

Performance Management (Capability) Policy

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1.0 Policy Statement

- 1.1 This policy is designed to help and encourage all employees to achieve and maintain standards of good performance. The formal process should be followed once all other informal avenues have been exhausted. It is the employee's manager's responsibility to follow the procedure where performance is shown to be below the standards required for the role.
- 1.2 The City of Wolverhampton Council has a commitment to assist employees to achieve and maintain a high standard of performance in their work. It will ensure that standards are clearly defined and communicated, performance is monitored and employees are given appropriate training and support to meet these standards.
- 1.3 Cases of poor performance should be identified and tackled promptly and the manager's focus and the employee's efforts must be to work together to meet the required standards.

2.0 Definition

- 2.1 Capability relates to the inability of an employee to meet the required standards of the role due to insufficient skill level or aptitudes.

3.0 Scope

- 3.1 This policy and procedure applies to all employees of the Council. It excludes NJC employees and Teachers employed by Governing Bodies who are covered by Schools HR Policies. Policies adopted by the Council may, following discussion with relevant trade unions also be recommended as good practice models for adoption by maintained school governing bodies.

4.0 Exclusions

- 4.1 Issues which are excluded from being dealt with under the Capability Policy are:
 - Address issues relating to attendance and health through the Management of Attendance Policy/Procedure
 - address issues relating to misconduct through the Disciplinary procedure
 - any refusal to comply with reasonable instructions relating to performance standards will be tackled under the Disciplinary procedure.

5.0 Principles

- 5.1 The City of Wolverhampton Council recognises that its employees are essential to achieving its strategic objectives.
- 5.2 The policy aim is to help employees to perform competently in their job role.

5.3 In applying this policy, the Council will:

- Ensure that the agile workstyle is well suited to the role and the needs of the individual.
- Ensure that employees are competent and confident in their roles by encouraging a continuous cycle of personal development including:
 - Induction
 - 1:1 meetings
 - group supervisory meetings – where appropriate
 - professional conversations.
- Identify and tackle cases of poor performance promptly
- Establish the facts before taking action
- Not normally dismiss an employee for poor performance unless a chance to improve has been given
- Ensure that objectives and performance measurements are discussed in professional conversations
- Ensure that matters of poor performance are addressed throughout the year through 1:1s or group supervisory meetings
- Consider whether poor performance may be related to a disability and if so, whether there are any reasonable adjustments that can be made to overcome difficulties caused by workplace arrangements
- Assess each case on its merits.

5.4 Before taking any formal action, managers should first seek to establish the facts and decide whether a more positive approach is likely to be more effective.

6.0 Process and Procedure

6.1 The policy is written with the purpose of helping employees to improve their work performance. Managers will assess each capability issue on its merits providing support, guidance and the offer of any available training, where applicable, to enable the employee to reach the expected level to perform in his/her job role competently.

6.2 Human Resources will be involved in **all** formal review stages of the capability process to offer coaching, support and guidance to managers, enabling them to resolve performance issues at the earliest intervention.

6.3 Employees will have the right to be accompanied by a work colleague or trade

union representative at any formal capability meetings or at an appeal hearing. Managers should keep records of all 1-1's and formal review meetings.

7.0 Informal Action

- 7.1 Cases of minor or unsatisfactory performance are usually best dealt with informally. A quiet word may be all that is necessary to improve an employee's performance. In some cases, additional support, coaching and advice may be necessary.
- 7.2 The cause of the poor performance should be discussed with the employee and the appropriate action to rectify the issues taken.
- 7.3 Where managers monitoring an employee's performance identify the cause for the underperformance is due to an ill-suited agile workstyle, the employee can be withdrawn from agile working arrangements as part of a performance action plan to support necessary improvements. The same applies if an agile worker's workspace appears to be disruptive or distracting.
- 7.4 Where managers monitoring an employee's performance identify the cause for the underperformance is due to the lack of skills required to do the job, the employee should be offered training, coaching or some other appropriate assistance, if applicable.
- 7.5 A reasonable timescale to achieve and maintain the required standard should also be agreed between the manager and employee. Managers should keep brief notes of any informal discussions held with the employee.
- 7.6 Options available at this stage may include:
- Training / Retraining
 - referral, where appropriate, to employees support services, such as Occupational Health and/or counselling support
 - mentoring / Coaching
 - closer supervision for a limited period
 - temporary alterations in duties which do not change the character of the job but allow the individual to develop at a slower pace.
- 7.7 The objective of the informal stage is to alleviate or remove the problem after adequate time has been allowed for improvement. If, however, it becomes clear that acceptable performance in the post cannot be achieved within reasonable timescales, the matter should be progressed to the formal procedure.

8.0 Formal Action

8.1 Unable to attend meeting

- 8.2 Employees who are unable to attend the formal review meetings because

their trade union representative or work colleague cannot attend may be offered a reasonable alternative date within five working days of the original date.

8.3 In instances where the employee becomes sick or has a stress related illness the review meeting can be re-scheduled once. If the employee remains sick, the hearing should go ahead and a decision made in his/her absence.

8.4 Formal Capability Meeting

8.5 Where an employee shows little (or insufficient) improvement following informal attempts to deal with the performance issues, the manager will write to the employee inviting him/her to attend a formal capability meeting.

8.6 Managers are responsible for setting realistic standards of performance, for explaining these standards to employees and for the provision of training, support and guidance, where applicable, so that the employee has the opportunity to perform well.

8.7 The employee should be given five working days' notice of the meeting. The letter should advise them of:

- The specific nature of the poor performance issue along with supporting documents, where appropriate
- time and date of the formal review meeting
- the right to be accompanied by their trade union representative or work colleague.

8.8 At the formal capability meeting the manager will present evidence of the informal actions/support that has been given to assist the employee to reach and maintain the required standard of performance.

8.9 The employee will be encouraged to give his/her view of the performance issues raised and asked whether any further support is needed to improve. The employee will be notified within five working days of the outcome of this meeting, unless it is not practicable to do so.

8.10 The outcome of the formal capability meeting may be one of the following:

- No further action is required and the employee will receive written notification confirming this decision.
- The finding of poor performance, for which a formal improvement letter is issued to the employee

8.11 The letter will cover the following:

- The performance issue
- the improvement required

- the timescales for achieving the improvement
- review date
- any support the manager will give to assist the employee
- potential to progress to a final capability review hearing, which could potentially result in dismissal, if insufficient improvement or further evidence of poor performance is demonstrated during the improvement period.

8.12 The length of the improvement period will be dependent upon the performance issues identified. A reasonable length of time should be agreed for improvement to be made. The precise time for the improvement will depend upon the complexity of the issue and the potential adverse impact on the service delivery.

8.13 Managers should provide support, guidance and training as appropriate, throughout the review period to help enable employees to improve to the required level of competence.

8.14 A review meeting should be held at the end of the agreed improvement period. The outcome of this meeting may be one of the following:

- No further action is required and the employee will receive written notification confirming this decision.
- There has been some improvement but not to the expected level required, therefore the review period will be extended for a specific period.
 - The manager will continue to monitor the employee's performance and will offer training, development, advice, guidance or other support to enable the employee to achieve to the required standard during this review period.
- The finding of insufficient improvement, or further evidence of poor performance, or where any improvement has not been maintained. The employee will be advised that they will now progress to a final capability review hearing in accordance with the formal procedure below.
 - The employee must be made aware that this is the final stage of the Capability procedure and their employment is at risk.

8.15 Final Capability Hearing (Dismissal or Other Action)

8.16 Where, after the agreed or extended period of time, improvement to the standard required has not taken place, the employee will be invited to a final capability hearing.

8.17 The hearing will consist of a panel of three members; two senior managers (Grade 9 or above) and a HR Advisor. Every effort will be made to ensure the panels are representative of as many of the protected characteristics as

possible with a minimum criterion of race and gender diverse to be met. Panel members will be required to undertake Unconscious Bias Training prior to participating on the panel. The panel must sign a confidentiality agreement prior to participating in the hearing.

8.18 Prior to this hearing taking place, the manager will gather all of the evidence and assemble all of the facts of the case in to a Case Summary Report.

8.19 The employee should be given ten working days' notice of the meeting, and the invite letter should include the following:

- Time and date of the hearing
- right to be accompanied at the meeting by a trade union representative or a work colleague
- their right to ask relevant witnesses to appear to support his/her case
- issues of concern regarding performance during the review period along with supporting documents, if appropriate. Supporting documents may include notes of one to ones or supervisory meetings, the appraisal documentation showing agreed objectives and/or notes from appraisal meetings.

8.19 The following formal actions will be considered and the employee will be notified of the outcome of the hearing in writing:

- **Dismissal on Capability Grounds**

- The employee will receive a formal failure to improve letter that explains that they are being dismissed on capability grounds and given the appropriate notice period as set out in their contract of employment.

OR

- **Alternative to dismissal** – this will only be considered with the employee's consent, where there are mitigating circumstances and clearly identified and agreed new actions which should lead to improvement within an agreed review period.

- **Transfer** - A transfer to a single, specified and available post of the same grade which the employee would be competent to fill as an alternative to dismissal.

- **Demotion** - Demotion to a lower graded, specified and available post. In this instance, there will be no protection of pay and the employee will automatically serve a 6 month probationary period in the new post. The recording of this decision will remain on file for 24 months.

- Should the Chair of the capability hearing be contemplating a transfer or demotion, then the hearing must be adjourned and the case discussed with the Deputy Director of People and Change before any alternative job

offer is made. If this sanction is approved and the employee agrees to this offer; the right of appeal will be removed. If the employee does not agree to an offer on these terms, as an alternative to dismissal, then dismissal will take place and he/she will be informed of his/her right of appeal.

- **Extension of the improvement period** for a specific period. A clear timetable for support and supervision will be established, detailing any targets to be met.
- The manager will continue to monitor the employee's performance and will offer training, development, advice, guidance or other support to enable the employee to achieve to the required standard during this review period.
- If, at the end of an agreed extended improvement period, there is evidence of insufficient improvement, or further evidence of poor performance, or any improvement has not been maintained, the final capability review hearing will be reconvened and the employee will be advised that their employment remains at risk.

The decision should be communicated in writing to the employee within five working days of the date of the meeting.

9.0 Appeals against Dismissal (Appeal Hearing)

- 9.1 The right of appeal against dismissal will be to the Human Resources Appeal Panel. The notice of intention to appeal against dismissal should be made in writing to the relevant Director within **five working days** of written confirmation of dismissal.
- 9.2 The purpose of an appeal against dismissal is for an employee to have their case reviewed and for the Chair to decide whether or not the dismissal applied is fair, reasonable, consistent and soundly based.

10.0 Roles and Responsibilities

10.1 Employees are required to:

- Employees have a responsibility to comply with this policy adhering to its terms and conditions, and be responsible for their performance.

10.2 Managers are required to:

- Managers should ensure that this policy is applied within their own area. Any queries on the application or interpretation of this policy must be discussed with HR prior to any action being taken for poor performance.

10.3 Human Resources Advice are required to:

- HR will provide operational support and advice to the organisation to enable the effective management of capability issues under this policy.
- ensure the communication, maintenance, regular review and up dating of this policy
- monitor and review delivery and impact of this policy.
- ensuring managers are sufficiently trained to implement this policy.

10.4 The Deputy Director of People and Change is required to:

- In consultation with the recognised Trade Unions, The Deputy Director of People and Change will exercise delegated authority for and be responsible for the on-going review and updating of this Policy to ensure compliance with changes in statutory requirements and operational delivery, including responsibility for identifying the appropriate process for the regular evaluation of the effectiveness of this policy. Any fundamental changes to this policy will be approved by an Individual Executive Decision Notice (IEDN).

10.5 Trade Unions are required to:

- Work in consultation with HR Advice on any review and revisions of this policy
- represent trade union members, if required.

11.0 Monitoring and Review

- This policy will be reviewed every 3 years or earlier if there are significant changes required in the light of best practice and or any changes to legislation.

12.0 Links to other Policies and Procedures

- Grievance Policy
- Disciplinary Policy

13.0 Equality and Diversity

13.1 The Council is committed to equality and fairness for all employees and will not discriminate because of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

13.2 In developing this policy we have undertaken an Equality Analysis the results of which indicate that it is lawful to proceed in the way described by this policy. The Council is committed to promoting equality and recognising the diversity of our communities and will work to ensure all parts of our community are treated fairly.

Appendix 1 - Glossary

Capability

The ability to perform the duties required of the role. Capability differs from disciplinary which is concerned with (mis)behaviour whereas capability deals with ability.

Poor Performance

Performance is the required work standard and expectation of employees. The appraisal process will be where the employee's objectives are set and will identify the measurement of these objectives. Poor performance is where an employee is not achieving the required standard for the role and this should be dealt with promptly to rectify the situation.

Professional conversation

All managers will hold at least four professional conversations with their employees. This is a supportive process for both managers and employees to cover specific elements of employment including; skills and support required to deliver the employees role, employee wellbeing, and employee development. It is also an opportunity for employees to contribute and feedback on new ideas for service delivery.

One to one (1:1)

A one to one (1:1) is a regular formal meeting between the manager and the employee, sometimes referred to as supervision.

Appeal

Where an employee feels that the outcome issued following the hearing is inappropriate they have the right to appeal this decision. For a sanction short of dismissal, the employee should let their Director know the grounds for their appeal in writing in accordance with this policy. If the appeal is against dismissal then this will be heard by the Human Resources Appeal Panel and the intention to appeal should be made in writing to the relevant Director. The appeal will be heard without unreasonable delay and the arrangements for this will be notified to the employee in advance. The outcome of the Appeal will be final.