

# **PUBLIC HEALTH AGENCY - PERFORMANCE FAILURE PROTOCOL**

## **Purpose**

This protocol outlines the process that should be followed by staff in the eventuality that an organisation that is in receipt of funding from the Public Health Agency is not meeting the terms and conditions of the signed contract. It is set within a general context that such performance failure situations are rare but it is nevertheless essential that the PHA acts in a prudent, reasonable and timely manner to protect service delivery as well as its investment and reputation.

It is recognised that there can be a number of reasons why an organisation may not meet the terms and conditions set - examples could include:

- Failure to provide monitoring returns demonstrating progress against agreed outcomes
- Concerns over the quality of the services being delivered
- Inadequate governance becomes apparent.

**In the process of resolving problems and agreeing a way forward, it is important that staff keep good records including notes of all telephone discussions, meetings and revised timescales.**

## **Levels of seriousness**

The attached table identifies a typical range of non/under-performance challenges which could arise as a result of an organisation failing to meet the terms and conditions of the Contract / Agreement. These are ranked as levels 1, 2 and 3. These headings indicate ascending levels of risk to the Public Health Agency, reflecting the seriousness of the problem, and urgency with which it needs to be dealt with and who within the PHA should be informed. In some instances further escalation may be required to other organisations e.g. DHSSPS, Internal Audit and Counter Fraud Service.

The list is not exhaustive and if in doubt about the seriousness of an issue or whether it should be escalated, managers should inform their line manager and if further advice is needed contact the Operations Directorate.

Other relevant documents and policies include:

- PHA Standing Orders: available on intranet
- PHA Standing Financial Instructions: available on intranet
- Fraud Response Policy and Plan: speak to Tracey McCaig (Finance) or Rosemary Taylor
- Whistleblowing Policy: available on intranet

**Issues and concerns in respect of Serious Adverse Incidents, potential professional misconduct and Child Protection/Vulnerable Adults etc should be dealt with through the appropriate processes.**

## **PHA PERFORMANCE FAILURE PROTOCOL**

<b>Level</b>	<b>Issue</b>	<b>Expected Response</b>
<b>LEVEL 1</b>	<b><u>Failure to Implement PHA recommendations within agreed timescales</u></b>	<p><b><u>Staff must keep full records including all correspondence, notes of all telephone discussions and meetings and agree timescales where appropriate</u></b></p> <p>Staff should</p> <ul style="list-style-type: none"> <li>• Inform Health Improvement Head <b>immediately</b></li> <li>• Explain verbally and in writing the rationale for the recommendation to the identified responsible officer within the organisation being funded</li> <li>• Provide additional advice or direct to another body where the PHA is in a position to do so</li> <li>• Agree revised timescales and review, where possible arrange a face to face visit to consider concerns with a view to resolution and avoiding escalation</li> </ul> <p>If problem persists beyond 1 month inform Assistant Director who may decide to escalate the problem to Level 2 “Unsatisfactory performance”</p>
	<b><u>Failure to facilitate visits of PHA monitoring officers</u></b>	<p><b><u>Staff must keep full records including all correspondence, notes of all telephone discussions and meetings and agree timescales where appropriate</u></b></p> <p>Staff should</p> <ul style="list-style-type: none"> <li>• Inform Health Improvement Head <b>immediately</b></li> <li>• Contact appropriate Manager/Office Bearer (preferably the person who signed the contract) reinforcing the contract requirements and agree suitable dates for the visit, for both parties</li> </ul> <p>If problem persists beyond 1 month inform Assistant Director who may decide to escalate the problem to Level 2 “Unsatisfactory performance”</p>
	<b><u>Failure to provide monitoring returns and other relevant information and documentation within timescales.</u></b>	<p><b><u>Staff must keep full records including all correspondence, notes of all telephone discussions and meetings and agree timescales where appropriate</u></b></p> <p>Staff should</p> <ul style="list-style-type: none"> <li>• Inform Health Improvement Head <b>immediately</b></li> <li>• Contact appropriate Manager/Office Bearer (preferable contract signatory) reinforcing the requirements of the contract and agree revised dated for submission of information</li> </ul> <p>If problem persists beyond 1 month inform Assistant Director who may decide to escalate the problem to Level 2 “Unsatisfactory performance”</p>

Level	Issue	Expected Response
LEVEL 2	<u>Unsatisfactory Performance</u>	<p><b><u>Staff must keep full records including all correspondence, notes of all telephone discussions and meetings and agree timescales where appropriate</u></b></p> <p>Staff should <b>immediately</b> inform Health Improvement Head/Assistant Director</p> <ul style="list-style-type: none"> <li>• meet and agree with Project Manager/Office Bearer of the organisation areas of underperformance, corrective action, timescales for improvement and level/form of monitoring PHA will undertake</li> <li>• Inform their Assistant Director of the issues, corrective action, timescales for improvement etc</li> <li>• Facilitate the organisation with any reasonable additional support or advice which the PHA is in a position to give (e.g. from NICVA)</li> <li>• Inform Senior Manager in Operations Directorate to note any performance compliance issues which would have an impact on meeting PfA and corporate objectives</li> </ul> <p>Where the problem persists or escalates, the relevant Assistant Director will</p> <ul style="list-style-type: none"> <li>• Inform their Director of the concerns together with proposed mitigating action</li> <li>• Through their Director advise Chief Executive if it is necessary to consider suspension, adjustment or termination of part or all of the contract, having given a full briefing including all documentation</li> <li>• Seek advice from PHA Finance Lead if appropriate</li> <li>• Adjust future payments accordingly or seek reimbursement if appropriate</li> </ul> <p>The Chief Executive will</p> <ul style="list-style-type: none"> <li>• Determine if it is necessary to suspend, adjust or terminate part or all of a contract and associated payments</li> <li>• Keep the PHA board and DHSSPS advised</li> </ul>

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	<u>Duplicate funding from another source has been received for same project</u>	<p><b><u>Staff must keep full records including all correspondence, notes of all telephone discussions and meetings and agree timescales where appropriate</u></b></p> <p>Staff should <b>immediately</b> inform Health Improvement Head/Assistant Director and PHA Finance Lead</p> <ul style="list-style-type: none"> <li>• With the advice of Finance, request in writing that the organisation provides copies of documentation relating to alternative funding and return of PHA funds as soon as possible if appropriate</li> <li>• If organisation fails to do so, inform Director/Chief Executive who will write formally to organisation requesting the funds to be returned as soon as possible.</li> <li>• The Chief Executive with advice of Director of Finance, may decide to escalate the problem to Priority 1 issue i.e. fraud or suspected fraud/funds spent inappropriately</li> </ul>
	<u>Partner withdrawing funding from the project or defaults on their commitment to fund the project</u>	<p><b><u>Staff must keep full records including all correspondence, notes of all telephone discussions and meetings and agree timescales where appropriate</u></b></p> <p>Staff should <b>immediately</b> inform Health Improvement Head/Assistant Director and</p> <ul style="list-style-type: none"> <li>• Communicate with the organisation to ascertain if the project is still viable to deliver original objectives/value for money</li> <li>• Request the organisation to submit recovery/action plan to secure delivery of service</li> <li>• Consider whether the PHA should continue to fund/support</li> </ul> <p>Assistant Director through their Director to advise Chief Executive if it is necessary to</p> <ul style="list-style-type: none"> <li>• Consider suspension, adjustment or termination of part of all of the Contract, having given a full briefing including all documentation</li> <li>• Adjust future payments accordingly or seek reimbursement if appropriate</li> </ul> <p>The Chief Executive will</p> <ul style="list-style-type: none"> <li>• Determine if it is necessary to suspend, adjust or terminate part or all of a contract and associated payments</li> <li>• This should be notified to the organisation in writing</li> </ul>

Level	Issue	Expected Response
<b>LEVEL 3</b>	<p><b><u>Fraud or suspected fraud</u></b></p> <p>The PHA is committed to the elimination of any fraud within or against the Agency, and to the rigorous investigation of any such cases.</p>	<p><b><u>Staff must keep full records including all correspondence, notes of all telephone discussions and meetings and agree timescales where appropriate</u></b></p> <p>Staff should inform the Health Improvement Head/ Assistant Director and Director <b>immediately</b> and together they will:</p> <ul style="list-style-type: none"> <li>• Review all Contract(s) between the organisation and the PHA</li> <li>• Review all correspondence</li> <li>• Inform the Director of Finance</li> </ul> <p>The Director of Finance (HSCB) will inform and consult with</p> <ul style="list-style-type: none"> <li>• The Chief Executive/Director of Operations in cases where the loss may be above the delegated limit or where the incident may lead to adverse publicity</li> <li>• The Fraud Liaison Officer – Finance HSCB (who will liaise with Counter Fraud Service on investigations and inform third parties such as the DHSSPS, External Audit (NIAO) or the PSNI if appropriate)</li> </ul> <p>The Chief Executive/Director of Finance will inform AMT, PHA board and Governance and Audit Committee and will determine if it is necessary to suspend or terminated part or all of a Contract and associated payments</p> <p><b>Under no circumstances should a member of staff speak or write to the press, TV, radio or to another third party about a suspected fraud without the clear authority of the Chief Executive. Adherence to strict confidentiality and prompt action may be of the utmost importance to prevent further loss to the Agency.</b></p>

Level	Issue	Expected Response
	<p><b><u>Financial controls</u></b></p> <p>Including inappropriate use of funds, poor accounting records/audit trails and other concerns regarding financial controls</p>	<p><b><u>Staff must keep full records including all correspondence, notes of all telephone discussions and meetings and agree timescales where appropriate</u></b></p> <p>Staff should inform the Health Improvement Head/Assistant Director and Director <b>immediately</b> and together they will:</p> <ul style="list-style-type: none"> <li>• Review all Contract(s) between the Organisation and the PHA</li> <li>• Ensure that the organisation is clear about the issues and concerns through timely written communication supported by regular meetings of the action expected by PHA</li> <li>• Identify what corrective action has been undertaken by the organisation. Take advice from Finance/Internal Audit as appropriate what further corrective action is necessary and seek the commitment of the organisation's management to enact this promptly and effectively</li> <li>• Notify their Director of concerns and actions taken</li> </ul> <p>The relevant Director will</p> <ul style="list-style-type: none"> <li>• Inform, seek advice from Chief Executive, Director of Finance and Director of Operations</li> </ul> <p>The Chief Executive will</p> <ul style="list-style-type: none"> <li>• Take the advice of the Director of Finance and the Director of Operations to suspend or terminate part or all of a contract and associated payment</li> <li>• Inform the PHA board where it is necessary to suspend or terminate part or all of a contract and associated payments</li> </ul> <p>The Director of Finance will inform</p> <ul style="list-style-type: none"> <li>• Internal Audit if appropriate</li> <li>• If appropriate the Fraud Liaison Officer, who will decide at what stage to involve the PSNI in cases of misappropriation and other irregularities as well as advise at what stage to inform other funders e.g. HSCB, Trusts etc.</li> <li>• The Governance &amp; Audit Committee</li> </ul>

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	<u>Organisation goes into bankruptcy/company liquidations</u>	<p><b><u>Staff must keep full records including all correspondence, notes of all telephone discussions and meetings and agree timescales where appropriate</u></b></p> <p>Staff should inform the Health Improvement Head/Assistant Director and Director <b>immediately</b> who will:</p> <ul style="list-style-type: none"> <li>• Review all Contract(s) between the organisation and the PHA</li> <li>• Notify immediately their Director and Director of Finance (cc to Chief Executive and Director of Operations)</li> <li>• With Finance Directorate support identify what funds have been paid out against what services have actually been delivered in order to identify losses.</li> </ul> <p>The Director of Finance will take the necessary steps to safeguard the PHA's interests in bankruptcies and company liquidations by ensuring</p> <ul style="list-style-type: none"> <li>• Correspondence from the liquidator is acted upon and that the PHA is listed as a creditor</li> <li>• That once the case is closed and in the event of a loss occurring to the PHA that the loss is written off by completing the relevant documentation in line with SFIs and PHA losses guidance</li> <li>• That all losses are recorded on the losses register and is reported to the Governance &amp; Audit Committee at least once per annum prior to the consideration of the draft Annual Accounts</li> </ul>