



## **Performance Support Policy**

### **Report by the Director for Digital & Resources**

#### **1.0 Summary**

- 1.1 This report seeks approval of the Adur & Worthing Councils Performance Support Policy.
- 1.2 The proposed new Adur and Worthing Councils Performance Support Policy is attached as Appendix 1, and would replace the current Adur and Worthing Councils Capability Policy.

#### **2.0 Background**

- 2.1 The organisation is intending to review all HR policies over the following 18 months in a three-phased approach. The current Capability Policy was last reviewed in January 2010 and is one of the policies being reviewed in the first phase of the policy review project.
- 2.2 The Councils recognise that most members of staff perform at the standard required of them. This policy would be used when an individual's performance falls below this standard.
- 2.3 The policy applies to all employees of both Adur and Worthing Councils.

#### **3.0 Proposals**

- 3.1 This policy outlines the approach that will be taken for the relatively small number of employees whose performance does not reach the necessary standard.
- 3.2 It is important that managers deal with performance that falls below the standard expected in a consistent manner and as soon as performance starts to deteriorate.
- 3.2 The changes to the policy and the rationale for those changes are detailed in Appendix 2.

## **4.0 Legal**

- 4.1 The Performance Support Policy would be classed as a contractual policy and therefore form part of the terms and conditions of employment.
- 4.2 Section 112 Local Government Act 1972 provides the Council with the power to appoint staff on the terms and conditions as they see fit.

## **5.0 Financial implications**

- 5.1 There are no direct financial implications arising from the policy. The policy will enable managers to ensure that staff perform effectively and avoid unnecessary additional costs.

## **6.0 Recommendation**

- 6.1 The Joint Staff Committee is recommended to approve the Performance Management Policy with an implementation date of 1st January 2018.

### **Local Government Act 1972**

#### **Background Papers:**

Adur and Worthing Councils current Capability policy available at [Capability Policy](#)

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## **Schedule of Other Matters**

### **1.0 Council Priority**

1.1 Where an employee's performance falls below the acceptable standards the Councils will take all reasonable steps to seek and support performance improvement.

### **2.0 Specific Action Plans**

2.1 Matter considered and no issues identified.

### **3.0 Sustainability Issues**

3.1 Matter considered and no issues identified.

### **4.0 Equality Issues**

4.1 The Equality Impact Assessment for the policy is attached as Appendix 3.

### **5.0 Community Safety Issues (Section 17)**

5.1 Matter considered and no issues identified.

### **6.0 Human Rights Issues**

6.1 Matter considered and no issues identified.

### **7.0 Reputation**

7.1 Failure to have an agreed approach to managing employees performance could result in negative reputational damage to the Councils.

### **8.0 Consultations**

8.1 Unison have been consulted with and have agreed the policy.

### **9.0 Risk Assessment**

9.1 Matter considered and no issues identified.

### **10.0 Health & Safety Issues**

10.1 Matter considered and no issues identified.

### **11.0 Procurement Strategy**

11.1 Matter considered and no issues identified.

### **12.0 Partnership Working**

12.1 Matter considered and no issues identified.





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## Performance Support Policy

### 1.0 Overview

- 1.1 The Councils recognise that most members of staff perform at the standard required of them. This policy outlines the approach that will be taken for the relatively small number of employees whose performance does not reach the necessary standard.
- 1.2 It is important that managers deal with performance that falls below the standard expected in a consistent manner and as soon as performance starts to deteriorate. If not, the potential impact on the individual, the team and the Councils could be:
- Low team morale or attendance when a member of staff is not performing at the required standard
  - Reduction in individual and team efficiency and effectiveness and compromised service delivery
  - Valuable time and energy taken from managers to rectify the situation
- 1.3 Where an employee's performance falls below acceptable standards the Councils will take all reasonable steps to seek performance improvement, in accordance with the ACAS (Advisory, Conciliation and Arbitration Service) Code of Practice.
- 1.4 All employees have the responsibility for ensuring good performance. Individual areas of responsibility are:
- **Corporate Leadership Team** – publicising the policy
  - **HR team** - reviewing this policy to ensure it is effective and advising managers on the interpretation and consistent application of the policy and on best practice
  - **Managers** - responsible for ensuring teams are performing to the standard required and proactively supporting and managing individuals who are not performing as required
  - **Employees** – complying with the spirit and wording of this policy

### 2.0 What is unacceptable performance?

- 2.1 Unacceptable performance is performance that falls below the standards that could reasonably be expected of, a member of staff.

- 2.2 An employee's performance can be assessed by reference to the job description and personal specification for the role, which details skill, aptitude, ability. It can also be assessment through physical or mental capacity, for example, lack of skill or ability in achieving business objectives such as frequent errors in work.
- 2.3 Performance may also concern *how* an employee completes their work, referring; for example, to our employee values and behaviours, the code of conduct for Council officers or any other behaviour that is impacting an employee's performance.

### **3.0 How does performance support differ from disciplinary?**

- 3.1 Performance support involves that which an employee can't do. The focus is on improving performance through:
- the employee's attention being brought to the areas of underperformance,
  - appropriate support and relevant training being given
  - effort made by the individual to bring their level of performance up to the standard agreed between the manager and the individual
- 3.2 Areas of improvement can involve both the outputs of their work (what they achieve) and behaviour (how they achieve their work).
- 3.3 In the beginning it may not be clear whether the issue is due to unacceptable performance or misconduct. If it is misconduct then the manager will need to refer to the Disciplinary Policy. If a case is initially dealt with under the Disciplinary Policy it should be transferred to the Performance Support Policy immediately it becomes clear that performance issues are involved.
- 3.4 If the manager is unsure whether the issue is due to underperformance or misconduct, they can contact their HR Business Partner for further guidance.

### **4.0 Who is covered by this policy?**

- 4.1 This policy applies to all employees, including those in their probationary period.
- 4.2 It should be interpreted in accordance with the Equalities Act 2010 and shall be applied fairly and consistently to all employees. Managers will need to consider whether an employee has a disability as defined in the Equality Act 2010 and therefore whether reasonable adjustments need to be made.
- 4.3 If at any stage it is clear that an employee's health is affecting their performance, managers should consider an occupational health referral and should contact the HR team for advice.

## **5.0 The Procedure**

- 5.1 The procedure for managing performance both informally and formally, which is in line with the ACAS Code of Practice, is detailed in the Performance Support Procedure documents stored on the intranet, available in the place of work and as outlined below.
- 5.2 This procedure will be followed unless unacceptable behaviour of one party makes it unreasonable to do so (stress and anxiety about the process is not a sufficient reason to not follow the procedure).

### **Informal procedure**

- 5.3 Managers will aim to resolve performance issues informally as soon as they arise. It is hoped that, for most cases, informal support will be enough to resolve the majority of underperformance issues.

### **Stage One**

- 5.4 If the required performance improvement is not made, despite a period of informal support given by the manager and a focus by the member of staff on performance improvement, a first formal meeting will be held. A performance improvement action plan will be developed at this meeting, a notification of concern letter will be issued if appropriate and a period of performance monitoring will take place.

### **Stage Two**

- 5.5 If the required performance improvement is not made, despite a period of formal support given by the manager and a focus by the member of staff on performance improvement, a second formal meeting will be held. The previous performance improvement action plan will be built on at this meeting, a final notification of concern letter will be issued if appropriate and a period of performance monitoring will take place.

### **Stage Three**

- 5.6 A third and final formal meeting will be held if an individual's performance has not improved to the required standard despite further support from their manager and a focus by the member of staff on performance improvement. This meeting may result in dismissal.
- 5.7 If the member of staff's performance does not meet the required standard in the time given, this could result in their employment being terminated on the grounds of capability.

### **The Performance Improvement Action Plan**

- 5.8 The performance improvement action plan is a S.M.A.R.T (Specific, Measureable, Achievable, Realistic, Time-limited) action plan mutually agreed by the employee and the manager to address the issues identified. This may include, where appropriate, training, other development opportunities, closer supervision or receiving greater clarity about standards required.

5.9 It is anticipated that in most situations the performance support procedure will formally start at Stage One. However, where an employee has been supported by the performance support policy and procedure concerning the same aspect of their work and the 'notification of concern' is still live it may be more appropriate to enter the procedure at a later stage.

## **6.0 Right to Appeal**

6.1 There is no right of appeal against the outcome of the informal stage of this procedure.

6.2 If the employee wishes to appeal a notification of concern letter, they should appeal in writing to the Head of Service or Director, copying in Human Resources, within 7 calendar days of receiving the written decision, stating the full grounds for appeal.

6.3 Appeals may only be raised on the grounds of:

- a) Procedure – where a failure to follow procedure had a material effect on the decision;
- b) Decision - the evidence did not support the conclusion reached or is inconsistent with other decisions within the Councils; or
- c) New evidence - which has come to light.

6.4 If an individual submits a formal appeal, the appeal will run in parallel with any continuing performance support procedures. Once the outcome of the appeal is known, the individual's case will be reviewed.

6.5 The outcome of an appeal is final.

6.6 Further details of the appeal can be found in the Performance Support Procedure documents available on the intranet.

### **Dismissal appeals**

6.7 In the event that a member of staff is dismissed on the grounds of capability they are entitled to an appeal.

6.8 The employee should submit their appeal in writing, clearly stating the grounds for their appeal to the relevant director, copying in HR, within 7 calendar days of receiving the letter issuing notice of dismissal.

6.9 Appeals may only be raised on the grounds of:

- a) Procedure – where a failure to follow procedure had a material effect on the decision
- b) Decision - the individual can show that the evidence did not support the conclusion reached
- c) Evidence - additional evidence has come to light

6.10 Any appeals against dismissal will be heard by a director within a reasonable period (not usually more than two weeks from receipt of the appeal letter). The director will consider the case and determine whether the original outcome was fair and reasonable based on the grounds of the appeal.

- 6.11 The appeal decision will be confirmed in writing to the employee within 7 calendar days from the appeal hearing. The outcome is final and therefore there is no further right of appeal.

## **7.0 Support and the right to representation**

- 7.1 Employees are encouraged to access the Employee Assistance Programme detailed on the intranet or in the place of work. Trade unions also provide advice and support to their members.
- 7.2 Employees have a right to be accompanied at all formal meetings or appeal by a trade union representative or an Adur & Worthing workplace colleague. Accompanying someone is voluntary and an employee's colleagues are under no obligation to do so. If they agree to do so, they will be allowed reasonable time off from duties without loss of pay to act as a companion.
- 7.3 It is the responsibility of each employee to arrange their own trade union representative or an Adur & Worthing workplace colleague, pass on all details (such as paperwork, meeting information) and to inform the manager at least 3 days in advance of the meeting who will be accompanying them.
- 7.4 There is no right to legal representation at any stage of this procedure. Legal representatives, including lawyers employed by the Councils, whether or not acting in any official capacity have no right to accompany an individual.
- 7.5 The trade union representative or Adur & Worthing workplace colleague may make representations and ask questions during any grievance meetings. They do not, however, have the right to answer questions on the employee's behalf, address a hearing if the employee does not wish it or prevent any other party from explaining their case.
- 7.6 If the employee is unable to attend the meeting for whatever reason (i.e. ill health), the employee (or in exceptional circumstances, the trade union representative/Adur & Worthing workplace colleague) must inform his or her line manager immediately and the meeting will be rearranged within 5 working days of the original meeting date where reasonably practicable. The meeting will only be rearranged once.
- 7.7 If an individual's trade union representative or Adur & Worthing workplace colleague is unable to attend the meeting date or time, the individual should first see if another representative/Adur & Worthing workplace colleague can attend to support in their place. If this is not possible, the employee must inform his or her line manager immediately and the meeting will be rearranged within 5 working days of the original meeting date where reasonably practicable. The meeting will only be rearranged once.

7.8 The employee must make every effort to attend formal meetings; failure to attend may be treated as misconduct as judged by the line manager. If the employee fails to attend or is unable to attend the rescheduled meeting, it may go ahead in his or her absence on the available evidence.

7.9 Managers have a right to be accompanied at all formal meetings or appeals by a Human Resources representative. The role of the HR representative is to advise the manager on policy/procedure. The manager is the decision maker.

## **8.0 Can an individual grievance be raised at the same time as the performance support policy?**

8.1 If an employee raises a grievance when the Performance Support Policy is being implemented, or there remains an outstanding grievance, the Councils will normally suspend consideration of the grievance until the outcome of implementing the Performance Support Policy is known. Each case will, however, be considered on its merits to ensure that the Councils are acting reasonably.

## **9.0 Monitoring and Review**

9.1 This policy will be monitored and reviewed on a regular basis by the Human Resources team with a thorough review taking place in three years if required.

## **10.0 Legislative framework**

10.1 This policy has been written in reference to the following documents:

- ACAS Code of Practice on disciplinary and grievance procedures
- Employment Rights Act 1996
- Equalities Act 2010
- Data Protection Act 1998

## Performance Support Policy

What's changed?	Old policy	New policy	Why?
Addition of definition of under-performance	No definition of under-performance	Detailed description of under-performance, which includes skill, aptitude, ability, physical/mental capacity, how an individual performs their role (i.e. behavioural under-performance)	So manager and individuals can be as specific as possible about the area of work that is not reaching the required performance, and aim to resolve it in a timely manner
Clarification of how performance management differs from disciplinary	No information in old policy	Clarity of 'can't do' (performance) vs. 'won't do' (disciplinary)	Sometimes it is unclear whether it is an under performance or disciplinary issue. This section acknowledges this and gives a way forward if the manager is unclear about how to proceed.
Changes to procedure	<p><b>Stage One</b> – when underperformance is identified</p> <p><b>Stage Two</b> – when sufficient progress has not been made. This meeting could result in further period of monitoring or dismissal</p> <p><b>Stage Three</b> – dismissal appeal</p>	<p><b>Stage 1</b> – formal meeting with performance improvement action plan and letter of concern issued</p> <p><b>Stage 2</b> – formal meeting with performance improvement action plan and final letter of concern issued</p> <p><b>Stage 3</b> – formal dismissal hearing with right to an appeal</p> <p><b>Dismissal appeal</b> - heard by director</p>	<p>The current policy is not in line with ACAS guidance, which states that individuals should have at least two formal warnings before dismissal.</p> <p>In practice, the current policy is often extended as it gives insufficient time for an individual to make improvements and so the new policy has an additional stage to allow an individual to improve their performance before moving to dismissal.</p>
Inclusion of section about grievance with performance management	No information about how to deal with a grievance raised during performance support proceedings.	Clarification that grievances will usually not be heard whilst performance support procedures are taking place.	For clarity on custom and practice on an issue that sometimes comes up in performance management cases.





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# **Equality Impact Assessment – Performance Support Policy**

**Name of project/policy/strategy (hereafter referred to as “initiative”):**

Performance Support Policy

**Provide a brief summary (bullet points) of the aims of the initiative and main activities:**

To give employees a standard policy and procedure to ensure that poor standards of work are addressed appropriately, in a supportive and constructive manner, and within a reasonable timescale.

To allows the organisation to manage underperformance in a fair and consistent way.

To outlines expectations around accrued hours.

**Project Manager: Amy Newnham****Date: November 2017****Stage 1: ‘Screening’**

**This stage establishes whether a proposed initiative will have an impact on equality groups, (age, disability, gender, race, religion/belief, sexual orientation), or whether it is “equality neutral” (i.e. have no effect either positive or negative). So for example in the case of gender impact, consider whether men and women are affected differently.**

**Q.1. Who will benefit from this initiative? Is there likely to be a positive impact on specific equality groups (whether or not they are intended beneficiaries), and if so, how? Or is it clear at this stage that it will be equality “neutral”? i.e. will have no particular effect on any group.**

The ultimate beneficiaries of the policy review are the residents of Adur & Worthing – effective management of performance enables the Councils to deliver the required services to them and ensure the best outcome possible due to high performance of all members of staff.

It is felt that this policy will be ‘neutral’ for those covered by a protected characteristic under the Equality Act as described below.

**Equality considerations:**

**Age** – it may be assumed that those who are older may find it harder to adjust to the digital shift in service delivery and so may be likely to be impacted by the performance support policy more than younger employees. However, this cannot be known for sure and, if this is the case, the performance support policy will be a supportive mechanism to help an individuals’ performance to reach the standard required and therefore it is felt that there will be a neutral impact on those covered under the Equality Act by age.

**Disability** – equality implications due to disability have been considered and none have been found. The policy and procedure applies equally to all employees and all the protected characteristics under the Equality Act 2010 and offers support and reasonable adjustments to disabled employees where the disability impacts on the performance of their duties and responsibilities.

**Gender Reassignment** – equality implications due to gender reassignment have been considered and none have been found. The policy is consistent in its approach to the management of performance regardless of an employee’s gender.

**Marriage and civil partnership** - equality implications due to marriage and civil partnership have been considered and none have been found. The policy is consistent in its approach to the management of performance regardless of an employee’s marital or civil partnership status.

**Pregnancy & Maternity** – equality implications due to pregnancy and maternity have been considered and none have been found. The policy is consistent in its approach to the management of performance regardless of whether an employee is pregnant.

**Race/ethnicity** - equality implications due to race/ethnicity have been considered and none have been found. The policy is consistent in its approach to the management of performance regardless of an employee’s race/ethnicity.

**Religion & belief** - equality implications due to religion/belief have been considered and none have been found. The policy is consistent in its approach to the management of performance regardless of an employee’s religion/belief.

**Sexual orientation** – equality implications due to sexual orientation have been considered and none have been found. The policy is consistent in its approach to the management of performance regardless of an employee’s sexual orientation.

**Sex** – equality implications due to sex have been considered and none have been found. The policy is consistent in its approach to the management of performance regardless of an employee’s sex.

**Q.2. Is there likely to be an adverse impact on one or more equality group as a result of this initiative? If so, who may be affected and why? Or is it clear at this stage that it will be equality “neutral”?**

Consultation has taken place with Unison and no significant concerns have been raised about equality issues due to protected characteristics.

**Q.3. Is the impact of the initiative - whether positive or negative - significant enough to warrant a more detailed assessment (Stage 2 - see guidance)? If not, will there be monitoring and review to assess the impact over a period of time? Briefly (bullet points) give reasons for your answer and any steps you are taking to address particular issues, including any consultation with staff or external groups/agencies.**

Due to the response in Q2, it is felt that a more detailed assessment is not required at this time. The policy will be reviewed in 3 years’ time and at this point, the equality impact assessment will also be reviewed to ensure that the impact on those covered by

the Equality Act remains “neutral”.