Chapter 17: Managing Poor Performance Procedures (Inefficiency Procedures)

1. About this Chapter

1.1 This chapter explains:

- the principles of managing poor performance in the House of Commons Service
- what to expect if your performance falls short of accepted standards.

2. Principles

2.1 Any areas of unsatisfactory or deteriorating performance will be brought to your attention by your Line Manager. This action can be taken at any time during the performance year (1 April to 31 March). In this way you can focus on the areas of performance that need improving.

2.2 You and your Line Manager may wish to consider both formal and informal development opportunities to improve your performance. More information is in chapter 16 and on the Intranet at:

   Careers and development

2.3 Sometimes, other procedures, such as respect, attendance, conduct or grievance, may be in progress at the same time as poor performance procedures.

3. Managing Poor Performance

Overview

3.1 Any action taken using the following procedures should be with the aim of improving performance. The actions are generally as listed below and should be read in conjunction with this section and sections 4 to 7 below:

**informal action:**

- identifying the problem and working towards improved performance
- this is an informal discussion with a note of the meeting, but the note is not placed on your personal file
- if sufficient improvement is shown after a reasonable time, then no further action is required.

**first formal action:**

- giving formal written warning and first trial period if there has been no or insufficient improvement
- includes the right to appeal
• a record is placed on your personal file
• if sufficient improvement is shown after the trial period, then no further action is required.

final formal action:
• includes final warning and final trial period if there has still been no or insufficient improvement
• includes the right to appeal
• a record is placed on your personal file
• if sufficient improvement is shown after the trial period, then no further action is required.

final action including dismissal:
• includes dismissal or other actions, for example, move to another post or to a lower pay band, if there has still been no or insufficient improvement
• includes the right to appeal
• a record is placed on your personal file

appeal against any formal action including dismissal:
• you have a right to an internal appeal against any formal action

3.2 In many cases it is expected improved supervision, guidance, counselling, coaching, training or advice at an early stage will be enough to correct problems. Line Managers will provide help and support before resorting to formal action as indicated below which if appropriate, will include seeking the advice of:

• the Parliamentary Health and Wellbeing Service (PHWS) if you have indicated that your health or other related issues are affecting your performance.
• the Diversity and Inclusion team if you have a disability and have indicated that your poor performance is related to the disability

Right to be accompanied at formal meetings

3.3 Line Managers should note that members of staff have the right to be accompanied by a Trade Union Representative or fellow employee of the House of Commons during paid working hours for any interview or hearing which forms part of the formal procedures for managing performance.

Role of the Trade Union Representative or fellow employee

3.4 If you wish a Trade Union Representative or fellow employee to attend a formal interview with you, they may:
• put your case
• sum up your case
• respond on your behalf to any view expressed at the hearing
• confer with you during the hearing.
They may not:

- answer questions on your behalf
- address the hearing if you do not wish them to do so
- prevent your employer from explaining their case.

**Right of appeal**

3.5 You have the right to appeal any formal actions taken to manage problems with your performance. Any appeal will not delay any trial period starting but the trial period end depends on the outcome of the appeal.

**Staff on probation**

3.6 In order to complete the probation period satisfactorily you must demonstrate that you are capable of meeting the requirements of the post to which you have been recruited. If your performance is not up to the required standard your appointment is unlikely to be confirmed.

3.7 Staff whose performance gives cause for concern and who are still serving their probationary period will generally be taken through these procedures. Any measures taken should be completed before the end of the probation period. Trial periods may, therefore, be reduced or steps omitted from the process at the Line Manager’s discretion, in consultation with HR, in order to take this into account.

3.8 If appropriate, your Line Manager will encourage you to seek help from your doctor or from the Employee Assistance Programme (EAP) if you indicate that you have a health, personal or domestic problem.

3.9 Line Managers have discretion to consider an extension to the probation period in exceptional circumstances, but they will do so only where they have genuine reason to believe that your performance is likely to improve, and that you will achieve, and maintain, an acceptable standard during the extended probation period.

4. **Procedures When Performance is Giving Cause for Concern: Informal Action**

**Identifying the problem and working towards improved performance (informal action)**

4.1 If your performance is unsatisfactory, your Line Manager will meet with you to discuss their concerns.

4.2 Your Line Manager will talk with you and attempt to identify the cause. You should discuss with your Line Manager if you feel there are health or other factors affecting your performance. The other factors may include personal or domestic problems, adverse working conditions or harassment, discrimination or bullying by others. At this stage they may ask for comments from others, for example, other managers or customers. Line Managers should seek advice from the Diversity and Inclusion team and/or the HR Advisory Service where harassment, discrimination or bullying by others is alleged, if you have a disability or if you are pregnant.
4.3 Your Line Manager will consider referring you for advice to PHWS if for example:

- you or they believe that health or wellbeing problems may have contributed to your poor performance and/or some time has elapsed since a previous referral
- you or they believe that the poor performance may result from a medical condition which may make medical retirement appropriate
- you are pregnant

4.4 Your Line Manager will encourage and support you in working towards a solution. They will explain the level of performance required and make clear the consequences of any failure to meet the standard.

4.5 Measures which may prove helpful include:

- ensuring that you understand what is required
- counselling or coaching
- extra training or development
- adjustments to your working pattern or working conditions
- a change of duties (temporary or permanent) if it is possible to arrange this
- reasonable adjustments if you have a disability.

4.6 You will be given a reasonable amount of time for improvement, and you will be kept informed of progress. As part of the informal discussion your Line Manager will ensure that they give you all of the information you need to understand their concerns, for example, the improvement required and the timescale for improvement.

4.7 It may be necessary for you to have more than one discussion to check that any measures have been put in place and are helping.

4.8 Your Line Manager will take a note of the meeting, agree the accuracy of the note with you and give you a copy. No record will be kept on your personal file at this stage but the meeting note will be included if a formal warning follows.

4.9 If sufficient improvement is shown, your Line Manager will confirm this with you and no further action will be taken.

4.10 If your performance does not sufficiently improve after a reasonable amount of time, your Line Manager will take formal action as described below.

5. Procedures When Performance is Giving Cause for Concern: First Formal Action and Trial Period

**First formal action and trial period**

5.1 If informal action has been taken and your level of performance does not improve sufficiently after a reasonable amount of time, more formal action will be taken.
5.2 Your Line Manager will invite you to a performance review meeting and will give you at least seven calendar days’ notice of the hearing. The meeting will normally be held after any report from the PHWS is made available, if applicable. The meeting is to:

- explain that your performance is still not up to the standard required
- explain the standard required
- give you the opportunity to put forward an explanation for poor performance
- explain what will happen if you fail to meet the standard.

5.3 If you are unable to attend a meeting at this stage, for instance if you are absent from work due to ill health, your Line Manager will decide, in consultation with HR, on the appropriate action to take. This may include arranging an alternative date for the meeting or seeing you at a more convenient location closer to your home. However, if despite making alternative arrangements, you still do not attend a meeting, a decision may be made in your absence. In this case you would be notified of any decision and given the right to appeal.

5.4 You have a right to be accompanied by a Trade Union Representative or a colleague from the House of Commons Service at this meeting. See section 3 on their role at the meeting.

5.5 If you are unable to find a representative or if your representative is not available on the date of the hearing you can ask that the hearing be delayed (for not more than seven calendar days) so you can make further arrangements.

5.6 An HR representative acting in an advisory capacity will normally attend formal meetings. A note will be taken of the meeting by either the HR representative or another member of staff.

5.7 At the meeting your Line Manager will explain why your performance is unsatisfactory, remind you of any current warnings, state what progress has been made and what improvement is still required. They should give you an opportunity to put forward your point of view and any explanations or reasons why a warning should not be issued. They should invite your views on possible remedial measures wherever possible.

5.8 Depending on the situation, your Line Manager may then adjourn the meeting to consider what has been said. If you have suggested that the problems may be due in part to health or wellbeing problems, or difficulties with working conditions, then they will consider how far these may have contributed to your poor performance. They will also consider whether any action should be taken, including:

- referral to PHWS as described in paragraph 4.3
- any of the measures listed in paragraph 4.5
- seeking advice from other sources as appropriate, including the HR Advisory Service.

5.9 If you have a disability or are pregnant, your Line Manager or HR Advisory Service will, if appropriate, seek additional advice from the Diversity and Inclusion team.

5.10 After the meeting and after obtaining advice if needed, your Line Manager may issue a first formal written warning. If a warning is being issued it will remain in force for six months.
5.11 Your Line Manager will give you written notification of their decision, including if a warning is being issued. It will explain the reasons for their decision. If a warning is issued, then the letter will also explain:

- the details of the warning
- where your performance is not up to standard
- what improvement is required
- the establishment of a trial period
- the timescale for improvement, normally, this will be no less than six calendar weeks
- the review date
- any additional help that will be given
- what will happen if you fail to meet the standard
- your right to appeal the decision. This includes the decision to issue a warning and/or establish a trial period.

5.12 You have a right to appeal the decision made following the performance review meeting. This includes the decision to issue a warning and/or to establish a trial period. See section 8 for further information about appeals.

**Trial period**

5.13 A trial period must always be set up under the first formal written warning procedure. Any supervision, guidance, counselling, coaching or training to be given must be properly recorded.

5.14 This first formal trial period must be long enough to provide you with a reasonable opportunity for improvement and for any remedial measures to take effect. It will normally be six calendar weeks in length but it may be longer, for instance if this is not sufficient to give you a reasonable opportunity to demonstrate an improvement. If you are on probation the trial period may be shorter.

5.15 During the trial period, your Line Manager will:

- supervise and monitor your performance
- keep you informed of your progress
- ensure that any agreed measures are in place.

**Following the trial period**

5.16 In many cases, the first formal action will bring satisfactory improvement. If so, your Line Manager will write to you, noting the progress made. The letter will make clear that the improvement must be sustained and that the formal warning will remain in force for six months.

5.17 If after six months, the procedures for managing poor performance are again necessary, final action, including a final warning, will not usually be taken without the first formal action being taken. However, expired formal actions may be taken into account as evidence of a pattern of poor performance. Expired formal actions may be considered in determining the length of any new trial period and whether it may be appropriate to issue a final warning immediately.
5.18 If your performance does not sufficiently improve by the end of the first trial period, your Line Manager will take further formal action as described below. The first trial period may be extended in exceptional circumstances, but this would usually be because there has been sufficient improvement and to give you the opportunity to demonstrate that this can be sustained.

6. Procedures When Performance is Giving Cause for Concern: Final Formal Action and Trial Period

Final formal action and trial period

6.1 If your level of performance does not improve sufficiently by the end of the trial period, more formal action will be taken.

6.2 Your Line Manager will invite you to a performance review meeting and will give you at least seven calendar days’ notice of the hearing. The meeting will be conducted as described above (paragraphs 5.2 to 5.11).

6.3 After the meeting and after obtaining advice if needed, your Line Manager may issue a final formal written warning. If a warning is issued, it will remain in force for 12 months.

6.4 Your Line Manager will give you written notification of their decision, within 14 calendar days of the date of the hearing, including if a warning is being issued, and it will explain the reasons for their decision. If a warning is being issued, then the letter will also explain:

- the details of the warning
- where your performance is not up to standard
- what improvement is required
- the establishment of a trial period
- the timescale for improvement, normally, this will be no less than eight calendar weeks
- the review date
- any additional help which will be given
- what will happen if you fail to meet the standard, including the possibility of dismissal
- your right to appeal the decision. This includes the decision to issue a warning and/or establish a trial period.

6.5 You have the right to appeal the decision made following the performance review meeting, within seven calendar days of receipt of the decision. This includes the issuing of a warning and/or the establishment of a trial period. See section 8 for further information about appeals.

Trial period

6.6 A trial period must always be set up under the final formal written warning procedure. This will be set up as described above for the first trial period (paragraphs 5.13 to 5.15) but will normally be for no less than eight weeks (unless you are on probation).

Following the trial period
6.7 In many cases, the final formal action will bring satisfactory improvement. If so your Line Manager will write to you, noting the progress made. The letter will make clear that the improvement must be sustained and that the formal warning will remain in force for 12 months.

6.8 If after 12 months, the procedures for managing poor performance are again necessary, final action, including a final warning, will not usually be taken without the first formal action being taken. However, expired formal actions may be taken into account as evidence of a pattern of poor performance. Expired formal actions may be considered in determining the length of any new trial period and whether it may be appropriate to issue a final warning immediately.

6.9 If your performance does not sufficiently improve by the end of the final trial period, your Line Manager will take further formal action as described below.

7. Procedures When Performance is Giving Cause for Concern: Final Action including Dismissal

Final action including dismissal

7.1 If your level of performance does not improve sufficiently by the end of the trial period, you will be invited to a meeting at which further action, including dismissal, will be considered.

7.2 Consideration of and the decision to dismiss will not be taken by anyone who is below the level of a band B1 manager. If your Line Manager is below this pay band, the decision will usually be passed up the appropriate line management chain.

7.3 Your Line Manager (or the appropriate manager) will invite you to a final action or dismissal meeting and will give you at least seven calendar days’ notice of the hearing. The letter will explain that following the meeting you may be dismissed. The meeting is to give you the opportunity to put forward:

- an explanation for poor performance and/or any extenuating circumstances
- a case why action, including dismissal, should not be taken.

7.4 The formal meeting will be conducted in the same way as described for previous formal meetings (paragraphs 5.2 to 5.11).

7.5 At the meeting your Line Manager (or the appropriate manager) will explain why your performance is still unsatisfactory. They should give you an opportunity to put forward your point of view and any explanations or reasons why action, including dismissal for poor performance (inefficiency), should not be taken.

7.6 Depending on the situation, your Line Manager (or the appropriate manager) may then adjourn the meeting to consider what has been said.

7.7 After the meeting, your Line Manager (or the appropriate manager) will decide what action to take, including:
• moving you to an alternative post at the same pay band if it was felt it was better suited for your skills, there is a suitable vacancy available, and there is reason for believing you would be able to perform satisfactorily in the new role
• offering you a move to a post in a lower pay band (or a transfer to a mainstream post for Fast Stream staff)
• dismissal.

7.8 In deciding on any future action, your Line Manager (or the appropriate manager) will bear in mind the likelihood of useful service in the future and any previous record of service.

7.9 Your Line Manager (or the appropriate manager) will give you written notification of their decision within 14 calendar days of the date of the hearing and the reasons for that decision. If the decision is that one or more of the actions described above will be taken, other than dismissal, then the letter will explain the action to be taken, the effective date and any further details. The letter will also explain your right to appeal.

7.10 If the decision is to dismiss, the letter will explain the reasons for the dismissal, the date on which your employment will terminate and your right to appeal.

7.11 You have the right to appeal the decision made following the final action meeting, within seven calendar days of receipt of the decision. See section 8 for further information about appeals.

7.12 If you are dismissed under the procedures for poor performance, you will receive any final salary and payment for accrued outstanding leave due (see chapter 26).

8. Appeals

Internal Appeal

8.1 Grounds for appeal include:

• the formal action was inappropriate, inconsistent or too harsh
• extenuating circumstances were not taken into account
• the likelihood of useful service in the future and any previous record of service were not taken into account
• the decision maker was biased
• the hearing was not fair
• the proper procedures were not followed
• new evidence has come to light.

8.2 An appeal against formal action taken at any stage of the procedures, apart from informal action, must be made in writing to the decision maker’s manager within seven calendar days of the receipt of written notification of the decision. This appeal will normally be heard within 14 calendar days unless both parties agree otherwise.

8.3 The appeal will be heard by the decision maker’s manager. In the alternative, the House may nominate another manager to hear the appeal who has not been involved in the events which led
to the sanction or dismissal. Prior to the meeting, the manager hearing the appeal will review all relevant documentation and the reasons for the sanction or dismissal.

8.4 The manager hearing the appeal will:

- inform you in writing of the arrangements for the appeal hearing
- review all the relevant documentation and the reasons for the decision
- explore all the relevant issues
- let you know when you can expect a decision.

8.5 You have a right to be accompanied by a Trade Union Representative or a colleague from the House of Commons Service at this meeting. See section 3 on their role at the meeting.

8.6 An HR representative acting in an advisory capacity will normally attend formal meetings. A note will be taken of the meeting by either the HR representative or another member of staff.

8.7 Following the appeal meeting, and after obtaining advice if needed, the manager in consultation with HR, will decide what action to take, including:

- to confirm the original decision
- to rescind the original decision
- to rescind the original decision and either substitute a different sanction or refer the issue back to the manager who took the original action for reconsideration
- in cases of dismissal where that decision is not upheld, reinstate the employee and substitute a formal or final warning or no sanction at all.

8.8 The manager who heard the appeal will give you written notification of their decision within 14 calendar days of the date of the hearing and the reasons for that decision.

Compensation

8.9 In limited circumstances the Civil Service Pensions Arrangements make provision for an efficiency compensation payment following dismissals for poor performance. Dismissals will be considered on a case by case basis by the HR Advisory Service.

9. Record Keeping

9.1 Details of poor performance cases resulting in a first written warning and/or final written warning will be kept on your personal file for six years after the warnings expire.

9.2 Poor performance cases resulting in loss of pay, movement to a lower pay band, suspension or dismissal will be kept on your personal file until your 100th birthday for pension administration purposes.

9.3 HR will keep a record of all formal action taken under the procedures for poor performance, for future reference. This is to ensure that action taken is fair and consistent.

Return to the Staff Handbook.