties.

Consideration should be given to involving expert or professional advisers where jobs incorporate highly technical aspects or elements which are not familiar to the manager.

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This policy does not cover failure to make use of abilities through lack of motivation/unwillingness to carry out duties or negligence. The Trust has other procedures for such circumstances:

Where poor performance is considered to be due to unwillingness to carry out duties properly, rather than inability to do so, it is appropriate to follow the Managing Conduct Policy and Procedure.

Where poor performance is due to ill health, the Managing Health and Sickness Policy and Procedure should be applied.

Where the circumstances of a situation suggest a combination of factors such as conduct and poor performance, the principal reasons for action should be selected and the appropriate procedure used. The use of this poor performance procedure does not preclude the use of another procedure if it becomes appropriate.

In handling issues of performance under this policy, the informal and formal stages will normally be followed sequentially. However, there may be circumstances where the issue is sufficiently serious to necessitate going straight to the formal stage one performance advisory meeting. This will only be done with Human Resources advice.

## 3. Definitions and Terms Used

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**Appraisal:** An annual review of performance which includes the creation of a personal development plan as well as the setting of objectives for the forthcoming year.

**Downgrading:** Downgrading occurs where a member of staff is underperforming in their role. As an alternative to dismissal it may be agreed (either informally or through a hearing) that a member of staff should work in a more junior role in which it is identified that they will be able to perform effectively. There will be no pay protection in this circumstance.

**Dismissal with appropriate notice:** Any employee dismissed under this policy will be dismissed with notice. Notice given will be either the employees contractual or statutory notice period, whichever is longer.

## 4. Duties and Responsibilities

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### Employee

- Employees are expected to act in accordance with the Trust Code of Expectations at all times.

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- Employees are responsible for co-operating in the performance procedure and should make every effort to attend any meetings arranged by management.
- Employees are responsible for arranging their own trade union representation or support throughout the performance procedure.

## Investigating Manager

- Performance cases should be dealt with without any undue delay on the part of the manager.
- The investigating manager must view the case with an open mind and come to a fair and justifiable conclusion after a full investigation.
- Where it is decided that a case is to be referred to a performance hearing the manager must prepare a thorough management case outlining their investigation for consideration by the hearing panel.

## Hearing Manager/Panel Members

- The hearing manager and panel members must consider the management case and the staff side case fairly during the hearing and come to a fair and justifiable decision as to the outcome of the performance hearing.
- The hearing panel will consist of a manager with dismissal rights, an HR representative and where appropriate a third member may sit as an advisor to the panel. The third member will be registered with the relevant professional body of the staff member whose case is being heard; i.e. in a case regarding a nurse, a registered nurse would sit on the panel.
- The hearing manager must write to confirm the outcome of the hearing to the employee and investigating team within 5 days of the date of the hearing.
- If the outcome of a grievance is appealed the manager must provide the appeal panel with a statement of case 7 days in advance of the meeting.

## Human Resources

- The Human Resources department is responsible for the creation and maintenance of records of performance cases within the Trust in line with best practice for information governance.
- To support and coach, where necessary, managers through the formal performance procedure, including the appeal stage.
- The Human Resources department is responsible for the review and maintenance of the Managing Performance policy through agreed forums within the Trust.

## Trade Unions

- To represent employees through the performance procedure where they are fully paid up members of that trade union or professional body.
- To ensure that all representatives have attended mandatory grievance and disciplinary training with their relevant trade union or professional body.
- To make every reasonable attempt to attend meetings at the scheduled time to support employees.

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## 5. Informal Performance Management

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### 5.1 Induction

All new starters in the Trust should receive an appropriate induction to the Trust, through the Trust Induction programme followed by a robust local induction to their department and their role.

The induction programme should be approved and agreed by both parties, reviewed regularly, and placed on the personal file.

When the new starter has completed their induction their manager should meet with them to establish standards of performance, skills and knowledge for their role and specific objectives. This meeting should take place within the first six weeks of commencement of the role, and the objectives should be documented and agreed with a copy on file.

Managers should try to make standards and objectives as “SMART” (Specific, Measurable, Appropriate, Realistic, Time Bound) as possible.

### 5.2 Appraisal Process

Managers will ensure that the appraisal process is followed for all staff and used to review performance and the achievement of agreed objectives.

An appraisal should form a fundamental part of the normal management process. It should provide a focused two-way communication with opportunity for reflection and feedback where the individual can be helped to work more effectively and used as a means of helping staff to plan their future working lives (as set out in the Appraisal policy).

Managers and staff should ensure they meet their roles and responsibilities of the appraisal, as explained in the Trust Appraisal policy, including the provision of training and support from managers. Staff should be given regular feedback on their performance and feedback should not be limited to the appraisal. Managers should give their staff regular specific and constructive feedback as soon as possible on both positive and less than satisfactory performance.

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### 5.3 Initial Performance Management Meeting

Managers should always be monitoring the performance of all their members of staff.

Where the performance of an employee is deemed to be inadequate, the manager should meet with the employee informally and set out in a clear and understandable way where and how the performance falls short of the required standard, and what that standard is. The Manager may also ask the employee for his or her views on a programme of future support or training. This meeting should be held in as positive and supportive an environment as possible. It is not necessary for a member of the HR team or an employee representative to be present at this initial meeting.

The employee should be given every opportunity to ask for clarification of the standards expected and to bring to the manager's attention any issues which may have affected his or her performance, including work and personal circumstances. This may also help the manager in assessing whether advice is required from Occupational Health or whether the employee should be reminded about the availability of the Trusts employee assistance programme. The employee may also like to discuss any learning needs.

The manager should ascertain from the employee's comments whether he or she accepts that there is a problem and assess the importance of any mitigating circumstances.

Having assessed the situation, the manager should discuss and seek the agreement of the employee to an action plan to achieve the improvements in performance that are expected. This would consist of:

- A clear statement of the standards to be achieved
- A realistic time scale for those improvements (usually between four and 12 weeks)
- Details of any support or training
- Provision for regular review meetings
- Details of how performance will be measured.

The action plan may also include support by way of shadowing or buddying with other employees if it is felt that this would be helpful in achieving the objectives set for the employee. Alternatively, the manager may choose to encourage the employee to receive mentoring from a manager external to the department.

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The manager will agree with the employee the schedule by which they will be meeting with the employee in order to provide support, feedback and review performance during the informal performance management period.

Please note for Registered Midwives under local supervised practice programmes the informal stage will run concurrently with this policy. Should improvement not be noted in performance the formal stage will then be commenced.

The manager should indicate to the employee that a failure to meet the required standards within the period set may mean that formal action will need to be taken in the future. The review period set under the initial informal stage may be shortened if serious problems arise during it.

## **5.4 Outcome of Initial Performance Management Meeting**

The meeting and action plan should be confirmed in a performance management letter to the employee within five working days of the meeting.

Following the meeting, it is important that the manager keeps the employee up to date with his or her progress in line with the programme of regular review meetings in the action plan.

If the employee adequately meets the required standards within the period set, the manager should meet with the employee to confirm that this is the case and confirm the meeting in writing. No further action will be taken, although the employee's performance will continue to be monitored in the usual way.

The records of the initial performance managing meeting should normally be retained on an employee's file for 12 months once his or her performance has been confirmed as having returned to the required standard. Should the employee's performance fall below the required standard during this 12 month time period then consideration will be made to re-starting the performance management process at the formal stage depending on the severity of the performance issues.

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## 5.5 Formal Performance Management Meeting

### 5.5.1 Stage One Meeting

Where an employee is failing to perform to an acceptable standard in their post after having been given initial performance counselling and support, a meeting will be arranged with the employee by his or her relevant line manager within 21 calendar days. The employee will be given at least five working days notice of the meeting. The written confirmation of the meeting must include:

- That they have reached the first formal stage of the Managing Poor Performance Policy.
- clear details of the shortfall in performance;
- all necessary supporting documentation;
- details of any informal discussion to this point
- the right of representation by an accredited trade union or professional association representative or a friend who is an employee of the Trust and who is not directly related to the employee

The employee should take all reasonable steps to attend the meeting.

The approach at this meeting will be supportive and the purpose of this meeting will be to discuss and agree the:

- areas in which the employee's performance is unsatisfactory;
- required performance improvement, and how this will be measured;
- action plan for addressing the performance issues with an agreed timescale for improvement – an example of an action plan can be seen as Appendix 2;
- a suitable review schedule and the arrangements for the provision of feedback and support.
- potential consequences of failing to meet the agreed performance level must also be clearly explained to the employee.

The employee should be given every opportunity to ask for clarification of the standards expected and to bring to the manager's attention any issues which may have affected his or her performance, including work and personal circumstances. This may also help the manager in assessing whether advice is required from Occupational Health or whether the employee should be reminded about the availability of the Trusts employee assistance programme. The employee may also like to discuss any training needs. If the employee makes a complaint about the application of the procedure or another related matter, the

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manager should consider whether the procedure should be suspended whilst the complaint is investigated.

The manager may like to discuss any options for redeployment with the employee at this stage.

The manager should review the original action plan and amend it if necessary. A new time scale for the achievement of the required standards should be set, which allows sufficient time to meet the standard, but it should not be unduly prolonged. This would usually be between four and twelve weeks, depending upon the circumstances.

## 5.5.2 Outcome of the Formal Stage One Meeting

The meeting and action plan should be confirmed in a formal stage one outcome letter to the employee within five working days of the meeting and the employee should be advised that a failure to meet and maintain the required standards within the agreed time scale may mean that the formal stage two of the procedure may be initiated, at which a decision on their continuing in their current post will be taken. The decision at the final stage two meeting could include downgrading to a lower band of post elsewhere in the Trust or dismissal on grounds of capability.

Following the meeting, it is important that the manager keeps the employee up to date with his or her progress in line with the programme of regular review meetings in the action plan.

If the employee adequately meets the required standards within the period set, the manager should meet with the employee to confirm that this is the case. They should confirm in writing that provided the standards continue to be met within the next year following the meeting, that no further action will be taken and the employee's performance will continue to be monitored in the usual way. If however there is a reduction in the agreed standards during the next year, the manager will recommence the managing poor performance process at the formal stage one.

The records of the formal stage one meeting should normally be retained on an employee's file for twelve months once his or her performance has been confirmed as having returned to the required standard. Should performance fall below the required standard during this 12 month period then the performance management process will recommence at a Formal Stage One meeting.

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### 5.5.3 Final Stage Two Meeting

If despite all the measures outlined above, it becomes evident to the manager that the required standards are failing to be met and are unlikely to be met within the time scale set, then it may be necessary to use the final formal stage. A meeting must be convened by a manager with the authority to dismiss within 21 calendar days. The employee will be given at least five working days notice of the meeting. The written confirmation of the meeting must include:

- that they have reached the final stage of the Managing Poor Performance Policy.
- clear details of the shortfall in performance.
- all necessary supporting documentation.
- details of any informal discussion to this point.
- the right of representation by an accredited trade union or professional association representative or a friend who is an employee of the Trust and who is not directly related to the employee.

The employee should take all reasonable steps to attend the meeting.

The meeting will be chaired by the manager with the authority to dismiss, who will normally be supported by a senior member of the HR team. The employee's line manager will normally also attend this meeting and will normally be supported by a member of the HR team.

At this meeting the member of staff's manager will feedback to the chair of the meeting and to the employee and their representative the areas where the employee has failed to achieve the acceptable level of performance as set out in the agreed standards and/or objectives. The employee and their representative will have the opportunity to ask questions and/or present their own evidence in relation to their performance. If the employee makes a complaint about the application of the procedure or another related matter, the chair of the meeting should consider whether the procedure should be suspended whilst the complaint is investigated.

### 5.5.4 Outcome of Final Stage Two Meeting

Having heard all of the evidence on the employee's performance, the chair of the meeting with support and advice from the senior member of the HR team, will decide on whether the employee's performance adequately meets the required standards, or whether the performance is below a minimum acceptable standard.

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If the chair concludes that the employee's performance adequately meets the required standard, the chair will confirm to the manager and the employee that this is the case. The chair should confirm in writing that provided the standards continue to be met within the next year following the meeting, that no further action will be taken and the employee's performance will continue to be monitored by the employee's manager in the usual way. If however there is a reduction in the agreed standards during the next year, the manager will recommence the managing poor performance process at the formal stage one.

If the chair concludes that employee's performance is below a minimum acceptable standard they will go through the options set out below with the employee and their representative.

### **5.5.5 Down Grading**

Downgrading options for the employee may be considered as an alternative to dismissal on grounds of capability (performance) if an appropriate post is available at the time of the meeting. Downgrading will only be considered within the same type of job family (i.e. a registered nurse to a HCA or a Senior Administrator to an administrator) and within the area of responsibility of the manager presenting the case.

Where it is identified through the Stage 2 Performance Meeting that the employee is unable to continue in their current role, the Chair will discuss with the manager and the employee the option to downgrade the employee to an alternative role. The chair will enquire with the manager about the suitability of the employee for alternative roles (based on the performance shortfall identified) and whether they have any available roles within their management structure in which it is identified that the employee will be able to perform effectively.

If the performance deficits identified throughout the performance management process are considered to also be relevant to lower banded jobs then the panel may decide that downgrading is not appropriate in the circumstances. If there is no available role within the same job family and within the management structure of the presenting manager then the Chair will confirm that downgrading is not an option. If the employee refuses to take up an identified opportunity for downgrading, the chair will confirm that this is the case and that as a result downgrading is not an option.

Where a suitable post is identified for an employee in the management structure of the presenting manager there will be no requirement for

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the employee to interview for the post. Any post agreed through downgrading will be offered on a 4 week trial basis, if performance is not satisfactory during this period the case would be referred back to the chair to reconvene the Stage 2 Meeting.

Where an employee is downgraded in line with this policy the changes to terms and conditions will be a permanent change (following the 4 week trial period). There will not be any protection of pay for any employee redeployed through this policy. They will receive the appropriate salary for the grade/hours of the job which is available to them.

### **5.5.6 Dismissal**

If the employee refuses down-grading, if an appropriate post is not available, or the performance deficit precludes downgrading, the employee's contract will be terminated with appropriate notice on the grounds of capability (performance) following the Stage 2 Performance Meeting.

During the notice period provided to the employee the organisation will offer support to the employee in finding alternative employment. A member of the HR department will be identified to provide advice on searching for posts, suitable roles, application and interview coaching or any other reasonable support identified by the employee. It will be the employee's responsibility to access this support should they feel that it would be helpful in finding an alternative role.

The employee will not receive priority status for posts for which they apply (nor will the redeployment policy be invoked) and will be required to undertake the same assessment process as other applicants for posts within the organisation. It is the employee's responsibility to look for posts during their notice period. Should the employee be successful in their application any reference provided by the current manager will need to outline the reason for their dismissal from that post (capability).

### **5.5.7 Registered Bodies**

If an employee is found to be incapable of working within a role for which they are required to hold a professional registration (for example Nurse, Midwife or Therapist) a referral will be made to the professional body following the outcome of the Stage 2 Meeting. All relevant information will be provided to the professional body to enable them to assess the case appropriately.

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### 5.5.8 Appeal

An employee dismissed under the Trust's Managing Performance Policy has a right to appeal against that decision in accordance with the Trust's Appeal Policy.

### 5.5.9 Interpretation, Variation and Termination

Any questions as to the interpretation of this policy shall be referred to the relevant member of the HR team. Where further advice is required this should be referred to the Director of HR.

Management and Staff Side will jointly review the collective performance and effectiveness of this policy and procedure at appropriate intervals. There shall be no variation to this policy except by joint agreement through the Trust Consultation and Negotiation Committee.

## 6. Monitoring Compliance

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The HR Department will be responsible for monitoring that this procedure is followed and may be consulted at any stage through the process to offer advice to those involved.

Monitoring information will be published within the HR Performance Report, which in turn will be reported to the Strategic Workforce Committee.

Should the monitoring uncover any shortfalls in the implementation of the policy, the HR team will work with the relevant management team to draw up an action plan for improvement. This action plan may include:

- Additional training for line managers and/or employees;
- A risk assessment;
- An action plan in support of the risk assessment.

## 7. Review

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This policy will be subject to a planned review every three years as part of the Trust's Policy Review Process. It is recognised however that there may be updates required in the interim arising from amendments or release of new regulations, Codes of Practice or statutory provisions or guidance from the Department of Health or

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professional bodies. These updates will be made as soon as practicable to reflect and inform the Trust's revised policy and practise.

## 8. Training

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Managers are responsible for ensuring all their staff receive the type of initial and refresher training that is commensurate with their role(s).

Staff must refer to the Mandatory Training Profiles, available on the intranet, to identify what training in relation to Managing Performance is relevant for their role and the required frequency of update. Further information is available on the statutory and mandatory training web pages about each subject and the available training opportunities.

The Mandatory Training Policy identifies how training non-attendance will be followed up and managed and is available on the intranet.

Training statistics for mandatory training subjects are collated by the Learning & Development team, and are reported to the Strategic Workforce Committee.

Staff must keep a record of all training in their portfolio.

All staff and managers can access their mandatory training compliance records via the Trust's mandatory reporting tool (STAR) available on the intranet.

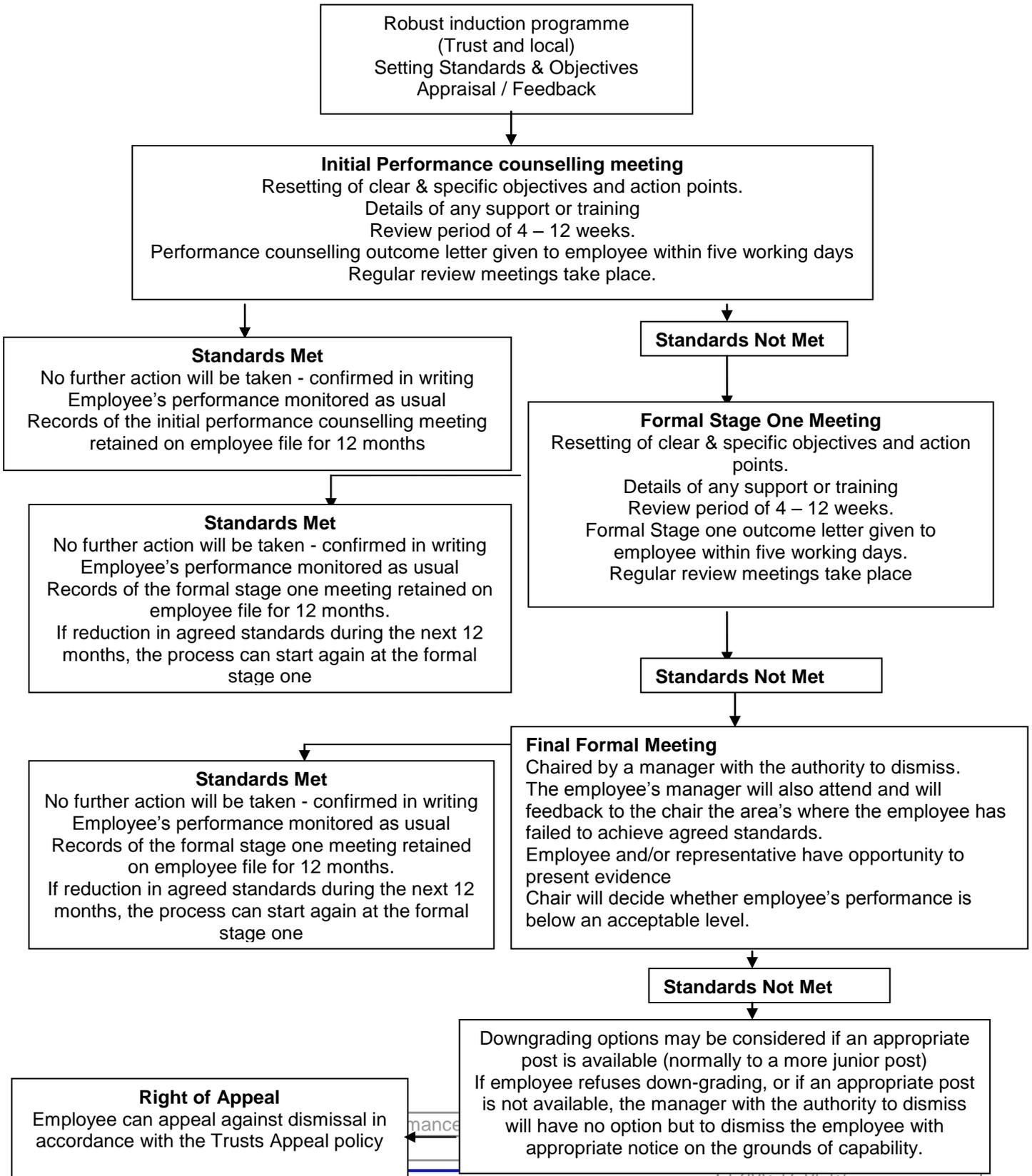
## 9. References

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Provide evidence base for procedural documents with up to date references. It is recommended that all references are cited in full using an agreed uniform approach to referencing.

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# Appendix 1: Managing Poor Performance Procedure Flowchart



## Appendix 2: Objective Template

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Formal Performance management – Objectives

Performance management –: NAME AND TITLE

### Objectives

Objective	Standard of performance Required	Timeframe for completion	Support/Training required for achievement	Progress as at DATE	Outcome Achieved: Y/N

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