

CITIZENS ADVICE REIGATE AND BANSTEAD MANAGING UNDERPERFORMANCE POLICY AND PROCEDURE

1. Introduction

This document outlines the process when issues arise with Citizens Advice Reigate and Banstead employees in relation to poor performance.

[Performance Improvement Plan - Review Form](#) [ 480 kb]

2. Requirements that must be met

2.1 ACAS Code

2.1.1 Continuous improvement

Managing employees' performance is a continuous process and involves making sure that the performance of employees contributes to the goals of Citizens Advice Reigate and Banstead as a whole. The aim is to continuously improve the performance of individuals and Citizens Advice Reigate and Banstead.

2.1.2 The ACAS Code of Practice on Disciplinary and Grievance Procedures represents best practice on how to tackle issues ensuring they are dealt with fairly and that reasonable action has been taken. The ACAS Code of Practice on Disciplinary and Grievance Procedures must be followed in cases where employment is being terminated due to poor performance.

2.2 Case law

[Polkey v AE Dayton Services Ltd \(formerly Edmund Walker \(Holdings\) Ltd\) \[1987\] IRLR 503 HL](#). The House of Lords emphasised that an employer will not normally be acting reasonably in dismissing an employee unless it follows a fair procedure. In the context of incapacity, Lord Bridge said that the fair employer would give the employee "fair warning and an opportunity to mend his ways and show he can do the job".

Example - An employee who has been in post for three years is underperforming in his or her role - they are not meeting important deadlines, the manager does not tell the employee that they have concerns over their performance and does not give the employee an opportunity to improve. The manager invites the employee to a meeting to dismiss the employee for underperformance - this is seen by employment law as unreasonable and therefore the dismissal could be seen as unfair as they were not given a fair chance to show they can do the job.

What the manager should have done, is determine the reason for the issues in performance, could they have helped the employee in any way i.e training/support then use the performance improvement plans to help the employee reach the required standards in performance - giving them every opportunity to do so. The manager should have followed the procedure in the Managing Under-Performance policy - this would then be seen as a fair procedure.

3. Identifying the cause of poor performance

Poor performance occurs when an employee does not perform the job to the required standard. Poor performance can occur because of:

- lack of capability (i.e. the employee is not able to reach the required standard) or
- misconduct (i.e. the employee is underperforming due to lack of effort).

It is necessary to identify whether the underperformance is caused by one or other or both..

4. Addressing Poor Performance

4.1 Informal Action

In cases of poor performance whether capability or conduct you should try to deal with matters informally initially.

The following steps should be taken:

Action	Purpose and action	Approach
Discussion	<ul style="list-style-type: none"> • Explain the specific problems to the employee. • Set the required standards and ensure the employee understands these. • Discuss the support available e.g. additional guidance and direction from their line manager, training, coaching, help from other colleagues etc. • A performance improvement plan drawn up and agreed with the employee where the issues are capability related. 	A supportive and encouraging approach - informal, open and honest conversation. Most minor problems with performance / misconduct will usually be resolved
Follow-Up	<ul style="list-style-type: none"> • Confirm what happened in the meeting and the actions that have been agreed by sending the performance improvement plan to the employee. • If no performance improvement plan was drawn up as the issue is conduct, confirm to the employee what was discussed, at this informal stage, an email to the employee is sufficient. 	The performance improvement plan or email should: <ul style="list-style-type: none"> • specify the standards required • specify the review period during which improvements should be achieved and sustained • describe the support available to the employee • explain that the informal action is not formal disciplinary action, but that if the employee fails to improve then formal disciplinary procedure may be instigated.
Monitoring	Monitor the employee's performance throughout the review period.	Regular meetings with the employee to facilitate open discussions about the employee's performance in the review process.
Review Meeting	Decision as to whether the employee has reached the required standards of	If the required standards are met and consistently maintained there will be no

	<p>capability or conduct at the set date following the review period.</p>	<p>further action. Records of the informal action will be kept on the employee's personnel file for reference. If the employee fails to meet and / or maintain the standards required, despite the appropriate support, the line manager may extend the review period or initiate formal action.</p>
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4.2 Performance Improvement Plans

Performance improvement plans provide a framework to discuss any performance issues in detail and plan the employee's improvement. The manager's expectations should be clearly set out and the level of performance required in the role, plus the timescale for improvement.

The purpose of the performance improvement plan is to enable both the manager and employees to communicate with a higher degree of clarity about the level of performance expected in the role, specifically addressing areas where the employee is currently underperforming.

They are to be used at the informal stage of managing an employee's performance, before any disciplinary action has taken place and where initial discussions about performance have not brought about any change.

They can also be used if formal action has been taken, in order to help the employee reach the desired level of performance and to provide evidence to establish whether performance has improved sufficiently after the formal warning or whether it is necessary to proceed to the next stage of the disciplinary process.

4.3 Devising a performance improvement plan

The following should be discussed with the employee when establishing a performance improvement plan:

- exactly which aspects of performance need to be improved (specific with examples);
- the level of performance expected and that it must be performed on a consistent and sustained basis;
- the training and other support and resources that can be provided to assist the employee;
- the measurements that will be considered in evaluating progress and the plan for providing feedback to the employee - SMART goals/objectives;
- the consequences if performance standards are not met i.e. failure to demonstrate improvement may result in disciplinary action (or further disciplinary action if a warning has already been given) for unsatisfactory performance.

Behaviour & conduct will not be included on a performance improvement plan.

4.4 Behaviour & conduct

Behaviour and conduct issues include:

- High sickness absence
- Lateness/poor timekeeping
- Refusal to carry out a procedure or management instruction
- Walking out on shift

- Unauthorised absence

Generally, conduct issues arise when an employee 'won't do' something rather than them not being able to do it (can't do'). If it is believed that an employee is able to carry out their role (and they have demonstrated this) and the issue is related to them deciding not to, or behaving in an inappropriate way, this should be dealt with under the Disciplinary Policy.

4.5 Monitoring the performance improvement plan

Their performance improvement plan will be monitored and feedback provided to the employee normally through weekly review meetings. All discussions, from the initial meeting and subsequent review meetings, must be recorded formally in writing and a copy kept on the employee's personnel file.

If there is insufficient improvement in the employee's performance within the timescales agreed in the plan then disciplinary action (or further disciplinary action) may be necessary.

4. Formal Action

If there is no improvement or insufficient improvement in performance following informal action the issues will need to be addressed using a formal process.

4.1 Misconduct issues - Where an employee's issues are in relation to misconduct, i.e. won't do rather than can't do, then Citizens Advice Reigate and Banstead's Disciplinary Policy and Procedure should be followed.

4.2 Capability issues - Citizens Advice Reigate and Banstead's procedure for formally managing under performance because of capability mirrors Citizens Advice Reigate and Banstead's Disciplinary Policy and Procedure. Disciplinary procedure in relation to the stages of the hearings and the outcomes of each stage.

5. Dismissal for capability

5.1 Dismissal by reason of capability or qualifications is potentially a fair reason for dismissal for the purposes of unfair dismissal legislation [Unfair dismissal](#).

- **Qualifications** means any academic, technical or professional qualification that is relevant to the role the employee holds. Dismissals concerning qualifications are very rare and legal advice should be sought on a case by case basis.
- **Capability** means both dismissals for poor performance and dismissal for ill-health.
- Dismissals for **ill-health** reasons are covered in [Sickness absence](#).

In order for a capability dismissal for poor performance to be fair the following steps should have been taken:

- the employee should have been given the chance to improve their performance, which includes offering additional training and support;
- full investigation or appraisal of the employee's performance should have taken place;
- the employee should have been given warnings of the consequences of failing to improve.

The number of warnings for poor performance given to an employee before dismissal is considered will vary depending on the facts of each case. However, for most performance issues an employer is generally expected to go through each stage of its formal procedure before a dismissal for poor performance occurs (giving the employee a reasonable time to improve, and a reasonable opportunity to improve i.e. training and support, in between each warning).

There may be some circumstances where it is appropriate to issue a more serious disciplinary sanction, e.g. final written warning, rather than go through each stage of the formal procedure in turn e.g. a situation where a one-off issue of poor performance has

extremely serious implications for the employer. However, the employer must still act reasonably and follow a fair process before making any decisions.

5.2 Capability Formal Warnings - Stages

5.2.1 Stage 1 - Improvement note for unsatisfactory performance - First written warning

Where informal action has not brought about the desired improvement in performance, an improvement note will be given following the performance /disciplinary meeting. This will include details of the performance problem, the improvement required, a timescale for improvement and review dates. It will also include a statement that, as an outcome, a first written warning may be given. The improvement note will detail the employee's right of appeal. This warning will remain on file for 6 months. As part of the outcome, the Performance Improvement Plan process will continue to take place.

This sanction is where the manager is satisfied that performance is below the required standard, but feels that the employee may be able to reach the required standard. If significant improvement is made after the Stage 1 warning outcome, no further action will take place, however continuous reviews and targets dates will continue as part of the process.

5.2.2 Stage 2 – Continuous Written Warning - Final written warning

Where no sustained improvement has been made within the agreed time frame at the Stage 1 review, Stage 2 will take place as the next phase. It will also include a statement that, as an outcome, a second or final written warning may be given.

This warning will be placed on file. The warning will state that, if there is insufficient improvement within an agreed period of time, the outcome may be dismissal. The warning will detail the employee's right of appeal.

If you have made significant improvement after the stage 2 warning outcome, no further action will be taken although continuous reviews and targets dates will continue as part of the PIP process. Any warning will remain on file for 12 months. If not this may move on to stage 3 of the Performance Procedure which is a final formal meeting.

5.2.3 Stage 3 – Dismissal (with notice)

If there is insufficient improvement after the period notified in Stage 2, a termination outcome may be given with appropriate notice following the disciplinary hearing. This is in line with Rights at work Act 1996, fair dismissal due to capability.

A letter will be sent to you confirming and detailing the reasons for the dismissal and you will be informed of your rights to appeal.

5.2.4 Poor performance in the probationary period

The formal disciplinary procedure does not normally apply in an employee's probationary period. If Citizens Advice Reigate and Banstead is concerned about the employee's performance during the probationary period the employee's line manager should explore the issues with the employee, clearly setting out the areas for improvement.

If, following this informal action, there is no improvement the following procedure will apply:

1. Where the employee's performance is not meeting the requirements of their role If Citizens Advice Reigate and Banstead should need to write to them notifying them of the concerns and inviting them to a meeting to discuss the matter.
2. A meeting will be held to discuss the matter at which the employee has the right to be accompanied by a colleague or trade union official and following which they will be notified of your decision. The employee should note that they are obliged to make all reasonable efforts to attend the meeting.

3. The employee has the right to appeal against the decision taken and at the appeal meeting they will again have the right to be accompanied and following the meeting they will be informed of the final decision in the matter.

6. Further Information

Every case will depend on the particular facts and circumstances. Links to extra guidance: ACAS code and accompanying guidance <http://www.acas.org.uk/media/pdf/b/l/Discipline-and-grievances-Acas-guide.pdf>

- ACAS Code of practice on disciplinary and grievance - <http://www.acas.org.uk/index.aspx?articleid=2174>
- Right to be accompanied

<https://www.citizensadvice.org.uk/bmis/Team/Paid-staff/Performance-and-supervision/Statutory-right-to-be-accompanied/>

- How to Manage Performance Guidance from ACAS - <http://www.acas.org.uk/media/pdf/p/0/How-to-manage-performance-advisory-booklet.pdf>