

## Formal procedures – less than effective performance

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### Using formal procedures

Formal procedures should be applied when informal procedures have failed to secure the necessary improvement in performance. An HR adviser should be contacted as soon as a manager has concerns that an individual's performance is of a more serious nature.

Formal procedures apply to colleagues who have successfully passed their probation period and have been in their post or grade for nine months or longer.

Managers and colleagues will continue to receive support from the HR adviser and development adviser throughout the formal procedures.

The HR adviser may delay the formal procedures:

- if it is clear that the manager has not acted on the issues agreed during the informal stage, or
- if it comes to light that there are mitigating circumstances relating to the individual's performance which are new or have not been identified previously

A further informal period to improve may then be agreed.

Under these formal procedures, where a 'partly effective' performance marking is given, the individual's salary is not affected. Where a 'not effective' performance marking is given the individual will not receive a pay award and their salary will be frozen.

The formal procedures follow five steps, explained in the pages of this guide, and colleagues have the right to appeal.

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### Meeting to discuss performance concerns

Managers will set out their areas of concern in a letter inviting their colleague to a meeting with them and the HR adviser. The purpose of the meeting is to discuss the performance, the basis of the concerns and the possible causes. It is also to agree an action plan to bring the colleague's performance up to an effective standard.

The letter will explain that this is the first stage of a formal procedure aimed at helping the individual improve their performance and sustain it at an effective level. It will also be a first warning about the possible consequences of continued underperformance.

#### Next step

Following the meeting, an action plan to improve performance should be agreed.

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### Action plan to improve performance

Managers and colleagues will agree an action plan setting out:

- the performance concerns
- the improvement that is required
- the support that will be given to secure the required improvement in performance
- the timescale for achieving the required improvement (referred to as the improvement period)
- a review date

The timescale set for the improvement period can vary, but won't normally be less than three months. It will be set and agreed by managers and the HR adviser, taking account of any views expressed by the colleague affected.

In the event that it is not possible to agree an action plan, an arbiter will be appointed from within HR to review the case. The arbiter's decision will be final.

#### Next step

Performance will be monitored and reviewed at the end of the period set out in the action plan.

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### First improvement period

During this period, the manager will give support and encouragement, monitor performance, give feedback and advise the colleague affected if no improvement is being made. They should take account of any mitigating circumstances that have been identified.

Colleagues on an improvement period can't apply for advertised posts.

At the end of the improvement period, and in consultation with the HR adviser, the manager will review their colleague's performance.

### Where performance is assessed as effective

Managers should write to their colleague recognising the improvement, confirming no further action will be taken and making clear that their improved performance must be maintained.

### Where performance remains below an effective standard

Managers should immediately complete a performance appraisal and award a partly effective or not effective performance marking.

Where this is the case, a second improvement period will begin.

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## Second improvement period

Where a partly effective or not effective performance marking has been awarded:

- the colleague will be invited to a further meeting with their manager and the HR adviser to discuss their continued underperformance
- a further action plan will be agreed
- managers will write to the colleague describing the action plan and advising of their right to appeal

The letter will act as a final warning. If performance doesn't improve to an effective standard during this second improvement period, the colleague may be dismissed or subject to other action.

During this period:

- managers should continue to take account of any mitigating circumstances
- colleagues cannot apply for advertised jobs

At the end of the improvement period, managers should discuss performance with the HR adviser and then carry out a performance appraisal.

### **Where performance is assessed as effective (or better)**

Managers should write to colleagues confirming no further action is required, but that their improved performance must be maintained.

### **Where performance is assessed as partly effective or not effective**

The next step is for the managers to refer the issue to an assessment board for consideration and appropriate action.

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## Assessment board

An assessment board will be convened to decide on an appropriate outcome. That outcome may be downgrading, dismissal or other alternatives.

The assessment board will:

- include an HR adviser with no previous involvement
- be chaired by a colleague from Band C or above (and at at least one management level higher than the individual concerned), outwith the DG family or agency, with management experience and no previous involvement in the case
- receive a factual report prepared by the HR adviser involved in the case, summarising events and providing copies of all relevant papers

A copy of the report, details of the board membership, the performance concerns and their basis will be sent to the colleague affected, along with an invitation to attend a meeting. Colleagues have the right to be accompanied by a colleague or a trade union representative (if a member).

The assessment board will reach a decision quickly and write to the colleague to inform them of the outcome. In the event of a decision to dismiss, the colleague will be advised of the reasons for dismissal, the date their employment contract will terminate and any period of notice. Colleagues have the right to appeal decisions.

Separate arrangements apply for non-departmental public bodies (NDPBs).

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### Right to appeal decisions

Individuals have the right to appeal against the assessment board's decision. Details will be provided in the board's decision letter.

Appeals must be lodged within the timescale set out in the board's decision letter. The appeal hearing will be held within 21 working days of the board's decision letter. The outcome of the appeal hearing will be issued within two working days.

Appeals will be heard by a member of the Senior Civil Service who has not been party to the decision or action and who is from outwith the colleague's DG family or agency. The decision of the senior civil servant hearing the appeal will be final.

Individuals will be given the opportunity to make written and oral representations and they may be accompanied at the appeal proceedings by a colleague or trade union representative (if a member).

Separate arrangements apply for non-departmental public bodies (NDPBs).

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