

URN: 23-106

Report Title: Performance Management (Capability) Policy & Process

Report to: Cabinet

Date of meeting: 29 January 2024

Responsible Cabinet Member: Councillor Carl Smith

Responsible Director / Officer: Karen Sly/Sarah Tate

Is this a Key decision? No

Date added to Forward Plan of Key Decisions if a Key Decision: N/A

EXECUTIVE SUMMARY / INTRODUCTION FROM CABINET MEMBER

This report presents the new Performance Management policy to cabinet following full consultation with the Executive Leadership Team (ELT), UNISON and the Joint Consultative Working Group (JCWG).

RECOMMENDATIONS:

That Cabinet

1. Approves the new Performance Management Policy and;
2. Gives delegated authority to the Head of Organisational Development to make minor and/or consequential amendments to the Policy for the purpose of keeping it up to date, clarifying its content or interpretation, correcting any errors or omissions, updating it in accordance with changes in legislation, and/or caselaw, or with changes in the management structure.

1. Introduction

The Council provides essential and important services to the borough and its residents. Key to it being able to function at the required level is ensuring that our employees are competent to undertake the whole of their role at an acceptable and safe standard.

This policy, which has been agreed with Unison, takes into account the Acas Code of Practice on disciplinary & grievance procedures and sets out the procedure which we will normally follow when performance has been identified as falling below an acceptable level. Its purpose is to provide a framework for resolving poor performance in a fair and supportive manner. All employees have a duty to cooperate with Council policies and will be encouraged to help identify the reason(s) for poor performance and how it can be improved.

The current policy has been revised taking account of up-to-date legislation, the ACAS Code of Practice and reflects learnings from recent cases and case law.

2. Work to date/proposal

The policy has been thoroughly reviewed and updated by HR and has been through the consultation process with ELT, UNISON and JCWG aiming to help managers and employees who are involved in the process, to signpost the support available, consistent with other recent policies.

Feedback has been constructive and only minor amendments were made to the draft policy for clarity. UNISON and the JCWG, independently provided very similar feedback.

It is proposed that Cabinet approve the policy.

The Head of Organisational Development is seeking delegated authority to make minor and/or consequential amendments to the Policy for the purpose of keeping it up-to-date, clarifying its content or interpretation, correcting any errors or omissions, updating it in accordance with changes in legislation and/or case law, or with changes in the management structure.

3. Impact / Next Steps

Once the policy has been approved it will be made available to staff via the Loop and training will be provided as and when required.

4. Financial Implications

None at this stage.

5. Risk Implications

The current policy is out of date and needed revision. The risk of not approving this policy is that we continue to work with an outdated policy which is not fit for purpose.

6. Legal Implications

The revised policy considers and is compliant with all relevant employment legislation, ACAS guidance and case law.

7. Background Papers

- Current Capability Policy
- ACAS Code of Practice

Consultations	Comment
Monitoring Officer Consultation:	Considered

Section 151 Officer Consultation:	Considered
Existing Council Policies:	Capability Policy
Financial Implications:	Considered
Equality Issues/EIA:	Considered



Performance Management (Capability) Policy & Procedure

Author	Human Resources
Version No.	2
Updated by	HR
Date of update	January 2024
Description of changes to this version	Updated
Document Status	DRAFT
Next review date:	November 2026

1 Introduction

- 1.1 The Council provides essential and important services to the borough and its residents. Key to it being able to function at the required level is ensuring that our employees are competent to undertake the whole of their role at an acceptable and safe standard.
- 1.2 This policy, which has been agreed with Unison, takes into account the Acas Code of Practice on disciplinary & grievance procedures and sets out the procedure which we will normally follow when performance has been identified as falling below an acceptable level. Its purpose is to provide a framework for resolving poor performance in a fair and supportive manner. All employees have a duty to cooperate with Council policies and will be encouraged to help identify the reason(s) for poor performance and how it can be improved.
- 1.3 This policy applies to all Council employees, other than the Chief Executive and Chief Officers who are covered by separate arrangements and also employees who are subject to an initial probationary review period, who will be managed under the Probationary Policy.
- 1.4 This policy does not form part of your contract of employment, and we reserve the right to amend or remove it.
- 1.5 Day-to-day supervision of employees is outside the procedure's scope. For example, there will be occasions when it is appropriate for a manager to discuss issues with an employee as part of normal supervisory arrangements and without recourse to the formal procedures.
- 1.6 Timescales given under this policy may be varied, including by mutual consent, or where the unsatisfactory performance is considered to be sufficiently serious, when the procedure may be shortened.
- 1.7 This policy applies to capability related to performance. For capability related to ill health or sickness absence, refer to The Sickness Management Policy.
- 1.8 No matter what the outcome, we will keep a written record of all performance management cases to help with any questions or similar cases in the future.

2 Employee Assistance Programme – provided by Vivup / Norfolk Support Line

Our employees have access to free confidential telephone support 24/7, 365 days a year to Norfolk Support Line, including face to face and virtual counselling, self-help workbooks and podcasts and blogs. Norfolk Support Line also provide a range of information and signposting for practical support for problems at work and at home. To access the service call 0800 169 7676, or go to the Norfolk Support Line website.

3 Definitions of performance management and capability

- 3.1 For the purposes of this policy, 'capability' refers to an employee's ability to do their job, including their skills, ability, aptitude, knowledge and also their attitude and/or behaviours, where it is having a negative or detrimental effect on the required job performance. Capability due to performance will be managed under this policy and will be referred to as 'performance management', the process by which performance concerns will be managed.

3.2 It should be noted that there can be a close relationship between performance, health/attendance and conduct and sometimes the circumstances may mean that we need to follow more than one policy at the same time or switch to using a different policy.

For example, if we decide that the issues are misconduct-related (i.e., general poor attitude/behaviours, an unwillingness to improve, believed to be the result of deliberate negligence or where serious errors have been made to the detriment of the organisation) rather than performance related (i.e., due to inability), we may decide to use our disciplinary procedure instead. Steps taken under this Policy will be taken into account and we won't do the same things twice unless there's a compelling reason to do so.

Where an employee's inability to meet required standards of performance may be due to ill-health or absence, reference should be made to the Council's Sickness Management Policy and Procedure.

4 Our expected standards

The standards of performance which we expect you to achieve are communicated to you in several ways including:

- In your job description, which sets out the basic requirements of your role.
- Reasonable duties and tasks in addition to your job description but commensurate with your grade, the role and your abilities
- Through 1-1 meetings with your line manager. It is the responsibility of your line manager to set the required standards for your role and ensure that they are met.
- Through our PDR (appraisal) process, where you will work with your line manager to set clear performance objectives which will be reviewed regularly.
- Through day-to-day feedback you receive from your line manager and those you work with.
- Through our Values, contained within The Plan 2020-2025 (accessible on the Loop), and [Agreed Behaviours Framework](#)
- Through our Customer Service Charter https://the-loop.great-yarmouth.gov.uk/media/3544/Customer-Service-Charter-Poster/pdf/Customer_Service_Charter_-_Poster.pdf?m=1539800340880
- Through the Officers Code of Conduct, which is at Article 44 of the [Council's Constitution](#).

5 Fairness and respect

Everyone is entitled to be treated calmly and with respect and we will not tolerate abusive or insulting behaviour, including from anyone taking part in a performance management procedure, and will treat any such behaviour as potential misconduct (see Disciplinary Policy).

5.1 If you have any misgivings about either the process, or the manager leading it, you should tell us openly so that we can address your concerns. You can do this by speaking to your manager, if you feel able to, or by speaking to HR; alternatively, you may wish to refer to the Grievance Policy.

5.2 If you have a disability or are aware of a health-related or other reason which may be underpinning a performance concern, or which may prevent you from participating in the management of your performance, you should inform your manager and HR as soon as possible. If we think that a disability, health or other reason may be impacting on your performance we will discuss it with

you, and depending on the circumstances, we may seek your consent to refer you to Occupational Health. Referrals are made by HR.

5.3 Referrals to Occupational Health are intended to be a supportive measure and you are strongly advised to consent to a referral to Occupational Health when requested, to attend an appointment with Occupational Health (which may be by phone/Teams or face to face) and agree to the release of a report. You should be aware that where you do not, the manager / Head of Service / Appeal Officer may proceed with a meeting/hearing without the benefit of advice from occupational health and will have to make decisions based on the information they have available to them, in consultation with HR. As this could be to your disadvantage, you are strongly advised to speak to your union representative, if you have one, or HR.

5.4 We will make every effort to ensure that any meeting (*for the purposes of this policy 'meeting' includes meetings or hearings*) we hold under this procedure is scheduled for a time and place that is reasonable and within your normal working hours. You (and your colleague/representative(s)) should make every effort to attend the hearing. You should let us know as soon as possible if there is a reason why you or your chosen companion cannot attend the meeting at the arranged time.

- If you are unable to attend a meeting you should inform the manager and HR as soon as possible, with an explanation.
- If you feel you are not able to attend a meeting due to ill health or disability, you should discuss this with the line manager and HR as soon as possible. With your consent, we will normally seek a medical opinion/advice from the Council's Occupational Health provider (see 5.2 and 5.3 above).
- If you are unable to attend a meeting face-to-face, you should inform the manager and HR as soon as possible, so that we can look at alternative ways of conducting the meeting, which may involve holding it at an alternative location or conducting it remotely (we will seek to ensure that you and your representative, if you have one, have access to the necessary technology for participating in the meeting and that the procedure remains fair and reasonable).
- If you fail to attend a meeting without notifying us in advance, we will seek to ascertain the reason(s) and consider how it should be managed i.e., proceed with the meeting, arrange a further meeting or make an OH referral (with your consent), manage it as unauthorised absence or other.
- If your chosen companion/trade union representative cannot attend on a proposed date, you can suggest an alternative time and date so long as it is reasonable and is not normally more than 10 working days after the original date (unless due to exceptional circumstances), otherwise we reserve the right to proceed with the original meeting.
- We will usually reschedule a meeting once, provided we are satisfied with your reason for not attending, for a jointly agreed time not normally exceeding 10 working days. We will not reschedule the meeting a second time unless there is a very good reason to justify this.
- Note that depending on the circumstances we may not reschedule a meeting at all if we decide it is likely to lead to an unreasonable delay and we may instead have to make our decision on the performance issue without you being present.
- By agreement with the Chair of the meeting, you may send your colleague/representative to a meeting on your behalf and/or may make representations in writing. However, we reserve the right to proceed with a meeting in your absence when it has not been possible to arrange a meeting that you are able to attend.

5.5 A written record of all meetings conducted under this procedure will be made, either by the person holding the meeting or by an additional person arranged by us to take notes, for example a member of HR or Democratic or Executive Services; notes taken will be shared with you. You, or

any person acting on your behalf, may also take your own notes if you wish to but you are not normally permitted to record electronically any meeting that we hold under this procedure. This is to encourage openness and full participation.

We may choose to record, or permit a meeting to be recorded electronically, when we will take responsibility for making the recording, including a meeting which is held remotely, provided that all parties agree. Any such recording will be made in line with our data protection obligations.

You or your companion must not covertly record a meeting e.g., using a mobile phone, as this suggests that you do not trust our process or the managers who are conducting the hearing. If you/your companion covertly record a meeting, or attempt to do so, it will be considered a breach of this provision and dealt with under the Disciplinary Policy, which may lead to disciplinary action, which could include dismissal. If you have misgivings about either the process or the managers leading it, you should tell us openly so that we can address your concerns. In turn, we will not record the meeting without your knowledge.

- 5.6 We will keep a written record of any performance management cases we deal with and will place information on the relevant employee file(s). This will be processed in accordance with our [Data Protection Policy](#).
- 5.7 Sometimes circumstances may prevent parts of this procedure from being followed in full and may require a change. For example, if a specified manager/meeting chair is unavailable, we may appoint an alternative.
- 5.8 Managers should remind employees of the support available from the Council's Employee Assistance Programme, Norfolk Support Line and continue to hold regular 1-1's and PDR's.

6 Right to be accompanied

- 6.1 You are entitled to be accompanied by a colleague (companion), an official employed by a trade union or a workplace trade union representative, who is not acting in a legal capacity, at all meetings held under the formal performance management procedure. Informal meetings or discussions, 1-1's, PDRs, and mediation or counselling sessions do not attract the right to be accompanied.
- 6.2 If you want to be accompanied, you should tell your line manager/the meeting chair as soon as possible who you want to accompany you and the capacity in which they are attending. If you choose a work colleague, they must not be involved in matters relating to your performance management or be a close relative. It is your responsibility to arrange for them to attend. We will not prevent them from attending, but we may rearrange the meeting if their absence from work could cause operational problems.
- 6.3 You may, at management's discretion, also be allowed to bring a companion who is not a colleague or union representative. This will be considered in circumstances such as where your first language is not English, or to help overcome a disability, when you may be allowed to bring a support worker or family member experienced in managing your disability, who is not acting in a legal capacity or involved in your case.

6.4 Should there be a formal meeting, your colleague or union representative can, if you prefer, explain the key points of your case to the meeting and can respond on your behalf. You can also confer with them during the meeting. However, they must not answer questions put directly to you, or try to prevent us asking questions or outlining our arguments.

7 Performance Management Procedure

7.1 Serious performance concerns / gross incapability of performance

In exceptional circumstances the actions and omissions of an employee may be considered gross incapability/incompetence. This would occur where the actual/potential consequences of any action/omission are considered so serious as to render the continued employment of the employee impossible, e.g., where others are put at risk of serious injury or death, or the Council's finances or reputation are put at serious risk.

In such cases consideration will be given to suspending you from duty pending further investigation and to allow a Performance Management Hearing to be convened. If the lack of performance is considered to be so serious as to amount to gross incapability / incompetence you may be dismissed without previous warning and without notice (i.e., summary dismissal) at the Hearing.

7.2 Suspension and alternative options

Where we consider your performance/lack of ability to be so serious as to endanger the welfare and safety of the public and/or your colleagues, your manager will consider whether there is a need to suspend you from work as a precautionary measure. If you are suspended it will be on full pay, subject to you being contactable and available to attend work and/or meetings and not undertaking work with another employer.

Managers should only use suspension after very careful consideration as it can leave individuals feeling prejudged, demotivated and devalued. You should be reassured that a fair procedure will follow in which your point of view will be listened to and fairly considered.

For the procedure which should be followed when considering suspending an employee, including consideration of alternative options, managers/decision makers must refer to the suspension checklist (see Disciplinary Policy) and ACAS advice: www.acas.org.uk/suspension-during-an-investigation. A file note of the considerations will be made by the manager and retained with the performance management case.

Managers should bear in mind that some people may find it upsetting to be suspended and consider when and how to communicate a decision about suspension. If you are suspended, they may encourage you to access some immediate support and to offer help to do this, for example, to offer to contact a colleague, friend or relative of their choosing to meet you immediately and remind you of the employee of the Council's Employee Assistance Programme, provided by Norfolk Support Line.

Your line manager/designated deputy should maintain contact with you, to check on your health and welfare and offer support, where possible this should normally be a minimum of weekly. You should remain contactable during your normal working hours and should contact your manager or HR if you need advice, help or support.

The suspension should be regularly reviewed by the person who made the original decision to suspend.

7.3 Informal performance management

When your manager has a concern about your performance, they will usually manage it informally in the first instance, as part of the normal line management process. They should raise their concerns with you as soon as they arise, which may be via the 1-1 process, providing confirmation of the standard that is expected of you and the timescales by which the required improvement should be made. You should engage in such discussion and help identify any factors which you believe may be contributing to it, and anything which may help resolve it, so that your manager can take it into account when considering suitable and reasonable steps to support you and help you to improve your performance, such as further training, additional support, reallocation of work and/or other measures.

Your manager will make a written record of the meeting (see Section 5.5) which will detail the concerns shared with you, the standards required and the support you will be provided to achieve this standard. You can make a written record but must not record meetings, including covertly; to do so, or attempt to do so, may lead to disciplinary action including dismissal. If you have any concerns about the support provided, you should speak to your manager in the first instance, if you feel able to, or HR, or your union representative, if you have one.

The details of the meeting/1:2:1 and agreed actions should be confirmed in writing, usually within 2 working days of the meeting. A Performance Improvement Plan (PIP) may also be prepared and form part of this.

In exceptional circumstances, where your manager considers that informal management has not resolved the performance issues within the required timescales, they may extend the period of review or refer to the formal stages of this policy and will inform you of this.

If your manager considers that the performance issues are sufficiently serious that they need to be placed on a formal footing at an early stage, you will be informed of this and the reason(s) why.

7.4 Performance Improvement Plan (PIP)

A PIP is a document we use to provide employees with a structured approach to help them to work to their full potential and should help you to focus on the improvement required and for your manager to assess improvement. It can be put in place at an informal stage, following a performance review or a 1-1 meeting in circumstances where you are experiencing difficulties in doing your job role or meeting specific targets and/or during or following an informal or formal performance improvement meeting. HR can provide advice and a template to managers.

Your line manager may prepare a PIP with you, outlining any existing performance issues in relation to you, including possible reasons for you underperforming and outlining ways in which performance issues can be addressed. Whilst we will seek to agree the PIP with you, we reserve the right to insist on any aspect of the PIP if agreement cannot be reached.

A PIP should:

- a Identify the particular areas where improved performance is required.
- b Consider/explain the possible cause(s) of these issues
- c Describe the areas that need improvement and the expected standard
- d Describe the evidence we will look at to check whether those standards have been met.

- e Set out the timescale in which the necessary improvement must be achieved for meeting the expected standards, including any incremental goals, objectives or targets.
- f Set out any supportive measures we will put in place to help you meet those objectives. This may include training, additional supervision, the reallocation of duties and the provision of additional support from your colleagues.
- g Set out the next date for you and your manager to meet to review the performance.

You will be given regular feedback from your line manager indicating the extent to which you are on track to deliver the required improvements. If at any stage your manager feels that your performance is not progressing in a satisfactory way, a further meeting may be held with you to discuss this and where appropriate, your PIP may be amended and/or extended (in exceptional circumstances) or you may be asked to attend a formal meeting under the next stage of this procedure. Where your performance worsens, action may be taken before the end of the review period.

7.5 Agreed Outcome

If, before, or during performance management, an employee admits, acknowledges and/or accepts the allegations made against them regarding their performance and the facts are not in dispute the Designated Manager may, with the agreement of the relevant Head of Service and Head of Organisational Development and the member of staff, proceed to issue a sanction, as an Agreed Outcome.

If an Agreed Outcome is reached, matters will be concluded without going through a Performance Management Hearing. If you are considering an Agreed Outcome you are encouraged to speak to your union representative, if you have one, or you may wish to speak to a colleague or contact HR if you do not (HR cannot make the decision for you). An Agreed Outcome will not be offered or accepted in cases of gross misconduct/gross incompetency, where the sanction is potentially dismissal. Prior to an Agreed Outcome, the relevant Head of Service and Head of Organisational Development will consider whether it is appropriate to offer an Agreed Outcome and if so, the outcome which they are prepared to agree, including the level and duration of any sanction to be imposed. Any agreed outcome will be in writing and will require the individual's signature to confirm acceptance.

A request from you for an Agreed Outcome must be made by in writing and must state that it is a request for an Agreed Outcome under this Procedure.

Alongside an Agreed Outcome you will be issued with a PIP/revised PIP.

7.6 Formal performance management procedure

• Formal performance management: Stage 1 Performance management meeting

Where your line manager believes that there is a persistent or more serious problem of poor performance or the required performance has not been sustained and normal/informal day-to-day management has not brought about the required improvement, they will proceed with formal performance management and arrange a Stage 1 Performance Management Meeting, which they will usually chair, supported by HR.

You will be given a minimum of 14 calendar days' notice of the meeting (unless agreed otherwise), which will be confirmed in writing, with case papers to give you time to prepare, with a copy to HR, including:

- That you are invited to a Stage 1 Performance Management meeting,
- The date, time and venue for the meeting along with details of who will be attending i.e., the name of the manager and HR Advisor (and note taker if applicable). (You or your companion can make a written

record but must not record meetings, including covertly, and to do so or attempt to do so may lead to disciplinary action including dismissal. – see Section 5.5).

- A copy of this policy, which we advise you to read in full.
- Details of the areas of performance which require improvement and any documents that will be referred to i.e., 1-1's, PIP.
- That you should submit any documents you wish to be considered to the manager and HR at least 5 calendar days in advance of the meeting.
- That you can be accompanied if you wish. (Section 6 Your right to be accompanied).
- The contact details for our Employee Assistance Programme (Section 2).
- Possible outcomes of the meeting (including whether dismissal might result).

You should review the evidence provided and contact us as soon as possible if there are any other documents, or further evidence, which you would like us to consider. Please provide copies to the Chair and HR of anything you want us to look at least 5 working days before the hearing.

All parties should make every effort to attend the meetings. If you or your chosen companion cannot attend a meeting(s) please let your manager and HR know as soon as possible and refer to Section 5.0, in particular 5.2 and 5.3.

At the meeting:

- Introductions will be made and an overview of how the meeting will be conducted will be given.
- We may arrange for an additional person to make a written/record of the meeting – see Section 5.4.
- The purpose of the meeting will be explained, which is to consider the concerns, including the gap between your actual performance and the required performance, referring to specific examples where possible and any steps taken at earlier stages of the policy.
- We will give you the time and opportunity to respond to the concerns and to put your own case. We will also give you the opportunity to ask questions and present your own evidence. You may request an adjournment of the hearing at any stage.
- The main points of the discussion will be summarised. You can summarise and/or add information if you wish to.
- The meeting will usually be adjourned before a decision is taken to enable the Chair to consider their decision. We may advise you of the outcome following the adjournment, or in writing as soon as possible, usually within 5 working days of the meeting.

Possible outcomes of the meeting include:

- No further action.
- A referral to Occupational Health. if deemed necessary, for which we will seek your consent. The outcome of the meeting may be delayed pending the outcome of this.
- Referring the matter for investigation under the disciplinary procedure, if it is considered to be due to misconduct rather than performance.
- An offer to redeploy you to alternative work, which will be entirely at our discretion. Such an offer will be made only where we are confident that you will be able to perform well in the redeployed role. Redeployment may involve offering you a less challenging role or a role with lesser responsibility, which would not therefore be an equivalent post in terms of seniority and/or pay, for example, and where there will be no salary protection. You would move to the terms and conditions of the new post with immediate effect and would enter the pay range at the equivalent spinal point position where you were in your previous post. Redeployment will only go ahead with your agreement, and you are able to refuse an offer of redeployment if you wish, however the Chair will have to consider which/whether one of the other possible outcomes should apply.

- The issuing of a First Written Warning for performance which will set out:
 - The performance shortfall(s).
 - The required improvement, which will act as a management instruction.
 - The timescale for improvement – i.e., 4 weeks. This will be determined by the manager and discussed with you, taking into account your performance vs the required performance, and any impact it is having i.e., on the manager, your colleagues, the service level / delivery. These timescales should normally be long enough to ensure that there is adequate time to make the required improvements without being detrimental to the Council.
 - Any action that management will take to help you to achieve the required performance i.e., support and/or training – this will usually include the writing of a PIP, if one is not already in place.
 - Any action you need to take to achieve and sustain the required level of performance.
 - That your performance will be monitored and reviewed including toward/at the end of this timescale i.e., 4 weeks, when a decision will be made as to whether it should be escalated to Stage 2 of this procedure, should you fail to achieve the required level of improvement during this time or when any improvement has not been sustained.
 - How long the warning will be in place. Under this policy, First or Final Written Warnings are usually be issued for a period of up to 12 months. Your manager will review your performance during this time and after the period defined above i.e., 4 weeks, and/or as required.
 - That you have a right of appeal against the decision to issue you with a Written Warning for performance.
- Approximately halfway through the timescale i.e., 2 weeks if the timescale is 4 weeks, your manager will meet with you informally to discuss and assess progress and highlight any areas still needing to be addressed. The manager will produce notes of the meeting and share these with you within one week. If the standard of work is still unacceptable, this will be clearly stated.
- At the end of the timescale i.e., 4 weeks, your manager will meet with you to review your performance with you. In doing so, they will consider whether your performance has improved to the required level, and has been sustained at the required level, and make a decision:
 - Where your performance has improved to the required level, they will inform you in writing and continue to monitor your performance for the period of the warning. As long as you maintain your performance at the required level no further action should be required. Where performance subsequently lapses during the period of the warning, a further 4-week review period will be required and if there is no improvement/the required improvement after that, or if there is a further lapse the manager will consider whether it should proceed to a formal hearing.
 - Where a Stage 1 warning has not led to the required improvement in performance within the timescale specified, or the improvement has not been sustained, the next stage of the procedure will be triggered. You will be informed in writing, with a copy to HR, and details of the arrangements for the next formal meeting. I.e., where a First Written Warning was issued, a Stage 2 meeting will be arranged.

- **Formal performance management: Stage 2 Performance meeting**

Where a Stage 1 Performance meeting and the issuing of a First Written Warning for performance has not brought about the required improvement, or an improvement has not been sustained, the manager will arrange a Stage 2 Performance Meeting, which they will usually chair, supported by HR.

You will be given a minimum of 14 calendar days' notice of the meeting (unless agreed otherwise), which will be confirmed in writing with case papers to give you time to prepare, with a copy to HR, including:

- That you are invited to a Stage 2 Performance Management meeting.
- The date, time and venue for the meeting along with details of who will be attending i.e., the name of the manager and HR Advisor (and note taker if applicable). (You or your companion can make a written record but must not record meetings, including covertly, and to do so or attempt to do so may lead to disciplinary action including dismissal. – see Section 5.5).
- A copy of this policy, which we advise you to read in full.
- Details of the areas of performance which require improvement, any documents that will be referred to i.e., 1-1's, PIP and previous warning(s) given under this policy.
- That you should submit any documents you wish to be considered to the manager and HR at least 5 calendar days in advance of the meeting.
- That you can be accompanied if you wish. (Section 6 - Your right to be accompanied).
- A reminder of the contact details for our Employee Assistance Programme (Section 2).
- Possible outcomes of the meeting (including whether dismissal might result).

You should review the evidence provided and contact us as soon as possible if there are any other documents, or further evidence, which you would like us to consider. Please provide copies to the Chair and HR of anything you want us to look at least 5 working days before the hearing.

All parties should make every effort to attend the meetings. If you or your chosen companion cannot attend a meeting(s) please let your manager and HR know as soon as possible and refer to Section 5.0, in particular 5.2 and 5.3.

At the meeting:

- Introductions will be made and an overview of how the meeting will be conducted will be given.
- We may arrange for an additional person to make a written/record of the meeting – see Section 5.4.
- The purpose of the meeting will be explained, which is to consider the concerns, including the gap between your actual performance and the required performance, referring to specific examples where possible and any steps taken at earlier stages of the policy.
- We will give you the time and opportunity to respond to the concerns and to put your own case. We will also give you the opportunity to ask questions and present your own evidence. You may request an adjournment of the hearing at any stage.
- The main points of the discussion will be summarised. You can summarise and/or add information if you wish to.
- The meeting will usually be adjourned before a decision is taken to enable the Chair to consider their decision. We may advise you of the outcome following the adjournment, or in writing as soon as possible, usually within 5 working days of the meeting.

Possible outcomes of the meeting include:

- No further action.

- A referral to Occupational Health, if deemed necessary, for which we will seek your consent. The outcome of the meeting may be delayed pending the outcome of this.
- Referring the matter for investigation under the disciplinary procedure, if it is considered to be due to misconduct rather than performance.
- An offer to redeploy you to alternative work, which will be entirely at our discretion. Such an offer will be made only where we are confident that you will be able to perform well in the redeployed role. Redeployment may involve offering you a less challenging role or a role with lesser responsibility, which would not therefore be an equivalent post in terms of seniority and/or pay, for example, and where there will be no salary protection. You would move to the terms and conditions of the new post with immediate effect and would enter the pay range at the equivalent spinal point position where you were in your previous post. Redeployment will only go ahead with your agreement, and you are able to refuse an offer of redeployment if you wish, however the Chair will have to consider which/whether one of the other possible outcomes should apply.
- The issuing of a Final Written Warning for Performance which will set out:
 - The performance shortfall(s).
 - The required improvement, which will act as a management instruction.
 - The timescale for improvement – i.e., 4 weeks. This will be determined by the manager and discussed with you, taking into account your performance vs the required performance, and any impact it is having i.e., on the manager, your colleagues, the service level / delivery. These timescales should normally be long enough to ensure that there is adequate time to make the required improvements without being detrimental to the Council.
 - Any action that management will take to help you to achieve the required performance i.e., support and/or training – this will usually include the writing of a PIP, if one is not already in place.
 - Any action you need to take to achieve and sustain the required level of performance.
 - That your performance will be monitored and reviewed including toward/at the end of this timescale i.e., 4 weeks, when a decision will be made as to whether it should be escalated to Stage 2 of this procedure, should you fail to achieve the required level of improvement during this time or when any improvement has not been sustained.
 - How long the warning will be in place. Under this policy, First or Final Written Warnings are usually issued for a period of up to 12 months. Your manager will review your performance during this time and after the period defined above i.e., 4 weeks, and/or as required.
 - That you have a right of appeal against the decision to issue you with a Final Written Warning for performance.
- At the end of the timescale i.e., 4 weeks, your manager will meet with you to review your performance with you. In doing so, they will consider whether your performance has improved to the required level, and been sustained at the required level, and make a decision:
 - Where your performance has improved to the required level, they will inform you in writing and continue to monitor your performance for the period of the warning. As long as you maintain your performance at the required level, no further action should be required. Where performance subsequently lapses during the period of the warning, a further 4-week review period will be required and if there is no improvement/the required improvement after that, or if there is a further lapse the manager will consider whether it should proceed to a formal hearing.
 - Where the warning has not led to the required improvement in performance within the timescale specified, or the improvement has not been sustained, the next stage of the

procedure will be triggered. You will be informed in writing, with a copy to HR, and details of the arrangements for the next formal meeting. Where a Final Written Warning was issued, a Stage 3 Performance Meeting will be arranged, where one of the possible outcomes is dismissal for capability (performance).

- **Formal Performance management: Stage 3 performance Management Meeting**

Where a Stage 2 Performance Management meeting and the issuing of a Final Written Warning for Performance has not brought about the required improvement, or an improvement has not been sustained, the manager will arrange a Stage 3 Performance Hearing, which will be chaired by a Head of Service and supported by HR. The line manager will be asked to prepare a report and attend the meeting to present it and to respond to any questions. You may ask questions and may also be asked questions.

You will be given a minimum of 14 calendar days' notice of the meeting (unless agreed otherwise), which will be confirmed in writing with case papers to give you time to prepare, with a copy to HR, including:

- That you are invited to a Stage 3 Performance Management meeting.
- The date, time and venue for the meeting along with details of who will be attending i.e., the name of the manager and HR Advisor (and note taker if applicable). You or your companion can make a written record but must not record meetings, including covertly, and to do so or attempt to do so may lead to disciplinary action including dismissal. – see Section 5.5.
- A copy of this Policy, which we advise you to read in full.
- Details of the areas of performance which require improvement, any documents that will be referred to i.e., 1-1's, PIP and previous warning(s) given under this policy.
- That you should submit any documents you wish to be considered to the manager and HR at least 5 calendar days in advance of the meeting.
- That you can be accompanied if you wish. (Please refer to section 6 Your right to be accompanied).
- Possible outcomes of the meeting (including whether dismissal might result).
- A reminder of the contact details for our Employee Assistance Programme (Section 2).
- That you should submit any documents you wish to be considered to the manager and HR at least 5 calendar days in advance of the meeting.
- That you can be accompanied if you wish. Refer to 'Your right to be accompanied'.
- Possible outcomes of the meeting, including that dismissal might result.

You should review the evidence provided and contact us as soon as possible if there are any other documents, or further evidence, which you would like us to consider. Please provide copies to the Chair and HR of anything you want us to look at least 5 working days before the hearing.

All parties should make every effort to attend the meetings. If you or your chosen companion cannot attend a meeting(s) please let your manager and HR know as soon as possible and refer to Section 5.0, in particular 5.2 and 5.3.

At the meeting:

- Introductions will be made and an overview of how the meeting will be conducted will be given.
- We may arrange for an additional person to make a written/record of the meeting – see Section 5.4.
- The purpose of the meeting will be explained, which is to consider the concerns regarding your performance i.e., the gap between your actual performance and the required performance, referring to specific examples where possible and any steps taken at earlier stages of the policy.
- The manager will be asked to present their case and to answer any questions.

- You will be given the time and opportunity to ask questions, respond to the concerns raised and to present your own case.
- Either party may request an adjournment of the hearing at any stage
- The main points of the discussion will be summarised. You can summarise and/or add information if you wish to.
- The meeting will usually be adjourned before a decision is taken to enable the Chair to consider their decision. We may advise you of the outcome following the adjournment or at a later date; where possible we will do so in person, and in any event the decision will be confirmed in writing, usually within 5 working days of the meeting.

Possible outcomes of the meeting include:

- No further action. (With details of possible outcomes should performance subsequently lapse).
- A referral to Occupational Health. if deemed necessary, for which we will seek your consent. The outcome of the meeting may be delayed pending the outcome of this.
- Referring the matter for investigation under the disciplinary procedure, if it is considered to be due to misconduct rather than performance.
- An offer to redeploy you to alternative work, which will be entirely at our discretion. Such an offer will be made only where we are confident that you will be able to perform well in the redeployed role. Redeployment may involve offering you a less challenging role or a role with lesser responsibility, which would not therefore be an equivalent post in terms of seniority and/or pay, for example, and where there will be no salary protection. You would move to the terms and conditions of the new post with immediate effect and would enter the pay range at the equivalent spinal point position where you were in your previous post. Redeployment will only go ahead with your agreement, and you are able to refuse an offer of redeployment if you wish, however at this stage the only alternative available will usually be dismissal. If we consider that there is no suitable alternative role available, you may be dismissed.
- A decision to dismiss you on the grounds of performance. Any dismissal will be with full notice, or a payment in lieu of notice, unless it is due to gross incompetency/summary dismissal, when no notice is due.

- **Formal performance management: Right of appeal**

At each stage of the formal process (Stages 1, 2 and 3), you have the right to appeal against the decision made.

In relation to Stage 1, 2 and Stage 3 appeals, we may choose to continue with the performance improvement process while your appeal is being considered, unless you have been dismissed. This is to prevent the process from being derailed, or delayed, by one or more appeals being inserted into the timeframe.

You must submit your appeal in writing within 10 working days of receiving your outcome letter, clearly setting out what stage and outcome you are appealing and your grounds for appeal, to the HR department. Please also let us know if you will be accompanied and if so, in what capacity they will be attending (see Section 6. Right to be accompanied) to hr@great-yarmouth.gov.uk.

Once we have received your letter of appeal, we will arrange an appeal hearing. An Appeal Officer will be appointed to hear your appeal. Appeal Officers will not usually have had any involvement in the process or the allegation up to this point. For Stages 1, 2 and 3 the Appeal Officer will usually be a Head of Service, supported by an HR, except where your appeal is against dismissal, when the Appeal Officer will usually be a member(s) of the Executive Leadership Team (ELT), supported by HR.

You will be given a minimum of 14 calendar days' notice of the meeting (unless agreed otherwise), which will be confirmed in writing, with a copy to HR, including:

- The arrangements for your appeal hearing, including date, time and venue and details of who will be attending i.e., the name of the Chair, HR representative (and note taker if applicable). You or your

companion can make a written record but must not record meetings, including covertly - see Section 5.5.

- A copy of this policy, which we advise you to read in full.
- That you should submit any additional documents you wish to rely on to the manager and HR at least 5 calendar days in advance of the meeting.
- That you can be accompanied if you wish. (Please refer to section 6 Your right to be accompanied).
- Possible outcomes of the meeting.

All parties should make every effort to attend the meetings. If you or your chosen companion cannot attend a meeting(s) please let your manager and HR know as soon as possible and refer to Section 5.0, in particular 5.2 and 5.3.

The appeal could involve a review of the original decision, taking account of the specific grounds of appeal you have raised. Alternatively, it could involve a full re-hearing of the matter. HR and the appropriate appeals manager will decide which approach is most appropriate for your case.

You should be aware that our appeal officers are not limited in their options when considering your appeal. They can, if they believe it appropriate, decrease a sanction, approve/confirm the original outcome, remove a sanction or in some cases, increase a sanction, where there is justification for doing so. Where a sanction is increased the employee will have a further right of appeal.

Appeal hearing

For appeals against warnings issued at Stage 1, Stage 2 and 3 the Chair (Appeal Officer) will usually be a Head of Service, supported by HR, except where your appeal is against dismissal, when the Chair (Appeal Officer) will usually be a member(s) of the Executive Leadership Team (ELT), supported by HR.

At the meeting:

- The Chair (Appeal Officer) will remind parties of the reason for the meeting.
- Introductions will be made and an overview of how the meeting will be conducted will be given.
- We may arrange for an additional person to make a written/record of the meeting – see Section 5.4.
- You will be asked to provide an opening statement and present your reasons for appeal. You may be asked questions by the Chair, HR or Manager (or Head of Service where your appeal is against dismissal).
- The manager (or Head of Service, for appeals against dismissal) will be asked to present their response.
- All parties will be given the time and opportunity to ask questions and respond to the concerns raised.
- Either party may request an adjournment of the hearing at any stage.
- Both parties will be able to re-examine any evidence before they proceed to give their final statements.

Appeals Officer(s) considerations / questions may include, for example:

- How long you have been in your current role.
- Any previous roles with the Council.
- How long your performance has been a concern and when you were informed.
- An assessment of the reasons given regarding your poor performance.
- Measures taken to support you to improve and how effective they were.
- Measures you have taken to improve and how effective they were.
- Whether you were given sufficient time given to correct the poor performance
- Warnings given that the poor performance could result in a warning, or dismissal.
- If different work was possible, whether it was reasonable to expect it to have been offered.
- The type of evidence collected, who was consulted and whether there was anything that was not done as part of the process which could have been done.

- Whether there are fair grounds for believing you were incapable of performing at the necessary level

At the conclusion of the Appeal Hearing, the Chairperson will, if possible, advise you of the outcome, either on the day (following an adjournment to enable the Appeal Chair to consider their decision) or by letter; we will usually aim to do this within 10 calendar days of your appeal hearing. In any event the outcome will be confirmed in writing as soon as possible. The decision you receive on appeal is our final decision and there is no further right of appeal.

Note that references to you (our employee) include the representative acting on your behalf.

8 Other relevant policies

The following internal policies contain additional information and guidance:

- Disciplinary Policy
- Absence Management Policy
- Grievance Policy
- Stress at Work

9 Administration of the Capability - Performance Management Policy & Procedure

HR is responsible for the administration of this policy. Should you have any feedback, please contact hr@great-yarmouth.gov.uk

10 Data Protection

The Council processes any personal data collected during performance management in accordance with its Data Protection Policy. Any data collected is held securely and accessed by, and disclosed to, individuals only for the purposes of managing performance. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the Council's data protection policy immediately. It may also constitute a disciplinary offence, which will be dealt with under the disciplinary procedure.