

Improving Performance Policy and Procedure



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South & East Lincolnshire Councils Partnership

This policy and procedure for employees of the Council advise on the informal and formal procedures for managers to follow to support and assist an employee whose performance has fallen below the required standards of output.

The policy and procedure define how the employee will be supported by their manager to enable the necessary improvements in job performance and sets out clearly the roles and responsibilities associated with improving performance.

The policy and procedure ensure careful consideration is given to the needs of the employee to preserve fairness and reasonableness at all stages, whilst also balancing these needs with the service delivery requirements of the Council.

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Contents

1.	Application of this policy and procedure.....	5
1.1	Application.....	5
1.2	Interaction with other policies and procedures	5
2.	Responsibilities.....	6
2.1	Employees’ Responsibility	6
2.2	Management Responsibility	6
2.3	Human Resources Responsibilities	7
2.4	Companion Responsibilities Including Trade Union Representatives.....	7
3.	Informal Resolution	7
4.	Stage 1 – Improving Performance Initial Meeting.....	8
4.1	Preparing for and conducting the Improving Performance Initial Meeting.....	8
4.2	Action Following Stage 1 – Improving Performance Initial Meeting.....	9
4.3	Outcomes from Stage 1.....	9
5.	Stage 2 – Improving Performance Review Meeting	10
5.1	Preparing for and conducting the Stage 2 – Improving Performance Review Meeting.....	10
5.2	Outcomes from Stage 2.....	10
6.	Stage 3 – Improving Performance Final Review Meeting.....	11
6.1	Preparing for and conducting the Improving Performance Final Review Meeting.....	11
6.2	Outcomes of the Improving Performance Final Review meeting	12
7.	The Appeal Process	13
8.	Conducting the Appeal Hearing.....	14
8.1	The Appeal Hearing Meeting.....	14
8.2	Following the Appeal Hearing	14
9.	Exclusions	15
10.	Data protection and retention of employee records	15

Introduction

Governing Legislation

The policy and procedure adhere to UK employment legislation, ACAS's, and CIPD's guidance on best practices for management of improving performance at work and employee relations.

Scope

This policy and procedure apply equally to all employees who work for the Council, including statutory roles and chief officer roles. Where this involves a statutory officer, Chief Executive, or chief officer these outcomes may be dealt with under the procedures set out in the Constitution and within the Memorandum of Agreement relating to an integrated Shared Workforce structure, between Boston Borough Council, East Lindsey District Council and South Holland District Council, known as the South and East Lincolnshire Councils Partnership (SELCP).

Aim

The Council places great importance on maintaining levels of performance at an acceptable standard.

The policy aims to support the employees with any intervention that may assist them to achieve the required expectations of their roles.

The aim is also to ensure prompt, consistent, and fair treatment for all employees and to enable both the individual and the Council to be clear about the expectations of both parties.

This policy provides a fair and objective process to enable Managers to ensure that those standards are met in every aspect of the Council's operations including its service delivery, performance, and engagement.

The Improving Performance Policy aims to:

- Establish a constructive approach to managing performance issues and raise an employee's performance to the agreed standard through effective supervision, mentoring, coaching, training, and/or other appropriate support.
- Ensure a fair and consistent process is applied where an employee is experiencing performance difficulties.
- Ensure issues of under-performance are handled appropriately with any underlying reasons considered; and that the employee is given all reasonable assistance to overcome performance issues.

Key Principles

The Council cannot accept under-performance from their employees and will address such issues in a reasonable, timely, and constructive manner. The Council is committed to supporting colleagues through mentoring, training, and development opportunities.

The Council will expect people managers to establish realistic and measurable standards of performance for each role. Managers are responsible for explaining these standards to employees through induction and probation, and for monitoring ongoing performance.

People managers should keep records of these regular meetings to monitor performance and support employees to achieve these standards through day-to-day management, and effective discussions about support and development through the appraisal process.

This policy should be used when normal line management action has been unsuccessful and there is evidence that there has not been an acceptable level of improvement. This policy should not be seen as a substitute for effective and supportive day-to-day line management of performance issues.

The Council is committed to supporting its employees, this may include such actions as supporting employees to gain role-specific qualifications or training.

The Council is keen to ensure that this policy is not seen as punishment. It provides a process of review, assessment, and recommendations for the employee to improve their performance, which must be transparent and understood by all concerned within the Council.

The Council cannot guarantee to maintain employment if an acceptable level of performance is not achieved when this procedure has been completed.

1. Application of this policy and procedure

1.1 Application

This policy should be used when normal line management action has been unsuccessful and there is evidence that there has not been an acceptable level of improvement.

This policy should not be seen as a substitute for effective and supportive day-to-day line management of performance issues.

Some examples of concerns that may be dealt with under this policy include:

- adequacy of skills, qualifications, and/or knowledge.
- professional insight or judgement.
- ability to manage reasonable workloads.
- ability to work to identified standards.
- ability to identify and work towards appropriate priorities.
- ability to establish good working relationships
- suitability of qualifications e.g., changes in statutory or professional regulations requiring a qualification not previously required.

This is not an exhaustive list – the Council reserve the right to invoke the policy in other cases where an employee has been unable to perform their duties to the required standard for the role.

There will be times when an employee does not perform at the level required. In dealing with cases of poor performance, the Council distinguishes between those where the reason is within the employee's control and those where the reason is outside the employee's control. Managers will need to make a judgement about whether a situation is an under-performance issue or a disciplinary issue. Care should be taken to distinguish between the two.

As a general guide this policy applies where an employee is motivated to carry out his/her/their role but for some reason cannot.

1.2 Interaction with other policies and procedures

The Council's Disciplinary Policy and Procedure apply where an employee is capable of carrying out his/her/their role but chooses not to or is negligent, deliberately careless, unwilling to carry out duties, or declines to take up continuous professional development essential for maintaining the agreed standard of performance. Managers should treat all ambiguous cases as under-performance issues in the first instance.

People managers should bear in mind the legal obligation, under the provisions of the Equality Act 2010, to consider reasonable adjustments when managing an employee.

Performance includes the contractual obligation of all employees, including employees with a disability, to maintain an acceptable level of attendance at work, to ensure that there is no breach of the contract of employment by the employee. Further guidance should be sought from HR at PSPS Ltd via HR@pspsl.co.uk

Where an employee is absent on a long-term basis due to ill health, the Employee's manager should seek advice from HR via HR@pspsl.co.uk. There is a separate policy and procedure for the management of sickness absence.

This policy and procedure also operate within the principles and requirements of the Council's Equality and Dignity at Work policies and procedures.

2. Responsibilities

2.1 Employees' Responsibility

Within contracts of employment, all employees have a responsibility to perform their duties to an acceptable standard and to continue their development in the post to keep their professional knowledge up to date, and to meet new challenges in their work. They will be given all reasonable support and encouragement to do so.

All employees are also responsible for bringing to the attention of their managers, as soon as possible, any work-related problems, health, or personal circumstances that are affecting or likely to affect their performance.

All employees are responsible for fully engaging with their managers when dealing with issues relating to their performance.

2.2 Management Responsibility

All people managers are responsible for overseeing and reviewing employee performance and addressing concerns at the earliest opportunity.

They are responsible for giving honest and constructive feedback on performance to their employees.

People managers must be prepared and ready to have conversations with employees; and deal with performance issues as soon as they are detected, preferably through informal coaching and mentoring.

It is part of the normal management process (including keeping records of such meetings and discussions) that when there is a lapse in performance, employees are reminded of what is required of them.

Employees will be managed in a constructive, supportive, and compassionate manner, to achieve a plan of action aimed at bringing a sustained improvement up to the agreed standard.

People managers will receive training and support in the use of this policy; they must use this policy consistently as a tool for helping and encouraging employees to improve and maintain their performance.

Concerns about an employee's job performance should, wherever possible be resolved by managers and employees informally.

All managers are responsible for ensuring their employees have:

- been set realistic objectives and clear standards for performance in their job role
- training and development needs identified and met for the job requirements.

2.3 Human Resources Responsibilities

HR is responsible for providing advice and guidance to managers and has a specific role to provide professional support during the stages of this procedure where this is indicated.

2.4 Companion Responsibilities Including Trade Union Representatives

An employee's companion may be a Trade Union representative or workplace colleague, their role is to support the employee or member and on occasions may act as an advocate.

The role of the companion is to assist and support the employee by acting as a friend and advisor. The companion may put the employee's case forward, summarise it at the end or ask questions to clarify understanding of the situation.

The employee must notify HR in advance of the meeting, who they have chosen as their companion. Where the chosen companion represents a conflict of interest then the employee will be advised by HR to select a different companion.

Colleagues who do not wish to accept an invitation to act as a companion are not obliged to do so.

Companions may attend meetings during working hours without loss of pay and will be given reasonable time to familiarise themselves with the matter and talk to the employee both before and after meetings.

Employees are responsible for ensuring their companions are willing to support them and can attend meetings and/or hearings.

Employees may not appoint a legal representative or anyone external to the Council, other than a recognised Trade Union Representative, to act as a companion.

3. Informal Resolution

Where there is minor concern about an employee's performance, this should be dealt with informally.

Where appropriate, the employee's manager should have a two-way discussion, clearly stating the reasons for the discussion, exploring ways that the employee could improve, and for the improvement to be sustained.

Both the employee's manager and the employee should keep a written record of their discussions and outcomes.

Where this fails to resolve the matter or it is sufficiently serious to warrant the formal process from the outset, the following process should be followed.

The Formal Improving Performance Procedure

The formal Improving Performance Procedure has three stages:

- Stage 1 - Improving Performance Initial Meeting
- Stage 2 - Improving Performance Review Meeting
- Stage 3 - Improving Performance Final Review Meeting

4. Stage 1 – Improving Performance Initial Meeting

4.1 Preparing for and conducting the Improving Performance Initial Meeting

The purpose of the '*Stage 1 - Improving Performance Initial Meeting*' is to discuss with the employee the required standard of performance, any shortfall, and the reasons for this.

The employee's manager should meet with the employee to have a two-way discussion.

The employee's manager may seek advice from HR about the procedure during the Stage 1 – Improving Performance Initial Meeting however, HR will not be present at this initial meeting.

The meeting will cover:

- the standard of performance required in the role;
- feedback from the employee's manager on the nature of the underperformance issue;
- the employee's perceptions of the situation;
- the possible reasons for the shortfall in performance;
- what improvements need to be made;
- how and when improvements need to be achieved, including support required and whose responsibility it is to provide such support;
- an agreed period for review not normally exceeding three months, recognising the amount of time necessary to assess the improvement required, this may be dependent upon the nature of the role;
- an agreement to the method and frequency of the feedback to be provided to the employee throughout the review period;
- the possible consequences of the inability to improve performance to the required level.

Both the employee's Manager and the employee should keep a written record of their discussions.

The outcomes of the discussion should be recorded in an Improving Performance Plan (IPP).

The IPP should be completed by the employee and the manager, with a copy given to the employee.

This document should be used as the basis for monitoring and reviewing the performance for the agreed period, targets set should be achievable, measurable, and agreed by both parties.

In exceptional circumstances, if any difficulties remain unresolved by the end of Stage 1 Improving Performance Initial Meeting then these should be recorded, and advice on the way forward should be sought by the employee's manager from HR.

The employee must be reminded that disciplinary action may be taken if they chose not to or are negligent, deliberately careless, unwilling to carry out duties, or declines to take up continuous professional development essential for maintaining the agreed standard of performance within the actions agreed.

4.2 Action Following Stage 1 – Improving Performance Initial Meeting

During the agreed 'Review Period', it will be the people managers responsibility to conduct regular one-to-one meetings with the employee as part of their normal line management.

The people manager should review the actions and monitor progress, ensuring any agreed support arrangements are provided to the employee.

The people manager must retain a copy of the Improving Performance Plan (IPP), record the outcomes of meetings and reviews, and provide copies to the employee. No record of the IPP will be kept by HR at this stage.

The people manager will conduct a meeting with the employee at the end of the agreed 'Review Period' and confirm to the employee in writing whether an acceptable level of performance has been achieved.

4.3 Outcomes from Stage 1

There are two possible outcomes:

Outcome 1 – The required improvement specified in the Improving Performance Plan (IPP) has been achieved.

The employee will receive confirmation of this outcome from the people manager and will be advised that no further action will be taken so long as the improvement is sustained, and work continues to be performed to the required standard.

The Employee will be advised that if the improvement is not sustained, and there is a further lapse, then a *Stage 2 – Improving Performance Review Meeting* may need to be arranged.

Outcome 2 - There has been little or no improvement in the Improving Performance Plan (IPP).

The employee will receive confirmation of this outcome and will be advised that a *Stage 2 – Improving Performance Review Meeting* will be arranged.

The people manager will notify HR where an employee is to be invited to a *Stage 2 – Improving Performance Review Meeting*.

5. Stage 2 – Improving Performance Review Meeting

5.1 Preparing for and conducting the Stage 2 – Improving Performance Review Meeting

The purpose of the '*Stage 2 - Improving Performance Review Meeting*' is to decide whether the employee requires further support and an extension to the review period.

Where the required standard has not been achieved, the people manager and a representative from HR will set a date for the '*Stage 2 Improving Performance Review Meeting*'.

A letter will be sent to the employee without undue delay, informing them of:

- the nature of the poor performance and that the meeting is to be a *Stage 2 – Improving Performance Review Meeting*.
- the date, time, location, and purpose of the meeting (to be held without undue delay whilst giving the employee sufficient time to prepare).
- the possible level of seriousness implied by the alleged poor performance
- the right to be accompanied by a Trade Union Representative or work colleague and the need to notify HR of the individual in advance of the meeting.
- the names and roles of the people who will be present at the meeting.

At the meeting, the people manager will explain:

- the purpose of the meeting.
- the issues relating to the under-performance of the employee and the action that has been taken to date to support the employee.
- provide the employee with an opportunity to put forward their case and any explanations as to the reason for their poor performance.

5.2 Outcomes from Stage 2

The *Stage 2 – Improving Performance Review Meeting* has two possible outcomes:

Outcome 1 – Further Review Period Required

Based upon the information shared during the meeting the people manager may decide a further review period is necessary.

The people manager with the employee will review and updated the Improving Performance Plan (IPP) and set a date to meet at the end of the review period.

The employee's manager must retain a copy of the Improving Performance Plan (IPP), record the outcomes of meetings and reviews, and provide copies to the employee and HR.

The employee will be invited to an end of review meeting following the 'Review Period' to which there will be two possible outcomes:

Outcome 2 - The required improvement specified in the Improving Performance Plan (IPP) has been

achieved at the end of Stage 2.

The employee will receive confirmation of this outcome and will be advised that no further action will be taken so long as the improvement is sustained, and work continues to be performed to the required standard.

The employee will be advised that if the improvement is not sustained, and there is a further lapse, then a *Stage 3 – Improving Performance Review Meeting* may be arranged.

Outcome 3 - There has been little or no improvement in the Improving Performance Plan (IPP) by the end of Stage 2, and/or a further review period is not warranted under Stage 2

The employee will receive confirmation of this outcome and will be advised that a *Stage 3 – Improving Performance Final Review Meeting* will be arranged.

6. Stage 3 – Improving Performance Final Review Meeting

The purpose of *Stage 3 - Improving Performance Final Review Meeting* is to review what action has been taken and what support has been offered to enable the employee to perform their duties to the expected level.

The *Stage 3 - Improving Performance Final Review Meeting* will be conducted by a manager independent of the employee. Where the matter concerns a member of the Senior Management Team then the *Stage 3 - Improving Performance Final Review Meeting* may be conducted by the Chief Executive, Head of Paid Service, Section 151 Officer or Monitoring Officer, or any other Executive Director appropriate.

6.1 Preparing for and conducting the Improving Performance Final Review Meeting

A letter will be sent to the employee by the independent manager without undue delay, informing them of:

- the nature of the poor performance and that the meeting is to be a Stage 3 – Improving Performance Final Review Meeting.
- the date, time, location, and purpose of the meeting (to be held without undue delay whilst giving the employee sufficient time to prepare).
- the possible level of seriousness implied by the alleged poor performance
- the right to be accompanied by a Trade Union Representative or workplace colleague, and the need to notify HR of the individual in advance of the meeting.
- the names and roles of the people who will be present at the meeting.

At Stage 3 – Improving Performance Final Review meeting, the independent manager will explain:

- the purpose of the meeting.
- the issues relating to the under-performance of the employee and the action that has been taken to date to support the employee.

- provide the employee with an opportunity to put forward their case and any explanations as to the reason for their poor performance.

6.2 Outcomes of the Improving Performance Final Review meeting

Outcome 1 - Downgrading or Redeployment

In certain circumstances, it may be possible to offer alternative employment or movement to a lower grade position if a post exists within the Council. The Council will not create a role if there is no alternative role available.

Initially, this alternative employment or movement to a lower grade position may be offered on a three-month trial basis, on protected terms and conditions of service, reviewed monthly, and involve, where appropriate, re-training.

On completion of the trial period, the terms and conditions for the lower grade position will be those appropriate to the grade of the post. Protection of existing pay, terms, and conditions will not apply after the trial period.

It must be made clear to the employee that failure to perform to an acceptable standard in the new position by the end of the trial period will result in *Stage 3 – Improving Performance Final Review Meeting* being reconvened, and termination of employment is likely to be the outcome.

Where the employee refuses the offer of alternative employment or movement to a lower grade position, dismissal will take place on the grounds of continued under-performance.

Outcome 2 - Recommendation for Dismissal

If an employee's performance is still unsatisfactory and fails to reach the agreed standards during the review period, dismissal on the grounds of sustained under-performance will normally result.

If the outcome is dismissal, the employee will be informed as soon as is reasonably practicable and notified in writing by the independent manager.

The dismissal letter will include the following information:

- the reason(s) for dismissal.
- the date on which the employment will terminate
- the right to appeal.

The dismissal will be with due notice, or payment in lieu of notice, as stated in the employee's contract of employment.

The performance improvements that have been documented to the employee as issued by the employee's manager as a result of this procedure will remain in force pending the outcome of any appeal.

7. The Appeal Process

An employee has the right to appeal against the outcome of Stage 2 and 3. An appeal can be submitted using the Appeal Form which is available on the HR and Payroll Services Portal/First4HR.

The Appeal Form should be submitted within 10 working days from receipt of the decision letter confirming the disciplinary action.

The appeal procedure will normally be carried out as soon as practicable following receipt of an appeal.

An appeal against the outcome at Stage 2 will be heard by an independent manager who has not previously been involved in the matter, they will chair the appeal hearing and a representative from the PSPS HR Team will be in attendance to provide advice and guidance.

An appeal against the outcome at Stage 3 will be heard by an Appeal Panel that has not previously been involved in the matter, comprising:

- Two senior managers (the “Employment Panel”), one of whom will act as the Chair and both of whom will be decision-makers about the Appeal.
- a representative from HR to provide advice and guidance to the Chair

The purpose of the Appeal Hearing is not to reinvestigate the case but to establish the grounds for appeal and ensure:

- the original decision was reached in a procedurally correct way
- the action taken was reasonable
- the decision reached was proportionate regarding the underperformance and all relevant circumstances of the case
- the full consideration of any new relevant evidence or mitigating circumstances that may not have been previously disclosed.

The Appeal Panel will consider the findings from the Stage 3 – Improving Performance Final Review Meeting, or Stage 2 – Improving Performance Review Meeting in the case of a Stage 2 appeal.

The Chair of the Appeal Panel will write to the employee notifying them of the time and date of the Appeal Hearing.

The Chair of the Appeal Panel will send, without undue delay, copies of any written submissions and documentary evidence to all parties before the meeting.

The employee may submit additional information to the Chair of the Appeal Panel no later than 2 working days before the hearing date.

8. Conducting the Appeal Hearing

8.1 The Appeal Hearing Meeting

The purpose of the Appeal Hearing is for the Appeal Panel to listen to the employee's concerns and determine whether the outcome of Stage 3 – Improving Performance Final Review Meeting was procedurally correct and to decide whether the outcome of Stage 3 – Improving Performance Final Review Meeting was appropriate to the facts of the case or Stage 2 in the case of a Stage 2 Appeal Hearing.

The Appeal Hearing should proceed in a formal, polite, and respectful manner. The employee will have the right to be accompanied by a Trade Union Representative or workplace colleague.

Members of the Appeal Panel may put questions to the employee. The employee should present their final submission to the Appeal Panel.

The Appeal Panel will consider its decision in private. The Chair will notify the outcome to the employee on behalf of the Panel, as soon as possible after the Appeal Hearing.

8.2 Following the Appeal Hearing

Confirmation in writing of the outcome of the Appeal Hearing at Stage 3 will be sent by recorded delivery to the employee's home address. A certificate of recorded delivery will constitute evidence of receipt. The outcome will also be emailed to the employee at the email address provided by them for this purpose.

At Stage 2, the confirmation will normally be sent to the employee by email only, using the employee's work email address, or their private email address if the employee prefers this.

The decision of the Appeal Panel will also be conveyed to the independent manager of Stage 3 – Improving Performance Final Review Meeting and the employee's manager.

Where an appeal against an outcome is successful and the decision is not to impose any penalty, the reference to the action concerned will be removed from the employee's file and the employee will be notified accordingly in writing by the Chair of the Appeal Panel. Records of the process will be retained, including the notification from the Chair that the action has been removed.

Where the appeal decision is to substitute a lesser penalty than that previously imposed, the employee's file will be updated, and the employee will be notified accordingly in writing.

Where an appeal against an outcome is not successful, there will be no change in the level of action previously decided following the conclusion of the Stage 3 – Improving Performance Final Review Meeting or Stage 2 Review Meeting. This will be confirmed to the employee in the written outcome provided to the employee.

9. Exclusions

If difficulties are experienced with the employee's conduct or performance during the probationary period, this will be dealt with under the employing Council's Probationary Policy or process.

Therefore, the provisions of this policy will not apply to employees who have less than 6 months' service, or greater than 6 months' service but an extension to their probationary period has been applied.

10. Data protection and retention of employee records

The Council will maintain records of Grievance investigations the outcome of the investigations and any corrective or disciplinary action taken, in accordance with its data protection policy and data protection law.

Inappropriate access or disclosure of employee data constitutes a data breach and should be reported to the Council's data protection officer immediately.

The data breach may also constitute a disciplinary offence, which will be dealt with under the Disciplinary Policy.