



ADVICE

on

Advice on managing poor performance

June 2011

This guide provides practical advice and guidance on managing poor performance. We have provided legal information for guidance only, so you should not consider it to be a complete statement of the law. It may be wise to get legal advice. If you need more help, you can contact us (our contact details are at the front of this booklet).

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Introduction

Poor work performance has a negative impact on productivity and workplace effectiveness and in severe cases could lead to an increase of workplace accidents. In addition, failure to address poor performance could cause resentment and have a negative impact on those employees are performing to a satisfactory standard. This booklet is designed to provide employers with some guidance on identifying causes of and dealing with instances of poor work performance.

Managing poor work performance should be part of an overall performance management process which also includes carrying out regular appraisals and identifying and meeting learning and development needs. This booklet focuses on addressing poor work performance via performance improvement.

Measuring performance

In order to make a determination that an employee is not performing to an acceptable level it is essential that some sort of performance measure/standard has been identified in advance and the employee's performance has been properly assessed against this. The type of measure used will ultimately vary from role to role and the list below provides a few examples of measurement tools.

- Detailed job description – which has been issued and discussed with the employee, will assist in determining if an employee is meeting the necessary work requirements described/outlined in the job description. This should be regularly updated to reflect changes in the role.
- Targets – the use of pre-set targets (common in a sales role) which are realistic and achievable can enable an employer to determine whether an employee is achieving the standard required of them.
- Quality controls – may be useful where the quality of the service is essential and can be monitored through such things as; the nature and level of complaints, observation of the employee and review and discussion of previous performance.
- Competency frameworks – which focus on the key behaviours that are required to achieve competent performance and can be helpful in identifying which aspects of the employee's performance, are not yet competent.

Regardless of the performance measure that is used it is important that employees are involved in their development so that they have a clear understanding of what is expected of them and timescales and expectations therein.

General procedural issues

While the procedure for dealing with poor performance may vary with the nature of the underlying cause there are two general procedural steps that should apply as detailed below:

- Investigation – to ascertain the underlying causes of poor performance. This requires the employer to gather information to establish that there is a decline in performance and then discuss this with the employee to establish the underlying cause.
- Review meetings – to outline the required performance improvement, goal/target setting and then a subsequent review-to establish the achievement against targeted improvements.

Identifying underlying causes of poor performance

When it becomes apparent that an employee is not performing to the standard required it is important to identify the underlying causes for poor performance. Poor performance could be related to:

- lack of application to the role;
- lack of capability/skills in general;
- lack of capability due to illness or injury.

Each of these situations will call for different remedial actions thus emphasising the importance of correctly identifying the cause of poor performance. The points detailed below can help an employer identify the underlying cause(s). This includes a review of:

- how long the employee has been underperforming;
- current staffing levels – reduced staffing and increased pressure could be having a negative impact on performance;
- the employee's past work performance;
- changes in the organisation –changes within the organisation could temporarily have an impact on performance, eg, the employee is struggling with new technology or ways of working, or

obsolete equipment impairs the employee's ability to perform to the required standard;

- factors external to the organisation – a downturn in the market/sector within which the organisation competes may have a negative impact on the employee's performance;
- change in personal circumstances – are you aware of any change in the employee's personal circumstances that could be impacting on their performance;
- relationships within the workplace – interpersonal conflict, or in extreme cases instances of bullying could have a negative impact on the employee's work performance;
- workplace stress – are there any indications that the employee is suffering from work-related stress which could be having a negative impact on their performance¹;
- the employee's record during the probationary period.

Considering these factors will enable an employer to build a more accurate and informed picture of the employee's performance and identify which, if any external factors could be affecting their performance.

The next step is to approach the employee to discuss their performance issues with a view to clarifying the underlying causes of the decline in their work performance.

Lack of application

This can also be referred to as 'can do, won't do' when the employee has the necessary skills and abilities to perform the role but is not applying these and, as a result, there is a decline in their performance. Before deciding what action to take an employer should establish why the employee is behaving in this manner, for example:

¹ It should be remembered that there is an increasing body of case law which has found employers culpable for claims arising from workplace stress and associated with an employer's general duty of care for employees. It is, therefore vital that employers fully consider whether the work itself, the management of the work, or volume of work have contributed to create unfair stress on the employee which is a significant factor in the reduced or inadequate performance. If an employer believes that this may be the case it will be necessary to address the causal issues before considering any corrective measures through the disciplinary procedure.

- is the employee demotivated – if so, why?
- is the role very routine or repetitive and needs to be enriched, enlarged or rotated?
- are there any personal problems impacting on the individual?
- are there any conflict issues within their team/organisation which could be impacting on their application?

Considering factors such as these will help the employer determine what the appropriate remedial action is. If an employee is demotivated because of a lack of feedback, appropriate reward, etc, then disciplinary action is unlikely to lead to any improvement. Likewise disciplinary action is unlikely to produce an upturn in performance if the reason is related to the routine nature of the role, personal circumstances or conflict – these issues may need to be addressed before an improvement in performance can be gained.

However, if the employer is satisfied that there are no internal or external circumstances impacting on the employee's application then, in the first instance, it is suggested that the employer follows the procedure detailed below.

1. Have an informal meeting with the employee outlining the areas where their performance is in decline and agree goals/targets and a review date.
2. Review the performance at the review date and determine if there has been any improvement. If there has been an acceptably significant improvement then no further action should be necessary. If there has been some improvement then perhaps the employer could identify the areas where the employee needs further improvement and set a further review date.
3. If there has been no significant improvement the employer may contemplate the use of the disciplinary/dismissal procedure. The appropriate penalty will vary with the relevant disciplinary procedure but it is strongly recommended that dismissal for a first occurrence is inappropriate. To ensure fairness of dismissal in

these circumstances the employer must demonstrate that an employee was given sufficient opportunity to improve.

Further guidance on carrying out disciplinary action is available in the Agency's Code of Practice – Disciplinary and Grievance Procedures (download from http://www.lra.org.uk/index/agency_publications-2/advice_and_guidance_on_employment_matters-3/codes_of_practice-2/disciplinary_and_grievance_procedures_-_3rd-april_2011.htm) or by contacting the Enquiry Helpline on 028 9032 1442.

Lack of Capability/Skills

Poor work performance could occur as a result of the employee's inability to carry out the role competently. Lack of capability could be a result of inadequate training or resources, provision of inadequate work instructions or a lack of appropriate skills. Each of these factors is discussed below.

- Inadequate or inappropriate training - the employee may not have been provided with the necessary training to carry out the role or the training has not been properly provided. In this case the employer should provide adequate training for the employee and review performance after training has been provided. Training does not necessarily mean external or formal training courses as very often, work shadowing and observation can be equally effective.
- Inadequate resources - the employee may not have been provided with the necessary resources to enable them to carry out their role competently, eg, they do not have a computer or the correct tools, or sufficient support from other departments. In this case the employer should identify what the correct resources are and whether it is feasible to provide these. If resources are not available then the employer may need to consider making adjustments to the role/outputs to bring about an improvement in performance.
- Inadequate or poor instructions - the employee may not have been given clear instructions on how to complete work tasks or has been given contradictory guidance from one or more persons. In

this case an improvement in performance could readily be gained by providing singular and clear work instructions. Performance should be reviewed some time after proper work instructions have been provided to establish whether a satisfactory improvement has been reached.

- Lack of necessary skills/abilities – if adequate training and instruction has been provided it may be that the individual is simply unable to carry out the role because they do not have the necessary skills. In the first instance the employer should ensure that further training has been offered to help develop the relevant skills, but if this does not bring about improvement the employer should consider whether the employee can be redeployed within the organisation. If this is not a possibility the employer may choose at this stage to terminate the employee's contract of employment, in accordance with the procedures mentioned earlier, on the grounds of capability. Capability is one of the potentially fair reasons for dismissal, provided the employer follows the statutory dismissal procedure (as set out in the Agency's Code of Practice as detailed below) and can demonstrate that the decision to dismiss was reasonable, ie, the employee had been provided with every opportunity to improve but that improvement did not occur and there were no redeployment opportunities available.

Further guidance on carrying out capability dismissals is available in the Agency's Code of Practice, Disciplinary and Grievance procedures (Download from http://www.lra.org.uk/index/agency_publications-2/advice_and_guidance_on_employment_matters-3/codes_of_practice-2/disciplinary_and_grievance_procedures_-_3rd-april_2011.htm)

Lack of capability due to illness or injury

An employee's work performance may become impaired as a result of illness or injury. Impairment due to illness and injury could be a result of:

- long-term sickness;
- disability;
- temporary impairment as a result of illness or injury.

- Long-term sickness

A serious illness or injury may prevent an employee from returning to work and fulfilling their role. In this case an employer is advised to consider, the points discussed below before making a decision about the employees continued employment.

- Carry out regular consultation and communication with the employee to keep up-to-date on the employee's progress and ascertain if and when they may be able to return to work.
- Seek a medical opinion – through the employee's GP or the Company's Occupational Health Advisor. This will enable an employer to make an informed decision about the employee's return to work and possible adjustments.
- Consider making adjustments to role/hours, etc, to facilitate the employee's return to work, eg, use of lighter duties for a temporary period.
- Consider the use of a phased return to work to enable the employee to return on a gradual basis.
- Consider redeploying the employee in another role if they cannot return to their original role.
- Dismissal – if the employee is unable to return or alternative work is not available. Though to ensure this is deemed fair an employer must demonstrate that they made every effort possible to facilitate the employee's return to work.

Detailed guidance on handling long-term sickness is available in the Agency's Guide Advice on Managing Absence from work. (Download from http://www.lra.org.uk/index/agency_publications-2/advice_and_guidance_on_employment_matters-3/advisory_guides2/advice_on_managing_absence_from_work-4.htm)

- **Disability**

An employee may have a pre-existing disability or develop a disability which has an impact on their ability to perform their role. However, this is a complex area of law developing all the time and under The Disability Discrimination Act 1995 *disability is defined as 'a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities.'* Employers are obligated to make reasonable adjustments to enable a disabled person to carry out their role. If an employee's disability is having a negative impact on their performance an employer must consider which reasonable adjustments they could make to enable the person to carry out the role to a more satisfactory standard. Adjustments will vary from role to role, but could include:

- use of technological aids;
- making a role or workplace more accessible;
- changes to duties;
- amendments to performance measures;
- amendments to working hours or shifts;
- increased rest periods.

This is not an exhaustive list and it is recommended that employers seek further advice from the Equality Commission on 028 9089 0890 or 028 9050 0600.

If no reasonable adjustments can be made to facilitate the individual in their existing role an employer should consider redeployment opportunities. If an employer is unable to accommodate a disabled

employee who is unable to undertake their role then they may ultimately consider dismissal on the grounds of capability, however this area of dismissal is notoriously complex. Guidance on handling dismissal is available in the Agency's Code of Practice, Discipline and Grievance Procedures. (Download from

http://www.lra.org.uk/index/agency_publications-2/advice_and_guidance_on_employment_matters-3/codes_of_practice-2/disciplinary_and_grievance_procedures_-_3rd-april_2011.htm

If the decision to dismiss on grounds of incapacity due to disability is taken the employer will need to demonstrate reasonableness, eg, that the decision to dismiss was not taken before ample consideration was given to making adjustments or redeployment. It is recommended that advice and guidance is sought from the Labour Relations Agency and the Equality Commission before contemplating dismissal in this situation.

- **Other temporary impairment as a result of illness or injury**

An employee's performance may become temporarily impaired as a result of illness or injury. Regardless of whether the injury was sustained at or outside work it is recommended that the approach to handling this is the same. Due to the temporary nature of the impairment any remedial action to facilitate the employee's attendance and ability to perform the role may also be temporary.

It is suggested that an employer consider the following:

- establish the nature of the impairment;
- with the employee's consent, seek medical advice or referral to an Occupational Health Advisor for further details;
- identify which aspects of the employee's work performance will be affected by the impairment;

- consider, with the employee's agreement, what adjustments can be made to enable the employee to resume working. This could include:
 - a temporary adjustment to hours of work or shift pattern;
 - temporary adjustment/reduction in targets/outputs;
 - reallocation of duties;
 - temporary transfer to alternative position/department;
 - use of technological aids to assist performance.

The use of the most appropriate measure will depend on the potential duration of the impairment and the medical information confirming the employee's ability during the period of impairment. If appropriate a risk assessment could be conducted to establish what aspects of the role/work environment should be adjusted. The employer and employee should meet regularly to review the arrangement. In the event that the impairment appears to have a more substantial or long-term impact on the employee's performance then it is recommended that the guidance in the Disability section (page 9) should be followed.

Summary

An employee's work performance may become impaired for a number of reasons, including illness and injury or lack of application. While the action for dealing with such impairments will vary according to the underlying cause, it is important that an employer demonstrates reasonable behaviour in providing employees with an opportunity to improve performance which is reviewed. A decision to dismiss for capability or conduct reasons should not be taken lightly and only after all other options to encourage improvement have been exhausted and procedures and protocols have been adhered to.

Useful contacts

Labour Relations Agency

2-16 Gordon Street
Belfast, BT1 2LG
028 9032 1442
www.lra.org.uk

Equality Commission for Northern Ireland

Equality House
7 - 9 Shaftesbury Square, Belfast, BT2 7DP
028 90 89 0890
www.equalityni.org

Information Commissioner - Northern Ireland (for guidance on Data Protection Issues)

51 Adelaide Street, Belfast, BT2 8FE
Telephone: 028 9026 9380
Fax: 028 9026 9388
Email: ni@ico.gsi.gov.uk Helpline Number: 01625 54 57 45
www.ico.gov.uk

Employment Medical Advisory Service (EMAS)

Longbridge House
2nd Floor, 20-24 Waring Street, Belfast, BT1 2EB
Tel No 028 9034 7487
Fax No 028 9034 7488
emasmail@detini.gov.uk
www.hseni.gov.uk

Health and Safety Works NI (advice for small businesses)

Longbridge House
16-24 Waring Street, Belfast, BT1 2DX
Phone: 0300 020 0030
Textphone: 028 9054 6896
Fax: 028 9034 7490
E-mail: hswni@detini.gov.uk

Labour Relations Agency

Head Office, 2-16 Gordon Street, Belfast BT1 2LG

Phone 028 9032 1442

Regional Office, 1-3 Guildhall Street, Londonderry BT48 6BB

Phone 028 7126 9639

Website www.lra.org.uk

E-mail info@lra.org.uk