

Performance Management



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Introduction—informal supervision and formal appraisal

Managing the performance of your team is crucial to the success of your organisation. Many employers make use of an initial probationary period during which performance is monitored, before confirming the employee in post (see the 'Probation' section). It is crucial, but performance management doesn't stop there.

Whether through regular one-to-one supervision meetings or formal appraisals, it is important that employees understand how their performance is viewed and how and where they could improve. Not doing so, can make the process of formal performance management, when it is decided that shortcomings can no longer be tolerated, all the more difficult.

The process of performance management ideally starts with job descriptions that accurately reflect what is required of employees, against which performance can be monitored and measured. Employees should ideally have performance objectives set for them which are SMART, i.e. specific, measurable, achievable, realistic and time-based.

You should then decide the criteria against which performance will be monitored and how frequently, whether annually or more frequently, formal appraisal meetings will take place.

As stated above, these formal meetings should be supplemented with regular informal supervision meetings. Appraisals often involve both the manager and the employee independently assessing the employee's work and the two then meeting to discuss the assessment.

Appraisal meetings should aim to highlight areas of success and good performance as well as any areas for improvement. Any criticism should be constructive but shortcomings in performance should not be overlooked. Ideally, managers, at the very least, should be trained in conducting appraisals.

The outcome of appraisal meetings should be documented. These records are important evidence should an employee subsequently be dismissed for poor performance or selected for redundancy on the basis of their relatively poorer performance in comparison to their colleagues. Where an employee is known to have performance shortcomings, too positive an appraisal outcome should be avoided, so as not to undermine subsequent performance management or redundancy selection procedures.

Formal performance management procedure

It is recommended to have a separate performance management procedure in addition to your disciplinary procedure. It can be difficult sometimes to know which procedure should be used when, but one way of differentiating them is to ask if the employee 'can't cook' or 'won't cook'. Always seek professional advice, if you're still struggling to decide which procedure is appropriate.

The Acas Code requires that the procedure be fair and transparent, specific and clear. You should ensure that all employees and managers know where to find the procedure and how to use it. You should aim to use procedures to encourage employees to improve, where possible, rather than just as a way of imposing a punishment. For employees that do not have the two years' service required to bring an unfair dismissal claim, this process can be truncated, subject to there being no protected or discriminatory factors.

Key features of the procedure are:

1. Informal action

Minor instances of poor performance or early evidence of underachievement may be capable of being dealt with informally. The employee's manager or supervisor should simply ensure the employee is aware of the underperformance and how to correct it. Often, this heightened awareness is enough to ensure the employee does not repeat the mistake or takes steps to improve their performance.

2. Investigation

Before holding a formal performance management meeting with an employee, you should ensure you have all the facts relevant to the discussion, with as many concrete examples of underperformance as possible and evidence clearly indicating that responsibility lies with the employee. By doing so, you can create an environment where you can say you have reasonable belief, after investigation, that the employee is or has been underperforming. If the employee did not know what was expected of them performance-wise, then consider whether this should be set out to them, with a reasonable timeframe for improving, before moving to a formal stage. If you have clearly set out objectives as recommended above, this shouldn't be as much of an issue.

3. First Written Warning / Performance Improvement Plan (PIP)

We recommend that the first stage of a formal procedure should be the issuing of a first formal warning following a meeting during which the underperformance is discussed and the employee is given the opportunity to give their view of the matter. As this is a formal meeting, the employee should be given the right to be accompanied by a colleague or trade union official.

The companion should be allowed to put the employee's case forward, respond to any views expressed and confer with the employee, but cannot answer any questions put to the employee. If the companion cannot attend a meeting at the time proposed by you, then the employee can ask for a postponement of up to five working days.

If an employee is refused the right to be accompanied, they can bring a claim and could be awarded up to two weeks' pay for the refusal.

It will be very important to take into account any protected issues, such as discrimination, when considering whether to issue a warning/PIP. For example, if the performance issues are caused by, say, an employee's disability, it will be necessary to consider reasonable adjustments rather than a warning (which could be discriminatory). In such circumstances, it may be more appropriate to utilise a medical capability procedure.

The elements of a PIP are:

- **Timescale:** The overall timescale in which the necessary improvement must be achieved should be set out, together with the timescale for reaching individual milestones where appropriate.
- **Targets:** The PIP should specify the particular areas in which improvement is needed and set out how and on what criteria the employee's performance will be assessed. Where appropriate, specific targets should be set, which will need to be achieved either by the end of the plan or at identifiable stages within it.
- **Measures:** The PIP should specify what measures will be taken by the employer to support the employee in improving their performance. These measures may include training, additional supervision, the reallocation of other duties, or the provision of additional support from colleagues.
- **Feedback:** As part of the PIP, the employee should be given regular feedback from their line manager indicating the extent to which the employee is on track to deliver the improvements set out in the plan.

4. Final Written Warning

If the PIP targets are not met or further performance issues arise, the next formal stage is to issue a final written warning. This should come following a meeting during which the underperformance is discussed and the employee is given the opportunity to give their view of the matter. As this is a formal meeting, the employee should be given the right to be accompanied by a colleague or trade union official. The final warning informs the employee that, unless the underperformance is corrected, and no further shortcomings arise, dismissal may result. The warning should also set out, as with the PIP, the targets, the timeframe and the measures, if any, that will be put in place to support the employee.



5. Dismissal

If the final written warning targets are not met or further performance issues arise, the next formal stage is the dismissal stage. Again, this requires a meeting at which the underperformance is discussed and the employee is given the opportunity to give their view of the matter.

As this is a formal meeting, the employee should be given the right to be accompanied by a colleague or trade union official.

Before dismissing for poor performance, you should consider whether, as an alternative, to issue an extended final warning and/or offer the employee demotion or transfer to another position which is within their capabilities.

In essence, successfully defending a claim for unfair dismissal where an employee is dismissed for poor performance requires the employer to have ensured that the employee understands the shortcoming, has been given the opportunity to improve, with any help and support that may be necessary, and that any viable alternatives to dismissal have been considered.

6. Appeal

At each stage of the procedure, the employee should be given the opportunity to appeal. It is suggested that you set a time limit for appeal, such as five to ten working days from receipt of notice of the sanction. As this is a formal meeting, the employee should be given the right to be accompanied by a colleague or trade union official. A more senior person who has not been involved with the case should hear the appeal. If, because your organisation is too small, that is not possible, then the person overseeing the case should try to act as impartially as possible.

Always seek specialist advice before dismissing anyone for poor performance, and always bear in mind any potential discrimination issues that may arise.

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