

EMPLOYEMENT COMMITTEE	AGENDA ITEM No. 5
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**DATE OF MEETING: 7 DECEMBER 2018**

**ASSISTANT DIRECTOR HR & DEVELOPMENT**  
**Authors: Debbie Hiller & Karen Craig**

**REVISED EMPLOYMENT POLICIES & APPRENTICESHIPS UPDATE**

<b>RECOMMENDATIONS</b>
<b>FROM : Assistant Director of HR and Development</b>
<p>That Employment Committee:</p> <ol style="list-style-type: none"> <li>1. <b>note</b> the update on the Apprenticeship position in the council (this includes the current position on the apprenticeship levy, and governance of the apprenticeship levy), and</li> <li>2. <b>approve</b> the updated employment policies (Apprenticeship Pay Policy, Social Media Policy, and Capability Policy and Process).</li> </ol>

**1. ORIGIN OF REPORT**

1.1 This report follows changes made to the policies after a scheduled review and after agreement with the trade unions at the Joint Consultative Forum on 17 September 2018 and 19 November 2018.

**2. PURPOSE AND REASON FOR REPORT**

2.1 Employment policies are regularly reviewed to ensure that they remain fit for purpose and compliant with ongoing statutory legislation changes (paragraph 4.5 below). The purpose of this report is to:

- (a) update members on the apprenticeship position (paragraph 4.1 below) and
- (b) obtain approval to the changes made to the policies detailed above (paragraphs 4.2 to 4.4 below).

2.2 This report is for the Employment Committee to consider under it terms of reference no 2.3.2.4

*‘To determine local terms and conditions of employment for employees’*

**3. TIMESCALE**

Is this a Major Policy Item/Statutory Plan?	<b>NO</b>	If Yes, date for relevant Cabinet Meeting	
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**4. BACKGROUND**

**4.1 Apprenticeship position:**

4.1.1 Background

The Apprenticeship Levy was introduced by the government in April 2017 and represents 0.5% of the total pay bill paid to HMRC in monthly instalments. The government then adds a 10% top up and those funds are transferred each month to PCC’s Digital Apprenticeship System (DAS) account.

From April 2019, the government will claim back any unused funds that are 24 months old. It is essential that these funds are used before they expire and that they are managed effectively to achieve

maximum benefit for the council. The Apprenticeship levy provides opportunities for the council to use apprenticeships to meet a skills gap and/or where it is difficult to recruit and retain people. It is the council's policy now to ring-fence new level 2 (GCSE) or 3 (A' Level) apprenticeships for our Care Leavers as part of its commitment to our Corporate Parenting responsibilities.

#### 4.1.2 Current position;

**Levy** - PCC's levy payments include grant maintained schools (just under 30k is paid in levy to HMRC each month). A levy tracker is currently being developed as part of the ongoing governance process, to track the spend vrs the content of the levy account. This is a complex process as there are many different financial parameters to the levy spend for each apprenticeship.

Prescribed groups and public sector bodies with 250 or more staff in England, have a target to employ an average of at least 2.3% of their staff as new apprentice starts. According to the Department of Education's latest statistics, in Local Authorities, the average Apprenticeship starts in 2017-18, as a percentage of headcount, was 0.9%. PCC's figure was 0.5% when the number of Apprenticeship starts (21) was reported as at end March 2018. Current Apprenticeship starts (as at 23rd November 2018) is 58 which demonstrates an increase to 1.4%. Whilst this is still short of the government's target (2.3%), it is showing an upward trajectory which is as a direct result of additional resource now in place.

**Process** - Up to now, apprenticeship requests have been agreed on an ad hoc basis and individuals are not necessarily completing apprenticeships as part of business requirements or their PDR/career plan. This is currently being addressed with managers as part of the communications plan. There is a degree of prioritisation for our Care Leavers as a direct result of our Corporate Parenting responsibilities and this is regularly discussed as part of the Corporate Parenting Panel.

#### 4.1.3 Challenges;

Spending the levy before HMRC claw the oldest unused funds back (two years plus) is a priority in order to ensure value for money from the levy account - the tracker referred to in 4.1.2 will help with this along With accountability and oversight from the Governance Board.

In accordance with the communication strategy, discussions with managers and schools are taking place, as part of recruitment processes and staff's professional development to ensure that consideration is given to an apprenticeship in the first instance. Up to now, this hasn't been the case due to lack of understanding of the apprenticeship guidelines by managers.

Informal quality assurance processes have been in place to capture the quality of the apprenticeships and to ensure that the learner experience is positive. However, more formal measures are now in place with City College Peterborough ensuring that quality provisions are met by way of employer and learner satisfaction surveys and that alternative providers have a good Ofsted rating for their provision.

#### 4.1.4 Governance

A governance group, chaired by Wendi Ogle-Welbourn, has been established which will be responsible for the oversight of the levy spend ensuring that priority for level 2 (GCSE) and level 3 (A level) is afforded to our Care Leavers in the first instance.

The responsibilities of this group will include:

1. Mitigating risk of clawback for funds approaching 24 months old;
2. Structured decision making processes to allocate funds;
3. Quality assurance of the training providers we engage with (with City College Peterborough being our preferred provider);
4. Reporting back to CMT on the levy spend and allocation and
5. Continuous improvement of the apprenticeship programme through feedback and performance.

Following a recent report, full support has been received from CMT to:

- support the message that all managers should consider the apprenticeship scheme in the first instance for all new and replacement posts.
- utilise the apprenticeship scheme where this is necessary for employees' development and their career planning.
- support the message to ring-fence new level 2/3 apprenticeships, in the first instance, for Care Leavers, which will support our Corporate Parenting responsibilities.
- form a governance group to manage the allocation and authority of the levy and allocate representatives to contribute.

This has provided a brief update on the current position with regards to the apprenticeship agenda. 4.2 below and Appendix A moves on to position the requirement with regards to a new pay structure specific to the apprenticeship scheme.

#### **4.2 NEW APPRENTICESHIP PAYMENT STRUCTURE**

For apprentices that have been recruited to date, the policy in PCC has been to pay the grade for the role, as determined by the standard job evaluation process.

However, now that we are moving to recruit more apprentices across the business, it is apparent that a more bespoke pay policy for apprentices is required. This is primarily because the apprentices will be working in a range of situations, eg. in some instances, some apprentices will be spending a percentage of their working week in formal training at the training provider rather than in the workplace, others will only meet some of the essential criteria for the role but not all (hence a 'training' position is being provided), others may be existing staff already in the workplace.

To move forward, we have considered various pay models with the aim of ensuring that we can cover all the different scenarios, whilst achieving a transparent policy free of any gender (or other) bias. The policy needs to be flexible enough in respect of costs to ensure that it encourages managers to consider the appointment of an apprentice rather than a standard employee. The draft policy (Appendix 1) sets out the proposed pay structure that is determined by various factors:-

- the (academic) level of the apprenticeship,
- whether the applicant meets the essential criteria for the role, and
- whether the applicant is an existing employee or not.

The proposed approach is the same as adopted in Cambridgeshire County Council.

#### **4.3 NEW SOCIAL MEDIA POLICY**

All employment policies are reviewed on a regular basis. The review of the social media policy included the need to incorporate the Regulation of Investigatory Powers Act (RIPA) into the employment policy and also update the list of types of social media that are covered as this form of communication develops. We are planning to provide employees with some additional training in the use of social media as the council needs to utilise this to its advantage. The revised policy follows at Appendix 2.

#### **4.4 NEW CAPABILITY POLICY & PROCESS**

This policy was last reviewed in November 2017. To ensure it remains fit for purpose and relevant, certain minor changes have been made. These include the need to keep a record of discussions that are held with the employee in respect of any potential redeployment, and the need for the manager to inform their HR Business Partner of any performance issues that they are dealing with under this process. The process now states that, in the event of dismissal, full notice would be provided unless the employee's performance was so negligent that it amounted to gross misconduct, in which case dismissal without notice may occur. The revised policy and process follows at Appendix 3.

#### **4.5 STATUTORY CHANGES TO POLICIES**

As a reminder, as legislation changes, the council is obliged to ensure that its employment policies are reviewed and updated appropriately. This has resulted in minor changes to the Fixed Term Contract procedure and also the Time Off policy.

#### **5. PROPOSAL**

To implement the updated policies, guidance and forms from 1 January 2019.

#### **6. IMPLICATIONS**

Financial – None

Human Resources – Increased guidance and advice will be accessible to managers to assist with the management of capability cases. Staff will be more aware of their obligations regarding the use of social media.

Legal - None

#### **7. REASONS FOR RECOMMENDATIONS**

The information regarding apprenticeships is to ensure that members of employment committee are fully briefed on this topic.

The updated employment policies will improve the important and relevant information shared with staff and managers on these topics. This will assist with compliance and consistency going forward.

#### **8. APPENDICES**

**Appendix 1** - Apprenticeship Pay Policy

**Appendix 2** - Social Media Policy

**Appendix 3** - Capability Policy and Process.

# APPRENTICE PAY POLICY DRAFT

## 1. Introduction

This policy sets out the apprenticeship payment policy.

## 2. Purpose

Because apprentices are working in a range of situations, for example:-

- some apprentices will be spending a percentage of their working week in formal training at the training provider rather than in the workplace,
- others will only meet some of the essential criteria for the role but not all (hence a 'training' position is being provided),
- others may be existing staff already in the workplace
- The range of apprenticeship levels results in differing lengths of courses.

It is necessary to set out the payment structure to ensure that the pay of each apprentice is transparent and free of any gender (or other) bias.

## 3. Key Principles

The policy is flexible enough to ensure that it encourages managers to consider the appointment of an apprentice rather than a standard employee.

All appointments will be made in accordance with this policy.

## 4. Scope

These arrangements apply to all City Council employees covered by the NJC for Local Government Services as far as possible. However, a different procedure may be necessary for certain employees, e.g. those based in schools and who are subject to procedures involving Governing Bodies. In these circumstances, Governing Bodies, where appropriate are recommended to adopt the principles of this procedure into their individual school policies.

## APPRENTICE PAY STRUCTURE

ACADEMIC LEVEL	DURATION	NEW TO ROLE Does not yet meet all essential criteria for full role			NEW TO ROLE (Meetsl essential criteria for full role)	ALREADY IN FULL ROLE Meets essential criteria for full role)
		YEAR 1	YEAR 2 (Subject to successful PDR)	YEAR 3 (Subject to successful PDR)	For Duration of apprenticeship	For Duration of apprenticeship
<b>Intermediate</b>  <b>Level 2 = equiv 5xGCSEs</b>  <b>(NVQ level 2/BTEC certificate)</b>	<b>1 year</b>	Statutory Apprentice rate (£3.70)	n/a (as L2 is not usually longer than 12-14 months)  Where a successful end point assessment occurs and if the employee continues in role, their pay will move to the normal minimum SCP for the role.	n/a	Bottom SCP of the evaluated grade for the role	Employee's existing SCP
<b>Advanced</b>  <b>Level 3 = equiv 2xA levels)</b>  <b>(BTEC diploma)</b>	<b>2 years</b>	70% of bottom SCP of the evaluated grade for the role.	85% of bottom SCP of the evaluated grade for the role.	L3 not usually longer than 24 months		
<b>Levels 4 to 7</b>  <b>Higher &amp; Degree</b>  <b>(Level 4/5= HND/Foundation degree)</b>  <b>Level 6=Bachelor's degree</b>  <b>Level 7=Masters degree</b>	<b>2+ years</b>			95% of bottom SCP of the evaluated grade for the role.		

**Governance**  
**Apprenticeship Pay Policy**

Date agreed at Employment Committee:	
Issue date of revised version:	New policy
Version number:	1
Review due date:	1/9/19

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If this document is printed into hard copy or saved to another location, you must check that the version number on your copy matches that of the intranet.

**Document control sheet**

<b>Purpose of document</b>	To set out pay structure for apprentices.
<b>Type of document</b>	Policy
<b>Document checked by Legal</b>	Not applicable
<b>If applicable, has an initial Equality Impact assessment (EIA) been completed?</b>	Not applicable
<b>Document Lead and Author</b>	Karen Craig
<b>Dissemination</b>	All new and updated policies and procedures are notified to entire workforce via insite and a variation letter. Policies are also submitted to City College, EPM and Serco. All documents are also posted onto the Employee Information pages of the intranet.
<b>What other documents should be read in conjunction with</b>	

<b>Who will review the document (job title)</b>	Senior Reward Advisor
<b>Why is this document being reviewed</b>	New policy

**Revisions**

<b>Version No.</b>	<b>Page/Paragraph No.</b>	<b>Description of amendment</b>	<b>Date approved</b>
1			CMT 10/10/18



# SOCIAL MEDIA POLICY

## 1.0 Introduction

Peterborough City Council (“the council”) recognises that social media provides an effective platform for discussion and information sharing amongst employees and service users. **Social media can also be used as an important business tool for investigating or accessing information about our service users.**

Nevertheless, the council also recognises that the use of social media can pose risks to its reputation and compliance with legal obligations.

The purpose of this policy is to minimise risk, avoid loss of productivity and to ensure that the council’s ICT resources and communications are used appropriately. This policy covers all individuals working at all levels and grades including senior managers, officers, directors, volunteers, homeworkers, part-time and fixed-term employees, casual and agency staff (“users”). This policy also applies to third parties with access to our electronic communication systems and equipment.

This policy does not form part of an employee’s contract of employment and it may be amended from time to time.

This policy should be read in conjunction with the council’s Regulation of Investigatory Powers Act (RIPA) Policy, Information, Communications and Telecoms (ICT) Policy, Equality and Diversity Policy, Employee Code of Conduct and Disciplinary Policy (including Disciplinary Rules). You should also refer to the Social Media [Insite page](#)

## 2.0 Scope

This policy deals with the use of every form of social media including:

- Social Networking sites (e.g. Facebook)
- Micro-blogging services (e.g. Twitter)
- **Video sharing services (e.g. YouTube)**
- **Photo sharing services (e.g. Instagram)**
- **Online gaming and virtual reality (e.g. World of Warcraft)**
- Messaging services (e.g. Whatsapp)
- Business Networking sites (e.g. LinkedIn)

It applies to the use of social media for both business **and personal purposes** whether or not during office hours or otherwise. The policy also applies regardless of whether or not the social media is accessed using the council’s ICT facilities and equipment or that of the users. It applies to all working styles (i.e. agile working, home working, office based working). Privacy and Safety tools should be enabled to restrict who employees interact with.

Breach of this policy may result in disciplinary action being taken in accordance with the council’s Disciplinary Policy and Disciplinary Procedure and for external service providers, a review of contractual arrangements. Users may also be required to remove internet postings which are deemed to constitute a breach of this policy.

## 3.0 Key Principles

The following sections of the policy provide users with common-sense guidelines and recommendations for using social media responsibly and safely.

## Protecting Peterborough City Council's business reputation:

- Users must not post disparaging or defamatory statements about Peterborough City Council and/or its:
  - o Service users;
  - o The Services provided by the council;
  - o Employees
  - o Visitors to the council
  - o Suppliers; or
  - o Other affiliates and stakeholders.
- Users are personally responsible for what they communicate in social media and should remember that what they publish may be available to a wide audience over a lengthy period of time.
- Users should not post comments which could be construed as sensitive, objectionable or inflammatory, to include political opinion.

## Compliance with the law

- Users should ensure that the use of social media for business processes is in compliance with the relevant law (including RIPA).
- Users should act in accordance with the relevant policy (including RIPA) and/or follow the guidance in the section of this document "Use of Social Media in Investigations".
- Monitoring of service users accounts without authorisation is not permitted.
- A user should not use a fake or false identity to obtain information or obtain access to private information unless this activity has been authorised by a RIPA Authorising Officer and received judicial approval.
- Users should not use their personal accounts for such activities.

## Respecting intellectual property and confidential information:

- Users must not identify young people within residential settings by name, photo, bedroom number, unit, physical description, or any events or actions which concern that child/young person.
- Users should not do anything to jeopardise the council's obligations under the Freedom of Information and Data Protection Acts and should therefore refrain from disclosing any information which could be construed as personal, confidential and/or exempt from public disclosure.
- Users should not misappropriate or infringe the intellectual property of other companies and individuals which could create liability for Peterborough City Council as well as themselves.
- Users should not use Peterborough City Council's logos, brand names, slogans or other trademarks without permission.
- On professional accounts, the council's logo and other branding elements should be used where appropriate. The logo should not be used on social networking applications which are unrelated to or are not representative of the council's official position. For further information about how accounts and profiles should look, refer to the social media [insite page](#).
- Users should keep their business and personal social media accounts totally separate and should avoid accepting friend requests to business accounts from personal friends and vice versa.
- When a member of staff leaves the council or moves to a different role, their line manager is responsible for ensuring that they close down any social media profiles or pass on responsibility for any shared pages.
- In any circumstance where a user is uncertain as to the appropriateness of any statement or posting

they should refrain from making the communication until it has been discussed with the Marketing Team.

- Where social networking applications are being managed by council representatives, appropriate feedback and complaints information must be published in a prominent place which is easily accessible.

#### 4.0 Personal Use

Occasional use of social media for personal activities at the office is permitted, provided it does not involve unprofessional or inappropriate content and does not interfere with an employee's primary job responsibilities and/or productivity. Employees who are unclear on the definition of occasional use should clarify this with their line manager.

The council does not encourage users to write about their work in any way and would prefer them not to do so. Nevertheless, if users choose to, they should do so in accordance with the key principles (refer to section 3) and the following additional considerations:

- Users who identify themselves as connected with Peterborough City Council, should ensure that their profile and any related content are consistent with how they would wish to present themselves to colleagues and customers.
- Any personal blogs or other personal posts must contain a disclaimer that makes it clear that "the opinions expressed are solely those of the author and do not represent the views of Peterborough City Council." Users must write in the first person and use a personal email address when communicating via social media.
- When using social media, users should respect their audience and refrain from making any detrimental comments about colleagues and/or Peterborough City Council and its partners. Some social sites provide for members to write recommendations or referrals for friends/associates. If a user does this as a representative of the council, it may give the appearance that the council endorses the individual being recommended which can create a liability. For this reason the council prohibits users from making such recommendations or referrals.
- Users who may not directly identify their association with Peterborough City Council when using social media for personal purposes at work or at home, should be aware that content they post on social media websites could still be construed as relevant to this.
- Users should not write or report on conversations, meetings or matters that are meant to be private or internal to Peterborough City Council.
- Users should be aware that they may be held personally liable for any unauthorised, inappropriate or illegal use of social networking sites.
- All users need to be aware that applications may be closed for a defined period before local and national elections in order to comply with legislation which affects local authorities.
- The only contact with children and young people who have left the care of the council should be through telephone calls at work – preferably witnessed by other staff, or by letter that is checked by the manager. Those who work with children and young people should have no further personal contact with the child or young person via any method when they have left the care of the council or the employee has left. This statement also applies to children who are no longer in receipt of any services from the council.

#### 5.0 Applying this Policy and Gaining Relevant Approvals

The guidance for gaining approval to access the council's social media sites is detailed on the Social Media [Insite page](#).

Consideration must be given to what, how and who will be able to provide regular content to the group, page or feed and respond to feedback. Unused social media channels that are not updated can be damaging to the council's reputation. The council already has an established presence on Facebook and Twitter and consideration should be made as to whether officers can achieve their aims through these social media channels first.

Employees who are uncertain or concerned about the appropriateness of any statement or posting, or wishing to report any misuse of social media or content that disparages or reflects poorly on the council, should contact their Line Manager or HR Business Partner in the first instance.

## 6.0 Professional Use

If social media is used in a professional capacity at work as part of their job role, users should do so in accordance with the key principles (refer to section 3) and the following additional considerations:

Users must:

- Not use any social media tool for council business unless they have received permission from their line manager and completed the social media training.
- Not use any social media tool for party political purposes or specific campaigning purposes as the council is not permitted to publish material which 'in whole or part appears to affect public support for a political party' (Local Government Act 1986) or use the sites for the promotion of personal financial interests, commercial ventures or personal campaigns.
- Identify themselves – this means disclosing their name and job title – when discussing Peterborough City Council or council related matters.
- Not post any confidential or proprietary information without prior written permission from their head of service.
- Not post anything related to colleagues, customers, clients, business partners, suppliers, vendors or other stakeholders without their written permission.
- Ensure that their profile and any content they post are consistent with the professional image they present to clients and colleagues.
- Be mindful that what they publish will be public for a long time and might be available to read by the masses and can't be retracted once published.
- Not write or report on conversations, meetings or matters that are meant to be private or internal to the council.
- Not cite or reference customers, partners or suppliers without their written approval. Where users do make a reference, where possible link back to the source and if users are unsure whether a particular post or upload might violate anyone's copyright or trademark, ask the Communications Team before making the post/upload.
- Not provide reference for individuals on social or professional networking sites as this creates a legal liability for both the author and the council.
- Make sure that professional use of social media adds value to the environment in which they are participating and to the council's delivery of services to Peterborough residents.
- Provide worthwhile information and perspective.
- Be aware that content on such social media websites may be subject to Freedom of Information requests.
- Not post comments about sensitive business-related topics, such as the council's performance, as these comments can damage the council's reputation. Reputation is built on three things: what people say about you; what you say about yourself; and how your actions and behaviours reflect what you stand for. Peterborough City Council's reputation is heavily influenced by its people and what is published will reflect on our reputation.
- Ensure that anything posted respects copyright and is consistent with the relevant legislation and rules including Data Protection Act 1998, Privacy and Electronic Communications Regulations 2003, Advertising Standards Authority Committee of Advertising Practice (ASA CAP) code and the Code of Recommended Practice on Local Authority Publicity.

It is the responsibility of the employee to make sure that they are familiar with how these apply to

professional use of social media. If in doubt, in the first instance employees should discuss with their line manager. Guidance is also available from the communications team.

## **7.0 Use of Social Media in Investigations (Criminal and Non-criminal)**

For full details regarding this issue please refer to the council's Regulation of Investigatory Powers Act (RIPA) policy.

**The use of the internet and it's content (this includes social media such as Facebook, Instagram and Twitter) in an investigation is permitted. In accessing such sites, employees must consider the issues of privacy and collateral intrusion.**

**Even though a person may have placed information about themselves or others in the public arena, they have done so with an expectation of a degree of privacy. Viewing information on the internet may constitute covert surveillance, particularly if there is monitoring of subjects involved (e.g. to establish patterns of behaviour). If an investigating officer enters into a 'conversation' with a profile, and the officer informs the person that they are being contacted in their role as an employee of the council, then this contact will be overt and no authorisation will be required.**

**Where the activity does not include monitoring of material in the public domain, neither a RIPA or a non-RIPA application will be required. An application will ensure that the activity is justified, proportionate and necessary to the furtherment of the investigation. The main difference will be where the activity falls under RIPA, it will require both PCC and judicial approval. If repeated visits to a site are made then this will constitute monitoring and consideration needs to be given to the use of social media or the internet.**

### **"Public setting"**

**If an investigating officer views for example a Facebook profile with whom they are not 'friends' which is not protected by any privacy settings the information can be treated as being in the public domain. Any initial viewing/visiting of this profile will be overt and authorisation under RIPA will not be required.**

**If the officer frequently or regularly views the same individual's profile this is considered targeted surveillance and a RIPA authorisation is required should it meet the stated RIPA test in this policy. If it does not then the Non-RIPA form at Appendix 9 of the RIPA Policy is required.**

### **Using a covert identity**

**Where officers are building and maintaining a relationship with an individual without that individual knowing the true nature of the purpose/s of the investigation, this will require an application for the use of a Covert Human Intelligence Source (CHIS). This will include where an officer sends a friend request for example. Officers must not create a false identity to establish a profile. The agreed process for the use of a CHIS is detailed above.**

**Officers must not use their own accounts for work purposes nor for any form of surveillance.**

The RIPA Policy provides the appropriate guidance and forms for completion including a template for recording the use of social media in investigations at Appendix 10. Please always refer to the council's RIPA policy for full details.

## **8.0 Monitoring and review of this policy**

The council will monitor the use of social networking sites to ensure that any internet use by employees complies with its ICT policy. Therefore, employees should have no expectation of privacy in any social media post, conversation or message, or any other kind of information or communications received or transmitted. Employees consent to such monitoring of their use of social media resources and systems.

## **9.0 Further information**

Enquiries or requests for information from social media, including requests from bloggers, should be forwarded to the media team for a response at [media@peterborough.gov.uk](mailto:media@peterborough.gov.uk). Officers must not respond directly to such enquiries without express permission from the media team.

Employees who are uncertain or concerned about the appropriateness of any statement or posting or wishing to report any misuse of social media or content that disparages or reflects poorly on the council should contact their Line Manager or HR Business Partner in the first instance.

# SOCIAL MEDIA POLICY

<b>Issue Date:</b>	TBC
<b>Version Number:</b>	3
<b>Review Due Date:</b>	01/01/20

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## Document control sheet

<b>Purpose of document</b>	To outline to employee's expectations regarding the use of social media in and outside of the workplace.
<b>Type of document</b>	Policy
<b>Document checked by Legal</b>	N.a.
<b>If applicable, has an initial Equality Impact assessment (EIA) been completed?</b>	N.a.
<b>Document Lead and Author</b>	Karen Craig
<b>Dissemination</b>	All new and updated policies and procedures are notified to entire workforce via insite and a variation letter. Policies are also submitted to City College, EPM and Serco. All documents are also posted onto the Employee Information pages of the intranet.
<b>What other documents should be read in conjunction with</b>	Social Media Insite Page RIPA policy
<b>Who will review the document (job title)</b>	Senior Reward Advisor
<b>Why is this document being reviewed</b>	Update and inclusion of RIPA

## Revisions

<b>Version No.</b>	<b>Page/Paragraph No.</b>	<b>Description of amendment</b>	<b>Date approved</b>
3	7	New section on RIPA implications. Basic update on types of social media. Change to approval process for use of social media (insite) Inclusion of RIPA in relevant parts of document.	JCF 19/11/18.



# CAPABILITY (PERFORMANCE) POLICY



## Contents

### **SECTION A**

1. [AIM](#)
2. [PRINCIPLES](#)
3. [SCOPE](#)
4. [RIGHT TO BE ACCOMPANIED](#)

### **SECTION B - INFORMAL PROCEDURE**

### **SECTION C - FORMAL PROCEDURE**

1. ARRANGING CAPABILITY MEETINGS
2. ATTENDING CAPABILITY MEETINGS
3. PURPOSE OF CAPABILITY MEETINGS
4. STAGE 1 CAPABILITY MEETING
5. STAGE 2 CAPABILITY MEETING
6. STAGE 3 CAPABILITY MEETING
7. SERIOUS/GROSS INCOMPETENCE
8. APPEALS
9. DOCUMENT RETENTION
10. FURTHER INFORMATION

## SECTION A - INTRODUCTION

### 1. Aim

The aim of this policy is to:-

- Help and encourage all employees to maintain required standards at work and to ensure that appropriate support is provided to enable them to do so.
- Ensure that fair, consistent and reasonable action is taken if acceptable standards of performance are not maintained.
- Enable issues to be raised and dealt with promptly, ensuring no unreasonable delay in arranging meetings, making decisions or confirming decisions.
- Ensure all employees have an understanding of the standards of performance expected of them.

Performance related concerns are likely to arise as a result of issues relating to an employee's skills, ability, aptitude and knowledge and may become apparent in a number of ways, including but not limited to:

- Frequent mistakes, not following a job through, or being unable to cope with instructions given;
- Inability to cope with a reasonable volume of work to a satisfactory standard;
- Attitude to work, e.g. poor interpersonal skills, lack of commitment and drive;
- Lack of apparent skill in delivering expected tasks or in the method of work required;
- Consistent inability to achieve agreed PDR performance targets, or to work in line with the council's values or behaviours.

### 2. Principles

- All capability issues will be dealt with in a confidential and sensitive manner.
- Consideration will be given as to whether poor performance may be related to a disability and, if so, whether there are reasonable adjustments that could be made to working arrangements, including changing duties or providing additional equipment or training in order to improve performance standards.
- Should poor performance be related to an illness that is not termed a disability and does not necessitate the employee being absent from work, this process can still be followed.
- In most cases, where minor performance issues arise, they should be resolved at an early stage through informal discussion between the employee and their line manager. Examples may include, but are not limited to, first occasion of a missed deadline; fluctuation in performance or inability to prioritise workload.
- At every stage of the Capability Procedure, the employee will be made fully aware of the concerns about their performance and have an opportunity to offer an explanation before any decision which constitutes formal action is taken.
- An employee has the right of appeal against any formal warning issued during this policy by following the council's Appeals Policy and Appeals Procedure.
- A representative of the HR Department may be in attendance at any formal or informal meeting.

### 3. Scope

This policy applies to all City Council employees as far as possible, except where there is a specific local agreement, or a clause within the contract of employment, which is at variance with the provisions contained within the NJC for Local Government Services agreement. A different procedure may be necessary for certain employees, e.g. those based in schools and who are subject to procedures involving Governing Bodies.

Schools are strongly advised to adopt the principles of this policy for non-teaching staff.

The policy also applies to employees who have been re-deployed to an alternative role due to health or capability reasons

This policy does not form part of any employee's contract of employment and it may be amended at any time.

This Policy does not apply to those who are within a probation or extended probation period (as the Probation Policy and Probation Procedure apply to this group of employees).

The council retain the right to start the formal capability process at any stage or skip any stage within the process depending on the circumstances of the situation.

#### 4. Right to be accompanied

Employees may bring a companion to any formal meeting under this policy. The companion may be a trade union representative or a work colleague.

The manager may at their discretion allow the employee to bring a companion who is not a colleague or trade union representative if this will help overcome difficulties that the employee may face in attending the meeting as a result of their disability.

Companions may make representations and ask questions but should not answer questions on the employee's behalf. The employee may talk privately with their companion at any time.

Acting as a companion is voluntary and no employee is required to fulfil this role unless they are happy to do so.

If the employee's choice of companion is unreasonable then the employee may be asked to choose someone else, for example:

- If the companion's unavailability will undermine the manager's ability to call a Capability Meeting within a reasonable timeframe, **for example within five days of the original meeting** (unless exceptional circumstances exist).
- **If the chosen companion is not a trade union representative or a work colleague.**

### SECTION B – INFORMAL PROCEDURE

In the first instance performance issues should normally be dealt with informally between the employee and their line manager as part of day-to-day management.

Managers are strongly advised to inform their HR Business Partner of any performance issues being dealt with under this procedure.

Informal discussions should be for the purpose of:

- Identifying areas of concern;
- Clarifying the required standards;
- Establishing the likely causes of performance issues and identifying any training needs;
- Setting targets for improvement and a time-scale for review.

The line manager should keep meeting notes of all discussions and any specific actions which have been agreed. A template meeting notes form has been provided for managers to use.

The employee should be advised that their work performance will be monitored for a period of between 4-8\* weeks depending on the circumstances, during which time regular meetings will take place.

**Formal or informal warnings shall not be issued at this stage.**

A copy of the meeting notes will be provided to the employee and the original kept on their personnel file. Both should be signed by the employee and their line-manager.

Where informal discussions have not resulted in satisfactory improvement within the agreed timescales, or where in the Council's view it is not appropriate to use the informal process, the formal procedure will apply.

*\* The review periods may be less than 4 weeks depending on length of service, specialised nature of the job and level of the post.*

### SECTION C – FORMAL PROCEDURE

#### 1. Arranging Capability Meetings

A Capability Meeting should be held as soon as possible after the decision to follow the formal procedure has been taken, and where necessary, to move through the stages.

Reasonable notice must be given to the employee to enable them to prepare for the meeting.

Managers must inform their HR Business Partner of any performance issues being dealt with under this procedure.

Meetings should be carried out in private and face to face, regardless if the employee works on an agile basis. . The meetings will normally be conducted by the employee's line manager, a more senior manager or nominated deputy.

Prior to a Capability Meeting, the employee should be sent a letter requesting their attendance. The letter will outline the following:

- The date, time and venue for the meeting;
- Details of the performance issue(s) for discussion;
- Summary of previous live warnings
- A summary of the reasons for calling the meeting as well as identifying any concerns arising as a result of the performance issue(s) (e.g. the impact on service provision);
- Providing a copy of any relevant documentation which will be referred to together with a copy of the Capability Policy and Procedure;
- Asking for details of any companion and/or witnesses the employee intends to bring with them;
- In more detailed or complex matters, inviting the employee to submit written representations;
- Informing the employee of any other persons who will be attending; and
- Confirming the possible outcomes of the meeting (with reference to this Procedure) and in particular, where a stage 3 Capability Meeting is being arranged, that it may result in the employee's dismissal.

Reasonable notice must be given to the employee to enable them to prepare for the meeting, this could be any time between two and seven days.

## 2. Attending Capability Meetings

An employee must take all reasonable steps to attend each meeting. Failure to do so without good reason may result in the meeting proceeding in the employee's absence, **or may be rearranged dependant on the circumstances**. Failure to attend may be treated as misconduct. If an employee or his or her companion is unable to attend at the time specified then they should immediately inform their line manager (or the HR Business Partner) who will aim to agree an alternative time.

A meeting may be adjourned if the manager or the HR Business Partner is awaiting receipt of information, needs to gather any further information, or needs to give consideration to matters discussed at a previous meeting. An employee will be given a reasonable opportunity to consider any new information obtained before the meeting is reconvened.

If an employee continues to be unable to attend scheduled Capability Meetings, a meeting may take place in their absence and a decision made on the evidence available in their absence.

## 3. Purpose of Capability Meetings

The purpose of each Capability Meeting is as follows:

- To set out the required standards that the manager believes the employee has failed to meet,
- To discuss any relevant evidence that supports the manager's view that the required standards have not been met.
- To allow the employee to ask questions, present and respond to evidence, to call witnesses and to make representations;
- To establish the likely causes for poor performance including reasons why any measures taken to that point have not led to the required improvement;
- To identify whether there are further measures, such as additional training or supervision, which may improve performance;
- Where appropriate to discuss targets for improvement and a time-scale for review;

- If dismissal is a possibility, establishing whether there is any likelihood of a significant improvement being made within a reasonable time and whether there is any practical alternative to dismissal such as redeployment. Any such alternatives should be permitted by the employee's contract and/or with the employee's agreement.

#### 4. Stage 1 Capability Meeting

Where an employee's capability has not improved after following the informal process, or where in the Council's view it is not appropriate to use the informal process, they will be invited to a Stage 1 Capability Meeting.

At the meeting, the difficulties caused by the poor work performance should be discussed, e.g. effects on service provision and work colleagues. The employee should be given every opportunity of identifying any new problems which might be contributing to the poor performance.

It is very important at this stage to set clear and realistic objectives/targets to be achieved which should be within the scope of the job description, and, ideally, should be agreed with the employee. The objectives should be reasonable and achievable within a review period to be set at between 4-8 weeks.\* The employee should be advised of the required objectives, and that continued poor work performance may lead to an escalation of the formal process and the termination of their employment.

The manager should keep a written record of all discussions and any specific actions which have been agreed (this will be known as the Performance Improvement Plan). A copy of the Performance Improvement Plan will be provided to the employee and the original kept on their personnel file. Both should be signed by the employee and their line-manager.

Following a Stage 1 Capability Meeting, if it is decided that an employee's performance is unsatisfactory, the employee will be issued with a First Written Warning. This shall be confirmed in writing to the employee. The letter will outline the following:

- The areas in which the employee has not met the required performance standards;
- Targets for improvement;
- Any measures, such as additional training, supervision or support, which will be taken with a view to improving performance;
- A period for review, the duration of which will be decided by the manager based on the particular circumstances of the case;
- The consequences of failing to improve within the review period, or of further unsatisfactory performance.

The warning will remain active for a period of 12 months, after which time it will remain permanently on the employee's personnel file but will be disregarded in deciding the outcome of any future capability proceedings.

The employee's performance will be monitored during the review period at the conclusion of which, the following will be confirmed in writing:

- That the employee has achieved a satisfactory level of performance and no further action will be taken, or
- The employee has not achieved a satisfactory level of performance and the matter may be progressed to a Stage 2 Capability Meeting; or
- If the manager decides that there has been a substantial, but still insufficient improvement in the employee's performance then the review period may be extended. In this case any previous warning issued will also be extended by the same period.

*\* The review periods may be less than 4 weeks depending on length of service, specialised nature of the job and level of the post.*

#### 5. Stage 2 Capability Meeting

If an employee's performance does not improve within the review period set out in their First Written Warning, or if there is further evidence of unsatisfactory performance while their First Written Warning is still active, it

will be necessary to hold a Stage 2 Capability Meeting.

It is very important at this stage to review the objectives/targets agreed at the Stage 1 Meeting. The objectives should be updated to reflect any changes, be reasonable and achievable within a review period to be set at between 4-8 weeks.\* The employee should be advised of the required objectives, and that continued poor work performance may lead to an escalation of the formal process and the termination of their employment.

The manager should keep a written record of all discussions and any specific actions which have been agreed (this will be known as the Performance Improvement Plan). A copy of the Performance Improvement Plan will be provided to the employee and the original kept on their personnel file. Both should be signed by the employee and their line-manager.

A record of discussions of any potential redeployment must also be kept, whether discussed at the formal meeting or during the review period.

Following a Stage 2 Capability Meeting, if it is decided that the employee's performance remains unsatisfactory, a Final Written Warning will be issued, setting out:

- The areas in which the employee has not met the required performance standards;
- Targets for improvement;
- Any measures, such as additional training, supervision or support, which will be offered with a view to improving performance;
- A period for review; the duration of which will be decided by the manager based on the particular circumstances of the case; and
- The consequences of failing to improve within the review period, or of further unsatisfactory performance.

The warning will remain active for 12 months, after which time it will remain permanently on the employee's personnel file but will be disregarded in deciding the outcome of any future capability proceedings.

The employee's performance will be monitored during the review period and the employee will be informed in writing of the outcome as follows:

- That the employee has achieved a satisfactory level of performance and no further action will be taken, or
- The employee has not achieved a satisfactory level of performance and the matter may be progressed to a Stage 3 Capability Meeting; or
- If the manager decides that there has been a substantial but still insufficient improvement in the employee's performance then the review period may be extended. In this case any previous warning issued will also be extended by the same period.

*\* The review periods may be less than 4 weeks depending on length of service, specialised nature of the job and level of the post.*

## 6. Stage 3 Capability Meeting

If an employee's performance does not improve within the review period set out in their Final Written Warning, or if there is further evidence of performance issues while their Final Warning is still active, it will be necessary to hold a Stage 3 Capability Meeting.

The meeting will normally be chaired by a Head of Service from within the department of the employee concerned, and who has not taken part in the review process. Where these officers have been involved with the review or are otherwise not available, then a Director, Head of Service (or their respective deputies) from another department may be asked to conduct the meeting. An HR Business Partner will also be in attendance.

A written record of all discussions held during the meeting shall be kept.

Following the meeting, if an employee's performance is found to be unsatisfactory, other options may be considered including:

- Dismissal;
- Redeployment to another role.

The manager should re-convene the Capability Meeting whether on the same or a different day to explain the decision, the reasons for it and any further action proposed.

In appropriate circumstances and with the consent of the employee it may be possible to agree for the decision to be communicated in writing only, but in any event all decisions should be confirmed to the employee in writing within one week of the Capability Meeting.

If the decision has been taken to dismiss the employee, the manager should also explain any notice period that will apply and confirm any other relevant termination arrangements. Dismissal will normally be with full notice **unless the employee's performance has been so negligent as to amount to gross misconduct, in which case we may dismiss the employee without notice or any pay in lieu.**

The manager should immediately notify payroll of an employee's dismissal and any relevant notice period.

The decision letter should contain the following information:

- The decision made and the reasons for reaching it;
- Any period of notice; and
- Confirming the employee's right to appeal and to whom.

## **7. Serious/Gross Incompetence**

When an employee's performance is regarded as so severe that continued employment may have serious consequences for the Council and/or pose an unacceptable risk to the individual, their colleagues or service users, it may be considered necessary to proceed straight to a Stage 3 Capability meeting or deal with the matter under the Disciplinary Policy.

The advice of the Assistant Director for Human Resources or their nominated deputy, must always be sought in these circumstances.

## **8. Appeals**

If the employee is dissatisfied with the outcome of a Capability Meeting held at any stage in the formal procedure, they may appeal in accordance with the Appeals Policy and procedure.

## **9. Document Retention**

The manager should forward copies of all paperwork relating to the investigation and capability Meetings to HR Support. Any such correspondence should be marked as 'Strictly Private and Confidential'.

Any paperwork retained will be stored and/or destroyed in accordance with the Council's records retention and management policies.

## **10. Further information**

For further advice and/or template letters please discuss with the HR Business Partner for the relevant service area.



## Governance Capability (Performance) Policy

Date agreed at JCF:	17 September 2018
Issue date:	
Version number:	2
Review due date:	1 December 2019

This document can only be considered valid when viewed via the Peterborough City Council internal web pages on Insite.

If this document is printed into hard copy or saved to another location, you must check that the version number on your copy matches that of the Insite version.

### Document Control Sheet

Purpose of document:	This policy is to set out how the council will deal with all aspects of performance that falls below the standard required of council employees.
Type of document:	Policy
Document checked by Legal	Yes
If applicable, has an initial Equality Impact Assessment (EIA) been completed?	N.a. minor changes
Document lead and author:	Karen Craig
Dissemination:	All new and updated policies and procedures are notified to entire workforce via insite and a variation letter. This policy is also submitted to City College, EPM and Serco. All documents are also posted onto the Employee Information pages of Insite.
What other documents should this be read in conjunction with:	Guidance documents listed in policy
Who will review the document	Senior Reward Advisor



(job title):	
Why is this document being reviewed?	To ensure it accurately reflects the statutory guidance outlined in the ACAS Code of Practice on Disciplinary, and to reflect agile working.

## Revisions

Version No.	Page/ Paragraph No.	Description of amendment	Date approved
1	All	Reviewed to ensure it accurately reflects the statutory guidance outlined in the ACAS Code of Practice on Disciplinary and to reflect agile working.	2/10/17
2	All reviewed	Additional points of Clarification added:- - re. Choice of companion and availability of companion - Confirmation that formal warnings will not be issued at the informal stage. - 2-7 days reasonable period for calling formal meeting. - Capability meetings can be rearranged dependent on circumstances. - Negligence could result in gross misconduct dismissal without notice.	JCF 09/18

# Capability - Guidelines



These guidelines are to provide helpful information to assist the management of performance capability issues and are not intended to amount to legal advice.

## 1. Introduction

These guidelines should be read in conjunction with the [Capability Policy](#) available through Insite.

The council retain the right to start the formal capability process at any stage or skip any stage within the process depending on the circumstances of the situation.

## 2. What is capability?

"Capability" refers to an employee's skills, ability, aptitude and knowledge in relation to the job that he or she is employed to do.

Lack of capability will in most cases lead to unsatisfactory job performance, which is likely to cause problems both for the Council and for the employee's colleagues.

Very few employees choose to perform their work badly, make mistakes, and fail to complete tasks or to have poor relationships with colleagues or customers. The key feature of underperformance is that there is usually an underlying reason.

**In the event that an employee is underperforming the manager should, therefore, be prepared to examine the circumstances and give support to the employee to help him or her to improve to the required standard of competence, rather than contemplating formal action.**

Appropriate action should be taken promptly as soon as it is noticed that the employee is not performing certain aspects of their job satisfactorily. Delaying - or even worse ignoring - may cause the performance problem to escalate. The result of this could be a subsequent major crisis caused by underperformance rather than simply dealing with the problem while it is still in its infancy.

A lack of capability exists where, no matter how hard an employee tries, they are simply unable to perform the job to the standard required by the Council. It is the agreed standard that is relevant, and not the manager's personal opinion of the employee.

If an employee fails to come up to the required standard as a result of their own recklessness, negligence, or wilful avoidance in undertaking the agreed duties or programmes of work, this does not constitute incapability, but should be regarded as misconduct, and the disciplinary policy should be followed.

One of the key distinctions between capability and conduct is that lack of capability will usually be outside of the employee's direct control. A conduct issue is usually where the employee has control over their conduct at work. There may be exceptional circumstances which apply - this may be the case in respect of an employee with mental health issues or a relevant disability.

## 3. Possible Causes of unsatisfactory performance

In the event that problems are being experienced with an employee's performance, it will be very important to try to identify the root cause of the problem and deal with it accordingly as soon as the issues have been identified.

It is a natural human reaction for the employee to be 'blamed' when mistakes are made, or where work is not completed satisfactorily. Managers should, however, refrain from assuming automatically that such performance problems are due to the employee's lack of effort or carelessness, as there are many other possible causes of poor performance.

These include:

- inadequate or insufficient training;
- poor systems of work, out-of-date policies or inadequate procedures that do not permit efficient or

effective work;

- employee unable to adapt to a new way of working, e.g. agile working, or new ICT systems and equipment
- tools and equipment that do not work properly or frequently break down;
- poor quality or inadequate supervision and/or support;
- lack of understanding on the employee's part about his or her job duties, priorities or goals, which may arise because no one has properly explained these issues or given the employee feedback;
- unclear instructions;
- work overload, causing stress and fatigue;
- unrealistic targets or deadlines that are virtually impossible for the employee to achieve;
- poor working relationships causing the employee to worry, be upset or feel excessive stress;
- bullying or harassment;
- physical or mental ill health, for example where the employee's state of health, or medication taken to deal with it, is causing tiredness; and
- personal problems that would inevitably affect the employee's concentration.

Managers should first investigate the underlying cause of the employee's unsatisfactory performance through discussion with the employee. The solution to the problem will flow on from the cause, and may involve actions such as training the employee's supervisor in "people management" skills, coaching the employee, instituting more effective two-way communication, rewriting procedures or reappraising the employee's job duties and targets.

If the cause of the problem can be effectively removed or reduced then the employee's performance is likely to improve.

## 4. How to deal with poor performance

### 4.1 Informal Stage

The manager should investigate the possible cause or causes of the employee's unsatisfactory performance by arranging an informal meeting. Managers are strongly advised to inform their HR Business Partner of any performance issues being dealt with under this procedure

Because the meeting is investigatory, and not a formal capability meeting, there is no statutory right for the employee to be accompanied.

The steps in dealing with poor performance will be as follows:

- Set up a meeting with the employee to discuss the possible cause or causes of the substandard job performance, making sure that he or she knows that the meeting is investigative in nature, and not part of the formal capability procedure.
- At the meeting, clearly state the nature of the problem and explain why it is a problem, for example the consequences for the Council when the employee makes mistakes or misses deadlines.
- Give the employee specific examples of instances where their performance has fallen below the required standard or where tasks have not been completed on time or satisfactorily.
- Remind the employee that they are not being blamed for the problem and that the manager is there to support them.
- Ask the employee what they enjoy about their job. This may help to make the discussion easier and reduce any defensiveness on the employee's part.
- Seek the employee's agreement that there is a problem with certain aspects of their performance.
- Ask the employee what they think the root cause of the problem is.
- Consider any mitigating factors put forward, for example problems in the employee's personal life.
- Restate what is expected in terms of job duties, outputs and targets. Avoid assuming that the employee knows everything that is expected of them.
- Ask the employee's opinion on what they can do to achieve an improvement in their performance.
- Seek to agree specific action points with the employee, the details of which will depend on whether or not any specific cause of unsatisfactory performance has been identified.
- Agree a timescale for the improvement to be achieved.
- Arrange training where appropriate.
- Schedule a follow-up meeting to review the employee's performance and make sure that the meeting takes place.
- Refer to Occupational Health or carry out risk assessments if the problem is likely to be as a result of a

physical illness or an environmental issue

- Keep a record of the meeting **using the meeting notes form.**

#### 4.2 Formal Process

The formal process should be instigated if an employee does not meet the objectives and action points as agreed in previous informal meetings. There are three stages in the formal process:

- Formal Stage One – First Written Warning will normally be issued
- Formal Stage Two – Final Written Warning will normally be issued, or if appropriate, redeployment
- Formal Stage Three – Dismissal **with full notice unless the Employee's performance has been so negligent as to amount to gross misconduct, in which case we may dismiss the Employee without notice or any pay in lieu.**

When carrying out the formal process, it is expected that a formal warning should be issued in all cases. However, there may be exceptional circumstances where a warning will not be issued.

Circumstances that will not be considered exceptional include but are not limited to:

- Wishing to avoid a difficult conversation or awkward situation
- Feeling sorry for the employee or
- Thinking that the act of merely arranging and attending a formal meeting is enough and has fulfilled the requirements of the policy

It is important to state that if a formal warning is not given, then this will prevent the manager moving through the formal process, resulting in the procedure being delayed. Also, this means that the capability issue is not actually dealt with; it is, in effect ignored resulting in employees being treated differently across the organisation. This will affect the individual and other colleagues in the team.

The important point is not to ignore these difficult issues. All managers must take responsibility for following the Capability Policy consistently. This will in turn assist those employees who may need support and help. The service may be suffering due to inconsistency of delivery and this must be measured against the needs of the employee.

If it is decided that, due to the evidence presented, no formal warning should be issued, then the employee must be informed of the reasons for this decision by detailing them in the outcome letter.

Evidence may include, but is not limited to:

- The employee declaring an underlying medical condition not previously known about, which affects their ability to carry out their role to the required standard
- The employee requires adaptations to their workspace so they can carry out their role effectively
- The employee requires additional training in order to be able to adapt to the new ways of working or technology

During the formal stages, regular review meetings must take place to ensure that the employee is supported and understands what is expected of them. These meetings also give the manager an opportunity to discuss any new job opportunities that may be available within the council. Records of the meeting must be kept on the Review Meeting Form. These records can then be used in the formal meetings.

## 5. Procedure for Formal Capability Meetings

If performance issues show no signs of improvement after following the informal process, or if the issues raised are sufficiently serious, the line manager should instigate the formal process. Managers must inform their HR Business Partner of any performance issues being dealt with under this procedure.

- The meeting should start by informing the employee of their right to be accompanied, and ensuring that they are happy to continue without representation (if applicable),
- Explain the procedure that will be followed during the meeting and possible outcomes.
- Outline the full review process that has been followed to that point
- Ask questions as required, either to clarify or further explore issues raised and actions taken to remedy

- Allow the employee to respond to questions as they are asked, to ask their own questions and to bring evidence forward
- When all the points have been raised, and questions answered, there should be a summary of what has been agreed at the meeting. Agreement should be sought of the summing up,
- The employee should be asked if they feel they have had a fair hearing and if there is anything else they wish to add
- When this has been done, the meeting should be adjourned to consider the information provided. A decision should be taken on whether any formal warning should be issued or what action points should be taken
- When the meeting has been reconvened, the manager should sum up the meeting and any comments and actions taken to date by the employee; the manager should then explain the outcome and reasons for the decision
- The manager should ensure that the employee understands why the warning has been issued, what they need to do to improve their performance, and any action points that have been agreed, with appropriate timescales
- If at the Formal Stage Two, the manager should ensure that the employee understands that their employment is at risk
- The manager should inform the employee of their right to appeal against the issuing of any formal warnings
- Update the PIP Form with achievements, new or updated goals, and reasons for any non-achievements.

## 6. Helpful tips when conducting a meeting

Conducting a meeting with an employee to discuss unsatisfactory performance is never an easy task, and it is understandable that managers may have concerns over such a meeting. Open, honest and unambiguous communication will be essential if such a meeting is to succeed.

In terms of communication skills the manager should:

- stick to facts and avoid expressing personal opinions;
- be specific, avoiding vague, woolly statements;
- avoid generalisations, for example "you're always late";
- ask open questions;
- listen actively to what the employee has to say and take it on board;
- ensure that the tone used is friendly and not accusatory;
- use positive words such as "improvement" and "achievement", rather than negative words such as "failure" or "weakness";
- focus the discussion on future improvement rather than on past inadequacies;
- always check for understanding, for example by asking the employee to state or summarise their understanding of what has been discussed.
- ensure that they do not make the employee feel that the problems have been resolved if actually they have not.

### 6.1 What to say and what not to say

Don't say	Do say
You're always making mistakes.	There are three mistakes in this piece of work.

You tend to shout at people.	I noticed at last week's meeting that you shouted somewhat aggressively at Jim when he ...
You're hopeless - you never meet your deadlines.	You've missed the monthly deadline six times this year so far, on each occasion by at least two days.
You're very aggressive.	I appreciate that you may not realise this, but sometimes your tone and manner come across to others as aggressive. For example ...
Your work is not up to scratch. You'll have to pull your socks up.	This piece of work falls short of the standard we require because ...
You're lazy. I can't ever rely on you to complete a piece of work.	It has been brought to my attention that you have not completed ...
You have a lousy attitude towards the rest of the staff.	What do you think you could do to improve your working relationship with your colleagues?

**7. Considering alternative employment**

f, despite adequate training having been given, an employee continues to perform unsatisfactorily, the manager will need to consider as part of Formal Stages 2 and 3 finding out if alternative work to which the employee could be transferred exists within the Council, or if it would help to review the Team Charter against the needs of the employee or if agile working is appropriate and the employee needs to be office based.

The manager would need to discuss any proposed change with the employee to establish whether or not they were prepared to agree to the move.

Forcing an employee to move to a different job without their express agreement would constitute a breach of contract. However, there is no positive duty on an employer to create a job for an employee who is incapable of performing their own job.

If, therefore, a vacant job that the employee could do, after a reasonable amount of training, exists, and provided that they are willing to transfer into it, the manager should consider this rather than contemplating dismissal.

**8. Further information**

For further advice and/or template letters please discuss with the HR Business Partner for your service area. Frequently asked questions follow.

**9. FAQs**

The following FAQs may help managers find an answer to their query. However, managers are also advised to seek support from their HR Business Partner.

**How do I know if poor performance is as a result of the employees' disability?**

The disability, or link to disability, may not be obvious and the employee may not declare it to you. However, through your normal day to day conversations with the employee, they might have disclosed information that leads you to reasonably assume that the poor performance may be due to a disability.

### What can I do if the employee refuses to attend an capability meeting?

If an employee refuses to attend a meeting, a suitable alternative date and location should be offered to them. If they still refuse to attend, then the meeting should take place without them and any decisions then based on the information to hand. You should offer the employee an opportunity to submit their comments in written form for you to consider at the meeting.

### If a warning is not live, do we have to start the formal process at the beginning?

Not necessarily. Please speak with your HR Business Partner for further advice on a case by case basis.

### Can an employee be dismissed without looking at alternative roles?

You have a legal requirement to explore if alternative roles and reasonable adjustments **that may alleviate a disability** can be accommodated before any dismissal takes place. Only when these avenues have been exhausted can a dismissal take place.

### What policy do I follow when the employee is not performing their job to the required standard because they are absent from work due to sickness?

If the underperformance is as a result of an illness, then you should speak with the employee and, dependant on the outcome of the conversation, consider referring them to Occupational Health.

The Attendance and Absence Management Policy should be followed if the employee is absent from work.

### The employee is not putting any effort into developing and does not want to actively engage in the improvement process, what do I do?

This may be a case of misconduct. Discuss this with your HR Business Partner and explore the possibility of using the disciplinary process.

### The employee has made some improvement during the review period, but is still not at the required standard. What do I do?

If the employee is not at the required standard then the next step in the process should be arranged, i.e. if the employee has been through Stage One, arrange Stage Two.

If the employee is very close to reaching the agreed standard, you may consider extending the review period by a reasonable timeframe of 2 or 3 weeks.

### The employee has raised a grievance whilst going through the capability procedure, what do I do?

Where an employee raises a grievance during the capability process, the process may be temporarily suspended in order to deal with the grievance.

Where a capability meeting triggers a disciplinary investigation the process may be temporarily suspended in order to deal with the disciplinary matter.

In any circumstance where both the procedures apply in relation to the same facts it may be appropriate to deal with both matters together.

### How long should a review period last?

A review period can last for up to 8 weeks. Regular review meetings should take place during this period to ensure the employee is supported and understands what is expected of them. Records of any meetings should be kept using the Review Meeting template.

### What do I do if the employee refuses to sign the PIP or Review Meeting Form?

Remind the employee that they are signing only to indicate that they have read the document and understand its terms as per the relevant stage of the process as detailed in the policy. Offer the employee the opportunity to write their own comments to be added into the file along with the assessment. This gives them the chance to offer their opinion, while also acknowledging that they have received and read the assessment.

If they don't want to add their own comments, another option is for them to write a note or statement on the document stating that they have received the assessment, but do not agree with its contents.

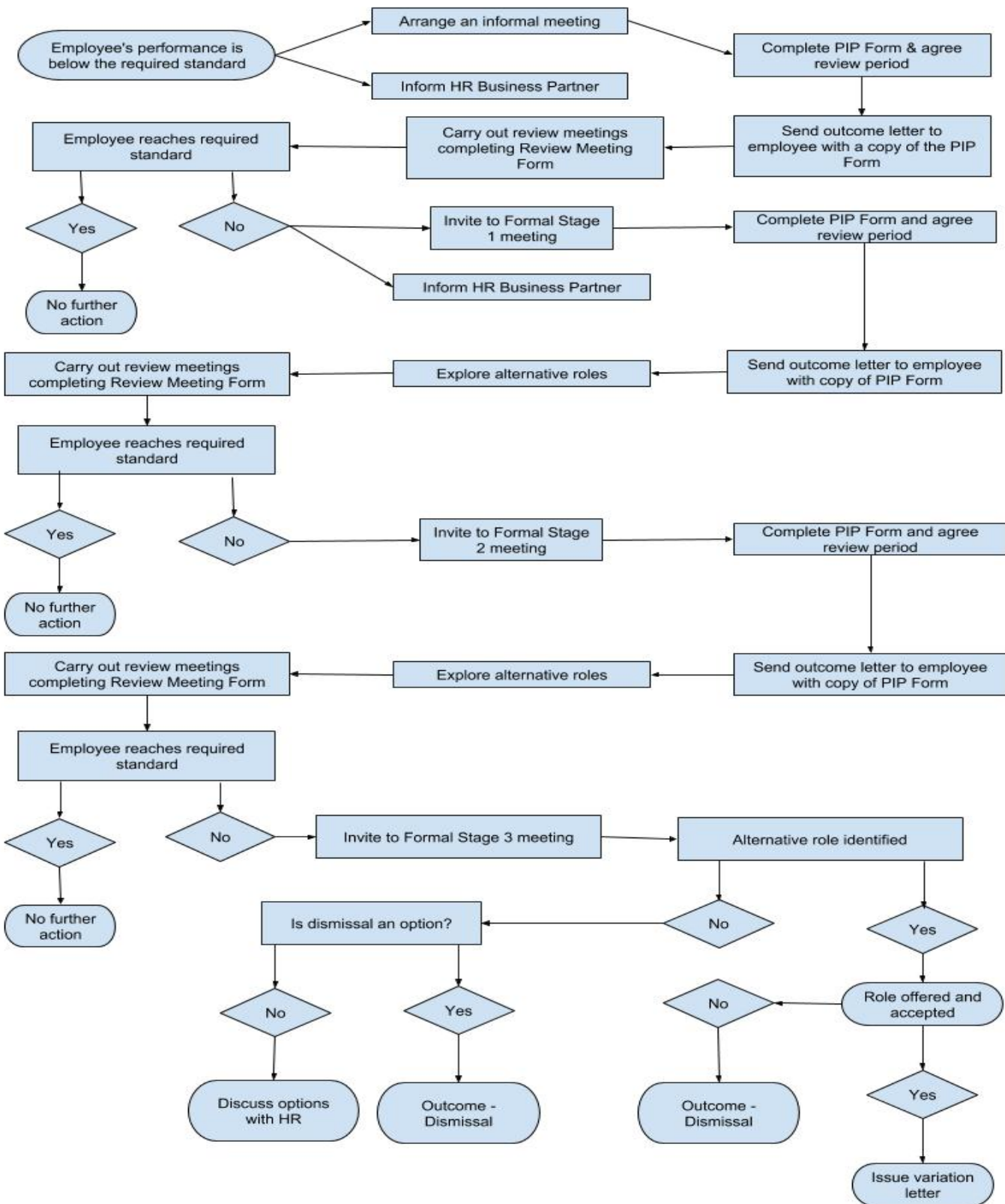
Sometimes, giving the employee a bit of time is helpful. Let them have a day or two to consider the contents, then meet with them again. Most likely they'll then be able to either provide their own statement to be added to it, or be willing to at least sign that they have received it even if they disagree.

At a minimum, you can sign it yourself with a note stating that the employee was given the assessment and has refused to sign it.

Always keep in mind that the purpose of the performance review is to give the employee positive and constructive feedback. Don't let the process of getting a signature get in the way of that.



## 10. Flow Chart



## 11. Example

	<b>Action taken</b>	<b>Reason for action</b>
January		Performance issues identified
February	Arrange an informal meeting; issues understood; actions agreed; review period of 2 months agreed	Issues become more pronounced and impactful
March	Ad hoc review meetings take place Training and development takes place	To ensure employee progressing well
April	Ad hoc review meetings take place Training and development takes place	To ensure employee progressing well
May	Review meeting takes place Employee does not achieve required standards – arrange formal stage one meeting Formal stage one meeting takes place; issues understood; actions agreed; review period of 2 months agreed. First Formal warning issued.	Review progress made, and performance standards attained  Employee has not attained the required standard
June	Ad hoc review meetings take place Training and development takes place	To ensure employee progressing well
July	Ad hoc review meetings take place Training and development takes place Alternative roles reviewed	To ensure employee progressing well
August	Review meeting takes place Employee does not achieve required standards – arrange formal stage two meeting Formal stage two meeting takes place; issues understood; actions agreed; review period of 2 months agreed. Second Formal warning issued.	Review progress made, and performance standards attained  Employee has not attained the required standard
September	Ad hoc review meetings take place Training and development takes place Alternative roles reviewed	To ensure employee progressing well
October	Ad hoc review meetings take place Training and development takes place Alternative roles reviewed	To ensure employee progressing well
November	Review meeting takes place. Employee does not achieve required standards; Formal stage three meeting takes place; no alternative role identified; employee dismissed	Review progress made, and performance standards attained  Employee has not attained the required standard

# GOVERNANCE

## Capability - Managers Guidance

<b>Date agreed at JCF</b>	September 2018
<b>Issue date:</b>	
<b>Version Number:</b>	2
<b>Review Due Date:</b>	

This document can only be considered valid when viewed via the Peterborough City Council internal web pages on the intranet.

If this document is printed into hard copy or saved to another location, you must check that the version number on your copy matched that of the intranet Version.

### Document control sheet

<b>Purpose of document</b>	These guidelines are to provide helpful information to assist the management of performance capability issues.
<b>Type of document</b>	Guidance
<b>Document checked by Legal</b>	Not applicable
<b>If applicable, has an initial Equality Impact assessment (EIA) been completed?</b>	Not applicable
<b>Document Lead and Author</b>	Karen Craig
<b>Dissemination</b>	All new and updated policies and procedures are notified to entire workforce via insite and a variation letter. Policies are also submitted to City College, EPM and Serco. All documents are also posted onto the Employee Information pages of the intranet.
<b>What other documents should be read in conjunction with</b>	Document listed in this guidance
<b>Who will review the document (job title)</b>	Senior Reward Advisor

<b>Why is this document being reviewed</b>	To ensure it accurately reflects the statutory guidance outlined in the ACAS Code of Practice on Disciplinary and to reflect agile working.
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## Revisions

<b>Version No.</b>	<b>Page/Para No.</b>	<b>Description of amendment</b>	<b>Date approved</b>
1	All	Reviewed to ensure it accurately reflects the statutory guidance outlined in the ACAS Code of Practice on Disciplinary and to reflect agile working.	2/10/17
2	All	Para stating that the formal capability process can be started at any stage or skip any stage inserted - (was already in policy). Importance of identifying the root cause of any problem and dealing with it as soon as the issues have been identified added. Importance of working with HR Business Partner inserted in two sections. Flow Chart updated.	JCF 09/18