

# **Ealing Council**

## **Managing Unsatisfactory Performance Procedure**

Effective 1<sup>st</sup> February 2008

# MANAGING UNSATISFACTORY PERFORMANCE PROCEDURE

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# **MANAGING UNSATISFACTORY PERFORMANCE PROCEDURE**

## **1 AIM**

- 1.1 The Council is committed to improving and maintaining employee performance that is essential to improving the Council's overall performance. The aim of this procedure is to provide fair, equitable and effective arrangements for achieving and maintaining the required standards of performance.
- 1.2 The procedure sets out the steps to be taken and takes account of the best practice, legislative requirements and guidance contained in the ACAS Code of Practice on Discipline and Grievance Procedures.

## **2 SCOPE AND PRINCIPLES**

- 2.1 This procedure applies to all employees who have a contract of employment with the Council, except for chief officers and teaching and support employees in schools who are covered by similar arrangements. Issues relating to agency workers should be referred to the person's employing agency.
- 2.2 Actions and/or sanctions to deal with the performance of a new employee during the probation period, or for all internal appointments (except for assimilations, redeployments and medical redeployments) during a performance review period, should be dealt with under the Council's Probation and Performance Review procedure. This is contained in the Local Terms and Conditions of Service, Part 2, paragraph 2.3 and Part 3, paragraph 2.3 to 2.7.
- 2.3 All employees should have clear standards of performance set for them by managers through job descriptions, person specifications, competencies, targets, objectives and achievements. They should also be made aware of the consequences of failing to adhere to these.
- 2.4 Separate procedures and guidance exist for dealing with disciplinary matters and the management of sickness absence and medical capability. If when progressing a performance case it transpires that it is an issue of misconduct or medical capability rather than poor performance, the matter should be referred for action under the relevant procedure. The same manager nominated to handle the unsatisfactory performance will normally follow through under the relevant Disciplinary or Medical Capability Review procedure.
- 2.5 If it is established that an employee's unsatisfactory performance may be due to either a personnel, domestic or short-term health problem, the manager should consider what support could be given to the employee. Employees should be referred to the Council's

Occupational Health Service and advised of the availability of the Employee Counselling service. In some circumstances, external professional assistance may be needed, for example, counselling or advice on housing problems. However, it should be made clear to the employee that while reasonable assistance will be provided, standards for improved performance will be established and must be met.

- 2.6 The guidelines contained in this document are not intended to replace the operation of the Council's Performance Appraisal Scheme. It is important to distinguish the two, and the Appraisal Scheme must not be used as a substitute for using this procedure, although outcomes under the appraisal scheme can be taken into consideration during the procedure.
- 2.7 The procedure is designed to establish the facts of a case quickly and to deal consistently with unsatisfactory performance issues.
- 2.8 Managers have the right to initiate the procedure at any stage depending on the specific circumstances of the case; however, the issues must have been considered prior to a formal Review Hearing. The employee will have access to any evidence that the presenting manager wishes to rely on at a formal Performance Review Meeting or Hearing, including any documentary evidence or witnesses.
- 2.9 Minor instances of unsatisfactory performance and practice should initially be dealt with in an informal way e.g. counselling, supervision, training and setting clear standards for improvement.
- 2.10 Performance Review Meetings should be conducted by line managers and a HR Advisor must also be present.
- 2.11 Performance Review Hearings should generally be heard by at least a 3rd or 4th tier officer (see definitions in Part 1, Annexe 3 of the Local Terms and Conditions of Service). Other than in exceptional circumstances, the Hearing Officer should be more senior than the presenting officer and should always be at least the same grade. An HR Advisor must attend as an Advisor to the Hearing Officer.
- 2.12 If an employee is dismissed on the grounds of unsatisfactory performance, such a dismissal will be with notice.
- 2.13 Employees have the right to appeal against any formal action imposed. There is however, no right of appeal against any informal action taken by management.

### **3 TIMESCALES**

- 3.1 All parties to the proceedings have an obligation to co-operate in ensuring that processes and timescales set out in this procedure are followed without delay. Where the handling of the case would be

compromised by the need to comply with the timescales and in the event more time is needed, the timescales may be extended. In this case, the employee must be informed and given the reasons for the extension, together with details of any steps to be taken to resolve the unsatisfactory performance within this period.

- 3.2 Where a trade union representative or work colleague chosen by the employee (who is the subject of performance action or an investigation) to accompany them at any stage of the formal procedure cannot attend on the date proposed, an alternative date may be arranged. This should normally be within five working days, beginning with the first working day after the day proposed by the employer.
- 3.3 The meeting would not normally be postponed a second time.

#### **4. RIGHT TO REPRESENTATION**

- 4.1 Employees who are the subject of action under this procedure have the right to advice and guidance and to be accompanied/represented by a trade union representative or work colleague at any stage of the formal procedure. This does not extend to representation at day to day management/supervision meetings, or any informal action.
- 4.2 In exceptional circumstances, a representative who is neither a work colleague nor a trade union representative may be permitted, for example, if there are medical reasons or as a reasonable adjustment. This will be at the sole discretion of the officer conducting the meeting (i.e. the Manager for Performance Review Meetings and the Hearing Officer for Performance Review Hearings. Legal representation, specialist employment law Advisors and similar, will not be allowed.
- 4.3 Employees and their representatives should be consulted on the timing of meetings/hearings.

#### **5. APPLICATION OF PROCEDURE**

- 5.1 Managers who participate in any formal stage of this procedure must have an understanding of the operation and requirements associated with the Managing Unsatisfactory Performance Procedure.

#### **6 ROLE OF HUMAN RESOURCES REPRESENTATIVES**

- 6.1 At all stages of this procedure, in addition to those stages where there is a specific requirement, the Director of Human Resources or their nominated representative should be consulted for advice. The designated HR representative for each Directorate will ensure that the Managing Unsatisfactory Performance procedure is implemented fairly and consistently through monitoring and providing advice, and support to managers.

6.2 The role of the Human Resources department includes the following:

- Providing advice to managers on informal action;
- Providing advice to managers on taking formal performance action, including advice on complex cases, scoping letters, hearing case documentation and arranging appointment of hearing officers;
- Ensuring that managers and hearing officers/appeal hearing officers are aware of the legal and any other sensitive aspects of a case;
- Advising at performance meetings, hearings and/or appeals hearings;
- Advising on outcome letters;
- Advising on interpretation of Council policy;
- Monitoring progress on performance action, investigations, hearings and appeals to ensure that the process is completed as quickly as possible.

6.3 The role of the HR Advisor at meetings, formal hearings and appeals, is primarily to provide advice to the Hearing Officer on procedural matters. The HR Advisor may also ask questions in order to seek clarification of points for the Hearing Officer/Appeal Panel.

## **7. ROLE OF MANAGERS**

7.1 The role of Managers includes the following:

- Managing employee's performance informally, and formally if required;
- Preparing documentation to be presented at Performance Review meetings/hearings, i.e. details of unsatisfactory performance;
- Making arrangements for administering the process and for notes to be taken and written up, where appropriate.
- Conducting Performance Review meetings/hearings

7.2 The line manager should generally conduct Performance Review Meetings. Performance Review Hearings should generally be heard by at least a 3rd or 4th tier officer (see definitions in Part 1, Annexe 3 of the Local Terms and Conditions of Service) depending on the grade of the person involved. Other than in exceptional circumstances, the Hearing Officer should be more senior than the presenting officer and should always be at least the same grade.

7.3 Managers should consult with their HR section before instigating action under this procedure.

## **8. ABOUT THE PROCEDURE**

### **Relationship with Performance Appraisal Scheme**

8.1 This procedure and guidelines are not intended to replace the proper

operation of the Council's Performance Appraisal Scheme, which provides a framework for the regular assessment of an employee's performance, potential and development needs. If a manager has concerns about the performance of an employee, action must be taken immediately under this procedure. Managers should not wait until the next appraisal meeting before raising their concerns with the employee and taking appropriate action under this procedure.

- 8.2 Where action is being taken in respect of an employee under the formal stage contained in this procedure, it should be noted that the appraisee is subject to the managing unsatisfactory performance procedure. Consideration may be given to suspending the performance appraisal process during this time. The outcome of the performance appraisal may be referred to under this procedure.

### **Internal Appointments Performance Review**

- 8.3 Where an internal appointment is subject to a six-month performance review period (see Local Terms and Conditions of Service Part 3, paragraph 2.3. to 2.7) and fails to meet the required standards of the new job at the end of the performance review period, the Managing Unsatisfactory Performance Procedure will be initiated at the formal stage and go straight to a Stage 2 Performance Review Hearing. Evidence and documentation arising from the performance review will be considered.

### **Confidentiality**

- 8.4 At all stages of the procedure confidentiality must be observed. Circulation of information will be that which is necessary to ensure a fair investigation and hearing. Unnecessary disclosure of confidential information at any stage may lead to disciplinary action.

### **Records**

- 8.5 Written records of proceedings must be kept on the employee's personnel file and managed appropriately. Tape recordings of meetings are not permitted. Managers should keep their own records and the Human Resources department should retain a record. The outcome should be retained on the employee's personnel file.

### **Trade Union Representation**

- 8.6 Where an employee under investigation is an official of a recognised trade union; the local Branch Secretary or paid official of that union must be informed before proceedings commence, except where immediate action may be required. In any event, the Director of Human Resources or nominated representative should be consulted about cases involving trade union representatives before any action is taken under this procedure.

## **Performance and Grievances**

- 8.7 Employees cannot generally raise a grievance to complain about or object to the fact that the Council may take action under this procedure, including the fact that the Council is commencing or is contemplating commencing any investigation.
- 8.8 The only exception would be if the grievance is that the action being taken amounts to, or would amount to unlawful discrimination, or that the true reason for the action is not the reason given.
- 8.9 In such cases, consideration should be given to suspending the procedure for a short period whilst this is looked into. The decision about whether or not to suspend action under this procedure, and for how long is at the sole discretion of the Council.
- 8.10 In any cases involving the above, advice must be sought from a HR Advisor before proceeding.

## **MANAGING UNSATISFACTORY PERFORMANCE**

### **9 Informal action**

- 9.1 Cases of minor unsatisfactory performance should be dealt with through day to day management for example through counselling, management guidance, supervision, instructions and training, setting clear standards for performance and expectations rather than the formal Managing Unsatisfactory Performance Procedure. The manager should confirm any informal discussions and action to the employee in writing.
- 9.2 In many cases, dealing with matters of performance early - the right actions at the right time - will often provide a more satisfactory result for both the manager and employee and may well prevent the need for more formal action in the future.
- 9.3 The following section deals with minor performance issues and should not be used for cases involving more serious performance issues, where formal action should be instigated immediately.
- 9.4 Where improvement in performance is required, the employee should be told what standards are expected, how this will be reviewed and over what time period. Any informal performance discussions should be noted, with a copy given to the employee concerned. Employees should also be made aware of what action could be taken if they fail to improve. Where the performance does not improve, or has not met the required standard, the manager should consider taking formal action.

- 9.5 In other cases, a manager may decide the improvement required in performance is likely to be achieved over a longer period of time, with other additional support provided. Any action taken and/or details provided about required standards should be confirmed in writing to the employee. This action may be referred to as part of the formal process.
- 9.6 If the employee subsequently achieves the required standards, then the employee should be informed of the need to maintain that improvement. A copy should be placed on his/her personnel file. The employee may comment on the content of the note if he or she wishes and this should also be placed on the personnel file. The manager will continue to monitor the employee's performance as part of their normal day-to-day supervisory/management responsibilities.
- 9.7 Where the required improvement is not reached or maintained, then the informal action may be referred to in any formal action subsequently taken under this procedure or the disciplinary procedure.
- 9.8 If during an informal meeting it becomes clear that the matter is more serious than first thought, the meeting should be adjourned and a decision made as to whether formal action should be taken immediately. Managers must contact their Human Resources department for further advice at this stage. The employee should be kept informed of any decisions and advised of any timescales.
- 9.9 If the decision under this procedure is that the employee's performance is now satisfactory then the employee will be notified accordingly in writing. In cases involving children or other vulnerable clients managers must seek advice and refer to the relevant procedures, i.e. London Child Protection Procedures, Safeguarding Adults Policy or other guidance from the Department for Children, Schools and Families and procedures regarding Allegations Against Teachers or School Support Staff. HR should be involved and attend strategy meetings where appropriate.

## **10. Formal Action**

- 10.1 The object of all action is to provide a framework for dealing with employees in a fair, equitable and expeditious manner. The formal procedure is designed to be used only if attempts to resolve potential problems through normal supervision and discussion or informal action (including where an employee has failed to meet the required performance standard) has been unsuccessful, or in cases of more serious unsatisfactory performance. Action under this procedure requires that more formal monitoring is undertaken leading to a sustained improvement or formal action.

## **10.2 Stage 1 – Performance Review Meeting**

10.2.1 Where early intervention and good management practice does not achieve the performance or standard required, or where the problem is more serious, the manager will arrange a Performance Review Meeting. This will normally involve the manager, a HR representative, the employee and their representative. The manager will inform their Head of Service and a Human Resources representative that they are arranging the meeting. This will be the first stage of formal action.

10.2.2 Before the Performance Review Meeting, the manager must:

- Advise the employee of her/his concerns about their performance which has led to the need to call the meeting;
- Give the employee **5** working days notice of the meeting and confirm the arrangements in writing;
- Advise the employee that this is the first stage of formal action and of their right to be represented by a trade union representative or work colleague at the meeting.

10.2.3 Managers should take into account the following principles and apply those which are appropriate at any meeting, or review at which performance is discussed:

- Bring to the attention of the employee problems with their work performance;
- Explain how it fails to meet the required standards;
- Provide an opportunity for the employee to give an explanation as to the causes;
- Clarify standards of performance required;
- Develop and agree action plans including training, supervision and other support that will improve performance, tailored to meet individual needs;
- Set clear and reasonable targets / objectives / achievements, if appropriate phased over a period of time;
- Identify how and over what period improved performance will be assessed;
- Take account of an employee's disability, and how this may impact on performance. Specialist advice may be sought where required;
- Review and monitor an employee's performance and provide feedback where appropriate;
- Keep full and accurate records of meetings and action taken.

10.2.4 The manager should warn the employee of the consequences of not reaching the performance standard required, which could ultimately be dismissal.

### **10.3 Outcomes - Stage 1 Performance Review meeting**

10.3.1 Managers should ensure that a record is kept including the date, time and subject of the meeting, details of the arrangements made for monitoring progress and the date of the review. A copy should be placed on the employee's personnel file.

10.3.2 After the meeting, the manager will confirm to the employee in writing:

- Issues discussed, any actions and timescales agreed to enable the employee to improve their performance, and the date for the next review meeting;
- Any training, development, supervision or other support offered to the employee;
- Arrangements to review their progress and provide feedback;
- The consequences of failure to achieve the required performance standard, which could include dismissal.

10.3.3 The employee must be advised that they have the right to appeal against this decision, the targets/objectives or monitoring period. This appeal should be heard by a Head of Service or Director and should follow the procedure outlined at Appendix 2.

### **10.4 Periods of Monitoring and Review**

10.4.1 The manager will monitor performance against targets / objectives/ achievements regularly at all stages in the procedure. Where appropriate, interim targets/objectives will be set to facilitate monitoring and allow action to be modified as necessary. Where it becomes apparent during the progress of the review there is no significant improvement in work performance, further action should be taken immediately.

10.4.2 It is expected that the timescales set out in this procedure and timescales agreed for monitoring and review will be followed. Any leave or sickness absence should also be taken into account. A reasonable time period may vary from 2 to 3 months depending on the seriousness of the circumstances. It is expected that a period of six weeks would be the norm. Timescales should only be extended in exceptional circumstances. Where this is necessary, the employee will be informed.

10.4.3 The terms of the monitoring period should be adhered to and other than in exceptional circumstances, the review should take place on or around the set date. A record should be kept of meetings, actions taken and information relating to the monitoring period.

10.4.4 If a condition of the monitoring is that a single reoccurrence of a specific event or action would lead to further action, then if this occurs Stage 2 of this procedure should be initiated promptly.

10.4.5 At the end of the specified period of monitoring and review, the manager will hold a meeting with the employee to review their progress. The manager will decide whether the employee's performance has reached the required standard and apply the following:

- If the required improvements have been fully met then the employee should be informed that the required standard of performance must be sustained. They should be told that if they fail to maintain this standard further action might be taken under this procedure. If the employee's performance falls below the required standard in the next twelve months, then the manager may proceed directly to Stage 2 of this procedure. This should be confirmed to the employee in writing and a copy placed on the employee's personnel file.
- If in the managers view there is genuine progress towards the required standards but they have not been fully met, then a further period of monitoring and review may be set. If during the extended monitoring period no further progress is made and/or the standard drops again and/or another event occurs, then Stage 2 of the procedure should be initiated.
- If at the end of the monitoring period there is no improvement or insufficient progress towards improved performance, then Stage 2 of the procedure should be initiated. A manager must consult with Human Resources before proceeding. The manager will convene a Performance Review Hearing, normally within 10 working days of referral.

## **10.5 Stage 2 - Performance Review Hearing**

10.5.1 This stage of the procedure should be used for:

- Repeated unsatisfactory performance or where an employee has failed to reach the required standard(s), whether as a result of a Performance Review Meeting or a period of monitoring or;
- Where there is a relevant unexpired formal warning, issued as a result of a previous performance review meeting;
- Where an existing employee has failed to reach the required standards of a new post within the six month performance review period;
- If an employee has successfully met targets set at Stage 1 but performance subsequently dips.

10.5.2 A Head of Service or a Director will conduct a Performance Review Hearing. A Human Resources representative will attend to advise. The Hearing Officer must inform the employee in writing of:

- Full details of the unsatisfactory performance and how the employee has not met the required performance standards;

- The status of the hearing and the possible consequences including dismissal or demotion;
- The date, time and location of the meeting;
- The identity of the manager who will be presenting the case;
- The right to be represented by a trade union representative or work colleague;
- The right to be heard and produce relevant information.

10.5.3 The employee will be given **5** working days notice of the meeting. A copy of this procedure with any supporting evidence must also be provided. An employee may choose to submit a written statement prior to the meeting. If so, this must be provided to the manager conducting the meeting at least two working days before the date of the meeting.

10.5.4 The Performance Review Hearing will be conducted in accordance with the arrangements set out in Appendix 1.

## **10.6 Outcomes - Stage 2 Performance Review Hearing**

The possible outcomes of a Stage 2 Performance Review Hearing are:

10.6.1 **A final opportunity to improve performance.** The Hearing Officer will warn the employee that a failure to achieve the required improvement may lead to the employee's dismissal; the employee should be advised of their right to appeal against this decision;

10.6.2 **Consideration of alternative employment.** This may only be considered with the agreement of both management and the employee concerned and is subject to the availability of suitable vacancies. If this option is agreed the appointment will normally be to the first point of the grade or pay rate applicable to the new job and not the rate applicable to the old job i.e. there will be no pay protection. In the event that this option is chosen, the employee must be able to demonstrate that they have the skills, abilities and aptitude necessary for the job for which they are being considered. They also need to be advised that they will be subject to the Probation/Performance Review Procedure in the Local Conditions of Service, Part 2 and 3.

## **10.7 Written Notification**

10.7.1 The decision of the Hearing Officer will be confirmed in writing to the employee within 5 working days including the right to appeal against either the warning, targets/objectives or length of monitoring period.

## **10.8 Stage 3 - Performance Review Hearing**

10.8.1 This stage of the procedure should be used for:

- Where an employee has failed to reach the required standard(s) following a Stage 2 Performance Review Hearing.

10.8.2 A Head of Service or Director will conduct a Performance Review Hearing. A Human Resources representative will attend to advise. The Hearing Officer must inform the employee in writing of:

- Full details of the unsatisfactory performance and how the employee has not met the required performance standards;
- The status of the hearing and the possible consequences including dismissal or demotion;
- The date, time and location of the meeting;
- The identity of the manager who will be presenting the case;
- The right to be represented by a trade union representative or work colleague;
- The right to be heard and produce relevant information.

10.8.3 The employee will be given **5** working days notice of the hearing. A copy of this procedure with any supporting evidence must also be provided. An employee may choose to submit a written statement prior to the meeting. If so, this must be provided to the manager conducting the meeting at least two working days before the date of the hearing.

10.8.4 The Performance Review Hearing will be conducted in accordance with the arrangements set out in Appendix 1.

## **10.9 Outcomes – Stage 3 Performance Review Hearing**

The possible outcomes of a Stage 3 Performance Review Hearing are:

### **10.9.1 The performance was satisfactory and/or take no further action.**

The employee should be informed that the required standard of performance must be sustained. They should be told that if they fail to maintain this standard further action may be taken under this procedure. If the employee's performance falls below the required standard in the next twelve months then the manager may proceed directly to Stage 3 of the procedure. This should be confirmed to the employee in writing and a copy placed on their personnel file.

**10.9.2 A final opportunity to improve performance:** This will only be appropriate where there has been some improvement already, and the Hearing Officer believes that a final period of review will lead to the required improvement in performance. An action plan will be developed including a date for a new Hearing, which should be fixed for the end of the review period. The duration of this will depend on the individual circumstances of each case.

**10.9.3 Demotion or transfer to another post:** This would normally be where the employee is judged not capable of carrying out their current job. (This may be particularly appropriate where the employee has been promoted but has a history of satisfactory performance at the lower grade). There will be no salary protection on demotion. It will also be

dependent on a suitable vacancy existing within the Council and this must first be discussed with the division/ section head in the new area. The appointment will normally be to the first point of the grade or pay rate applicable to the new job and not the rate applicable to the old job. In the event that this option is chosen, the employee must be able to demonstrate that they have the skills, abilities and aptitude necessary for the job for which they are being considered. They also need to be advised that they will be subject to the Probation/Performance Review Procedure in the Local Terms and Conditions of Service, Part 2 and 3. If the employee does not accept this offer then the original dismissal will stand.

#### **10.9.4 Dismissal on the grounds of incapability with the appropriate contractual notice.**

10.9.5 Dismissal, demotion or transfer to another job may only be applied if the employee has been formally warned (in writing and as an outcome of a previous Stage 2 Performance Review Hearing that a failure to achieve the required standard of performance will result in dismissal from the Council's employment.

#### **10.10 Written Notification**

The decision of the Hearing Officer will be confirmed in writing to the employee within 5 working days including the right to appeal.

#### **10.11 Non-attendance by employee**

10.11.1 If the employee does not attend a Stage 1 Performance Review Meeting or a Stage 2/3 Performance Review Hearing, it may either proceed in their absence, or be adjourned taking into account the reasons for the non-attendance. **If the reason for not attending is non-availability of an employee's representative, refer to paragraph 3. 2 and 3.3 of this procedure.**

10.11.2 If non-attendance is due to a medical reason, the employee must inform the Hearing Officer as soon as possible. Written confirmation together with a medical certificate must be submitted, stating specifically the reasons why the employee is unable to attend the Performance Review meeting/hearing (a certificate which merely states that the employee is unfit for work is not sufficient; the certificate must relate specifically to the employee's ability to attend the Performance Review Hearing). The cost of obtaining the medical certificate will be reimbursed. The employee may also be referred to the Occupational Health Unit to ascertain whether they are fit to attend the meeting/hearing.

10.11.3 If it is decided to adjourn the Performance Review meeting/hearing, it will be rearranged. If the employee again fails to attend, the meeting/hearing will normally go ahead in their absence

after considering all the circumstances of the case. Where an employee is unable to attend, they may arrange for representation at the meeting/hearing in their absence or make written submissions.

## **11. Appeals**

- 11.1 An employee has the right of appeal against any formal action taken under this procedure on the following grounds:
- The process followed was flawed;
  - The outcome/targets/objectives length of monitoring period was not appropriate and/or reasonable in all the circumstances; and/or,
  - New evidence has come to light, which if it had been available at the original Hearing may have resulted in the Hearing officer reaching a different conclusion.
- 11.2 Appeals must be registered within **5** working days of date of the letter informing the employee of the outcome of the Performance Review Hearing, and should be sent to the Executive Director of the employing department. The appeal notification must incorporate a statement setting out clearly the grounds for the appeal specifying the reasons or state that the full grounds of appeal will follow. If these are not received within a further **10** days, (i.e. within **15** days of the date of the outcome letter) then the employee will be deemed to have failed to appeal and no further action will be taken in relation to the notice of appeal. If the employee wants a short extension of time for lodging the full grounds of appeal, then the employee must make a written request within the time limit. The request will normally be granted where the reason is that the Council failed to supply the notes of the Performance Review Hearing promptly. Otherwise the request will only be granted in exceptional circumstances, such as severe ill health, or pre-planned holiday abroad. The duration of the extension will be at the discretion of the Executive Director of the employing department, but will not normally be longer than **20** working days.
- 11.3 Appeals against a warning, targets/objectives or the length of a monitoring period under this procedure, will be heard by a Director or Head of Service who has not previously been involved in the case, and who would normally be (except in exceptional circumstances) more senior than the original Hearing Officer and supported by a Human Resources Representative (see procedure at Appendix 2).
- 11.4 Appeals against dismissal or demotion will heard by the Council's Appeals Committee (see procedure at Appendix 3).
- 11.5 If an employee lodges an appeal against dismissal, then the employee will not be reinstated, nor be entitled to have the termination date delayed, pending the outcome of the Appeal Hearing.

## **11.6 Timing of Appeal Hearing**

11.6.1 The Appeal Hearing will be held no later than **20** working days from receipt of the notice of appeal or the full grounds of appeal. The employee, and (if appropriate) their representative, will be given at least **5** days written notice of:

- The date, time and place of the hearing;
- Details of the panel hearing the appeal;
- The employee's right to attend and be represented at the appeal by a trade union representative or work colleague.

11.6.2 Provided the employee has been given the appropriate notice of the date of the hearing, the appeal may be considered on the basis of the available evidence in the absence of the individual.

## **11.7 Appeal Hearing Procedure and Process**

11.7.1 Appeal Hearings will be conducted in accordance with the arrangements set out in Appendices 2 and 3. The Appeal Hearing will take the form of a review of the original hearing and not a full rehearing of the issues. A decision on whether the appeal should take the form of a rehearing will be made following advice from the Director of Human Resources or their nominated representative. The Appeal Hearing should address the arguments set out in the grounds of appeal and determine whether the decision made at the original hearing was reasonable in all the circumstances.

11.7.2 The presenting manager (usually the manager who was responsible for the original decision) will prepare a response to the employee's submission. This should be provided to the employee within **10** working days of receipt of the notice of appeal or of the full grounds of appeal, if sent later. If further clarification or elaboration is considered necessary, either or both parties will be asked to provide this information at least **2** working days before the appeal hearing.

11.7.3 New evidence will only be considered in exceptional circumstances. This will be at the discretion of the appeal panel/officer and will only be admitted where it may significantly affect the previous decision, as provided for in the grounds.

## **11.8 Outcomes**

11.8.1 **Possible outcomes of an Appeal Hearing for appeals against warnings, setting of formal targets/objectives or the length of a monitoring period are:**

- i) A decision to uphold the employee's appeal and either revoke the decision completely or impose a different outcome;

- ii) Deny appeal and confirm the original decision or impose a different outcome;
- iii) Submit case back to employing department for a new hearing (In the event that the Hearing Officer believes that the hearing was so flawed as to render the decision unsafe OR that important evidence was either not available or not appropriately considered at the original hearing AND feels unable to rehear the case and/or substitute a new decision for the original hearing then the case may be remitted for a new hearing subject to the agreement of all parties to cooperate).

**11.8.2 Possible outcomes of an Appeal Hearing for considering appeals against demotion or dismissal are:**

- i) An adjournment to allow for additional evidence and/or witnesses and/or information to be made available;
- ii) A decision to uphold the employee's appeal and either revoke the decision completely or impose a lesser sanction;
- iii) To make any appropriate recommendation;
- iv) Any combination of the above or;
- v) To submit the case back to the employing department for a new Performance Review Hearing (In the event that the Committee believe that a performance hearing was so flawed as to render the decision unsafe OR that important evidence was either not available or not appropriately considered at the original hearing AND feel unable to rehear the case and/or substitute a new decision for the original then the case may be remitted for a new hearing subject to the agreement of all parties to cooperate) or;
- v) To deny the appeal and confirm the demotion/dismissal.

11.8.3 The decision of the Appeal Hearing Panel will be final.

**11.10 Notification of Decision**

11.10.1 The decision will be given orally on the day of the hearing, unless it is not practical to do so. In all cases, the decision of the appeal will be confirmed in writing within **5** working days of the conclusion of the hearing.

11.10.2 Where the action/outcomes are rescinded, all records will be removed from the employee's personnel file and destroyed except in cases involving children or other vulnerable clients. A copy of the investigation will be retained in accordance with Human Resources record keeping practices.

**12 MONITORING AND REVIEW**

12.1 The Council will monitor the performance under the relevant performance indicators. The impact and performance of the procedure should be reviewed on a quarterly basis.

- 12.2 This procedure will be reviewed on a regular basis and changes and improvements made where necessary by the Director of Human Resources or their nominated representative. The recognised trade unions will be consulted on any proposed changes to this procedure, in accordance with the relevant provisions of the Council's Agreement on the Local Terms and Conditions of Employment, Part 1, paragraphs 3.3 to 3.8 inclusive.

## **Appendix 1**

### **1. Procedure to be followed at Performance Review Hearings**

- 1.1 The Hearing Officer will invite both parties into the room at the same time, introduce all parties present and explain the purpose of the hearing. Both parties should be asked if they intend to bring witnesses, although failure to name witnesses at this stage does not mean that they cannot be called later within the hearing. It is for the Hearing Officer to manage the process and intervene where appropriate.

### **2. Management presentation with witnesses**

- 2.1 The management representative will present the case.
- 2.2 The other parties may ask questions on the presentation in the following order:
- Employee and/or trade union representative;
  - Hearing Officer;
  - HR Advisor.
- 2.3 The manager presenting the case will then call witnesses individually. The Hearing Officer will explain to the witness the procedure to be followed.
- 2.4 The Hearing Officer will invite other parties to ask questions of the witnesses in the following order:
- Employee and/or trade union representative;
  - Hearing Officer;
  - HR Advisor.

### **3. Employee's presentation with witnesses**

- 3.1 Following the presentation of the management case, the process is then reversed, with the employee and/or trade union representative having the chance to put their case. The Hearing Officer will invite other parties to ask questions.
- 3.2 The employee/trade union representative will then call witnesses. The Hearing Officer will explain to the witness the procedure to be followed. The employee/trade union representative may then ask questions of the witness. The other parties may ask questions of the witnesses in the following order:
- Manager presenting the case;
  - Hearing Officer;
  - HR Advisor.

- 3.3 Following questioning by the other party, witnesses may be re-examined once more by the manager, employee (trade union representative), Hearing Officer or HR Advisor, if necessary, to clarify any points raised during the cross-examination.
- 3.4 It is for the Hearing Officer to manage the process and intervene where appropriate.
- 3.5 Once each party has completed their questioning, witnesses should not normally, be recalled. However, the Hearing Officer has the right to recall witnesses or seek further information if this is required. If this does happen, both sides should be recalled into the hearing. In addition, the Hearing Officer may require that other witnesses/evidence should be called/produced in order to ensure that all the necessary facts can be considered before making a decision on the case. The Hearing Officer may decide to adjourn the hearing to allow for this, if necessary.

#### **4. Summing - up stage**

- 4.1 Both parties will then have an opportunity to sum up, with management summing up first, followed by the employee/representative. This summing up may take into account statements made during the proceedings, but may not introduce new evidence.

#### **5. Deliberation**

- 5.1 The Hearing Officer will then ask both parties to withdraw apart from the HR Advisor and note taker. The Hearing Officer should indicate to the parties whether they should wait to be recalled for the decision. The Hearing Officer should then reach a decision on the basis of the evidence presented in the course of the hearing with advice from the HR Advisor as necessary.

#### **6. The Decision**

- 6.1 The Hearing Officer may give the decision verbally at the end of the Hearing, or in writing later. In any event, the decision must be confirmed in writing, within 5 working days of the Hearing, to the employee and copied to their representative and to the manager presenting the case. The HR Advisor can provide advice on the content of the outcome letter.

## **Appendix 2**

### **1. The Performance Appeal process for cases Not involving Demotion or Dismissal**

- 1.1 The Appeal Hearing Officer should ensure that there is a management note taker. The Appeal Hearing Officer will invite the parties into the room, introduce all parties present and explain the purpose of the hearing. The appeals process will not normally take the form of a rehearing. Witnesses will only be allowed with the permission of the Hearing Officer and where it is relevant to the issue of the appeal. Both parties should therefore be asked if they intend to bring any witnesses. Failure to name witnesses at this stage does not mean that they cannot be called later within the hearing. It is for the Hearing Officer to manage the Appeal Hearing process and intervene where appropriate.

### **2. Presentation by the appellant**

- 2.1 The appellant or representative presents the grounds for the appeal.
- 2.2 The Appeal Hearing Officer will invite the presenting manager and HR Advisor to ask questions of the appellant/representative on the grounds for appeal in that order.
- 2.3 The appellant/representative to call any witnesses individually.
- 2.4 The Appeal Hearing Officer will invite the presenting manager and HR Advisor to ask questions of witnesses in that order.

### **3. Response to the Appeal by Management**

- 3.1 The presenting manager will respond to the appeal in the presence of the appellant.
- 3.2 The appellant (or representative)/Appeal Hearing Officer/HR Advisor may ask questions of the presenting manager in that order.
- 3.3 The manager presenting the case will then call any witnesses individually.
- 3.4 The appellant (or representative)/Appeal Hearing Officer/HR Advisor may ask questions of any witnesses.
- 3.5 If required, the Appeal Hearing Officer may recall witnesses or seek further evidence to ensure that s/he is aware of all the facts of the case. The Appeal Hearing may be adjourned to allow for this to happen. If recall is necessary to clear points of uncertainty, both parties will return, notwithstanding the fact that only one may be concerned with the point giving rise to doubt.

#### **4. Summing Up Stage**

- 4.1 The presenting manager, followed by the appellant (or representative) will have the opportunity to sum up their case. This summing up may take into account statements made during the proceedings, but may not introduce new evidence.

#### **5. Deliberation by the Appeal Hearing Officer**

- 5.1 Both parties will withdraw, leaving the Appeal Hearing Officer to deliberate accompanied by the HR Advisor and note taker. The Appeal Hearing Officer will indicate to the parties whether they should wait to be recalled for the decision. The HR Advisor will provide advice as necessary. The Appeal Hearing Officer should make a note of the reasoning behind his/her decision and keep this carefully filed for future reference if need be.

#### **6. The Decision**

- 6.1 The decision is made by the Appeal Hearing Officer and may be given to the parties verbally at the end of the hearing, or later in writing. In any event, the Appeal Hearing Officer must confirm the decision in writing within 5 working days. The HR Advisor will provide advice on the content of the outcome letter.

### **Appendix 3**

#### **Procedure at Performance Appeal Hearings for cases involving Demotion/Relegation or Dismissal**

##### **1. Appeals Against Demotion/Relegation and All Dismissals**

- 1.1 An appeal against a decision to dismiss, or to relegate to a lower graded post is to the Council's Appeals Committee. The Appeals Committee arrangements are set out below.
- 1.2 In any case, where an employee is dismissed either with or without notice, payment of salary/wages will cease on the effective date of dismissal. Where on appeal the disciplinary decision or other dismissal is upheld, the effective date of dismissal or relegation will be the effective date of the original decision.
- 1.3 Where an appeal is upheld, any salary/wages due will be reinstated as appropriate.
- 1.4 The intention to appeal must be notified to the employee's Executive Director within 5 working days of the date of the written confirmation of the disciplinary action. The Executive Director will immediately notify the Principal Committee Administrator who will arrange for a meeting of the Council's Appeals Committee to take place following receipt of the full grounds of appeal.
- 1.5 The appellant must then provide a written statement outlining in detail the grounds of the appeal against the decision, together with any supporting documentation within 10 working days of receipt of the written confirmation of the action. The appellant should clearly state with full reasoning, the basis on which s/he believes the decision to be at fault (i.e. why s/he believes that the procedure was incorrectly applied and/or that the evidence did not substantiate the allegations and/or that the sanction is too severe and/or that specific relevant evidence was not available or was not taken into account at the original hearing). No hearing shall be arranged until such a detailed statement has been received.
- 1.6 A representative of the Director of Human Resources will assess the case statements and review the notes of any hearing in the light of the appellant's statement. If further information, clarification or elaboration in support of the case is considered necessary, then the appellant will be asked to provide this information at least 3 clear working days before the date set for the Appeal Hearing if it is to be used. A hearing will be arranged and the employee notified of the date, time and place of the hearing.

##### **2. Appeals Committee Hearing Procedure**

- 2.1 The local authority shall appoint an Appeals Committee, which shall be constituted from among elected members who have no direct formal responsibilities specifically for the relevant employing service/department. A representative of the Service Director, Human Resources and a Committee Administrator will support the Committee.
- 2.2 The employee shall be given notice in writing at least five working days in advance of the time and place of the hearing that:
- S/he shall be allowed to be represented by his/her trade union representative, a colleague or other representative of his/her choice and;
  - May call witnesses and;
  - Refer to previously submitted documents relevant to his/her appeal; at the hearing;
  - The employee will also be informed that the Appeal Hearing will not be a full rehearing of the case and that s/he should restrict his/her presentation to arguments about the reasonableness of the decision and/or procedural faults or failure.
- 2.3 The Chair of the Committee will outline the procedure to be followed and inform the appellant that s/he may stop and/or redirect any participant if at any time s/he believes that witnesses testimony or evidence being produced is irrelevant to the matter under consideration.
- 2.4 The management representative(s) will present his/her justification of the disciplinary decision, or other dismissal, in the presence of the appellant and his/her representative. The management representative(s) may also call witnesses to the Appeal Hearing.
- 2.5 The appellant (or his/her representative) will then have the opportunity to ask questions of the management representative on the evidence given by him/her and any witnesses whom s/he may call.
- 2.6 The members of the Committee may ask questions of the local authority's representatives and witnesses.
- 2.7 The appellant (or his/her representative) will present his/her case against the reasonableness of the performance decision or other dismissal in the presence of the Council's representative and to call such witnesses as s/he wishes.
- 2.8 The management representative will then have the opportunity to ask questions of the appellant and his/her witnesses.
- 2.9 The committee may ask questions of the appellant and his/her witnesses.

- 2.10 The management representative and the appellant (or his/her representative) will then have the opportunity to sum up their case if they so wish.
- 2.11 The committee supported by the Human Resources Advisor and the Committee Administrator (who will only provide procedural and administrative support) will deliberate in private only recalling the local authority's representative and the appellant to clear points of uncertainty on evidence already given. If recall is necessary both parties are to return notwithstanding only one is concerned with the point giving rise to doubt.

### **3. Courses of action open to the Appeals Committee are:**

- 3.1 An adjournment to allow for additional evidence and/or witnesses and/or information to be made available;
- 3.2 A decision to uphold the employee's appeal and either revoke the decision completely or impose a lesser sanction;
- 3.3 To make any appropriate recommendation;
- 3.4 Any combination of the above **or**;
- 3.5 To submit the case back to the employing department for a new hearing (In the event that the Committee believe that a disciplinary hearing was so faulty as to render the decision unsafe OR that important evidence was either not available or not appropriately considered at the original hearing AND feel unable to rehear the case and/or substitute a new decision for the original hearing then the case may be remitted for a new hearing subject to the agreement of all parties to cooperate); **or**
- 3.6 To deny the appeal and confirm the relegation, demotion or dismissal.

### **4. Outcome**

- 4.1 The Appeals committee will announce the decision to the Council's representative and appellant personally on the day of the hearing, if practical and in any case be confirmed in writing, together with the reasoning behind the decision within **5** working days of the conclusion of the Appeal Hearing. The employee will also be reminded that there are no further rights of appeal.