## Managing Performance Policy

### Policy statement
The Office of the Police and Crime Commissioner (OPCC) is committed to supporting employees to fulfil the requirements of their role. This 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

### Policy outcomes
The aims of this policy are to:
- improve and maintain performance
- manage unacceptable performance positively
- define the mechanism for managing unacceptable standards of performance
- support the corporate behaviour framework

### Check which policy to use
Concerns due to an employee’s wilful (deliberate) or negligent behaviour or conduct which falls below the standards required or is in breach of policies or rules should be addressed using the Managing Misconduct Policy.

Absence from work due to sickness should be addressed using the Managing Sickness Absence Policy.

The performance of all employees should be appraised using the Appraisal Policy.

Concerns raised by an employee about a decision or action taken when applying this policy should be addressed through the meetings or appeal process of this policy. A separate workplace issues (e.g. grievance) should not be raised.
Key definitions

**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) include circumstances in which 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 the employee is unable to make the change required due to a permanent health condition or disability. Anticipated long term performance concerns only applies in exceptional circumstances.

**Gross incompetence** - is where an employee fails 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 the business reputation and performance at serious risk. Gross incompetence only applies in exceptional circumstances.

A person has a **disability** for the purposes of the Equality Act 2010 if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

**Calendar days** - where reference is made to calendar days, these are defined as Monday to Sunday, including Bank Holidays or Public Holidays. This is consistently applied irrespective of an employee's work pattern.

**OPCC continuous service** - earliest date when an employee began continuous service (no breaks) with the OPCC.

What the law says

The **ACAS Statutory Code of Practice** on discipline and grievance 2009, issued under section 199 of the Trade Union and Labour Relations (Consolidation) Act 1992, sets out the principles for managing unacceptable performance issues in the workplace.

The code provides the following general principles to deal with managing unacceptable performance fairly:

- ensure the employee is informed of the performance concerns
Managing Performance Policy

- address issues within a reasonable timeframe and do not unreasonably delay meetings, decisions or confirmation
- act consistently
- carry out any necessary investigations to establish the facts of the case
- meet with the employee
- allow employees to be accompanied at any formal meeting
- an employer must form a reasonable belief
- a panel to act “in good faith”
- decide on appropriate action
- reason for dismissal to be both genuine and reasonable
- allow the employee to appeal against any formal decision made

**Equality Act 2010** – prohibits discrimination in the workplace and in wider society by reducing inequality. This means that some individuals with a protected characteristic may be treated more favourably in order to achieve equality. The protected characteristics are; age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Where an employee meets the definition of **disability** under the **Equality Act 2010**, the act requires employers to consider adjustments to working practices and environments and make them where reasonable. This is so that an employee with a disability is not disadvantaged in comparison to a non-disabled employee.

In order to bring a claim for unfair dismissal, under section 108 of the **Employment Rights Act 1996**, an employee must have at least two years continuous employment. There is a specific section in this policy that relates to employees with **less than two years** continuous OPCC employment.

**Safeguarding**

When applying the Managing Performance Policy, local and national safeguarding requirements, including the actions of the Police, must be observed. This may include delaying notifying the employee of the nature of an allegation until the consent of other agencies has been obtained.

**Exceptions**

The following is excluded when managing unacceptable performance:
- absence – whether authorised or unauthorised
### Referrals to Occupational Health
Where a performance concern may relate to a possible underlying medical condition or disability, a referral may be made to Occupational Health (OH) either prior to the application of the formal stages of this policy or at any point during the process. The line manager must review the advice received from OH and consider whether to continue to manage the concern as a performance concern or whether it is more appropriately managed under the Managing Sickness Absence Policy.

### Support and adjustments
All managers should support their employee’s to fulfil the requirements of their role and perform to the best of their abilities. Employees are expected to respond positively to the support offered. In some cases, particularly where there may be a health concern or disability, the manager and employee must work together to identify and consider any reasonable adjustments which will further support the employee to perform in their role.

### Formal action concerning a trade union representative
Where there are concerns involving an employee who is a trade union representative, advice must sought from HR Operations before taking formal action.

### Unacceptable Performance (including anticipated long term performance concerns)

#### 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 an anticipated long term performance concern an abridged process may be applied.

#### Informal monitoring discussion
The manager must raise an unacceptable performance concern promptly through a monitoring discussion with the employee.

The employee has no statutory right to be accompanied at the monitoring discussion. However the employee can contact their union where they are a member for advice.
Formal stage meetings

The manager must hold a formal meeting with the employee at each formal stage of the policy.

The manager will write to the employee to invite them to the formal meeting.

The manager and employee are required to exchange details of any significant issues and relevant papers in advance of the meeting. Management documents are normally supplied with the invitation letter.

Depending on the nature and complexity of the unacceptable performance concern, the manager may produce a management record.

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

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

Outcome of a formal meeting

The chair of the meeting must decide how the unacceptable performance will be managed.

The employee may receive a written warning that their performance must improve. The warning is kept on their personnel file or ePF for a specified number of months.

At a stage three meeting the employee may be dismissed on the grounds of performance capability with contractual notice.

At the meeting the chair must advise the employee of:

- the outcome
- their right of appeal
- the date by which an appeal must be submitted, which is within 10 calendar days starting from the day after the meeting

The details of the meeting and the outcome are confirmed in writing.
| **Review meetings** | Following the issuing of a written warning, the manager must hold frequent review meetings with the employee.  

The employee has no statutory right to be accompanied at these review meetings. |
| **Right of appeal** | The employee has a right to appeal a formal outcome of the Managing Performance Policy. The employee must have specific grounds for making an appeal and identify supporting evidence.  

An employee must ensure their written appeal is received by the chair within **10 calendar days** of the meeting, starting from the day after the meeting. The full reasons for the appeal must be given along with the supporting evidence. |
| **Appeal meeting** | The chair of the meeting must write to the employee to invite them to an appeal meeting.  

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

The manager and employee are expected to provide details of any significant issues and relevant papers in advance of the meeting. Management documents are supplied with the invitation letter.  

The employee, or their companion, must submit their information to arrive at least **4 calendar days** before a meeting. |
| **Outcome of an appeal meeting** | The chair of the meeting must decide whether the employee’s appeal is upheld or not.  

The chair of the meeting must advise the employee of the outcome at the meeting and confirm this in writing. |
| **Less than two years continuous service** | The same principles apply when managing unacceptable performance for employees with less than two years continuous services however the procedure is shorter.  

There are three possible stages:  
- informal monitoring discussion  
- formal stage – may result in dismissal  
- appeal |
The line manager must raise an unacceptable performance concern promptly through a monitoring discussion with the employee.

A formal meeting takes place when the manager identifies that an employee’s performance continues to fall below the standard required following a monitoring discussion. The same principles for the formal stage meeting apply.

The chair of the meeting must decide how the performance concern will be managed.

The employee may receive a written warning of the need to improve their performance. The warning is kept on their personnel file or ePF for a specified number of months.

The employee may be dismissed on the grounds of performance capability with contractual notice.

An employee only has the right to appeal against a dismissal decision, not against a warning. The same principles for the appeal stage meeting apply.

**Mutual agreement**

As an alternative, at any point during the process of managing unacceptable performance, regardless of an employee’s length of service, their contract of employment may be ended by mutual agreement between the employee and the OPCC.

Whilst the OPCC seeks to support an employee to improve their performance, it recognises that in some situations this may not be the employee’s wish and where this is the case the OPCC will support their decision.

There is no right to appeal a mutual agreement as both parties are entering into the agreement.

It is recognised that not all employees will want to enter into a mutual agreement and those cases should continue to be managed through the formal process.
Gross incompetence

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<tr>
<th>Policy stages</th>
<th>There are two possible stages:</th>
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<tr>
<td></td>
<td>• formal meeting – may result in dismissal</td>
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<td>• appeal</td>
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<th>Suspension or alternative arrangements</th>
<th>Where concerns may amount to gross incompetence, suspension or alternatives to suspension may be necessary.</th>
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<td>Both are neutral and precautionary acts that may be put in place at any point during the Managing Performance Policy once it is established there may be a gross incompetence concern.</td>
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The manager must meet immediately with the employee to inform them that they are being suspended or of the alternative arrangements. The employee has no statutory right to be accompanied. However a companion (an OPCC work colleague or trade union representative) is normally accommodated where it does not cause any unnecessary delay. The manager sends the employee a letter to confirm the decision regarding suspension or alternative arrangements and suspends the employee’s IT account and security pass.

During suspension or whilst alternative arrangements are in place, an employee continues to receive full contractual pay and is required to be available for meetings and to follow normal reporting procedures such as sickness absence and annual leave.

In exceptional circumstances, where further time is needed to decide whether there is a gross incompetence concern and whether suspension is necessary, the employee is expected to stay away from work for a maximum of 5 calendar days.

<table>
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<th>Formal meeting</th>
<th>The same principles for the formal stage meeting apply as before.</th>
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<th>Outcome of the formal meeting</th>
<th>The chair of the meeting decides how the gross incompetence will be managed.</th>
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<td>The employee may be summarily dismissed or dismissed with notice on the grounds of performance capability. In such cases the manager must cancel the employee’s IT account and security pass.</td>
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Where the unacceptable performance is judged not to be gross incompetence, the employee may receive a written warning that their performance needs to improve. The warning is kept on their personnel file or ePF for a specified number of months.

The manager must advise the employee of the outcome and their right of appeal at the meeting and confirm this in writing.

### Appeal

The same principles for the appeal stage meeting apply as above.

### Referrals to professional bodies

Some professions are required to be registered with a professional body in order to practice. Where there are gross incompetence concerns which relate to an employee’s fitness and competence to practice, during or upon completion of the Managing Performance Policy, there may be a duty to refer the employee to their professional body.

### Related documents

To help with the application of this policy it may be useful to read the following:
- Reasonable Adjustments Policy
- Appraisal Policy

### Support

**Employees:**

Queries should be directed to your line manager.

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)

Your trade union or professional association may be able to provide you with additional support.

**Managers:**

Further information is available in the Managers’ How to Guide – Managing Performance.

Advice on remaining queries can be directed to HR Operations.
Employees of non Office of the Police and Crime Commissioner bodies are excluded from this policy and should refer to their own employer’s policies and procedures.