

# Managing Poor Work Performance Policy & Procedure

## 1 Introduction & Aim

1.1 Managing work performance is essential to the Council's success. Every Manager has a duty to:

- set and communicate standards of work
- properly manage work performance
- handle any problems that arise in a sympathetic and constructive manner.

1.2 If left unattended poor work performance is likely to:

- have an adverse effect on the quality of services provided by the Council
- reduce accuracy, efficiency and productivity
- lower employee morale
- encourage employees to look for other employment

1.3 This policy and procedure aims to help Managers reduce the risk of problems occurring in the first place, and to identify and address them when they do arise. The policy and procedure also aims to provide Managers with a process through which they can bring about improvements in the accuracy, quality, quantity of work, and to ensure that they have an effective, fair and reasonable method for dealing with employees who are poor performers.

1.4 Managers must remember that this policy and procedure is totally separate from the Personal Development & Performance Appraisal Scheme (PDPA) which, in essence, is aimed at addressing employees' personal and career development. Employee lack of capability issues must not be saved up to be dealt with as part of the PDPA process. Such matters must be dealt with as they occur in line with this procedure.

1.5 The major issues facing local government such as Best Value, the growth of performance management and, the modernising of local government all carry a significant human resources dimension and may require employees to either re-skill or increase their skills base. In that context, another aim of this policy and procedure is to act as an enabling tool in enhancing the ability of employees to properly adapt to, and function in a rapidly changing working environment with limited resources.

## 2.0 The Distinction Between Misconduct and Incapability

2.1 Poor work performance occurs where an employee fails consistently to perform their duties to an acceptable standard. The reason for this falls broadly into two categories:

(a) Misconduct due to negligence, carelessness, or other wilful acts on the part of the employee. For example,

- if the employee refuses to follow procedures or instructions

- is guilty of poor timekeeping or unauthorised absenteeism
- does not work in accordance with health and safety practices

These matters will be dealt with in accordance with the Council's Disciplinary Procedure.

(b) Lack of capability which amounts to limited competence assessed by reference to skill and aptitude.

2.2 Of course there may be circumstances when it is difficult to distinguish between the two - for example, when an employee demonstrates a lack of adaptability, or is inflexible, or fails to work to agreed timescales. In such circumstances, Managers will need to consult with their Personnel Managers and make an informed judgement about the best way of dealing with the problem.

2.3 This policy and procedure deals with managing problems of capability related to lack of skill and aptitude. The employee is working below the standards set by the Council, although they are not deliberately doing anything wrong. For example they:

- do not have the capacity or the ability to do the job
- appear to be unable to understand or follow clear managerial directions
- work in a way that disrupts the work of colleagues
- carry out their duties in a way which is inconsistent with the Council's values or standards
- fail to deliver work in accordance with agreed realistic timescales
- demonstrate behaviour which adversely affects the employee's own work performance and that of colleagues
- fail to meet the requirements of the service in terms of output and/or quality

### **3.0 Measuring Work Performance**

3.1 From the Manager's point of view there should be tangible evidence of poor work performance. The Manager should consider the following questions:

- are there factual grounds such as poor results to indicate poor work performance arising from quality inspection or other means of measuring performance targets?
- does the Manager's own observations of the employee indicate dissatisfaction?
- as a consequence of an investigation, are there, or have there been, substantiated complaints or criticisms about the employee's work performance from customers, other employees, supervisors or managers?

3.2 In order to avoid the potential for their own bias to influence matters, Managers must substantiate these observations with clear evidence and hard facts.

### **4.0 Preventing Capability Problems**

4.1 Managers can help to avoid capability problems arising through:

- careful recruitment and selection methods to ensure they select the best person for the job

- accurate job descriptions which clearly state the purpose and scope of the employee's job
- person profiles which set out the qualities, attributes, knowledge and experience necessary to perform the duties to a satisfactory level
- effective induction programmes and proper use of the probationary period
- regular supervision and appraisal
- engaging in clear and effective communication with employees
- good and focused employee training and development
- individual advice, guidance and encouragement
- setting clear, realistic and agreed targets and standards
- regular team briefings
- involving employees in the development of the Community Plan, service plans and business plans

All the above are examples of good management practice and help to improve the performance of individual employees and teams. Managers should keep records of occasions when these issues are raised and discussed, as reference may need to be made to them if an employee fails to meet the standards of their job.

## **5.0 Stage One - Initial and Corrective Action**

- 5.1 Formal action is not always necessary to improve the capability of employees. As genuine incapability is not misconduct, the employee should be treated sympathetically and confidentiality should be maintained. The Manager's primary objective should be to encourage and support the employee to improve their work performance to reach the required standard.
- 5.2 Performance problems need to be clearly defined. The employee should be given appropriate consideration and support at the earliest possible stage. The nature of the problem, its level of seriousness and cause(s), must be investigated and identified by structured information gathering and systematic recording.
- 5.3 Managers have a duty to ensure that those they manage understand the standards expected through - corrective action, advice, guidance, encouragement, instruction, and counselling.
- 5.4 The first step is for the Manager to meet with the employee and clearly explain:
- how they are failing to cope adequately with the work
  - the reason for the dissatisfaction with their work performance
  - how they are falling short of the required standards of the job
  - the level of satisfactory work performance required
- 5.5 Having done that, the Manager should:
- give advice and direction to the employee as to how their work performance should be improved
  - identify and discuss possible solutions to any problems that come to light
  - agree and put in place an action plan to help the employee to overcome the problem

- arrange for a training and development assessment
- give added supervision, encouragement and support
- set clear, realistic and agreed targets
- monitor outcomes
- have subsequent discussion of progress
- set a review date

5.6 After the discussion the Manager should make the necessary follow up arrangements to monitor and assess the employee's work performance as objectively as possible and as frequently as appropriate, taking into account the employee's duties, and the length of time which it would be reasonable to allow for improvement. This timescale will be agreed with the employee.

5.7 If it comes to light that the employee has domestic or personal difficulties such as caring responsibilities or personal problems, the Manager will discuss the problem with the employee and consider ways to overcome it. For example, permanent or temporary adjustment of hours, duties or workload may be the solution, if any of these options is feasible within the demands of the service. The Manager will advise the employee that the Council has a confidential counselling service which is able to offer help, advice and support to employees, depending on the appropriate need. If it comes to light that the employee has a drug or alcohol problem, the Manager should follow the Council's Policy for dealing with employees suffering from Alcohol or Drug Misuse. The Manager should also consider whether Occupational Stress is an issue and should refer to the Council's Code of Practice for Managing Occupational Stress.

5.8 The Manager should confirm in writing to the employee the issues discussed at the meeting. The letter should clearly identify a plan of action, setting out revised targets and target dates, and the date for a review of the employee's work performance.

5.9 In accordance with the **Disability Discrimination Act 1995**, if the employee under-performing has a disability, the Manager must give due regard to any problems which may have developed because of the employee's disability. It could be the case that whilst the duties of the job have not changed, the effects of the person's disability may have intensified, resulting in a fall in performance. In order for performance to be improved it may be necessary to consider introducing reasonable adjustments in terms of equipment, work allocation, workplace environment and the provision of extra support. Under the Act the Council has a duty to make reasonable adjustments. Managers need to be aware of the importance of maintaining objectivity, and not to discriminate against any employee with a disability.

5.10 Alternatively, the employee may be newly disabled and this has affected their work performance. Again the provision of reasonable adjustments should be given full consideration. Managers are advised to consult with the Occupational Health Service in such circumstances.

5.11 Where the poor work performance is not related to any disadvantage caused by a person's disability, the employee is subject to all the provisions of this procedure in the normal way.

## 6.0 Monitoring and Review

*Approved by Committee: Nov 1999*

*Revised: October 2001*

*Revised Appeal Arrangements with effect from 1<sup>st</sup> March 2004*

*Revised: May 2005*

- 6.1 If after monitoring during the review period, the employee's work performance improves to the required standard, no further action will be necessary. The Manager will inform the employee of the satisfactory outcome of the review, and confirm this in writing within five working days of the end of the review period.
- 6.2 If the Manager has taken all the steps outlined in stage one, and the employee's work performance does not improve, or the improvement is not adequate,

**or**

in genuinely exceptional circumstances and, where the Manager believes a more serious lack of capability exists, (e.g. if serious financial mismanagement arises from the employee's action/inaction) the Manager should consult with the Head of Human Resources with a view to arranging a formal meeting with the employee.

## **7.0 Stage Two - Performance Management Meeting**

7.1 A letter outlining the date and time of the meeting will be sent to the employee at least five working days in advance of the meeting. The letter must include:

- the reason for the meeting
- the name of the Manager who will conduct the meeting
- the employee's right to be represented by a trade union representative, or a friend who may speak on their behalf. In more serious or complex cases, the employee may be accompanied by a second person to assist the main representative during the proceedings, as and when required

7.2 The Manager will conduct the meeting, accompanied by a Personnel Adviser. The purpose of the meeting is to:

- allow the Manager the opportunity to discuss formally with the employee the satisfactory standard of work performance required
- discuss how improvement will be monitored and assessed, and the timescales for this
- allow the employee the opportunity to give any explanation about the causes for the poor performance or to comment on their work
- discuss how the employee, and the Manager each feel about the best way to tackle the problem, what improvement is necessary, and how the employee can be helped to achieve it
- agree the level of support, supervision and where necessary training and retraining, so as to allow the employee every opportunity to reach the required performance standards
- allow the Manager and the employee the opportunity to explain any other option that may be open
- set a review date giving the employee a reasonable timescale for improvement, or to show that they are capable of performing all the duties of the job
- explain that the employee's work will be monitored throughout the review period, and if the work performance does not improve, or if any improvement is not maintained, then further formal action may be taken.

This could include progressing to Stage 3 of the procedure which is referral to the Head of Service, who may consider terminating the employee's services on the grounds of capability due to lack of skill or ability.

7.3 Within five working days of the meeting the Manager should confirm in writing to the employee, the action to be taken following the meeting. The letter should state:

- the areas where improvement is required
- the level of improvement necessary and the required standard that must be achieved
- the measures that will be made available to give the employee every opportunity to reach this level, for example, training and/or supervision
- any other action that will be taken by the Manager or employee to help resolve the situation
- the consequences of failing by the end of the review period, to achieve the level of performance specified/consequences of failure to maintain improvement
- the agreed timescale for improvement

7.4 The Manager, in liaison with the Personnel Manager, should ensure that the further training or assistance offered is made available, and that the employee's work performance is closely monitored. Performance should be assessed objectively and as often as is considered necessary and the employee should be kept informed of their progress. The review period should be for a reasonable timescale, and depending on the issues under review, should be within the range of one to three months.

7.5 If performance has not reached the required level at the end of the review period (or earlier if there is clearly no improvement) or, if the employee's work performance deteriorates, the Manager should consult their Personnel Manager and decide whether it is appropriate to progress to **stage three**.

7.6 If the decision is to progress to stage three, the employee must be informed that their work performance has not improved, or, that it has deteriorated to an unacceptable level, and that the matter will be referred to the Head of Service or nominated representative, who will consider the termination of employment at a hearing convened as follows:

## 8.0 Stage three - The Capability Hearing

8.1 When referring a case to the Head of Service (who will act as the Hearing Officer at the Hearing), the Manager should set out the events that have led to this stage, indicating:

- the areas where the employee has failed to meet the required standards
- the consequences for the service area of the employee's poor performance
- the steps taken to assist the employee

8.2 The Head of Service/Hearing Officer will arrange a Capability Hearing as soon as possible and the employee will be informed in writing with ten working day's notice of:

- the date and time of the hearing
- the purpose of the hearing
- the right to be represented and
- that a possible outcome of the hearing may be dismissal from the Council's service, if the employee is held to be incapable of performing their duties to the required standard

8.3 Both the Manager and the employee should attend the hearing and may produce documentary evidence and call witnesses. The time scale for producing documentation is as follows:

- all management documentation to be passed to the employee five working days prior to the hearing
- employee documentation to be passed to management three working days prior to the hearing
- documentation will not normally be allowed to be presented on the day of the hearing

8.4 The Hearing Officer conducting the hearing will introduce all the parties and explain the purpose of the hearing. The names of any witnesses being asked to attend should be recorded, and all documentary evidence being presented should be verified.

### **8.5 The Management Presentation**

8.6 The Manager will present the case beginning with an opening statement outlining the reasons for bringing the case.

8.7 Questions may be asked of the Manager on the opening statement in the following order:

- the employee or their representative
- the Hearing Officer
- the Personnel representative

8.8 The Manager may then call their witnesses and ask questions of them. The witnesses can then be questioned by the other parties in the order outlined above.

### **8.9 The Employee's Presentation**

8.10 The employee or their representative will present the response to the management presentation.

8.11 Questions may be asked of the employee in the following order:

- the presenting Manager
- the Hearing Officer
- the Personnel representative

8.12 The employee or their representative will then call their witnesses and ask questions of them. The witnesses will then be questioned by the other parties in the order outlined above.

### 8.13 Summing Up

8.14 Management will have the opportunity to sum up, followed by the employee or their representative. No new evidence may be introduced at this stage.

8.15 The Hearing Officer will then ask both parties to withdraw and will come to a decision based on the evidence presented. The Hearing Officer may also decide to adjourn the hearing to consider the matter further before arriving at a decision.

8.16 In coming to a decision, the Hearing Officer must take into account all relevant factors including:

- the action taken to improve the employee's work performance
- the impact and consequences of the poor performance
- the results of the review period(s)
- any mitigating circumstances

### 8.17 Possible Outcomes

8.18 The possible outcome may be:

- **dismissal** from the Council's employment on the grounds of capability; or
- **a further final period of review** to determine whether the employee can meet the standards of performance set by management. Where this occurs, the employee will be informed that failure to reach a satisfactory level of performance will lead to a further hearing, at which the Hearing Officer will consider dismissing the employee from the Council's service.
- **consideration of other optional outcomes** such as finding alternative work for the employee within the employing Service Cluster. This possibility should be considered as an alternative to dismissal by the Hearing Officer at the Capability Hearing when considering terminating the employee's contract.

8.19 The timescale for finding alternative work for the employee is three months from the date of the decision. If alternative work is not found within that time the Capability Hearing will be reconvened and the employee's services will be terminated.

8.20 In seeking alternative work, the Hearing Officer should be confident that the employee would be able to perform the duties of the new job satisfactorily. Otherwise, there is a risk that the capability problem will be transferred to the new area of work.

8.21 Where alternative work is found, offered and accepted, the rate of pay, grade and other conditions would be those applicable to the new post.

8.22 Once a decision has been made, both parties should be recalled and informed of the



outcome. The decision should be confirmed in writing within 5 working days. Where the Hearing Officer adjourns to reach a decision the decision will be notified to all concerned within 5 working days of the adjournment.

8.23 The letter should give the reason for the decision and inform the employee of any appeal rights and the time limit for registering the appeal

## **9.0 The Capability Appeal**

9.1 The employee has the right of appeal against dismissal This appeal will be heard by an Appeals Panel comprising a member of the Council's Strategic Management Team, who will be from a different service from that where the employee works, and the Independent Person. The appeal will not take the form of a re-hearing of the case. The purpose of the appeal is to determine whether:

- the correct procedures have been followed, and/or
- the decision of the Appeals Panel was reasonable in the circumstances

9.2 Any appeal must be lodged in writing with the Assistant Chief Executive (Human Resources) within ten working days of receipt of the letter confirming the decision to dismiss, clearly setting out the grounds of the appeal and outlining the reasons why they believe that the decision to dismiss was unfair.

9.3 The Hearings Panel (Capability), advised by a representative from Human Resources, will hear the appeal as soon as possible, generally this will be within thirty working days of the registration of the appeal, unless a longer timescale is agreed by both sides. The employee should be given ten working days' notice of the date of the hearing, and may call witnesses and produce any documentary evidence relevant to the appeal. New evidence will not be submitted at the appeal stage, except in exceptional circumstances.

9.4 The employee has no right of appeal through the grievance procedure on matters of capability.

9.5 The decision of the Hearings Panel (Capability) will be final.

## **10.0 Corporate Monitoring**

10.1 This policy and procedure will be monitored on an annual basis. Personnel Managers will ensure that Service Cluster information is presented to the Management Team on a regular basis. The information will be forwarded to Corporate Human Resources and the Head of Human Resources will report back to the Senior Management Team on an annual basis to inform Elected Members of the extent of its effectiveness.

## **11.0 Reference**

11.1 The Employment Rights Act 1996  
The Disability Discrimination Act 1995  
The Employment Law Service (Chartered Institute of Personnel and Development)