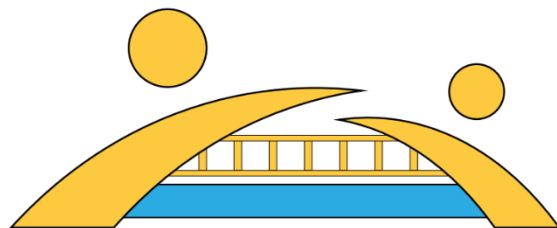


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Performance Capability Policy

This policy applies to all staff but excludes teaching staff employed in educational establishments

	Enw / Name	Llofnod / Signature	Dyddiad / Date
Cadeirydd / Chair of Governors	Cllr Gareth Jones	<i>Gareth D Jones</i>	4.7.23
Pennaeth / Headteacher	Huw Lloyd-Jones	<i>H. Lloyd Jones</i>	4.7.23
Adolygwyd a Chadarnhawyd Reviewed and Accepted	4.7.23	Dyddiad Adolygu / Date of Review	Summer Term 2024
Polisi Statudoli'w adolygu pob blwyddyn / Statutory Policy to be reviewed annually Canllawiau: Guidance:			

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Policy History

Policy Date	Summary of change	Contact	Version/ Implementation Date	Review Date
31 December 2019	General review completed. Changes to job titles and formatting. Policy has been slimmed-down	S Holcroft	5	December 2021

1. Introduction

- 1.1 The purpose of the Council's Performance Capability Policy is to provide a supportive framework to assist managers and employees, when work performance that is below the expected standard has been identified. The aim of the policy is to support employees to demonstrate improvement in their work performance, and to reach and maintain the expected standard of performance.
- 1.2 This Policy sits within a wider Performance Management culture within the Council, focussing on continuous improvement to deliver effective and appropriate local services to the residents of Powys.
- 1.3 Informal and formal Performance Management activities overlap with the Performance Capability Procedure, including informal supervision sessions and formal employee appraisals. See also, the Council's Individual Performance Management Policy.
- 1.4 It is critical, for a performance management culture to be successful, that employees understand the required level of performance expected of them in their role. In some posts, there will be national standards of performance and in other roles it will be for the Service's management team to agree and communicate the standards expected of the post-holder. However required levels of performance are arrived at, they must be clearly conveyed to the

employee in a direct and meaningful way so that the employee understands what the Council expects of them in their job role.

2. Purpose

- 2.1 This policy should be utilised when an employee demonstrates that they are not attaining the expected levels of performance required for the role in which they are employed. This may be because:
- they do not have the required skills, aptitude or competencies needed to perform in their role;
 - they are unable to cope with what is considered a reasonable workload or being unable to meet identified standards; or
 - an inability to prioritise work.
- 2.2 In all circumstances, there must be facts and evidence to support concerns which clearly demonstrate that the expected standards of performance are not being met. Importantly, other reasons for an employee demonstrating poor performance may be due to the work-related environment and/or personal circumstances that are impacting on their ability to complete the duties required of their role. All of these should be fully explored in both the informal and formal procedures.
- 2.3 Instances where an employee does have the appropriate skills etc., but chooses not to apply them, or they demonstrate a negligent approach to their work, will be dealt with under the Council's Disciplinary Policy and Procedure as misconduct.
- 2.4 On occasion the Performance Capability Policy and the Disciplinary Policy can be used together. For example, an employee may have breached financial regulations which would be considered a misconduct matter but the lack of understanding of essential procedures for the role could also be dealt with under the Performance Capability Policy. The two processes can run concurrently but managers must be mindful of the main principles and main differences of the two procedures and ensure both are followed.

3. Key Principles

This policy is based on the following key principles:

- There are informal and formal elements of the Performance Capability Policy. In most circumstances it will be reasonable to follow informal elements before progressing to formal action. However, there may be circumstances where an employee's performance in their role is demonstrating significant failure requiring consideration at a Performance Capability Hearing;
- No action should be taken under this policy without the line manager first discussing the situation with the employee and making sure they understand the policy and procedure being used;
- The Council's commitment to equality will be observed at all times during the operation of this policy. This will ensure that employees are treated fairly and

without discrimination on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation; and

- If an employee falls sick during a period where their performance is being managed either informally or formally under this procedure, it will be appropriate for a decision to be made to either postpone or extend the period of any performance capability review or progress the matter through to a conclusion. It may be necessary to keep any decision made under regular review depending on the reason and length of any absence.

4. Rights and Responsibilities

Manager	Employee	Human Resources
Set clear and attainable standards of the performance required. Be clear as to the specific outcomes you want from the employee, using examples where necessary and appropriate	Work with their manager to resolve any concerns which are identified in relation to their performance	Advise managers on the informal elements of the process
Deal with performance problems at the earliest opportunity and establish any reasons for the performance concerns	Co-operate with any informal and formal meetings under the Performance Capability Procedure	Support managers on the formal elements in the application of this policy
Support employees to improve performance	Highlight to their manager any reasons performance may be affected to assist in identification of necessary support at an early stage and throughout the process	Arranging OD intervention to identify and deliver development and training activities
Share this policy with employees	Have a contractual responsibility to work to the required standard, achieving a level of performance required by the Council	Advise managers in relation to disability and reasonable adjustments
Ensure fair process is followed as per this policy	Employees have the right to be accompanied by their Trade Union Representative or a work colleague during the formal process	To ensure that this policy is reviewed and updated, where necessary.
Making reasonable adjustments where necessary and appropriate during the capability process and allowing reasonable time frames for improvement, e.g. all correspondence to service users must be completed within 1 month	The Council cannot continue the employment of an employee in their post if an acceptable level of expected performance has not been achieved by the end of the formal process.	
Keep all meetings private and allow for two-way		

dialogue with the employee		
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5. Performance Capability Procedure

- 5.1 There is a Process Map providing a summary of the Council’s Performance Capability procedure and a checklist for managers to assist managers with actions required when planning and preparing to manage employees through the Performance Capability process.
- 5.2 If, during the period the action plan is being reviewed, the employee’s performance falls to a level significantly below the expected standard required as outlined at the outset of the process, the manager should take advice from their HR practitioner as to whether to progress to a first formal warning or Performance Capability Hearing earlier.

5.3 Informal Procedure

Managers need to ensure that employees are made aware of concerns over their failing performance and are given guidance and support to improve. It is essential that the manager fully records at each stage the specifics of the underperformance, the actions taken and the responses from the employee. Employees need to be aware that failure to meet expected actions/targets may lead to a formal Performance Capability Hearing.

- 5.4 Conversations about expected performance, support and timescales need to be fully recorded as they may be used at a later stage in the process. It is important that the employee is given the opportunity to explain any reasons for poor performance e.g. ill-health, personal issues or work related matters.
- 5.5 Managers should evidence poor performance with examples directly from the employee’s workload. Sometimes the concerns will be across a range of duties; i.e. poor case recording or inability to meet expected targets within reasonable timescales.
- 5.6 Once the manager has raised their concerns with the employee and given a reasonable time to improve performance, if there is improvement deemed significant enough, the employee does not need to continue to be managed through the performance capability process and this must be communicated to the employee, documented and recorded on the employee’s file. If however, there is no significant improvement the manager, following discussion with HR, needs to decide if the matter should progress to the formal stage of the procedure.

5.7 Formal Procedure

If the matter needs to progress to formal action, the manager and the employee (with HR input where required) will need to agree an outline

action plan, which is normally reviewed over a three month period, although this depends on the nature of the role.

- 5.8 The manager will call a meeting with the employee and their representative to discuss the actions required in the plan in detail, to ensure that the employee understands what the concerns are, what is expected of them and what they need to achieve to demonstrate a satisfactory improvement and for both parties to agree the final action plan is reasonable and achievable. Any support or training that the employee is required to undertake to meet the necessary improvements should also be agreed at this meeting. Where an employee faces disciplinary action for poor performance, undiagnosed (and undisclosed) learning difficulties (e.g. dyslexia) should always be considered as a possible contributory factor.
- 5.9 The plan should be monitored by the manager and discussed in a formal review meeting regularly (i.e. no less than monthly) with the employee and their representative. If there are concerns which have been successfully addressed by the employee they should be removed from the action plan, likewise if there are new issues they must be added to the action plan. All formal review meetings should be recorded in detail, including relevant discussions and outcomes agreed, and a copy provided to the employee. The review meeting may result in a revision of the initial plan with updated current targets. When reviewing performance Managers need to be specific about each part of the action plan and explain if they think the employee has improved, has remained the same or has failed to improve to the expected standard, considered for each area of concern identified. At the review meeting, if there is improvement deemed significant enough, the employee does not need to continue to be managed through the performance capability process, this will be communicated to the employee, documented and recorded on the personnel file.
- 5.10 Managers need to ensure that realistic timescales for action plans are set in order that actions can reasonably be achieved, including meeting the requirement for any training or actions which require input from other employees.
- 5.11 After the agreed period, e.g. up to three months, there needs to be an assessment of whether the plan has been successfully completed, needs an extension or that the matter should be progressed to formal action.
- 5.12 If a decision is made to progress the matter formally advice should be considered from HR as to whether it is appropriate to issue a first written warning to the employee or to progress for consideration at a Performance Capability Hearing.
- 5.13 If a decision is made to progress to consideration of a first written warning a first formal meeting with the individual and representative from HR will be arranged by the manager (trade union or work colleague support is also appropriate). This meeting should provide an opportunity for a full review of

evidence from action plan review meetings, including any response from the employee. If, following an adjournment of the meeting and a discussion taking place between the manager and HR, it is felt insufficient progress has been made or that the employee has not been able to improve their performance to the required standard identified **then a first written warning may be issued**. This warning is based on the employee's level of performance being unacceptable and is therefore classed as performance capability as the employee is not meeting their obligation to perform to a satisfactory level. Recommendations for further improvement should be outlined and set out in a revised action plan and a further review period should be set by the manager at this meeting. It should be made clear to the employee that should performance fail to improve during any further period of review a Performance Capability hearing may be required. A letter detailing the considerations and outcome of this meeting will be sent to the employee within 5 working days of the meeting and held on their personnel file, with the warning standing for a period of 12 months.

- 5.14 Employees have the right of appeal against the first written warning by writing to their Head of Service within 5 clear working days of the meeting.
- 5.15 If, following an adjournment of the meeting and a discussion taking place between the manager and HR, it is felt sufficient progress has been made or that the employee has been able to improve their performance to the required standard identified then a decision will be made not to issue a first written warning. Any recommendations for further improvement arising from considerations should be outlined and set out in a revised action plan and a further review period should be set by the manager at this meeting. It should be made clear to the employee that should performance fail to improve during any further period of review the matter may be referred back to first formal meeting stage or, depending on the level of standards being attained, it may be referred to a performance capability hearing. A letter detailing the considerations and outcome of this meeting will be sent to the employee within 5 working days of the meeting and held on their personnel file. See the guidance documents on Performance Capability Hearings and Appeals accompanying this policy.

