

## Performance Capability Policy and Procedure

Policy Identification	
<b>Policy Ownership</b>	
Department:	Human Resources
Owner:	Head of Human Resources
Author:	Human Resources Manager
<b>Screening and Proofing</b>	
Section 75 screened:	September 2020
Human Rights proofed:	September 2020
<b>Consultation</b>	
	NAPO NIPSA SLT
<b>Approval</b>	
SLT	6 October 2020
PPC:	6 November 2020
Board:	20 November 2020
<b>Version</b>	
Version:	2
Date of Issue:	1 December 2020
Implementation date:	1 December 2020
Review date:	November 2024

## Document Control Sheet

### Document Amendment History

<b>Version Number</b>	<b>Date</b>	<b>Description</b>
0.1	November 2015	First draft
0.2	December 2015	Second draft
0.3	January 2016	Third draft
1	March 2016	Issue Version
1.1	July 2020	Review
1.2	November 2020	Post PPC Version for Approval at Board
2	November 2020	Approved by Board

## **Alternative Formats**

This documentation can be made available in alternative formats such as large print, Braille, disk, audio tape, an ethnic-minority language upon request. Requests for alternative formats can be made to the Probation Board using the following contact information:

Human Resources Manager  
Probation Board for Northern Ireland  
2<sup>nd</sup> Floor  
80-90 North Street  
Belfast  
BT1 1LD  
Telephone Number: 028 9052 2632

E-mail [recruitment@probation-ni.gov.uk](mailto:recruitment@probation-ni.gov.uk)

# CONTENTS

Section	Title	Page Number
	<b>Performance Capability Policy</b>	
1	Rationale	5
2	Aim	5
3	Objectives	5
4	Responsibilities	6
5	Implications of non-compliance	6
6	Monitoring and Evaluation	7
7	Review	7
8	Linkages	7
	<b>Performance Capability Procedure</b>	
9	Stage 1 - Performance Meeting	8
10	Capability Meetings	9
11	Stage 2 - First Capability Meeting	10
12	Stage 3 - Second Capability Meeting	12
13	Stage 4 - Final Capability Meeting Consideration for Dismissal	13
14	Appeals against action in Stages 2 and 3	15
15	Appeals against Stage 4 Dismissal	16
Annex 1	Flowchart	18
Annex 1	The Performance Improvement Plan Process and Template Performance Improvement Plan (PIP)	19

# 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 PBNI employees should they fail to meet the required standards of performance for their role. An employee is any person under a current contract of employment with PBNI, including fixed term contracts.

### 1.3 Probationary Period Arrangements

All staff are subject to a probationary period as outlined in their letter of offer. In addition, Probation Officers have their performance assessed in line with the timeframes in the *Probation Officer The Assessed Year in Employment/ Probationary Period Guidance*.

Given the probationary status of the Jobholder it is very important that these reviews are completed on time. This is the responsibility of both the job holder and the line manager. Staff can raise concerns with the senior line manager if reviews are not planned in a timely manner.

Performance issues should in the first instance be raised directly with the member of staff.

**If there are any concerns about a member of staff in their probationary period, the line manager must raise at the earliest opportunity with the senior line manager who should liaise with Human Resources.**

1.4 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
  - comply with NISCC Standards of Conduct and Practice (probation staff)
  - being open to constructive feedback
- 4.3 It is the responsibility of line managers to:
- offer appropriate support, arrange training and resources to ensure the employee is given every opportunity to improve
  - 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
  - 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 including referral to occupational health where the employee has an identified health issue that may be contributing to difficulties
  - 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 wilful breach of this policy and procedure may be regarded as misconduct, which could lead to disciplinary action, in line with PBNI Disciplinary Policy.

## **6. Monitoring and Evaluation**

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

## **7. Review**

7.1 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.

## **8. Linkages**

8.1 This policy links with the following:

- Managing Attendance Policy
- Domestic Violence and Abuse Workplace Policy
- Substance Abuse Policy
- Disciplinary Policy
- Grievance Policy
- Equal Opportunities Policy
- Flexible Working Policy
- Performance and Development Guidance
- Probation Officer The Assessed Year in Employment /Probationary Period Guidance

## Performance Capability Procedure

### 9. Stage 1 - Performance Meeting

- 9.1 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.
- 9.2 Initial problems with performance are best dealt with through advice, coaching and monitoring. 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.
- 9.3 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 initial meeting to discuss performance and to ascertain the reasons for the underperformance. The invitation should be in writing and inform the employee that he/she may be accompanied by a trade union representative or a work colleague.
- 9.4 This stage is an initial measure to assist the employee to improve performance. No warning in respect of capability will be given.
- 9.5 The HR department can provide advice and guidance to line managers/employees as necessary.
- 9.6 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 (OH) 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 under achievement. However, an improvement plan should last no longer than 8 weeks.

9.7 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.

9.8 Outcomes of the Stage 1 - Performance Meeting

- 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 and this has failed to produce sufficient improvement, the employee should be informed that it is necessary to invoke the next stage of the procedure.

9.9 Advice should be sought from the HR department prior to referring a matter under the next stage of the capability procedure.

## **10. Capability Meetings**

10.1 If performance does not reach the appropriate standard and the performance meeting has not succeeded in addressing the problems the employee will progress to Capability Meetings.

10.2 There are three further stages within procedure:

- Stage 2 – First Capability Meeting. The outcome of this meeting may result in a first written warning which will remain on file until the review meeting. Dates will be agreed at the meeting and should be no longer than 12 weeks
- Stage 3 – Second Capability Meeting. The outcome of this meeting may result in a final written warning which will remain on file until the review meeting. Dates will be agreed at the meeting and should be no longer than 12 weeks.
- Stage 4 – Final Capability Meeting. The outcome of this meeting may result in a recommendation of dismissal.

- 10.3 Matters to be addressed under a capability meeting 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 Director or above, the matter should be referred to the Chairman of the Board.
- 10.4 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.

## **11. Stage 2 – First Capability Meeting**

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

### **11.1 Before the Meeting**

The employee will be advised in writing of the decision to hold a Stage 2 First 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

11.2 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.

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

### **11.4 During the Meeting**

The purpose of the meeting is to:

- clearly identify to the employee the areas in which they are underperforming 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

### **11.5 After the Meeting**

The senior line manager conducting the meeting should give the 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 maximum of 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 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 5 working days, otherwise they will be deemed accurate. The senior line manager should provide a copy of the notes to the union representative, if applicable.

### **11.6 Following the Review Period**

The line manager must invite the employee to attend a meeting. The employee may be accompanied by a trade union representative or workplace colleague. During the meeting the line manager will either;

1. inform the employee that they have met the performance standard expected of them and that formal action has now ended. The employee will be reminded of the need to sustain the improved level of performance. Further instances of underperformance within a 12 month period will be dealt with through a capability meeting without the need to complete stage 1 again.  
Or
2. Inform the employee that it is necessary to invoke Stage 3 Second Capability meeting under the procedure.

This will be confirmed in writing to the employee following the meeting and the letter will be retained on the employee's HR file.

## **12. Stage 3 – Second Capability Meeting**

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

### **12.1 Before the Meeting**

The employee will be advised in writing of the decision to hold a Stage 3 Second 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

12.2 In circumstances when the employee's 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.

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

### **12.4 During the Meeting**

The purpose of the meeting is to:

- clearly identify to the employee the areas in which they are underperforming 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

### **12.5 After the Meeting**

The senior line manager conducting the meeting should give the 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 which should be for a maximum of 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 5 working days, otherwise they will be deemed accurate. The senior line manager should provide a copy of the notes to the union representative, if applicable.

## **12.6 Following the Review Period**

The line manager must invite the employee to attend a meeting. The employee may be accompanied by a trade union representative or workplace colleague. During the meeting the line manager will either;

1. inform the employee that they have met the performance standard expected of them and that formal action has now ended. The employee will be reminded of the need to sustain the improved level of performance. Further instances of underperformance within a 12 month period will be dealt with through a capability meeting without the need to complete stage 1 again.  
Or;
2. Inform the employee that it is necessary to invoke Stage 3 Final Capability meeting under the procedure.

This will be confirmed in writing to the employee following the meeting and the letter will be retained on the employee's HR file.

## **13. Stage 4 – Final Capability Meeting Consideration for Dismissal**

13.1 A decision to dismiss a permanent employee may only be taken by a grade at Director or above who will chair the Final Capability Meeting. The employee will be advised in writing of the decision to hold a Stage 4 Final Capability 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 (or nominated HR representative) 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

13.2 In circumstances when the employee's 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.

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**

13.5 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.

13.6 The Director or above 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.

#### **13.7 After the Meeting**

13.8 The Director or above and the Head of HR (or nominated HR representative) will review all actions taken to ensure that all procedures have been followed correctly.

13.9 The Director or above 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

13.10 The Director or above 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 5 working days, otherwise they will be deemed accurate. A copy of the notes will also be provided to the union representative, if applicable.

## **14. Appeals against action in Stages 2 and 3**

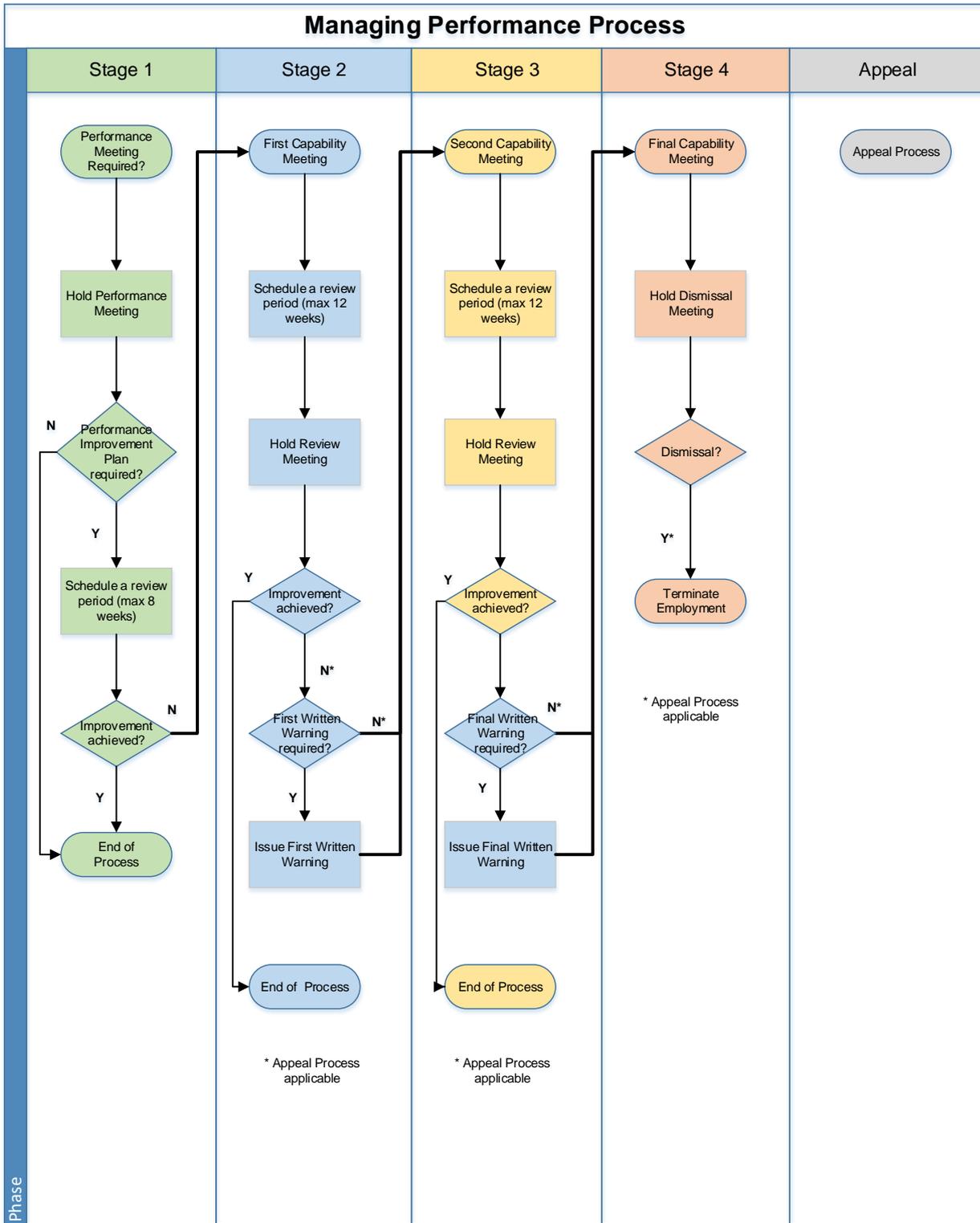
- 14.1 An employee has the right of appeal against any finding and sanction under Stages 2 and 3.
- 14.2 Employees must exercise their right of appeal by writing within 10 working days of being notified of the decision to a named person, giving a statement of the case and grounds for appeal along with copies of any documentary evidence they intend to rely on at the appeal hearing.
- 14.3 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.
- 14.4 The Head of HR or nominated representative 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.
- 14.5 For appeals heard by board members the Board Secretary will be in attendance at the hearing and may seek HR advice as necessary.
- 14.6 The appeal hearing will normally take place within 10 working days of the receipt of the appeal request.
- 14.7 The employee has the right to be accompanied to the hearing by a trade union representative or work colleague.
- 14.8 The manager/or panel of Board members 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.
- 14.9 The hearing may be adjourned if this is deemed necessary.
- 14.10 The manager or panel of Board members 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.
  - Overrule and rescind the original decision to extend the review period or to proceed to the next stage of the formal procedure.
- 14.11 A copy of the decision will be sent to the employee's line manager and the original decision maker.
- 14.12 The decision made at appeal will be final and there will no further internal right of appeal.

## **15. Appeals against Stage 4 dismissal**

- 15.1 Appeals against dismissal will be heard, in the first instance by the Chief Executive. Should the initial decision have been taken by the Chief Executive an appeal will be heard by a panel of members of the Board.
- 15.2 Employees must exercise their right of appeal by writing, to the Chief Executive 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.
- 15.3 The Head of HR or nominated representative 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.
- 15.4 For appeals heard by board members the Board Secretary will be in attendance at the hearing and may seek HR advice as necessary.
- 15.5 The appeal hearing will normally take place within 10 working days of the receipt of the appeal request.
- 15.6 The employee has the right to be accompanied to the hearing by a trade union representative or work colleague.
- 15.7 The Chief Executive 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.
- 15.8 The hearing may be adjourned if this is deemed necessary.
- 15.9 The Chief Executive 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 procedure.
  - Overrule and rescind the original decision to extend the review period or to proceed to the next stage of the fl procedure.
- 15.10 A copy of the decision will be sent to the employee's line manager and the original decision maker.
- 15.11 The decision made at appeal will be final and there will no further internal right of appeal.

## Annex 1

## Managing Performance Process



## **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 on form Annex 1 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 on Annex 1. 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 Stage 2/Stage 3 of the performance capability procedure if the employee fails to show adequate improvement.

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

**Section A:**

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

**Section B:**

<b>Improvement Objective</b> <i>(What specifically must the individual do to improve their performance to meet expected standard?)</i>	<b>Performance Measures</b> <i>(How will you know when the expected standards of performance have been met?)</i>	<b>Additional Support Required</b> <i>(What additional development or support does the individual require in order to achieve the expected standards?)</i>	<b>Review Schedule</b> <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 2/Stage 3 of the performance capability procedure if the employee fails to show sufficient improvement.	Inform employee the matter will proceed to the next step in the I procedure. Consult with HR to progress.	

Employee signature \_\_\_\_\_ Line Manager signature \_\_\_\_\_

Date \_\_\_\_\_