

# Managing Performance at Work (Capability) Procedure



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## **1. Introduction**

### **Council Policy**

The Council is committed to providing a working environment where individuals are treated with fairness, dignity and respect; the Managing Performance at Work (Capability) Procedure is designed to ensure that there are fair and objective arrangements for dealing with performance issues in the workplace.

The Procedure applies to all employees employed directly by the Council and follows the guidance contained within the ACAS statutory Code of Practice for Disciplinary and Grievance Procedures, (effective from 6 April 2009) and Guidance “How to manage performance” (April 2010).

**The Procedure should be viewed primarily as a way of helping and encouraging employees to improve unsatisfactory performance. It is intended to ensure that performance issues are dealt with promptly, fairly and consistently in accordance with the Council’s policies, employment legislation and “Best Practice”.**

## **2. General**

### **Advice and support**

Human Resources will support and advise managers dealing with performance issues and monitor all formal cases to ensure that they are dealt with in accordance with the Procedure, employment and equalities legislation, and “best practice”.

Employees are entitled to be accompanied by a trade union representative or a fellow work colleague at any meetings under the “Formal Process”. (See “Representation”).

### **Confidentiality**

In the interests of natural justice and to avoid prejudicing the outcome of any performance process, the proceedings must be kept strictly confidential. All those involved in the process will be required to maintain confidentiality at all times and must not discuss or disclose details of issues or the outcome of meetings etc.

### **Fairness and objectivity**

It is important to ensure that the performance review process is conducted in a fair and unbiased manner.

Advice must be sought from Human Resources where there any concerns as to “impartiality” or the process being followed.

## **Unsatisfactory performance**

Unsatisfactory work performance is that which falls below the expected standards or requirements, (but it is not wilful misconduct which should be dealt with under the Disciplinary Procedure); examples may include:

- not working as fast as required or producing enough work
- producing unsatisfactory quality of work or making mistakes
- not understanding or following instructions
- not adapting when ways of working change
- not being able to work in line with agreed procedures
- not performing as well as colleagues in comparable jobs

## **Representation**

Employees may only be accompanied / represented at meetings during the formal process (at 4.2-4.4), and by a fellow work colleague **or** a trade union official.

It is the employee's responsibility to arrange their representation and to inform their representative of the arrangements (time and dates) of meetings.

## **Records**

The ACAS Code of Practice recommends that records should be kept of hearings, detailing the following:

- the nature of any unsatisfactory performance;
- the employee's defence or mitigation;
- action taken and the reasons for it;
- whether an appeal was lodged and its outcome; and
- any subsequent developments

Records should be confidential and kept in accordance with the requirements of the Procedure and the Data Protection Act 1998. The employee should receive copies of any meeting records.

## **Monitoring**

The application of the Procedure will be monitored closely and reviewed annually in consultation with management and the trade unions.

## **3. Roles and Responsibilities**

### **Employee's responsibility**

The Council, as part of the normal employment contract, expects the following from its employees:-

- good timekeeping (including punctuality and attendance);
- good standards of work (including quality and quantity);

- compliance with reasonable orders, instructions, requirements, and observance of Council practices, policies and procedures.

Employees must comply with arrangements detailed in this Procedure which are designed to ensure that performance issues are dealt with fairly and objectively. Employees are required to:

- Fully co-operate with the process
- Maintain confidentiality
- Attend meetings at the time and place designated
- Attend training and take part in staff development as and when required
- Give as much notice as possible when they or their representative cannot attend formal meetings and be reasonable when suggesting alternatives, (which must be within 5 working days of the original date)

### **Manager's responsibility**

Managers must ensure that their employees are made aware of the standards expected and that:

- Employees understand their roles and have up-to-date job descriptions
- Employees are set clear, fair, realistic and measurable targets
- Employees have annual appraisals, six monthly reviews and regular e.g. monthly supervision / 1-1 meetings
- Employees are provided with support and training as agreed through regular e.g. monthly supervision / 1-1 meetings and at appraisals
- Changes in individual workloads and performance targets are reviewed regularly in supervision and 1:1 meetings
- New employees (including internal transfers) have structured induction and are made aware of the standard of performance expected
- Appropriate reasonable adjustments are made for disabled employees

Managers must comply with arrangements detailed in this Procedure which are designed to ensure that performance issues are dealt with fairly and objectively. Managers are required to:

- Notify the employee of any concerns about unsatisfactory performance
- Maintain confidentiality
- Try and resolve performance issues as they arise informally with the employee through informal discussion and advice
- Where performance issues cannot be resolved informally, give the employee reasonable opportunity, with appropriate support, to reach the required standard
- Consult Human Resources before proceeding to the formal stages of the Procedure

## **Employee supervision**

Performance issues should be raised and investigated by the employee's immediate supervisor/manager as part of the normal supervision / "1-1's", and the appraisal process. This includes identifying with the employee any training needs and/or issues that may affect the individual's performance.

## **Performance Reviews**

Reviews will be conducted either by a Corporate Director, Divisional Director or Group Manager with the authority to chair a disciplinary hearing and to issue any disciplinary sanctions e.g. issue warnings or dismissal.

In the case of JNC officers, the Review will be conducted by the Chief Executive / Corporate or Divisional Director; in the case of the Chief Executive (Head of Paid Service), Monitoring Officer and Chief Financial Officer (Section 151 Officer), the Review will be heard by a Member Panel consisting of a Cabinet Member and the involvement of an independent person.

## **Capability Hearings**

Hearings will be conducted by another Corporate Director or Divisional Director or Group Manager with the authority to chair a disciplinary hearing and to issue any disciplinary sanctions.

In the case of JNC officers, a Member Panel consisting of the Leader and Deputy Leader of the Council (as Chair and Deputy Chair respectively), the relevant portfolio holder, plus at least two other councillors:

- i) will make decisions in respect of the dismissal and consider disciplinary action in respect of all JNC Officers with the exception of the Chief Executive (Head of Paid Service), Monitoring Officer and Chief Financial Officer (Section 151 Officer), whose cases will additionally require the involvement of an independent person, and
- ii) in the case of dismissal, be subject to recommendations to the Assembly.

## **Human Resources**

Procedural advice must always be sought from Human Resources. A Human Resources Adviser will attend all formal Performance Reviews, Capability Hearings and Appeals (at 4.2-4.4), to ensure a thorough and fair process for all concerned in line with the Council procedures and "Best Practice".

Human Resources will be available to give appropriate support and advice during the process; this will include:-

- talking through the process to be followed
- where to go for further help and support

## **Head of Human Resources**

The Head of Human Resources and his/her named representative, has the overriding authority to ensure that all performance cases are dealt with appropriately and in accordance with this Procedure, employment legislation and “Best Practice”.

### **4. Performance Process**

It is essential that any concerns as the employee’s performance are raised with the individual as soon as possible; this will normally be done through the regular e.g. monthly supervision and must not be left to the annual appraisal.

In accordance with the principles of natural justice, employees will be advised at each stage, by their manager or the Reviewing Officer, of the precise nature of the complaints about their performance and given the opportunity to respond before any decision is made. The individual will also have the right of appeal against any disciplinary action taken after a Review or Hearing.

No disciplinary action will be taken until the matter has been investigated and the employees given a further/final opportunity at the Performance Review, to meet and maintain the required performance standards.

#### **4.1 Performance management**

The intention is to try and resolve performance issues informally where possible and help the employee to reach and maintain the required standards.

It is important to understand why someone is not performing their duties at the standards required and whether there are any underlying reason(s) e.g. has the role changed or do they have health or other problems. Managers must ensure that they have made the employee aware of the required standards and that:

- the employee understands their role and has an up-to-date job descriptions or agreed list of duties;
- the employee has been set clear, fair and realistic targets;
- the employee has had annual appraisals, six monthly reviews, and regular supervision / 1-1 meetings;
- any support and training agreed has been provided ,
- reasonable adjustments are made for disabled employees;
- the employee has been made aware of any concerns and given a reasonable opportunity to reach the required standard

The employee should be kept informed of the nature of the poor performance, the level of improvement required and the time limit for achieving this. They should also be made aware of the possible outcomes if they fail to achieve and maintain the required standards i.e. so this will not be a surprise to them.

Where the employee is still failing to achieve and maintain the required standards, the manager will arrange a Performance Review.

## **4.2 Performance Review**

**Managers must consult Human Resources and provide evidence of either an appraisal having been conducted that year or the performance issues raised with the employee before proceeding to a Performance Review.**

The arrangements for the Performance Review are detailed at Appendix 2.

A Performance Review will be conducted by a Corporate Director or Divisional Director or Group Manager (Reviewing Officer) with the authority to chair a disciplinary hearing and to issue sanctions; the Reviewing Officer should have experience of or be familiar with that service area. A Human Resources Adviser will provide procedural advice to the Reviewing Officer.

The Reviewing Officer conducting the meeting will arrange for a note taker to be present. (If the employee disagrees with the notes of the meeting, they can ask for their version to be attached to the minutes).

The management case should normally be presented by the employee's line manager who will arrange for the employee to be formally advised in writing of the date and arrangements for the Performance Review including:

- the specific details of their unsatisfactory performance;
- their right to be represented;
- their right to present evidence;
- copies of the evidence and names of any witnesses to be presented.

The employee or their representative is responsible for arranging:-

- i) Their witnesses and notifying them of the time and date of the Review.
- ii) Provision of their evidence/documentation to be presented at the Review.

Details of the information to be presented and the names of witnesses to be called should be made available to the Reviewing Officer, line managers and employee, a minimum of 5 working days before the day of the Review.

If the employee's chosen representative is unable to attend, the Performance Review will be rescheduled to a mutually convenient time no more than 5 working days after the date originally proposed. (This deadline may be extended by agreement provided the meeting is held within 20 working days of the originally notified date).

The employee will be notified in writing that if they fail to attend the re-arranged Performance Review without good reason, or to arrange representation, the case may be heard in their absence.



## Outcome

When considering an outcome the Reviewing Officer should consider the following:

- Has the employee being set clear, fair and measurable targets?
- Has the employee been made aware of the standards required and the issues concerning their performance?
- Has any training and support agreed by the manager being provided or appropriate reasonable adjustments made for disabled employees?
- Have I paid sufficient regard to any explanation put forward by or on behalf of the employee?
- Do I genuinely believe that the employee is not performing to the required standards?

If the answer to all of the above points is yes;

- Are the issues serious enough to warrant the decision I am contemplating?
- Have I had regard to any mitigating circumstances put forward by, or on behalf of, the employee and a response by management?
- Is the decision reasonable in all the circumstances (taking into account the individual's service history and the action taken in similar cases)?

After full consideration of the evidence presented, the Reviewing Officer may decide from the following outcomes:

i) Adjournment

To adjourn pending further consideration/ investigation of issues raised at the Review before reconvening to decide on the outcome or to continue the Review.

ii) No Action

Where there is no case to answer or the matter does not warrant a warning, the employee should be informed that the matter is being dropped and that no further action will be taken.

The outcome and any recommendations must be confirmed to the employee in writing and the records and documentation from the investigation will be destroyed.

iii) Written / Final warning

The Reviewing Officer should ensure that the employee is clear about the reasons for the warning, and the consequences of failure to meet and maintain the required performance. The letter will set out the:

- details of the unsatisfactory work performance
- employee's explanation of the performance issues
- performance improvement plan and monitoring arrangements
- arrangements for any support and training during the Review Period
- timescale for the Review Period

The duration of the Review Period will depend on the circumstances of each case and is normally 3 months, starting from the date of the letter notifying the employee of the outcome.

Note: Managers must ensure that any support agreed is provided as it will be unfair to progress the case through the Procedure if they themselves have not complied with the outcome.

**In all cases, the Reviewing Officer will notify the employee in writing of the outcome of the Review, including any recommendations, within 5 working days, along with the right to appeal as appropriate.**

### **Review Period**

The line manager must continue to monitor the employee's performance during the Review Period and ensure that any support and training agreed is provided.

Where at the end of the review period, the employee has achieved the required performance the line manager will confirm this in writing and advise them that:

- the level of improvement must be maintained for 12 months after which the Process will be considered concluded; and
- failure to maintain this may result in further formal action being taken.

A copy of the letter should be sent to the Human Resources to be placed on employee's personal file.

Where at the end of the review period the employee is still failing to achieve and maintain the required standards the manager will arrange a Capability Hearing.

### **4.3 Capability Hearing**

The arrangements for the Capability Hearing follow the same process as for a Performance Review but will be conducted by another senior officer, (or Member Panel for JNC Officers).

The management case should normally be presented by the line manager who will arrange for the employee to be formally advised in writing of the date and arrangements for the Hearing:

## Outcome

When considering an outcome the Hearing Officer should consider the following:

- if the timetable for improvement was reasonable
- if the action plan was reasonable
- establish that adequate support and training has been given
- establish the reason(s) for continued below standard performance
- the employee's explanation of the circumstances of the case, together with any mitigating factors or supporting evidence

If the answer to all of the above points is yes;

- Are the issues serious enough to warrant the decision I am contemplating?
- Have I had regard to any mitigating circumstances put forward by, or on behalf of, the employee and a response by management?
- Is the decision reasonable in all the circumstances (talking into account the individual's service history and the action taken in similar cases)?

The Hearing Officer may decide from the following outcomes:

i) Adjournment/Extend Review Period

To adjourn pending further consideration/ investigation of issues raised at the Hearing before reconvening to decide on the outcome or to continue the Hearing.

ii) No Action

Where there is no case to answer or the matter does not warrant a warning, the employee should be informed that the matter is being dropped and that no further action will be taken.

The outcome and any recommendations must be confirmed to the employee in writing and the records and documentation from the investigation will be destroyed.

iii) Dismissal

If it is considered that all agreed support mechanisms have been put in place, the Hearing Officer may decide to dismiss. Dismissal, with notice, will normally result when performance remains unsatisfactory despite an earlier warning.

In exceptional cases, as agreed by the Head of Human Resources i.e. where the employee has proven capable of performing duties in another post or at lower level, consideration may be given as to other vacant positions within that service area as an alternative to dismissal but salary protection will not apply. In this situation, the line manager will assess

any vacancies for suitable alternative employment during the notice period.

**In all cases, the Hearing Officer will notify the employee in writing of the outcome of the Hearing, including any recommendations, within 5 working days, along with the right to appeal as appropriate.**

#### **4.4 Appeals**

Employees have the right to appeal against any action and if they wish to do so, they should write to Human Resources within 10 working days of receiving the letter confirming the outcome of the Review or Hearing, stating the grounds for the appeal.

Appeals against written and final warnings will be heard by a Director or Head of Service.

Appeals against dismissal will be heard by the Personnel Board.

The Officer/Panel hearing the appeal may vary or confirm the decision made at a Disciplinary Hearing but cannot increase the sanction.

Note:

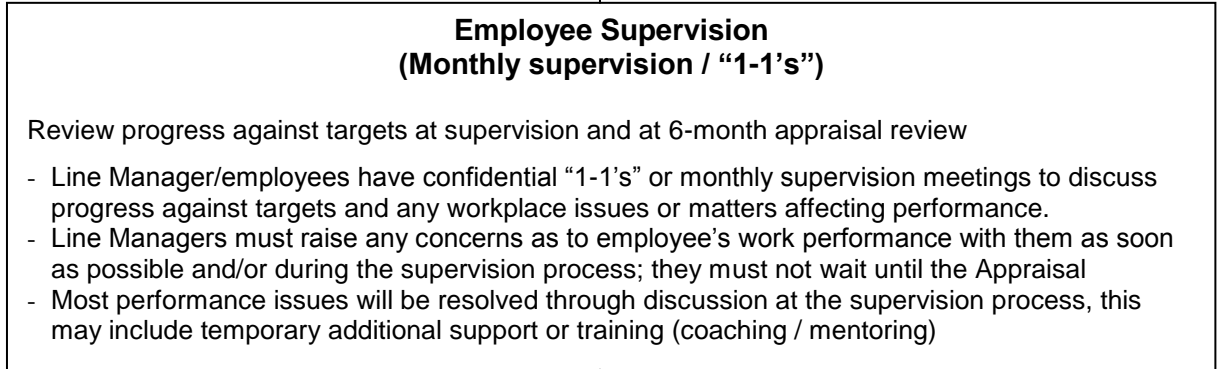
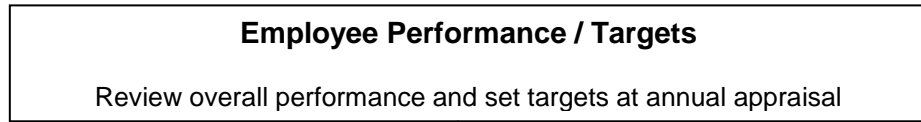
- i) A Director or Head of Service with the responsibility to chair an Appeal Hearing will hear appeals against disciplinary sanctions against officers up to and including LSMR posts. Appeals against final warnings and dismissal will be heard by Members at a Personnel Board.
- ii) A Member Panel consisting of at least two Cabinet Members, one of whom shall be appointed as Chair, plus two other councillors, subject to none having participated in any previously appointed Panel relating to the case in question, to:
  - (i) consider appeals in respect of dismissal and disciplinary action from JNC Officers;
  - (ii) consider, with the involvement of a separate independent person, appeals in respect of disciplinary action against the Chief Executive (Head of Paid Service), Monitoring Officer and Chief Financial Officer (Section 151 Officer); and
  - (iii) in the case of dismissal, this will be subject to recommendations to the Assembly

**This is the final stage; there is no further right of appeal.**

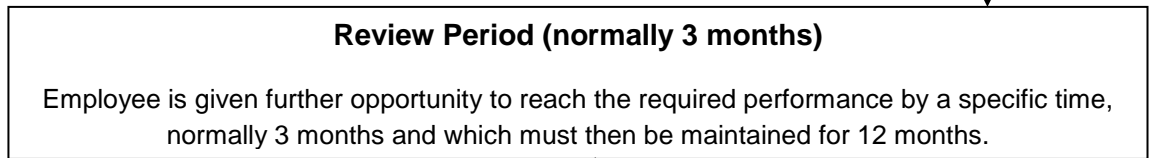
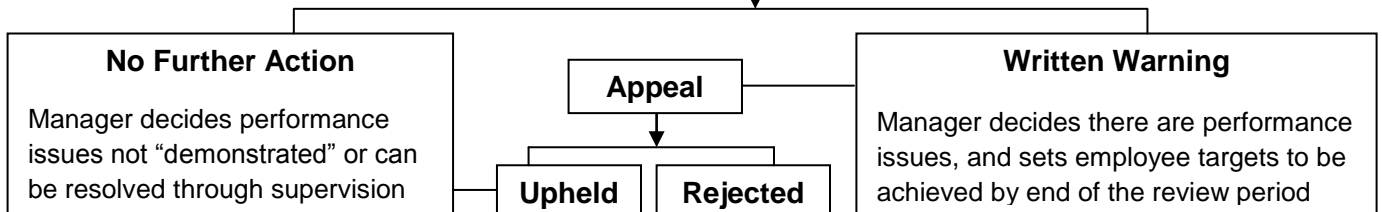
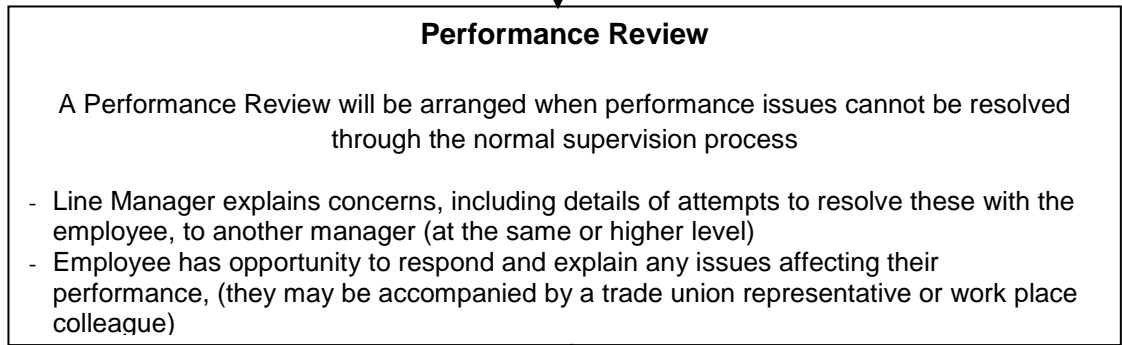
**Human Resources will automatically update the Procedure to comply with any changes to legislation and / or ACAS guidance and notify employees of the amendments.**

## Appendix 1: Managing Performance at Work (Capability) Procedure Flowchart

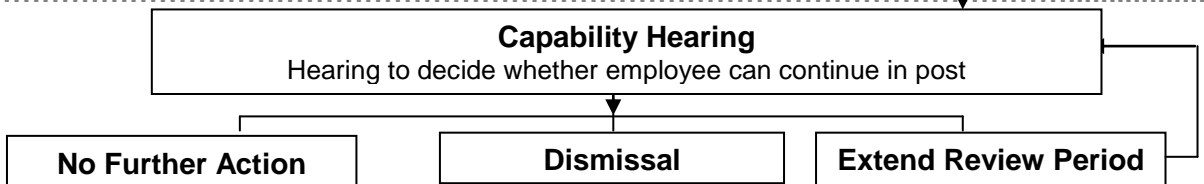
### Supervision



### Performance Review



### Capability Hearing



### Appeal



## **Appendix 2: Performance Review / Hearing Procedure**

### **1. Introduction**

- The person hearing the case at the Review or Hearing (the “Hearing Officer”) will; clarify the roles of those present; check both sides have copies of the documentation and details of any witnesses to be presented; and outline the process to be followed.
- The Hearing Officer will not normally allow any further documentation or witnesses to be presented unless both sides agree.
- The manager presenting the case, the employee and their representative will be present throughout the Review/Hearing except for any adjournment and when the Hearing Officer is considering their decision.
- Witnesses will only be present when they are called to give their evidence and to be questioned by the Hearing Officer, the management and staff sides.
- The Hearing Officer and HR Adviser can ask questions of the manager, the employee and/or their representative and witnesses at any time.
- The Hearing Officer will give the employee the opportunity to say whether they admit to any of the allegations before management presents their case.

Where the employee admits to the performance issues, the Hearing Officer may consider claims of mitigation instead of having the whole case presented. The Hearing Officer will still allow management the opportunity to ask the employee or their representative questions. The employee and/or their representative will then have the opportunity to clarify any points raised during the questioning.

In such cases the Hearing would then go directly to Stage 4: Summaries

### **2. Management case**

- Management will present their case and call witnesses and refer to documents as appropriate
- After the presentation, the employee and/or their representative can ask the management questions
- Management will then have the opportunity to clarify any points raised during questioning.

### 3. Employee case

- The employee and/or their representative will present their case and call witnesses and refer to documents as appropriate.
- After the presentation, management can ask the employee and/or their representative questions.
- The employee and/or their representative will then have the opportunity to clarify any points raised during the questioning.

### 4. Summaries

- Both sides, starting with management, will have the opportunity to **summarise** their case if they wish. This is not a rehearing of the whole case and neither side will be allowed to ask any further questions.
- Both sides will then withdraw whilst the Hearing Officer considers their decision. If it is necessary to recall the employee, manager or a witness to clarify points of uncertainty as to the evidence presented, this must be done in the presence of both parties who will be called back together.

### 5. Outcome

- The Hearing Officer will recall both sides together to notify them of the outcome. If further time is needed to consider the matter, both sides will be recalled and given an indication as to when a decision is to be made and allowed to leave.
- The Hearing Officer will confirm the decision and any recommendation(s) in writing within 5 working days and arrange for the notes of the meeting to be issued to both parties and the Human Resources Adviser as soon as possible afterwards.

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