

11. MANAGING PERFORMANCE OF OFFICERS (CAPABILITY) PROCEDURES (TR)

1. Purpose of the report

To approve the arrangements in place to manage poor performance of PDNPA employees. This includes officers, the Chief Executive, the Section 151 Officer, the Monitoring Officer and the three non-statutory Chief Officers.

Key Issues

- **The Authority currently deals with employee poor performance (capability) and poor behaviour (conduct) by following procedures outlined in the Disciplinary Policy.**
- **The key distinction between capability and conduct is that lack of capability will usually be outside of the employee's direct control, while the same employee obviously will have control over his or her conduct at work.**
- **For the above reason, good practice advises a separate capability procedure.**
- **The basic principles of fairness set out in the Discipline and grievance - ACAS Code of Practice, which would be tested at an Employment Tribunal, will be followed in both procedures.**

2. Recommendations(s)

- 1. To adopt the Managing Performance (Capability) Procedure and Guidance as set out in Appendix 1.**

How does this contribute to our policies and legal obligations?

3. The Employment Rights Act 1996 requires employers to provide employees with a Statement of Particulars (employment contract). A note in the statement should specify any procedure applicable to the taking of disciplinary decisions relating to the employee, or to a decision to dismiss the employee or referring the employee to the provisions of a document specifying such a procedure which is reasonably accessible to the employee.
4. The Managing Performance (Capability) Procedure, as above, outlines one of the Authority's procedures which could result in the dismissal of an employee.
5. It is anticipated a separate capability procedure will help managers by giving clearer guidance on the approach to managing unsatisfactory performance, and encourage employees subject to the procedure as they can see how they will be supported.

Background Information

6. There are five fair reasons for dismissal. Conduct (misconduct) and capability (poor performance) are two of the fair reasons and currently the procedure to follow for both is outlined in the Disciplinary Policy.
7. The Authority Disciplinary Policy and procedures are heavily weighted towards managing misconduct, and the terminology involved such as investigation, witnesses, evidence, hearing, can feel intimidating when reading it to an employee subject to unsatisfactory performance.

8. It is envisaged employees respond better to support offered under capability process rather than perception of a misconduct process.
9. With a capability procedure there is a requirement to demonstrate having provided ongoing training and support to improve performance before considering dismissal. A disciplinary procedure is designed to improve performance/conduct/behaviour through a series of warnings before considering dismissal. The two are therefore separate courses of action.
10. Before embarking on formal action, it must be established whether the employee is falling short of the standards because of their capability or conduct. Put simply, Capability is CAN'T and conduct is WON'T. For this reason, it is advisable to always have a separate disciplinary procedure and a capability procedure. Capability procedures would be invoked when even after appropriate training an employee CAN'T achieve or maintain the performance standards necessary for their job. Disciplinary or Conduct procedures are invoked when through carelessness, negligence or wilfulness the employee WON'T perform to the required standards of conduct.

Proposals

11. In principle it is for each organisation to determine its procedures for managing conduct and capability.
12. The ACAS statutory Code of Practice on discipline and grievance provides basic practical guidance to employers and sets out principles for handling disciplinary and grievance situations in the workplace.
13. The proposed Managing Performance (Capability) Procedures follows the principles set out in ACAS Code of Practice and incorporates best practice from the Chartered Institute of Personnel and Development.

Are there any corporate implications members should be concerned about?

Financial:

14. No direct cost related to implementing the procedures. Failure to address underperforming employees has a hidden cost.

Risk Management:

15. The procedure follows ACAS statutory Code of Practice

Sustainability:

16. There are no sustainability issues.

Equality:

17. This procedure makes sure that all employees are treated and fairly and equally regardless of their personal circumstances. It also recognises that reasonable adjustments need to be made where the circumstances relate to ill health or incapacity as well as changes to the health and wellbeing of the employee during the course of the process.

18. Background papers (not previously published)

None

19. Appendices

Appendix 1 - Managing Performance Procedure & Guidance

Report Author, Job Title and Publication Date

Theresa Reid , Head of Human Resources, 29 November 2018