

APPOINTMENTS AND CONDITIONS OF SERVICE COMMITTEE – 21 May 2013

Title of paper:	Performance Management	
Director(s)/ Corporate Director(s):	Angela Probert – Director of HR and Transformation	Wards affected: Not applicable
Report author(s) and contact details:	Gail Keen – HR Consultant (0115) 8763612	
Portfolio Holder(s):	Councillor Jon Collins	Date of consultation with Portfolio Holders(s): 17 April 2013.
Other colleagues who have provided input:	<p>Karl Deakin Solicitor, Legal Services 0115 8764342 Karl.deakin@nottinghamcity.gov.uk</p> <p>Louise Greig Finance Business Partner, Corporate Finance 0115 8762546 Louise.greig@nottinghamcity.gov.uk</p> <p>Della Sewell Employee Relations Manager 01158763573 della.sewell@nottinghamcity.gov.uk</p>	
Relevant Council Plan Strategic Priority: (you must mark X in the relevant boxes below)		
World Class Nottingham		
Work in Nottingham	X	
Safer Nottingham		
Neighbourhood Nottingham		
Family Nottingham		
Healthy Nottingham		
Leading Nottingham	X	
Summary of issues (including benefits to citizens/service users):		
<p>This report outlines the rationale for the introduction of a new approach to Performance Management within Nottingham City Council. Councillors are asked to note key information about how this will be embedded and supported, including the development of a new Performance Management Policy.</p>		
Recommendation(s):		
It is recommended that ACOS:		
1	Note key changes to our approach to Performance Management.	
2	Agree the implementation of the new Performance Management policy with effect from 1 June 2013.	

3	Note actions to be taken by Human Resources colleagues to support and encourage management in embedding a culture of proactive performance management.
---	--

1. **BACKGROUND**

- 1.1 In the current economic climate, it is vital that the Council is able to rely on its colleagues performing to their optimum standards, and has a robust mechanism for the management of performance issues where this may not be the case.
- 1.2 Performance Management is a tool to ensure managers manage effectively. The process of performance management (including performance appraisal discussions) contributes to the effective management of individuals in order to achieve high levels of organisational performance. It establishes a shared understanding about what is to be achieved enabling a manager to address underperformance as well as helping management develop employees to reach their full potential.
- 1.3 A robust approach to Performance Management will encourage a culture whereby management and employees take responsibility for their contributions, skills and behaviours. Swift resolution of performance issues and their associated impact on other colleagues and citizens will strengthen the overall efficiency of the Council and reduce costs associated with lost productivity.
- 1.4 For performance management to be effective, it is important that there is a framework in place to give colleagues the support needed to improve or the opportunity to move to a more appropriate role for their skillset. Alternatively, if an improvement has not been made and individuals remain unable to meet the required standards, the Council needs to be able to facilitate the exit of these employees in a timely manner.
- 1.5 The current Performance Management guidance contained within the People Management Handbook was last updated in October 2004. Anecdotal feedback from Nottingham managers indicates that they considered it to be unclear in places and difficult to apply in practice which may have impacted upon their ability to successfully manage performance. In addition to this, given the length of time that has passed since the guide was updated, it is apparent that the Council's Performance Management guidance requires updating, not least in light of new developments such as Performance Appraisal and People Plus (the Internal Jobs Market).
- 1.6 The aim in developing the new policy is to underpin a culture of proactively managing performance. It is more user friendly as a tool to enable managers to deal with performance issues consistently and effectively.
- 1.7 The new policy also aims to benefit employees who are subject to performance management by ensuring that they have a clear understanding of the standards required of them and the expectations for their improvement. The structured framework will enable managers to consider the range of elements that may be contributing towards poor performance and develop specific plans for the affected employee so that they can be confident of a fair approach.

2. REASONS FOR RECOMMENDATIONS (INCLUDING OUTCOMES OF CONSULTATION)

- 2.1 It is important that Performance Management is seen to be a tool which will interact with the continuous cycle of Performance Appraisal to enable managers and colleagues to work towards meeting the required standards in both objectives and competencies.
- 2.2 The new Performance Management policy fits more appropriately with the new direction we wish to take regarding performance management. It echoes the principles of People Plus and is in line with the commitment to developing and progressing internal colleagues, and ensuring that colleagues are able to access the right job for their skills. The new policy gives a clearer guide for managers, and will help them to tailor their approach to provide the appropriate support for each employee. Recommended timescales have been introduced to help reduce delays in resolving performance issues, and to encourage consistency of approach. There is also a 'fast-track' option for cases where there is a risk of severe detriment to service provision. The new policy and guidance are attached at Appendices A and B.
- 2.3 The new approach to performance management will be supported by a staged communication and engagement plan (attached in Appendix C), which will start with briefings to the Departmental Management Teams, followed by a three-month period from June to August 2013 during which a number of briefings will be made available for Nottingham Managers to attend. These briefings will be the foundation for promoting and embedding an ongoing culture of proactive performance management and will promote the benefits of managing poor performance (including introduction of the new supporting policy).
- 2.4 Feedback from the Manager briefing sessions will be used to identify areas where managers indicate they will need additional support in managing performance. Training/coaching will be made available to support managers, providing them with the tools to enable them to take a more robust approach to performance management. Individual support for managers in putting this into practice will also be available from HR Business Partners and Casework Advisors, and in the form of peer mentoring by more experienced managers.
- 2.5 Trade Union Consultation

The trade unions have been consulted on the recommendations contained in this report. Their comments are attached in Appendix D.

3. OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS

The alternative option to changing our Performance Management culture would be to remain with the existing approach, which, for the reasons outlined above, no longer meets the needs of the Council.

4. FINANCIAL IMPLICATIONS (INCLUDING VALUE FOR MONEY/VAT)

There are no direct financial implications attached to the new Performance Management Policy however there is clearly a direct link to People Plus. Colleagues may, as a result of performance management move in to the redeployment process meaning they have the opportunity to seek an alternative post and can continue to contribute to the Council. If in the event of no suitable alternative post being available,

colleagues then left the Council, they would not be entitled to a redundancy payment.

5. RISK MANAGEMENT ISSUES (INCLUDING LEGAL IMPLICATIONS AND CRIME AND DISORDER ACT IMPLICATIONS)

- 5.1 The proposed performance management policy reflects the ACAS Code of Practice on Disciplinary and Grievance Procedures 2009, which is a statutory code of practice setting out principles for, amongst other things, handling performance situations in the workplace.
- 5.2 Dismissal due to the lack of capability or qualifications of the employee for performing work of the kind which he/she is employed to do is a potentially fair reason for dismissal under the Employment Rights Act 1996. Case law is clear that an employee should be given reasonable warning, training and support before a decision is taken to dismiss an employee for performance concerns. The proposed policy provides this and indeed goes beyond the minimum standard expected by law.

6. EQUALITY IMPACT ASSESSMENT

- 6.1 An Equality Impact Assessment (EIA) has been undertaken (Appendix E). It does not indicate that the new approach would have an adverse impact on any particular minority group.
- 6.2 It is recommended that the EIA is undertaken again one year from implementation to assess the impact of the new approach in practice.

7. LIST OF BACKGROUND PAPERS OTHER THAN PUBLISHED WORKS OR THOSE DISCLOSING CONFIDENTIAL OR EXEMPT INFORMATION

None

8. PUBLISHED DOCUMENTS REFERRED TO IN COMPILING THIS REPORT

None

CAPABILITY: PERFORMANCE MANAGEMENT POLICY

1. Preamble

- 1.1 Nottingham City Council recognises that its people are its key resource for delivering high quality and improving services and that the majority of its employees are exemplars of good performance.
- 1.2 The City Council is committed to recruiting, retaining, promoting and training the right people for the right jobs to reduce the risks of poor performance at a later stage
- 1.3 [Performance Appraisal](#), underpinned by the City Council's [competency framework](#), provides a corporate approach and clear standards to support colleagues to achieve the required standards of competency and behaviour and to deliver high quality services. Effective and timely performance management is critical so that high performance can be acknowledged and colleagues' abilities and talent is recognised and grown, but also that colleagues who are not performing satisfactorily can be supported to improve.
- 1.4 This policy should be used in conjunction with the Performance Appraisal process. If there are performance concerns, managers should ensure that these are appropriately reflected in the Performance Appraisal assessment. However, this does not preclude managers from applying the Performance Management policy should performance concerns arise in between Appraisal reviews. (*linked guidance – Guidance Note 1- 'Understanding the link between Performance Appraisal and Performance Management'*)
- 1.5 If a low Performance Appraisal rating is received and attempts have already been made to support the employee to improve, it is expected that this would be a trigger for their manager to consider commencing the Performance Management process, after due consideration of the reasons for this and any mitigating circumstances. (*linked guidance – Guidance Note 3 – 'What is Capability?' and Guidance Note 4 – 'Possible causes of unsatisfactory performance'*)

2. Scope

- 2.1 This policy applies to all employees of the City Council on permanent or temporary contracts, including Apprentices. It does not apply to schools-based staff or probationary employees, for whom separate processes exist.
- 2.2 Further Guidance on the performance management of schools-based staff can be found in the [People Management Handbook for Schools](#). Guidance on the management of probationary employees can be found within the [Probationary Policy](#) in the People Management Handbook.
- 2.3 This policy runs parallel with, but is not part of the disciplinary procedure. The Council recognises that poor job performance and incapability do not always amount to misconduct but are still legitimate causes for concern. However, serious acts of negligence due to poor performance may be addressed under the disciplinary procedure rather than the performance management policy. (*linked guidance – Guidance Note 2 - 'Choosing the right process'*)

3. Capability or Misconduct

- 3.1 In order to distinguish between capability and misconduct, the manager must establish the cause of poor performance. A clear distinction must be made between "negligence", which

usually involves a measure of personal responsibility arising from, for example, a lack of action or attention, and “lack of ability”, where there is a mismatch between the competency/skills/knowledge needed to do a job and those possessed by the employee. In simple terms, is it a case of ‘can’t do’ or ‘won’t do’? (*linked guidance – Guidance Note 2 - ‘Choosing the right process’, Guidance Note 3 - ‘What is Capability?’ and Guidance Note 4 - ‘Possible causes of unsatisfactory performance’*)

- 3.2 If negligence is identified, then it may be appropriate to take disciplinary action. Further guidance can be found in the City Council’s [Disciplinary Procedure](#) in the People Management Handbook.
- 3.3 If a lack of ability is identified, then it is expected that managers will follow this policy. Managers should ensure that when using this policy they take a fair and even-handed approach and consider the individual needs of the employee in order to ensure equity in its application.
- 3.4 One instance of incompetence will not usually necessitate action under the performance management policy, except in situations where the consequences of that act are considered to present a significant risk to the Council (e.g. where there is cause for serious concern that the provision of a service is being jeopardised).

4. The right to be accompanied

- 4.1 Meetings held to discuss performance during the informal part of this process hold no right of accompaniment. However, if the employee asks to be accompanied, this will not unreasonably be refused, where this is practical.
- 4.2 Employees must be given the right to be accompanied by a trade union representative or work colleague at any formal meetings that are held under this policy.

5. Keeping Records

- 5.1 Full records should always be kept of any evidence of poor performance collated by the manager, all meetings or discussions with employees about job performance, whether they are formal or informal, and any outcomes/actions such as targets for improvement. The manager should share all records with the employee.

6. Dealing with poor performance informally

- 6.1 Where it has been identified through performance appraisal or more regular one-to-one/supervision meetings that an employee has not been performing satisfactorily and the manager believes that this is due to a lack of ability, the manager should investigate the employee’s poor performance. In the case of specialist posts, this may require input from an appropriate specialist in the relevant discipline. (*linked guidance – Guidance Note 4 - ‘Possible causes of unsatisfactory performance’*)
- 6.2 The manager should discuss the performance concerns with the employee and provide them with factual examples of their unsatisfactory performance. The employee should be given an opportunity to respond to the concerns and put forward any reasons for the poor performance. (*linked guidance – Guidance Note 5 - ‘The informal discussion’ and Guidance Note 6 - ‘Communication Skills’*)
- 6.3 Where the reason for unsatisfactory performance is the lack of the required skills, the manager is responsible for assisting the employee to access relevant training, coaching or mentoring where this is reasonable and appropriate. If it is a question of lack of support, tools or other resources, or (where there is a disability) a potential need for a reasonable adjustment, the manager must take steps to provide the necessary assistance required wherever possible.

- 6.4 In cases where the employee has a disability, the manager should be satisfied that appropriate reasonable adjustments have been identified and put in place before proceeding with a Performance Management process. In such cases, the manager should seek further advice from the HR Casework Team and Employee Wellbeing. A [Guide to Reasonable Adjustments For Managers](#) is available in the People Management Handbook.
- 6.5 The manager should draw up a performance and improvement plan for the employee, clearly outlining the areas of concern, targets to be met, support to be provided and timescales for improvement. *(linked guidance – Guidance Note 8 - ‘The Improvement Plan’)*
- 6.6 The manager should make the employee aware of the performance management policy and explain that if their performance is still of concern at the end of the improvement period, the matter will progress to the formal stages of the policy.
- 6.7 In some cases, underperformance may be due to personal issues that the employee is experiencing. In these cases, the manager should offer appropriate support to help the employee to manage these issues, including the BUPA Employee Assistance Programme or the City Council network support groups for BME, Disability and LGBT communities. In these circumstances, it may not always be necessary to use the Performance Management process, unless the problems persist and continue to impact on performance at work.
- 6.8 Following the performance discussion, the employee must be given a reasonable period of time for improvement. This will depend upon the circumstances of each case, however this would not normally exceed 4 weeks. *(linked guidance – Guidance Note 7 - ‘Setting timescales for improvement’)*
- 6.9 The manager must keep a note of the discussion to summarise the required outcomes and confirm the review date. This should be shared with the employee along with a copy of the performance improvement plan.
- 6.10 The manager should undertake regular reviews of the employee’s progress during the improvement period, ensuring that feedback is given and the employee is clear about their progress and whether they are meeting expectations. *(linked guidance – Guidance Note 8 - ‘The Improvement Plan’)*
- 6.11 At the end of the improvement period, the manager should undertake a final review of the employee’s progress and consider the appropriate next steps. If the employee has shown improvement, but has not quite attained the full standards required, the manager will need to decide if it is appropriate to progress to the formal stages of this policy.
- 6.12 In cases where a manager feels that the employee will reach the required standards if allowed a reasonable period of additional improvement time, then they should take this approach instead of commencing the formal stages.
- 6.13 If the employee is still unable to meet standards even after additional time has been given, the formal stages of this policy should be followed.
- 6.14 In cases where at the end of the review period the employee has not achieved the required improvements, a move to another post in the service area at the equivalent or lower grade could also be considered as an alternative to progressing to the formal stages of this policy. A move of this nature would be subject to the availability of an appropriate post, on a voluntary basis with the employee’s agreement, and cannot be enforced at this stage of the process. Should the manager and employee wish to consider this option, they should take further advice the HR Casework Team.

7. Dealing with poor performance formally

7.1 Where despite support the employee is unable to reach the required standard of performance, the manager should write to the employee, giving at least 5 working days notice, inviting them to a formal meeting to discuss their performance. *(linked guidance – Guidance Note 9 - 'Format of a formal capability meeting')*

7.2 The formal process is as follows:-

7.2.1 Stage One – first written warning

If there is no improvement or insufficient improvement after the informal stage, or if improvement is not maintained for the period set out at the informal discussion, the employee will, unless there are significant mitigating circumstances, be given a first written warning. This must set out in writing to the employee the precise nature of the poor performance, the improvement required, the time for achieving that improvement, the consequences of failure to achieve or maintain the improvement, the length of time the warning will remain “live” (6 months), and a warning that the Performance Management process could potentially lead to dismissal if there is insufficient improvement.

The improvement plan should be reviewed and if necessary, revised, and a further improvement period set. It is recommended that the improvement period following a first written warning should not exceed 8 weeks. *(linked guidance – Guidance Note 7 - 'Setting timescales for improvement')*

7.2.2 Stage two – final written warning

If there is no improvement or insufficient improvement after the first written warning, or if improvement is not maintained for the period stated in the first warning, the manager should write to the employee again to arrange a further meeting, where the employee will, unless there are significant mitigating circumstances, be given a final written warning. This must again be confirmed in writing, and should include the same detail as outlined in the stage one warning (note that a second warning will also remain “live” for 6 months), but with an additional clear statement that a failure to improve to the required standard is likely to result in dismissal.

The improvement plan should be reviewed and if necessary, revised, and a further improvement period set. It is recommended that the improvement period following a final written warning should not exceed 4 weeks. *(linked guidance – Guidance Note 7 - 'Setting timescales for improvement')*

7.2.3 Stage three - dismissal

If there is still no improvement or insufficient improvement after the final written warning, or if improvement is not maintained for the period stated in the final warning, as a last resort the employee will normally be dismissed with notice. A dismissal should be conducted by a more senior manager, who should be no lower than third tier. As with the previous stages, the manager must write to the employee and arrange a formal dismissal meeting *(linked guidance – Guidance Note 10 – 'Format of a dismissal meeting')*.

Wherever appropriate, and in all cases where performance concerns are due to a disability, the manager, supported by the HR Casework Team, will seek to identify alternative employment for the affected employee elsewhere in the organisation if a suitable post at the equivalent or lower grade is available. *(linked guidance – Guidance Note 11 - Redeployment via Project People)*

The outcome of the meeting must be confirmed in writing, including the right of appeal.

7.2.4 At any of the above stages within the formal process, the manager may consider a move to another post at the equivalent or lower grade, either alongside (or, if appropriate, as an alternative to) a formal warning, or as action short of dismissal. Should the manager wish

to consider this option, they should take further advice from HR colleagues in the Casework Team.

7.2.5 Appeal

An employee will be able to appeal against a decision to issue them with a first or final warning, or to dismiss them, by writing to the manager who made the decision. This should be done within ten working days of the letter confirming the original decision. An appeal should be heard by an alternative manager to the one who made the original decision, and this should be a more senior manager wherever reasonably practicable.

7.2.6 The appeal should focus on specific factors which the employee feels have been dealt with unfairly or which have received insufficient consideration, such as:

- an inconsistent, inappropriate or excessively harsh penalty;
- extenuating circumstances;
- alleged bias of the Disciplining Officer;
- alleged unfairness in the conduct of the meeting;
- new evidence subsequently coming to light.

7.2.7 There will be no further right of appeal other than that described above. (*linked guidance - Guidance Note 12 - 'Format of an appeal meeting'*)

8. Time Limits

8.1 Both first and final written warnings will remain live for six months, but improvement periods under the formal stages of the policy would not normally exceed 8 weeks.

8.2 If the employee does not reach expected standards, the manager should proceed to the next stage in the formal process at the end of the improvement period.

8.3 If the employee does demonstrate sufficient improvement by the end of the improvement period, the performance management process can be discontinued. However, the warning in place will continue to be live until the 6-month period expires, and should the performance concerns reoccur within the life of the warning, the performance management process can be resumed at the same point that it was stopped, and the manager can proceed to the next stage in the formal process. If new performance issues arise that are different to the ones that led to the warning, then a new performance management process should be started in order to give the employee the appropriate support to address the issues before any move towards the formal stages. However, if a pattern of frequent performance management issues arises, whether recurring or for different reasons, then the manager will have discretion to make a decision about the appropriate way to proceed, in line with section 8.6 of this policy.

8.4 Warnings will cease to be live following the 6-month period, subject to satisfactory performance. Performance will be regarded as satisfactory where there are no continuing concerns about performance within the specific period of the warning. Further action in respect of new performance concerns will require a further Performance Management process. This does not mean however, that an employee's past performance (both positive and negative instances) should not be taken into consideration when deciding upon the appropriate action to take where there are further concerns.

8.5 In exceptional circumstances, where the inadequacy of performance is so extreme that an opportunity for improvement would be of no benefit to the employee and/or may constitute an unfair burden on the business or a detriment to service users or customers, then it may be appropriate to proceed straight to a final warning or dismissal. (*linked guidance – Guidance Note 7 – 'Setting timescales for improvement'*).

8.6 This may also apply in cases where the Performance Management Policy has been

followed on one or more previous occasions with the same employee (either due to recurrence of the same performance issues or for different ones), even where warnings may be 'spent'.

- 8.7 Advice from the HR Casework Team must be sought in all such cases and decisions made on a case by case basis.

9. Opting in to People Plus

- 9.1 People Plus is all-inclusive and any colleague may choose to opt in. An employee on performance management will not be prevented from opting into People Plus if they would like to be considered for alternative posts in the organisation.

- 9.2 Further information on opting in to People Plus can be found in the [People Plus Guidance](#) on the intranet.

- 9.3 If an employee decides to opt in to People Plus, this should not prevent the performance management process from continuing while the employee remains in their current post. If the employee moves to a new post via People Plus, it will be a matter for the new manager to assess their performance and therefore the process with the former manager will cease.

10. Mutual Agreement to terminate contract

- 10.1 There is nothing in this policy that prevents the parties concerned reaching a mutual agreement that employment with Nottingham City Council should not continue where it is accepted that the employee's skills, knowledge and abilities are not appropriate to the requirements of the post, there is no fault involved, and the employee wishes to tender their resignation.

- 10.2 Managers must ensure that the option to remain in post with support through an improvement plan is offered to the employee in all cases.

- 10.3 If unsure about how to proceed, managers should seek advice from the HR Casework Team.

Appendix 1

The Council has a number of human resources (HR) related policies and services in place that together with the Performance Management Policy provide support for its employees:

- Reasonable Adjustment Guidance
- Employee Assistance Programme
- Occupational Health Service
- Mentoring
- Mediation Service
- Equality and Diversity Policy
- Corporate Violence Policy
- Mental Health & Wellbeing Advisory Service/Mental Health Strategy
- Stress Guidance and Policy
- Domestic Violence Policy Guidance
- Teleworking Policy
- Alcohol, Drugs and Substance Misuse Policy
- Annual Holidays
- Flexible Working Hours Scheme
- Voluntary reduction in working hours
- Variable working hours
- Compressed working hours
- Right to request flexible working
- Job sharing scheme
- Flexible retirement scheme

Guidance Note 1 - Understanding the link between Performance Appraisal and Performance Management

Performance issues should not be raised for the first time at a Performance Appraisal (PA). It is expected that concerns should be picked up via the day to day management process and the employee will be aware of them before the PA takes place. The PA gives an opportunity for any issues that have been raised to be summarised and formally incorporated into the employee's individual objectives and development plan. Sometimes a manager may find that the PA assessment process crystallizes their concerns and presents them with a clearer basis on which to start a structured Performance Management process., Performance Management should be used in cases where performance is of significant concern, and managers should have already taken steps to address their concerns via day to day management and/or one to ones before commencing the Performance Management process.

Performance Appraisal and Performance Management are separate processes, but are not mutually exclusive and will inevitably cross over where there are performance concerns. It is expected that, where both apply to an employee, there will be consistency of feedback across both processes.

The Performance Management process should not address any issues that the PA does not also reflect and the manager has not already raised and addressed with the employee. For example, employee X has performance issues, which might relate to competencies (i.e. X is not displaying the required competency level for the post) or to objectives (i.e. X is failing to meet specific deadlines or standards of work). X's manager should ensure that these concerns are included as part of X's individual objectives and competency levels.

Performance concerns within a PA will inevitably lead to some 'not met' or 'partially met' ratings for an employee's competency standards, and such employees will therefore receive a contribution rating of either 1A, 1B, 2B or 2C (2A is not included here as this relates to employees who are new to post but are making good progress, and therefore does not apply for the purpose of this guidance).

Where employees receive these lower contribution ratings, if they have not already commenced a Performance Management programme, their manager should use this as a trigger to consider whether or not Performance Management might be an appropriate route to help the employee to improve to the standards required. As part of this process, the manager should consider any contributing factors for the low score and take these into account when deciding whether it is appropriate to begin Performance Management or whether support can more appropriately be given on an informal basis.

Employees who receive the higher contribution ratings in their PA of 3A or 4A, should do so on the basis that they have consistently met or exceeded the performance standards required of them. Therefore, it would generally be inconsistent for such employees to require Performance Management. However, there may be cases where something changes significantly between PA review dates and in these cases a high contribution rating would not necessarily rule out Performance Management if it has become necessary.

Guidance Note 2 – Choosing the right process

Before commencing the Performance Management process, managers should carefully consider which is the appropriate policy or procedure to manage the concerns they have.

Disciplinary Procedure

If there are reasonable grounds to believe that underperformance is deliberate with intent to be obstructive or to cause detriment to service provision, service users, customers, colleagues or the reputation of the Council, this would usually be treated as misconduct under the Disciplinary Procedure.

Certain instances of negligence, whether deliberate or not, which are so serious that they pose a risk to service provision, service users, customers, colleagues or the reputation of the Council may also be more appropriately managed under the Disciplinary Procedure.

All cases will be different and it is impossible to provide generic guidance on what type of performance issue would constitute a disciplinary matter. Managers should seek advice from the HR Casework Team where they are unsure.

If a very serious issue of underperformance occurs or comes to light while performance management is in progress and the focus changes from a performance management concern to a disciplinary matter, the evidence already collated under the performance management process can be used to inform the disciplinary process, and need not be repeated via a disciplinary investigation. Additional investigation can be undertaken to supplement the performance management evidence if it is required to ensure a full and fair investigation has taken place.

Performance Management

The Performance Management Policy should be used where the issue is believed to be due to a skills gap, i.e. a need for training or other support in order to perform to the required standard; or where there may be a capability issue, i.e. the employee is genuinely unable to undertake the requirements of a role even with support on the manager's part and effort on the part of the employee.

The aim of the Performance Management policy is to provide the employee with the support required to enable them to improve their performance – it is not intended for use as a punitive process and there should be no implication of blame or wilfulness on the part of the employee. However, the facility exists within the Performance Management policy to terminate employment if necessary, should the underperformance persist despite support being provided, or should it be so severe in nature that it poses a risk to the Council.

If it becomes apparent that an employee's underperformance is due to personal issues which are impacting on their wellbeing and ability to perform at work, support should be offered to the employee to help them to manage their personal issues, including access to the BUPA Employee Assistance Programme. In such cases, the Performance Management process may not always be necessary unless the problems persist and continue to impact on job performance.

Attendance Management

Managers should be aware that in some cases health or disability may be a contributing factor to performance capability issues, and in some of these cases there may also be an impact on attendance which may mean that management under the Attendance Management Policy might be more applicable. Again, in cases where the way forward may not be clear, advice should be sought from the HR Casework Team.

Guidance Note 3 – What is Capability?

Under the Employment Rights Act (ERA), capability is one of the potentially fair reasons for dismissal. In deciding whether or not to deal with an employee's performance issues as capability (rather than misconduct) a manager should consider whether the unsatisfactory performance is due to one of the following (as described by the ERA) :-

Skill: This refers to lack of ability, skill or knowledge which means an employee is unable to perform to the standard expected as defined in the City Council's Core competencies. "Skill" is much easier to establish with new employees or employees where there has been a recent and significant change to their job description as the cause may be attributable to poor application of recruitment or selection processes or inadequate training. Conversely with a long-serving employee it is much harder to establish unless the problem has arisen because new skills are required or standards have been changed.

Aptitude: This is where there may be a mismatch between a person's natural tendencies and personal strengths and those required for a role. 'Aptitude' can also relate to circumstances where an employee's performance is affected by issues within their control which they do not wish to address, for example an unwillingness to follow a particular direction or to adapt to change in the workplace. Under the latter circumstances, a decision would need to be made as to whether this behaviour should be addressed as capability or misconduct.

Physical quality: This is where an employee develops a disability or health condition that impacts on the employee's ability to carry out their role. The provisions of the Equality Act may become relevant here in particular the duty to make reasonable adjustments

Qualifications: Where possession of a qualification, such as a valid driving license, is required for employment, its lapse or loss falls within this category. However, a manager would need to be able to demonstrate that the requirement of the qualification was in reality an essential and substantial part of the job.

To fall within the capability policy, the qualification must relate to aptitude or ability and a mere permit or authorisation (such as CRB clearance or registration with a professional body) will not normally relate to capability. In situations where a qualification or professional membership is an essential and substantial part of the job, its lapse or loss would usually be managed under a different procedure. In these cases, managers should seek further advice from the HR Casework Team.

Guidance Note 4 – Possible causes of unsatisfactory performance

Having identified that the reason for unsatisfactory performance is capability, there may be a range of factors contributing to that employee's apparent inability to reach the expected standard. The manager should consider whether there is/has been:

- Inadequate or insufficient training
- Poor systems of work, out-of-date policies or inadequate procedures that do not permit efficient or effective work
- 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/her job duties and goals
- Reluctance on the employee's part to undertake their role, or certain aspects of it (this could be due, for example, to a lack of confidence in a particular area or to difficulty in acclimatising to changes to a post.) This should not be confused with outright refusal to undertake a role, which would more appropriately be addressed as a disciplinary issue
- Unclear instructions
- Work overload (causing stress and fatigue)
- Unrealistic targets or deadlines
- Working relationship/interpersonal issues
- Bullying or harassment
- Physical or mental health issues (including disabilities)
- Personal problems that affect the employee's concentration
- Recent change which may be affecting the employee

Where it is identified that poor performance may be due to factors within the manager's control, e.g. unreasonable workload, the manager should take steps to address this before entering into Performance Management.

Guidance Note 5 – The informal discussion

In holding an informal discussion with an employee to address their unsatisfactory performance, as their manager you should consider the following guidance:

- Clearly explain to the employee why you do not consider them to be performing satisfactorily and ensure you are able to provide examples. (gather information prior to the meeting – ensure that this is factual);
- Be able to demonstrate the shortfall between the employee's performance and the required standard of performance – the competency framework may be a good tool to use. In some cases, where the employee holds a specialist role, it may be necessary to seek input from another appropriate specialist in the relevant discipline;
- Listen to the employee's side of things and establish whether there are any problems facing the employee with which they can be helped;
- Examine the causes of the unsatisfactory poor performance and determine any appropriate support that may be provided, for example:
 - Coaching and advice
 - Mentoring/Training
 - Review working arrangements
 - More frequent supervision
 - Review local processes and practices
 - Reasonable adjustments
 - Referral to Occupational Health
 - Access to BUPA Employee Assistance Programme;
- Obtain the employee's commitment to reaching the required standard and acceptance of responsibility for their own development:
- Seek joint agreement on a performance improvement plan and timescales (note: this may not always be accepted by the employee. Please see paragraphs below regarding this);
- With consideration to any time required for training etc, set an agreed time period for the employee to reach the standard and agree on a monitoring, review, and feedback system within that period (see further guidance on setting timescales);
- Inform the employee that you will hold regular review meetings during the time period (these could be during one to one/supervision sessions) and will set a final review meeting at the end of the time period agreed; and
- Make the employee aware of the Performance Management Policy and inform them that if he/she fails to improve their level of performance satisfactorily then the matter will proceed to the formal stages of the policy.

The manager must keep a note of the discussion and share this, together with the performance improvement plan, with the employee for their reference.

It is acknowledged that employees may not always be receptive to a conversation about their performance, and may not accept the feedback given by their manager. For this reason in particular, the manager should ensure that they are able to give clear evidence of the underperformance and explain how performance is not satisfactory, so that the employee has a clear understanding of the reasons for the manager's concern.

While the employee may not wish to participate in the performance management process, they must understand that the required standard of performance is a matter for their manager to decide. Providing the manager's expectations are reasonable and the rationale for performance management can be demonstrated, the employee is expected to engage with the performance management process. If they refuse to do so, the manager will have no choice but to progress through the formal performance management process, or pursue disciplinary action if they feel it is appropriate.

Guidance Note 6 – Communication Skills

When conducting a meeting with an employee to discuss unsatisfactory performance, open and unambiguous communication is essential. Managers are advised to:

- Stick to the facts and avoid expressing personal opinions.
- Be specific, e.g. “There are three mistakes in this piece of work” (where possible, provide documentary evidence).
- Avoid generalisations, e.g. “you always miss deadlines”.
- Express the impact of the error, i.e. “this meant that a client received the wrong information”.
- Ask open questions, e.g. “What do you think you could do to improve your working relationship with your colleagues?”
- Ensure the tone used is supportive and not accusatory.
- Ensure that the employee is given the opportunity to contribute to the discussion, and that you listen and respond to them.
- Use positive words such as ‘improvement’ and ‘achievement’ rather than negative words such as ‘failure’ and ‘weakness’.
- Focus the discussion on future improvement rather than on past inadequacies.
- Always check for understanding by, for example, asking the employee to summarise his/her understanding of what has been discussed.

Guidance Note 7 – Setting timescales for improvement

Timescales for improvement would not normally exceed 4 weeks at the informal stage of the process or 4/8 weeks at the formal stages. However, what amounts to a reasonable time for improvement will depend upon the circumstances of each particular case, and may include:

- The nature of the employment;
- How long the employee has had to learn the role, what prior support/training they have had;
- The availability and timescales of training that might be required
- The employee's past performance;
- The extent to which the employee's work falls below standard;
- The seriousness of the shortcomings;
- The impact on the business of continuing poor performance;
- Whether there have been any recent additions/changes to the job;
- Any relevant mitigating factors.

In setting timescales, the manager should also be mindful that an excessively lengthy process can have a negative effect on the employee's emotional welfare, and should ensure that timescales are not extended beyond what is relevant and appropriate to the case.

If it becomes apparent that the employee's performance is affected by illness or disability, a referral to Occupational Health should be considered to assess whether and to what extent the health condition or disability has a direct impact on the employee's performance, and to obtain advice on any reasonable adjustment that may be appropriate. This would need to be taken into consideration when setting any timescales agreed for improvement to be achieved. Where there is significant impact on an employee's capability due to illness or disability, the manager should, seek advice from the HR Casework Team.

Where an employee is absent during their improvement period because of illness or annual leave, the manager should consider making a reasonable extension to the timescales in order to accommodate this. However, absence should not be accommodated for unreasonable lengths of time and in such cases the manager should seek further advice from the HR Casework team.

In exceptional circumstances, it may be necessary to proceed straight to a final warning or dismissal, if it is felt there is extreme underperformance.

This would usually be in either one or both of the following circumstances:

- Where an opportunity for improvement would be of no benefit to the employee. For example: it becomes apparent that they simply do not have the aptitude required to ever reach the desired standards, and there is too much risk in allowing them to continue in their post. (Note, if this lack of aptitude could be due to a disability then reasonable adjustments would need to be explored before any move towards termination of employment)
- Where an opportunity for improvement may constitute an unfair burden on the business or a detriment to service users or customers. For example: if the length of time required to effect an improvement would be disproportionately large and therefore unsustainable due to the impact on service provision.

Guidance Note 8 - The Improvement Plan

A performance improvement plan should clearly state the areas where performance is of concern, what the target performance should be, and what support/actions will be provided to help the employee to achieve their objectives.

Guidance on compiling an improvement plan can be sought from the HR Casework Team if required. A template for a performance improvement plan can be found at the end of this guidance ([use weblink](#)).

In developing the improvement plan, the manager should consider the following points:

- Ensure that areas of concern are clearly laid out. These should have already been raised and evidenced during the informal discussion.
- Consider whether, in the case of specialist roles, input may be required from another specialist in the relevant discipline (ensuring that the person consulted is external, or at an appropriate level within the Council).
- Consider the level of performance required – this should be reasonable and realistic, and in line with the level and requirements of the role.
- Express the required performance in a set of objectives that link to each area of concern (this could be one or more objective per concern).
- Give examples of what 'good' looks like so that the employee is clear about what they need to aim for. This could be in the form of figures (e.g. 'manage a caseload of 20', or 'respond to x number of calls per hour') or behaviours (e.g. 'confident in liaising with senior managers', or 'projects are consistently delivered on time').
- Think about how you will measure success. This may be simple in some cases (e.g. numerical targets) but some of the more behavioural competencies may be harder to capture. If you are not satisfied with the employee's progress, you should be confident that you can explain to the employee why this is. You may find the competencies from the Performance Appraisal process useful as a benchmark.
- Identify actions that the employee might need to take in order to attain their goals (e.g. 'keep a 'to-do' list and update every day' or 'set reminders to flag deadlines'). Ensure that the employee understands that they must take responsibility for their own improvement, with appropriate guidance and support from you.
- Identify support that the employee might need in order to attain their goals. This could be a variety of things including (but not limited to) training, coaching, mentoring, shadowing and provision of additional/specialist equipment. Support should be identified in consultation with the employee to ensure you understand their needs and concerns. However, you should also use your discretion to ensure that the support provided is relevant, reasonable and appropriate.
- Set a reasonable timescale for improvement. This would not usually exceed 4 weeks at the informal stage of the process (4-8 weeks at the formal stages), but should take into account any training and development programmes that may be needed and the availability/duration of these.
- Focus on your role as a manager in enabling a person to succeed: there needs to be a reasonable investment of your time to ensure that the employee receives effective, reasonable feedback and sufficient access to the support mechanisms identified. This will be proportionate to the amount of performance improvement required.

As part of the improvement plan, the manager should undertake regular reviews of performance and discuss progress with the employee. The employee should be clear throughout the duration of the improvement period how they are doing, including where improvements have been made, what is going well, and where additional improvement is still needed. The manager must keep notes of these discussions and share these with the employee for their records.

The manager's notes should include:

- The date of the discussion;
- The employee's name;
- The manager's name;
- The nature of the discussion (i.e. whether it is a first discussion of performance, or a follow-up review meeting);
- A summary of the performance concerns under discussion;
- Notes of any improvements made so far during the review period;
- Notes of where improvement is still required, and to what extent;
- Notes of any actions taken since the last discussion (if applicable);
- A summary of any actions or outcomes pending, or new ones arising from the discussion, and any deadlines applying to these;
- A note of the amount of time remaining in the performance review period (if applicable);
- Where relevant and possible, a note of the date the next performance review will take place.

This is not intended to be an exhaustive list, but should serve as a guide and starting point.

At the end of the improvement period, the manager should conduct a final review of the employee's progress and performance, and inform the employee of whether they have met their improvement targets or not, and what the next steps will be.

Performance Improvement Plan

Employee's name:		Job title:	
Department:		Date of appointment to current role:	
Manager:		Date of performance discussion:	
Length of review period:		Review period end date:	

The following areas of performance have been raised as being of concern, and objectives have been agreed as below in order to address these areas of concern:

Area of Concern	Required level of performance (what 'good' looks like)	Actions to be taken	Support to be provided
1.			
2.			
3.			
4.			
5.			

Employee's signature:	Date:
Manager's signature:	Date:

Final Review – end of improvement period

Please log progress below after the final review point:

Note: frequent progress updates should also be given to the employee during the review period, and a note kept of these discussions. Please keep notes of these discussions with this performance plan to show how the assessment below has been reached.

Area of Concern	Objective Met? (Y/N/Partly)	Comments
1.		
2.		
3.		
4.		
5.		
Employee's signature:		Date:
Manager's signature:		Date:
Next steps: <i>(delete as appropriate)</i>		
Standards met - discontinue performance management	Standards not met - progress to formal stage of policy	
Notes:		

Guidance Note 9 – Format of a formal capability meeting

The manager should write to the employee to invite them to attend a meeting, giving at least 5 working days' notice and outlining the reasons for the meeting, including copies of any documents to be referred to at the meeting and reminding the employee of the right to be accompanied by a Trade Union representative or work colleague. The employee should take all reasonable steps to attend the meeting.

At the meeting the manager should:

- Where appropriate, review the original performance and improvement plan;
- Provide evidence of where the employee has failed to demonstrate sufficient improvement, and if applicable acknowledge any improvement that has been made;
- Seek to investigate and determine the performance gap, the causes which may be affecting performance, and the actions to be taken;
- Re-emphasise the expected performance standards and determine any support that is required by the employee (this may include training, or reasonable adjustments);
- Outline the impact of not meeting those standards;
- Agree a further performance improvement plan and timetable to review the agreed objectives;
- Explain that this meeting constitutes a first or final (as appropriate) warning under the formal stages of the Performance Management policy;
- Make the employee aware that failure to meet and maintain the standards within the agreed period, will lead to the next stage of the formal policy being initiated; and
- Set regular interim reviews and a formal review date.

During the meeting the employee should be given every opportunity to ask for clarification of the expected standards and to bring to the manager's attention any issues which have affected his or her performance including work and personal matters.

The manager should amend the performance and improvement plan and a new timescale for achievement of the required standard should be set. This should allow sufficient time to meet the standard, but it should not be unduly prolonged. This would usually be no less than four weeks, but should not exceed eight weeks, dependent upon circumstances and the stage of the process.

The outcome of the meeting, the terms of the first warning, and a warning that the potential consequence of continued insufficient improvement may be dismissal must be confirmed in writing by the manager to the employee together with a copy of the revised performance and development action plan, within 10 working days of the meeting.

At any stage of the formal process if the employee's performance improves and then subsequently deteriorates again a meeting should be arranged and the policy will be reactivated at the same stage that it left off, providing that a warning is still live. If there are cases where the Performance Management Policy has been followed on one or more previous occasions with the same employee, but warnings are 'spent', the manager should consult the HR Casework Team for further advice, and decide on a case by case basis how to proceed.

Guidance Note 10 – Format of a dismissal meeting

If it becomes apparent to the manager that the required standards have not been met or look unlikely to be met during the timescales, or the level of underperformance is so extreme that an opportunity for improvement would be of no benefit to the employee and/or may constitute an unfair burden on the business or a detriment to service users or customers, then it may be necessary to commence the final formal stage.

Before initiating the final formal stage the manager, with advice from the HR Casework Team, should give full consideration to:

- The steps taken to encourage and support improvement;
- The level of improvement attained;
- The extenuating circumstances, if identified;
- The possibility of alternative employment if appropriate;
- The attitude of the employee;
- Whether, in cases where there is an extremely serious concern, the disciplinary process might be more appropriate.

The manager should prepare a report detailing the history of the performance management process, support provided, progress made, and where/why performance continues to be of concern, and submit it to a more senior manager (no lower than third tier), who should write to the employee to invite them to attend a formal meeting giving at least 5 working days notice. An HR Casework Advisor should be present at the meeting. The letter should outline the reasons for the meeting, include copies of any documents to be referred to at the meeting and remind the employee of the right to be accompanied by a Trade Union representative or work colleague. The employee should take all reasonable steps to attend the meeting.

At the meeting the senior manager should:

- Confirm the formal nature of the meeting and advise the employee that the meeting may result in their dismissal;
- Ask the line manager to present their report and detail the shortcomings in performance that have been identified, any action taken so far and any improvements made;
- Provide the employee with every opportunity to ask for clarification of the standards expected, to highlight any issues which may have affected his or her performance, including work and personal matters and to fully present their case;
- Sum up the key points of the meeting and confirm with the employee that all substantial and relevant information has been presented;
- Inform the employee of when a decision will be made;
- Adjourn to consider their decision in private with the HR Casework Advisor;
- Reconvene the meeting to inform the employee of their decision;
- If dismissed, inform the employee that they have the right of appeal;
- Confirm to the employee that the decision will be confirmed in writing within a reasonable timescale (usually within 5 working days).

Scope of decisions

Dismissal will not be an automatic outcome of this meeting if the deciding manager does not feel it is appropriate under the circumstances. Consideration should be given to factors such as support that has been provided and whether it was appropriate, and the amount of improvement (if applicable) that has been shown.

Action short of dismissal could include a compulsory move to an appropriate alternative role at an equivalent or lower grade, if one is available.

Guidance Note 11 - Redeployment via Project People

In cases where an employee fails to meet the required performance standards and the decision is made to dismiss them, consideration may be given to redeployment.

From April 2013, redeployment forms part of People Plus, and therefore for detailed guidance on the redeployment process ('Project People'), managers should refer to the dedicated [People Plus guidance](#).

People Plus uses a strengths and experience based approach to job matching which will match people to posts that suit their strengths and transferable skills. Therefore, an employee who has been dismissed from one post due to poor performance may be matched to a more suitable post in which they could perform well.

It should be noted that Project People is primarily focused on finding alternative posts for 'surplus' colleagues whose posts have been deleted as part of restructures. These colleagues, and colleagues who are subject to redeployment due to a disability, will usually take precedence over colleagues who are part of Project People for other reasons, such as poor performance.

Colleagues who are dismissed for poor performance and placed into Project People will be considered for alternative posts for the duration of their notice period, and will be matched to suitable posts providing there are no 'surplus' or disabled colleagues who are also a match. This may be at either an equivalent or a lower grade than that of their previous post.

If an employee has been dismissed due to the impact of a disability on their performance, they will be treated in the same way as any other colleague who is in Project People due to a disability, and will be considered for alternative posts for an appropriate period in line with the standard Project People timescales, and with consideration to the specific details of their disability.

Managers should seek guidance from the HR Casework Team and the Project People team within Talent & Skills when considering redeployment for employees dismissed for poor performance.

Guidance Note 12 – Format of an appeal meeting

Employees have the right to appeal against the decision to issue them with a first or final written warning for poor performance, as well as against the decision to dismiss. An appeal should be heard by an alternative manager to the one who made the original decision, and this should be a more senior manager wherever reasonably practicable.

The Appeal Officer should write to the employee to invite them to attend a formal meeting giving at least 5 working days notice. An HR Casework Advisor should be present at the meeting. The letter should outline the reasons for the meeting and remind the employee of the right to be accompanied by a Trade Union representative or work colleague. The employee should take all reasonable steps to attend the meeting.

At the meeting, the Appeal Officer should:

- Introduce those present to each other, explaining their presence if necessary.
- Explain the purpose of the meeting, how it will be conducted, and the powers the Appeal Officer has.
- Ensure clarity by all parties on the reasons for the appeal, and establish that they are in line with the appropriate reasons for appeal outlined within the policy.
- Provide the employee with the opportunity to present their case for appeal.
- If necessary, corroborate any points raised by, for example, speaking to key participants.
- Pay particular attention to any new evidence that has been introduced, and ensure the employee has the opportunity to comment on it.
- Once the relevant issues have been thoroughly explored, summarise the facts and call an adjournment to consider the decision in private with the HR Casework Advisor.
- Change a previous decision if it becomes apparent that it was not soundly based - such action does not undermine authority but rather makes clear the independent nature of the appeal. If the decision is overturned consider whether training for managers needs to be improved, if rules need clarification, or if there are other implications to be considered? (Note that an appeal officer does not have the power to increase a sanction where they feel it was too lenient).
- Reconvene the meeting to inform the employee of the results of the appeal and the reasons for the decision and confirm it in writing. Make it clear that this decision is final.

Vision: To promote a culture of proactive and robust Performance Management at Nottingham City Council, underpinned by the implementation of a revised Performance Management Policy.

Aims:

- To provide Nottingham Managers with the tools and support to quickly and effectively address poor performance.
- To address the impact of poor performers on the business by ensuring that performance issues are robustly addressed and quickly resolved, thus ensuring we have the right people in the right roles, alleviating pressures on other colleagues and removing the additional cost implications of carrying poor performance within the organisation.
- To create a culture where colleagues with performance concerns can be confident of a transparent and structured support mechanism to assist their improvement, and where we can continue to invest in those colleagues who genuinely wish to make a positive contribution but may not be in the right role to do so.
- To ensure that performance is managed consistently and fairly across the organisation, with strong links to Performance Appraisal.

Audiences:

- Corporate and Departmental Leadership Teams
- Nottingham Managers
- Colleagues
- Councillors
- Trade Union Representatives
- HR Colleagues (specifically Casework and Service Redesign)

Risks to success of implementation:

- Opposition to change – **mitigated by** ensuring that communication and engagement of key stakeholders (in particular, operational managers) highlights the benefits to the organisation, and that support and buy-in is secured from the Leadership team
- Failure to reach intended audiences – **mitigated by** ensuring that communications start at the highest level and can be cascaded down, as well as ensuring targeted and appropriate communication. Ensuring that there are an adequate number of briefings available at several locations, and that information is also communicated via HR colleagues in their liaison with managers.
- Managers lacking skills or confidence to implement – **mitigated by** a strong framework of support via information provision, training, and coaching/support from HR colleagues, senior managers, and peers.

Links to other programmes and projects:

- People Plus
- Performance Appraisal
- Nottingham City Council values
- Nottingham Manager development programme

Channels:

- Face to face briefings for managers
- Emails to senior managers and people managers
- Intranet
- Impact

Key Messages:

Senior Leaders

- **Think** – I fully understand and support the new approach and can see why we are doing it
- **Feel** – I believe that we are committed to managing performance within the organisation
- **Do** – visibly champion, communicate and support the new direction for Performance Management.

Nottingham Managers

- **Think** – I understand the new direction we are taking with Performance Management, and why we are taking it, and know where I can go for information and support to help me to put this into practice
- **Feel** – I can see how the new approach to Performance Management will benefit me and the organisation and consider it to be a positive thing
- **Do** – put into place the new approach and ensure that I proactively manage performance promptly and thoroughly. Participate in Action Learning Sets so that learning and experiences can be shared with peers. Act as a role model to other managers and colleagues in applying the new approach, and share positive outcomes.

Colleagues

- **Think** – I am aware that the Council has a new approach to Performance Management, including a revised Performance Management policy, and can understand why this is necessary
- **Feel** – I feel that the new approach will help to make my colleagues and me more effective, by addressing poor performance and thereby increasing overall productivity and reducing strain on high-performing colleagues. I feel confident that if I am subject to Performance Management, the new approach will ensure that I will be given all appropriate support and will be treated fairly.

Councillors

- **Think** – I understand the new approach that is being taken towards Performance Management and how it will help to make the Council more efficient in delivering Council Priorities
- **Feel** – I feel confident that this new approach will benefit colleagues and citizens and is in tune with the Council Plan
- **Do** – support the new direction for Performance Management.

Trade Unions

- **Think** – I understand the rationale for the new approach to Performance Management and I am satisfied that appropriate consultation has taken place with the Trade Unions
- **Feel** – I feel confident that TU feedback has been taken on board and that measures will be in place to ensure that the policy is applied appropriately and fairly
- **Do** – I will support the introduction of the new approach and engage constructively in its application.

HR Colleagues

- **Think** – I understand what the new approach to Performance Management is and why we need it, and what my role will be in its implementation and successful use
- **Feel** – I feel fully equipped with the skills and knowledge I need to support managers in using the new approach
- **Do** – I will pro-actively promote Performance Management and will ensure that I undertake my role in facilitating its implementation and in supporting managers.

Activity	Audience	Detail	Purpose	Date
Briefing to Departmental Leadership Teams	Leadership Team	Briefing to be delivered by HR Business Partners	Engage and inform Leadership Team and obtain buy-in	<i>Provisionally 29 May 2013</i>
Briefing sessions for managers	All Nottingham Managers	Short sessions (approx 20-30 mins) facilitated by HR Consultants and Casework Advisors To be held at a selection of locations to reach the maximum number of managers	Communicate how we are looking to move into an improved culture of managing poor performance plus introduction of new policy. Obtain feedback on what support mgrs believe they might need to start managing performance differently	1 June – 30 August 2013 <i>Approx. 2 sessions per week over 13 weeks</i>
Training programme	All Nottingham Managers	Relevant training incorporated into Nottingham Manager Programme Action learning sets offered by Casework Team	Provide managers with all the tools and support they need to implement and embed new culture.	Ongoing – long term <i>Feedback from manager briefing sessions will be used to design tailored support</i>
Coaching/support for individual mgrs	All Nottingham Managers; in particular those with less experience/confidence	Support via HRBPs at manager request, will signpost either to HR Casework Advisors or identify experienced peer mentor	Provide managers with additional support if they need to access it.	Ongoing – medium/long term
Briefing/s for HR Colleagues	Casework Team Service Redesign HRBPs	Briefings to be delivered by HR Consultants	Ensure HR colleagues understand what their contribution will be to embedding new culture and are up to date with new developments.	May/June 2013
Wider communication	All Colleagues	Emails to managers Publishing on Intranet and Impact	Give general update on new developments	From Implementation (1 June onward)

Key messages in more detail

Messages for colleagues:

The Council is committed to recruiting, retaining, promoting and training the right people in the right jobs to reduce the risk of poor performance at a later stage

The Performance Management policy needs to be used together with Performance Appraisal

It's not intended to punish but rather to provide the employee with the support required to enable them to improve performance

Colleagues will have a clear understanding of the standards required and the expectations for improvement

There are now recommended timescales for improvement

There's an emphasis on supportive measures, in particular where there may be disability-related concerns

Key messages for managers:

- You have told us that the last policy could be clearer – the aim is to give you clearer guidance
- It's been updated and is more concise
- There are recommended timescales for improvement
- You can have peer mentoring by a more experienced manager if you need it
- The new policy contains a process specifically acknowledging disability aspects and the support needs associated with that, while still allowing for termination of employment, if this ultimately becomes necessary
- Manager must establish the cause of poor performance – capability is recognised as a cause, along with the support to improve
- You will know where to go for support
- A key tool to interact with Performance Appraisal
- In line with People Plus commitment to develop and progress colleagues
- More flexibility and the chance to fast track if necessary

PERFORMANCE MANAGEMENT POLICY
TRADE UNION COMMENTS

The trade unions recognize the need for the Council to have a documented procedure to address concerns regarding the performance of its employees to ensure a fair and consistent approach to performance management.

We acknowledge that a number of changes have been made following trade union consultation, in particular the detailed guidance which is a key accompaniment to the policy.

We are opposed however to the introduction of the policy in its current draft, in particular the introduction of a dismissal procedure within the policy, and the unacceptably short timescale of 16 weeks in which a manager is able to dismiss an employee, which could be even shorter as outlined in sections 8.5/8.6.

One of the concerns we have is regarding the link between the Performance Appraisal system and the Performance Management Policy as we do not believe the Council has fully assessed the appraisal system introduced last year.

Whilst we have been provided with quantitative data – i.e. numbers completed – we have not had any qualitative information which is equally important in assessing the application of appraisals, particularly given concerns some members have raised with us about it being a “tick box exercise” and in some areas even being done with groups of employees rather than on an individual basis.

We acknowledge this is not the case for all employees, however if appraisals are not carried out properly, which we believe may be the case in some service areas where there are high volume posts and where managers’ workloads are increasing, employees may end up being taken through a performance management process and potentially dismissed which could result in claims of unfair dismissal.

Another concern relates to the timescales set out for improvement. Whilst we acknowledge the need to set timescales, these need to be realistic and in consultation with the employee concerned as there are a number of factors which can influence that timescale: this includes for example availability of any training identified, availability of either the manager or another colleague for mentoring, how much time a manager is able to set aside to adequately monitor and support the employee with improvement, holidays or sickness.

Failure to adequately allow an employee the opportunity to improve will again potentially result in unfair dismissal claims.

Finally with the introduction of a new jobs matching process, which uses personality strengths assessment as the main basis on which to match an individual to a post, there are concerns about employees possibly being matched to posts that they are not really suitable for and therefore could find themselves not able to perform in the role, which in turn would lead to a performance management process possibly ending in dismissal. On this basis we believe the new matching system – People Plus – should be closely monitored to identify whether this becomes an issue.

Because of the concerns outlined above the trade unions believe the council should reconsider the dismissal process and remove the rigid timescale set for an employee to improve their performance.

Christina Sanna – JTUC Secretary
7 May 2013

Appendix E

Name and brief description of proposal / policy / service being assessed New approach to Performance Management - Proactive performance management strengthens the overall efficiency of the Council and reduces the associated impact on other colleagues and the costs associated with lost productivity. It is important that we develop a culture whereby we take a more holistic and instinctive approach to performance management. To underpin this culture change, a new Performance Management policy has been developed to ensure a more robust, thorough, consistent and equitable approach to Performance Management across the Council. The draft policy has been through consultation with Unions with the intention to implement from 1 June 2013.		Information used to analyse the effects on equality <ul style="list-style-type: none"> • Consultation has taken place with HR colleagues, manager groups (inc. Head of Equality & Community Relations), Trade Unions, and the City Council network support groups for BME, disabled and LGBT colleagues. • As this is a new proposal and policy, no data is available yet to analyse its effect. 		Could particularly benefit (X)	May adversely impact (X)	How different groups could be affected: Summary of impacts	Details of actions to reduce negative or increase positive impact (or why action not possible)
People from different ethnic groups	<input type="checkbox"/>	<input type="checkbox"/>	<p>The BME network has been consulted and their feedback taken on board in developing the policy. They have not expressed any concerns that BME colleagues could be negatively affected by the new approach.</p> <p>The new policy places strong emphasis on managers thoroughly evidencing their rationale for starting a performance management process; therefore there should be no opportunity for the use of the policy to discriminate against colleagues. Managers who are not able to demonstrate the reasons for performance concerns will be open to challenge.</p>	<p>The new Performance Management (PM) Policy has a number of controls integrated into it to limit negative impact and increase positive impact, including:</p> <ul style="list-style-type: none"> • Emphasis on managers thoroughly evidencing their rationale for managing performance. This should limit the opportunity for any bias, should it exist. • The new policy also contains much clearer guidance and should result in more consistent application but with clear guidance on where approach should be different to accommodate differing needs. • Training will be developed to help managers to use the PM policy appropriately, and with consideration for equalities issues. 			
Men, women (including maternity/pregnancy impact), transgender people	<input type="checkbox"/>	<input type="checkbox"/>	<p>There is no indication that the new PM approach will adversely impact on any of these groups.</p> <p>The new policy places strong emphasis on managers thoroughly evidencing their rationale for starting a performance management process; therefore there should be no opportunity for the use of the policy to discriminate against colleagues. Managers who are not able to demonstrate the reasons for performance concerns will be open to challenge.</p>	<p>The new PM Policy has a number of controls integrated into it to limit negative impact and increase positive impact, including:</p> <ul style="list-style-type: none"> • Emphasis on managers thoroughly evidencing their rationale for managing performance. This should limit the opportunity for any bias, should it exist. • The new policy also contains much clearer guidance and should result in more consistent application but with clear guidance on where approach should be different to accommodate differing needs. • Training will be developed to help managers to use the PM policy appropriately, and with consideration for equalities issues. 			
Disabled people or carers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<p>The Disabled Employees Support Network has been</p>	<ul style="list-style-type: none"> • The new PM policy is explicit in addressing 			

			<p>consulted and do not feel that the new approach will have a negative impact on disabled people.</p> <p>It is anticipated that the new policy will have a positive impact on disabled colleagues as it encourages managers to consider and address disability issues before commencing performance management. This should prevent performance management being implemented in cases where a reasonable adjustment could resolve the performance concerns, and ensure that disabled colleagues are treated fairly.</p>	<p>disability-related issues and providing guidance to managers on how to appropriately manage performance issues related to a disability.</p> <ul style="list-style-type: none"> If a disability is genuinely adversely impacting on performance, then it is not possible for action to be taken to prevent these issues from being managed. However, the new policy is clear about the support and reasonable adjustments that should be offered in such cases before formal action is taken. Colleagues who are dismissed due to performance issues linked to a disability will be entitled to a more generous redeployment period than non-disabled colleagues in the same circumstances.
People from different faith groups	<input type="checkbox"/>	<input type="checkbox"/>	There is no indication that the new PM approach would adversely impact people from different faith groups.	
Lesbian, gay or bisexual people	<input type="checkbox"/>	<input type="checkbox"/>	There is no indication that the new PM approach would adversely impact lesbian, gay or bisexual people. The LGBT network have been consulted and have expressed no concerns.	
Older or younger people	<input type="checkbox"/>	<input type="checkbox"/>	There is no indication that the new PM approach would adversely impact older or younger people.	
Other (e.g. marriage/civil partnership, looked after children, cohesion/good relations, vulnerable children/adults)	<input type="checkbox"/>	<input type="checkbox"/>	The new policy has been designed to guide managers to thoroughly investigate possible issues which may impact on performance, so it is not anticipated that it would adversely impact on other colleagues with specific support needs.	
Outcome(s) of equality impact assessment:				
No major change needed <input checked="" type="checkbox"/> Adjust the policy/proposal <input type="checkbox"/> Adverse impact but continue <input type="checkbox"/> Stop and remove the policy/proposal <input type="checkbox"/>				
Arrangements for future monitoring of equality impact of this proposal / policy / service: As this is a new policy, it is recommended that a review of this EIA is conducted 1 year from implementation (i.e. 1 April 2014) to assess the impact of the policy in practice.				
Approved by (manager signature): Della Sewell, Employee Relations Manager Tel 01158763575			Date sent to equality team for publishing: Send document or link to equalityanddiversityteam@nottinghamcity.gov.uk	