

# Unsatisfactory Performance



## Summary

Westminster City Council is striving to become a high performing organisation to enable us to deliver excellent services to our community. A culture of performance recognises the contribution of each individual to this goal.

All employees have clear standards of performance set for them through their performance development conversations and regular feedback. Where it has been identified that an individual is not performing to a satisfactory level and performance development interventions have not been successful the Unsatisfactory Performance Policy (UPP) should be used.

This policy provides a framework for managers to work with their employees to resolve performance issues and helps the employee to understand the level of performance expected. It ensures staff are given the opportunity to improve their performance through appropriate feedback, training and support.

This policy applies to all Westminster City Council employees.

## When should you use the UPP policy?

The UPP policy is appropriate if an employee has:

- failed to meet a specified standard/quality or level of performance
- failed to meet particular targets and deadlines
- has a lack of initiative or application in their work

- the performance development process has not resulted in an improvement in performance to the required standards

## Performance Objectives

Setting appropriate performance objectives is essential to the management of performance. They should be linked to the 7 Personal Development themes, which support the Council's aim to drive excellence and innovation.

## Managers Responsibility

- ensure employee's work performance is monitored, and assessed in line with the Performance Development Process and that employees receive feedback on a regular basis to identify any performance issues
- explain the standard of work required so that your employee knows what is expected of them
- take into account any personal circumstances which may be affecting performance
- provide support and training necessary to help the employee meet the required standards

## Employees Responsibility

- advise their manager if there are any barriers or personal issues (which could include health, domestic situation, personal finances etc.) which they think may be affecting their performance at work
- reflect and recognise when their performance is falling below the required standard and ask for support from their line manager
- take on board constructive feedback and fully co-operate with their manager in discussions regarding work performance
- participate in any training/development activities proposed in order to improve performance
- continually work towards achieving their performance objectives, highlighting any further training/development needs they may have.

## Informal Resolution

Managers will always aim to resolve performance issues on an informal basis, through normal management processes. Performance Development conversations will help resolve any issues at the earliest possible opportunity.

Managers should:

- explain clearly the shortfall between the employee's performance and the required standard.
- mutually explore the cause(s) of the unsatisfactory performance. Encourage the employee to describe the situation from their perspective.
- mutually agree an action plan to address the shortfall. This may include additional training, retraining, or closer supervision and support.
- Establish a realistic timescale for the employee to reach the required standard and agree an appropriate method of monitoring.
- Inform the employee what will happen if the required standard is not met.

You may wish to keep a note of any discussions you have had in meetings or 1-2-1s as part of informal resolution.

If after attempting informal resolution, there are continuing concerns about an employee's performance you should move to the formal process.

You may wish to consult your HR advisor prior to commencing the Unsatisfactory Performance Procedure.

## UPP Procedure

There are 3 Steps in the formal UPP procedure.

### Step 1: Meeting

To advise the employee that the formal UPP procedure will be undertaken. Agree an Action Plan to improve performance setting out priority development areas and performance objectives and confirm dates of the 4 week performance monitoring period.

Key Points & Actions:

- give the employee 10 working days notice of the Step 1 meeting in writing (or 14 calendar days out of term time for schools based staff)
- advise the employee that following an informal review of performance it has become necessary to proceed formally as performance has not improved to the required standard
- advise the employee that they have a right to be accompanied by a trade union or work colleague at the meeting (representatives may not act in a legal capacity)
- give the employee a copy of this procedure and ensure they are clear about the process, its purpose and its duration
- confirm the reasons why the employee's performance has been unsatisfactory and give the employee and/or their representative the opportunity to explain

why their performance is unsatisfactory.

- reiterate to the employee what the expected standard of performance is for their role.
- agree an Action Plan to improve performance. Set clear objectives, in line with the Council's Values and Behaviours, job description and other relevant performance criteria, arrange training and additional support if appropriate and manage the 4 week monitoring period
- confirm the outcome of the meeting in writing to the employee. This letter should also confirm the details of the next meeting, and include the agreed action plan.

#### Next Steps:

- Review employee's performance on a regular basis over the next 4 weeks and continue to provide feedback during performance development discussions

### **Step 1: Manager's Review**

To review the employee's performance of the last 4 weeks and assess progress against the action plan

#### Key Points & Actions:

- Manager to assess to assess whether performance has improved over the last 4 weeks, measuring progress made against the action plan set at the Step 1 meeting
- Determine whether
  - there is a need to proceed to Step 2 or
  - whether sufficient improvements have been made and UPP is no longer necessary

#### Next Steps:

#### Either:

- Meet with the employee to confirm that satisfactory performance improvement has been achieved no further action will be taken and that normal performance management process will continue to be followed. This should be confirmed in writing.

#### OR

- Invite employee to Step 2 meeting and advise them they have not made sufficient improvement against the action plan and their performance is unsatisfactory. A further 4 week review period is recommended and give notice of the Step 2 meeting. (Confirm this in writing)

## **NOTE:**

If the UPP procedure is being used to manage performance in an "extreme case" you can fast track immediately to a Step 3 of the process. Extreme cases will include, but are not limited to, where the education of pupils is jeopardised, or care and safety of vulnerable adults or children are threatened. Your HR Advisor can support in these cases.

If the employee has previously undergone the UPP process and their performance deteriorates within 2 years of leaving the process, you can reconvene from the last step taken e.g. the end of Step 2.

### **Step 2: Meeting**

This meeting takes place if following the Step 1 review it was been determined that a further 4 week performance assessment period was required.

- Confirm to the employee that they are on Step 2 of the process
- Confirm to the employee that a further 4 week monitoring period is necessary, (following the outcome of the Step 1 managers review or drop in performance objectives for previous UPP case or appropriate concerns if extreme case)
- Review the action plan which was set at the Step 1

#### **Key Points & Actions:**

- give the employee 10 working days notice of the meeting in writing
- advise the employee that they have a right to be accompanied by a trade union or work colleague at the meeting (representatives may not act in a legal capacity)
- assess progress to date using the action plan set at the Step 1 meeting
- consider if the plan should be revised in order to improve performance
- discuss the areas where performance has improved and where there are still areas of concern
- give the employee opportunity to comment on how the action plan is going and how they intend to make further progress in their performance
- give the employee and/or their representative the opportunity to explain why their performance is unsatisfactory
- advise the employee of what happens next in the process

#### **Next Steps:**

Confirm the outcome of the Step 2 meeting in writing to the employee and advise them that their performance will continue to be reviewed for a further 4 week period.

### **Step 2: Manager's Review**

To review the last 4 week monitoring period (which began following the Step 2 meeting), assess the level of improvement made and determine the appropriate outcome, which may result in a referral to a UPP hearing.

#### Key Points & Actions:

Acknowledge improvements made and confirm a return to normal performance management procedures if following assessment of progress there is evidence that sufficient performance improvements have been made (i.e. UPP process ends)

OR

Advise the employee that despite some performance improvement a further 4 week performance monitoring is recommended.

OR

- Advise the employee that they moving to Step 3 of the Unsatisfactory Performance Process, which is a referral to the UPP Hearing
- You should give your employee feedback on their performance to date and why it has been necessary to refer them to Step 3 of the process
- You should advise your employee on the nature of Step 3 of the process, so that they are clear about the potential consequences, (i.e. dismissal on the grounds of unsatisfactory performance)

#### Next Steps:

Either:

Meet with the employee to confirm that no further action will be taken and that normal performance management process will continue to be followed. This means the UPP process has ended. (Confirm this in writing)

OR

- Invite the employee to a meeting giving 10 working days notice of in writing
- advise the employee that they have a right to be accompanied by a trade union or work colleague at the meeting (representatives may not act in a legal capacity)

and either:

confirm that a further 4 week performance review period is recommended as part of Step 2 giving specific examples of poor performance and details of help and support offered or provided to enable improvement

OR

- Inform the employee that they will be required to attend an Unsatisfactory Performance Hearing which could result in dismissal if their performance does not improve to the required standard, as set out in the Action Plan.
- Confirm the discussion and outcome of the meeting in writing to the employee highlighting any changes to the Action Plan, and confirming the date of the final review.

### **Step 3: Referral to a UPP Hearing**

If following the Step 2 Review you consider that performance made since the UPP process began is insufficient and if following an assessment of the performance made to date (set out in the employee's Action Plan), you consider that performance would not improve with a further review period, you should move to Step 3 UPP process hearing referral.

#### **Next Steps**

- The manager needs to produce a management report to make a case for a referral to a UPP hearing. This should include a summary of the employee's performance progress to date and any related papers (such as the action plan)
- refer the report to your ELT or SLT Member to act as Adjudicating Officer and request that an Unsatisfactory Performance Hearing be convened.
- send a copy of all documents to your HR adviser

### **Arranging an Unsatisfactory Performance Hearing**

The ELT or SLT Member will:

- arrange a Hearing within 15 working days of the Step 2 Review Meeting if possible
- write to the employee giving 10 working days notice of the Hearing
- make sure that the letter advises the employee that:
- the purpose of the Hearing is to consider the employee's continued employment with the Council
- the employee has the right to be accompanied at the Hearing by a trade union or work colleague (representatives may not act in a legal capacity)
- if they fail to attend without reasonable cause then the case may be considered in their absence
- any documentation the employee wishes to submit to the Hearing must be sent to the Adjudicating Officer no later than 3 working days before the Hearing
- send a copy of the management report and any other documents to be presented at the Hearing to the employee at least 5 working days before the Hearing

- Employees and their representatives should make every effort to attend the hearing. If there is a request to defer the hearing, this should not be unreasonably refused provided there are exceptional circumstances outside the control of the employee. Failure to attend the hearing without good cause may mean the ELT or SLT Member will proceed with the hearing and make a decision based on the available information. Should an employee be sick and unable to make a hearing, they are able to make written submissions, or authorise their representative to act on their behalf.

## **Unsatisfactory Performance Hearing**

The ELT or SLT Member will act as Adjudicating Officer, and in schools the Chair of Governors will conduct the Hearing.

A HR representative will be present at the Hearing to give advice on the conduct of the proceedings and any procedural issues.

Order of the Hearing:

- The Adjudicating Officer will ask the manager to outline the case.
- The Adjudicating Officer may question the manager and any relevant witnesses.
- The employee or representative will have the opportunity to question the manager and any witnesses
- The employee or representative will present their case together with any appropriate documents or witnesses, including any mitigating circumstances that may have resulted in their unsatisfactory performance.
- The Adjudicating Officer may question the employee and any witnesses.
- The employee or representative will be given the opportunity to sum up their case and clarify any outstanding points.
- The Adjudicating Officer will ask the employee if there are any mitigating circumstances.
- The Adjudicating Officer will ask all parties to withdraw.
- The Adjudicating Officer will consider the case.
- The Adjudicating Officer will recall both parties and inform both parties of the decision, unless they require further time for deliberation. In that case they will reconvene the hearing, or write to both parties to inform them of the decision.

Where the Adjudicating Officer decides that the level of performance is such that the employee can no longer fulfil the requirements of the job, any dismissal will be with notice or with pay in lieu of notice.

Where the Adjudicating Officer decides that the level of performance does not warrant dismissal, they can issue a final written warning and refer the employee for a final performance review period (of between 1 to 3 months to conclude at Step 2).

The Adjudicating Officer may also consider that redeployment (in line with the



council's policy) should be explored as a feasible alternative to dismissal subject to appropriate opportunities being available.

The Adjudicating Officer will confirm the decision of the hearing to the employee in writing.

The letter must advise the employee of the right to Appeal against the Adjudicating Officer's decision.

**Record of the Hearing** - A confidential and detailed record of the hearing must be made. This is not a verbatim record but a summary of the proceedings. The Adjudicating Officer should ensure that the notes of the hearing are accurate and are as clear and precise as possible, as they will be used in any subsequent appeal hearing or any possible employment tribunal.

### **Appeal against dismissal for Unsatisfactory Performance**

The employee must submit their Appeal in writing to the Director of People Services within 10 working days of the decision to dismiss. For schools staff the appeal must be lodged in writing to the Chair of the Unsatisfactory Performance Hearing.

### **Arranging an Appeal**

The Director of People Services will convene a meeting of the Staff Appeals Committee (Dismissals) comprising 3 Members of the Council but will be quorate with 2 Members, or for sanctions other than dismissal the appeal will be heard by a ELT or SLT Member who has not previously been involved, or delegated senior manager.

For schools based staff appeals will be heard by the Governing Body's Appeals Panel. The Appeal will be held within 15 working days of it being submitted or as soon as practicable.

The employee will be given at least 5 working days notice of the Appeal Hearing. The letter must advise the employee of the right to be accompanied at the Appeal Hearing by a trade union representative or work colleague (representatives may not act in a legal capacity).

There is no further right of appeal against the decision of the Appeals Hearing.

## **Supporting documents and letters**

UPP Step 1 Action Plan Letter [UPP Step 1 Action Plan Letter.doc](#)

UPP Step 1 invite to meeting letter UPP [Step 1 invite to meeting letter.doc](#)

UPP Step 1 outcome no further action letter [UPP Step 1 outcome no further action letter.doc](#)

UPP\_ Step 1 Outcome move to Step 2 letter [UPP\\_ Step 1 Outcome move to Step 2 letter.doc](#)

UPP Step 2 outcome no action Step 2 letter [UPP Step 2 outcome no action Step 2 letter.doc](#)

UPP\_ Step 2 Action Plan letter [UPP\\_ Step 2 Action Plan letter.doc](#)

UPP\_ Step 2 outcome move to Step 3 letter [UPP\\_ Step 2 outcome move to Step 3 letter.doc](#)

UPP\_ Step 3 Dismissal Appeal letter [UPP\\_ Step 3 Dismissal Appeal letter.doc](#)

UPP\_ Step 3 Invite to hearing letter [UPP\\_ Step 3 Invite to hearing letter.doc](#)

UPP\_ Step 3 outcome Dismissal letter [UPP\\_ Step 3 outcome Dismissal letter.doc](#)

UPP\_ Step 3 outcome Final Warning letter [UPP\\_ Step 3 outcome Final Warning letter.doc](#)

UPP\_ Step 3 outcome Redeployment letter [UPP\\_ Step 3 outcome Redeployment letter.doc](#)

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