

Managing Capability Policy and Procedure

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Introduction

Brent Council is committed to providing our customers and colleagues with the highest level of service. The performance of our staff is key to ensuring the high standards we expect to deliver and managers are expected to proactively performance manage staff to maintain these high standards.

Our approach

Employees are expected to perform their duties and responsibilities to the standards set by the Council, and to be supported and assisted in achieving these standards by managers who set, communicate and monitor performance of individuals.

The Managing Capability Policy provides a fair and coherent approach to addressing performance issues, with guidance on best management practice and how to achieve equitable solutions when performance falls below the Council's required standards. Throughout the informal stage emphasis is placed on support and regular feedback, addressing under-performance quickly and setting clear goals and targets. Performance improvement should be achieved through regular supervision, one to one meetings, coaching, mentoring, training and development.

This policy outlines the approach that managers should adopt if informal action has been unsuccessful in achieving performance improvement.

Policy statement

Policy summary

Brent's Managing Capability Policy forms part of the council's performance management framework.

Where informal action does not achieve improvement formal action must be taken.

The policy is designed to work in conjunction with other Council policies (*Managing Alcohol, Drugs and Substance Misuse at Work Policy and Procedure, Attendance Management Policy and Procedure, Disability, One to One Discussions (Supervision), Individual Performance and Development Scheme (IPAD), Disciplinary Policy and Procedure, Grievance Policy and Procedure*). Advice should be taken from Human Resources when dealing with capability issues which are impacted on by any of the above policies.

The Council reserves the right to amend this policy from time to time, after consultation with trade unions recognised by the Council for collective bargaining purposes.

The Council will ensure that the policy is applied fairly to all employees and does not impact negatively on race, gender, religion or belief, sex or sexual orientation or age, gender reassignment, marriage and civil partnership and disability.

Managers should take primary responsibility for the effective implementation of this policy across the Council. They are also responsible for managing the equality impact of the policy and preventing adverse impact on any particular groups of employees wherever possible.

Definitions and general information

Employees

The policy applies to all employees of the Council with the exception of:

- Employees in their probationary period. Issues of under-performance during the probationary period should be handled under the Council's Probationary Procedure
- Teachers, and school based non-teaching staff where the school has a delegated budget
- Temporary employees with less than 12 months continuous employment with the Council
- Agency workers, who are not employees of the Council. Any capability issues should be addressed with the employing agency.

Managing capability policy

Capability is concerned with an employee's inability to undertake and perform tasks to the required standard. This is different to misconduct where the employee is capable of carrying out the tasks but chooses not to.

Any disagreement between management and the employee concerning the interpretation of the policy should be referred to the Assistant Director, People and Development or their delegated representative whose decision will be final.

Deferral of this policy will be by exception as advised by an HR Adviser.

Contractual notice

An employee who is dismissed from the Council's service will normally be entitled to contractual notice or pay in lieu. During the notice period if the employee has not attended work without good cause or has failed to co-operate whilst at work, they will not be paid for any period of non-attendance or lack of co-operation.

Confidentiality

Confidentiality and privacy will be maintained at all times during the managing capability process. This applies to all correspondence, reports and other documentation. Circulation of information will be that which is necessary to ensure a fair process.

Records retention

Records must be kept detailing action taken in relation to the Managing Capability Policy and will be retained on the employee's HR file. These will include:

- The nature of the under-performance
- Action taken and the reasons for it
- Whether an appeal was lodged, and its outcome
- Any subsequent developments.

Correspondence

All correspondence with employees subject to the Managing Capability Policy (including letters convening meetings/hearings, documentary evidence and decisions of hearings) should be delivered either by hand on behalf of the Council, or by recorded or registered post. A further copy should also be sent through the ordinary post.

Qualifications and compliance issues

For certain occupations there is a requirement for an employee to hold a specific regulatory classification and/or to maintain a certain standard in order to carry out their job, (e.g. registration with a professional organisation). Formal action under this policy may have implications for such an employee's membership of a professional organisation and/or their ability to carry out the job.

In such circumstances, formal action may have implications for an employee's ability to continue to undertake the duties/responsibilities of the post. If the employee's continued fulfilment of their job would be compromised, the manager must seek the advice of a Human Resources Adviser either before the meeting is held or during an adjournment.

If a statutory body, such as the Healthcare Professionals Council, is involved (for compliance/ regulated posts), serious under-performance issues may need to be reported whilst steps are being taken to improve performance. This will not preclude matters from being dealt with internally as normal. However, if registration is withdrawn by external regulators, the case will need to be reviewed in order to assess the impact on the individual's ability to continue to do their job.

Where qualification and/or compliance issues may be involved, the relevant Assistant Director and Assistant Director of People and Development or Head of People Services must be consulted before formal action commences.

Swift action

There may be occasions where an employee's level of under-performance exposes the Council to significant risk if the under-performance continues and swift action is therefore necessary. There may be other circumstances which may also warrant prompt action, e.g. an employee refuses to accept that there is a problem with their performance, and refuses to co-operate with attempts to achieve an improvement, or where the employee is grossly incompetent. In such instances, a decision may be made to proceed directly to Stage Two of the policy without taking action under Stage One. In such circumstances advice should be sought from the Assistant Director of People and Development or Head of People Services before any action is taken.

Alternative employment

When managing capability, the manager may consider and discuss with the employee suitable alternative employment with the Council as a means of dealing with under-performance. This may include looking for jobs requiring different skills which are compatible with those possessed by the employee, or for less responsible jobs. If the manager believes that this is an appropriate measure but the employee is reluctant to consider this option, the manager should seek advice from a Human Resources Adviser.

Any offer of alternative employment will be made in writing, setting out why the offer is being made and the consequences of refusing the offer. The employee should be given at least seven working days notice to consider the offer and discuss it with their representative.

Any offer of alternative employment will be made on a salary equivalent to the rate for the new job. Where the grade of the job being offered is lower, the starting salary will be the minimum spinal column point on the new grade and no period of pay protection will apply.

Review meetings

Capability Review meetings provide the opportunity to set and revise targets, review progress, provide feedback and consider any other action that may be required.

Where early intervention and good management practice through the normal channels does not achieve the required improvement in performance, or the under-performance is more serious, the manager must proceed to the next stage (i.e. first formal stage or first formal stage to second formal stage).

Temporary employees

Where performance issues arise which involve temporary employees with less than 12 months continuous service, the procedure set out in below will apply.

Stage One and Two of the capability policy and procedure will be followed in all respects with review periods of between two to six weeks normally. The following factors will be taken into account in deciding the viability of continuing the contract:

- The complexity of the job
- The gap in performance
- The scope for improvement
- The length of the contract remaining.

Where a meeting is convened involving the potential dismissal of the employee, the employee will:

- Be given three working days notice of the meeting
- Have the right to be represented
- Be afforded the opportunity to comment on their performance, present evidence and submit mitigation
- Receive any documentation to be relied upon at the hearing and the names of any witnesses to be called at least three working days before the meeting.

A Human Resources Adviser will attend the meeting to advise the manager.

Where the manager concludes that the employee should be dismissed, but does not have the delegated authority to dismiss, a recommendation will be made to the Head of Service and the Assistant Director of People and Development.

An employee may be dismissed without being given a prior warning.

The employee will have a right of appeal to another Head of Service or Assistant Director.

Action involving trades union representatives

Where concerns about performance involve an employee who is an official of a recognised trades union, the matter should be discussed at an early stage with an official employed by the relevant trades union. The Assistant Director of People and Development or Head of People Services should also be notified as soon as possible about cases involving trades union representatives and will advise if any other action is required. This should not delay managers taking the appropriate steps in the normal way under this policy.

Roles and responsibilities

Employees

Employees must have an understanding of the requirements set out in this policy and ensure that they achieve and maintain satisfactory performance levels. If they have any concerns about their ability to fulfil their duties, employees should inform their manager and co-operate with any strategies implemented to improve the standard of their work.

Line managers

Line Managers are required to implement the capability management procedures fairly and consistently within their teams and ensure that any concerns about performance are addressed promptly and within the timeframes outlined in the procedure.

Directors, Assistant Directors and service heads

Directors, Assistant Directors or Service Heads have authority to dismiss employees. Where the manager conducting the Stage Two hearing is not a Head of Service or more senior manager a recommendation to dismiss will be made to the Head of Service or more senior manager and the Assistant Director of People.

Directors, Assistant Directors or service heads also have authority to hear appeals against dismissal. They should be at the same level of seniority or at a higher level than the manager who took the decision to dismiss.

Human Resources

Human Resources is available to give advice and support and will attend all meetings where dismissal is a possible outcome and appeal hearings.

Representation

Employees have the right to advice and guidance at any formal stage in this procedure. Employees also have the right to be represented and/or accompanied by either:

- A trades union representative
- A work colleague (a person who is a Council worker) but not a legal representative.

It is the employee's responsibility to organise representation on the relevant date. However, as far as possible, employees and their representatives will be consulted on the timing of meetings/hearings.

The representative can put forward a case on behalf of the employee and can give advice and support during the process. The representative cannot, however, answer questions for the employee. The employee must at all stages respond to questions asked during a meeting held under this procedure.

Monitoring and review

Monitoring reports will be presented to corporate and departmental management teams on a quarterly basis, and the Annual Workforce Monitoring report expanded to include full equalities monitoring information.

Application of the policy and decisions taken on capability matters will be monitored to ensure consistency and fairness.

Timescales

All parties involved in the proceedings have an obligation to co-operate in ensuring that processes and timescales set out in this policy are followed. The only exception to this is where the outcome of a case would otherwise be prejudiced. Managers should discuss any variations to the timescale with a Human Resources Adviser and inform their manager before taking any action.

Records of interviews, meetings and hearings

A written record of all interviews and hearings must be made. It will not be a verbatim record but will accurately reflect all of the issues raised at the interview/hearing and the actions required to rectify performance in line with the requirements and standards for the job.

The manager is responsible for producing the record and, if necessary, may arrange for a note taker. Any dispute about the accuracy of the summary will be resolved by the manager with the individual employee. If the employee disagrees with the record of the meeting, they can ask for their comments to be noted for future reference.

Interviews, meetings and hearings will not under any circumstances be taped.

Formal Action

Stage One

A meeting between the employee and the manager will be held. The manager will write to the employee setting out:

- Date and time of the meeting
- The requirement to attend a performance meeting giving seven working days notice
- Concerns about performance which have triggered the need to convene a Stage One meeting
- The right to be represented
- The requirement for the manager and the employee to provide any supporting evidence which they may wish to rely upon at least three working days before the meeting.

The aims of the meeting are to:

- Specify where performance falls short of the standard
- Set targets for improvement

- Identify measures against which performance will be assessed
- Put in place an action plan setting out the support to be provided
- Warn the employee of the consequences if their performance does not improve
- Set a date for a further meeting to review progress against the performance targets set for improvement. The length of the review period will be dependent on the nature of the job up to a maximum of three months, but will normally be for approximately one month.

Stage One outcomes

There are three possible outcomes at the end of the review period.

1. Performance has improved to the required standard and no further action is required, other than to inform the employee of the need to sustain the level of improvement and the consequences of not doing so.
2. Where an employee's performance has not met the standard but there is evidence to show that a further period of monitoring and review is likely to achieve the standard, a decision may be taken to extend the initial review period for a further period of up to one month.
3. The employee's performance has not met the standard and a decision is taken to proceed to Stage Two.

If it is clear during the review period that the employee's performance will not reach the required standard by the end of the period then it is not necessary to wait until the review period is completed before proceeding to Stage Two.

Where a decision is taken to extend the review period, the manager and employee will revise the action plan based on progress made, and the arrangements set out in the plan for monitoring and reviewing performance will be followed.

Where the required level of improvement has been achieved performance will be monitored, and should it not be sustained in the following 12 month period, action may be reinstated at Stage Two of the procedure which could ultimately lead to dismissal. .

The line manager will confirm the outcome of the meeting in writing within five working days of the verbal notification of the decision.

There is no right of appeal against a Stage One outcome.

Stage Two

The meeting will be conducted by the manager and a Human Resources Adviser will attend the meeting. The manager will give the employee seven working days notice of the meeting.

The written notification will set out:

- Date and time of the meeting
- The requirement to attend a Stage Two performance meeting
- The manager's continuing concerns about under-performance which have triggered the need to convene a Stage Two meeting
- The status of the meeting and that the most likely outcome is dismissal
- The employee's right to be represented.

Any supporting evidence to which management or the employee may wish to rely on at the meeting should be provided to the other party and to the manager in advance of the meeting.

The aims of the meeting are to:

- Review performance and the action taken to achieve the required improvement
- Where improvement has been unacceptable consider whether to dismiss or recommend dismissal
- Where it is decided the employee has demonstrated that with further support they are likely to achieve the required level of improvement, review and as appropriate revise, the targets and action plan designed to support the required improvement in performance and allow up to one month to improve
- Monitor progress
- set a date for a formal review meeting.

Stage Two outcomes

There are four possible outcomes:

1. On completion of a Stage Two meeting the employee's performance has not met the required standard and they have not demonstrated that they are likely to achieve the desired improvement within a reasonable period of time. A decision is taken to dismiss or to recommend dismissal.
2. At the end of a Stage Two review period, performance has improved to the required standard and no further action is required. The employee will be informed of the need to sustain the level of improvement and the consequences of not doing so.
 - 3.1 At the end of a Stage Two review period, the required standard has not been reached. A decision may be taken to further extend the review period, by up to one month, where there is evidence to show that a further review period will lead to the required improvement. The employee will be warned that failure to reach the required standard will lead to dismissal.
 - 3.2 At the end of a Stage two review period (section 3.1), where the employee's performance has not met the required standard and there is no prospect of the standard being met. The manager will take a decision to dismiss or recommend dismissal.

The manager will confirm the outcome of the meeting in writing within five working days.

Where the required level of improvement is achieved the employee's performance will be monitored and should it not be sustained in the following 24 month period, action may be reinstated at the Stage Two of the Code which is likely to lead to dismissal.

Dismissal approval process

Where the manager does not have the delegated authority to dismiss approval will be sought from a Senior Manager (Director, Assistant Director or Head of Service) and the Assistant Director of People and Development and the employee informed within five working days of the last review meeting.

Appeals

All employees have a right to appeal against dismissal. An appeal lodged against dismissal does not require the employee to be reinstated pending appeal.

An appeal may be lodged on one or more of the following grounds:

1. Procedure – where failure to follow the correct procedure had a material effect on the decision

2. The facts of the case – where the Hearing Manager came to the conclusion on a material point of fact, which no reasonable person could have reached
3. Sanction – where the decision to opt for dismissal rather than an alternative option was one that would not have been reached by any reasonable Hearing Manager
4. New evidence is available that could not have reasonably been raised at the Stage Two performance meeting and the absence of which had a material effect on the decision.

Appeals will not be allowed on any other grounds.

Appeals must be lodged within 10 days of the date of the letter informing the employee of the outcome of the Stage Two performance meeting. The appeal should be submitted to the manager who took the decision either using the Appeal Registration Form which can be obtained from the Intranet, Human Resources, or the local offices of the trades union or providing in writing the information sought by the form. The manager will copy the appeal to the HR Service Manager.

The appeal notification must set out clearly:

- The grounds for the appeal (i.e. one or more of the four listed above)
- The detailed basis, as far as possible, for each ground of appeal to be relied on
- In the case of new evidence, details of the evidence must be included when lodging the appeal.

The conduct of an appeals hearing is as follows:

- Manager's case examined and questioned
- Case for the employee examined and questioned
- Further questioning and clarification as requested by the Hearing Manager
- Closing statements
- Decision.

Appeals against dismissal on grounds of capability will be heard by a Director, Assistant Director or Head of Service, subject to the Appeal Hearing Manager being at the same level of seniority as, or more senior to, the manager who took the decision to dismiss. Where a Director has taken the decision to dismiss the employee, the appeal will be considered by a Director from another department. The Appeal Hearing Manager will have had no previous involvement in the case.

The employee and (where necessary) their representative will be given in writing giving at least seven working days notice of:

- Date, time and place of the appeal hearing
- Details of the person hearing the appeal and the person presenting the management case
- Their right to attend and be represented at the appeal
- The requirement that any documentation to be relied upon and the names of any witnesses it is proposed to call must be provided to the Appeal Hearing Manager and presenting manager at least three working days prior to the hearing.

The Appeal Hearing Manager is responsible for communicating this information to the employee and their representative.

The Appeal Hearing Manager, in consultation with a Human Resources Adviser where appropriate, will arrange for the employee to receive any documentation to be relied upon by management at the appeal hearing, including the summary record of the

Stage Two meeting at which the decision to dismiss was taken and names of any witnesses to be called, at least three working days before the appeal hearing.

Provided the employee has been given the appropriate notice of the date of the appeal hearing, the appeal may be considered on the basis of the available evidence in the absence of the individual, unless there are acceptable reasons to defer the hearing.

The appeal hearing will not be a full rehearing of the issues, but will only address the specific grounds of appeal set out in the employee's letter of appeal.

The possible outcomes of an appeal hearing are as follows:

1. Uphold the original decision
2. Allow the appeal in its entirety
3. Reduce the severity of the management action.

There is no further right of appeal.

Where the Appeal Hearing Manager decides to uphold the appeal on the grounds of procedure or new evidence, they will have the discretion to either:

- Refer the case back to the original Hearing Manager with advise from an HR Adviser

Appendix One

The following template forms and letters can be found on the intranet or obtained from Human Resources.

1. One to One Discussions (Supervision) Meeting Record Form
2. Model Letter : Stage One Performance Meeting Invite
3. Model Letter: Stage One Performance Meeting Outcome
4. Model Letter: Stage One Outcome – End of Review Period
5. Model Letter: Stage Two Performance Meeting Invite
6. Model Letter: Stage Two Performance Meeting Outcome Pre-Review Period
7. Model Letter: Stage Two Outcome – End of Review Period
8. Model Letter: Stage Two Performance Meeting Dismissal Approval Invite
9. Model Letter: Stage Two Performance Meeting Dismissal Approval Outcome
10. Capability Appeal Registration Form
11. Model Letter: Capability Appeal Hearing Invite
12. Record of Appeal Decision Form
13. Model Letter: Capability Appeal Hearing Outcome