Policy statement

The Office of the Police and Crime Commissioner (OPCC) is committed to supporting employees to fulfil the requirements of their role. The Managing Performance Policy defines the OPCC’s approach to the management of performance which is unacceptable due to a lack of skill, knowledge, experience or appropriate behaviours.

Scope

All employees of the OPCC

How to use this document

This document is not part of the formal policy. It provides additional information to help you as the manager in the practical day to day application of the policy.

It is expected that you will have an understanding of the Managing Performance Policy prior to using this guide.
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As the manager you are responsible for:
- adopting a pro-active approach to induction, general development and continuing professional development of your employees to prevent performance concerns
- identifying concerns and deciding on appropriate action
- applying and complying with the Managing Performance Policy accurately
- tracking and progressing cases through case management
- informing HR Operations when progressing to stage two or where there are gross incompetence concerns
- considering adjustments and deciding whether to implement them where reasonable to do so
- maintaining regular contact with employees during the process, especially where suspension is in place
- arranging meetings as necessary
- suspension of IT accounts and security passes as appropriate
- keeping records, drafting and issuing letters / documents with HR support as necessary

All employees are responsible for:
- adopting a pro-active approach to induction, general development and continuing professional development
- seeking to improve their performance
- identifying mechanisms of support helpful to their particular development needs
- conducting themselves in an acceptable manner and complying with the policy
- applying the Managing Performance Policy accurately
- arranging their own work companion or trade union representative if desired and advising management of this

The HR person who is supporting the manager is responsible for:
- advising on policy application and best practice
- supporting with case management
- advising on the completion of letters, reports and relevant documentation
- attending meetings in an advisory capacity
- HR does not perform a decision making role

The OPCC work colleague or trade union representative is responsible for:
- supporting their member/ colleague
• attending arranged meetings or ensuring meetings are covered and not delayed
• ensuring the procedure is fairly and equitably applied

They may make representations, submit papers, ask questions and address a meeting on behalf of the employee. They may not answer questions on behalf of the employee.

Safeguarding

Whilst the principles of the Managing Misconduct Policy will still apply, there may be some variation in terms of timescales and what information is shared, and when, in order to support a Police or safeguarding team’s investigations.

How to distinguish unacceptable performance from misconduct

Misconduct is generally wilful action or omission. To help decide whether an action or omission is wilful you may want to consider the following:

• does the employee hold the necessary skills? This can be evidenced by their participation in relevant training through which they have developed these skills
• does the employee have the necessary knowledge? This can be evidenced by the employee’s previous demonstration of the correct or expected actions or tasks completed

Where the above can not be evidenced, it is more likely that the employee has a lack of skills and knowledge and is therefore a performance concern.

Where an employee has wilfully chosen to behave in a manner which contradicts their own skills and knowledge, it is a misconduct concern.

How to identify and respond to performance concerns

Examples of unacceptable performance and gross incompetence are included in appendix 1 and appendix 2 respectively.

If you are concerned about an employee’s standard of performance, you may find it useful to consider the following:

• are there clear, tangible examples of unacceptable performance you can share with the employee
• whether informal or formal performance management has already started
• does the employee have a disability covered by the Equality Act 2010 that may impact upon their performance (especially in cases of anticipated long term performance concerns)
• has training and support been available where an employee is new to their role or where changes to the role have taken place

You must then decide on a course of action:
• where previous support or training has been lacking, make arrangements to put this in place and monitor for improvements
• where there may be a medical condition or disability, make a referral to Occupational Health
• where you are happy the employee has the right support and training, hold a monitoring discussion
• where the unacceptable performance is sufficiently serious, move straight to a formal stage
• where a warning has already been issued – consider progressing to the next stage
• where there is an anticipated long term performance concern because the skills deficiency is too large and cannot be made good in a reasonable period, consider progressing straight to formal stage three
• where there is potential gross incompetence consider suspension and move straight to a formal meeting to consider dismissal

Referral to Occupational Health and reasonable adjustments

Where a performance concern may relate to a possible underlying medical condition or disability, you should make a referral to Occupational Health early on. This helps you to better understand the health issues, their possible impact on the employee’s work and whether any reasonable adjustments can be put in place to alleviate the concerns. You should consider reasonable adjustments as a matter of priority and a way to support an employee, before starting the formal stages of the procedure.

Alternatively you may decide it is more appropriate to manage the concern using the Managing Sickness Absence Policy which covers long term health conditions without sickness absence.

Where there are both sickness absence and performance issues which are unrelated the stages of both policies should be run in tandem.
**Unacceptable performance** is where an employee is unable to perform the duties of their role to a satisfactory standard or level. This may arise due to a lack of skill, knowledge, experience or appropriate behaviours. It may also arise from a physical, cognitive, mental, sensory, emotional, or developmental disability which may be temporary or permanent. **Anticipated long term performance concerns** (linked to disability or capability) includes circumstances where there is no possibility an employee can achieve the required levels in performance. This may be because the skills deficiency is too large and cannot be made good in a reasonable period or they are unable to make the change required due to a permanent health condition or disability. Anticipated long term performance concerns only apply in exceptional circumstances.

**Policy stages**

There are five possible stages:
- informal monitoring discussion
- formal stage one
- formal stage two
- formal stage three – may result in dismissal
- appeal

There is a shortened procedure for employees with less than two years service.

In the exceptional circumstance of anticipated long term performance concern, an abridged process may be applied.

**Informal monitoring discussion**

You should normally seek to resolve the performance concerns with an employee informally through a one-to-one monitoring discussion. For the avoidance of doubt you must make it clear to the employee that the meeting is the informal stage of the Managing Performance Policy and is not a normal day to day discussion.

The employee has no statutory right to be accompanied at the discussion, however a request to be accompanied by an OPCC work colleague or trade union representative may be considered in exceptional circumstances.

**How to run a monitoring discussion**

You must:
- set out the nature of the performance concern/s and clear examples of when and why performance has been unacceptable and / or the impact upon service delivery or other team members as a result
- ask the employee to respond to these concerns, explaining any reasons they feel may be relevant
- establish what the employee has done to address the
issue/s
- identify the standards expected and ensure the employee understands what this looks like in practice
- discuss with the employee whether there is any support, training or reasonable adjustments that might help them
- decide on an outcome

Possible outcomes of a monitoring discussion

- the employee is given an explanation of why their current performance standard is a cause for concern
- the employee is told how their performance needs to improve
- a timescale is set within which an improvement needs to take place and a review meeting is scheduled
- a referral is made to Occupational Health as appropriate
- support and/ or development/ training is agreed
- a clear statement is made that failure to improve will lead to formal action in line with the Managing Performance policy

Use the Record of Informal Discussion form to keep a summary of the discussion. Working with the employee, you may also find it helpful to draft an action plan which reflects the key outcomes from the discussion and associated timescales. Share the record with the employee and keep a copy on the personnel file or ePF.

How to progress from a monitoring discussion to the formal stage

Where you are not satisfied that an employee’s performance has met the standard required following a monitoring discussion, or if an initial improvement is not sustained, this should be progressed to the formal stage.

There may be circumstances in which you feel the employee’s performance is sufficiently serious to progress straight to the formal stages without a monitoring discussion taking place.

How to invite an employee to a formal stage meeting

You must write to the employee to invite them to a formal meeting. The letter must give up to 9 calendar days notice of the meeting to enable them to prepare and submit any relevant mitigating information.

Use the template letter to ensure you include all the necessary information.

If you are progressing to a stage two meeting you must contact HR Operations if you haven’t already done so.
Right to be accompanied

The employee has the right to be accompanied at a formal meeting or appeal meeting by an OPCC work colleague or a trade union representative.

It is the employee’s responsibility to arrange their own companion and advise management of this.

Alternative date

An alternative date is automatically scheduled for within 9 calendars days of the first. All reasonable efforts should be made by the employee and their companion to attend the first scheduled date but where this is not possible due to availability, the alternative date will be used.

If the employee is unable to attend or fails to attend the re-arranged meeting, this will normally go ahead in the employee’s absence.

Who chairs the formal meeting

<table>
<thead>
<tr>
<th>Stage</th>
<th>Chair of the meeting</th>
<th>Adviser to the chair</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stage one</td>
<td>Employee’s Line Manager</td>
<td>None</td>
</tr>
<tr>
<td>Stage two</td>
<td>Employee’s Line Manager or other Manager</td>
<td>HR Adviser</td>
</tr>
<tr>
<td>Stage three / Less than two years service /</td>
<td>Employee’s Second Line Manager, other Senior Manager or other nominated Manager</td>
<td>HR Adviser</td>
</tr>
</tbody>
</table>

Other meeting attendees may include:
- the employee and their representative
- where the manager is not the chair of the meeting, they (or a management representative) will attend to present the performance concerns and actions taken to date

What information should be shared

You and the employee are expected to provide details of any significant issues and relevant papers in advance of the meeting.

A simple record of the concerns and notes of previous discussion/s may be all that is required during the early stages of the process. Alternatively a template management report is available to help you compile relevant information if necessary in more complex cases and at stage three. The length and detail of this report is proportionate to the performance concern and the
stage in the procedure.

The record or report is normally supplied with the invitation letter.

The employee, or their companion, must submit their information to arrive at least 4 calendar days before a meeting.

You must provide the employee with two copies of any documents that will be used in advance of the meeting, one for them and one for their companion.

How to run a formal meeting

The chair of the meeting must:

- identify the unacceptable performance concerns and discuss the measures put in place during any previous stage of the procedure, referring to any documents or evidence – or ask the manager to do so
- ask the employee to respond, referring to any documents or evidence
- all parties may ask questions
- adjourn the meeting, if necessary, to consider the evidence and decide on the outcome
- keep a written record of the meeting
- inform the employee of the decision

Possible outcomes of a stage 1 and 2 formal meeting

The chair of the meeting must decide whether;

- no formal action is required – and the required improvement and/or alternative action is stated or
- a written warning is issued
  - stage one: first written warning up to 12 months
  - stage two: final written warning between 12-24 months or
- the previous warning is extended

The length of the warning depends on the nature of the unacceptable performance, whether there is a belief that it may reoccur and whether a warning at the same stage has previously been issued.

Discuss the following with the employee in order to support them to achieve an improvement;

- the improvement in performance required and their responsibility to make positive improvement in their performance
- performance targets and the associated timescale within which these should be achieved
- the additional support or development/training to help
the employee achieve the attendance standards required
- schedule dates for review meetings
- whether a referral to Occupational Health is appropriate
- whether any reasonable adjustments need to be considered
- confirm that the employee has a right of appeal against the outcome

Working with the employee, it may be helpful to draft an action plan which reflects the key outcomes from the meeting and associated timescales. Share the record with the employee and keep a copy on the personnel file or ePF.

**Reasonable support to find an alternative role** can be offered to an employee as a means of helping them to find alternative employment, either within the OPCC or externally. Typically it may involve help with searching for vacancies, applications / CVs and interview techniques. There is no right to redeployment or priority status, as identified in the Redeployment Policy, when applying the Managing Performance Policy.

**Possible outcomes of a stage 3 formal meeting**

The chair of the meeting must decide whether;
- no formal action is required - and the required improvement and/or alternative action is stated OR
- the previous stage 2 written warning is extended OR
- to dismiss on the grounds of performance capability with contractual notice

Where the decision is not dismissal, the employee is supported to achieve an **improvement** as per the list above.

**Support to find an alternative role** can be offered as above.

**How to confirm the decision**

The chair of the meeting must send a letter to the employee to confirm the outcome. Use the template letter to ensure you include all the necessary information.

The letter is sent ideally on the same day as the meeting but if not within **4 calendar days** and a copy placed on the personnel file or ePF.

**Review meetings**

Following the issuing of a formal warning, you must hold regular review meetings with the employee and a final review meeting at the end of the warning period. Initially these should be every
four-six weeks however you may wish to decrease the frequency where an improvement is being sustained. These meetings enable you and the employee to monitor progress and provide progress updates and constructive feedback to the employee. Use the review meeting to establish whether there is a need to progress to the next formal stage.

**How to progress through the formal stages**

Progression through the formal stages normally occurs where performance continues to be a concern whilst a written warning remains active. You do not have to wait until the end of the action plan or warning period if there are concerns early on.

However where there is a history and pattern of performance concerns over a prolonged period of time which continues to give cause for concern, despite there not being an active warning, there may be grounds upon which to move to any stage of the procedure.

A history of performance concerns may be identified by a record of previous written warnings and / or where there is evidence to show the employee has been unable to sustain improved performance.

**How to manage anticipated long term performance concerns**

In exceptional circumstances there may be a change in an employee’s personal situation or health which means they are no longer able to perform the duties of their role and you anticipated this will present a long term or permanent performance concern. This is because the skills deficiency is too large and cannot be made good in a reasonable period or they are unable to make the change required due to a permanent health condition or disability.

In this situation it is beyond an employee’s capabilities to meet targets for improvement and therefore the issuing of a warning and targets are not an effective way to manage the performance concern. A better approach may be to consider a mutual agreement with the employee if this is their wish. If however the employee does not wish to enter into a mutual agreement, you can consider progressing straight to a stage three meeting.

**Please note this approach is not an acceptable way of managing performance concerns that have developed over a period of time but which have not previously been formally managed.**
Right of appeal

The employee has a right to appeal against any formal decision. If the grounds for the appeal are unclear, you should ask the employee to clarify the specific reasons and their evidence.

How to invite an employee to an appeal meeting

You must write to the employee to invite them to a formal appeal meeting. The letter must give up to 9 calendar days notice of the meeting.

Use the template letter to ensure you include all the necessary information.

The employee has the right to be accompanied.

An alternative date will be arranged if requested.

Who chairs the appeal meeting

<table>
<thead>
<tr>
<th>Stage</th>
<th>Chair of the meeting</th>
<th>Adviser to the chair</th>
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<tbody>
<tr>
<td>Appeal against formal warning</td>
<td>One senior manager</td>
<td>HR Adviser</td>
</tr>
<tr>
<td>Appeal against dismissal</td>
<td>One senior manager and the Chief Executive</td>
<td>HR Adviser</td>
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</table>

How to run an appeal meeting

The chair of the meeting must:
- ask the employee or their companion to present their appeal referring to any documents or evidence
- ask you to respond to the appeal and present the grounds upon which previous decisions have been made, referring to any documents or evidence
- invite questions from all parties
- adjourn, if necessary, to consider the evidence and decide on the outcome
- let the employee know the outcome at the end of the meeting

Possible outcomes of an appeal meeting

- the appeal is not upheld and the previous decision remains
- the appeal is upheld and an alternative outcome is decided

If the employee is reinstated on appeal after a previous dismissal, the employee’s service is continuous and any loss of pay between dismissal and reinstatement is paid.
How to confirm the appeal decision

The chair of the meeting must send a letter to the employee to confirm the outcome. Use the template letter to ensure you include all the necessary information.

The letter must be sent ideally on the same day as the meeting but if not within 4 calendar days, and a copy placed on the personnel file or ePF.

Less than two years continuous service

Where you have performance concerns regarding an employee with less than two years service, you must take the same factors into consideration as you would for those with longer service, especially conditions covered by the Equality Act 2010 (see section How to respond to performance concerns).

Where a formal warning is issued and there is no subsequent improvement or an improvement is not sustained within the first two years a further formal meeting needs to be held to consider dismissal. However be careful if an employee has moved into their third year of service, as the full procedure will now need to be applied and the previous warning will now count as a stage one warning.

Mutual agreement

A mutual agreement is most likely to be reached where an employee does not wish to participate in a formal process or both parties do not believe the required improvement is achievable within a reasonable timescale.

For employees that wish to improve their performance, a mutual agreement is unlikely to be an agreeable solution for them.

A mutual agreement is neither a dismissal nor a resignation. It is a letter setting out an agreed end date of employment, and other related arrangements, which is signed by both parties.

Where a mutual agreement is being considered you must contact HR Operations for advice if you haven’t already done so and they can also provide the template letter.
**Gross incompetence** - is where an employee has failed to perform the duties of their role to such an extent that this causes serious harm or puts others (employees, general public or service users) or business reputation and performance at serious risk. Gross incompetence will only be in exceptional circumstances.

<table>
<thead>
<tr>
<th>Policy stages</th>
<th>There are two possible stages:</th>
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<tbody>
<tr>
<td></td>
<td>• formal meeting – may result in summary dismissal</td>
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<tr>
<td></td>
<td>• appeal</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Suspension or alternative arrangements</th>
<th>Where the concerns may amount to gross incompetence, you must consider whether suspension, or alternatives to suspension are necessary.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Alternative arrangements to suspension can include temporary placement into another role or amended duties in their current role. This is only appropriate where the new duties or role are not linked in any way to the alleged incompetence.</td>
</tr>
<tr>
<td></td>
<td>You must discuss any potential suspension, or alternatives, with HR Operations and receive authorisation from your senior manager prior to putting the decision in place.</td>
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<tr>
<td></td>
<td>Once you have decided suspension is necessary, or alternatives, you must meet with the employee immediately to inform them that they are being suspended or of the decision to implement alternative arrangements. The employee has no statutory right to be accompanied however this is normally accommodated where it does not cause any unnecessary delay.</td>
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<tr>
<td></td>
<td>You must send the employee a letter to confirm the decision regarding suspension ideally on the same day as the meeting but if not within 4 calendar days.</td>
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<td></td>
<td>You should continually review the decision regarding suspension or alternative arrangements to check the grounds for suspension or alternative arrangements are still supported. Conversely new examples of the performance concerns may mean the case is more serious than first thought and suspension or alternative arrangements are now appropriate.</td>
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| Formal Meeting | The same arrangements for the formal stage meeting apply as before. |
Who chairs the formal meeting

<table>
<thead>
<tr>
<th>Stage</th>
<th>Chair of the meeting</th>
<th>Adviser to the chair</th>
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<tr>
<td>Gross incompetence</td>
<td>Employee’s second line manager and/or other senior manager</td>
<td>HR Adviser</td>
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Outcome of the formal meeting

The chair of the meeting must decide whether:
- no formal action is required - but the required improvement and/or alternative action is stated OR
- a formal written warning is issued OR
- to dismiss on the grounds of performance capability with contractual notice
- summary dismissal

Summary dismissal applies when gross incompetence has been evidenced. The line manager must cancel the employee’s IT account and security pass.

**Reasonable support to find an alternative role** can be offered to an employee as a means of helping them to find alternative employment, either within the OPCC or externally. Typically it may involve help with searching for vacancies, applications / CVs and interview techniques.

There is no right to redeployment or priority status, as identified in the Redeployment Policy, when applying the Managing Performance Policy.

Where the decision is not dismissal, the employee must be offered support to achieve an improvement.

The chair of the meeting must also discuss the following:
- the reasons for the decision
- the right of appeal
- any duty to refer the employee to a professional body

Right of appeal

The arrangements for the appeal meeting are as outlined previously under unacceptable performance.

Referrals to professional bodies

Some professions are required to be registered with a professional body in order to practice. During, or upon completion, of the managing performance process where there are concerns about the employee’s fitness or competence to
practice, there may be a duty to refer the employee to their professional body. Further guidance is available on the professional bodies website.

Support

Managers:
Any queries can be directed to HR Operations.

A confidential Employee Support service is available on freephone **0800 030 5182** (or 0161 836 9498 if calling from a mobile) at any time. Further information is available at [http://www3.hants.gov.uk/employee-support](http://www3.hants.gov.uk/employee-support)

How to guide Governance

<table>
<thead>
<tr>
<th>Hantsfile reference:</th>
<th>12476726</th>
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| Date of publication:| V1 – November 2014  
V1.1 – April 2016 |
| Planned review date:| 2 years or sooner if required |
| Owner:              | HR Operations |
Appendix 1 - Unacceptable performance

An employee is unable to perform the duties of their role to a satisfactory standard or level. This may arise due to a lack of skill, knowledge, experience or appropriate behaviours. It may also arise from a physical, cognitive, mental, sensory, emotional, or developmental disability which may be temporary or permanent. **Anticipated long term performance concerns** (linked to disability or capability) include circumstances in which there is no possibility an employee can achieve the required levels in performance. This is because the skills deficiency is too large and cannot be made good in a reasonable period or they are unable to make the change required due to a permanent health condition or disability. Anticipated long term performance concerns will only apply in exceptional circumstances.

Examples (this list is not exhaustive and other examples of unacceptable performance will be managed under the Managing Performance policy)

Possible indicators of unacceptable performance may be the inability, due to lack of knowledge, skill, experience or appropriate behaviours to;

- apply training to the workplace
- use workplace systems (electronic and paper) effectively
- apply corporate, professional or departmental policies or procedures accurately
- use equipment in the correct way
- produce an acceptable standard of work (quality, accuracy)
- understand their job duties, priorities or goals
- understand the aims and objectives of the service in which they work
- understand instructions
- manage workload effectively
- meet reasonable targets or deadlines
- have effective working relationships with colleagues
- appreciate how to conduct themselves appropriately in the workplace
- appropriately represent the OPCC within and outside of the workplace
- have effective input into team and department objectives
- adapt to alternative ways of working
Appendix 2 - Gross incompetence

Examples
(this list is not exhaustive and other examples of serious or gross incompetence will be managed under the Managing Performance policy)

Gross incompetence is where an employee has failed to perform the duties of their role to such an extent that this causes serious harm or puts others (employees, general public or service users) or business reputation and performance at serious risk.

Possible indicators of gross incompetence due to a lack of knowledge, skill, experience or appropriate behaviours may include:

- using equipment in a dangerous or unsafe manner
- complete lack of knowledge and professional expertise
- complete lack of understanding of the health and safety aspects relevant to the role
- where the inability relates to the majority of the role, therefore making the improvement required too great
- where the time period or support required to achieve the improvement is not operationally feasible
- where an employee has failed to obtain a qualification or registration that is an essential criteria of their role
- misadvising in a professional capacity which may have a direct implication on the reputation of the OPCC