

NORTH LINCOLNSHIRE COUNCIL

**CORPORATE AND COMMUNITY SERVICES
CABINET MEMBER**

REVISED HUMAN RESOURCE (HR) DOCUMENTS

1 OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To seek approval for the new Managing Performance and Capability Hearing documents.

2 BACKGROUND INFORMATION

- 2.1 Currently referred to as the Capability procedure, the revised document provides:
- A focus on early intervention, encouraging managers to talk to their employees about issues of performance at the earliest opportunity.
 - An informal process to try and resolve the issues.
 - A formal process providing employees with a realistic period of time over which the desired improvements in performance/attendance can be achieved.
 - A capability hearing where the outcome may be a written warning and review, alternative employment, career break or, only if none of the others are appropriate, dismissal.
- 2.2 The proposed changes, including renaming the document 'Managing Performance', now place a much greater emphasis on:
- The day to day management of performance.
 - Informal intervention where performance is inadequate.
 - Highlights the overarching framework of supporting practices.
- 2.3 The capability hearing element of the current procedure has been separated out and will apply where the earlier stages of the Managing Performance procedure or the Sickness Absence procedure have been exhausted.

3 OPTIONS FOR CONSIDERATION

- 3.1 To consider and accept the revised policy.
- 3.2 To reject the revised policy.
- 3.3 To recommend further amendments to the revised policy.

4 ANALYSIS OF OPTIONS

- 4.1 The revised documents are an integral part of measures to manage employee performance. Accepting the revised documents will encourage managers to address day to day performance issues in a consistent manner and tackle inadequate performance with confidence.
- 4.2 The existing capability procedure has tended to lead to a desire to enter into the formal procedure having failed to approach issues on an informal basis first. Rejecting the revised documents will continue to undermine the council's ability to manage inadequate performance.
- 4.3 Recommending further changes to the policy would require further consultation and delay implementation.

5 RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)

5.1 Financial

There are no direct financial implications.

5.2 Staffing

The Managing Performance procedure will apply to all employees of the council, with the exception of:

- Employees during their probationary period, and
- those appointed by schools with delegated powers.

5.3 Property

None.

5.4 IT

None.

6 OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17 CRIME AND DISORDER, RISK AND OTHER)

- 6.1 The revised documents comply with the principles set out in the Acas (Advisory, Conciliation and Arbitration Service) code of practice on disciplinary and grievance procedures, which has statutory force in capability dismissal scenarios.

7 OUTCOMES OF CONSULTATION

- 7.1 Extensive consultation has taken place over many months on the revised documents. The relevant trade unions have been consulted and are supportive of the revisions.

8 RECOMMENDATIONS

- 8.1 That the revised documents be approved and adopted.

Assistant Director Human Resources

Pittwood House
Ashby Road
Scunthorpe
DN16 1AB
Author: P Adams
Date: 6 October 2011

Background Papers used in the preparation of this report: None

1.0 INTRODUCTION

- 1.1 This procedure describes the steps to be taken to enable employees to achieve and maintain a high standard of performance in their work. It also provides a framework of informal and formal intervention, where performance is inadequate.
- 1.2 This procedure is designed to ensure that an employee whose performance is inadequate is clearly informed of the expected standards and receives the necessary support and time to achieve those standards.
- 1.3 Nothing contained within this procedure should replace normal day to day management and any issues should be discussed and addressed with an employee, as they arise.
- 1.4 This procedure will apply to all employees of the council, with the exception of:
- employees during their probationary period, where the Probation policy A.3 should apply, and
 - those appointed by schools with delegated powers.
- 1.5 Employees on teachers' terms and conditions will be subject to statutory performance management arrangements, in line with the council's adopted policy. However where serious performance issues are identified, performance management arrangements will be suspended and the formal stages of this procedure will apply.

2.0 RESPONSIBILITIES

- 2.1 All employees have a contractual responsibility to exhibit a high standard of work performance. Employees are therefore expected to:
- be committed to achieving and maintaining that standard
 - actively participate in elements of the performance framework outlined at section 3.0
 - attend meetings and hearings convened in accordance with this procedure
- 2.2 **Employees must:**
- Meet relevant standards of practice and work in a lawful, safe and effective way;

- Maintain clear and accurate records as required by procedures established for their work;
- Be aware of and comply with policies, procedures and good practice, that they have been informed of;
- Participate constructively in employee appraisals and undertake relevant training to maintain and improve their knowledge and skills;
- Seek assistance from their manager if they do not feel able or adequately prepared to carry out any aspect of their work, or are not sure about how to proceed in a work matter.

Note 1: Standards of practice may not always be written but will generally be known and will include professional standards, the job description for the post, competencies etc. This is not an exhaustive list.

2.3 **Managers must ensure that the performance of employees is managed by:**

- Giving clear information and guidance about employees' roles and responsibilities;
- Giving clear information about the performance expected of employees;
- Managing and supervising employees to support effective working, good conduct and supporting employees to identify areas for improvement in their performance;
- Having systems in place to enable employees to report inadequate resources, or operational difficulties, which might impede their performance or health and safety.
- Drawing attention to policies, procedures and good practice and ensuring adequate training is provided.

3.0 **PERFORMANCE FRAMEWORK**

3.1 Employment performance is supported by a framework of related policies and practices as detailed below.

Recruitment

3.2 Performance standards are set before an employee commences in the post. Consideration should be given to these standards prior to recruitment.

- 3.3 The job description and employee specification must be reviewed and updated if necessary, before any recruitment commences, so that the expected standards can be reinforced throughout the process. This should ensure that the appointee has the necessary skills and abilities to meet the requirements of the post and fulfill the performance expectations. See the council's Recruitment and Selection policy A.2 and Grading policy B.5 for further information.

Note 2: Any changes to job descriptions or employee specifications should be agreed with HR and the relevant trade unions to ensure the job evaluation and diversity implications are assessed.

Induction

- 3.4 Once the successful candidate is appointed they should be given an effective service induction. This should reinforce the performance standards expected, and outline the measures that will be used to monitor performance in their role.
- 3.5 In addition, all new employees must complete a council corporate induction programme, appropriate to their role. This is designed to help employees integrate into the workforce and understand the broader performance expectations of the council.

Employee appraisal

- 3.6 All employees should receive an appraisal on at least an annual basis. This should feature a review of achievements against those agreed for the previous period. A discussion about the employee's actions and objectives for the following year should also take place. An employee should be given a chance to reflect on their performance, discuss areas of difficulty and talk about their career aspirations.
- 3.7 The appraisal should not be a substitute for normal day to day management of performance issues. It should provide an employee with a clear picture of what they need to achieve over the next 12 months and the necessary support they will receive to achieve those actions.
- 3.8 Actions set for the next 12 months should be clearly defined and appropriate milestones identified. Targets and standards should be SMART (Specific, Measurable, Achievable, Relevant and Time-limited). Targets and standards should

be revised as necessary during the year, through one to one discussions or supervision meetings.

One to one meetings/Supervision

- 3.9 Performance should be monitored during regular one to one meetings between the manager and employee. They should feature an update on targets and objectives and the prioritisation of day to day workloads, to ensure that agreed actions are met. These discussions should be documented.
- 3.10 In services where it is not practical or appropriate to conduct regular one to one meetings, there must be at least an arrangement where employees and their manager are able to contact each other to arrange a meeting when either party has concerns regarding performance. Again, these discussions should be documented.
- 3.11 In certain posts within Adult Social Services and Children's Services, professional supervision is a mandatory requirement, which must be undertaken in line with the appropriate procedure.

Record keeping

- 3.12 It is important that records are maintained by individual managers, of **any** action taken in respect of performance and notes diarised or placed in a confidential and secure location. The Performance Improvement Plan (Appendix 1) may be utilised at any stage for this purpose.
- 3.13 Managers must also jointly review the effectiveness of any training provided, and ensure it is properly recorded, using the council's Learning and Development Activity Record (LADAR).
- 3.14 Where this procedure indicates that notice or confirmation of action(s) should be provided in writing, this can be an email providing all other requirements in relation to content and timescales are satisfied.

4.0 INADEQUATE PERFORMANCE

- 4.1 Inadequate performance may be as a result of an inability to undertake the duties of a post due to capability (would but can't) or as a result of conduct (can but won't). If the inadequate performance is due to misconduct the Disciplinary procedure C.2 should be invoked.
- 4.2 If the concern arises as a result of sickness absence then the council's Sickness Absence procedure D.2 should be followed. In such cases a capability hearing may result but only after the earlier stages of the Sickness Absence procedure have been followed.
- 4.3 Inadequate performance which may be attributable to health conditions that are not resulting in periods of sickness absence, should be addressed in accordance with this Managing Performance procedure but should be fully investigated beforehand, with support and advice sought from HR as appropriate. This may require a referral to the council's occupational health provider for further guidance.

Informal discussion

- 4.4 Where there are concerns that an employee's performance is inadequate, an informal discussion will be held between the manager/supervisor and the employee to try to establish the reason(s) for this. The discussion should alert the employee to the concerns and give the manager the opportunity to assess the situation, on the basis of the response provided.
- 4.5 The required standard of performance should be clearly established and targets for improvement should be set. Where appropriate, informal support mechanisms should be engaged and a review period established. Support may include:
- in-service training
 - coaching/mentoring
 - provision of special equipment
 - work observation by a suitably experienced person (either from within the team or another department)
 - work shadowing of a more experienced person

- visits to other teams to observe good practice

- 4.6 The outcome of any informal discussions should be confirmed in writing to the employee concerned. The Performance Improvement Plan (Appendix 1) may be used where appropriate.
- 4.7 The employee will be informed of the availability of the confidential Staff Welfare and Counselling service.
- 4.8 If the required standard of performance is not achieved following the engagement of informal support mechanisms, a formal performance improvement meeting will be arranged.

Temporary redeployment/Precautionary suspension

- 4.9 In exceptional circumstances, where there are concerns that an employee's capability represents a significant danger to themselves, colleagues, service users or the financial/physical resources of the council, temporary redeployment (where available) or suspension on full pay may be considered, pending a referral to the council's occupational health provider and/or a performance improvement meeting.
- 4.10 Advice should be sought from HR prior to contacting the employee where temporary redeployment or suspension is a possibility. The reason for temporary redeployment or the suspension will be confirmed in writing to the employee with a copy to the Assistant Director HR. Such a transfer/suspension is precautionary and will not prejudice the outcome of any subsequent capability hearing.
- 4.10.1 If the employee is a trade union representative, a senior trade union representative or full time official should normally be notified at the same time or as soon as possible thereafter. This notification should only occur however **with the agreement** of the trade union representative whose performance is in question.

Performance improvement meeting

4.11 Where an employee has failed to improve following informal action, or the employee has been temporarily redeployed or suspended, they will be asked to attend a performance improvement meeting. They should be informed that they have the right to be represented by a trade union representative or accompanied by a fellow worker of the council. The employee should be provided with a copy of this procedure in advance of the meeting. An HR service team representative will be available to support as required.

4.12 Where the employee concerned is a trade union representative, a performance improvement meeting should not normally be scheduled at any stage of this procedure until the circumstances of the case have been discussed with a senior trade union representative or full-time official. This notification should only occur however **with the agreement** of the trade union representative whose performance is in question.

4.13 At the meeting the manager will:

- clearly explain the shortfall between the employee's performance and the required standard
- establish the possible causes of the inadequate performance
- identify the action taken to date
- identify other potential remedial action, including training, development, support or other interventions such as reasonable adjustments to the work or times of work

then

- obtain the employee's commitment to reaching the required standard
- set out the required standard using the Performance Improvement Plan (see Appendix 1)
- establish a reasonable period of time (the monitoring period) for the employee to reach the required standard
- determine a system to regularly monitor their progress and to evaluate the success of support mechanisms

- inform the employee that failure to meet the required standard may result in referral to a capability hearing

or

- where medical advice states that the employee is not capable of undertaking the role they are employed to do and reasonable adjustments cannot be made, or in exceptionally serious cases (see paragraph 4.9), inform the employee that they are to be referred to a capability hearing

Note 3: The monitoring period may vary from case to case but will be sufficient to give the employee reasonable time to reach the required standard. Regular review meetings should take place throughout the period and notes kept of all meetings with copies provided to the employee.

- The outcome of the meeting will be confirmed in writing to the employee and, where relevant, their trade union representative. The confirmation must clearly indicate that the employee's performance is a serious cause for concern
- which aspects of the employee's performance must improve
- what support will be available
- what timescale and against what targets and criteria the employee's performance will be assessed
- that failure to meet the required standards may lead to further action within the managing performance procedure which could include dismissal after a capability hearing
- the date of the end of the monitoring period when a final review meeting will be held

Final review

4.14 At the end of the monitoring period, or earlier if the employee's performance represents a significant danger to themselves, colleagues, service users or the financial/physical resources of the council, the performance of the employee will be examined.

4.15 The employee will be given notice in writing of the review and will again be advised that they have the right to be represented by a trade union representative or accompanied by a fellow worker of the council.

- 4.16 If the required improvement has been achieved, the employee will be thanked for their effort and achievement and advised that the monitoring is at an end. No further action will be taken provided that acceptable performance is maintained. Failure to maintain the agreed performance within a period of 12 months may result in an immediate return to a formal performance improvement meeting.
- 4.17 If some improvement has been made but the standard has not yet been met, or where new issues or mitigation has arisen, the monitoring period should be extended if there is evidence that there is realistic chance of acceptable performance being achieved. In such cases:
- the Performance Improvement Plan (Appendix 1) will be modified to reflect the outstanding improvements required and any further action to be taken
 - a further timescale will be set for improvement, which other than in exceptional circumstances will not be longer than three months, following which a second review meeting will be held
 - the arrangement for the second review meeting will reflect the first
- 4.18 Where there is no, or insufficient, evidence of improvement, the manager will explain to the employee that they have failed to meet the required standard and the matter will be referred to a capability hearing.
- 4.19 The outcome of the meeting will be confirmed in writing to the employee and a copy provided, where relevant, to the trade union representative.

5.0 DISPUTES

- 5.1 Any complaints arising from the application of this procedure or the processes in support should be addressed in line with the council's Grievance procedure C.5.

1.0 INTRODUCTION

- 1.1 This policy describes the steps to be taken, where the earlier stages of the Sickness Absence or Managing Performance procedures have been exhausted, the required standard has not been achieved and there is insufficient or no evidence that it will.
- 1.2 The manager (with the support of Human Resources (HR) as appropriate), having satisfied themselves that the earlier stages of the Sickness Absence or Managing Performance procedure have been fulfilled and that any reasonable adjustments have been made, will refer the matter to the relevant Director and a Capability Hearing will be held. An HR Service team representative will be available to support the officer hearing the matter.
- 1.3 The employee will be given 10 working days notice in writing of the time and place of the hearing and be reminded that they have the right to be represented by a trade union representative, or accompanied by a fellow worker of the council.
- 1.4 If the employee or their representative is not available on the date given for the hearing an alternative date will be sought, and the meeting will be convened normally within 10 working days of the original date.
- 1.6 The Director will have responsibility for capability hearings within their directorate but may delegate this responsibility to a senior manager. They will listen to the factual submissions of the manager and the employee and/or their representative and make a decision as to whether there is any realistic expectation of the employee achieving an acceptable level of attendance/performance by extending the time-scale and/or assistance offered at any previous Sickness Absence/Performance improvement meeting.

2.0 PROCEDURE

- 2.1 The council's representative will present the case in the presence of the employee and their representative. They will outline the action taken to date and the reason for any recommendations made.

- 2.2 The employee and/or their representative may ask questions on the evidence given by the council's representative.
- 2.3 The officers hearing the matter will then have the opportunity to ask questions of the council's representative.
- 2.4 The employee and/or their representative shall present their case in the presence of the council's representative.
- 2.5 The council's representative may ask questions on the evidence given by the employee and/or their representative.
- 2.7 The officers hearing the matter shall have the opportunity to ask questions of the employee and representative.
- 2.8 The council's representative shall have an opportunity to sum up his/her case by making a final statement.
- 2.9 The employee and/or their representative shall have an opportunity to sum up their case by making a final statement.
- 2.10 The council's representative, the employee and their representative shall withdraw while the officers hearing the matter consider the outcome. If recall is necessary, both parties are to return notwithstanding that only one party is concerned with the point needing clarification. An opportunity should be given to each party to question or comment upon any additional information.
- 2.11 The parties concerned will be recalled to hear the decision of the officer in charge of the hearing.
- 2.12 The decision of the officer in charge of the hearing will be confirmed in writing to all parties concerned.

3.0 POSSIBLE OUTCOMES/SANCTIONS

No further action

Written warning & further review

- 3.1 If there is evidence that acceptable attendance/performance may be possible within a reasonable timescale, or where new issues or mitigation has arisen during the hearing, a further monitoring period may be set.
- 3.2 The length of this monitoring period will be determined by factors such as previous record, personal circumstances, medical opinion and the likelihood of improvement. The nature of the work and the impact of poor attendance/performance on service provision and colleagues will also be taken into account.
- 3.3 The employee will be issued with clear objectives detailing the improvement required, the timescale for the review and the support to be provided. This will be accompanied by a written warning, which makes it clear that failure to meet the required standard may result in dismissal.

Potential dismissal

- 3.4 The following options should be considered before reaching a decision to dismiss.

Redeployment

- 3.41 If the decision of the officer/s hearing the matter is that performance or attendance will not become acceptable in the current post consideration should be given to whether or not suitable alternative employment is currently available.
- 3.42 The officers hearing the matter may ask the HR service team to advise them on any available posts. If necessary the meeting will be adjourned to allow this to take place.
- 3.43 The offer of another post in these circumstances is an alternative to dismissal. The job will be offered without any protection of terms and conditions of employment. If the employee accepts the post they will be subject to a further monitoring period in accordance with this policy, of a maximum of three months.

Career break

- 3.44 In cases of long-term absence, where there is no likelihood of a return to work within a reasonable period of time and ill-health retirement is not recommended, a career break may be considered as an alternative to dismissal subject to the needs of the service and individual circumstances.
- 3.45 The terms of the career break will be in accordance with the council's Career Break Scheme B.3.7.

Dismissal

- 3.5 If at the end of an agreed career break the employee remains medically unfit for work, a further Capability Hearing will be scheduled, at which the dismissal will be confirmed. The effective date of termination will be at the end of the contractual notice period given at this meeting.
- 3.6 If no suitable alternative employment opportunities are identified, the employee will be dismissed with contractual notice.
- 3.7 If the employee rejects a career break or redeployment as an alternative to dismissal the employee will be dismissed with contractual notice.
- 3.8 The employee will be advised of the decision and this will be confirmed in writing and a copy provided, where relevant, to the trade union representative.

4.0 RIGHT OF APPEAL

- 4.1 If a sanction is imposed the employee must be advised of their right of appeal. Agreement to accept suitable alternative employment or a career break is not deemed to be a sanction and cannot therefore be appealed against unless and until dismissal subsequently takes place.
- 4.2 All appeals must be made in writing within 10 working days of receipt of the written notification of the decision.

- 4.3 The employee should indicate the grounds for appeal stating whether it is against the severity of the sanction or if the facts relied upon in the judgement are disputed.
- 4.4 If against the severity of the sanction, the appeal will consist of both parties making summary submissions with the officer who made the original decision representing the council. Normally in such circumstances, no new evidence will be allowed.
- 4.5 If the appeal is on the facts of the case or if procedural anomalies are alleged there will normally be a full re-hearing of the evidence.
- 4.6 If the grounds of the appeal are not specified and cannot be clarified, a full re-hearing will take place.

Appeal against formal warnings

- 4.7 The appeal must be in writing to the relevant Director who will hear the matter. Where a hearing has been heard by the Director, the appeal should be to the Assistant Director Democratic and Legal, who will arrange a meeting of the Appeals Committee. Appendix 2 may be used for this purpose.

Appeal against dismissal

- 4.8 The appeal must be made in writing to the Assistant Director Democratic and Legal who will arrange for it to be considered by the Appeals Committee. Appendix 2 may be used for this purpose.
- 4.9 Action to implement decisions to dismiss will not be suspended pending the appeal but should the appeal be upheld, the appellant will be reinstated to his or her original post without a break in service.