



POLICY AND RESOURCES SCRUTINY COMMITTEE – 8TH JUNE 2010

SUBJECT: MANAGING JOB PERFORMANCE PROCESS

REPORT BY: DIRECTOR OF CORPORATE SERVICES

1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to present the Managing Job Performance Process to Policy and Resources Scrutiny Committee for consultation and feedback prior to the process going to Cabinet for approval.

2. SUMMARY

- 2.1 As Committee is aware, the new Disciplinary Procedure, which became effective on 1st April 2010, now deals with matters of capability and revokes the Council's Capability Procedure. This process, the Managing Job Performance Process is the vehicle designed for Managers to follow if they are experiencing issues with any of their employees' performance.
- 2.2 The process has been consulted on with the Council's recognised trade unions and a meeting to discuss their feedback further has been arranged for 7th June 2010. A verbal update on the outcome of this meeting will given at the meeting. The areas of difference to the previous Capability Procedure and the main issues raised by the trade unions are highlighted below.

3. LINKS TO STRATEGY

- 3.1 The new process links to the People Management Strategy and therefore to all other strategies, including all equality strategies, policies and procedures, that relies on employees to deliver the strategy and service provision

4. THE REPORT

- 4.1 As Committee is aware, the new Disciplinary Procedure, which became effective on 1st April 2010, now deals with matters of capability and revokes the Council's Capability Procedure. This process, the Managing Job Performance Process is the vehicle designed for Managers to follow if they are experiencing issues with any of the employees' performance and forms an Appendix to the Disciplinary Procedure.
- 4.2 The process for Managers to follow is not dissimilar to the process laid down in the previous Capability Procedure, in that Managers must investigate any instances where job performance does not reach the required level for the post, identify any particular areas of poor performance and identify ways in which the performance can be improved. All these steps must be undertaken in conjunction with the employee so that they are aware of the areas where their performance is thought not to have reached the required standard and they should agree to the remedies that are identified that will improve on that performance. Once the development opportunities are established, Managers should review progress in terms of the employee's performance and ensure that the agreed targets are being met.

- 4.3 One of the main areas of difference in this process to the previous Capability Procedure is now Managers and employees meet regularly as part of the Supervision and Personal Development Review (PDR) process. In the first instance, any areas where an employee's job performance does not meet the required standard for the post should be discussed within the confines of these meetings. Remedies to the problem should be sought at this point to allow the employee to improve their performance. The trade unions are concerned that there may be an element of favouritism or 'blue eyed boy' syndrome. Records are kept of Supervision meetings and PDRs and any issues that have been addressed with employees should be noted on the documentation and be available for scrutiny.
- 4.4 If the employee's performance does not improve then the Manager will invoke the Disciplinary Procedure and deal with the matter formally under the Managing Job Performance Process. Prior to any action being taken under the Disciplinary Procedure, Managers must undertake a full and thorough investigation as to why the employee's performance is not improving despite all the actions put in place. If after this investigation there is no acceptable reason as to why the employee's performance is not improving, disciplinary action may be taken. This action must be justified on the evidence available and seen to be reasonable or the Council will be liable for a constructive dismissal claim. The evidence from the Supervision sessions and the PDR, in addition to this investigation, should highlight if there has been any unfair criticism of the employee. The disciplinary action will, in the first instance, be a written warning lasting for a period of 12 months. If the employee's performance does not improve after this period then a final written warning may be issued, lasting for a period of 18 months. Again if the performance does not improve, dismissal is the ultimate sanction.
- 4.5 In addition to the warning a financial penalty may also be levied against an employee. This would be in the form of the withholding of an annual increment and can only be applied in cases where employees have not reached the top of their incremental scale. If an employee has reached the top of their scale, the Council is unable to deduct an increment as this would be seen as an illegal deduction from pay and leave the Council open to an Employment Tribunal claim. This is the major area of dispute with the Council's recognised trade unions, who believe that employees should have not suffer a financial penalty. The authority to withhold increments lies within the negotiated terms and conditions of the 'Purple Book', which states that an increment can be withheld if an employee's performance is not up to the required standard.
- 4.6 The financial penalty would last for the period of the warning that has been issued, i.e. either 12 or 18 months. If the employee's performance is satisfactory when the warning expires, the increment will be paid to the employee from the day after. If, however, the performance has not improved sufficiently the financial penalty may remain in place until the required standard is reached.
- 4.7 Employees will have the right of appeal at each stage of the process and the right to be accompanied either by their trade union representative or a work colleague.
- 4.8 It is proposed that guidance notes are produced for Managers so that they are aware of all the avenues that must be considered when dealing with employees' performance.
- 4.9 The process will apply to all employees except teaching employees, the Chief Executive, the Council's Monitoring Officer and the Section 151 Officer as separate procedures apply to these groups of employees.
- 4.10 This process will not be used to address performance issues concerning the medically certified long-term sickness absence of an employee.
- 4.11 The Council's Equality Groups have also been consulted on the contents of this process and have not raised any equalities issues with the process. In addition the recognised trade unions have canvassed the views of their members and these have been presented to the

Council for consideration and form part of the feedback received.

5. FINANCIAL IMPLICATIONS

- 5.1 There are no additional financial implications of introducing this process although if an employee has an increment withheld then there are obvious financial implications for the employee concerned.

6. PERSONNEL IMPLICATIONS

- 6.1 There are Personnel implications for the support of individual Officers in the process. This will occur on an 'as and when' basis and will be offset by the expected improvement in employees' performance.

7. CONSULTATIONS

- 7.1 Corporate Management Team
Head of Human Resources and Organisation Development
Human Resources Personnel Management Team
Head of Legal Services and the Council's Monitoring Officer
Directorate of Corporate Services Directorate Management Team
Council's recognised trade unions
Council's Equality Groups
Employees

8. RECOMMENDATIONS

- 8.1 That Policy and Scrutiny Committee provide feedback to the Head of Human Resources and Organisation Development on the process and approve the principles in order to progress to full Cabinet approval.

9. REASONS FOR THE RECOMMENDATIONS

- 9.1 The vast majority of Council employees are hard working and achieve a very high level of performance but the Council needs a vehicle to allow it to address the minority of employees who do not achieve an acceptable level of performance. This process will provide Managers with that vehicle and allow areas of unacceptable performance to be rectified.

10. STATUTORY POWER

- 10.1 Local Government Act 1972
Local Government Act 2000
Employment Act 2008

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Consultees: Corporate Management Team
Head of Human Resources and Organisation Development
Human Resources Personnel Management Team
Head of Legal Services and the Council's Monitoring Officer
Directorate Management Team
Council's recognised trade unions

Council's Equality Groups
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Background Papers:

ACAS Code of Practice on Discipline and Grievance
ACAS Guidance on the Code of Practice
Caerphilly County Borough Council Disciplinary Procedure
Various law bulletin updates and professional journals

Appendices:

Appendix 1 Managing Job Performance Process