

HR & OD POLICIES

human resources and organisational development



Work Performance Ability Procedure

Local Government, Craft and Chief Officials

1. INTRODUCTION

As a matter of good practice employees should be kept advised of the work and standards expected of them, for example by up to date job profiles regular [one to one](#) meetings with their Line Manager and constructive feedback where appropriate. When setting standards managers must ensure that their expectations regarding quality and quantity of work are fair and realistic, and endeavour to make them objective and measurable. The [Competency Framework](#) gives Managers guidance on the acceptable standards and behaviours employees are required to demonstrate when undertaking their duties. It is acknowledged that the majority of employees perform at or in excess of the standards required and in so doing contribute effectively to the provision of the Council's services.

Issues of Work Performance Ability will require to be addressed where a member of staff is consistently failing to carry out their duties to an acceptable standard due to an apparent lack of ability.

All employees have a contractual responsibility to be competent to perform the job they are employed to do, and if necessary should be given support, encouragement and training to achieve this.

Where employees are considered to be failing to perform to the required standard the matter should be investigated before any formal action is taken.

This can be in the form of an informal meeting which may quickly address the problem and subsequently no further action need be taken.

Where the reason for the underperformance is found to be a lack of the required skills the employee should, wherever practicable, be assisted through training and/or coaching and given reasonable time (not exceeding twelve weeks) to reach the required standard. It is the manager's responsibility to record and keep details of all meetings within the procedure with the employee including any targets set and monitoring and support agreed. Care should be taken to differentiate between 'satisfactory' and 'optimum' performance. This policy applies where performance is below the minimum satisfactory standard. The Council's [EAR Scheme](#) is concerned with enhancing satisfactory or above satisfactory performance towards an optimum level.

For the purposes of this procedure 'reasonable time' is up to a maximum of twelve weeks. In exceptional circumstances this time frame may be extended because of the nature of the training required but in all cases this should be discussed with [HR&OD](#).

At all stages the employee will be provided with advice, guidance and support. This policy focuses on the use of training interventions to enable satisfactory performance, and

therefore it is unlikely to be appropriate in cases where the performance deficit is due to reasons such as ill health.

Work performance ability is inter-linked with three other policies:

- [Attendance Management](#)
- [Disciplinary](#)
- [Equality](#)

Where an under performance issue can be attributed to a medical reason referral to Occupational Health is appropriate, under the Attendance Management Procedure if applicable. In cases of disability advice must be sought from HR&OD and Occupational Health, to ensure progress in accordance with the Equality Act.

Where unsatisfactory performance is due to conduct, the Disciplinary Procedure should be initiated. Advice should be sought from [an HR Advisor](#).

If the employee fails to show sufficient improvement under the Work Performance Ability Procedure then the Redeployment Procedure will be applied. Should the employee fail to secure employment through redeployment then the employee will be dismissed on work performance ability grounds. Where dismissal is being considered advice must be sought from HR&OD and Legal & Governance.

It should be noted that this policy does not relate to the Council's wages/pay schemes (in that pay can only be reduced if the employee accepts redeployment to a lower graded post, not as a sanction) and it cannot be used as an alternative to making someone redundant.

An employee who feels that the procedure is being applied to him/her unfairly may initiate the Council's [Grievance Procedure](#). Where the grievance and the work performance process are related it will generally be appropriate to deal with the grievance concurrently with the work performance process. Further advice on the procedure may be obtained from HR&OD or Trade Unions.

2. RIGHT TO BE ACCOMPANIED/ REPRESENTED

Employees may be accompanied or represented by a colleague or Trade Union representative at the formal stages of this procedure. These terms are defined as follows:

Accompany

A colleague or Union representative accompanying an employee may:

- Put the employee's case to the hearing.
- Respond on behalf of the employee to any views expressed at the hearing.
- Ask questions.
- Confer privately with the employee during the hearing.
- Sum up at the end of the hearing.
- A colleague or Union representative accompanying an employee may not:
- Answer questions on the employee's behalf.

Represent

A colleague or Union representative has all the rights above and in addition may answer questions on behalf of the employee, if the employee wishes.

When Accompanying or Representing

An employee accompanying or representing another colleague will be given reasonable paid time off to attend any meetings, to conduct discussions with the colleague immediately before and after any meetings, and, if required, to familiarise him/herself with the issues.

Travel costs may be claimed in the usual manner.

There is no obligation on any employee to accompany or represent a colleague when asked to do so.

No employee will be disadvantaged because they have accompanied or represented a colleague, or because they have declined to do so.

A decision on whether to agree to accompany or represent or not, should be given as promptly as possible.

Identifying a Performance Issue

Unsatisfactory work performance can be identified in a number of ways and should be addressed as quickly as possible. The feedback to the employee should be communicated in a calm and professional manner and can be in the form of an informal counselling meeting which may quickly address the problem and subsequently no further action may be required. It should be made clear to the employee that this initial meeting is informal and does not constitute part of the formal process however if the issues are not resolved then it could lead to the Work Performance Ability procedure being initiated.

It is the responsibility of managers and supervisors to identify instances of underperformance and to make sure a note of the instances are recorded to be used as evidence when speaking to the employee. This information should be factual and detailed and should include the dates and times of the alleged under performance.

Unsatisfactory work performance can become apparent in a number of ways, for example:

- Through informal discussions with the employee and/or other team members and colleagues.
- Manager's or Supervisor's observations.
- Feedback and or complaints from other colleagues and or customers.
- Failure to meet deadlines and or targets.
- Poor standards of work, e.g. Frequent mistakes, not completing tasks, inability to follow reasonable instructions and low output.

If the informal approach does not resolve the issue/s then the employee must be informed that the matter will be progressed formally to Stage 1 of the procedure.

3. PROCEDURE

Where a manager or supervisor has had an initial informal discussion with their employee regarding work performance and the situation has not improved they should then follow the Work Performance Ability Procedure. The procedure is broken down into eight stages:

Stage 1: Meeting with the Employee

Stage 2: Counselling

Stage 3: The Review Meetings

Stage 4: Work Performance Hearing

Stage 5: Appeal

Stage 6: Redeployment

Stage 7: Dismissal

Stage 8: Appeal

NB: Copies of any discussion notes and agreed actions as well as letters to the employee must be kept by the manager in a confidential and secure location. Any letters or correspondence which relate to the formal part of the process should be retained in the employee's file and removed at the designated time.

Stage One: Meeting with the Employee

Having identified that the work performance issue has not been resolved the line manager or supervisor should meet with the employee to ascertain the reason behind the continuing underperformance. Work performance should normally be raised initially at the employee's regular one to one meetings, however if an issue of underperformance is identified at a time when a regular meeting is not planned then a specific meeting to discuss the issue should be arranged. The meeting should be organised and the location selected to ensure confidentiality and freedom from interruptions.

The aim of this meeting is to:

- Advise the employee that they are not meeting the required standards of the post.
- Ensure that the employee is aware of the standards required.
- Establish whether the underperformance is due to a lack of ability or the employee's conduct or misconduct or for medical, or other personal or domestic reasons.

Outcome One: Lack of Ability

If the manager concludes that the underperformance is due a lack of ability then a counselling meeting should be scheduled. Proceed to Stage 2.

Outcome Two: Conduct or Misconduct

If the underperformance is due to the conduct or misconduct of the employee, counselling or other action under the Disciplinary Procedure may be appropriate. An [HR Advisor](#) should be consulted at this point.

Outcome Three: Underlying Medical Reason

If the manager concludes that the underperformance is due to an underlying medical reason then the matter should be dealt with under the [Attendance Management Policy](#) if appropriate.

Advice should be sought from HR&OD at this point and the employee should be referred to the Council's [Occupational Health Advisor](#).

Outcome Four: Personal and/or other Domestic Reason

In the case of underperformance relating to a situation outside work the manager should endeavour to support the employee. The employee should be encouraged to seek the appropriate guidance and consideration should be given to the [Employee Assistance Programme](#).

If the underperformance is related to a poor relationship between the employee and their manager and/or another colleague, this should be addressed and resolved. Advice and guidance should be sought from an HR Advisor who will advise on workplace mediation.

Stage Two: Counselling

Following the initial meeting where the reason/s for the underperformance has been established as a lack of ability a counselling meeting should be scheduled as soon as reasonably practical using [Letter 1](#) to send to the employee. The counselling meeting provides an opportunity for discussion between the manager or supervisor and the employee to:

- Identify the performance and/or skills gap between the employee's current performance and the standard required in that post.
- Discuss potential methods of attaining the skills necessary to carry out the job to the required standard.
- Determine a course of action designed to enable the employee to reach the required standard. A [Performance Improvement Plan](#) should be drawn up and agreed and a copy retained by the employee and the supervisor/manager.
- Set targets for the employee.
- Schedule regular review meetings.

The employee should be made aware that the agreed improvement in performance is expected within a period of up to twelve weeks. Should the employee fail to demonstrate insufficient improvement within the maximum timescale (twelve weeks) then a Work Performance Hearing will be convened. Any extension to the agreed timescale will only be

considered in exceptional circumstances and must be discussed with [an HR Advisor](#) prior to any extension being agreed.

The manager or supervisor will decide on the timescales for the review meetings and notify the employee. The frequency of the review meetings will depend on the timescale agreed for the improvement in performance.

For example, if the agreed timescale for the improvement in performance is 4 weeks then a minimum of one review meeting must be held.

The manager or supervisor should provide the employee with a copy of the Performance Improvement Plan and confirm the review meeting dates in writing using [Letter 2](#) no later than seven calendar days after the counselling meeting.

Stage Three: The Review Meetings

The purpose of the review meeting/s is to determine:

- Whether the targets set at the counselling meeting have been achieved.
- Whether the employee is demonstrating a commitment and taking steps to achieving the targets set.
- Whether the employee has obtained the necessary skills to meet the required standard or steps are being taken to obtain the necessary skills.
- Any further action or agreed outcome.

Where the targets set have not been achieved the reasons for this should be explored and other methods of attaining the skills discussed if appropriate.

There are three possible outcomes from the review meeting/s.

Outcome One: Agreed Performance Levels Achieved

If the employee has met all the targets as agreed in the counselling meeting and the manager is satisfied with the employee's level of performance then the work performance ability procedure will cease.

This decision will be confirmed to the employee in writing no more than seven calendar days from the date of the meeting using [Letter 3](#).

Outcome Two: Further Time to Improve Considered Appropriate

If the employee has not reached the required standard within the agreed improvement period but has shown a significant improvement the manager may (in discussion with HR&OD) extend the timescale. This decision will be confirmed to the employee in writing no later than seven calendar days from the date of the meeting using [Letter 4](#).

Outcome Three: Performance Levels below Standard

If the employee's work performance has not reached an acceptable standard and the employee has failed to demonstrate ongoing improvement and commitment to achieving the standards and targets set then the process may be concluded early and a Work Performance Hearing convened. Please contact [askHR](#) for advice regarding the Work Performance Hearing before proceeding to Stage Four.

Stage Four: Work Performance Hearing

If at the end of the improvement period the employee has not reached the required standard or if during the improvement period did not demonstrate any commitment to achieving the required standard a Work Performance Hearing should be held.

Legal & Governance must be notified of the forthcoming Hearing date and invited to attend.

For guidance on how to conduct the Hearing refer to [How to Carry out a Work Performance Hearing](#).

The employee should be given at least seven calendar days' notice of the hearing, in writing using [Letter 5](#) and may be accompanied by a colleague or Trade Union representative.

If the employee has advised that they wish to be accompanied by a Union representative, then the employee should liaise with their representative regarding the arrangements for attending the hearing.

The Work Performance Hearing will be arranged and chaired by either the line manager of the employee's supervisor or manager or another appropriate manager. The Chair must understand the requirements of the employee's post.

The employee's manager or supervisor will produce a comprehensive statement indicating details of the employee's under performance, details of the support mechanisms put in place, the duration of the improvement period, a copy of the Performance Improvement Plan and the employee's standard of performance before and during the improvement period.

The employee will be given the opportunity to respond to these points and put forward their case.

At the conclusion of the Hearing the Chair will decide on one of the following outcomes:

Outcome One

Performance is of the required standard, and no further action will be taken.

[Letter 6](#) should be sent within seven days of the hearing.

Outcome Two

Performance has not yet reached the required standard, however the employee has shown a significant improvement and is demonstrating a strong commitment to achieving the required standard. [Letter 7](#) should be issued to the employee within seven days of the hearing.

Outcome Three

Performance is not of the required standard, and it is unlikely that this will be achieved. The Redeployment Procedure will be implemented.

During the redeployment period the employee will either:

- Attend work or
- Be suspended on full pay.

The employee will be informed of the Chair's decision and the underpinning reasons in writing. [Letter 8](#) should be issued to the employee no later than seven days from the date of the meeting. If the employee is placed on redeployment it is worth noting at this stage the following:

- Make sure the manager has a particular area of work or a project identified for the employee to work on straightaway should they remain at work.
- Make sure the manager has a clear diary for the return to work date so that current work issues can be identified and reallocated to another member of the staff as well as briefing the employee on the special work allocated to them.

Stage Five: Appeal

An appeal against the decision to place the employee on the redeployment register made at Stage 4 should be made by the individual or, where appropriate, through his/her Trade Union representative in the manner specified in the letter confirming the decision to place the employee on redeployment.

The 'status quo' will apply during the appeal process the employee will remain at work and no action will be taken towards placing him/her on redeployment.

An appeal should be lodged in writing within 14 calendar days of receipt of notification of the action.

The Head of Service/Director to whom the appeal was made will designate the manager of the Stage 4 chair (or another appropriate manager) to chair the appeal.

The chairperson will normally arrange the hearing within 14 calendar days of receipt of the notice of appeal by the Head of Service/ Director, unless otherwise agreed with the employee.

It is recommended that a colleague or Trade Union representative accompany the employee at this stage. If the employee has advised that they wish to be accompanied by a Union representative, then the employee should liaise with their representative regarding the arrangements for attending the hearing.

The employee should be given at least seven calendar days' notice of the meeting, in writing. If the employee has advised that they wish to be accompanied by a Union representative then the employee should liaise with their Union representative regarding the arrangements for attending the Appeal Hearing.

The chair of the Work Performance Hearing will present their reasons for the decision made at Stage 4. The employee must be given a full opportunity to express their views. The chair will decide on one of the following outcomes:

Outcome 1: Decision to Place on Redeployment Withdrawn

Further counselling and review may be appropriate (return to Stages 2 and 3) or the employee may be considered to have reached the required standard (either that originally set or that considered appropriate by the chair) in which case no further action will be taken.

Outcome 2: Decision to Place on Redeployment Upheld

Employee is placed on the redeployment register. Proceed to Stage 6.

The employee will be informed of the chair's decision and the underpinning reasons in writing, no later than seven calendar days from the date of the meeting.

Please use [Letter 9](#).

Stage Six: Redeployment

Redeployment will take place in accordance with the Council's [Redeployment Policy](#).

HR Officers and the Recruitment Team will provide advice and guidance in respect of identifying any suitable vacancies under the Redeployment Procedure for the employee to apply for. If no alternative post is secured within the redeployment period, proceed to Stage Seven.

Stage Seven: Dismissal on Work Performance Ability Grounds

Before proceeding with Stage Seven advice and guidance should be sought from an [HR Advisor](#). Legal & Governance must also be notified.

If following the redeployment period no suitable alternative employment has been secured then the employee will be dismissed on capability grounds. Please use [Letter 10](#).

REFERRAL TO EXTERNAL PARTIES

If the employee holds membership of a professional body and a referral is made to a regulatory body, the individual should be informed in writing that the referral has been made.

Normally a referral should not be made until the internal proceedings have been concluded. However there are certain circumstances where a referral to SSSC or the Care Commission must be made earlier. Please contact [HR&OD](#) for guidance on referrals.

Stage Eight: Appeal

Any employee dismissed under this Policy has a right of appeal. Appeals should be lodged with the Head of Service (Legal & Governance) by the employee or their Trade Union representative within 14 calendar days of receipt of notification of the dismissal, and must be in writing.

An appeal hearing shall normally be arranged within 28 calendar days of receipt of the notice of appeal, unless otherwise mutually agreed. Appeals will be heard by the Appeals Committee.

An employee shall have the right to be represented by a Trade Union representative or work colleague at any appeal hearing. There are two possible outcomes:

Outcome 1:

The grounds of the appeal have not been substantiated and the appeal is not upheld. The dismissal will stand.

Outcome 2:

The grounds of the appeal have been substantiated and the appeal is upheld. The dismissal will be withdrawn and action taken as directed by the Committee. Notification of the outcome of an appeal hearing should be confirmed in writing to the employee within five calendar days.

Work Performance Ability

Index of Documents

Procedure

Revision Date	Previous Revision Date	Summary of Changes
31-01-2012	-	Creation of new Documents
10-10-2014	31-01-2012	Revision of Policy & Procedure
28-05-2015	10-10-2014	Update
06-09-2022	28-05-2015	Updated links