

Chester-le-Street
District Council

Addressing and Resolving Poor Performance

A Guide for Supervisors and Managers



Human Resources
Employee communication



Working together to fulfil the needs of our communities

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Introduction

What Is the Purpose of This Booklet?

Most employees work hard, and their performance is considered good or even exceptional. However, at times supervisors are faced with employees whose performance is not acceptable. The purpose of this booklet is to help you address and resolve poor performance. This guidance should be used in conjunction with the technical advice you receive from the human resources team.

How Should I Use This Booklet?

Addressing and resolving poor performance is a three-step process. These three steps are:

STEP

1

COMMUNICATING EXPECTATIONS AND PERFORMANCE PROBLEMS

STEP

2

PROVIDING AN OPPORTUNITY TO IMPROVE

STEP

3

TAKING ACTION

This booklet is organised accordingly into three steps. At the end of each section, you will find a checklist as well as answers to commonly asked questions. In the appendix, you will find samples of documents that can be used throughout this process.

Why Should I Address Poor Performance?

Dealing with performance problems is a real challenge for any supervisor. Experienced supervisors often say it is one of the toughest parts of their jobs. Nevertheless, it is a key supervisory responsibility, and failure to address poor performance can have a greater impact than you may appreciate. Let's briefly discuss some of the reasons supervisors often give for not addressing poor performance.

Dealing with poor performance can be time consuming. My time is better spent supervising my productive employees.

While dealing with poor performance can be time consuming, failing to address poor performance sends a clear message to other employees that you have unique standards for poor performers and that they need not meet your performance expectations. It is critical that all employees produce, and ignoring poor performance by some staff can no longer be tolerated. Poor performance usually only gets worse over time - rarely does it correct itself without action on the part of the supervisor.

If I take action against one employee, it will lower morale among other employees and create a less productive work environment.

Actually, taking such action can have just the opposite effect. Most employees want and expect to be held accountable for their work and resent it when others do not "pull their weight." Building a productive team can begin by setting clear expectations and addressing failure to meet those expectations.

Telling employees that they are not performing satisfactorily is unpleasant and requires special human relations skills.

Thankfully, very few individuals enjoy criticising others. But as a result, most employees receive little or no negative feedback from their supervisors. Constructive counseling given early and regularly not only often leads to performance improvement but also eliminates the need to consider more formal action that is even more unpleasant. Providing such counseling does not require special skills. There are several points to remember, however, and they will be discussed in the next section.

The procedural steps involved in addressing poor performance are complex and highly technical.

Many performance problems can be addressed prior to undertaking any formal action. Furthermore, the procedural steps are actually fairly straightforward and not that complicated. Those steps will be described later in this booklet.

What Can I Do To Prevent Poor Performance?

The focus of this booklet is on helping you address and resolve poor performance. The best way for supervisors to handle poor performance issues is to take action to avoid performance problems before they occur. Such preventive actions include:

- **Communicating clear performance standards and expectations to employees.**

If your employees don't understand what is expected, it will be very hard, if not impossible, for them to meet those expectations. Providing clear expectations doesn't necessarily require you to lay out precisely written, detailed instructions on every performance component. Generally, the question you should ask yourself is: "Would a reasonable person understand what was expected?"

- **Providing regular and frequent feedback on performance.**

Such feedback, both positive and negative, whether given in regularly scheduled meetings or in unscheduled discussions, is crucial to ensuring that expectations are understood. Frequent feedback lessens the likelihood that an employee will be surprised if it becomes necessary to take formal steps to resolve poor performance. Always look for opportunities to confirm that your employees understand what is expected.

- **Rewarding and recognising good performance, informally and formally.**

Recognising good performance is simply another way of clarifying expectations.

- **Making full use of the probationary period for new employees.**

The importance of the probationary period is discussed in more detail under the "Special Topics" section of this booklet. Performance problems often first show up during the initial period of employment. This period is designed to provide an opportunity for management to address such problems.

A recurring theme in successful resolution of performance problems is that taking action early is always better than waiting. This statement is definitely true when considering ways to prevent performance problems. Early communication and early feedback (positive and negative), prevent future performance problems. Investing time early is always time well spent.

STEP

1

COMMUNICATING EXPECTATIONS

AND

PERFORMANCE PROBLEMS

STEP

1

STEP ONE: COMMUNICATING EXPECTATIONS AND PERFORMANCE PROBLEMS

Why Counsel an Employee?

Most performance problems can be resolved through effective communication between supervisors and their employees. A counseling session is an opportunity to clarify expectations and discuss performance problems. This step will provide advice on preparing for and conducting counseling sessions.

What's the Difference Between Poor Performance and Misconduct?

It is important that you first make sure you are faced with poor performance rather than misconduct. The difference between poor performance and misconduct is explained below:

Misconduct is generally a failure to follow a workplace rule (whether written or unwritten). Poor performance, on the other hand, is simply the failure of an employee to do the job at an acceptable level. The acceptable level is usually, but not always, documented in written performance standards and is typically defined in terms of quality, quantity, or timeliness. Although it is normal for performance and misconduct to be interrelated, it is important to recognise the difference between the two. The guidance in this booklet is designed to help you address and resolve problems that are primarily performance based rather than misconduct related.

How Can I Effectively Counsel an Employee?

If, despite the preventive steps you have taken to avoid poor performance, you find an employee's performance is not meeting expectations, the best approach is to meet with the employee to discuss the performance problem. The focus of this discussion should be to tell the employee exactly what must be done to bring performance up to an acceptable level, both by providing specific examples of poor performance and also suggesting ways that performance can be improved.

It is critical that you review the employee's performance to ensure that they clearly convey what needs to be done in the job. Your human resources staff can assist you in this review. Be sure to ask the employee if he or she understands precisely what must be done to bring performance to an acceptable level.

Immediately after any such discussion with an employee, you should take a few minutes and make a dated note for the file to document the matters discussed and any assistance offered. If such a note would help confirm your mutual understanding of the matters discussed, you should share it with the employee. (See Appendix A)

STEP

1

Topics Discussed During Counseling Session

1. Your Expectations
2. The Employee's Performance Standards
3. What the Employee Must Do To Bring Performance to an Acceptable Level

Effective Counseling Tips

- Before counseling, make sure you can state clearly what would constitute acceptable performance.
- Whenever possible, conduct the counseling session in a private place.
- Arrange adequate time for your comments as well as comments from the employee.
- Clearly state performance expectations and seek confirmation that the employee understands those expectations.
- Focus on the poor performance, not on personalities or other distractions.
- Always maintain a constructive tone, along with a calm and professional manner.
- Seek cooperation, NOT confrontation.
- Remember that your goal is to improve the employee's performance, not to win an argument with the employee.
- Try to end the session on a positive note by emphasizing that your mutual goal is improving the employee's performance.

STEP

1

Use the following checklist to make sure that you have completed all the actions related to Step One.

Step One Checklist

Yes

No

Are you sure the issue is primarily a performance problem (as opposed to misconduct)?

Have you communicated performance standards to the employee?

Are the standards clear and reasonable?

Have you asked the human resources staff to review the standards for any possible problems?

Have you counseled the employee on how to improve to an acceptable level?

“Let the employee know if performance is improving or not!”

STEP

1

Step One Questions and Answers

Question: Do I have the authority to tell an employee that his or her performance is unacceptable?

Answer: Yes. More than that, as the employee's supervisor, it should be your aim to keep an employee informed about your assessment of his or her performance, particularly when that assessment is negative.

Question: Do I have to wait for the PDP meeting to tell an employee that his or her performance is unacceptable?

Answer: No, you should not wait. In fact, good managers provide their employees with performance feedback throughout the PDP cycle.

Question: Should my employee get a copy of all my notes about his or her performance?

Answer: As a general rule, you should give your employee a copy of the notes from a discussion or meeting that pertains to your expectations and responsibilities as well as the employee's responsibilities. It is expected that you may take "supervisory" notes to serve as "memory joggers" regarding the employee's performance. For example, these notes can include dates or the number of times an employee was given an instruction. This type of "supervisory" information does not have to be included in the notes given to the employee.

Question: I've never had to counsel an employee before. What kind of information is worth putting into "supervisory" notes?

Answer: One of the most important things to remember in taking notes is to date them so they reflect when you met with an employee or when you noted a particularly good or bad instance of performance. Keep track of specific examples of poor performance at work. Doing so will make it easier for you to explain what's wrong with the employee's performance through the use of examples. Note how you expressed your performance expectations and how the employee responded to the counseling. Once an opportunity period (see Step Two for an explanation of an opportunity period) has begun, you will need to make notes of all routine meetings with the employee. In addition, you may need to keep a record of when work was given to the employee and what instructions were provided.

STEP

1

Counseling Employees about Performance Problems

Additional guidance is presented below on preparing for and conducting counseling sessions.

PREPARING FOR A COUNSELING SESSION

- 1** Once you recognise that a performance problem exists, find out about what guidance the employee has been given on performance. You may also have some applicable operating manuals or guides, so take a look at everything.
- 2** Think through the types of things that you will say to the employee to further explain what it is you expect. Write these notes down.
- 3** Even though you may never need to go any further than an oral counseling session to get this employee to improve, contact your HR Officer and find out what you need to do to take formal action later. Ask advice on the performance standards you expect of the employee to ensure that there aren't any problems with them.
- 4** If you do have operating manuals, guides, or other tools that all employees use, take a look at them and see how these could be used to help the employee improve. Try to read them as objectively as possible to look for areas that may not be clear. Remember, you know this job (probably better than almost everybody else), but there is some part of the job that is not making sense or becoming clear to this employee. If you have to, break it down into parts and explain it from the bottom up.
- 5** Remember your aim is to improve the employee's performance, not to win an argument with the employee. To prepare for a counseling session with an employee, write out and then practice saying what acceptable performance in the job would mean. Listen to yourself. If it doesn't make any sense to you, it won't make any sense to the employee. Be as specific as possible.
- 6** Have some specific examples of poor performance in your mind (or your notes) so that you can respond to the inevitable, "What do you mean?" Do not emphasise past poor performance, though; instead, seek to clarify future good performance.

1

CONDUCTING THE COUNSELING SESSION

- 1 In scheduling a meeting to discuss a performance issue, make sure you allow adequate time for your comments and any feedback from the employee. Whenever possible, conduct the meeting in a private place where the employee will not be embarrassed if the conversation is overheard by coworkers.
- 2 Choose your time based on your knowledge of the employee. Is this someone who needs to have a meeting like this on Friday so he or she can sort things out over the weekend? Or is this a person who will feel like you are dumping on him or her and then leaving no opportunity to respond for 2 days? Use the same thought process for deciding how information is best given. Although you will be meeting to have a discussion, would this employee like to read through some written notes before talking? Would a verbal discussion with a commitment to follow up with something in writing be more in the style of the employee?
- 3 Set and maintain a constructive tone: be calm, professional, and focused.
- 4 Seek cooperation, not confrontation, by focusing on how the employee's performance fits into the performance of the total organisation.
- 5 Unless you think the employee will attempt to take control of the discussion, choose several points throughout your comments where you can stop and get confirmation from the employee that he or she understands the problems and your expectations. Providing opportunities for him or her to respond will allow the employee to be active in the discussion and may lessen the negative connotation of a "lecture" from the boss.
- 6 At the conclusion of the meeting, end on a positive note by emphasising that improving the employee's performance is a mutually beneficial goal. Offer a written summary then or to be given to the employee later. Having a written summary is particularly valuable if you will be trying something new or changing any work assignment routine.
- 7 Keep notes for yourself documenting the date of the discussion and any specific agreements you reached with the employee regarding changes to the way work is assigned or structured.
- 8 Follow up! If the employee shows improvement, let him or her know it immediately! If the employee appears to be still struggling, go back and talk again.

STEP

2

PROVIDING AN
OPPORTUNITY
TO IMPROVE

STEP TWO: PROVIDING AN OPPORTUNITY TO IMPROVE

Providing an Opportunity To Improve

An opportunity period is a useful tool for assisting employees in improving their performance.

The Opportunity Period

In most cases, the informal steps you take with employees, such as the counseling described previously in Step One, will prove very effective in your efforts to avoid or resolve poor performance. However, if an employee is still working at an unacceptable level, you will need to give the employee a formal opportunity to improve his or her performance.

In this booklet, we will use the term “opportunity period” as a generic reference to a formal period for improving unacceptable performance.

This period is designed to give the employee an opportunity to bring his or her performance up to an acceptable level. It is also the supervisor’s opportunity to clearly express his or her expectations and the consequences of not meeting those expectations. If the employee fails to improve to an acceptable level by the end of the opportunity period, further action is warranted.

2

Depending on the nature of the job and the employee's experience, it may be appropriate to offer assistance in a variety of ways. For example, an employee may be given a checklist, paired with another employee, offered training, and/or given closer supervision. Not every employee will require every type of assistance, but once assistance is offered, be sure to follow through with it in the opportunity period. The procedures for providing a formal opportunity to improve are:

Determination of Unacceptable Performance

Employee's performance is determined to be unacceptable in one or more areas.

"Opportunity Period" Notice

Meet with employee for 1st formal review. Inform the employee in writing of the area(s) in which he or she is failing, what is needed to bring performance up to an acceptable level, what assistance will be provided, and the consequences of failing to improve during the opportunity period. (See sample notice in the Appendix B)

Formal Opportunity to Improve

Employee must bring performance up to an acceptable level in failed area(s). Duration of opportunity period may vary. Be sure to document the employee's progress and to provide any appropriate assistance.

Determination of Performance Improvement

Consider the evidence of performance and expectations outlined in the opportunity in the opportunity period notice.

Hopefully, an employee will improve and maintain acceptable performance. However, if an employee fails to perform acceptably by the end of the opportunity period or improves but then fails again in the same area(s) within 1 year from the start of the opportunity period the process will return to the next formal stage.

Special Considerations

In reality, performance-based actions do not always run as smoothly as the procedures just described. Some issues may occur that deserve special consideration.

Requests for Adjustment

When counselling, providing an opportunity period, or taking action, you may discover that a performance problem is due to a mental or physical condition. As a result, an employee may request some type of reasonable adjustment. As an employer we have a duty under the DDA to make reasonable adjustments where any aspects of working arrangements (including premises) place a disabled person at a disadvantage.

A disabled person under the DDA is defined as having “A physical or mental impairment that has a substantial and long term effect on their ability to carry out normal day to day activities.

This type of situation is an area in which you will have to get technical assistance from the human resources team.

If the employee demonstrates that he or she is a qualified individual with a disability, you will need to work with the human resources team to determine whether the adjustment request is reasonable.

An adjustment should be designed to address an employee’s physical or mental limitations so that the employee has as much of a chance to achieve acceptable performance as a non-disabled person. While each case may be different, as a supervisor your responsibility is to resolve the performance problem, not the mental or physical disability. Keep in mind that a request for a reasonable adjustment does not preclude you from proceeding with a performance-based action. In many situations, adjustments can be put in place at the same time an opportunity period is started.

STEP

2

Requests for Leave

Another issue that sometimes “stumps” supervisors is what to do when an employee requests leave during the opportunity period. You should consider each request for leave based on the specific circumstances in the request. Know the authority’s rules for approving or disapproving leave and get some technical advice from the human resources team before you deny any leave during this time. Additionally, keep these thoughts in mind:

- An employee on approved leave (annual, sick, or leave without pay) cannot be penalised for work that is not completed while on approved leave.
- An employee should be aware of the procedure for requesting leave and for providing sickness notification forms. The employee should also be aware of what action the authority may take if these procedures are not followed.
- Be sure you understand the various family-friendly leave entitlements available to employees.
- If an employee is on approved leave for a significant period of time during the opportunity period, you may want to extend the period to allow the employee a “reasonable” time on the job to improve.

Deciding What Comes Next

The employee will be invited to a second formal review meeting. Deciding what comes next depends on the employee's performance at the conclusion of the opportunity period. If the employee has reached an acceptable level of performance, there is no need for any action except to keep providing feedback and encouragement to the employee. If the employee is still performing unacceptably, you must determine the best solution. Your options include:

- a) Extending the opportunity period if you believe improvement is likely in the near future.
- b) Alternatively, where it is not felt that a further action plan would produce any further improvement in performance, the Supervisor may discuss a range of career options including, voluntary redeployment either at the same grade or to a lower graded post. (N.B Where voluntary redeployment is accepted to a post at a lower grade, there will be no protection of pay or allowances.)
- c) Activate the next stage of the procedure.

Before you reach a decision on what to do, discuss the situation with your Human Resources Officer.

Use the following checklist to make sure that you have completed all the actions related to Step Two.

Yes **No**

In the opportunity notice did you tell the employee that his or her work was unacceptable in one or area(s)?

Did the opportunity notice tell the employee specifically what he or she had to do to improve performance?

Did you explain what efforts would be made to assist the employee (including training, if appropriate)?

Was the notice clear that continuing failure to meet performance standards would result in formal action being taken?

Did you provide the promised assistance (training, etc.) to the employee?

Did you consider any requests for reasonable adjustment?

Did you document the employee's performance during this opportunity period?

Did you take into account any approved annual, sick, or other leave during the opportunity period?

When the opportunity period ended, was the employee still performing at an unacceptable level?

Step Two Questions and Answers

Question: Is there a law that requires me to allow an employee to bring a union representative into a meeting where I plan to issue an opportunity period notice?

Answer: Because the meeting is not disciplinary or investigatory in nature, you are not obligated to allow union representation although it is advisable. The purpose of the meeting is to explain your expectations of the employee and describe any specific efforts you will be making to assist the employee in improving his or her performance. Although any employee who is being told that his or her work is unacceptable will view this as a negative process, it is a meeting to discuss methods of assisting an employee and is not disciplinary or punitive in nature.

Question: How will I know if my employee is “disabled” and I should make reasonable adjustments?

Answer: The question of who is “disabled” under the law is one that is still confusing to experts. In most cases, you will want to give any documentation you receive from the employee to the human resources team so that they can obtain a Doctor’s review of the employee’s medical documentation. Once you get a decision from Occupational Health that the employee’s condition significantly impacts his or her ability to perform, you will need to carefully consider what the employee is requesting in the way of adjustment and assess whether or not you can provide the adjustment.

Question: What should I do about an employee who just won’t talk to me? How can I give this person an opportunity to improve?

Answer: Although we focus a great deal in this booklet on supervisory responsibilities for informing and assisting an employee, the employee has the primary responsibility for improving his or her performance. An employee who gives the boss “the silent treatment” and refuses to accept any assistance runs the risk of failing to improve performance during the opportunity period and suffering the consequences. You may want to consider contacting the human resources team to act as facilitators to break through some communication problems. Regardless, an employee needs to be told what the expectations are for his or her performance and the consequences if these expectations are not met. Be sure to document your efforts to communicate these expectations and consequences.

2

Question: If my employee asks for leave during the opportunity period, do I have to grant it?

Answer: Generally, annual leave and leave without pay are discretionary based on the needs of the office and could be denied based on the importance of focusing on improving performance in the time allotted. However, sick leave, supported by acceptable documentation, must be approved as long as the employee follows the authority's procedures for requesting the leave.

Question: If I do approve leave during an opportunity period, what happens to the deadlines that I've set up?

Answer: Once you approve leave, you cannot hold the employee accountable for work that does not get done during the absence. In terms of short absences, you may not have to adjust the deadlines or requirements at all. However, if the employee is out for an extended time during the opportunity period, you may need to extend the opportunity period for the time of the absence to ensure that the employee has a chance to perform acceptably. Depending upon the nature of the work, an opportunity period shortened by approved absence may be valid if the work assignments and expectations were such that the employee still had the chance to demonstrate improved performance.

Question: We don't have any money for training. What should I do about training during the opportunity period?

Answer: There is no requirement for formal classroom training. One option is to see how much of the training can be accomplished with the experts on your own staff. On-the-job training is probably the most common form of training provided during an opportunity period. Also, contact the authority's training officer and find out what is available through self-instructional manuals, videos, or the authority's corporate training programme.

Question: Do I have to follow the counseling steps before initiating an opportunity period?

Answer: There is no obligation to provide counseling to an employee before beginning an opportunity period because of the employee's unacceptable performance. However, it is always good management practice to talk to an employee when his or her performance begins to slip below the acceptable level. Hopefully, early counseling efforts would be successful and there would be no need for a formal opportunity period.

STEP

3

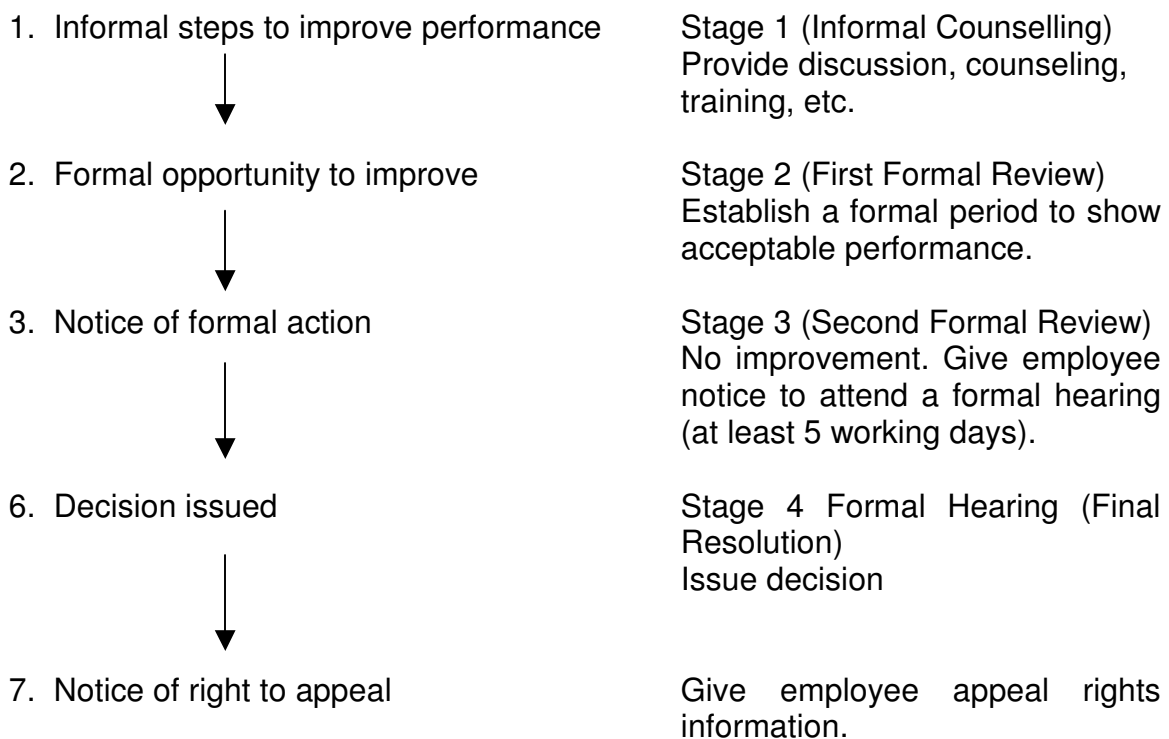
TAKING
ACTION

STEP THREE: TAKING ACTION

Taking Action

This section is designed to give you an overview of the process used in taking action for unacceptable performance. It will describe the role and responsibilities of the officers involved. There is also a brief explanation of employee appeal rights.

The Process



Formal Stage

The formal stage of the procedure should be activated where the problem is deemed to be at a serious level or where there has been no significant improvement in an employee's performance following Step 2 (the opportunity to improve period). Prior to implementing this stage advice should be sort from your designated Human Resources Officer. In these circumstances the Supervisor will provide the employee with a copy of this procedure and advise him/her to contact his/her trade union representative. No action should be taken against a trade union official until the relevant full time official has been informed and given the opportunity to discuss the case with the Service Team Manager.

The employee will be requested in writing to attend a formal review hearing with the Service Team Manager. The employee will be given at least five working days notice advised of their right to be accompanied by a trade union representative or a fellow colleague at the meeting. All the information resulting from the investigation relating to the alleged deficiencies must be included in the letter (Appendix C). Formal meetings should also have a representative from HR present in an advisory capacity.

The purpose of the hearing will be to:

- Confirm the specific areas of work which are unsatisfactory.
- Confirm the standards required and determine whether those standards have been set at an unattainable level.
- Remind the employee of the steps taken to assist him/her to improve work performance.
- Discuss the outcome of the monitoring period.
- Establish the shortcomings.
- Establish if this is due to poor performance, misconduct or ill-health
- Consider the options available.

The appropriate supervisor will provide the employee with a summary of the areas under performance, including documentary evidence, which the employee will have seen at earlier review meetings.

The employee will be given the opportunity to put forward any explanation they may wish to offer, present relevant information and/or witnesses to support his/her case.

The Service Team Manager will make a decision on the basis of the information provided as to whether there is a reasonable prospect of an improvement in performance within a reasonable time scale.

If at the meeting the employee is able to advance acceptable reasons to counter the allegation of lack of capability, no further action will be taken under the capability procedure and the meeting will be terminated.

Where the poor performance is due to misconduct any further handling of the matter will continue under the terms of the Disciplinary Procedure. The Capability Hearing will be terminated at this point and a further Disciplinary Hearing will be convened under the terms of the Disciplinary Procedure.

Where the Service Team Manager determines that the standards have been set at an unattainable level, revised reasonable standards should be issued and no further action will be taken except where the employee's performance fails to meet the revised standards.

OPTIONS

Taking into account the support given to achieve an improvement in performance, any improvement actually achieved and any points of view put forward by the employee, the Service Team Manager will consider the following options;

Extend the period of the Action Plan

This will give the employee a further opportunity to achieve the required level of work performance. The Service Team Manager should at this point issue the employee with a formal warning that, unless the required improvement is made within a specified period of time, further action could be taken which could result in dismissal.

After the prescribed interval, the employee should be interviewed again by the nominated officer in order to be informed of the view now taken of his/her competence. If the performance is regarded as satisfactory, the employee should be informed of this fact in writing and the matter will be regarded as closed.

If performance is still not satisfactory, then one of the remaining courses of action identified below should be taken.

Redeployment

An opportunity for redeployment into alternative employment can be considered. However, it must be made to the employee that such redeployment can only be offered if a suitable vacancy arises and if the employee is suitable for that vacancy. Any redeployment will be subject to a trial period. A redeployment opportunity will not necessarily be to an equivalent post or earning level and current earnings will not be protected. During such a period appropriate retraining will be given.

Any redeployment will be with the agreement of the employee. There is no specified limit as to the number of redeployments considered, although this will depend upon reasonableness and the opportunities available at the time.

The employee should be formally warned that failure to perform to acceptable standards will lead to the employee returning to his/her substantive post and if there are no other suitable options, further action will be taken which could result in dismissal.

Early Retirement

Early retirement under the provisions of the Early Retirement/Voluntary Retirement scheme can be explored in cases where incapability results from a fundamental change to the nature of the job.

The employee should be formally warned that if this course of action is not appropriate and if there are no suitable options, further action will be taken which could result in dismissal.

Dismissal

Where all other options under this paragraph are either not suitable or have been tried and failed, appropriate notice will be given to terminate the employment on the grounds of incapability.

The Service Team Manager will inform the employee in writing of the decision, together with reasons for the decision, and the right of appeal.

The Council's Discipline and Dismissal Policy and procedure must be followed in all dismissal cases.

Appeal Rights

The employee has a right of appeal at each stage of the procedure. Appeals should be made in writing where possible or verbally. Stage 1, Stage 2 and Stage 3 appeals will be to a manager at least one tier above the Supervisor. At stage 4 the appeal will be heard by a Chief Officer previously not involved in the process. And appeal against dismissal will be heard by the Staff Sub-Committee.

Stage of the Procedure	Officers involved	Appeal heard by
Stage 1 Informal Counselling	Supervisor and HR Officer	Manager at least one tier above the Supervisor.
Stage 2 First Formal Review Formal Opportunity to Improve	Supervisor and HR Officer	Manager at least one tier above the Supervisor.
Stage 3 Second Formal Review	Supervisor and HR Officer	Manager at least one tier above the Supervisor.
Stage 4 Final Resolution	Manager, Supervisor, and HR Officer.	Chief Officer not previously involved in the process.
Appeal against Dismissal		Staff SubCommittee

Any employee who is dissatisfied with action taken against them under the poor performance procedure has a right of appeal. Appeals should be made in writing where possible or verbally to the Head of Organisational Development within 10 working days of receipt of the letter following the review interview with the line Manager. In submitting an appeal the employee must give details to support their belief that they do have a performance problem.

Following receipt of confirmation to appeal against the decision, an appeal hearing will be scheduled. The employee will be informed in writing and/or verbally if required of the date, time and location of the hearing and their right to be accompanied by a Trade Union Representative or work colleague at least five working days in advance of the appeal hearing.

At the appeal the employee and immediate line manager will be given an opportunity to state their case independently. Relevant documentary evidence may be produced to support their position. The manager hearing the appeal will review all information provided and make a decision as to whether the continuation of the Poor Performance Procedure is justified.

Following an appeal hearing, the following options will be available:

- a) Fully uphold the decision. The action will stand and the employee will have no further right of appeal (except in cases of dismissal).
- b) Uphold the decision to take action but impose further review.
- c) Overturn the original decision.

On completion of the appeal hearing, the decision of the appeal panel will be confirmed in writing and/or verbally to the employee.

In cases where dismissal is the penalty imposed and the first appeal is unsuccessful, the employee will have the right to a further appeal to the Staff Sub Committee. Appeals should be made in writing where possible or verbally within 10 working days of receipt of the letter informing the employee of the outcome of the first appeal.

Final appeals against dismissal will normally be heard by the Chair of the Staff Sub-Committee and the Staff Sub-Committee. The Service Team Manager who made the decision at the Final Resolution Meeting will present the evidence to the Staff Sub-Committee including the reasons for the decision to dismiss. (The Chief Officer who heard the first appeal and Investigating Officer may be called as witnesses.) The employee will then be asked to present their case for appeal against dismissal.

Following the appeal hearing to the Staff Sub Committee, the following options will be available:

- a) Fully uphold the decision of the original panel. The dismissal will stand and the employee has no further right of appeal.
- b) Uphold the decision to take action but impose a lesser penalty, re-instating the employee.
- c) Overturn the decision of the original panel.

On completion of the appeal hearing to the Staff Sub-Committee, the decision of the appeal panel will be confirmed in writing to the employee.

The decision of the hearing panel will be made, in writing, to the employee as soon as possible after the hearing.

The decision of the appeal panel is final.

Regardless of the route an employee chooses to appeal a performance-based action, following the guidance in this booklet and getting assistance as needed from the human resources team will prepare you to present a strong case supporting your actions before any third party. Remember—the H R team are experts in this area, and will be glad to explain your role in the appeals process and provide the technical assistance you need.

STEP

3

Use the following checklist to make sure that you have completed all the actions related to Step Three.

STEP THREE CHECKLIST

YES

NO

Do you have written performance standards for the employee?

Do you have copies of any supervisory notes of counseling or assistance given to the employee?

Do you have copies of memoranda of counseling provided to the employee?

Do you have a copy of the written notice providing an opportunity to improve?

Did you document the employee's performance during the opportunity period?

Do you have written performance standards for the employee OR evidence that performance expectations were communicated?

Is there documentation that the employee was clearly "on notice" of performance expectations?

Do you have copies of any supervisory notes of counseling or assistance given to the employee?

Do you have copies of memoranda of counseling provided to the employee?

Do you have a copy of the written notice providing an opportunity to improve OR can you explain your reasons for not providing an opportunity to improve?

Did you document the employee's performance during the period in question?

STEP

3

Step Three Questions and Answers

Question: How much specific information needs to go into a proposal notice to improve?

Answer: We have provided a sample of a notice to improve (Appendix B) At a minimum, your notice will specify what performance area(s) the employee failed to meet, cite the evidence of unacceptable performance, and discuss the opportunity period (or the lack of one). Ask your human resources officer for some samples of other performance-based notices.

Question: What reasons warrant not providing an employee with a formal opportunity period to improve?

Answer: One reason for not providing an opportunity period may be that your employee has several years of experience in the job and additional training would prove useless. Another reason may be that your employee has already received extensive informal training and additional training or assistance would seem unreasonable.

SPECIAL TOPICS

Special Topics

During the process of addressing and resolving performance problems, you will need to keep abreast of certain situations that are driven by an employee's length of service. The most common situation involves the consideration of an employee's probationary/trial period.

The Probationary/Trial Period

One of the most important times to address performance is during the probationary/trial period. As the final step in the examination process of a new employee, this period—which generally lasts 6 months – is designed to give supervisors the opportunity to assess how well an employee can perform the duties of a job.

Employees' performance during this time period usually serves as a good indication of how well they will perform throughout their career. During this period, supervisors should provide assistance to help new employees improve their performance while, at the same time, determine whether or not the employee is suited for a position. This period also gives supervisors the chance to determine whether a new employee will be an asset rather than a liability to the organisation.

The lapse of a probationary/trial period without a proper assessment of a new employee's performance may result in future performance problems. For supervisors, the probationary/trial period should always be considered a key period for addressing and resolving poor performance.

SPECIAL TOPICS

Special Topics: Questions and Answers

Question: Do I have to give a probationary/trial employee an opportunity to improve?

Answer: No. This exclusion is because the entire probationary period is similar to an opportunity period. These employees should receive closer supervision, instruction, and training as needed during the first year of their employment.

APPENDIX

Contents

This appendix contains samples of documentation provided by a supervisor to an employee at different stages in the process of addressing performance problems.

Specific items contained in this appendix include the following:

- Appendix A Sample Memorandum of Counseling
- Appendix B Sample Opportunity Notice.
- Appendix C Sample Notice of intention to arrange a formal hearing

APPENDIX A

This sample notice is provided as a guide for supervisors but is not to be considered a model or even a suggested version for final use. Actual notices will include more specific information about the performance deficiencies. Supervisors should contact their human resources officer for technical assistance and review of actual notices before sending to an employee

SAMPLE MEMORANDUM OF COUNSELING

SUBJECT: MEMORANDUM OF COUNSELING

FROM: (SUPERVISOR)

TO: (EMPLOYEE)

The purpose of this memo is to provide a summary of our August 20th meeting. This meeting was held to informally discuss your performance during the implementation of our new computer system. As I said last Tuesday, there are three areas of concern with your work. My understanding of the issues addressed are as follows: (1) Missed deadlines, (2) customer complaints, and (3) careless mistakes. During our discussion, it was quite evident that the lack of good communication between the two of us has contributed to deficiencies in your performance. Particularly, you noted that although I gave you overall time frames for the system implementation, I never explained the importance of specific deadlines and how that would impact the organisation. You also said that my style of supervision was more detailed and closer than that of your previous supervisor. Finally, you seemed genuinely surprised by the number of customer complaints I had received about your work and the number of times I had to follow up and fix problems. To help improve your performance, we agreed on the following:

1. While I may not change my “hands-on” management style, I agreed to give you more flexibility to work independently. In turn, this will allow you to be able to focus more on your job rather than worry about what my intentions are.
2. I agreed to inform you of all complaints I receive from customers concerning your work. In turn, you agreed to handle these complaints yourself and correct the problems associated with them.
3. We both agreed to meeting weekly to discuss our progress. Based on your experience, I believe you can succeed in this job, but it is essential that you work to reduce the number of errors and focus clearly on completing work within the assigned time frames. If you have any comments to add to these notes, please feel free to inform me orally or in writing.

APPENDIX (B)

This sample notice is provided as a guide for supervisors but is not to be considered a model or even a suggested version for final use. Actual notices will include more specific information about the performance deficiencies. Supervisors should contact their human resources officer for technical assistance and review of actual notices before sending to an employee

SAMPLE OPPORTUNITY NOTICE: EXAMPLE #1

SUBJECT: NOTIFICATION OF UNACCEPTABLE PERFORMANCE/
OPPORTUNITY TO IMPROVE

FROM: (SUPERVISOR)

TO: (EMPLOYEE)

This notice is written confirmation that I am providing you with an opportunity to improve your performance. I have determined that your performance is unacceptable in two areas of your position, and therefore, have agreed a performance improvement plan. The performance improvement plan outlines the two area(s) in which your performance has fallen to an unacceptable level. If you have any concerns about the performance improvement plan or you require additional guidance in following it, please let me know as soon as questions arise.

The performance improvement plan becomes effective today and will continue for _____ days from today. It is important to perform well under the standards set out in your performance plan, which was provided to you on _____. A copy of the area(s) and standards for your job is attached. By the end of the opportunity period, you must have brought your performance up to at least a satisfactory level on the area(s) in which you are currently unacceptable in order to avoid formal action being taken. This performance improvement plan is to assist you in reaching that objective.

During the period of the performance improvement plan, you are to report directly to me for problems relating to your performance. Given the nature of my duties, I realise there are times when I may not be available during the day. During these times, you should report any problems or address your questions to _____. Beginning this Tuesday at 9:00 and every Tuesday morning throughout the performance improvement period, you and I will meet at least once a week to discuss the quality of your work. Although I don't foresee any long-term absences on my part, if I am gone for a full week, _____ will act on my behalf and meet with you to review your performance.

The deficiencies in your performance have centered on two critical area(s). During your first year in this job, you received all of the formal training associated with these elements that is normally provided to accounting technicians in this authority. However, you have been unable to apply this training and demonstrate the necessary skills in these areas. Your most recent PDP was good despite the fact that these performance discrepancies existed to some degree even during

your first year. I made that decision on the basis that some of those performance problems reflected the fact that you were still in the learning curve on your assignments. These problems were communicated to you during the PDP. However, in the 6 months since then, your work performance has declined and, despite the fact that I have routinely pointed out your errors, you have not been able to perform acceptably in some of the key areas of your position.

In the defined area(s) your performance improvement plan states a satisfactory level of performance is:

Routinely reconciles accounting transactions affecting the employee's assigned work, including obligations, accruals, and payments, in an accurate manner. These transactions are reconciled accurately to the accounts payable open document listing in a timely manner.

Currently, your performance on this area is at an unacceptable level due to the number of errors I have found in your work because you continually post transactions in the wrong category and then extensive work is needed to determine why your records are not reconciled. Over the past month, I frequently had to point out to you mistakes that occurred because accounting documents were not input in the appropriate categories in the system. Further, I found that 25 errors occurred where your worksheets did not balance with the open document listing. 25 errors in one month does not meet the requirement for routinely accurate work. This type of performance is representative of the performance deficiencies you have been exhibiting over the past several months.

[At this point an actual notice would include a more detailed assessment of the mistakes in the employee's work.]

During this opportunity period, you must improve your performance to at least the minimum level in order to continue in your position. In particular, you must conduct your reconciliation work with an error rate of no more than 10% per week. You must also reconcile your worksheets with the accounts payable open document listing with an error rate of no more than 10% per week. Each of these two functions are equally important and failure to perform adequately on either one will result in an overall finding of unacceptable performance.

To assist you in this area, I would like to spend some time during our first weekly meeting next Tuesday to review the reconciliation process and go over with you the thought process that is needed when deciding where certain transactions should go in the system.

[Specific examples of various forms of assistance should be included here.]

In the area 'Coding of Accounts Payable Documents your performance in this area is unacceptable based on both your problems with accurate coding and your lack of timeliness. Although some level of error is anticipated given the large number of data items that must be coded, the constant number of corrections that you must make on your work is not acceptable.

[At this point an actual notice would include a more detailed assessment of the mistakes in the employee's work.]

In order to achieve a minimum level of acceptable performance, you will need to reduce your number of errors to no more than 20 coding errors on any biweekly error report. I arrived at the figure of 20 errors based on the fact that the number of data items coded in a 2-week period is typically 300. Here, errors will be defined as coding mistakes in situations where you received all the correct information on the original documentation. Errors that resulted because you were given incorrect information or because the data were changed after they were originally coded will not count. Both accuracy and timeliness are equally important in your performance.

To assist you in improving in this aspect of your job, I have asked _____ to create a “cheat sheet” of commonly used codes for a variety of entries. I have also pulled up your coding sheets for each of the errors shown on the latest error report. During our first weekly meeting, we will go over each of the mistakes and perhaps I can determine a pattern that may show why you are not selecting the correct codes. Also, each week, bring three or four of your current assignments to the meeting and we will go through the coding together.

I believe that if you use these written tools and our weekly meetings to develop and hone your accounting skills, you will be able to bring your performance to an acceptable level. You must meet and maintain the minimum level of acceptable performance on both the area(s) listed above for 1 year from the beginning of the opportunity period. Failure to achieve acceptable performance during the opportunity period, or to maintain it during the remainder of the 1 year, may result in further action.

If you have any questions about this performance improvement plan or require additional guidance on implementing the provisions of it, please let me know as soon as questions arise. Keep in mind that it is important to refer to this plan throughout the performance improvement period.

[It is essential that you contact your human resources officer to determine what additional information should be included in an actual notice]

APPEAL PROCEDURE

If you feel that you have a personal or medical problem that may be impeding your ability to perform your duties at an acceptable level, please inform me as soon as possible and I will arrange an appointment with our Occupational Health Advisor.

Please sign a copy of this memorandum, which serves only to acknowledge your receipt of this notice.

Receipt Acknowledged

Signature

Date

APPENDIX C

This sample notice is provided as a guide for supervisors but is not to be considered a model or even a suggested version for final use. The names used in this sample are fictional. Actual notices will include more specific information about the performance deficiencies and must include any additional statements or referrals required by agency policy or collective bargaining agreements that may exist. Supervisors should contact their human resources offices for technical assistance and review of actual notices.

SAMPLE NOTICE TO ARRANGE FORMAL HEARING

FROM: SUPERVISOR

TO: EMPLOYEE

I am writing to inform you that following our meeting today it is my intention to arrange a formal review hearing to discuss your unacceptable performance.

On June 10th, after several months of informal counseling about your performance problems, I issued you a memorandum stating my determination that your performance was at an unacceptable level and provided you with an opportunity to demonstrate acceptable performance. Attached you will find a copy of your performance standards as well as the opportunity notice that further clarified your performance standards. During the 90-calendar-day opportunity period (from date _____ to date _____), you failed to achieve the required level of performance. The specific reasons for this proposal follow.

During the opportunity period, I met with you every Thursday with the exception of two dates (July 17th and August 21st) when I was on annual leave and official training, respectively. During those weeks, you were encouraged to contact the Director of Human Resources with any significant cases that came up and I met with you on the Monday following my absences to cover any issues that needed further attention. One purpose of these meetings was for you to demonstrate that you were researching current case law prior to issuing any draft notices to supervisors or providing them with verbal guidance on how to proceed in certain circumstances. As indicated in my summary notes from those weekly meetings (a copy of which you received each week), your performance in this activity was spotty at best. On several occasions, you simply failed to present any research, while at other times you submitted copies of cases dating from the mid-to-late 1980s, which, although relevant to the topic, could not be considered current by any means. I was forced routinely to inform you of specific cases that I knew that were relevant to the cases you were handling. In several cases this caused rewrites of the draft notices you had prepared, and, in two cases (Montague and Tyrone), you needed to meet with the supervisors and restructure the advice you had given regarding responding to their employees about their appeal rights, if adverse actions were taken against them.

[An actual proposal notice would include more specific examples and documentation of the unacceptable performance.]

By far, the most egregious mistake occurred because you failed to research the current case law on the issue of providing a “firm choice” to alcoholic employees. A supervisor, Dr. Hamlet, presented you with a situation in which an employee with a long history of disciplinary actions associated with his use of alcohol had created a disturbance at work, left work without approval, and remained in an AWOL status for 5 days. Clearly, your performance has fallen far short of routinely providing accurate technical advice, and I find you to be unacceptable in this aspect of your performance.

The second aspect of your performance involves the timeliness of advice given to supervisors. As I indicated in your notice of an opportunity to improve, I expected you to respond to supervisors in a timely manner by establishing reasonable deadlines for yourself and keeping supervisors apprised of your progress. I expected you to carry out this assignment with minimal assistance from me. However, I reviewed all of your pending work during our first meeting and established priorities and deadlines for those assignments. Additionally, I asked you to maintain a telephone log for the duration of the opportunity period so I could monitor who was calling and when you were responding to them. On several occasions (dates), when I questioned you, you were unwilling to discuss your own decisions on deadlines for new cases you received during the opportunity period. Finally, as stated in my summary notes from our August 7th meeting, I worked closely with you to set deadlines for all of the work you brought to the meeting. An audit of all of your work submitted during the opportunity period indicates that you met your established deadlines in only 78% of your assignments. This number does not include the three cases where we agreed to extend the deadline due to unusual circumstances beyond your control. Further, I continued to receive a large number of complaints from supervisors that you simply would not return their calls and I was forced to provide them with a status report in the cases where I had that information. Discounting the calls I received during the first 2 weeks of the opportunity period (as stated in the opportunity period notice), I received 12 complaints from supervisors where you were unable to provide me with a supportable reason for your failure to respond to their calls. At this time, I have determined that you continue to be unacceptable under the timeliness aspect of your performance.

Conclusion

During the opportunity period, you were given every opportunity to improve to the Fully Successful level but failed to do so.

Request for Reasonable Accommodation

In our weekly meeting on June 26th, you presented medical documentation stating that you were suffering from diabetes and would need accommodation on the job due to your disabling condition. I requested clarification regarding the impact of the diabetes on your ability to work as well as your accommodation request. You responded that you would need sick leave for doctor’s visits while you are getting your medication program established and administer that medication once a day. As I stated at the time you submitted this information, I am extremely sorry to hear that you have diabetes, but there didn’t appear to be any reason to alter the conditions of the opportunity period except to handle your

work myself or assign it to other staff members during your sick leave absences. This was done on each occasion when you were absent, and there were no instances when you were denied use of sick leave.

I have determined that your medical condition has not had any negative impact on your ability to perform because none of the medical documentation you submitted would support that position.

[Always contact your human resources office when an employee raises a medical issue that may be disabling.]

You have a right to be accompanied by your trade union representative or a representative of your choice.

You will be required to submit any evidence you intend to use at the hearing 3 days in advance of the hearing. The Authorities representatives will also be required to submit any evidence they intend to use to you by the same date.

Receipt Acknowledged

Signature

Date