

## **Personnel Committee – 18 April 2017**

### **Performance & Ill Health Capability Procedure**

#### **1. Purpose of the report**

To request Personnel Committee approval for the new Performance & Ill Health Capability Procedure (Appendix 1).

#### **2. Recommendations**

That the Personnel Committee approve the Performance & Ill Health Capability Procedure.

#### **3. Background**

The purpose of the Performance & Ill Health Capability Procedure is to provide a framework within which managers can support and encourage employees to achieve and maintain satisfactory performance standards and take appropriate action where this is not achieved.

The Council's Performance Procedure was last updated in 2009 and there is currently no Capability Procedure. Feedback received from the organisation identified the current Performance Procedure as lengthy, time consuming and lacking clear guidance. The review and development of this procedure has addressed the concerns of the business by ensuring that it is fit for purpose, user friendly, meets current legislation, demonstrates best practice and importantly free from any form of discrimination.

The Performance & Ill Health Capability Procedure is a key element of our employment practices and it is vital that it meets the needs of managers, employees and the general public to ensure that unsatisfactory performance are managed in a fair and consistent manner.

The procedure still has the same amount of stages as the current Performance Procedure (2009), namely:

- informal stage
- stage 1 (Formal Improvement Notice)
- stage 2 (Final Improvement Notice)
- stage 3 (Consideration of dismissal).

The current procedure gives no timescales, the key changes in the revised procedure are:

- Timescales for monitoring (minimum 4 weeks)
- At least two reviews during the monitoring period (i.e. at least one in the middle and one at the end)
- Timescales for the warnings remaining live:
  - stage 1 decision live for 6 months
  - stage 2 (and stage 3 if not dismissed) decision live for 12 months

- confirming that if improvement in performance is not sustained whilst a warning is 'live' the manager can return back to the stage previously at.
- Removal of link to Employee Performance Appraisals (as the EPR procedure is different to the previous EPA procedure)
- Removal of reference to probation (as unsatisfactory performance during probation should be dealt with under the probation process)
- Removal of the appeals details, instead referencing the Appeals Procedure (for consistency with other revised procedures)
- Inclusion of an ill health capability process for managing poor performance due to persistent or permanent health issues which are not impacting on attendance
- A template Performance Improvement Plan to assist managers has also been included.

#### **4. Financial Implications**

There are no direct financial implications arising from this report.

#### **5. Legal Considerations**

There are no direct legal implications arising from this report.

#### **6. Citizen Impact**

There is no direct impact on our citizens as a result of this procedure.

#### **7. Equality implications**

An equality impact assessment is attached (Appendix 2)

#### **8. Consultation**

The procedure has been consulted upon with senior managers across the Council and recognised Trade Unions between 16 June and 14 July 2017 and 28 February 2018 to 13 March 2018. The procedure was approved by CMT at its meeting on 29 March 2018 to be submitted and seek further approval at Personnel Committee.



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**Walsall Council**

# **Performance & Ill Health Capability Procedure**

DRAFT

## Version Control

<b>Document title</b>	<b>Performance and Ill Health Capability Procedure</b>		
<b>Owner</b>	Human Resources		
<b>Status</b>	Draft	<b>Version</b>	1.1
<b>Effective from</b>	To be confirmed	<b>Approved on</b>	To be confirmed
<b>Last updated</b>	26/02/2018	<b>Last updated by</b>	HR Strategy and Planning
<b>Purpose</b>	To provide a framework within which managers can work with employees to achieve and maintain satisfactory performance standards and to encourage improvement where necessary.		

This procedure links to:

- Appeals Procedure
- Absence Management Procedure
- Code of Conduct
- Disciplinary Procedure
- Employee Performance Review
- Probationary Procedure
- Redeployment Procedure

For advice and guidance on this procedure, or if you would like this information in another language or format please contact:

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## 1. INTRODUCTION

- 1.1 The main aim of this procedure is to provide a framework within which managers can work with employees to achieve and maintain satisfactory performance standards, and to encourage and support improvement where necessary.
- 1.2 Sometimes employees may fail to meet the required standards in performance as a result of a lack of capability or competence. Where there are concerns over performance matters these should be dealt with as soon as practically possible in a fair and supportive manner. Any employee who becomes subject to the performance and ill health capability procedure should be provided with a copy of the procedure.
- 1.3 Employees will not normally be dismissed for performance concerns without previous formal improvement notices (with the exception of ill health capability, where improvement notices are not issued).
- 1.4 Ill health capability (section 9) due to persistent or permanent health issues will be managed in a supportive manner with Occupational Health/Medical input and consideration of reasonable adjustments, including redeployment where appropriate. Managers will have discretion to move from the performance procedure into the ill health capability process based on medical information.
- 1.5 This procedure has been developed to comply with legislation, best practice and free from any form of discrimination.

## 2. SCOPE

- 2.1 This procedure applies to all Council employees with the exception of:
  - Employees whose conditions of service are negotiated by the JNC for Chief Executives and the JNC for Chief Officers;
  - Centrally employed teachers on School Teachers' Pay and Conditions, where they are managed through the school's Appraisal Policy (in line with The Education (School Teachers' Appraisal) (England) Regulations 2012) and the associated Capability Policy.
  - School based employees, where the Governing Body has delegated authority for these staff and for whom separate arrangements apply;
  - Employees in their probationary period, where the Probationary Procedure applies.
- 2.2 This procedure should not be used to address cases of sickness absence, which should be managed in accordance with the Attendance Procedure.
- 2.3 This procedure should not be used to address misconduct or gross misconduct, which should be managed in accordance with the Disciplinary Procedure.
- 2.4 Where an employee has concerns related to the use of, or decisions made, under the Performance Procedure, these will normally be dealt with through the meetings/hearing or appeals procedure. It is within the discretion of management whether or not to suspend the performance process whilst a grievance process is followed dependent upon the individual circumstances of the case.

### 3. RESPONSIBILITIES

#### 3.1 Employees will;

- ensure they understand what targets and standards of work are expected from them in their role and be responsible for their own performance.
- fulfil their role and work to the best of their ability
- fully participate in their induction, supervision, one to ones and EPR/appraisal meetings.
- work with their manager to identify where performance could be improved and how best to achieve that improvement.
- engage in any reasonable training and development that will enable them to reach the required standards of performance
- to discuss and/or address any concerns or issues around their own performance.

#### 3.2 Managers will;

- ensure that employees are aware what is required of them in relation to performance, quality standards, productivity and responsibility in their roles.
- actively use supervision, one to ones and EPR/appraisal meetings with the aim of maintaining high standards of performance within their teams.
- assist all employees to achieve and maintain satisfactory performance standards, encouraging and supporting improvement where required.
- seek to address performance issues at the earliest opportunity in the course of day to day line management. However, where an employee fails to meet the required standard of performance the manager may initiate the performance procedure.
- set objectives and expectations that are realistic, achievable and in accordance with the employee's job description and employee specification.
- remind employees of the support the Council offers in relation to support such as the employee assistance programme.

#### Reasonable adjustments

- 3.3 If an employee considers that a disability or health condition might be impeding their performance they should discuss the situation with their line manager as soon as possible.
- 3.4 Consideration will be given within the process to any reasonable adjustments required to enable the employee to fully participate, in accordance with the Equality Act. In addition consideration will be given within the process to any factors impacting on performance as a result of any protected characteristic, in accordance with the Council's [Equality and Diversity Protocol](#).

### 4. INFORMAL STAGE

- 4.1 Initial identification of an employee not meeting the required levels of performance often arises through one to ones, professional supervision, supervision, the Employee Performance Review (EPR), appraisals or from complaints. Often a quiet word or regular dialogue at one to ones may be all that is necessary to improve performance.

- 4.2 Where there are performance concerns the manager should collate any necessary evidence or examples to demonstrate to the employee where they are not meeting the required standards, such as the job description/person specification, supervision notes, case files, screen prints of data systems, call recordings, complaints etc.
- 4.3 The manager will meet with the employee to discuss the unsatisfactory performance concerns that have been identified. Performance issues are not disciplinary in nature; therefore the discussion should be one of constructive support and guidance. The employee should be provided with a copy of the procedure.
- 4.4 There is no formal notice or invite letter required to attend meetings at the informal stage, managers may decide to reconvene meetings where an employee requires time to consider issues raised at the initial meeting (normally within 2 days)
- 4.5 There is no right of representation for meetings at the informal stage of this process.
- 4.6 The area(s) of concern should be discussed, along with appropriate support, guidance and training, and a reasonable timescale set over which improvement will be monitored and reviewed. During the monitoring period the manager should maintain written notes for their own record of any informal discussions held with the employee. The template performance improvement plan ([Appendix 1](#)) may be used at the informal stage.
- 4.7 It is expected that the majority of performance concerns will be resolved at this level. However, where performance remains unsatisfactory and there is evidence to show that an informal stage has been undertaken the formal procedure may commence.
- 4.8 Managers may seek advice from HR before progressing to the formal stages of the procedure.

## 5. FORMAL STAGE/PROCEDURE

- 5.1 The formal procedure should be used where earlier informal discussion has not resulted in satisfactory or sustained improvement or, in exceptional cases, where the manager considers there are more serious issues of concern, such as gross negligence over performance requiring immediate application of the formal process at any stage (stage 1 to 3)

There are three stages in the formal procedure:

- ❖ Stage 1 Performance Meeting – First Improvement Notice
- ❖ Stage 2 Performance Meeting – Final Improvement Notice
- ❖ Stage 3 Performance Hearing – Consideration of Dismissal

- 5.2 A flowchart of the procedure can be seen in [Appendix 2](#).
- 5.3 Managers may seek advice from HR before progressing to the formal stages of the procedure.



## 6. STAGE 1 - FORMAL PERFORMANCE MEETING (First Improvement notice)

- 6.1 The Formal Performance Meeting should be conducted by the employee's line manager (however, if this is not possible or appropriate, another manager may consider the matter).

### Preparation before a formal meeting

- 6.2 The manager invites the employee to a Stage 1 Formal Performance Meeting to discuss the continuing concerns (or more serious concerns where escalated straight to the formal procedure).
- 6.3 Employees will be given at least 5 calendar days notice for all meetings at the formal stage including review meetings (meeting/review dates may be agreed at the initial meeting).
- 6.4 At all formal meetings, including review meetings, employees have the right to be accompanied by a suitable Walsall Council work colleague or recognised Trade Union Representative; it is the responsibility of the employee to arrange this. HR may also be in attendance to provide support to the manager during formal meetings, including review meetings.
- 6.5 The employee should be provided with a copy of the evidence discussed at the informal stage (if applicable).

### During the meeting

- 6.6 The discussion should include the following:

- ❖ details of the shortfall in performance and a review of monitoring period
- ❖ review the informal stage, where applicable
- ❖ allow the employee to state their case and provide evidence to support their response.
- ❖ consideration of any extenuating circumstances that may be affecting the employee's performance

- 6.7 Following the discussion the manager will make a decision whether to issue an improvement notice or not (improvement notices remain live for a period of 6 months from the date of the meeting) and where the manager decides that performance is unsatisfactory they may (as appropriate):

- ❖ seek to agree a Performance Improvement Plan and targets. Where an agreement cannot be reached the manager will make the final decision. A template Performance Improvement Plan is provided in [Appendix 1](#).
- ❖ seek to agree any relevant training and support required which can practicably be provided.
- ❖ establish if there are any reasonable adjustments which may need to be considered

- ❖ establish a monitoring period (**minimum 4 weeks**), advice can be sought from HR.
- ❖ advise of the frequency of review meetings within the monitoring period. As a minimum there should be two review meetings, one in the middle and one at the end of the monitoring period.
- ❖ advise the employee that should the level of performance not be satisfactory by the end of the monitoring period they may progress to Stage 2 of the procedure, which may lead to a Final Improvement Notice being issued.
- ❖ remind the employee of the availability of the Employee Assistance Programme, including the confidential counselling service, and / or make a referral to Occupational Health, if applicable.

**This list is not exhaustive**

NB where an employee declines a referral to Occupational Health, the manager needs to explain that without such a report management decisions will be made using the information available to them and that the matter will continue to be managed under the Performance Procedure without medical advice. It should be noted that Occupational Health may also request relevant medical information from an employee's General Practitioner or Consultant etc.

#### **Follow up action and review meetings**

- 6.8 The outcome of the Stage 1 Performance Meeting will be confirmed in writing to the employee including the possible outcome if performance continues not to be acceptable. A copy of the Performance Improvement Plan will also need to be enclosed with the letter.
- 6.9 The review meetings should take place between the employee and the manager during the agreed period to monitor progress, meetings should be documented in the 'Progress' column of the Performance Improvement Plan. Any targets that need amending during this period should also be made on the Performance Improvement Plan, together with any additional support being accessed or provided. Furthermore, regular feedback should also be given to the employee during the review period, this may be done verbally (ad hoc meetings, one to ones, supervisions etc) but a written record should always be kept.
- 6.10 At the end of the agreed monitoring period the manager will meet with the individual (and their line manager, where this is a different manager) to discuss the progress and inform them of the outcome of the review period. The manager should confirm the outcome to the employee in writing.

#### **Possible Outcomes of Monitoring Period:**

- ❖ The employee has now reached, or is shortly expected to reach, the specified levels of performance, and that no further formal action is necessary. However, the existing **Improvement Notice will remain 'live'** until its expiry date (6 months from date of the stage 1 meeting) and therefore, if satisfactory improvement proves only to be of a temporary nature the manager has the option of returning immediately to this point in the procedure.

OR

- ❖ The employee has made substantial improvements, but his/her performance is still below acceptable standards. The monitoring period may be extended (the extension will normally be **4 weeks**).

OR

- ❖ The employee has made insufficient improvement in meeting the required standard(s), therefore the formal procedure continues and a Stage 2 Performance Meeting will be arranged. (allowing 5 calendar days notice)

## 7. STAGE 2 - FORMAL PERFORMANCE MEETING (Final Improvement Notice)

- 7.1 The Stage 2 Formal Performance Meeting and follow up review meeting will follow the same principles as Stage 1 (see paragraphs 6.2 to 6.8). The same manager who conducted Stage 1 will normally conduct the meetings at Stage 2.
- 7.2 Following the discussion the manager will make a decision whether to issue a final improvement notice or not (final improvement notices remain live for a period of 12 months from that date of this meeting) and where the manager decides that performance is unsatisfactory they may (as appropriate):

- ❖ seek to agree a new or revised Performance Improvement Plan and any further targets. Where an agreement cannot be reached the manager will make the final decision.
- ❖ confirm any further relevant training and support that is required and can be practicably provided.
- ❖ establish if there are any reasonable adjustments which may need to be considered
- ❖ establish a further monitoring period (**minimum 4 weeks**), advice may be sought from HR.
- ❖ advise of the frequency of review meetings within the monitoring period. As a minimum there should be two review meetings, one in the middle and one at the end of the monitoring period.
- ❖ advise the employee that should the level of performance not be satisfactory by the end of the monitoring period they may progress to stage 3 of the procedure, which may lead to a Formal Performance Hearing (consideration of dismissal).
- ❖ remind the employee of the availability of the Employee Assistance Programme, including the confidential counselling service and / or make a referral to Occupational Health, if applicable.

## Follow up action and review meetings

- 7.3 The outcome of the Stage 2 Performance Meeting will be confirmed in writing to the employee including the possible outcome if performance continues not to be acceptable. A copy of the Performance Improvement Plan will also need to be enclosed with the letter.
- 7.4 At the end of the agreed monitoring period the manager will meet with the individual to discuss the progress and inform them of the outcome of the review period. The manager should confirm the outcome to the employee in writing.

### Possible Outcomes of Monitoring Period:

- ❖ The employee has now reached, or is shortly expected to reach, the specified levels of performance, and that no further formal action is necessary. However, the existing **Final Improvement Notice will remain 'live'** until its expiry date (12 months from date of the stage 2 meeting) and therefore, if satisfactory improvement proves only to be of a temporary nature the manager has the option of returning immediately to this point in the procedure.

OR

- ❖ The employee has made substantial improvements, but his/her performance is still below acceptable standards. The monitoring period may be extended (the extension will normally be **4 weeks**).

OR

- ❖ The employee has made insufficient improvement in meeting the required standard(s), therefore the formal procedure continues and a Stage 3 Performance Hearing will be arranged, which may lead to dismissal.

## 8. STAGE 3 - FORMAL PERFORMANCE HEARING (Consideration of Dismissal)

- 8.1 The line manager advises HR to convene a Formal Performance Hearing, the line manager will then confirm the arrangements in writing to the employee giving at least 14 calendar days' notice, of the hearing and reminding the employee of the right to be accompanied by a Walsall Council work colleague or recognised Trade Union Representative. Supporting documentation for the hearing, from the manager and the employee will be provided 5 calendar days before the hearing date.

### The hearing invite letter will include:

- ❖ a clear statement of the employee's failure to meet the required standards of performance and the Performance Improvement Plan
- ❖ the date, time, location of the hearing
- ❖ name of the Hearing Officer for the case.
- ❖ the name of the person who will present the management case (usually the

employee's line manager)

- ❖ that a decision may be taken to dismiss on the grounds of performance
- ❖ the arrangements and deadlines for the exchange of papers and informing of witnesses

- 8.2 The line manager, the employee and his/her representative will attend the hearing. Both management and the employee can submit documentation, call and question witnesses.

### Preparation before the hearing

- 8.3 Any documentation that either management or the employee wishes to be considered at the hearing, including the names of witnesses to be called, should be made available to HR no later than 5 calendar days prior to the hearing. It is the responsibility of the person who wishes to call a witness to make arrangements for them to attend.
- 8.4 If the employee wishes to attend the hearing but is absent due to sickness or some other reason or their representative is unable to attend, the meeting may be postponed and will be rearranged within 5 calendar days of the original hearing date. The employee should be notified of the date in writing and informed that if they or their representative are not able to attend on the revised date the hearing will proceed on this occasion in their absence. If the employee cannot attend personally they will be invited to put their case either through their representative or submit their case in writing in advance of the hearing.

### The hearing

- 8.5 The hearing will be chaired by a Senior Manager, who is a trained Hearing Officer (normally from the service area concerned) with no prior involvement in the case. They will hear all the evidence and decide the outcome.
- 8.6 HR will support the Hearing Officer giving HR technical advice.
- 8.7 A note taker will be present, provided by the service area of the Hearing Officer (or if necessary from another area, where required this will be organised by the Hearing Officer).
- 8.8 The management case will normally be presented by the employee's line manager and will be required to demonstrate what action, support, training, and discussions have taken place with the employee throughout the procedure to date. HR may be present to support the line manager.
- 8.9 The employee, or their representative, will be required to give an explanation as to why they have not met the required standards of performance.
- 8.10 The Hearing Officer will consider the employee's performance history, all related evidence and any relevant Council policies, procedures and practices before making a final decision on the outcome.
- 8.11 The Hearing Officer (supported by HR), will write to the employee confirming the outcome.

## Outcome of the Hearing

### 8.12 Possible Outcomes of the Hearing:

- ❖ **No further action.** However, the existing **Final Improvement Notice will remain 'live'** until its expiry date (12 months from date of the stage 2 meeting) and therefore, if satisfactory improvement proves only to be of a temporary nature the manager has the option of returning immediately to a Performance Hearing, if the performance concerns are related

OR

- ❖ **Extension of monitoring period,** if the Hearing Officer believes that an extension might be beneficial (**maximum 4 weeks**) at the end of this period, the Performance Hearing will be reconvened. The manager will submit a summary report for the Hearing Officer to make a final decision, following the same procedure, the employee will be provided with a copy of the summary prior to the reconvened hearing. This option is normally only used once.

OR

- ❖ **Dismissal with contractual notice.** In exceptional circumstances, the employee may not be required to attend work during their notice period, or may receive pay in lieu of notice if appropriate.
- ❖ And in exceptional circumstances **redeployment** may be approved, allowing the employee to be placed on the redeployment register during their notice period, in accordance with the Redeployment Procedure.

## Follow up action

- 8.13 The outcome of the Formal Performance Hearing will be confirmed to the employee in writing by the Hearing Officer.
- 8.14 Where the monitoring period has been extended by the hearing officer the performance hearing will be reconvened at the end of this period. The manager will submit a summary report for the hearing officer to make a final decision, the employee will be provided with a copy of the summary prior to the reconvened hearing, following the same procedure. This option is normally only used once.
- 8.15 Where an employee is dismissed the letter will inform the employee of their right of appeal. The employee's line manager should complete a Walsall Council Leavers Form and return it to Payroll.

## 9. ILL HEALTH CAPABILITY PROCESS

- 9.1 This procedure may be used for ill health capability issues where an employee has a long term or permanent medical condition or disability, which is impacting upon their performance but not their attendance at work. This is where the health issues are beyond the employee's control and with no foreseeable sustained improvement expected within a reasonable period of time. A flowchart of the procedure can be seen in [Appendix 3](#).
- 9.2 If the ill health is having an impact on attendance and the fall in performance relates to the persistent sickness absence then this should be dealt with under the Attendance Procedure.



- 9.3 Ill health capability concerns could be identified in routine supervision or one to one meetings, an informal meeting specifically for this purpose or at an existing meeting under the performance procedure (if the performance procedure has already started).
- 9.4 The decision to apply, or switch from the performance procedure, to the ill health capability process is based on an unacceptable level of performance due to assumed or reported persistent or permanent health issues.

### Step 1 – Ill Health Capability Meeting

- 9.5 The manager invites the employee to a capability meeting to discuss the performance concerns. This should be in writing giving at least 5 calendar days' notice and reminding the employee of the right to be accompanied by a Walsall Council work colleague or recognised Trade Union Representative, it is the responsibility of the employee to arrange this.

- 9.6 The discussion at the capability meeting should include the following:

- ❖ Details of the shortfall in performance which is considered to be due to health issues.
- ❖ Informing the employee that the ill health capability process is being considered and the process that will be followed.
- ❖ An Occupational Health referral specifically focussed on capability (if required), and reminding the employee of the availability of the Employee Assistance Programme, including the confidential counselling service.
- ❖ Any further reasonable adjustments (setting monitoring and review periods where relevant).
- ❖ The timescales for monitoring may be shorter or longer than the normal 4 weeks in the performance procedure depending upon the case.

- 9.7 The Occupational Health referral should contain clear information about the job context and relevant physical and mental demands, including an indication of degree of time spent on particular activities. It should also include clear questions to confirm the details of the permanent or persistent health condition, the prognosis for improvement in the condition (including timescales), the limitations the condition places (or will place) on activities required for the role and what reasonable adjustments are required to assist or improve performance. It should be noted that Occupational Health may also request relevant medical information from an employee's General Practitioner or Consultant etc.
- 9.8 If the employee declines to attend Occupational Health, the manager should explain that without such a report decisions will be made using the information available to them, and that the procedure will continue to be managed without medical advice.

## Step 2 – Ill Health Capability Review Meeting

9.9 Once the manager is in receipt of the Occupational Health report, and/or at the end of the monitoring period, the manager should invite the employee to a capability review meeting. This should be in writing giving at least 5 calendar days notice and reminding the employee of the right to be accompanied by a Walsall Council work colleague or recognised Trade Union Representative, it is responsibility of the employee to arrange this.

9.10 The ill health capability review meeting should include the following:

- ❖ A review of discussions and actions taken to date related to the performance issues.
- ❖ Discussion of the Occupational Health/Medical advice.
- ❖ The adjustments already made and the impact these are having on the employee, the team and service delivery and if they can be maintained in line with service delivery.
- ❖ Assessment of the main activities of the job and the employee's level of capability against each element and the job overall.
- ❖ Whether any further adjustments can be made and the extent of improvement these are likely to achieve.
- ❖ Itemise the elements of the job that the employee is able to undertake
- ❖ Consider whether redeployment within the Service area is relevant or available (if applicable, pay protection will apply), this will result in a hearing to consider employment in the substantive post.
- ❖ A discussion on consideration of ill health retirement, where relevant the formal question should be asked of Occupational Health for specific advice and guidance.

9.11 The possible outcomes of the review meeting are:

To make further reasonable adjustments with a set monitoring period.

- ❖ The timescales for monitoring may be shorter or longer than the normal 4 weeks in the performance procedure depending upon the case. Advice should be sought from HR. A further review meeting will take place at the end of the monitoring period.
- ❖ Consideration of the Council's Redeployment Procedure, reasonable adjustments, if relevant/possible and based on medical advice, and whether this is temporary or permanent.
- ❖ Further Occupational Health Referral and medical advice if necessary before reconvening the review meeting, particularly if ill health retirement is to be considered.
- ❖ Where there is no medical evidence to support ill health capability, the employee will return to the relevant stage within the performance procedure.
- ❖ Progress to a Formal Ill Health Capability Hearing.



9.12 A decision to move to a Formal Ill Health Capability Hearing will be considered when;

❖ Reasonable adjustments have been made but performance remains unsatisfactory after a reasonable monitoring period (minimum 4 weeks).

OR

❖ There are no reasonable adjustment to consider

❖ The adjustments are not reasonable

❖ The adjustments cannot be permanent

OR

❖ There is no alternative suitable post within the Service area or the employee has declined it

OR

❖ Ill health retirement has been considered (if appropriate)

### Step 3 – Formal Ill Health Capability Hearing

9.13 The formal ill health capability hearing will follow the hearing principles as set out in section 8.

9.14 If the outcome of the formal ill health capability hearing is dismissal then redeployment will be approved (if appropriate). This will allow the employee to be placed on the redeployment register during their notice period, in accordance with the Redeployment Procedure.

9.15 The employee will have the right to appeal against any dismissal decision, in accordance with the Appeals Procedure.

## 10. APPEALS (Performance procedure & ill health capability)

10.1 The employee will have a right of appeal against a decision made at any formal stage of the performance and ill health capability procedure. This must be done within 14 calendar days of the date of the outcome letter.

10.2 Appeals at stage 1 and 2 will be made to the manager's manager or above.

10.3 Appeals at stage 3 will be in line with the Council's Appeals Procedure

## 11. RECORD KEEPING (Performance procedure & ill health capability)

11.1 Managers will retain their own notes of any informal discussions. Managers must ensure outcome letters are placed on the employee's personal file. HR will retain papers on any formal hearings (consideration for dismissal) or appeals.

11.2 Template letters for all parts of the process are available on the HR intranet.

## Appendix 1 - Performance Improvement Plan

Employee Name:

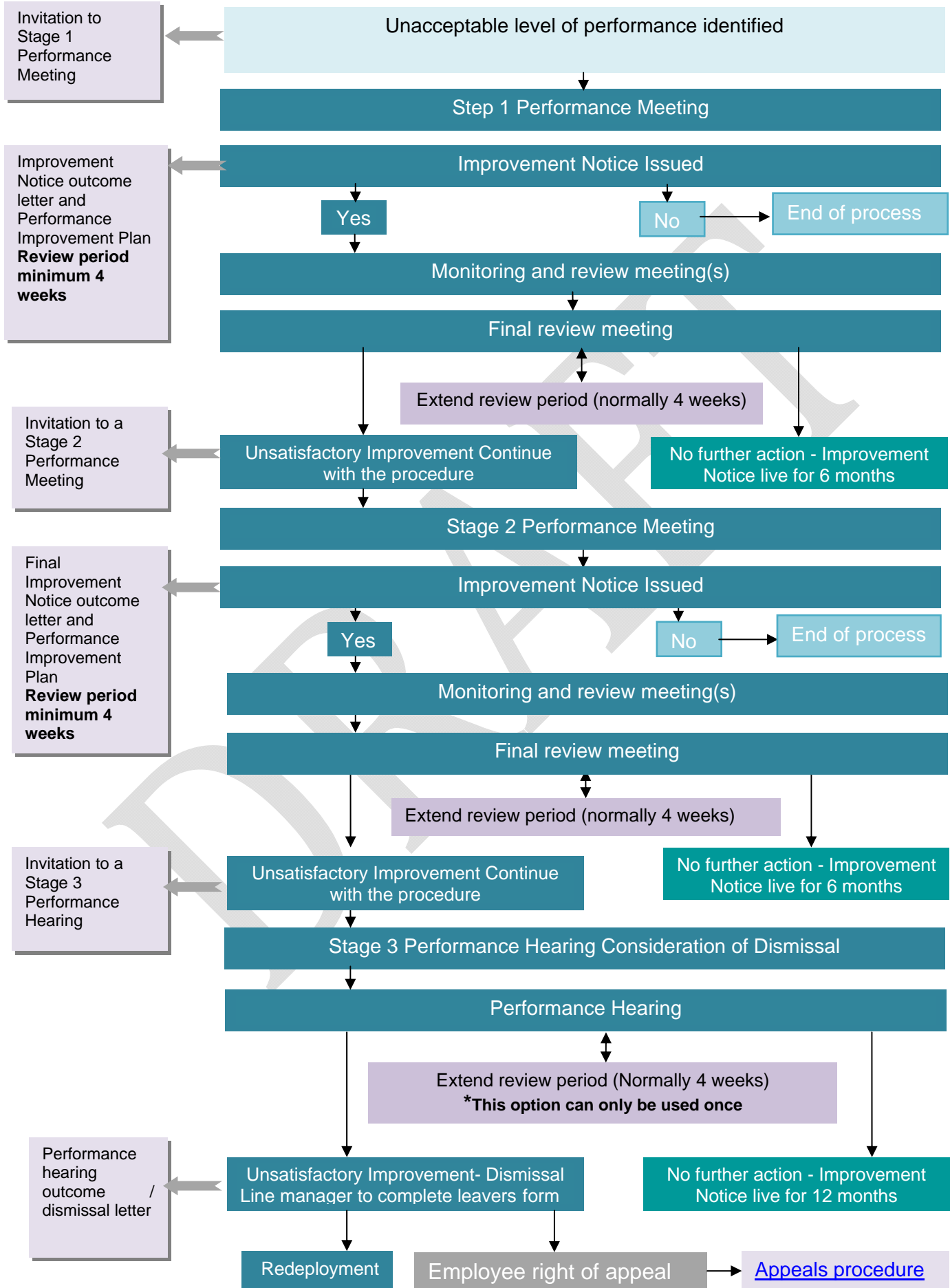
Employee Number:

Job title:

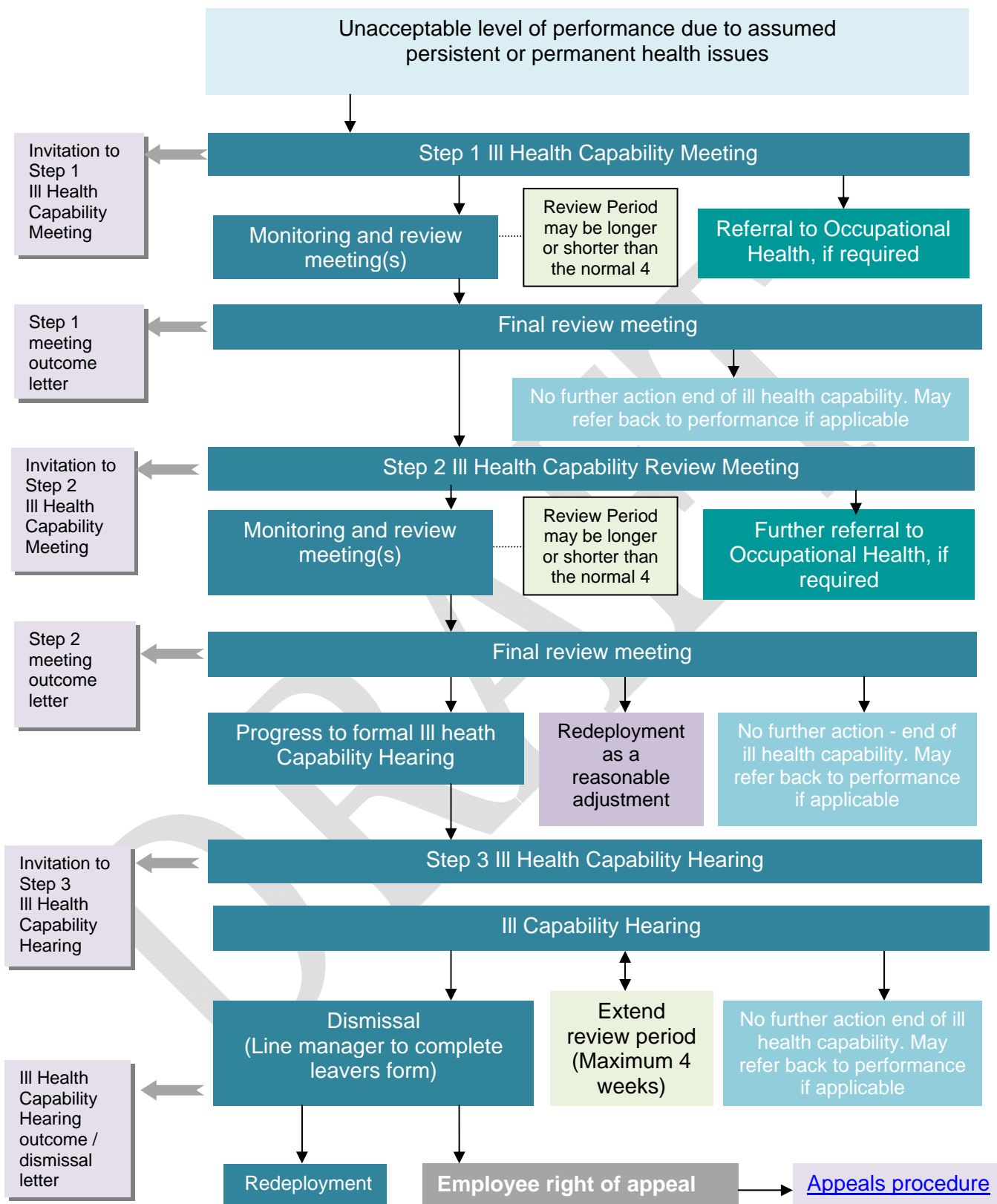
Identified area(s) of performance concerns (clarify with evidence where the shortfall in performance has occurred)	Required/ expected standard (as shown in job description, EPR objectives, emails, work examples)	Actions to be taken (to address the concerns – these should be SMART; Specific, Measurable, Achievable, Relevant, Time bound)	Support/Training/ Resources (actions that need to be taken by others to address the concerns, including timescales)	How it will be measured (how it will be observed, recorded, evaluated, and by whom)	Review timescales (to monitor progress towards standards)	Progress against Targets
<b>For example –</b> Missed deadlines and complaints received from managers (evidence attached)	<b>For example -</b> Deadlines confirmed in email (evidence attached)	<b>For example –</b> Operate daily ‘to do’ list and diarise events/deadlines	<b>For example –</b> Training on using outlook calendar and task lists from XX by DATE. General support from XX to prioritise workload when conflicting demands arise.	<b>For example –</b> XX will monitor if deadlines have been achieved and if any complaints have been received	<b>For example –</b> 2 weeks	

Employee's Name		Employee's Signature		Date	
Manager's Name		Manager's Signature		Date	

## Appendix 2 - Performance Procedure Flowchart



## Appendix 3 – Ill Health Capability Flowchart



**Appendix 2****Equality Impact Assessment (EqIA) for Policies, Procedures and Services**

Proposal name	Performance & Ill Health Capability Procedure		
Directorate	Resource and Transformation		
Service	HR Strategy and Planning Team		
Responsible Officer	Rebecca Lloyd/ Tracey Edwards		
EqIA Author	Rebecca Lloyd/Tracey Edwards		
Proposal planning start	October 2016	Proposal start date (due or actual)	April 2018

1	What is the purpose of the proposal?	Yes / No	New / revision
	Policy	No	N/A
	Procedure	Yes	revision
	Internal service	No	N/A
	External Service	No	N/A
	Other - give details		
2	What are the intended outcomes, reasons for change? (The business case)		
	<p>The purpose of the Performance &amp; Ill Health Capability Procedure is to provide a framework within which managers can support and encourage employees to achieve and maintain satisfactory performance standards and take appropriate action where this is not achieved.</p> <p>The Council's Performance Procedure was last updated in 2009 and there is currently no Capability Procedure, this review and development of this procedure ensure that it is fit for purpose, meets current legislation, demonstrates best practice and importantly free from any form of discrimination.</p> <p>The Performance &amp; Ill Health Capability Procedure is a key element of the Council's employment practices and it is vital that it meets the needs of managers, employees and the general public to ensure that unsatisfactory performance is managed in a fair and consistent manner.</p> <p>The procedure still has the same amount of stages as the current Performance Procedure, namely:</p> <ul style="list-style-type: none"> <li>• informal stage</li> <li>• stage 1 (Formal Improvement Notice)</li> <li>• stage 2 (Final Improvement Notice)</li> <li>• stage 3 (Consideration of dismissal).</li> </ul> <p>The current procedure gives no timescales, the key changes in the revised procedure are:</p> <ul style="list-style-type: none"> <li>• Timescales for monitoring (minimum 4 weeks)</li> <li>• At least two reviews during the monitoring period (i.e. at least one in the middle and one at the end)</li> </ul>		



	<ul style="list-style-type: none"><li>• Timescales for the warnings remaining live:<ul style="list-style-type: none"><li>- stage 1 decision live for 6 months</li><li>- stage 2 (and stage 3 if not dismissed) decision live for 12 months</li><li>- confirming that if improvement in performance is not sustained whilst a warning is 'live' the manager can return back to the stage previously at.</li></ul></li><li>• Removal of link to Employee Performance Appraisals (as the EPR procedure is different to the previous EPA procedure)</li><li>• Removal of reference to probation (as unsatisfactory performance during probation should be dealt with under the probation process)</li><li>• Removal of the appeal details, instead referencing the Appeals Procedure (for consistency with other revised procedures)</li><li>• Inclusion of an ill health capability process for managing poor performance due to persistent or permanent health issues which are not impacting on attendance</li><li>• A template Performance Improvement Plan to assist managers has also been included.</li></ul>		
3	Who is the proposal potential likely to affect?		
	People in Walsall	Yes / No	Detail
	All	No	
	Specific group/s	No	
	Council employees	Yes	All corporate employees (excluding those on JNC Chief Executives and JNC Chief Officers terms and conditions, and those employees in their probationary period).
	Other		
4	Evidence, engagement and consultation (including from area partnerships, where relevant)		
4.1	The Performance & Ill Health Capability Procedure will be submitted to CMT on 29 March 2018 and Personnel Committee on 28 April 2018.		
	Type		Date
	Audience		
	Protected characteristics		
	Feedback		
	N/A		
	Type		Date
	Audience		
	Protected characteristics		
	Feedback		

N/A

#### 4.2 Concise summary of evidence, engagement and consultation (including from area partnerships, where relevant)

A first draft of the revised Performance & Ill Health Capability Procedure was consulted on with:

09/12/16 – 19/12/16 HR Management team - the procedure was then put on hold whilst the Corporate Workforce Strategy was developed.

25/05/17 – 17/05/17 CMT for comment in principal in relation to the Workforce Strategy.

16/06/17 – 14/07/17 ADs/Heads of Service and the Trade Unions, Professional Associations between.

The trade unions comments mainly related to:

- Allowing trade union representation at the review meetings
- The involvement of Occupational Health and other medical advice. However, Occupational Health only give advice and recommendations to managers, they are not the decision makers.
- Timescales being 4 weeks minimum (not normally 4 weeks)

That performance improvement plans and targets should be agreed with the employee. Have inserted seek to agree as ultimately the manager has to take a decision if no agreement is reached.

28/02/2018-13/03/2018 Further consultation with ADs/Heads of Service and the Trade Unions, Professional Associations

Main comments received on the second draft:

Where an employee is absent from work for periods of time can the process be paused including improvement notices?

The procedure has been updated to allow discretion to pause the process of the improvement notice, this will allow the employee to receive support where required.

**27/03/2018** The Performance & Ill Health Capability Procedure will be submitted to CMT

**18/04/2018** The Performance & Ill Health Capability Procedure will be submitted to Personnel Committee ( ) for sign off the procedure could result in termination of employment.

As of 31 March 2017 the total number of Walsall Council employees (excluding Schools) were 3428. In total there were 131 (3.82%) employees who declared they had a disability, as defined by the Equality Act 2010, some of these may require communication in a different format.

From casework information held by the HR Operations Team:

During 2016/17 6 employees entered the Performance Procedure, compared to 6 the

previous year (2015/16), and 3 in (2014/15).

Of the 15 employees recorded as entering the procedure:

- 8 were female and 7 male
- 11 were white and 4 minority ethnic
- 4 considered themselves as disabled
- 7 were in the age range 36-45 years old, 5 were in the age range 46-55, and 3 were in the range 56 years and older.

Of the 15, 8 were determined within the informal stages, 1 resigned, 3 requested voluntary redundancy which was granted, 2 are ongoing, 1 improved to come out of the procedure.

5	<b>How may the proposal affect each protected characteristic or group? The effect may be positive, negative or neutral.</b>			
	<b>Characteristic</b>	<b>Effect</b>	<b>Reason</b>	<b>Action needed Y or N</b>
	Age	<b>neutral</b>	No impact foreseen	No
	Disability		Potential impact on employees who require reasonable adjustments for communication and for those who do not understand the policy e.g. employees with learning disabilities.	Yes
	Gender reassignment		No impact foreseen.	No
	Marriage and civil partnership		No impact foreseen.	No
	Pregnancy and maternity		Potential impact for people who are on maternity or paternity leave and are not updated about the policy.	Yes
	Race		Potential impact on those employees whose first language is not English as they may not understand the policy.	Yes
	Religion or belief		No impact foreseen.	No
	Sex		No impact foreseen.	No
	Sexual orientation		No impact foreseen.	No
	Other (give detail)			
	Further information			
6	<b>Does your proposal link with other proposals to have a cumulative effect on particular equality groups? If yes, give details below.</b>			(Delete one) <b>No</b>



7	<b>Which justifiable action does the evidence, engagement and consultation suggest you take? (Bold which one applies)</b>
	A No major change required
	<b>B Adjustments needed to remove barriers or to better promote equality</b>
	C Continue despite possible adverse impact
	D Stop and rethink your proposal

Action and monitoring plan				
Action Date	Action	Responsibility	Outcome Date	Outcome
Day of launch	To ensure employees understand the requirements of the policy and support them to achieve the desired outcome.	Employees line manager should make themselves available to explain the policy to ensure understanding and offer support to allow individuals to achieve the requirements	As and when required	
Day of launch	To ensure employee who are on maternity/parental leave are made aware of the updated procedure.	Employees Line Manager	As and when required	
Day Of launch	The procedure will be explained/made available in other languages on request for employees whose first language is not English.	Appropriate liaison as required with the councils Interpretation, Translation, Transcription and Easy Read service (ITTE)	As and when requested	
Day of launch	Alternative formats (audio and Easy Read) for disabled employees of the new policy will be made available on request.	Appropriate liaison as required with the councils Pearl Linguistics Service	As and when requested	

Update to EqIA	
Date	Detail

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