

Capability Policy for Managing Performance

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1. Purpose

- 1.1 The purpose of this policy is to provide a structured approach to managing underperformance among employees at Bury Council. This policy aims to support employees in improving their performance to meet the required standards and to ensure fair and consistent treatment.

2. Scope

- 2.1 This policy applies to all employees of Bury Council, excluding teachers and those in their probationary period, who are covered by a separate probationary procedure.

3. Principles

- 3.1 Fairness and Consistency: All employees will be treated fairly and consistently.
- 3.2 Support and Development: The Council is committed to supporting employees to improve their performance through appropriate training and development.
- 3.3 Confidentiality: All matters related to underperformance will be handled confidentially.

4. Identifying Underperformance

- 4.1 Underperformance may be identified through:
- Regular performance appraisals.
 - Regular one to one meetings or supervision meetings
 - Feedback from supervisors, colleagues, or service users.
 - Observations of work performance.

5. Initial Action

- 5.1 Capability relates to, but is not limited to, the skills, aptitudes, mental or physical health of an employee.
- 5.2 When underperformance has been identified as outlined above, the manager should take the following initial actions.

- **Discussion:** The line manager will discuss the performance issues with the employee, providing specific examples and explaining the required standards.
- **Support Plan:** A support plan will be developed, outlining the support and training to be provided, and setting clear, achievable targets and timescales for improvement (see section 9).

6. Formal Capability Procedure

6.1 If there is insufficient improvement following the initial action, the formal capability procedure will be initiated.

6.2 Stage 1: Formal Meeting

- **Notification:** The employee will be given at least 5 working days' notice of the meeting, by the line manager.
- **Meeting:** The meeting will be conducted by the line manager and if required, a representative from HR. The employee has the right to be accompanied by a trade union representative or a colleague. A discussion should take place regarding details of the performance concerns any supporting evidence and agreement reached on what supportive actions may help.
- **Outcome:** A performance improvement plan (PIP) will be agreed upon, setting out the required improvements, support to be provided, and a review period (see section 9).

6.3 Stage 2: Review Meeting

- **Review:** At the end of the review period, a meeting will be held to assess the employee's progress. The employee should be given at least 5 working days' notice of the meeting. A representative for HR can attend if required. The employee has the right to be accompanied by a trade union representative or a colleague.
- **Outcome:** If sufficient improvement has been made, the capability process will end. If not, the review period may be extended (for example where some improvement has been made), or the process may move to the next stage (for example, where the performance is so serious that it is having a harmful effect on the Council or its clients). Where the review period is extended, a further review meeting (extended review meeting) should be held at the end of the extended review period.

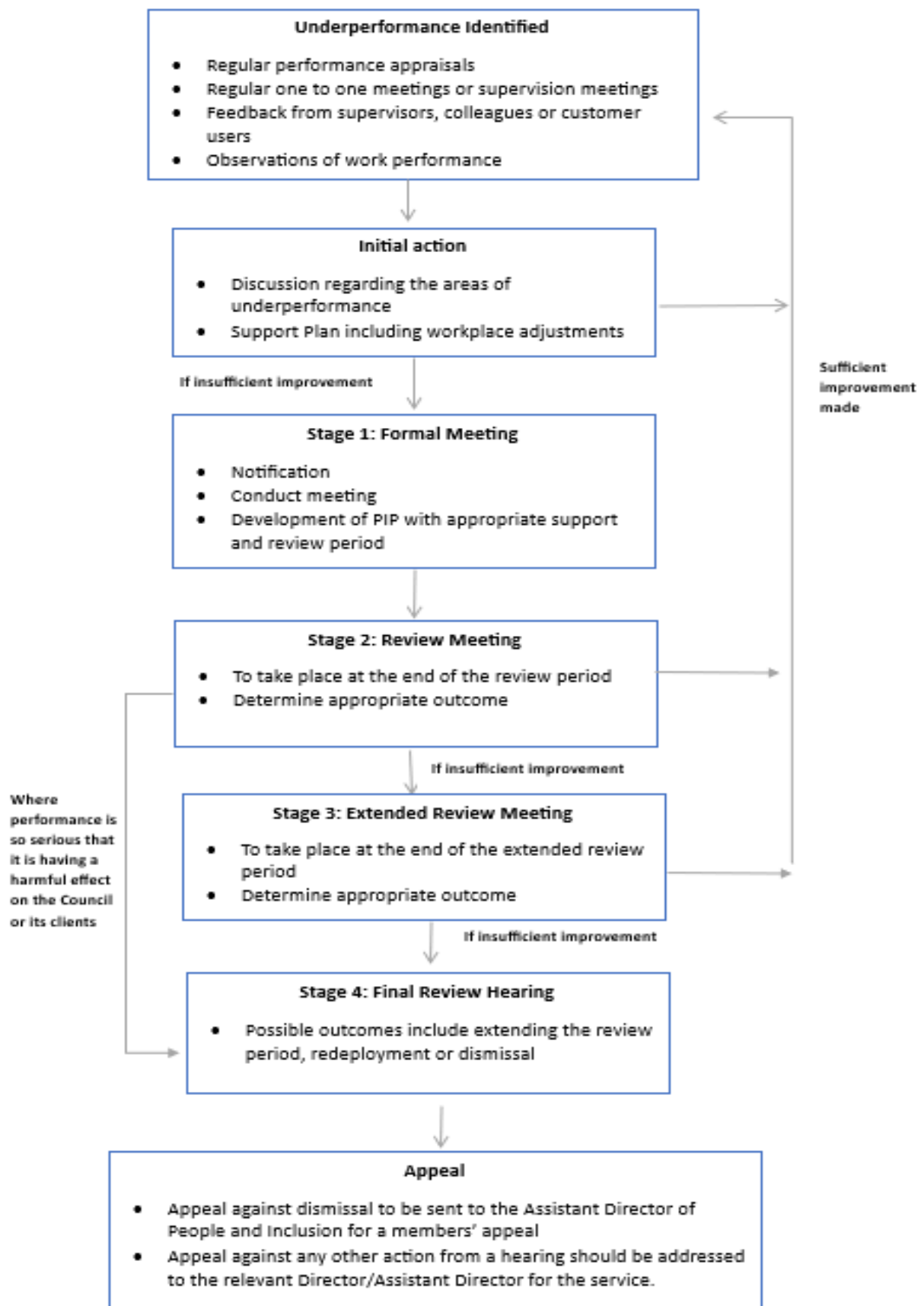
6.4 Stage 3: Extended Review Meeting

- **Review:** At the end of the extended review period, a further meeting will be held to assess the employee's progress. The employee should be given at least 5 working days' notice of the meeting. A representative for HR can attend if required. The employee has the right to be accompanied by a trade union representative or a colleague.
- **Outcome:** If sufficient improvement has been made, the capability process will end. If not, the employee will be informed that a final review hearing will be arranged.

6.4 Stage 4: Final Review Hearing

- **Final Review:** If there is still insufficient improvement, a final review hearing will be held. This will be chaired by a Senior Manager (see appendix 1)
- **Outcome:** Possible outcomes include extending the review period, redeployment, or dismissal on the grounds of capability. Employee has the right to appeal (see appendix 2)

Flow Chart



7. Support

- 7.1 One to one meetings/ supervision meetings should continue to take place during any review period.
- 7.2 At any stage of the process the line manager in conjunction with the employee should consider if a referral to Occupational Health (Optima) would be beneficial and/or if redeployment is a consideration.
- 7.3 If the employee has a disability that's related to the performance issue, the employer must take reasonable steps to support them with workplace adjustments. Ideally, workplace adjustments should be explored and implemented before commencing formal stages of the procedure.
- 7.4 Other support available can include training and development, work shadowing, work buddy, mentor or coach, the Employee Assistant Programme. This list is not exhaustive of the support which can be provided.

8. If the employee is absent due to sickness

- 8.1 Even if the employee is ill, they should co-operate as much as they can with the procedure. Employees absent due to sickness absence will be subject to the Council's Managing Attendance Policy. Review periods may be suspended whilst an employee is absent from work due to sickness absence.
- 8.2 In cases where the health of an employee is impacting performance, the line manager should consider a referral to Occupational Health (Optima) and/or workplace adjustment.

9. Review Period

- 9.1 The timescales for the review period should be determined by the manager in conjunction with the employee. This will be based on the regularity of carrying out the tasks concerned or the seriousness of the implications of the poor performance for the Council, its customers or other employees. For example, if an element where under performance is identified only happens once a month, then 3 months could be a reasonable review period but if the element is an everyday/weekly task, then 4 weeks could be deemed suitable. Timescales which are unrealistic can inhibit the achievement of successful outcomes.

10. Monitoring and Review

- 10.1 This policy will be reviewed 3 yearly to ensure its effectiveness and compliance with relevant legislation.

Appendix 1: Hearing Procedure

Arranging the hearing

- Where possible Hearings will be scheduled to take place on one day or, if necessary, on consecutive days, although it may be necessary to adjourn to seek further information or advice.
- The employee must be informed in writing that they are required to attend a Hearing and that they have the right to be accompanied by a work colleague or a Trade Union representative, or an official employed by a Trade Union. It will be for the employee to arrange the person who will accompany the employee at the Hearing. The employee must be given at least 7 calendar days' notice of the Hearing date, time and venue from the expected date of receipt of the letter.
- The letter will include information about the performance concern(s) and possible consequences. It will also ask if the employee has any special requirements for the Hearing and will provide copies of previous correspondence pertaining to the process.
- The employee will be asked to confirm the name of the Trade Union representative or work colleague attending the Hearing. The employee will be asked to provide any documentation that he or she intends to present or rely on at the Hearing at least 3 working days before the Hearing.
- If the employee cannot attend on the scheduled date through circumstances outside of the employee's control, the Hearing will be rearranged for another date. If the employee's Trade Union representative or work colleague cannot attend on the rescheduled date, the employee can suggest an alternative date and the Hearing will be rearranged for that date. However, ideally the rescheduled Hearing will take place no more than 5 working days after the date of the original Hearing.
- If two Hearings have been convened which the employee has been unable to attend, the second Hearing will take place in the employees' absence and a decision will be made based on the evidence available.
- If required, the Chair of the Hearing will seek a medical view from Occupational Health as to whether the employee is fit to attend the Hearing.

Hearing Procedure

The Chair of the Hearing will introduce everybody and explain the following procedure to both sides: -

1. The line Manager will state the nature of the case, referring to evidence gathered. They will be permitted to produce relevant documentation.
2. The employee will be given the opportunity to ask questions of the Manager on the evidence given by them.
3. The Chair and the HR representative may also take the opportunity to ask questions.
4. The employee will be given the opportunity to state their case, to produce relevant documentation.
5. The employee's companion will be allowed to address the hearing to:
 - Present the employee's case
 - Sum up the employee's case
 - Respond on the employee's behalf
 - Confer with the employee during the hearing
6. The employee's companion will be able to participate as fully as possible in the hearing, including asking witnesses questions. However, the employee's companion cannot answer questions on the employee's behalf, address the hearing if the employee does not wish it, or prevent the management representative from explaining the Management case.
7. No other person, for example partner or relative, will be allowed to attend the Hearing.
8. The Chair and the HR representative will take the opportunity to ask questions.
9. If appropriate, there may be a general discussion to establish all the facts and/or clear up any misunderstandings.
10. The Manager and employee may summarise the main points of their case. No new evidence or information may be included.
11. The Chair will adjourn to consider the case, with the HR representative.
12. If the Chair wishes to clarify any points of evidence, both sides will be recalled.
13. The Chair will reconvene the hearing to deliver the decision of the Hearing.
14. The decision of the Chair will normally be given verbally at the end of the Hearing and will be confirmed in writing to both parties.

The employee will be given the right of appeal (if appropriate) after the decision.

Appendix 2: Appeal Procedure

Staff have the right of appeal against any dismissal or any formal sanction within 10 working days of the decision being communicated:

- Appeals against dismissal to be sent to the Assistant Director of People and Inclusion for a members' appeal.
- Appeals against any other sanctions should be addressed to the relevant Director/Assistant Director for the service.

The appeal must state the reasons for the appeal, which will be one of the following:

- Any part of the procedure was wrong or unfair.
- The dismissal/ sanction was for an unfair reason.
- There is new evidence.

Upon receipt of an appeal, the Director of People and Inclusion or Director/ Assistant Director for the service will provide acknowledgement in writing, ideally within 2 working days.

Following acknowledgement of receipt of the appeal, the Chair of the Appeal Panel plus their HR representative may agree in advance with the appellant and their representative whether the appeal:

- Hears all of the evidence and submissions made to the original hearing (appeal based on findings being unfair)
- Focuses on the issues surrounding the decision (appeal based on the penalty being unfair) – there is no reconsidering all of the evidence, but the management representative may briefly summarise the case.
- Focuses on any new evidence (as this is the reason for the appeal) – it may be considered alongside all the other evidence or may be the main focus – the management representative may briefly summarise the case.
- Focuses on the issues surrounding the procedure (appeal based on procedure not being used correctly) – management representative may briefly summarise the case.

The Chair of the Appeal Panel may request for the Employee to provide further information regarding the reason for their appeal, if insufficient information is provided within their 'Employment Appeal Form'. The appeal hearing date will not be set until such information has been provided

Appeal hearings should ideally take place within 30 working days of receipt of the written request. Where this is not possible, the applicant should be informed as soon as practically possible.

Appeals against dismissal.

Following acknowledgement of receipt of the appeal, the Assistant Director of People and Inclusion will provide the necessary information to the Democratic Services team, who will co-ordinate and arrange the hearing in consultation with all parties.

The panel is made up of the Chair of the Human Resources and Appeals Panel and elected Members of the Council supported by a HR representative. A member of Democratic Services will be present to take notes of the hearing.

Appeals against other sanctions.

Following acknowledgement of receipt of the appeal, the Director/ Assistant Director for the service will make arrangements for the appeal to be heard.

The panel is made up of 2 Senior Managers who have not previously been involved in the case, supported by a HR representative. A note taker may also be present at the hearing.

Process

- The Chair of the original Hearing will present the management case to the hearing panel and may be accompanied by the HR representative who advised them during the Hearing. The HR representative's role is to provide support during the hearing if required, not to present the case.
- The applicant and respondent will be given at least 12 working days' notice of the date of the appeal.
- All statements and documentation to be referred to at the hearing (including any new evidence to be considered) will be submitted 6 working days prior to the hearing date, along with the names of any witnesses to be called.
- Papers will be distributed to Panel members, applicant and respondent 5 working days prior to the appeal.

Procedure

The Chair of the appeal Hearing will introduce everybody and explain the following procedure to both sides: -

1. The employee will be given the opportunity to state their case, explaining the reasons for the appeal.
2. Management may ask the employee questions.
3. The panel and the HR representative may also take the opportunity to ask questions.

4. Management will state the nature of the case, and the reasons for the sanction/dismissal.
5. The employee and representative may ask management questions.
6. The panel and the HR representative may also take the opportunity to ask questions.
7. If appropriate, there may be a general discussion to establish all the facts and/or clear up any misunderstandings.
8. Management and employee may summarise the main points of their case. No new evidence or information may be included.
9. The panel will adjourn to consider the case, with the HR representative.
10. If the Chair wishes to clarify any points of evidence, both sides will be recalled.
11. The Chair will reconvene the hearing to deliver the decision of the Hearing.
12. The decision of the Chair will normally be given verbally at the end of the Hearing and will be confirmed in writing to both parties.
13. There is no further right of appeal, so the process ends.

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