

Performance Management Policy

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1 The Purpose of this Policy

It is the policy of the Council to help and encourage all employees to achieve and maintain acceptable standards of performance in their work. To achieve this, a procedure has been developed to deal with circumstances where an employee is failing to carry out the duties of their job to an acceptable standard, for reasons related to capability.

Capability is defined as “capability assessed by reference to skill, aptitude, health or any other physical or mental quality”. (The Employment Rights Act 1996 s98(3)).

The procedure seeks to:

- Assist employees to improve their performance, wherever possible, when such deficiencies exist.
- Provide a firm but fair and consistent means of dealing with performance management problems
- Provide means of solving performance management problems where improvement in the current job is not possible.

Where poor performance is believed to be the result of deliberate negligence, or where serious errors have been made to the detriment of the organisation, the Council’s disciplinary procedure should be used instead of this policy.

The Performance Management Policy should only be used where the manager has engaged in formal 1-2-1s and appraisals with the employee and these have identified that there may be a Capability or performance issue.

2 Responsibilities

A written record of all meetings conducted under this procedure must be made, either by the person holding the meeting or by an additional person arranged by HR to take notes. These written records will form the basis of any evidence relied upon by the authority in any subsequent hearing.

2.1 Responsibility of Assistant Directors/ Strategic Directors

- To understand and comply with the policy and to ensure the compliance of others.
- To respond promptly to any issues raised under this policy.
- To give Trade Union Representatives the time required to support their membership.
- Where a Strategic Director acts as a Presiding Officer under stage 3 to ensure that there is a minute taker for the hearing and that a written record is made.

2.2 Responsibility of Line Managers/Service Managers

- To understand and comply with this policy, addressing any performance issues identified quickly.
- To conduct meetings under stage 1 and 2 in line with this policy
- To produce a written record of all stage 1 and stage 2 meetings
- To produce any letters required under stage 1 or stage 2
- If a Performance Improvement Program is required to set realistic time scales and targets for improvement.
- If improvement is obtained within the timescales set to notify the employee of this in writing
- Where a case would be more appropriately dealt with under another policy to notify HR and the employee of this change and start proceedings under the appropriate policy.

2.3 Responsibility of the Employee

- To engage with and participate in all stages of this policy and comply with the policy.
- Where a Performance Improvement Plan is required to assist in setting realistic targets and timescales and to participate fully with this Plan.
- To raise any issues or problems that may be affecting capability with either HR or their service manager as soon as possible.

2.2 Responsibility of HR

- To provide support and guidance on the application of this policy to management.
- To ensure that timescales are realistic and ensure that they are met.
- To regularly review and update this policy as required (see Section 6)
- To send out any letters, formal warnings and arrange any hearings under this policy and to create any hearing bundles as required.

2.3 Responsibility of the Trade Unions

- To respond promptly to any issues raised under this policy.
- To provide support and assistance to their members.

- To comply with this policy in respect of their role under the relevant stages of this policy.

3. Eligibility

This procedure applies to all employees except: The Chief Executive and Town Clerk and those employed under JNC Chief Officer and Chief Officer related terms and conditions of employment (for whom separate procedures exist, as contained in the respective JNC Conditions of Service Handbooks). This policy should not be used where the employee is still subject to a probationary period, where this is the case, the Probationary Policy should be used.

This policy is to be used where there is a genuine lack of capability rather than where there is a culpable failure on the part of the employee to perform to the standards of which they are capable. In the latter circumstances, the matter should generally be dealt with as misconduct under the Disciplinary Procedure.

Health or any other physical or mental issues which are leading to performance problems, should be dealt with under this procedure. Health or any other physical or mental issues which are leading to attendance problems, should be dealt with under the Sickness Absence Management Policies and Procedures. However if the employee experiences health issues that lead to absence once the Performance Management procedure as begun section 5 of this Policy will apply.

In some cases, employees may identify difficulties or changes in their domestic circumstances, which are adversely impacting on their job performance. In such cases, the manager should discuss with the employee what sort of measures might be helpful to assist in resolving the difficulties. Such measures may be either short term or longer term, depending on the circumstances. Where such circumstances are identified it may be appropriate to offer the employee a reduction in hours, flexible working or even redeployment. Where necessary, the advice of HR should be sought.

4 Key Principles

A framework of reasonable and fair principles which guide this procedure have been adopted. They are as follows:

1. The emphasis of this procedure is to avoid wherever possible capability issues resulting in dismissals by attempting to identify the causes of underperformance, devise strategies to overcome such difficulties and to ensure that employees are treated fairly and consistently. Where necessary a Performance Improvement Plan may be put in place.
2. Unsatisfactory performance is best dealt with in the first instance by the immediate line manager bringing the matter to the attention of the employee and discussing how the necessary improvements can be achieved. This should be done during a 1-2-1, a written record of this meeting must be made and retained.

3. Management will be supportive in providing employees, where reasonable and appropriate, with access to experience, supervision and training which will assist the employee to improve performance, the goal is to enable the employee to improve.
4. Employees will be expected to actively participate in identifying and responding to any agreed programmes of support and advice. And to actively participate in any meetings held as part of this policy.
5. Employees will be made aware of their right to be supported, at all stages (except the Informal Stage), by a trade union representative or a work colleague.
6. In cases involving suspected physical or mental health issues, the advice of the Council's Occupational Health Service should be sought. Nothing in this policy will prevent an employee from requesting re-deployment on the grounds that their current job is damaging their health, be that their physical or their mental health
7. The full procedure includes an informal stage comprising a discussion between the line manager and the employee, at which the employee should be advised that his/her job is not at risk at that stage, followed by a further three stages potentially leading to dismissal. The objective at each stage is to give the employee every appropriate opportunity to achieve the required standard of performance improvement within a period specified by his/her line manager. In the case of stages 1 and 2, the maximum period of each stage will normally be three months. However, it is emphasised that there is no automatic entitlement to such a period, nor is it envisaged that all stages of the procedure will be followed in every case. In certain circumstances, it will be appropriate to specify a shorter period for improvement and/or to omit certain stages altogether such as:
 - In cases of serious incapability where a prolonged period of poor performance would be seriously detrimental to the service;
 - Where irremediable incapability is identified at an early stage.
8. No employee will be dismissed on grounds of capability unless it can be concluded that the employee has no reasonable prospects of achieving the required level of performance within a reasonable timescale or has failed to do so, having been given a reasonable opportunity. Records made during all stages of this policy will be used to evidence this.
9. Where at any stage of this Policy the employee reaches the desired capability, they will be informed of this in writing, and they will no longer be subject to any action under this Policy. However, if their work falls to an unacceptable standard within 12 months from the date of this letter the Council reserves the right to restart the Performance Management Procedure at the previous stage. Unless the employee is able to demonstrate that there are exceptional circumstances why the procedure should be restarted at the Informal Stage.

10. An employee will have a right of appeal against a decision to dismiss, this will be heard by a Member Appeal Panel (see Appendix 5).
11. Where the employee has a disability Reasonable Adjustments should be considered at all stages of this procedure. Advice should be sought from HR on whether or not these can be implemented, it may also be necessary to seek Occupational Health's advice. Any request for or consideration of a reasonable adjustment should be recorded by the manager along with any decision on whether or not a reasonable adjustment will be applied in this case and why.

5. Sickness Absence during the Capability Procedure

- 5.1. Where the formal stages of the procedure have begun and the employee falls absence due to sickness this policy should continue to be followed. However, advice from HR and a referral to Occupational Health (with the employee's permission) may be necessary to ensure that the employee is able to properly engage with this procedure.
- 5.2. Any recommendations or requests for Reasonable Adjustments where the Employee has a disability should be considered to enable the employee to fully engage with this procedure.
- 5.3. Even if an employee is sick, they should still continue to cooperate as much as they can with the capability procedure. Any formal meetings or hearings under this procedure should continue as scheduled unless the Employee has a note from their GP which confirms that they are unable to attend or a report from Occupational Health confirming this, Reasonable Adjustments may be suggested to enable the Employee to attend.
- 5.4. Whilst the employee is too sick to engage with this Procedure any Performance Improvement Plan, meetings or hearings should be paused until the employee is fit to return to work. If the employee is not fit to attend, an Occupational Health report will need to be obtained to confirm this.
- 5.5. Where capability is the result of sickness absence this should be dealt with under the sickness absence policy.

6 The Capability Procedure

This is split into 4 stages and each stage is outlined in the following Appendix:

1. The Counselling and Support stage or the Informal Stage
2. Stage 1 - Formal Review Meeting
3. Stage 2 - Second Formal Review Meeting
4. Stage 3 - Capability Hearing
5. Member appeal hearing against the outcome of the Capability Hearing

7 Review of the Policy

This policy will be reviewed at intervals of three years, or earlier at the request of either the management or staff side.

**Human Resources
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APPENDIX 1

1 Counselling and Support or the Informal Stage

- 1.1. Where a manager has concerns about an employee's poor or unsatisfactory performance, these should be addressed with the employee directly and sympathetically. This should be raised as part of the 1-2-1 or Appraisal programme and a written record of this should be made.

The emphasis of the informal stage is on providing help and support to achieve the required standard. As a consequence this stage of the process should involve a sympathetic discussion between the manager and the employee. This discussion can also take place as part of the 1-2-1 programme. As this meeting is an informal review meeting, the employee is not entitled to be accompanied by a trade union or work colleague.

The objective of the discussion is to:

- Inform the employee of the concerns about their performance;
 - Clarify the required standards
 - Identify areas of concern
 - Listen to the employee's response;
 - Identify any difficulties the employee may be experiencing;
 - Suggest ways in which improvements can be made including any additional support required. This can include training requirements.
- 1.2 Only where the inadequate performance is identified in the discussion as arising from lack of capability, will the manager and the employee seek to agree a Performance Improvement Plan for dealing with the problem at the end of the discussion.
- 1.3 The manager will ensure records of the initial discussion; agreed Performance Improvement Plan and subsequent interviews/review meetings are kept with a copy made available to the employee.
- 1.4 It will be appropriate for the manager to have a number of discussions with the employee and to provide support on a continuing basis during the agreed timescale from the Performance Improvement Plan, until a satisfactory level of performance is achieved. The time scales agreed must be reasonable considering all the points in the Performance Improvement Plan.
- 1.5 Managers should ensure that reasonable steps have been taken to provide support by means of training, and advice from others to assist the employee in reaching and maintaining an acceptable standard of performance before, and if necessary, progressing to the first formal stage of the procedure.

- 1.6 If at any stage a manager has reason to believe that the under performance is due to misconduct or lack of effort on the part of the employee, they will stop the process and set up an investigatory interview at a later date in accordance with the Council's disciplinary procedure. Any change of procedure should be in consultation with HR and any supporting documentation collated during this procedure will form the investigation required under the Council's Disciplinary Process.

2 Performance Improvement Plan (PIP)

A Performance Improvement Plan is a series of measures designed to help the employee to improve their performance. Managers will seek to agree each measure with the employee but reserves the right to insist on any aspect of the Performance Improvement Plan if agreement cannot be reached.

Each PIP will be tailored to the particular situation of the employee, but will cover the following elements:

2.1 Targets

The areas in which improved performance is needed and on what criteria performance will be assessed. Where appropriate, we will set specific targets that will need to be achieved either by the end of the Plan or at identifiable stages within it.

2.2 Timescale

The overall timescale in which the necessary improvement must be achieved, together with the timescale for reaching individual milestones where appropriate.

2.3 Measures

The measures management will take to support the employee in improving their performance. This may include:

- training;
- additional supervision;
- the reallocation of certain duties; and
- the provision/ offer of additional support

2.4 Feedback

The employee will be given regular feedback from their line manager indicating the extent to which they are on track to deliver the improvements set out in the PIP. This can be done during the regular 1-2-1 programme.

If, at any stage during the Plan, the manager feels that the employee's performance is not progressing in a satisfactory way, this should be discussed with the employee. Where appropriate, the PIP may be amended and/or extended or stage 1 will be initiated.

2.5 Review

Within the Plan timescales will be set for its implementation and duration. At the expiry of the Plan, the employee's performance will be reviewed (this can be done during the 1-2-1 programme). If satisfactory progress has been made, this will be confirmed in writing. If it is felt that satisfactory progress has not been made, the Performance Improvement Plan may be extended and/or amended. Alternatively, the employee may be asked to attend a formal meeting under stage 1 of this procedure (see below).

2.6 Ongoing review

Following the successful completion of a Performance Improvement Plan, the employee's performance will continue to be monitored (this can be done during the 1-2-1 process). If, at any stage during the following 12 months, performance again starts to fall short of an acceptable standard, the manager may decide to initiate stage 1 of this procedure.

APPENDIX 2

1 Formal Stage - Stage 1 - Formal Review Meeting

- 1.1 Where an employee continues to fail to perform to an acceptable standard, despite having been given informal guidance, assistance and a reasonable time to improve, a formal review meeting will be arranged for them with their line manager.
- 1.2 A Stage 1 meeting could result in a First Improvement Notice being issued, depending upon the level of performance issues and the efforts made by the employee to address the issues raised.

The employee will be given at least five working days written notice of the arrangements for the meeting which must include:

- The date, time and venue of the meeting
 - The reason for the meeting;
 - Clear details of the shortfall in performance;
 - Details of any previous informal discussions which are to be referred to at the meeting;
 - All necessary supporting documentation, including any Performance Improvement Plan drawn up during the informal stage.
 - Purpose of the meeting and it's possible consequences;
 - A copy of this policy;
 - Confirmation that any requests to submit additional evidence by the employee must be made at least 48 hours prior to the meeting. Requests for later submission will be at the discretion of the manager;
 - The right to be accompanied by a trade union representative or a work colleague of their choice.
- 1.3 This meeting is intended to:
- Review why previous informal actions have not produced the necessary improvements;
 - Give the employee the opportunity to explain and present relevant information concerning the issues involved;
 - Make clear to the employee the standard expected;

- Identify any further supportive and training actions needed to achieve improvement
 - Warn the employee that subsequent stages of the procedure will be invoked if the required improvement is not achieved.
- 1.4 A letter will be sent following the meeting to the employee confirming the decision taken within five working days. If a first Improvement Notice is to be given, then this should be explained within this letter.
- 1.5 If it is felt that further action needs to be taken a reasonable timescale for improvements will be set (the length to be determined by individual circumstances but normally not longer than three months) with monitoring during that period. If the employee fails to consistently sustain the improved performance over the following 3 month period, a second formal meeting should be arranged, and stage 2 should be initiated.
- 1.6 If the improvements have been achieved in performance by the end of the specified period, a meeting will be convened with the employee to inform them of the situation and agree any further measures needed for ensuring that the improvement can be sustained. This will then be confirmed in writing as appropriate. This will formally conclude the capability process for the employee, but managers can reserve the right to restart the process at this stage if the employee's work falls to an unacceptable standard within 12 months from the date of this file note. Unless the employee is able to demonstrate that there are exceptional circumstances why the procedure should be restarted at the Informal Stage.

APPENDIX 3

1 Stage 2 - Second Formal Review Meeting

- 1.1 If the improvements have not been achieved at the end of the agreed period the manager should arrange a Second Formal Review Meeting in the same manner as shown in Appendix 2. This meeting could result in a Second Improvement Notice being issued depending upon the level of performance issues and the efforts made by the employee to address the issues raised.
- 1.2 The meeting will review progress since the previous meeting. The employee will be given an opportunity to answer the points made and explain his/her problems.
- 1.3 It is appropriate at this stage, if it has not already featured as a possible solution, to discuss alternative work arrangements, such as revised duties or hours of work. If this is an agreed possibility, then advice needs to be sought from HR to identify the steps required to implement this as a possible solution.
- 1.4 Following the review meeting, a formal letter will be sent to the employee setting out:

- The continued deficiencies.
- What, if any, Improvement Notice has been imposed and why
- The expected improvement.
- The timescale for achieving the acceptable standard, and
- Details of further help which may be given.

The letter will, if it is appropriate, state that a failure to achieve the required improvement within the timescale may necessitate the termination of the employee's contract under stage 3 of this procedure and thus a Second Improvement Notice will act as a final written warning.

- 1.5 A reasonable timescale for improvement will be set (again normally not longer than three months), with monitoring during that period. If the employee fails to reach the required improvement within the timeframe set in the Second Improvement Notice a final written warning will be issued and a Capability Hearing should be arranged.
- 1.6 If the improvements have been achieved at the end of the second formal review period (stage 2), this will be discussed at a meeting with the employee, and they will be sent a letter confirming the situation. This will formally conclude the Performance Management process for the employee, but the manager can reserve the right to restart the process at this stage if the employee's work falls to an unacceptable standard within 12 months from the date of this letter. Unless the employee is able to demonstrate that there are exceptional circumstances why the procedure should be restarted at Stage 1.

APPENDIX 4

1 Stage 3 - Capability Hearing

- 1.1 If the improvements have still not been achieved at the end of the second formal review period, a capability hearing should be arranged in the same manner specified in Appendix 2.
- 1.2 The purpose of the hearing is to consider any further actions necessary, which may include dismissal on grounds of capability.
- 1.3 An Assistant Director or Strategic Director, referred to as the Presiding Officer, should chair the hearing and a HR or Legal representative should be present. The manager who has conducted the previous stages will attend as the Presenting Officer.
- 1.4 The employee has the right to be accompanied by their Union Representative or a work colleague should they wish.
- 1.5 A formal bundle will be produced by HR for use at the hearing. This will contain written records of all the stages of this policy. The bundle will also contain any evidence upon which the employee seeks to rely on. If appropriate it should also include any advice sought from a GP or Occupational Health. The bundle should be agreed between HR and the employee prior to the hearing. This should be done no later than 5 working days before the hearing to give time to produce this bundle and to allow all parties time to read the bundle prior to the hearing.
- 1.6 The hearing should proceed as follows:
 - Introduction by the Presiding Officer;
 - Presentation of the issues e.g. continued deficiencies (setting out the shortfall in performance and the outcome of the previous stages of this policy) by the Presenting Officer, calling witnesses in exceptional circumstances, if necessary;
 - Questioning of the Presenting Officer and any witnesses by the employee or their Trade Union representative or work colleague, then by the Presiding Officer and /or the HR/Legal representative
 - Response by the employee and/or their Trade Union representative or work colleague, calling witnesses if necessary;
 - Questioning of the employee by the Presenting Officer and as appropriate by the Presiding Officer and/or the HR/Legal representative;
 - Final questioning of either the Presenting Officer or the employee or their Trade Union representative or work colleague by those conducting the hearing.
 - The Presenting Officer and the employee or their Trade Union representative or work colleague (in that order) will then be given the opportunity to

summarise their case in the form of a final statement to assist the Presiding Officer.

2.1 The Decision

All parties will then withdraw to allow the Presiding Officer to reach a decision. The HR/Legal representative will remain in the room to advise the Presiding Officer on HR procedures. However, the decision is the responsibility of the Presiding Officer. The outcome of hearing will be one of the following:

- A finding that the employee has shown improvement and therefore no further action will be taken
- Referral for investigation under the disciplinary procedure because the Presiding Officer feels that this is a disciplinary matter and therefore should be dealt with under that policy
- Redeployment (only if there is a suitable vacancy)
- An extension of the assistance offered, and a realistic timescale set for improvement. This could include a revision of the PIP.
- Dismissal

- 2.2 The Presiding Officer will make a decision as to whether there is evidence of continuing incapability and, if so, if there is any likelihood of the employee's performance achieving an acceptable level with an extension of the assistance offered and timescale allowed under stage 2 (the employee should be warned that failure to reached the required improvement in their return to stage 2 could result in a further stage 3 hearing and unless there are exceptional circumstances for this there will be no further offer of the extension of this assistance).
- 2.3 If the decision is that performance will not become acceptable in the current post, the Presiding Officer can consider whether permanent redeployment is possible. This will involve consideration of the available positions in the redeployment pool on the date of the hearing (future or past positions cannot be considered). It will be the responsibility of HR to advise the Presiding Officer of the available positions in the redeployment pool and whether any of these might be suitable given the employee's qualifications and training and the job specification of the considered position. Only these positions can be considered, if there are no suitable positions available on the day of the hearing, redeployment will not be an option.
- 2.4 If no suitable alternative employment is available at the time of the hearing, or the employee declines redeployment, the employee will be dismissed. The employee will be written to within five working days confirming the decision including the reasons, the last date of employment, any necessary administrative or financial arrangements and appeal rights.
- 2.5 Where however, the Presiding Officer believes there is evidence of sufficient improvement, this will end the procedure and no further action will be taken against the employee in respect of this case.

APPENDIX 5

1 Appeals against the outcome of the Capability Hearing

An employee who wishes to appeal against a decision at stage 3 of the process should inform the HR Manager, in writing, within five working days of the date of the letter notifying them of the sanction. The employee must state in their letter the reason for the appeal.

The HR Manager will arrange for the appeal to be heard as soon as possible.

Appeals against a dismissal will be heard by a Members Appeal's Panel (this is a panel of elected members / Councillors). A representative from Legal or HR will be present to support the Members Appeal's Panel.

This will be a review hearing and not a rehearing. Therefore, new evidence, which was not considered or available at the time of the initial hearing will not be allowed unless the panel considers that there are exceptional reasons for allowing this.

A formal bundle, to be used at the hearing, will be produced by HR. It will contain all the material produced in the bundle for the initial hearing and the employee's appeal letter.

The Appeal Panel may overturn the previous decision, but they do not have the authority to re-instate the employee. This decision will rest with the relevant Strategic Director (and will not be made on the day of the hearing). The Strategic Director will have the option to:

- Re-instate; or,
- Re-engage in an alternative capacity.

In making this decision the Director should take into consideration the likelihood of industrial strife and any distrust between parties which may make re-integration into the workforce impossible. Where this is believed to be the case the matter must be referred to HR or Legal to determine a way forward.