

# Thanet District Council Performance Management Policy & Procedure

**October 2022/Final/HR**

A decorative graphic at the bottom of the page consisting of overlapping, curved shapes in shades of blue and teal, resembling a stylized wave or landscape.

<b>Introduction</b>	<b>3</b>
<b>Scope</b>	<b>3</b>
<b>Roles &amp; Responsibilities</b>	<b>3</b>
<b>Policy &amp; Procedure Principles</b>	<b>5</b>
<b>Informal Action</b>	<b>5</b>
<b>Formal Action</b>	<b>6</b>
<b>Appeal</b>	<b>9</b>
<b>Redeployment</b>	<b>10</b>
<b>Right to be accompanied</b>	<b>10</b>
<b>Retention of Records</b>	<b>11</b>
<b>Equality Statement</b>	<b>11</b>

### **Key Points:**

- Managers should discuss performance issues with employees informally before taking formal action. If this fails to resolve the problem, the formal approach will normally be used.
- Employees have a statutory right to be accompanied by a trade union representative or workplace colleague at any formal meeting which could result in the issue of any warning/action, including appeals.
- The HR team should be contacted at the earliest stage and prior to initiating any formal process and, if necessary, for advice around the informal process.
- Confidentiality will be given the utmost importance at all stages of the procedure.

# 1. Introduction

We strive to ensure through our policies that staff can deliver excellence in all that they do and we try to find creative and innovative ways of working together to achieve that excellence. We will be open and accountable in all of our dealings with you and value and respect your views and contributions at all times.

This policy is to help employees whose performance has fallen below achieving an acceptable standard to improve within a workable timescale. The emphasis is on encouragement, training and support to make the necessary improvement. However, it is recognised that it may be necessary, in some cases, to take further action where improvements to performance are not achieved or sustained for a reasonable period.

## 2. Scope

- 2.1. This policy and procedure applies to all employees other than the Chief Executive, Section 151 and Monitoring Officer for whom separate arrangements apply.
- 2.2. Cases which relate to a Non-Statutory Chief Officer can be considered by hearing and appeal panels comprising of other Non-Statutory Chief Officers, the Section 151 Officer, the Monitoring Officer and/or the Chief Executive, as appropriate and in accordance with sections 6 and 7 of this policy. In the event that there are insufficient appropriate panel members to consider an appeal process, the Council will engage an appropriate external party to act as the decision maker on its behalf.
- 2.3. This policy and procedure applies to issues relating to the underperformance of an employee for reasons relating to their capability. If at any time it is found that underperformance is wilful the council has the right to move to an appropriate stage of the Disciplinary Policy and Procedure.
- 2.4. When dealing with capability on the grounds of ill health, managers should refer to the Sickness Absence Management Procedure.
- 2.5. Managers can move from one procedure to another at a comparable stage in light of a change in circumstances and where it is appropriate to do so.

## 3. Roles & Responsibilities

### Employees will:

- Strive to deliver excellence in everything that they do;
- Endeavour to maintain exemplary performance as expected by the council.;
- Cooperate fully in meetings to discuss their performance with their line manager;
- Seek clarification from their line manager if they are unsure of any of the improvements expected in their performance at the earliest possible opportunity;
- Keep their line manager informed if there is any reason that is likely to, or is affecting the standard and consistency of their work.

### Managers will:

- Ensure they and their employees act in accordance with this policy;

- Ensure their employees are aware of the Performance Management Policy and what is expected of them via induction, 1-2-1's and subsequent day-to-day management;
- Address performance issues when they arise and seek to resolve these at the earliest opportunity in a prompt, confidential and supportive manner, ensuring consistency and fairness;
- Set achievable performance improvement targets in collaboration with the employee where possible;
- Maintain records of conversations with employees and the performance expectations that they have agreed with them;
- Appraise sustained improvements in performance and provide clarity if there are any further areas to work on;
- Keep records relevant to any performance improvement discussions and the employee's success / failure to improve standards accordingly;
- Seek guidance from the HR team at any point through this process where support is required but always at the formal stage;
- Ensure a fair and reasonable investigation has taken place into employee performance matters before initiating the formal process;
- Lead informal discussions and formal Stage 1 and 2 Performance Review Meetings as appropriate;
- Ensure that in dealing with performance management cases that they are compliant with the Equality Act 2010 (which incorporates the key provisions of the Disability Discrimination Act, as amended in 2005);
- Make any necessary arrangements for hearings, such as arranging note takers, booking a venue, sending meeting requests and so forth;
- Attend training on the application of this policy.

#### **HR will:**

- Monitor employment legislation relating to performance management at work in line with the Equality Act (2010) and support the council to review and amend this policy as appropriate;
- Provide support, advice and training to the Council and its employees in the interpretation and application of this policy;
- Ensure a consistent and fair approach to the application of this policy;
- Support managers to investigate claims where individuals believe that they are being treated unfairly or unreasonably under this policy.

#### **Service Directors & the Corporate Management Team will:**

- Make suitable arrangements to ensure the appropriate application of this policy;
- Encourage all employees to promote and maintain delivering excellence as expected by the council;
- Support managers to act fairly and consistently in relation to performance matters;
- Participate, and/or chair Hearings and Appeal Hearings, as appropriate;
- Encourage managers to participate in the formal Performance Management Procedure when required, ensuring release from normal duties where appropriate;
- Attend training on the application of this policy.

## 4. Policy & Procedure Principles

- 4.1. This policy and procedure is primarily concerned with helping and encouraging employees to improve their performance and it aims for an outcome that is fair, reasonable and constructive.
- 4.2. Managers are responsible for informing staff of the performance that is expected of them through effective induction, regular 1-2-1 meetings and annual appraisal and should highlight any performance that falls short of expectations promptly.
- 4.3. The whole process must be given a high priority by the manager, the employee concerned and anyone else involved in the process and be dealt with in a timely manner.
- 4.4. No formal action will usually be taken without concerns having been raised and attempts made to address them on an informal basis in the first instance.
- 4.5. Dismissals can only be carried out by managers with the appropriate delegated authority. This applies automatically to the Chief Executive, Corporate and Service Directors. In exceptional circumstances, the Chief Executive can delegate this authority to another manager if appropriate. Managers should always check that they have the appropriate authority prior to any hearing being arranged where dismissal is a possible outcome.
- 4.6. Audio/visual recordings of the proceedings are not acceptable at any stage of the procedure and are not admissible within this process, unless agreed as a reasonable adjustment for an employee with a disability.

## 5. Informal Action

- 5.1. Before the formal stages of this procedure are engaged, the employee should receive face to face feedback via good 1-2-1 conversations with his/her manager, either virtually or in person, setting out the concerns about their performance and how it should be improved.
- 5.2. There should be a specified improvement period which is not usually more than 12 weeks.
- 5.3. The manager will identify the standards of improvement to be achieved during this period and will put in place appropriate monitoring arrangements to review progress. This may include:
  - Additional 1-2-1 and/or supervision sessions
  - Feedback
  - Support and guidance, including but not limited to counselling or training, for example
  - Work shadowing
  - Coaching and mentoring
- 5.4. If any training needs are identified as part of the discussion, appropriate training should be arranged to take place during the review period.
- 5.5. A written record will be maintained of the steps taken and any improvement made during the informal improvement stage. This may take the form of a Performance Improvement Plan.
- 5.6. Improvement targets should be attainable, objective and realistic and should take into account the specific requirements of the job description of the post.

- 5.7. If at the end of the informal review period the employee has made sufficient improvement he/she will be advised of this and the procedure will cease.
- 5.8. If at the end of the informal improvement period some progress has been made and there are prospects of further improvement, the manager may agree to extend the improvement period to allow such progress to continue. The length of the extension will be for the manager to determine based on the particular circumstances. The employee will be advised of this.
- 5.9. If the informal stage does not bring about the required improvement, managers should seek advice from HR around instigating the formal process.
- 5.10. In addition to the above, a pattern of poor performance which causes concern, e.g. a repeated inability to sustain improved performance for an extended period following successful completion of Performance Improvement Plan(s) may also trigger the initiation of the Formal Performance Management Procedure.

## 6. Formal Action

The formal procedure is designed to be used when efforts during the informal stage do not lead to the employee improving his/her performance to an acceptable level. In exceptional circumstances where performance has been particularly poor the manager may commence the procedure directly at the formal stage without needing to undertake the informal improvement stage but must seek advice from the HR team before doing so.

### Stage 1 - Performance Review Hearing

- 6.1. The manager will write to the employee inviting them to a Stage 1 Performance Review Hearing and explaining that either:
  - There has been insufficient progress during the informal stage and the formal procedure will be initiated; or
  - Due to the seriousness of the poor performance the process has been commenced immediately at the formal stage.
- 6.2. The employee's manager will prepare a report detailing the facts of the case up to this point, which will be shared in advance of the hearing.
- 6.3. The employee will be given reasonable notice, usually of no less than three working days, that a hearing will take place to discuss their performance.
- 6.4. The hearing will usually be chaired by the employee's manager supported by another manager who has not previously been involved in the case. A member of the HR team may be present to advise the panel.
- 6.5. The hearing will focus on:
  - Clarifying the shortfall in performance;
  - Exploring the potential reasons for this
  - Identifying what support can be offered to the employee to help them improve
  - Obtaining the employee's suggestions as to how they can improve their performance
  - Setting improvement targets for a specified improvement period (normally no more than 12 weeks)

- Setting dates for further review meetings throughout the improvement period.
  - Confirming that a first or final written warning for performance will be issued and will remain on the employee's file for a period of six or twelve months, as applicable
- 6.6. Following the meeting, the manager will confirm all of this in writing to the employee within a reasonable timeframe not usually more than five working days from the date of the meeting.
- 6.7. If at the review meeting, the desired improvement has been achieved, the employee will have this confirmed to them in writing within a reasonable timeframe not usually more than five working days from the date of the meeting. The employee's performance should continue to be monitored via the normal 1-2-1 process although performance that is not sustained whilst the first or final written warning is live, will resume at the formal stage of the procedure. Any minor lapses should be dealt with in ordinary day to day management but should this become an issue then the line manager must seek advice from the HR team before progressing.

## Stage 2 - Performance Review Hearing

- 6.8. If the required performance improvement has not been achieved, a Stage 2 Performance Review Hearing will be arranged.
- 6.9. In cases where a final warning has been issued at Stage 1, the manager should proceed straight to Stage 3 of the procedure.
- 6.10. The employee's manager will prepare a report detailing the facts of the case up to this point, which will be shared in advance of the hearing.
- 6.11. The manager will write to the employee inviting them to the hearing, providing reasonable notice usually of no less than three working days.
- 6.12. The hearing will usually be chaired by the employee's manager supported by another manager who has not previously been involved in the case. A member of the HR team may be present to advise the panel.
- 6.13. The hearing will focus on:
- Clarifying the shortfall in performance and exploring the potential reasons for this;
  - Reviewing the support measures previously identified and agreeing whether they should continue or if supplementary measures may be helpful;
  - Setting improvement targets for a specified improvement period (normally no more than 12 weeks)
  - Setting dates for further review meetings throughout the improvement period.
  - Confirming that a final written warning for performance will be issued and will remain on the employee's file for a period of twelve months
- 6.14. It may be felt appropriate at this meeting to discuss formal career counselling or whether a permanent redeployment would be appropriate, and, if so, an agreeable option for the employee.
- 6.15. Where redeployment is made to a lower graded post, the new post's salary and conditions will be applicable with no salary or terms and conditions protected.
- 6.16. The employee will be advised that should their performance fail to meet the required standard by the agreed review date, dismissal is a possible outcome.

- 6.17. Following the meeting, the manager will confirm everything that has been discussed and agreed in writing to the employee along with a copy of the agreed action plan, within a reasonable timeframe of not normally more than five working days.
- 6.18. If at the review meeting, the desired improvement has been achieved, the employee will have this confirmed to them in writing within a reasonable timeframe not usually more than five working days from the date of the meeting. The employee's performance should continue to be monitored via the normal 1-2-1 process although performance that is not sustained whilst the final written warning is live, will resume at the appropriate formal stage of the procedure. Any minor lapses should be dealt with in ordinary day to day management but should this become an issue then the line manager must seek advice from the HR team before progressing.
- 6.19. If the employee has still not achieved the required standard of performance at the end of the review period, then consideration to move to a Stage 3 Capability Hearing that may result in the employee's dismissal should be made. During this final review, consideration should be given with regard to ensuring that all the relevant training and assistance has been given to the employee.

### Stage 3 Capability Hearing

- 6.20. This Capability Hearing will be chaired by a manager with authority to dismiss who has not previously been involved in the case. This is usually a Service Director or member of the Corporate Management Team but delegated authority may be given by the Head of Paid Service to another manager if appropriate.
- 6.21. The chair of the hearing will be accompanied by another manager not previously involved in the case and a member of the HR team may also be present.
- 6.22. The employee will be invited to the hearing in writing and provided with reasonable notice of not usually less than three working days.
- 6.23. The employee's line manager will prepare a report that will be shared with the employee and the hearing panel in advance of the hearing outlining the steps that have been taken to date, both informally and formally, to address performance issues including details of the support and training provided, where appropriate. They will present this report at the hearing.
- 6.24. The employee will have the opportunity at the hearing to respond to the evidence in the report and to set out any concerns about the assessment of their performance and/or the support they have received. The employee may be questioned by the line manager and the hearing panel.
- 6.25. If appropriate, the chair of the panel may explore the option of redeploying the employee to another role within the Council.
- 6.26. The hearing may be adjourned if the chair decides that they need to gather any further information or give consideration to matters discussed at the hearing.
- 6.27. The outcome of the hearing will be confirmed in writing to the employee as soon as reasonably practicable. The outcome could be one of the following:
  - That there is insufficient progress but that redeployment to another role or demotion is possible;
  - That there has been insufficient progress, but it is reasonable to set a further review period (no more than 12 weeks), due to some improvement being made. In this situation, the capability hearing will be adjourned and reconvened at the end of this review period.

- That there is insufficient progress and the employee should be given notice of dismissal on the grounds of capability.
- 6.28. In cases of dismissal, it will usually be on contractual notice, unless performance has been so negligent it may amount to gross negligence. Cases of gross negligence/gross neglect of duty will usually be dealt with under the council's disciplinary policy.
- 6.29. Where the hearing is reconvened and there has been some improvement, the decision may be taken to issue a further final written warning for performance which would remain on file for a period of 12 months. This decision will be confirmed to the employee in writing within a reasonable timeframe, usually no more than five working days following the meeting. Failure to maintain this level of improvement during this time may result in the process being reinstated at the Stage 3 Capability Hearing stage, depending on advice from the HR team.
- 6.30. Employees will not normally be dismissed for performance reasons without a previous warning, except in cases of gross negligence or cases involving an employee who has not yet completed their probationary period.

## 7. Appeal

- 7.1. An employee has the right to appeal the decision of any formal warning or dismissal made as a result of this procedure.
- 7.2. The submission of an appeal will not halt any improvement periods currently in place unless there are exceptional circumstances to warrant this.
- 7.3. Appeals must be made in writing to HR within five working days of receipt of the written confirmation of the warning or dismissal.
- 7.4. An appeal is not a re-hearing of the original case but instead should be based upon one or more of the following principles:
- The level of sanction imposed is disproportionate based on the evidence presented or is inconsistent with sanctions imposed on other employees in similar circumstances
  - New evidence has come to light since the original hearing/meeting which needs to be considered
  - The council has failed to follow its performance management policy and procedure
- 7.5. The appeal hearing will be chaired by a manager of the same level or above to the chair of the hearing/meeting that is subject to the appeal, depending on the circumstances of the case. Another officer or manager not previously involved in the case will make up the panel. An HR representative will provide advice and guidance on policy and process, including on the appropriateness of the panel members.
- 7.6. The appeal hearing will be arranged in a timely and reasonable manner.
- 7.7. The employee will be given reasonable notice in writing of no less than three working days of the appeal hearing detailing who will be conducting the hearing, arrangements in relation to any documents to be forwarded prior to the hearing (if not already enclosed) and the employee's right to be accompanied by either a trade union representative or workplace colleague.
- 7.8. At the hearing, the employee will be asked to give their reasons for appealing, referring to any relevant evidence and the chair of the previous hearing/meeting may be asked to attend the hearing to explain the rationale for their decision.

- 7.9. Once all evidence has been considered, the hearing should be adjourned to allow the panel to consider the information put before them. If the panel requires further information or clarification prior to making a decision, this should be sought as a matter of urgency and the employee advised that there will be a delay in reaching an outcome.
- 7.10. Once a decision has been reached, the hearing should be reconvened or a letter written to the employee to inform them of the outcome.
- 7.11. The outcome of the appeal could be that the appeal is upheld or it is not upheld. This will be confirmed in writing within five working days of the hearing unless there has been a delay due to additional evidence or clarification being sought.
- 7.12. The decision of the appeal hearing is final and there is no further right of appeal.
- 7.13. If the employee is appealing against a decision to dismiss them, their dismissal date will be effective from the date in their dismissal letter, unless their appeal is upheld. The employee's employment will not continue whilst a decision regarding their appeal is reached. If the appeal is upheld, the employee will be reinstated with no break in their continuous service and their pay will be backdated to the date of dismissal.

## **8. Redeployment**

- 8.1. Whilst an employee might be considered incapable of reaching the standards of their current role it may be possible that they are capable of undertaking another role within the organisation.
- 8.2. Consideration of redeployment to such alternative employment should be given at the earliest opportunity and before any final decision to dismiss is taken.
- 8.3. Consideration of redeployment is dependent upon the types of vacancies available at that time and the employee's individual skills and experience so cannot be guaranteed.
- 8.4. Where redeployment is offered it may be at the same or a lower grade of the employee's current position and there will be no salary protection.

## **9. Right to be accompanied**

- 9.1. You have the right to be accompanied by a fellow worker or trade union representative at any formal meeting or subsequent appeal.
- 9.2. The automatic right to be accompanied does not apply at any informal stage of this procedure but if requested then it will be allowed, provided that it does not cause any delay to the process.
- 9.3. The council reserves the right to refuse accompaniment by a person who is deemed to be unsuitable by the HR team. Examples of unsuitability would include someone who has a vested interest in the outcome of the process and anyone who has previously behaved inappropriately during a hearing.
- 9.4. If your trade union representative or workplace colleague is not available at the time arranged for the hearing, you may request an alternative hearing date provided that it is within a reasonable timeframe, which will be determined by the chair of the panel. A postponement will normally also be granted where, to do otherwise would seriously prejudice the ability of either party to present their case. A hearing will normally only be rearranged once and the chair of the hearing may determine an

outcome on the evidence available without the employee being present if they are unable to attend a hearing that has already been rearranged.

## **10. Retention of Records**

- 10.1. A full confidential record of all notes, evidence and letters relating to the formal Performance Management Procedure must be kept for a period of 6 or 12 months in line with the sanction issued.
- 10.2. Lapsed warnings for performance will not be taken into consideration in any subsequent performance case. However, they may be referred to, in order to:
  - Refute evidence by the employee that they did not know that such performance was below what was expected of them;
  - Refute representations by the employee about their previous service which are inconsistent with their performance record.

## **11. Equality Statement**

The Council is committed to promoting equality, valuing diversity and combating unfair treatment. The Council will endeavour to ensure equal access to its policies and procedures and will combat discrimination or less favourable treatment on the grounds of any irrelevant consideration, in accordance with the Equality Act 2010.