

TONYREFAIL & DISTRICT COMMUNITY COUNCIL

STAFF PERFORMANCE POLICY

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1. Introduction

Policy Statement

Tonyrefail & District Community Council recognises that employees should be treated fairly and that managers should not discriminate against employees in the way they manage performance.

This procedure is a framework for dealing with cases of poor performance in a fair and supportive way. It aims to ensure that any employee's ability to achieve acceptable standards of work are addressed clearly, ensure that supervision, training, counselling and support measures are used to assist the employee to reach the acceptable standard and provide a clear procedure for the termination of employment in cases where the employee is not reaching the acceptable standard of performance.

The definition of 'capability' refers to an employee's inability to perform work which is expected as part of their job role to a required standard due to insufficient skill level or aptitude.

Capability and performance management issues which occur while the employee is subject to disciplinary proceedings will usually be heard only after the disciplinary process has been completed. Where the employee's poor performance is related to behaviour rather than lack of application it should be dealt with through the disciplinary procedure.

Where an employee's capability issues are linked to ill-health these cases should be dealt with under the procedures for dealing with absence from work.

Where an employee's capability issues are linked to poor attendance or wilful poor performance these circumstances will be dealt with under the absence management and disciplinary procedures.

Where an employee's poor performance is related to a qualifying disability under the Equality Act 2010, then requirements of the Act require the Council to make reasonable adjustments in the workplace and reasonable adjustments to the job. The Council must also not discriminate.

Compliance with ACAS Advisory Guidelines

This procedure is drawn from [ACAS advice on how to manage performance](#) (updated March 2015), which identifies best practise in performance managing staff in a fair and supportive way.

Part of these guidelines state that:

- The Council aims to ensure that all employees understand what is expected of them in terms of performance;
- That performance will be monitored via regular supervision meetings with the employee and her/his line-manager and through the annual performance management process;
- Employees are given appropriate training and support to meet those standards.

Compliance with Disability Discrimination Law & the Equality Act 2010

Under the Equality Act 2010 a person has a "disability" if they have a physical or mental impairment that has a substantial and long-term adverse impact on their ability to carry out normal day-to-day activities.

A disabled person is discriminated against if they are treated unfavourably because of something arising in consequence of their ability, and the person discriminating cannot show that the treatment is a proportionate means of achieving a legitimate aim (s.15 Equality Act 2010).

There is also protection for direct and indirect disability discrimination.

The Equality Act 2010 requires the Council to make “reasonable adjustments” where:

- the Council’s provision, criteria or practices put a disabled person at a “substantial disadvantage” compared with a person who is not disabled;
- the Council’s premises have physical features which puts a disabled person at a substantial disadvantage;
- a disabled employee will be put at a substantial disadvantage if they are not provided with an auxiliary aid.

Scope of Policy

This agreement applies to all staff who will be employed at Tonyrefail & District Community Council.

2. General Principles

The following principles will apply to this procedure:

- Problems of poor performance are dealt with quickly and equitably.
- A full explanation will be given to the employee of where they are not meeting the required standard.
- An employee has the right to be accompanied to any meeting held as part of this procedure by their trade union representative, full-time union official, support worker or fellow employee.
- Documentation involved in this procedure will be treated confidentially and only circulated to those directly involved.
- In cases of capability by ill-health the employee needs to inform the Council of their health issues and discuss where their workload and working conditions can be adjusted to accommodate their health issue.

3. Resolving performance issues informally

It is the Council’s responsibility to identify any performance issues as early as possible and take steps to resolve these issues informally by providing support and training to enable the employee to meet the standards required.

A line manager will invite an employee to an informal meeting to discuss the performance issue. The written invitation must also include date, time and venue of meeting, a copy of this capability procedure and a copy of the employee’s job description.

The purpose of this meeting is to find a solution and a way forward should be agreed. The manager should confirm the expectations of the role and the standards required:

- The Council should provide a full explanation of where the employee is not meeting the required standard;
- The Council should define the expected standard of performance and give examples.
- The Council should then examine the occasions where these standards have not been met by the employee and establish the reasons why the desired level of performance has not been achieved.
- The Council should try and establish if there are any outside factors that could have impacted on an employee's performance. Some of these could include excessive workloads, limited resources, lack of training, ill-health, changes in management and the employee's personal circumstances.
- The Council should take into account the employee's perception of how they are performing and any evidence the employee can present to support their case.
- A written record will be maintained by the line-manager, but will not put on the employee's HR file.

The Council should consider the circumstances around the employee's performance issues. Options available at this stage would include:

- Training / retraining / development
- Referral, where appropriate, to Occupational Health or Employee Support Service
- Mentoring / coaching
- Closer supervision for a limited period
- Temporary alterations to duties, which do not change the job, but allow the employee to develop at a slower pace

If the Council has accepted the mitigating reasons around an employee's poor performance, no further action will be taken. If the Council still has concerns about the employee's ability to work to the required standard an action plan with 'SMART' targets should be set with an agreed review date (**normally within 4-6 weeks** of the informal meeting).

SMART targets should always be Specific, Measurable, Achievable, Result-focused and Time-bound. For the purpose of this procedure if targets fall out of this scope, then they will be deemed to be inequitable.

As part of the action plan any areas or outside factors which have been identified as having had an impact the employee's performance, should be addressed; for example, the Council could review an employee's workload or offer an employee more training or a mentor to help support the employee.

Before agreeing to an action plan, employees have the right to discuss and review the action plan with their trade union representative (if applicable). A clear monitoring and feedback procedure should be established and the employee needs to be clear on what they have agreed to.

Where an employment relationship has broken down, the Council may wish to involve an outside mediator to agree an action plan. This mediator will work with the line manager and employee to set SMART targets and objectives with long (3 month) and short term (1 week) deadlines for meeting the targets.

The action plan needs to be agreed by all parties. The consequences of not meeting these deadlines should be made clear - that the capability procedure will move onto the formal procedure.

If the action plan is not agreed by all parties then the Council has the right to impose the action plan or refer the employee to formal stages of the capability procedure. The employee can submit a grievance under the grievance procedure if they feel the action plan imposed on them is unfair.

4. Formal Procedure

If improvements in performance are not achieved informally, the formal procedure will be instigated. A meeting between the line manager and employee will be arranged and the employee must be given written confirmation of the meeting – including the date, time and venue of the meeting. This should happen within **10 working days** of the informal procedure ending.

The written confirmation must also include

- examples of where the employee has not met the desired performance or examples where the employee has not completed targets on their action plan,
- a copy of this capability procedure,
- a copy of the employee's job description,
- names and job titles of all those invited to the formal interview and
- state that the employee has the right to be accompanied to the meeting by their trade union representative, full-time union official, support worker or work colleague.

The letter should also state possible outcomes from the meeting including compulsory redeployment to another post.

If the employee is unable to attend the meeting, they must notify the instigator¹ of the meeting in writing as soon as possible and state the reason for not attending. Failure to attend without a good reason may result in a decision being taken in the employee's absence.

¹ The Clerk unless the Clerk is the subject of the Capability Procedure, then the Chair or the Chair of the Staffing Committee.

Stage 1 Interview

The Staffing Committee will appoint a sub-committee of three councillors to attend the formal interview with the line manager, employee and their companion.

The interview will cover:

- Exploration of the alleged unsatisfactory performance, including reviewing all internal documentation that was taken during the informal process and see if any improvements have been made;
- A review of the SMART targets which were set and timescales for improvement;
- Review the outcome of any training which has been provided;
- Review any other evidence from the employee and line manager to establish if any improvements have been made;
- If the capability issues are around ill-health, then the sub-committee will need to review if any adjustments have been made to support the employee;
- Options on possible remedies with any retraining support.

During the interview both parties will outline and explain their position and can table evidence as well as call any witnesses that support their case. Any documentation either party intend to use in the interview should be submitted to the meeting instigator within a reasonable time of the meeting so that copies can be shared. It is up to each party to organise their witnesses and make sure they are aware of the date, time and venue of the interview. It is also the responsibility of each party to inform the instigator of the name and job title of witnesses **3 days prior** to the formal interview.

After the meeting the sub-committee will review all the evidence and decide what action to take or recommend. At this stage the following options are available:

- No further action;
- After reviewing the evidence, a second action plan (with SMART targets) and deadlines is set, with a date for a second review interview set within **1-3 months following** the first formal interview;
- Recommend changing working practices – for example a change to the employee's working pattern;
- Recommend training;
- Recommend redeployment to another post – this could be to another post with a lower salary. In cases where redeployment is due to ill-health capability then salary and conditions of service will be protected;

In cases where capability issues are on ill-health grounds, the sub-committee can recommend that the employee take sick leave until the employee is certified fit by occupational health.

In cases of more serious performance issues the sub-committee can recommend that the employee proceed to Stage 2 of this procedure.

The employee will be informed of the decision taken by the sub-committee in writing within **5 working days** of the formal interview. The letter will cover:

- The capability issues
- Any decision that has been made and the reasons for that decision
- Any action plan with deadlines and SMART targets with date of review meeting
- The employee's right to appeal
- Make clear that failure to improve performance will result in the employee moving to stage 2 of this procedure.

The outcome of the interview will be recorded and all parties involved in the process need to be clear about the recommendations. The employee will also be issued with a *First Stage written warning* and this will remain on their Human Resources file for 12 months.

Appeals against Stage 1 decisions

Appeals can be lodged by the employee to the Instigator within five working days of the decision taken in the formal interview.

The appeal will be considered **within 15 working days** of receipt and the employee will be informed of the appeal decision in writing.

Three members of the Staffing Committee who were not involved in the original formal interview will review the case.

Decisions on appeals will be final and the employee will be informed in writing **within 5 working days** after the appeal date.

Stage 2

Following an agreed period of time and second review meeting, if improvements in the employee's standards have not taken place; the Instigator will invite the employee to attend a second formal interview.

The letter should make clear that one of the outcomes from this meeting could be that the employee's case is progressed to stage 3 and set out their right to be accompanied in this interview by their trade union representative, full-time union official, support worker or work colleague.

If the employee is unable to attend the meeting, they must notify the Instigator in writing as soon as possible and state the reason for not attending. Failure to attend without a good reason may result in a decision being taken in the employee's absence.

The Staffing Committee will appoint a sub-committee of three councillors to attend the formal interview with the line manager, employee and their companion.

The interview will cover:

- Exploration of the alleged unsatisfactory performance, including reviewing all internal documentation that was taken during stage 1 of this procedure and see if any improvements have been made.
- Explore the areas where the employee has not met the required standard.
- Targets for improvements.
- Identify if there are any further measures that could be put in place.
- The period for review.
- The consequences of failure to improve.

After the meeting the sub-committee will review all the evidence and decide what action to take or recommend. At this stage the following options are available:

- No further action;
- Recommend a time period for a review of progress – set date for review meeting;
- Recommend redeployment to another post – this could be to another post with a lower salary. In cases where redeployment is due to ill-health capability then salary and conditions of service will be protected;
- In cases where capability issues are on ill-health grounds, the sub-committee can recommend that the employee take sick leave until the employee is certified fit by occupational health.

The employee will be informed of the decision taken by the sub-committee in writing **within 5 working days** of the stage 2 formal interview. The letter will cover:

- The capability issues
- Any decision that has been made and the reasons for that decision
- Notice that a final written warning will be placed on the employee's personnel file for 12 months.
- Any action plan with deadlines and SMART targets with date of review meeting
- The employee's right to appeal
- Make clear that failure to improve standards will involve the employee progressing to stage 3 of this procedure.

Appeals against Stage 2 decisions

Appeals can be lodged by the employee to the Instigator within five working days of the decision taken in the formal interview.

The appeal will be considered **within 15 working days** of receipt and the employee will be informed of the appeal decision in writing.

Three members of the Staffing Committee who were not involved in the original formal interview will review the case.

Decisions on appeals will be final and the employee will be informed in writing **within 5 working days** after the appeal date.

Stage 3 – Dismissal Hearing

If an employee's performance set out in the final written warning has not improved by the date of expiry of the review in stage 2 of this procedure, the Council may decide to hold a third capability hearing.

The letter inviting the employee to the dismissal hearing should make clear that one of the outcomes from this hearing is dismissal and set out their right to be accompanied in this interview by their trade union representative, full-time union official, support worker or work colleague.

If the employee is unable to attend the meeting, they must notify the Instigator in writing as soon as possible and state the reason for not attending. Failure to attend without a good reason may result in a decision being taken in the employee's absence.

The Council will appoint a committee of three councillors with delegated powers to attend the formal interview with the line manager, employee and their companion.

If the Committee decides that an employee's performance is unsatisfactory following the third capability hearing, then the Committee can:

- Recommend no further action
- Dismiss the employee.

A decision to dismiss must be reported to Council at the earliest opportunity.

In cases of more serious performance issues the Committee can decide that the employee is dismissed with notice or with pay in lieu of notice.

Appeal against dismissal

The employee has **10 working days** to submit an appeal against dismissal stating the grounds on which it is made following receipt of the decision letter. The appeal should be in writing to the Clerk unless the Clerk is the subject of the Capability Procedure, then the Chair or the Chair of the Staffing Committee. If an appeal is lodged, the dismissal does not take effect until the appeal has been heard, but the employee can be suspended on full pay from the date of the decision letter.

In order to come to a final decision, the Council will appoint a committee of three councillors who have had no involvement in the case. Where this is not possible, only councillors involved in the first or second stages of this procedure will be considered.

If the employee has expressed a wish to make oral representations, then a meeting will be organised **within 10 working days** of receipt of the written appeal. The employee has the right to be accompanied by their trade union representative, full-time union official, support worker or work colleague.

Supplementary evidence from all parties can be included as part of the appeal and should be submitted with the written appeal. This evidence will be circulated to all parties prior to a decision being made.

An appeal may be heard **up to 20 working days** after the receipt of the employee's appeal.

Decisions on appeals will be final and the employee will be informed in writing **within 5 working days** after the appeal date and (if applicable) the date in which their employment will end.