

Performance Capability Policy and Procedure

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Alternative Formats

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Performance Capability Policy

1. Rationale

- 1.1 It is vital that the Probation Board for Northern Ireland is held in a high regard by the community. All staff should maintain high standards of performance and integrity.
- 1.2 The Performance Capability Policy and Procedure seeks to establish a clear course of action which will ensure the fair, supportive and consistent treatment of employees should they fail to meet the required standards of performance for their role.
- 1.3 It is important to distinguish between situations where the difficulties relate to conduct and an employee's wilful refusal to work or satisfy the standard of behaviour required, in which case the Disciplinary Procedure should be applied, and situations where the difficulties relate to capability (which is assessed with reference to skill, aptitude, behavioural competencies, knowledge and ability to do the job), in which case the Performance Capability Procedure should be applied.

2. Aim

- 2.1 To promote fairness in the treatment of individuals and to ensure they are given the appropriate time, training and support to enable an improvement in performance.

3. Objectives

- 3.1 To provide a framework of practice guidance which allows PBNI to deal with performance related matters in a fair and consistent way.
- 3.2 To ensure those involved in the process are aware of both their rights and responsibilities throughout.

4. Responsibilities

- 4.1 The Probation Board for Northern Ireland is responsible for creating a working environment in which a high standard of performance is encouraged, made possible and recognised.
- 4.2 It is the responsibility of all employees to maintain high standards of performance. This includes:
 - taking responsibility for their own performance and behaviour
 - bringing to the attention of line managers, as soon as possible, any work related problems or personal circumstances that are impacting their performance
 - working with managers to constructively address any underlying issues impacting on performance
 - taking ownership for personal development
 - being open to constructive feedback

4.3 It is the responsibility of line managers to:

- explain clearly the duties and responsibilities of the employee's role
- regularly review performance to ensure standards of work are maintained
- address performance issues early on
- offer appropriate support, training and resources to ensure the employee is given every opportunity to improve
- set clear next steps and realistic timescales when addressing poor performance
- maintain accurate records of discussions and action plans and share these with their employees
- ensure the individual's right to confidentiality will be respected as far as possible throughout the process

4.4 It is the responsibility of Human Resources to:

- provide assistance, advice and support to managers and employees in the management of performance
- promote the consistent application of the performance capability policy and procedures
- ensure employment legislation is observed
- ensure the individual's right to confidentiality will be respected as far as possible throughout the process

5. Implications of non-compliance

5.1 A breach of this policy and procedure may be regarded as misconduct, which could lead to disciplinary action, in line with PBNI Disciplinary Policy.

6. Resources

6.1 The review of this policy and procedure will not incur any additional cost.

7. Communication

7.1 PBNI employee's will be made aware of the updated version of this policy and procedure through email communication and will have access to it via PBNI's intranet.

8. Monitoring and Evaluation

8.1 The effectiveness of this policy will be kept under regular review and any amendments will be agreed with trade unions.

9. Review

9.1 This policy will also be kept under review to ensure it is in keeping with current legislation and best practice and will be formally reviewed in four years.

10. Linkages

10.1 This policy links with the following:

- Sickness Absence Policy
- Disciplinary Policy
- Grievance Policy
- Equal Opportunities Policy

Performance Capability Procedures

11. Informal Action

- 11.1 Performance Management is an ongoing process of communication between a manager and an employee that occurs throughout the year, in support of accomplishing the strategic objectives of the organisation.
- 11.2 Initial problems with performance are best dealt with through informal advice, coaching and counselling. There are occasions, however, when an individual's performance does not meet the required standard despite the support of the line manager and it is necessary to take a more structured approach.
- 11.3 Early and positive intervention by the line manager is very important to give an individual the time, opportunity, assistance and support to improve their performance. The line manager should invite the employee to an informal meeting to discuss the situation and to ascertain the reasons for the underperformance.
- 11.4 The HR department can provide advice and guidance to line managers/employees if necessary.

11.5 During the meeting, the line manager will:

- Provide the employee with clear examples of where and how their performance does not meet the standards required and the risk(s) this poses for PBNI.
- Give the employee the opportunity to provide an explanation for their underperformance and to raise any concerns they may have. The aim is to identify any problems or reasons for the underperformance which could be immediately resolved, however it may be appropriate to arrange a follow up meeting to allow the employee time to review the information being presented to them.
- Be alert to possible contributing factors, including working relationships, insufficient training, domestic pressures or ill health. Should the reason be related to ill health, managers are advised to consult with HR to discuss the case and decide whether a referral to Occupational Health Service (OHS) is necessary. It will be important to consider the provisions of the Disability Discrimination Act, in particular the obligation to make reasonable adjustments when dealing with an employee with a disability.
- Identify and consider the support available to the employee, which may include additional training, coaching, relocation, flexible working or working with a mentor.
- Consider whether or not it is appropriate to establish a Performance Improvement Plan (PIP) with the employee. If proceeding with a PIP, complete the template PIP (see Annex 1), concentrating on the specific areas of concern, setting clear and realistic objectives and agreeing reasonable timescales for review. The programme for improvement will vary from individual to individual depending on the cause and severity of the underachievement.

11.6 After the Meeting, the line manager will:

- Hold review meetings as agreed with the employee to review progress.
- Take account of issues which may create delays, for instance, availability of training or periods of sickness absence. Amend review dates where necessary.
- Acknowledge improved performance where appropriate and encourage ongoing improvement.

11.7 Outcomes of the informal stage

- At the date of completion of the PIP, the line manager must decide whether the required improvement has been made. If this is the case, the employee should be given positive feedback and reminded of the need to sustain the improved level of performance.
- Where all necessary steps have been taken under the informal process and this has failed to produce sufficient improvement, the employee should be informed that it is necessary to invoke the formal procedure.

11.8 Advice should be sought from the HR department prior to referring a matter under the formal capability procedure.

12. The Formal Procedure

12.1 If performance does not reach the appropriate standard and the informal approach has not succeeded in addressing the problems the employee will be referred under the formal performance capability procedure.

12.2 There are three stages within the formal procedure:

- Stage 1 – First Capability Meeting. The outcome of this meeting may result in a first written warning.
- Stage 2 – Second Capability Meeting. The outcome of this meeting may result in a final written warning.
- Stage 3 – Final Capability Meeting. The outcome of this meeting may result in a recommendation of dismissal.

12.3 Matters which require a formal approach shall be referred in writing to the senior line manager. The senior line manager will be one level above the individual's immediate line manager. For cases involving the grade Deputy Director or above the matter should be referred to the Chairman of the Board.

12.4 No action should be taken against a trade union representative until the circumstances of the case have been discussed with an appropriate senior union official or permanent union official. All cases involving trade union representatives must be discussed with the Head of HR or their nominated deputy.

13. Stage 1 – First Capability meeting

The senior line manager will chair the formal capability meeting. The meeting will always include a representative from the HR team in an advisory capacity.

13.1 Before the Meeting

The employee will be advised in writing of the decision to hold a formal capability meeting. The letter will:

- inform the employee of the date, time and venue of the meeting
- outline the steps that have been taken previously to address performance issues
- provide all relevant evidence
- explain the possible outcomes from the meeting, which may include a first written warning and/or further review period
- inform the employee of the right to be accompanied by a trade union representative or work colleague
- Inform the employee that a representative from the HR Department will be in attendance to take notes and advise on points of process or relevant employment law
- Advise the employee that if they refuse or fail to attend the meeting without good reason a decision may be made in their absence. Line managers must take advice from HR in these circumstances

13.2 In circumstances when the employees' representative is not available on the proposed date the employee can suggest an alternative time and date for the meeting so long as it is reasonable and not normally more than 5 days after the original date.

13.3 The meeting may proceed should the employee or their representative fail to attend without advance notification and without good reason.

13.4 During the Meeting

The purpose of the meeting is to:

- clearly identify to the employee the areas in which they are under performing providing examples as appropriate
- discuss with the employee possible causes of their under performance
- provide the employee with the opportunity to challenge and put forward evidence for consideration
- reconfirm the expected standards of the role
- explore the support that has been provided previously and what other support may be required to help the employee improve performance
- confirm that the employee fully understands the concerns surrounding their performance and the standards they are expected to achieve

13.5 After the Meeting

The manager conducting the meeting should give his/her decision in writing within 5 working days. The letter will:

- include a clear statement of the facts
- detail the decision and the reason for this
- outline the steps that have been taken previously to address performance issues
- if imposing a first written warning, state the duration
- confirm whether the employee will serve a further review period which should be for a minimum of 12 weeks, not exceeding 24 weeks.
- set dates to review progress including final review date
- outline the steps the employee must take to improve
- state that failure to improve could result in further action which can include a final written warning
- include the right of appeal and how to exercise that right

The employee should also be provided with a copy of the notes within 5 working days of the meeting and asked to verify, in writing, that they are an accurate record within 10 working days, otherwise they will be deemed accurate. A copy of the notes will also be provided to the union representative, if applicable.

13.6 Following the review period

- If the required improvement has been made, the employee should be given positive feedback and reminded of the need to sustain the improved level of performance. Further instances of under performance within a 12 month period may be dealt with through the formal procedure without the need to complete the informal process.
- If there has been insufficient improvement the employee should be informed that it is necessary to invoke Stage 2 of the formal procedure.

14. Stage 2 – Second Capability Meeting

The senior line manager will chair the formal capability meeting. The meeting will always include a representative from the HR team in an advisory capacity.

14.1 Before the Meeting

The employee will be advised in writing of the decision to hold a Stage 2 formal capability meeting. The letter will:

- inform the employee of the date, time and venue of the meeting
- outline the steps that have been taken previously to address performance issues
- provide all relevant evidence

- explain the possible outcomes from the meeting including a final written warning and/or further review period
- inform the employee of the right to be accompanied by a trade union representative or work colleague
- Inform the employee that a representative from the HR Department will be in attendance to take notes and advise on points of process or relevant employment law.
- Advise the employee that if they refuse or fail to attend the meeting without good reason a decision may be made in their absence. Line managers must take advice from HR in these circumstances

14.2 In circumstances when the employees' representative is not available on the proposed date the employee can suggest an alternative time and date for the meeting so long as it is reasonable and not normally more than 5 days after the original date.

14.3 The meeting may proceed should the employee or their representative fail to attend without advance notification and without good reason.

14.4 During the Meeting

The purpose of the meeting is to:

- clearly identify to the employee the areas in which they are under performing providing examples as appropriate
- discuss with the employee possible causes of their underperformance
- provide the employee with the opportunity to challenge and put forward evidence for consideration
- reconfirm the expected standards of the role
- explore the support that has been provided previously and what other support may be required to help the employee improve performance
- confirm that the employee fully understands the concerns surrounding their performance and the standards they are expected to achieve

14.5 After the Meeting

The manager conducting the meeting should give his/her decision in writing within 5 working days. The letter will:

- include a clear statement of the facts
- detail the decision and the reason for this
- outline the steps that have been taken previously to address performance issues
- if imposing a final written warning, state the duration
- confirm whether the employee will serve a final review period of up to 12 weeks.
- set dates to review progress including final review date
- outline the steps the employee must take to improve
- state that failure to improve could result in further action which can include dismissal

- include the right of appeal and how to exercise that right

The employee should also be provided with a copy of the notes within 5 working days of the meeting and asked to verify, in writing, that they are an accurate record within 10 working days, otherwise they will be deemed accurate. A copy of the notes will also be provided to the union representative, if applicable.

14.6 Following the review period

- If the required improvement has been made, the employee should be given positive feedback and reminded of the need to sustain the improved level of performance. Further instances of underperformance within a 12 month period may be dealt with through the formal procedure without the need to complete the informal process.
- If there has been insufficient improvement, the employee should be informed that it is necessary to invoke Stage 3 of the formal procedure.

15. Stage 3 – Consideration for Dismissal

15.1 A decision to dismiss a permanent employee may only be taken by a grade Deputy Director or above. The employee will be invited to a meeting to discuss their performance. The letter will:

- inform the employee of the date, time and venue of the meeting
- outline the steps that have been taken previously to address performance issues
- provide all relevant evidence
- inform the employee of the right to be accompanied by a trade union representative or work colleague
- inform the employee that the Head of HR will be in attendance to take notes and advise on points of process or relevant employment law.
- inform the employee that dismissal is a possible outcome of the meeting

15.2 In circumstances when the employees' representative is not available on the proposed date the employee can suggest an alternative time and date for the meeting so long as it is reasonable and it is not normally more than 5 days after the original date.

15.3 The meeting may proceed should the employee or their representative fail to attend without advance notification and without good reason.

15.4 During the Meeting

15.5 The purpose of the meeting is to allow the employee or their representative to make representations concerning the reasons for the poor performance and put forward reasons why dismissal should not ensue.

15.6 The Deputy Director/Director will confirm with the employee that they fully understand the standards expected of them and are aware of the steps that have been taken to address the issue.

15.7 After the Meeting

15.8 The Head of HR and the Deputy Director will review all actions taken to ensure that all procedures have been followed correctly.

15.9 The Deputy Director may decide that:

- the matter does not merit consideration of dismissal
- the matter merits consideration under another Board Policy and Procedure
- the matters in relation to the employee's performance may be addressed by measures other than dismissal
- the final decision on the matter be adjourned for a specified period
- dismissal is appropriate

15.10 The Deputy Director conducting the hearing should give their decision and reasons to the employee regarding the findings and any action which is to follow in writing within 5 working days. The letter will:

- include a clear statement of the facts
- state what further action is proposed, if the decision is not to dismiss
- outline the reasons for the termination of employment
- provide details of any final payments
- confirm the right of appeal and how to exercise that right

The employee should also be provided with a copy of the notes within 5 working days of the meeting and asked to verify, in writing, that they are an accurate record within 10 working days, otherwise they will be deemed accurate. A copy of the notes will also be provided to the union representative, if applicable.

16. Appeals against action in Stages 1 and 2

16.1 An employee has the right of appeal against any formal finding and sanction under this policy.

16.2 Employees must exercise their right of appeal by writing within 10 working days of being notified of the decision to a named person, giving a statement of the case and grounds for appeal along with copies of any documentary evidence they intend to rely on at the appeal hearing.

16.3 Appeals will be heard by a manager senior to the original decision maker. Should the initial decision have been taken by the Director of Probation an appeal will be heard by a panel of members of the Board.

- 16.4 The Deputy Head of HR or someone acting on their behalf will be in attendance at the appeal hearing. The role of the Deputy Head of HR is to take notes and advise on points of process or relevant employment law.
- 16.5 The appeal hearing will normally take place within 10 working days of the receipt of the appeal request.
- 16.6 The employee has the right to be accompanied to the hearing by a trade union representative or work colleague.
- 16.7 The manager conducting the appeal hearing will present a summary of the issues raised in the employee's appeal statement and invite the employee or their representative to present their case.
- 16.8 The hearing may be adjourned if this is deemed necessary.
- 16.9 The manager conducting the appeal hearing should give their decision and reasons to both parties as soon as possible after the hearing. This should be confirmed in writing within 5 working days. The outcome of the appeal could be to:
- Uphold the original decision to extend the review period or to proceed to the next stage of the formal procedure.
 - Over-rule and rescind the original decision to extend the review period or to proceed to the next stage of the formal procedure.
- 16.10 A copy of the decision will be sent to the employee's line manager and the original decision maker.
- 16.11 The decision made at appeal will be final and there will no further internal right of appeal.

17. Appeals against dismissal

- 17.1 Appeals against dismissal will be heard, in the first instance, by the Director of Probation. Should the initial decision have been taken by the Director of Probation an appeal will be heard by a panel of members of the Board.
- 17.2 Employees must exercise their right of appeal by writing, to the Director, within 10 working days of being notified of the decision. This decision may be extended by mutual agreement. The employee should provide a statement of the case and grounds for appeal, along with copies of any documentary evidence they intend to rely on at the appeal hearing.
- 17.4 The Head of HR or someone acting on their behalf will be in attendance at the appeal hearing. The role of the Head of HR is to take notes and advise on points of process or relevant employment law.
- 17.5 The appeal hearing will normally take place within 10 working days of the receipt of the appeal request.

- 17.6 The employee has the right to be accompanied to the hearing by a trade union representative or work colleague.
- 17.7 The Director will present a summary of the issues raised in the employee's appeal statement and invite the employee or their representative to present their case.
- 17.8 The hearing may be adjourned if this is deemed necessary.
- 17.9 The Director should give their decision and reasons to the employee as soon as possible after the hearing. This should be confirmed in writing within 5 working days. The outcome of the appeal could be to:
- Uphold the original decision to extend the review period or to proceed to the next stage of the formal procedure.
 - Over-rule and rescind the original decision to extend the review period or to proceed to the next stage of the formal procedure.
- 17.10 A copy of the decision will be sent to the employee's line manager and the original decision maker.
- 17.11 The decision made at appeal will be final and there will no further internal right of appeal.

18. Appeal to a Panel of Board Members

- 18.1 Should the original decision have been taken by the Director of Probation, an appeal should be made to a Panel of Members of the Board.
- 18.2 Employees must exercise their right of appeal, in writing, to the Board Secretary within 10 working days of being notified of the decision. This 10 day limit may be extended by mutual agreement. The employee should provide a statement of the case and grounds for appeal, along with copies of any documentary evidence they intend to rely on at the appeal hearing.
- 18.3 The appeal hearing will normally take place within 10 working days of the receipt of the appeal request.
- 18.4 The employee has the right to be accompanied to the hearing by a trade union representative or work colleague.
- 18.5 The Board Secretary will be in attendance at the hearing and will reserve the right to seek HR advice as necessary.
- 18.6 The Panel of Board Members will present a summary of the issues raised in the employee's appeal statement and invite the employee or their representative to present their case.
- 18.7 The hearing may be adjourned if this is deemed necessary.

- 18.8 The Board Secretary will issue the decision/outcome of the appeal to the employee and reasons in writing within 5 working days.
- 18.9 A copy of the appeal decision will be sent to the employee's line manager and the Director of Probation as the original decision maker.
- 18.10 The decision of the Panel of Board Members shall be final and there will be no further right of appeal.

The Performance Improvement Plan Process

If a Performance Improvement Plan is to be implemented, the employee and manager will meet to identify the reason for the shortfall in performance. This forms the basis of the Performance Improvement Plan, which should be consistent with any recent Annual Progress Meeting Review or Interim Progress Meeting conducted by the current manager or a previous manager.

Managers will identify the specific actions and performance standards that are required in consultation with the employee, and will confirm milestones and criteria for success. The emphasis in all cases should be upon working together to achieve good levels of performance within a reasonable timescale, through honest and open feedback, appropriate development, and clear standard setting and objectives.

At this meeting, the manager will explain to the employee both the consequences of completing the Plan successfully or failing to complete the Plan.

The Performance Improvement Plan will be documented overleaf and the employee and the manager will keep a copy of the Plan.

The Individual's performance will be reviewed at the due dates documented overleaf. At the date of completion of the Plan, the manager will decide whether:

- to agree that the Performance Improvement Plan is complete because the individual has successfully improved performance.
- to invoke the formal performance capability procedure if the employee fails to show adequate improvement.

Performance Improvement Plan (PIP) for: <EMPLOYEE NAME>

Annex 1

Section A:

Reason(s) for placing employee on PIP:	<Enter a description of the nature of the underperformance>
Aim of the PIP	<Enter the overall aim of the PIP>
Plan Start Date:	<Enter the date the PIP commences>
Plan End Date:	<Enter the date the PIP finishes>

Section B:

Improvement Objective <i>(What specifically must the individual do to improve their performance to meet expected standard?)</i>	Performance Measures <i>(How will you know when the expected standards of performance have been met?)</i>	Additional Support Required <i>(What additional development or support does the individual require in order to achieve the expected standards?)</i>	Review Schedule <i>(When will progress against the improvement objective be reviewed (weekly, fortnightly, monthly?)</i>
1.			
2.			
3.			
4.			

Employee signature _____ Line Manager signature _____

Date of next review meeting _____

Section C: Review meetings (complete table below at each review meeting).

Date of Review Meeting: _____

Improvement Objective	Met / Not Met/ Partially Met	Any Further Action Required

Employee signature _____ **Line Manager signature** _____

Date of next review meeting _____

Section D: Overall outcome of Performance Improvement Plan

Possible Outcomes	Action required	Tick as appropriate
1) To agree that the Performance Improvement Plan is complete because the individual has successfully improved performance.	Give the employee positive feedback and remind them of the need to sustain the improved level of performance.	
2) To invoke Stage 1/Stage 2 of the formal performance capability procedure if the employee fails to show sufficient improvement.	Inform employee the matter will proceed to the next step in the formal procedure. Consult with HR to progress.	

Employee signature _____ Line Manager signature _____

Date _____