

Supporting performance policy

Draft 2022



Transform
Tewkesbury Borough



**Tewkesbury
Borough Council**

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Policy Statement

Tewkesbury Borough Council has an obligation to the public in our borough to provide high quality services and deliver the objectives set out in our council plan. The council plan informs the annual service plans which set objectives for services which will deliver the council's vision. Individuals within services are set objectives to help to deliver high quality services and the objectives set out in their service plans through the annual Personal and Professional Development process, and these are monitored through the year with informal 1-2-1s with their manager.

Tewkesbury Borough Council has a commitment to assist employees to achieve and maintain a high standard of performance in their work. Managers will ensure that standards are clearly defined and communicated, performance is monitored, and employees are given appropriate training and support to enable them to meet these standards. Employees are responsible for taking action to meet and maintain the required standards.

This policy is designed to help and encourage all employees to achieve and maintain standards of good performance. Managers have a responsibility to follow this policy where performance is shown to be below the standards required for the role. The policy encourages managers to have conversations about enhancing performance as part of their normal 1-2-1 conversations with employees and to take a supportive and empowering approach with employees to help them to address any issues quickly and effectively. The policy also provides a clear and fair escalation framework which the council will follow where the required levels of performance are not resolved informally.

This policy is non-contractual.

Scope

This procedure applies in all cases where it is identified that there are gaps in skill, knowledge, attainment or ability for an employee performing a role for the council. Where it is considered that non-achievement of the required standards is a choice (a conduct issue), the disciplinary policy will apply. Where there are elements of both conduct and capability to address, it is possible for the procedures to run simultaneously. HR will be able to support a decision about which policy is appropriate to use.

This policy applies to employees only, (except for those on probation who will be managed through the Probation Policy), and does not apply to members, contractors, consultants, agency workers or any self-employed individuals working for the council.

Statutory and Chief Officers have unique arrangements under regulatory requirements which must be followed if formal concerns are raised regarding their performance. These are set out in Appendix 1.

Policy Principles

The following principles will apply to this procedure:

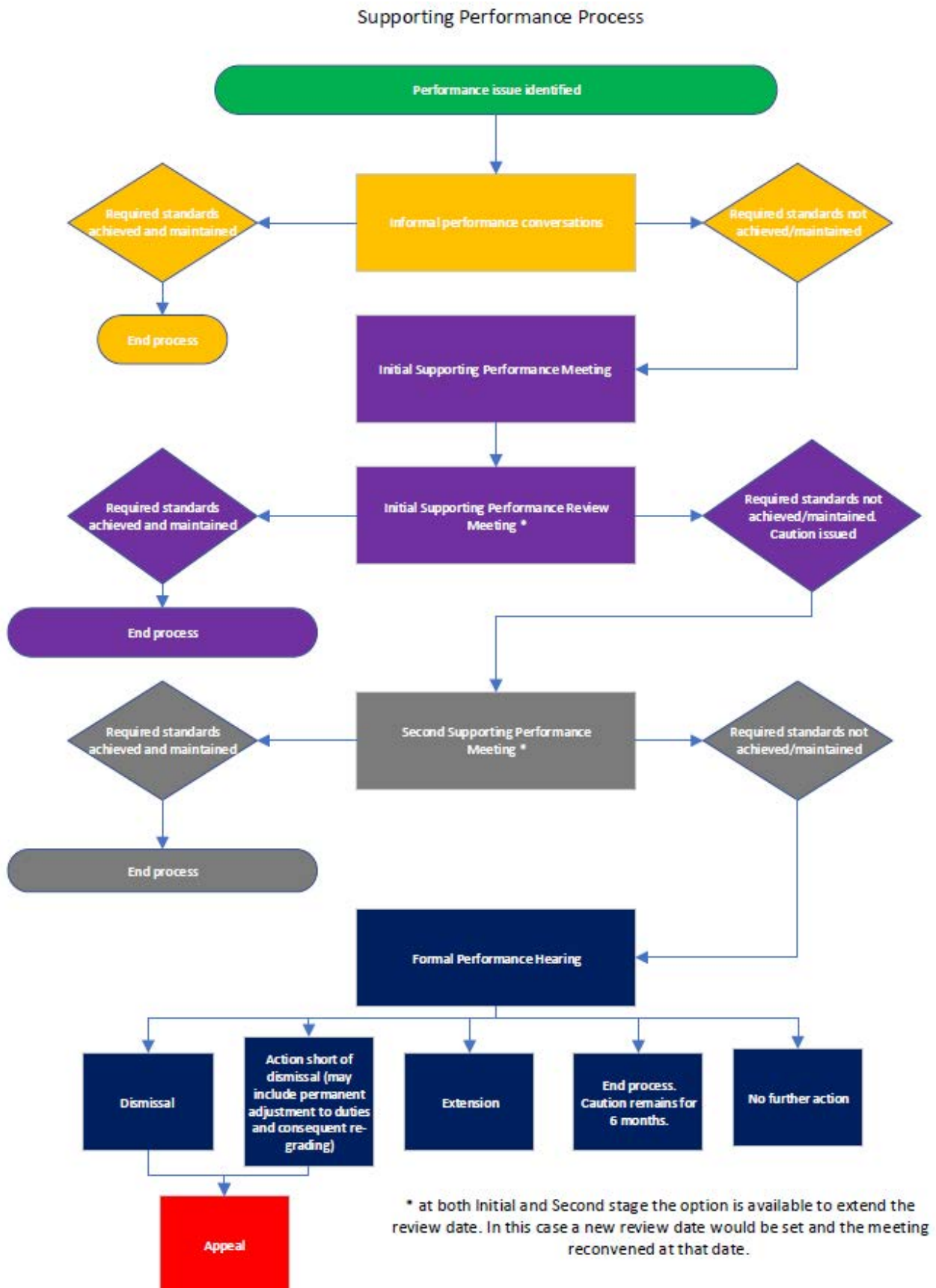
- Performance issues will be dealt with quickly and equitably;
- An explanation will be given to the employee of where they are not meeting the required standard.
- An employee has the right to be accompanied by their trade union representative or colleague employed by the council to any formal meeting at the Initial or Second Stage or Formal Performance Hearing.
- Documentation involved in this policy will be treated confidentially and only circulated to those directly involved.

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- When the formal stage of the supporting performance policy is activated a member of the HR and OD team will be allocated to advise on the case as necessary and make sure that the policy is being followed fairly.
- In cases where it is clear, or suspected, that the performance issues are being impacted by health issues, Occupational Health advice will be sought in respect of adjustments which could be made and these will be accommodated wherever they are deemed to be reasonable.
- In most cases employees will enter this process at the lowest level possible (i.e. informal management), however, where there are more serious concerns it may be appropriate to commence this process at the Initial or Second Stage. If this is being contemplated, then HR advice must always be sought to ensure consistency and fairness.
- All meetings in this process are intended to be a forum for an open and honest discussions with employees about their performance and all factors which impact on it and may therefore also include review of any other relevant information, such as any advice and guidance received from other agencies (Occupational Health).
- Managers will consider options to support improved performance and employees will also be encouraged to think about actions they could take to positively impact their performance.

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Supporting Performance Process Diagram



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Informal conversations to support performance improvement

Managers are expected to raise issues regarding performance in a timely way as part of their normal management conversations (eg in 1-2-1s) in a way which is:

- Prompt
- Clear
- Objective
- Constructive
- Specific

In most cases addressing performance issues early and without recourse to formal processes will be easiest and most effective in adjusting performance to required standards. Informal conversations can be held by team leaders and supervisors as well as more senior managers.

Guidance for managers on how to have these conversations is available in the Supporting Performance Guidance document.

A shared written record will be kept of these conversations reflecting the issue clearly, the required standard, dates this needs to be achieved and any support which is going to be given. It may be useful to use the supportive action plan template for this record (available within the Supporting Performance Guidance document).

Dependent on the scale and gravity of the gap between actual and required performance, it may be necessary to move straight to the formal process. Advice must be taken from HR to ensure consistency of approach if this is felt necessary.

Formal Process

Initial Supporting Performance Stage

If informal measures have not resolved the performance issues then the relevant Operational Manager (or equivalent) will manage the formal process. The Operational Manager will invite the employee to an Initial Supporting Performance meeting in writing. The relevant team leader or supervisor may also be invited to join the meeting if the Operational Manager feels this would be helpful.

The written confirmation will also include date, time and venue of meeting, a copy of this Supporting Performance policy and a copy of the employee's job description. A template letter can be found in the Supporting Performance Toolkit.

The meeting is intended to be a forum for an open and honest discussion with the employee about their performance and all factors which impact on it.

- The manager will provide a full explanation of where the employee is not meeting the required standard including evidence or specific instances to help the employee to clearly understand the issue.
- The manager will explain the expected standard of performance.
- The manager will then explore with the employee where their performance is not reaching that standard.
- The manager and employee may also discuss if there are any outside factors that could have impacted on an employee's performance (in some cases it may be appropriate to get further advice from HR before continuing, eg if the performance issue may be related to a disability).
- The manager will also listen to the employee's perception of how they are performing and any evidence the employee can present to support this.
- The manager and employee will together put together a supportive action plan (a SMART* plan or plan which is similarly clear is recommended), including identifying any support which may be required and who is responsible for delivering any actions identified.

*'SMART' is an acronym describing targets which are Specific, Measurable, Achievable, Realistic and Time-bound. A template can be found in the Supporting Performance Toolkit. It will often be useful to set a performance support plan using these targets, but any similarly clear format can be used.

As part of the discussion, consideration will be given to what support can be provided to support the employee to reach the performance standards. This may include:

- Training/retraining/development
- Referral, where appropriate, to Occupational Health or Careline
- Mentoring / coaching
- Closer supervision for a limited period

As part of the action plan any areas or outside factors which have been raised as potentially having an impact the employee's performance, will be addressed; for example the manager may feel it is appropriate to review an employee's workload.

The consequences of not meeting these standards must be made clear: that the supporting performance procedure will progress to the Second Supporting Performance Stage and a review date will be set.

A letter must be sent to the employee following the meeting detailing:

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- The capability issues
- Any decision that has been made and the reasons for that decision, including discontinuation of the formal process, or confirmation that the employee is on the Initial Stage of the Supporting Performance process.
- The action plan with deadlines and targets with date of review meeting
- The potential consequences of not achieving the targets set
- The date for the Initial Supporting Performance Review Meeting

Initial Supporting Performance Review Meeting

The relevant Operational Manager (or equivalent) will schedule a meeting to review the employee's performance against the targets set in the Initial Supporting Performance Meeting. The relevant team leader or supervisor may also be invited to join the meeting if the Operational Manager feels this would be helpful.

After the meeting the manager will review all the evidence and decide what action to take. At this stage the following options are available:

- Closure of the process: this will be appropriate where all targets are achieved and the performance issue has resolved
- Extension to the targets set in the original supportive action plan (this may be appropriate where the manager accepts that the employee has been unavoidably prevented from achieving the targets eg where required training has not been available). There is no fixed recommended period for an extension but it should be reasonable in respect of the set target.
- Escalation to the Second Supporting Performance Stage with a reviewed or new supportive action plan: this will be appropriate where the required standards have not been met/maintained

The outcome of this review will be recorded in a letter to the employee and will confirm:

- The capability issues
- Any decision that has been made and the reasons for that decision, including removal from the formal process, extension, or escalation to the Second Supporting Performance Stage with a formal caution.
- Any action plan with deadlines and targets with date of review meeting
- The potential consequences of not achieving the targets set
- The date for the Second Supporting Performance Review Meeting if the decision was to escalate to the Second Supporting Performance Stage.

There is no right of appeal against decisions made at the Initial Supporting Performance Stage.

Second Supporting Performance Stage

The employee should be supported as outlined in the supportive action plan to achieve their targets.

A Second Stage Supporting Performance review meeting will be held as per the arrangements agreed at the Initial Supporting Performance Review meeting. The format of the meeting will replicate the format of the Initial Supporting Performance meeting and is intended to be a forum for an open and honest discussion with the employee about their performance and all factors which impact on it.

The possible outcomes will include:

- Closure of the process: this will be appropriate where all targets are achieved and the performance issue has resolved

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- Extension to the targets and caution set in the existing supportive action plan (this may be appropriate where the manager accepts that the employee has been unavoidably prevented from achieving the targets eg where required training has not been available). There is no fixed recommended period for an extension but it should be reasonable in respect of the set target.
- Escalation to a Formal Performance Hearing. This will be appropriate where the required standards have not been met/maintained.

Formal Performance Hearing

An employee must be invited to a Formal Performance Hearing in writing by the chair of the hearing at least 7 calendar days ahead of the proposed date. The letter inviting the employee to the dismissal hearing must make it clear that one of the outcomes from this hearing is dismissal and set out the employee's right to be accompanied in this hearing by a trade union representative or colleague working for the council. A manager who is more senior than the manager who has led the earlier stages (usually a Head of Service or equivalent) will chair a Formal Performance Hearing, supported by a member of HR who has not been previously involved (wherever possible). A short report regarding the performance issues, progress against targets and any other relevant information (eg advice from Occupational Health) will be put together by the employee's Operational Manager (or equivalent) for all parties to consider and this will usually be distributed with the letter of invitation to the Formal Performance Hearing. Templates are available in the Supporting Performance Toolkit.

Formal Performance Hearings will give the opportunity for the manager to present the performance issues and the actions taken to date as well as giving the employee the opportunity to respond and raise any issues they believe are pertinent.

An example meeting procedure is set out in the Manager Guidance documents.

Outcomes from a Formal Performance Hearing can include:

- End process: this will be appropriate where the chair considers all targets are achieved and maintained and the performance issue has resolved. The caution will remain on the employee file for a further 6 months.
- Extension to the targets set in the existing supportive action plan: this may be appropriate where the chair accepts that the employee has been unavoidably prevented from achieving the targets eg where required training has not been available. There is no fixed recommended period for an extension but it must be reasonable in respect of the set target. If this the case then the hearing will be adjourned for the period of the extension and will reconvene following the end of the extension to consider progress.
- Permanent adjustment of duties within the employee's role: this may be appropriate where the performance issues are limited to a specific aspect of the work and removal of this aspect is likely to resolve the performance issues and can be operationally accommodated. HR will be able to advise on whether the change to the role requires the job description to be regraded. No pay protection applies if a role is evaluated at a lower grade in these circumstances. If the employee does not wish to accept this, redeployment can be considered, and if suitable roles are not available then the employee will be dismissed.
- Action short of dismissal with notice: this may be appropriate where the employee is unable to meet/maintain the required standards of performance but the chair considers that there may be opportunities available within a reasonable period (usually available within a two weeks period from the hearing) for the employee to be redeployed on an initial 4 week trial basis into another role within the council which is believed to be better suited to their skills and capabilities. If following exploration of available roles it is apparent that no suitable posts are available or the employee does not wish to be redeployed to the available role, the decision will revert to

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dismissal with notice. No pay protection applies if an available role is offered at fewer hours / a lower grade than the employee's existing contract.

- Dismissal with pay in lieu of notice: this will be appropriate in cases where the employee is unable to meet/maintain the required standards of performance and the chair considers that there are no likely opportunities for redeployment or where redeployment is not a suitable option.

Appeal against sanctions

Employees have the right to appeal against sanctions applied at the Formal Performance Hearing.

In order to exercise this right, the employee must write to the HR & OD Manager within 14 consecutive calendar days of receipt of the written notice of the sanction. In their letter, the employee must state their grounds of appeal.

Appeals made by Chief Officers will be made in writing to the Monitoring Officer for the Appeal to be considered by the Employee Appeals Committee.

The council will arrange for the appeal to be held as soon as possible following receipt of the employee's letter of appeal.

A trade union representative or other colleague may accompany the employee at the appeal hearing.

The Appeal Panel will not be made up with any manager involved in any previous investigation or decision.

A representative from HR will support and advise the Appeal Hearing and, where appropriate, will be a different HR representative than previously involved. Where it is not practicable to have an alternative HR representative, they will advise on process and provide technical advice to the Chair.

During the appeal hearing, both the council and the employee will have the opportunity to state their case and provide any documentary evidence.

The Chair of the Appeal Hearing will communicate their decision in writing, within 7 consecutive calendar days of holding the appeal. The decision of the Chair (or Employee Appeals Committee in the case of a Chief Officer) is final.

Recurring Performance Issues following the end of a process

Should an employee return to not meeting the required standards of performance within 6 months of a formal Supporting Performance process ceasing, they will commence the process at the Second Supporting Performance Stage.

No performance concerns

Should there be a situation where it is accepted by all parties that there are no legitimate concerns that warrant the use of the formal performance process (for example, it is demonstrated that perceived performance issues are in fact due to a software malfunction) this outcome will be recorded in writing and any associated sanction will not stand.

Failure to attend a formal meeting

If the employee is unable to attend any formal meeting they must notify Human Resources in writing as soon as possible and state the reason for not attending for consideration. The council will usually accommodate one change of date. Failure to attend without a good reason may result in a decision being taken in the employee's absence.

Health related transfer requests

An employee may inform the council that they believe their health is impacting on their ability to perform to the required standards and request to transfer to an alternative role where they believe their ability to perform would be increased. Occupational Health advice must be sought in these circumstances. If Occupational Health advice is obtained at any point in this process that the employee's health and their performance would benefit from being placed in an alternative role, it is possible for the employee to opt to be placed on a transfer register whilst the performance process continues. Any adjustments recommended by Occupational Health which are deemed to be reasonable adjustments will be put in place for the employee's existing role in the meantime.

If a potentially suitable role is identified either by the council or by the employee, the employee may be assessed for suitability (usually via application and interview) ahead of a role being recruited to in the normal way. If the recruiting manager considers the candidate to be successful, they may be offered the role without the need for further advertisement. It is for the recruiting manager to determine suitability and there is no guarantee of placement. Occupational Health must confirm that there is a reasonable likelihood that such a move will benefit the employee's health and performance before such a transfer can be confirmed. The supportive action plan will transfer to the new manager for review.

Should a suitable role be available at a lower grade or fewer hours, no pay protection will apply, but employees will retain the right to not put themselves forward for, or reject a role which they consider to be undesirable.

The performance process will continue for employees who have requested a transfer and if performance continues to fall below required standards, an employee may be dismissed at a Formal Performance Hearing as per this policy.

Pregnant Employees and Employees with a Disability

Where there are performance issues with an employee who is pregnant, or with an employee who has a known disability, HR advice must be sought to ensure that these issues are dealt with fairly and in line with legislation.

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Training

The HR & OD team will provide training to managers on this policy and will advise on the application of the policy to ensure fairness and consistency.

Appendix 1 – Performance Concerns where the employee is a statutory officer

In the event that disciplinary action is contemplated against a statutory officer based on performance (head of paid service, chief finance officer/s.151 officer/monitoring officer) the council will ensure it complies with the regulatory requirements and the relevant terms and conditions of employment.

This includes adopting and following the model disciplinary procedure and guidance which incorporate the relevant statutory requirements, agreed by the Joint Negotiating Committee (JNC) for local authority chief executives.

Allegations will be considered by the Employment and Disciplinary Committee [EADC] (taking the function of the Investigatory and Disciplinary Committee within the regulations) which decides whether a full investigation must take place.

The EADC will appoint an independent investigator taken from a list held by the National Joint Secretaries. The independent investigator will investigate and report back to the EADC.

The EADC will hold a hearing and determine whether: there will be a recommendation to the council to dismiss the statutory officer; or there is no case to answer; or there should be action short of dismissal.

If the recommendation is for dismissal, this must be considered by an independent panel.

The independent panel consists of people appointed under section 28(7) Localism Act 2011 (the same independent persons who deal with member conduct). The panel will act as a committee of the council. The independent panel will review the recommendation and compile a recommendation of its own.

Both reports/recommendations go before full council to make their final decision. Where the action proposed falls short of dismissal, the matter must be referred to an appeals committee to make a final decision.

Appendix 2 – Formal Performance Hearing outline

In order to ensure consistency throughout the council, the following arrangements have been agreed with the trade unions and must be followed for every formal performance hearing.

A formal performance hearing, which has been arranged, and a date agreed, may be re-arranged at the request of either side on one occasion, if necessary. However, in the case of a requested second postponement, the hearing will proceed unless there are exceptional circumstances.

Hearings will be digitally recorded or a note-taker will be present to take a written record of the hearing.

All parties must conduct themselves in a professional manner and if they fail to do so, after warnings have been given, can be asked to leave by the Chair and the proceedings continue without them. Should the panel feel that they need further information or clarity they can adjourn the hearing. Should the panel agree to accept additional evidence that could significantly affect the outcome of the case they can refer the case back to the investigating officer for further investigation or seek further information before continuing with the hearing.

The following running order may be used:

Introductions

- a) The Chair facilitates introductions all parties present.
- b) The Chair goes through the format for the hearing.

Management

- a) Manager presents management case.
- c) Employee or employee's representative may question manager
- d) Panel members may question manager

Employee

- a) Employee or employee's representative states case.
- b) Manager may question employee/ employee's representative
- c) Panel members may question employee/ employee's representative

Summing up

- a) Manager sums up the case.
- b) Employee or employee's representative sums up the case.

In this summing up neither party may introduce new matters or information.

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Decision

- a) The parties to the hearing will withdraw to enable the panel to consider the case privately.
- b) If any points requiring clarification arise, both sides must be recalled together, even if only one side is concerned.
- c) Prior to a decision being reached, the Chair will ask the employee whether they wish to receive the decision in writing or whether they wish both sides to be recalled to hear the decision. If the decision is made that both sides are to be recalled, every attempt will be made to ensure this takes place within seven calendar days. If the employee confirms that they prefer to be notified of the panel's decision in writing, this will be within seven calendar days of the panel reaching a decision.
- d) The decision must always be clearly set out including the reasons why this is felt appropriate. The panel must provide a written decision in all cases that must be sent to the employee, and trade union representative/ companion if agreed by the employee, within seven calendar days of the panel reaching its decision. The employee must also be notified of their right of appeal.

Appendix 3 Summary of Responsibilities

Managers are expected to:

- Lead Supporting Performance processes including leading meetings and preparing reports as necessary.
- Support their employee's health, safety and well-being, signposting to counselling support and ensuring Occupational Health advice is obtained as necessary. Act on this advice promptly where reasonable, in consultation with HR.
- Have due regard for the Equality Act and provisions
- Apply a fair, consistent and supportive approach to all employees at all times
- Ensure that HR advice is sought as needed
- Ensure that records are maintained in a confidential manner but that supportive action plans and records are shared with the employee in a timely fashion for their reference.
- Ensure that information regarding an employee's performance is treated in line with the General Data Protection Regulation and the Council's Data Protection policy.
- Monitor performance levels and take prompt action as necessary, in line with this policy and in a consistent and fair manner.
- Set realistic improvement targets and review progress in line with agreements made with the employee.

Employees are expected to:

- Do everything possible to achieve and maintain the required standards of performance, engaging fully with Supporting Performance processes and seeking support at an early stage where they may be concerned that they have a training or performance need.
- Raise concerns with their manager or HR if they believe that their performance is being impacted by their health, or that their job is making them ill or contributing to illness.
- Co-operate fully with the Occupational Health service and any other organisations that provides support to the council and its employees.
- Ensure that medical advice and treatment, where appropriate, is received and acted upon as quickly as possible.

HR will:

- Provide expert support and guidance to managers and employees in dealing with performance issues and in the use of the council's related policies and procedures.
- Take Occupational Health advice on behalf of the manager and advise on its application.
- Signpost to counselling services where appropriate

Trade Unions will:

- Work with their members and the management of the council to ensure that performance issues in the council are managed fairly.

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