

# Performance Improvement

**This document outlines the Scottish Prison Service policy in relation to improving employee performance.**

Published by Human Resources, Corporate Services

Published 16 March 2018

**Unlocking Potential - Transforming Lives.**

**Policy Number:**

HR008/v001

**Directorate Owners:**

Corporate Services, Human Resources

**Policy Scope:**

All SPS Employees who have completed their Probationary Period.

**Links to Other Policies:**

[Probation](#)

[Performance Management](#)

[Employee Wellbeing](#)

[Absence Management](#)

[Dignity at Work](#)

[Equal Opportunities in Employment](#)

[Civil Service Management Code](#)

**Approved by:**

Head of Human Resources

**Effective date:**

16 March 2018

**Review Date:**

16 March 2021

## Policy Content

<b>1.0 Introduction</b>	<b>1</b>
<b>2.0 Aim</b>	<b>1</b>
<b>3.0 Policy Statement</b>	<b>1</b>
<b>4.0 Scope</b>	<b>2</b>
<b>5.0 Definitions</b>	<b>2</b>
<b>6.0 Roles and Responsibilities</b>	<b>2</b>
<i>Employee Responsibilities</i>	2
<i>Line Manager Responsibilities</i>	3
<i>Human Resources Responsibilities</i>	3
<b>7.0 Identifying Unsatisfactory Performance</b>	<b>4</b>
<b>8.0 Performance Improvement Process</b>	<b>5</b>
8.1 General Principles	5
<i>Location</i>	5
<i>Invite to Meetings</i>	5
<i>Meeting Outcomes</i>	5
<i>Entry Points to the Process</i>	6
<i>Performance Warnings</i>	6
<i>Appeals</i>	6
<i>Additional Support and Reasonable Adjustments</i>	6
8.2 Informal Performance Improvement Interview	7
8.3 Formal Improvement Process	8
8.4 First Formal Improvement Period	8
8.5 Second Formal Improvement Period	9
8.6 Final Improvement Period	9
8.7 Transfer or Dismissal Interview	10
8.8 Transfer or Dismissal Appeal	11

## 1.0 Introduction

The Scottish Prison Service (SPS) is committed to supporting employees perform their roles efficiently and effectively. This policy sets out the approach the SPS will adopt in situations where performance falls below the required standard. A Performance Improvement Guidance document is available offering further information on the implementation of this policy.

## 2.0 Aim

The aim of the Performance Improvement policy is to address unsatisfactory performance in a supportive manner. Wherever possible, the aim will be to assist the employee to achieve and maintain a satisfactory level of performance. It is recognised that on occasion this may not be possible, and in such circumstances, a lateral transfer, transfer to a lower pay band role or dismissal may be considered, but only where it is demonstrated that all reasonable steps to provide support have been taken, and that the employee has been given a reasonable period of time to achieve the required standard.

## 3.0 Policy Statement

The Performance Improvement policy is intended to deal with situations where an employee is under performing in some area of skill, knowledge, or behaviour, and is unable to carry out the required duties of their post to an acceptable standard. It outlines the role of the line manager in monitoring and supporting employee performance and identifying potential instances of unsatisfactory performance.

Where unsatisfactory performance is identified, this policy outlines the process for bringing unsatisfactory performance to an employee's attention, exploring the reasons for the underperformance and agreeing a plan of support to assist the employee to achieve the required standard. It also outlines how performance improvement will be monitored and further steps that can be taken if satisfactory performance is not achieved within agreed timescales.

All interactions relevant to the application of this policy will be treated with sensitivity, in confidence, and in accordance with the Data Protection Act, and any formal actions relating to the policy will be recorded and communicated to employees in writing.

Nothing within this policy is intended to prevent the normal process of supervisory control, whereby managers allocate work, monitor performance, draw attention to errors and poor quality, and, as importantly, highlight work done well.

## 4.0 Scope

This policy applies to all employees who have successfully completed their probationary period, regardless of the nature of their contract of employment. Instances of unsatisfactory performance during the probationary period should be dealt with using the SPS Probationary policy.

This policy should be read in conjunction with the [Performance Management policy](#). This will assist managers in ensuring employees have a clear understanding of their role and the performance standards required, and are receiving the appropriate development to achieve these. It is not necessary to wait for a performance management review to initiate action under this policy, where it is clear that unsatisfactory performance has been identified.

Where a pattern of unsatisfactory performance emerges, and where there are also attendance or health concerns in relation to the employee, line managers should seek advice and guidance from Human Resources (HR) on the interaction between this policy and the Absence Management policy.

## 5.0 Definitions

For simplification of this document, the following terms and definitions apply:

- **Unsatisfactory Performance** – A pattern of performance or behaviours in one or more aspects of an employee's work that is below the core requirement of their role. This may include, but is not limited to, repeated errors or omissions, failure to meet core role outputs or failure to complete work within required timescales.

## 6.0 Roles and Responsibilities

### *Employee Responsibilities*

- Ensuring they are aware of the standards of performance expected of them, and seeking further guidance if they are unclear;
- Trying, to the best of their ability, to meet the expected standards;

- Approaching their manager at the earliest opportunity where they are having difficulties meeting the expected standards of performance;
- Working with managers to comply with any agreed support measures put in place.

### ***Line Manager Responsibilities***

- Maintaining an on-going dialogue with all employees for whom they are responsible, to ensure they are aware of the standards of performance required;
- Ensuring they monitor and record employee performance on an on-going basis;
- Providing advice, support and feedback to address minor performance issues at an early stage wherever possible;
- Identifying and making timely arrangements for employees to access any training required of them to address essential knowledge or skills gaps;
- Keeping appropriate and confidential records of any actions taken under this policy;
- Ensuring the Performance Improvement Plan supports the achievement of the employees key objectives, and is clearly linked to the Performance Management policy
- Treating personal information about the performance of employees as confidential at all times and discussions with anyone out with the relevant management chain (or HR) would be a breach of confidentiality, which may lead to disciplinary action;
- Ensuring they seek HR advice where necessary and appropriate in the application of this policy.

### ***Human Resources Responsibilities***

- Supporting managers to ensure they understand the policy and the supporting documentation;
- Providing advice, support and coaching to managers in identifying unsatisfactory performance, approaching discussions of unsatisfactory performance, and identifying support and monitoring measures;
- Providing guidance and signposting to further specialist support as required; for example, where there is a potential link between unsatisfactory performance and a disability;
- Ensuring records of action under this policy are appropriately and securely maintained.

## 7.0 Identifying Unsatisfactory Performance

Potential unsatisfactory performance may be identified in a number of ways, including, but not limited to:

- Direct observation by the line manager;
- Review of paperwork, electronic records and other work completed by the employee;
- Complaints (formal or informal);
- Missing agreed deadlines.

Where a potential pattern of unsatisfactory performance is identified, the Line Manager should take a measured approach to considering whether the Performance Improvement process should be initiated. For example:

- If an employee is new to their current role, they should consider if the issue is part of the normal learning process, or of a more serious nature than they would expect of an employee at that stage in their development;
- Where the underperformance is out of character or a one off issue, it may indicate an underlying work or personal issue that can be identified and addressed through the normal supervisory process;
- Where a similar performance issue is observed among a number of employees, it may indicate a general training need or a communication issue within a team.

The Line Manager should consider if the issue can be addressed through other means, such as the normal supervisory process or team briefings/toolbox talks. They may seek additional support and guidance, for example by:

- Discussing their observations with their own manager or, where necessary, another relevant manager. Care should be taken to ensure confidentiality is maintained at all times;
- Seeking advice and support from HR;
- Monitoring the situation for a period of time, the length of which will depend on the nature and seriousness of the performance issue.

Where the Line Manager concludes that the identified issue cannot be addressed through normal support and guidance, the performance improvement process should be initiated.

## 8.0 Performance Improvement Process

### 8.1 General Principles

#### *Location*

All meetings held under the performance improvement process should be held in an office, meeting room, or other suitable workplace location that provides privacy and is free from interruptions as far as is reasonably possible.

#### *Meeting Attendees*

An employee will have the right to be accompanied by a Trade Union representative or work colleague at all formal meetings held under the performance improvement process.

Performance discussions will generally be most productive and effective as a one to one discussion between the First Line Manager and the employee, particularly at the informal performance improvement interview and first formal improvement period meeting stages. Depending on the circumstances, it may be appropriate for an HR representative or additional management representative to attend formal meetings under the process, although this is more common at the second and final improvement period stage. The employee will be informed of any additional attendees in the meeting invite.

At the transfer or dismissal interview stage, an HR representative, generally of HR Business Partner level, will attend to advise the Chair. The Chair may require the Line Manager, or others who have been involved in the process, to attend this meeting to provide additional information on the employee's performance and the actions taken so far. The employee will be informed of any additional attendees in the meeting invite.

#### *Invite to Meetings*

The informal performance improvement interview should be arranged as a face to face discussion between the Line Manager and the employee and will take place at the earliest opportunity. For all other stages, the employee should be provided with written notification of the meeting, their right to be accompanied, and any documentation that will be referred to, at least 5 working days in advance of the meeting.

#### *Meeting Outcomes*

Template letters and performance improvement plans to confirm meeting outcomes are available, and Line Managers are encouraged to seek HR guidance to ensure that the correct outcome paperwork is completed and the employee is provided with a copy at each stage in the process.



All meeting outcomes should be issued within five working days of the meeting date. A copy of all written correspondence issued to the employee during the performance improvement process should be provided to HR at the time of issue. HR will retain the documentation for a period of 12 months following the conclusion of the performance improvement process.

### ***Entry Points to the Process***

Employees will generally enter the performance improvement process at the first possible point; that is the informal performance improvement interview. However, there will be exceptions to this principle:

- Where an employee has had an informal performance improvement interview for a similar performance issue within the preceding 12 months, the process will be started at the first formal improvement period stage;
- Where an improvement period has ended and the employee has a live warning for unsatisfactory performance, the process can be restarted at any stage up to and including the next stage on, from that at which the warning was issued.

### ***Performance Warnings***

Formal performance warnings issued under this policy, as set out in Section 8.3 to 8.6, will remain live as follows:

- Verbal Improvement Warning – 6 months
- Written Improvement Warning – 9 months
- Final Written Improvement Warning – 12 months

### ***Appeals***

The employee will have a right of appeal against an improvement warning issued under the performance improvement process. The right of appeal is to a manager at least one level above the decision maker, and must be lodged within 5 working days of the written confirmation of the warning being issued.

### ***Additional Support and Reasonable Adjustments***

At any stage in the performance improvement process, underlying factors may emerge that are affecting performance, which may require additional support, action or adjustments. Where this relates to a disability (physical or mental health condition), we will accommodate the needs of our employees to ensure they are not substantially disadvantaged when carrying out their job.

Where this relates to a disclosure of bullying, harassment or other work related issues, further help and guidance should be sought from the Dignity at Work policy.

Where information on underlying factors emerge, including where an employee alleges that their Line Manager's approach or management style is a factor in their

underperformance, the Line Manager must take advice from HR on what support and adjustments may be required.

At any stage within the performance improvement process, it may be appropriate, as part of a structured programme of support, for an employee to spend time working in a different team or area of an establishment. Any such temporary move, and the skills or experience that are required to assist the employee in developing, should be agreed and detailed as part of the meeting record (informal performance improvement interview stage) or formal Performance Improvement Plan (first formal improvement stage onwards).

The process provides timescales for improvement periods at each stage, however, on occasion it may be a reasonable adjustment to extend these improvement periods e.g. when there is a disability or other circumstances. Potential extensions to improvement periods should be discussed with HR.

## 8.2 Informal Performance Improvement Interview

The informal performance improvement interview provides a mechanism for a structured and supportive discussion of performance concerns, beyond what can be dealt with through day to day management and feedback. The Line Manager will arrange a one to one meeting with themselves and the employee. At the meeting, the Line Manager will:

- Provide the employee with a copy of this policy;
- Clearly indicate to the employee the nature of the performance concerns and how they have been identified;
- Establish a dialogue with the employee to explore any underlying causes for the performance issue;
- Establish what actions the employee needs to take, and what support or training will be provided to assist the employee to address the performance concerns;
- Set out the criteria that will be used to measure if a suitable improvement has been achieved;
- Set a timescale, of generally 2 to 3 months, after which performance will be reviewed;
- Agree a process for on-going feedback and support during the review period.

The Line Manager will provide the employee with a written record of the meeting, covering the key discussion points and decisions on the points above.

During the review period, the employee should receive regular feedback, positive and negative, on their performance. If, following this period, the employee has achieved satisfactory performance, the Line Manager should meet with the

employee to confirm this and thereafter provide written confirmation to the employee that no further action is required. If satisfactory performance has not been achieved, the Line Manager should meet with the employee to notify them that they are being progressed onto the Formal Improvement process.

### **8.3 Formal Improvement Process**

This is the formal stage of the performance improvement process. While the emphasis remains on support, the meeting will, other than in exceptional extenuating circumstances, generally result in the issuing of an improvement warning on the grounds of unsatisfactory performance, and the employee must be made aware that failure to achieve a satisfactory improvement in performance will lead to further formal action under this policy.

### **8.4 First Formal Improvement Period**

The employee will receive written notification of a meeting as set out in Section 8.1, and details of the performance improvement areas to be discussed. At the meeting the Line Manager will:

- advise the employee of any areas of performance improvement and the areas of unsatisfactory performance that require to be addressed;
- review agreed actions and support from the informal stage, and establish to what extent these have been effective;
- establish what further action by the employee and assistance from management is required;
- set out the criteria that will be used to measure if a suitable improvement has been achieved;
- set a timescale, of generally 2 to 3 months, for the required improvement to be achieved;
- agree a process for on-going feedback and support during the improvement period.

Following the meeting, the Line Manager will provide the employee with a formal Performance Improvement Plan, covering the key discussion points and decisions on the points above. They will also confirm in writing that a Verbal Improvement Warning has been issued, the reasons for a monitoring period being granted, and when the issuing of a warning will be reviewed.

During the improvement period, the employee should receive regular feedback, positive and negative, on their performance. If, following the improvement period, the employee has achieved satisfactory performance, the Line Manager should meet

with the employee to confirm this and thereafter provide written confirmation to the employee that the required standard has been met. However future underperformance, whilst the warning is still live, will lead to the process being restarted as described in Section 8.1. If satisfactory performance has not been achieved, the Line Manager should initiate a Second Formal Improvement period.

## 8.5 Second Formal Improvement Period

The Line Manager will write to the employee giving five working days notice confirming that they are required to attend a Second Formal Improvement Period meeting. The Second Formal Improvement Period meeting will follow the same format as that of the First Formal Improvement Period meeting. In addition to developing an updated formal Performance Improvement Plan, the meeting will, other than in exceptional extenuating circumstances, generally result in the issuing of a Written Improvement Warning on the grounds of unsatisfactory performance. A Second Formal Improvement period will normally last at least 3 months.

If, following the improvement period, the employee has achieved satisfactory performance, the Line Manager should meet with the employee to confirm this, and thereafter, provide written confirmation to the employee that the required standard has been met. Where satisfactory performance has not been achieved, the Line Manager should refer the matter to their Second Line Manager who will determine whether to initiate a Final Improvement Period.

## 8.6 Final Improvement Period

The Second Line Manager will write to the employee giving 5 working days notice confirming they are required to attend a Final Improvement Period meeting. The format for this meeting will be as for the First and Second Formal Improvement Period meeting, and will be chaired by the Second Line Manager. In addition to developing an updated Performance Improvement Plan, the meeting will, other than in exceptional extenuating circumstances, generally result in the issuing of a Final Written Improvement Warning on the grounds of unsatisfactory performance.

If an employee fails to achieve satisfactory performance by the end of the final improvement period, the case will be referred to a transfer or dismissal interview. It is therefore important that there is a close review, including detailed evidence of all support provided to date and of any other support options available. A Final Improvement Period will normally last at least 3 months.

If, following the Final Improvement Period, the employee has achieved satisfactory performance as defined in the Performance Improvement Plan, the Second Line Manager should meet with the employee to confirm this and thereafter, provide written confirmation to the employee that the required standard has been met. If satisfactory performance has not been achieved, within 5 working days of the end of

the Final Improvement Period the Second Line Manager will provide a transfer or dismissal recommendation report to the Governor in Charge/Head of Department (or their nominee). The report will provide:

- Details of the nature of the unsatisfactory performance, any improvement that has been achieved and the remaining performance gap, including copies of any relevant supporting documentation;
- Details of the support that has been provided, including copies of improvement plans, meeting outcomes and any other relevant supporting documentation;
- A recommendation on whether the employee should be transferred, laterally or to a lower graded post, or dismissed. Wherever possible, the option of lateral transfer, then transfer to a lower graded post, should be considered before dismissal. However, depending on the employee's current role and the nature of the performance concerns, this will not always be possible or appropriate.

## 8.7 Transfer or Dismissal Interview

Within 5 working days of receipt of the transfer or dismissal recommendation report, the Governor in Charge/Head of Department (or nominee), will write to the employee providing a copy of the report and supporting documentation, requesting they attend a Transfer or Dismissal Interview. The purpose of the Transfer or Dismissal Interview is:

- To review if the performance improvement process has been correctly applied;
- To review whether appropriate support and time for improvement has been provided;
- To consider the possible outcomes of transfer or dismissal, taking account of the employee's own circumstances and views.

The possible outcomes of the Transfer or Dismissal interview are:

- Offer of a transfer to a substantive role of the same grade but different duties, including a post at another establishment or work location;
- Offer of a transfer to a lower graded post, including a post at another establishment or work location, without pay protection or travel or subsistence allowances;
- Dismissal with pay in lieu of notice;

Where an offer of a transfer is the outcome of the interview, and this is refused, dismissal with pay in lieu of notice will apply.

In exceptional circumstances, it may be possible to award a further final improvement period along with a Final Written Improvement Warning.

Where a decision to dismiss has been taken, this should be managed as outlined in the Civil Service Management Code (Leaving the Civil Service).

## 8.8 Transfer or Dismissal Appeal

The employee will have a right of appeal against a decision to transfer or dismiss.

The right of appeal is to the Internal Dismissal Appeal Board (IDAB) and must be lodged within 5 working days of the written confirmation of the decision to dismiss.

The IDAB will be composed of the Head of Human Resources (or their nominee), who will act as Chairperson, together with 2 senior managers drawn from out with the direct line management chain of the appellant. Where it is appropriate and practicable, at least one of the senior managers will be familiar with the subject area relevant to the appellant's duties.

The employee (or their representative) will have the right to challenge the suitability of the IDAB membership chosen to perform this role. Grounds for challenge should be in writing, and should be submitted to the Head of Human Resources no later than 2 working days after being notified officially of the membership of the Board. The Head of Human Resources will make a final decision on the IDAB membership.

The IDAB shall be entitled to:

- a. confirm the dismissal decision;
- b. overturn the dismissal decision; or
- c. substitute a lesser penalty (i.e. transfer to another role at the same pay band, or to a lower pay band (without pay protection)).

Appeal hearings will be convened in a timely manner, generally within 10 working days [of receipt of the appeal notification]. The employee will have the right to 5 working days notice of the appeal hearing, to be accompanied at the hearing by a Trade Union representative or work colleague, and to present oral and written submissions and evidence in support of their appeal. The employee will normally receive written notification of the outcome of their appeal within 5 working days of the hearing. .

Employees will have the right to legal representation (at their own expense) at any appeal hearing against a dismissal decision. Such right will be confirmed in writing when the dismissal decision is given.

## Further Information:

The SPS recognises that from time to time employees may have questions or concerns relating to Performance Improvement. In certain situations employees' rights and obligations regarding Performance Improvement may change. In these circumstances the SPS will abide by any statutory obligations.

The SPS wishes to encourage open discussion with employees to ensure that questions and problems can be resolved as quickly as possible. Employees are encouraged to seek clarification on any issues with the appropriate Line Manager in the first instance.

## Sustainability

Improving our environmental performance and doing things in a more sustainable way should be seen as integral to our core business practices.

In line with the SPS Sustainable Policy and to demonstrate compliance with the Scottish Government's commitment to improving environmental and sustainable development performance, please be mindful if printing this document – keeping paper usage to a minimum (print only version), printing on both sides, and recycling.

## Equality Statement

The SPS is an equal opportunities employer where all employees are treated with dignity and respect. We are fully committed to equality, diversity and human rights and to ensuring our culture, working environment, policies, processes and practices are free from bias. This policy applies to all employees regardless of protected characteristics, and, subject to any eligibility criteria, length of service, grade, working pattern or operational status.

## Inclusive Communications

It is our ambition to ensure that SPS documents are readable, accessible and engaging for staff.

In formatting this document, good practice principles around engagement and inclusive communications have been adhered to.

If you require this document in an alternative format please contact Human Resources.

## Review and Monitoring

This policy will be reviewed every three years or sooner where applicable to reflect changing business and legislative requirements.

The agreement may be subject to formal review by SPS management and the TUS at national level. A review will be triggered by one of the parties in writing. Discussions between the parties will commence within three months of the written request for review being received.

The policy may be terminated by SPS management at any time, with a minimum of three months' notice. In the event of termination, SPS management and the POA (Scotland) will enter into discussions within one month of the termination of the policy regarding appropriate alternatives, provided either of the parties has indicated in writing to the other (within one month of notice of termination being received) their wish to do so.

## Human Resources Policy and Guidance in SPS

SPS policies take into account current legislation, rules, regulations and best practice guidance from a range of professional and public bodies, including the following:



UK Civil Service Management Code



UK Legislation



EU Legislation



ACAS



CIPD Best Practice