

Managing poor performance

Policy and procedure

Information sheet

Information box

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Policy

Policy principles

- 1 Estyn expects effective performance from all its employees. Managing poor performance fairly, effectively and promptly is critical to Estyn maintaining a professional service. Failure to address poor performance results in inefficiency, and lowers engagement throughout the rest of the workforce. Managers will address poor performance with the aim of improving performance. Where routine performance management activities and support have failed to result in performance at the required standard, this policy should be applied.
- 2 The policy is based on fair and transparent treatment of all Estyn employees, and complies with: employment legislation; Advisory, Conciliation and Arbitration Service (ACAS) best practice; the Equality Act 2010; and the Civil Service Management Code.

Scope of policy

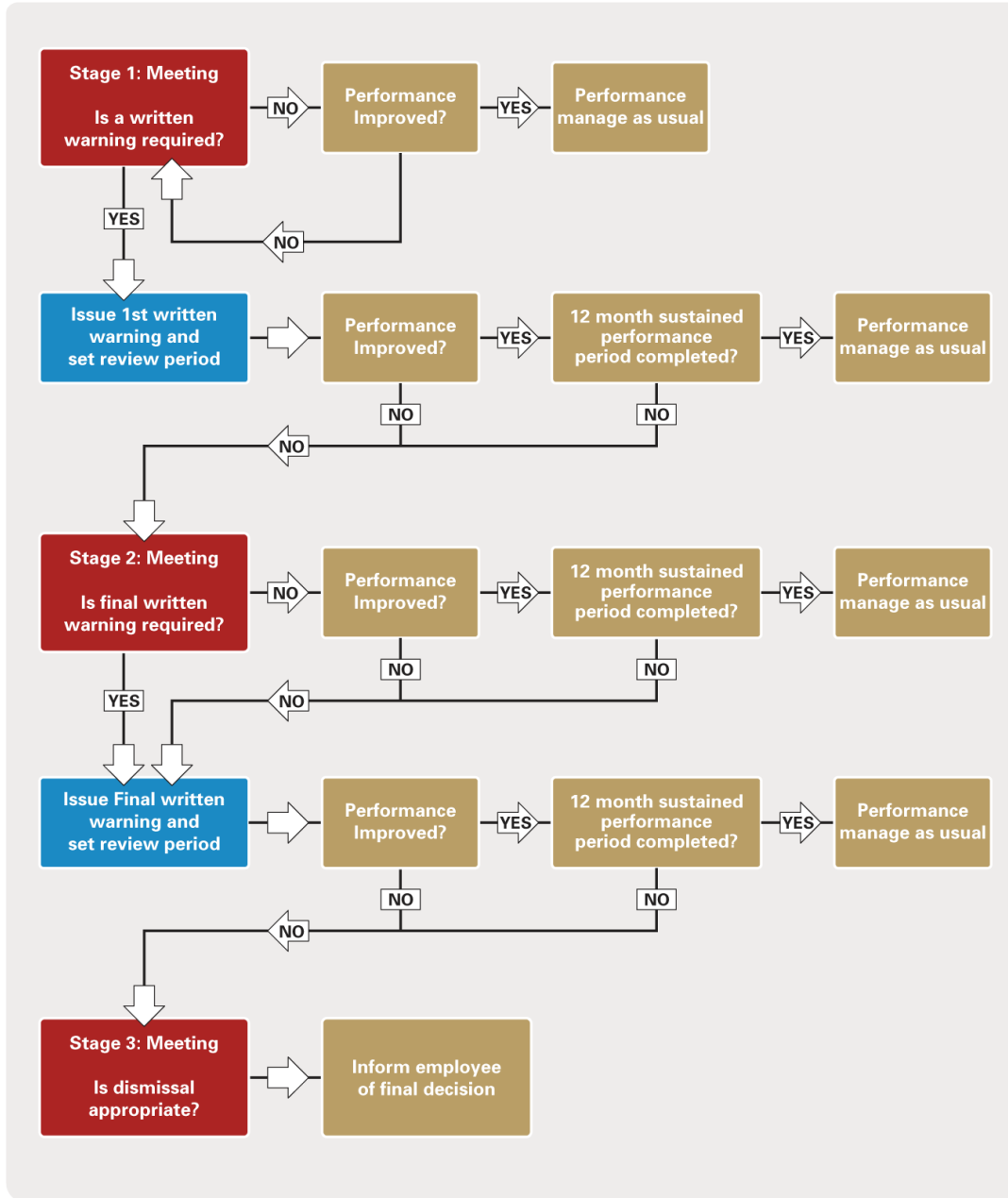
- 3 This policy applies to all staff at Grade 6 and below, who are performing poorly, and who have successfully completed probation. Separate arrangements apply to staff in the Senior Civil Service (see Managing Poor Performance Policy and Procedures for the SCS).

Policy summary

- 4 Poor performance is when an employee's performance falls below the expected performance required to carry out their role effectively. These performance expectations may vary depending on the role but they will be specified in a combination of:
 - 'what' delivery of objectives
 - 'how' demonstration of behaviours
 - competency frameworks
 - values
 - job descriptions
- 5 Key areas covered by this policy include:
 - Stage 1: first written warning
 - Stage 2: final written warning
 - Stage 3: dismissal decision
- 6 After each written warning there is a review period in which employees are supported to improve their performance. Incremental progression will be deferred until the employee has completed a 12-month Sustained Performance Period. There is also the facility to appeal decisions. Managers and employees are advised to keep a written record of discussions. In instances that result in dismissal it is expected that, where line managers have robustly managed performance, the procedure should take no longer than 6 months.

Managing poor performance procedure

Process overview



- 7 Appeals are available at every stage of the poor performance procedures.
- 8 In stages 1 and 2, review periods should not normally be longer than 1 month per stage. In exceptional circumstances, the review period may be extended to take account of reasonable adjustments, as a result of a disability and training needs, up to a maximum of 3 months for any stage.

Introduction

- 9 This document outlines the procedure to manage poor performance. This procedure must be followed to ensure the statutory code of practice, as laid out by Advisory, Conciliation and Arbitration Service (ACAS), has been adhered to.
- 10 A summary of the procedure can be found in the flowchart: Process Overview. Managers may also find the 'Managing Poor Performance Advice and Tools' document useful. This contains tips and templates for use throughout the process, but is not a mandatory part of the policy.

Preliminary action

- 11 In deciding whether or not to use this policy it is critical for managers to check that employees are aware of the level of performance required of them. It is expected that managers will provide all reasonable help, support and encouragement to assist employees to reach and maintain the performance expectations required. Initial deterioration in an employee's performance should be identified and addressed promptly as part of day-to-day management conversations and recorded on the Continuous Performance Management Record form. Line managers may also find the How to: Deal with dips in performance Guide useful.
- 12 If performance remains below the required expectations, managers must move to the procedure outlined below.

Roles and responsibilities

- Decisions in each meeting (stage 1, stage 2 or stage 3) should normally be taken by the line manager of the individual who is performing poorly.
- Where possible, appeals should be heard by someone who is both independent of the decision being appealed, and at least one grade higher than the person who made the decision. Managers must consult with the HR team to appoint an appropriate Appeal Manager.
- Managers using this policy should inform HR when the decision is made to move to the meeting stages of this procedure.
- Managers should inform HR of the outcome of each meeting stage of this procedure.
- HR will take the notes of each meeting (stage 1, stage 2, stage 3 and appeals) and maintain the formal record of proceedings and outcomes.
- There are indicative timings provided throughout the procedure and all parties involved are responsible for ensuring these are met wherever possible. There may be circumstances where the timings described in the procedures need to be amended, for example allowing time for support and adjustments to become available or to take effect. Reasons for extending any stage in the process should be clearly documented.
- Managers must ensure that they comply with the requirements of the Data Protection Act and the General Data Protection Regulation when processing or retaining documents.

Meetings

- 13 These common elements apply to each meeting in this procedure. For further information about stage 3 and appeal meetings, see [‘Stage 3 – dismissal decision’](#) and [‘Appeals’](#) respectively.
- 14 **Before a meeting**, managers must:
- Invite the employee to the meeting in writing to discuss their performance. The letter should contain sufficient information about the alleged poor performance and its possible consequences, including any previous performance discussion notes, to enable the employee to prepare for the meeting.
 - Make any necessary reasonable adjustments, required as a result of a disability under the Equality Act 2010, to enable employees to do their job.
 - Notify the employee of their statutory right to be accompanied by a trade union representative or work colleague.
 - Arrange for HR to attend the meeting to take notes.
 - Give the employee at least 5 working days notice of the meeting. If the employee, or their colleague or Trade Union representative cannot attend, the meeting may be postponed once up to a further 5 days. If the employee fails to attend a meeting without reasonable cause, decisions may be taken in his or her absence based on the facts available.
- 15 **In a meeting** managers should:
- Set out clearly the specific areas that are falling below the expected performance required, and the consequences of not improving performance.
 - Give the employee the opportunity to reply or raise any new issues or factors that may have impacted upon performance, for instance personal issues.
 - Discuss any possible solutions, including what support is available to the employee.
 - Discuss the timescale during which an improvement is expected.
 - Recognise that either party has the right to request a short adjournment to consider any points raised.
- 16 **At the end of a meeting** managers should decide what action to take. The potential outcomes are that:
- In any stage – new evidence comes to light and the manager decides that neither of the below are appropriate.
 - In stages 1 and 2 – a written warning will be issued and incremental progression will be deferred.
 - In stage 3 – the manager dismisses the employee, or imposes an alternative sanction.
- 17 **After a meeting** managers should:
- Write to the employee within 5 working days, including
 - a note of the discussion and performance issues
 - the decision taken

- the improvement required from the employee
- the help and support available to the employee
- the length of the review period
- whether incremental progression will be deferred
- the date of the next meeting
- All correspondence should be copied to the HR team.
- Where no warning or sanction is to be issued, the manager should detail the reasons for this.
- In some cases, for example to accommodate a temporary adjustment, or learning and development requirement, an additional meeting may be required. If so, the date of that meeting should be included.

Stages 1 and 2 – written warnings

- 18 In order to issue a written warning, managers must meet with the employee. The written warning can be given in, or shortly after, the meeting. It should include:
- What the performance issues are and the expected performance the employee needs to reach.
 - What assistance will be provided to help them to make the required improvements.
 - That there will be a review period in which they will be expected to improve their performance.
 - The duration of this review period, and the date of the next meeting at the end of the period. Review periods should not normally be longer than 1 month. In exceptional circumstances, the review period may be extended, to take account of reasonable adjustments as a result of a disability and training needs, up to a maximum of 3 months.
 - That incremental progression will be deferred until the employee has completed a 12 month Sustained Performance period.
 - That if their performance does not improve to the required level, they will move to the next stage in the procedure. The manager must make the employee aware that ultimately this process could lead to sanctions including dismissal or downgrading.
 - That if their performance does improve to the required level, they will enter a 12 month Sustained Performance period.
 - That the employee can appeal the warning.

Sustained performance period

- 19 Written warnings are followed by a review period in which an employee has the opportunity and support to improve their performance. If the employee is successful, the manager should use the meeting at the end of the review period to advise them that a 12 month Sustained Performance period now applies.
- 20 During this time, the manager must hold regular performance discussions with the employee. Initially these should be at least monthly if this is not already the case, becoming as frequent as required under normal performance management arrangements if satisfactory performance is sustained. Otherwise, normal performance management arrangements apply.
- 21 If the employee maintains their performance throughout the Sustained Performance period, all action under this procedure ceases and incremental progression will be reinstated.
- 22 The manager should address any dips in performance, as detailed in the Guide found here promptly during the Sustained Performance Period. If the performance is of a level that justifies poor performance procedures, they will move directly to the next stage.

Stage 3 – dismissal decision

- 23 An employee will move to stage 3 of the procedure if they fail to improve their performance after a final written warning, or fail to maintain their performance during the Sustained Performance period following a final warning. The manager will meet with the employee and make a decision as to whether to dismiss the employee.
- 24 In exceptional circumstances the manager may consider and offer an alternative to dismissal, for example downgrading. However, the manager must ensure that the employee understands that the post is offered as an alternative to dismissal and the employee must expressly consent to the alternative sanction being offered.
- 25 Managers must consult HR about the appropriate course of action. HR will check that appropriate case records have been maintained to support the manager's decision. If considering downgrading the manager must feel confident that the employee would be successful at the lower grade and confirm with HR that there is a post available.
- 26 Decisions to dismiss an employee will normally be taken by the line manager, who will not be less than HEO Grade.
- 27 In addition to the points raised in the ['Meetings'](#) section, managers chairing stage 3 meetings will need to:
 - Inform HR in advance if the meeting is likely to lead to dismissal or alternative sanctions.
 - Inform the employee that their case is under consideration of various sanctions, including dismissal and downgrading.

- 28 The manager should notify the employee of their decision in writing, within 5 working days of the meeting. The notification should include:
- the reasons for the decision
 - the date on which the decision becomes effective
 - the appropriate period of notice, if relevant
 - the employee's right of appeal
 - the name of the Appeal Manager

Appeals

- 29 There is one right of appeal per stage in this procedure. Appeals can be made against procedural errors and / or decisions. Employees may not additionally raise separate grievances about the same issue under any other departmental procedures.
- 30 The appeal process should continue in parallel with, and not delay, any ongoing action under this procedure, including the start of any notice period.
- 31 The Appeal Manager's decision is final.

Employee actions

- 32 Employees have 10 working days from the date of receipt of the decision, in which to submit their appeal in writing to the Appeal Manager. The appeal must make clear whether it is against a procedural error and/or a decision and the employee should provide any new evidence that has not been considered previously. The appeal should clearly state the employee's desired outcome.

Appeal manager actions

- 33 The Appeal Manager will, within 5 working days of receiving the appeal, invite the employee to a meeting. The employee should be given at least 5 working days notice of the meeting.
- 34 If the employee, or their colleague or representative, cannot attend, the meeting may be postponed once up to a further 5 days. If the employee fails to attend a meeting without reasonable cause, decisions may be taken in his or her absence based on the facts available.
- 35 In addition to the points raised in the '[Meetings](#)' section, the Appeal Manager should:
- Check they have all the written notes relating to the case.
 - Ensure they understand the grounds of the appeal and are prepared to give full consideration to the points the employee raises.
 - Consider the basis of the original decision and any new evidence that has been raised.
 - Refer to HR if they are unsure of any points, to ensure consistency.
 - Decide whether to uphold or reject the appeal and highlight any recommended actions to be taken.

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- 36 The Appeal Manager should consult with HR before notifying the employee of the outcome of the appeal.
- 37 After the meeting, the Appeal Manager will notify the employee of the decision within 5 working days.