



Derbyshire Constabulary

Guidance on Unsatisfactory Performance Procedures (UPP) for Police Staff

Policy Reference 09/278

This guidance is suitable for Public Disclosure

Owner of Doc: Head of Department, Human Resources

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1. Guidance Identification Page

Guidance title:	Guidance on Unsatisfactory Performance Procedures (UPP) – Police Staff
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Impacts on other policies / guidance / documents (*list*):

Police Staff Discipline Procedure

Security Classification: NOT PROTECTIVELY MARKED
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Guidance to be published on Intranet YES
Guidance to be published on Force Website YES
Guidance disclosable to public via FOI request YES

2. Legislative Compliance

This document has been drafted to comply with the principles of the Human Rights Act. Proportionality has been identified as the key to Human Rights compliance, this means striking a fair balance between the rights of the individual and those of the rest of the community. There must be a reasonable relationship between the aim to be achieved and the means used.

Equality and Diversity issues have also been considered to ensure compliance with the Equality Act 2010 and meet our legal obligation in relation to the equality duty. In addition, Data Protection, Freedom of Information and Health and Safety issues have been considered. Adherence to this policy or procedure will therefore ensure compliance with all relevant legislation and internal policies.

3. Introduction

These procedures are for all police staff members who have completed their probationary period. The guidance covering the probationary period can be found on the Intranet under Policies and Procedures, Police Staff Probationary Guidance.

Employees have a contractual responsibility to perform to a satisfactory level and should be given support and training to do so. The Force has a responsibility in setting realistic and measurable standards of performance and for explaining these to staff.

The purpose of managing unsatisfactory performance is to improve performance to an acceptable level. The aim is to avoid discipline and dismissal. However, if performance does not improve and there are no mitigating factors, disciplinary action may be taken.

The PDR process and PPF role profile should be used to set objectives, make a member of staff aware of the activities and behaviours expected and address any developmental needs. Using the PDR process effectively should reduce the risk of unsatisfactory performance.

The purpose of the procedure is to enable line managers to discuss with staff in an objective and systematic way any perceived failures to meet acceptable performance and identify actions for both parties in order to improve.

Further advice about the procedure may be obtained from:-

- HR
- UNISON

4. GUIDANCE ON MANAGING PERFORMANCE

4.1 Poor Performance

Where employees are found to be performing below standard the matter should be investigated by the line manager before any action is taken. The below may need to be considered;

4.2 Lack of Capability

When dealing with unsatisfactory performance consideration must be given to any underlying reasons which have led to the situation which may be related health issues or lack of skills.

- (a) where there is a gap between the skills of the employee and the present needs of the job. It is possible that over time the skills requirement has changed. In these circumstances, the employee should be assisted through training, support and given a reasonable time to reach the required standard.
- (b) where the employee no longer has the skills through illness or health issues. The provisions of the Equality Act 2010 must be considered.

4.3 Lack of Skills

Skills need to be updated to meet constantly changing demands of the job. Sometimes there may be a gap between a person's personal competencies and the skill needs of the job.

Where this occurs, the line manager should determine what skills are needed, what skills the employee already possesses and what appropriate training and guidance should be provided.

It is essential that the individual is made aware of the expectations of their job, their deficiencies and the proposed training and development programme arranged to provide those additional skills. This should be formalised within the PDR process.

Training will provide the employee with new skills so that they can do their job properly. This requires monitoring and review until performance reaches a satisfactory level.

4.4 External Factors

There may be external circumstances which prevent satisfactory performance such as personal/domestic circumstances (divorce, bereavement, financial problems etc.). Whilst in the short term such circumstances can be supported, in the long term this cannot be allowed to continue. In most cases the appropriate line of action will be to refer the employee to the Employee Assistance Provider, currently CiC.

It would be inappropriate to place sanctions on an employee if it can be seen that the problem is short term and likely to disappear with time and support.

It is very important that the situation is monitored and reviewed with the employee regularly.

4.5 Health Issues

Where performance issues may be due to ill health then a medical review can be put into action. The line manager should contact the HR Officer for further advice and guidance.

During any periods of monitoring performance, it may be appropriate to refer the member of staff to Occupational Health or the Employee Assistance Provider. This should be undertaken in liaison with the member of staff to assist in identifying any underlying health/welfare issues which may be contributing to performance. The referral may identify any issues that fall under the Equality Act which may be impacting upon performance. Advice may need to be obtained in respect of any reasonable adjustments which may be required to assist the member of staff in reaching a satisfactory level of performance.

The purpose of the medical review will be to determine if the employee is: -

- Fit for work.
- Fit for employment but not for that particular job.
- Fit for employment but with reasonable adjustments.
- Permanently unfit.

The medical prognosis will dictate the next course of action.

Where the employee is deemed fit to work then poor performance is likely to be due to another factor.

Where the employee is deemed permanently unfit, then ill-health retirement may be considered. The HR Officer should be consulted.

Sometimes the medical review will determine the employee fit for work but unfit for a specific job. In these circumstances consult the HR Officer so that arrangements can be put into place to look for a suitable alternative role within the Force.

Sometimes the medical review may identify that the employee's performance is affected by disability as defined by the Equality Act 2010, i.e. physical or mental impairment which has a substantial and long term adverse effect on an individual's ability to carry out normal day to day activities. In these circumstances, reasonable adjustment such as the acquisition of a specific piece of equipment, or working shorter hours should be explored. Employees should not be discriminated against because of their disability. Dismissal should only be contemplated when the cause of a poor performance cannot be mitigated by making reasonable adjustment(s).

4.6 Lack of Effort

Where it is evidenced that poor performance is due to a lack of effort – there being no other extraneous factor – then a more formal approach is necessary. The objective is to improve performance to an acceptable level informally but the outcome might result in the commencement of Unsatisfactory Performance Procedures (UPP).

5. MANAGING UNSATISFACTORY PERFORMANCE

It is important that the problem and the reasons for managing unsatisfactory performance are clearly evidenced. This could include:-

- Unsatisfactory quantity of work.
- Need for constant supervision.

- Unsatisfactory quality of work.
- Complaints from colleagues/public.
- Negative attitude and lack of co-operation.

The employee should be advised that there are elements of their work which are unsatisfactory and require further consideration.

The line manager must investigate the unsatisfactory performance and identify and collect all the details and supporting evidence.

When determining the cause of the problem and supporting evidence the following should be considered:-

- What is an acceptable level of performance within the role?
- What examples/evidence have been obtained?
- Is there written evidence?

Having gathered the evidence it is necessary to consider whether to implement UPP.

6. MANAGEMENT ACTION STAGE

Where performance or behaviour has deteriorated, in the first instance, the matter should be addressed *informally* with the aim of finding a joint way forward to improve matters without recourse to UPP. However, if performance does not subsequently improve it is the responsibility of the Line Manager to begin the UPP process with the individual (*Letter one - informal meeting*).

At the informal stage health, disability and or welfare issues should also be reviewed jointly and if required, advice sought from the HR Officer.

If informal discussions have not improved performance, Line Managers should then record the matter in the individual's PDR, a performance improvement action plan should be agreed with the member of staff and an informal warning issued in respect of performance. As the progress of the performance plan is monitored the manager can decide at any point to either close the plan if performance has improved, or, to manage the performance issue through the UPP process. Realistic timescales should be set to monitor performance.

Managers should be aware that it is not necessary to wait until the annual PDR review to commence the UPP process. Performance issues should always be addressed in a timely manner.

If the standards are not achieved following the performance improvement plan or action plan the line manager will determine the appropriateness of moving to a First Stage warning. Advice and guidance can be obtained from HR.

7. THE FORMAL PROCESS

7.1 First Stage Warning

A first stage warning is held if there has been no improvement, insufficient improvement or the improvement is not sustained over a reasonable period of time. If a member of staff reaches this stage it is expected that all previous attempts to seek improved performance have failed.

The line manager should notify the member of staff in writing that they are required to attend a meeting to discuss performance issues (**Letter two**). The letter must also include copies of relevant documents and evidence relating to the underperformance. Where possible the meeting date should be agreed but where this cannot be reached, the manager should specify a date and time. If the member of staff or their representative is not available at that time, an alternative time should be agreed within 5 working days from the date of original meeting.

The relevant HR Officer may also attend the meeting.

The purpose of the meeting is to hear the evidence of unsatisfactory performance and provide the opportunity for the member of staff to put forward their views and any factors impacting upon performance and what they consider could be done to overcome these.

Any documents submitted by the member of staff which were not submitted in advance may be considered at the discretion of the line manager and a short adjournment should be made. The meeting may also be adjourned should the line manager need to check information which has emerged during the course of the meeting.

The line manager should explain the three stages of UPP and that the maximum outcome from the Stage 1 meeting is a formal written warning. It should also be explained that if there is no improvement dismissal may be the final outcome.

At the meeting the manager will:-

- (a) Explain the reasons why performance is considered unsatisfactory.
- (b) Provide the opportunity for the member of staff to respond.

Having considered the above and if, having found the performance unsatisfactory the line manager will:-

- (i) Inform the member of staff of the areas in which performance is not satisfactory.
- (ii) Inform of the improvement required and that if insufficient improvement is made within a period to be determined at the meeting, this may result in progression to a Stage 2 meeting.
- (iii) Agree a further action plan with the member of staff. It is expected that the member of staff will co-operate with this and take responsibility for their own development and improvement.
- (iv) Inform the member of staff that if sufficient improvement is not maintained and sustained during the period of the warning (12 months), they may be required to attend a Stage 2 meeting.
- (v) Consider whether it is appropriate to withhold incremental progression (see Appendix A).

There may be situations where a previously unidentified problem is highlighted. Appropriate action should be undertaken. However, the ultimate aim of the procedure is to improve individual performance. If the member of staff is referred to the Occupational Health Unit or Employee Assistance Provider, performance should continue to be monitored, time scales set and performance reviewed and any reasonable adjustments implemented as appropriate.

After the meeting a letter confirming the first stage warning will be issued by the HR representative which identifies clearly the areas of under-performance and any action plan agreed. The warning will remain in place for a period of 12 months.

The member of staff may appeal the outcome of Stage 1. See Section 9 – Appeal Process.

7.2 Second Stage Warning – Final Written Warning

If the standards are not achieved at any stage during the period of the first stage warning, the line manager will determine the appropriateness of moving to a Stage 2 meeting. Advice and guidance can be obtained from the HR Officer in these cases.

The line manager will then notify the member of staff in writing that they are required to attend a Stage 2 meeting with the second line manager to discuss performance issues (Letter Three). The letter must also be accompanied by copies of relevant documents and evidence/examples relating to the underperformance. Where possible the meeting date should be agreed but where this cannot be reached, the manager should specify a date and time. If the member of staff or their representative is not available at that time, an alternative time should be agreed within 5 working days from the date of original meeting.

The purpose of the meeting is to hear the evidence of unsatisfactory performance and provide the opportunity for the member of staff to put forward their views and any factors impacting upon performance and what they consider could be done to overcome these.

The HR Officer and first line manager may also attend the meeting if circumstances require.

Any documents submitted by the member of staff which were not submitted in advance may be considered at the discretion of the line manager and a short adjournment should be made. The meeting may also be adjourned should the second line manager need to check information which has emerged during the course of the meeting.

At the meeting the second line manager will:-

- a) Explain the reasons why performance is considered unsatisfactory.
- b) Provide the opportunity for the member of staff to respond.

Having considered the above and if, having found the performance unsatisfactory the second line manager will:-

- (i) Inform the member of staff of the areas in which performance is not satisfactory.
- (ii) Inform of the improvement required and that if sufficient improvement is not made within a period to be determined at the meeting, this is likely to result in a third stage meeting and potential dismissal.
- (iii) Inform the member of staff they will receive a final written warning.

- (iv) Inform the member of staff that if insufficient improvement is not maintained during the period of the warning (12 months), they may be required to attend a third stage meeting.
- (v) Agree an action plan to assist the member of staff. It is expected that the member of staff will co-operate with this and take responsibility for their own development and improvement.
- (vi) Consider whether it is appropriate to withhold incremental progression (Appendix 2 refers).

There may be situations where a previously unidentified problem is highlighted. Appropriate action should be undertaken. However, as in Stage 1, the ultimate aim of the procedure is to improve individual performance. If the member of staff is referred to Occupational Health Unit or Employee Assistance Provider, performance should continue to be monitored, time scales set and performance reviewed and any reasonable adjustments implemented as appropriate.

After the meeting a second written warning will be issued which sets out clearly the areas of underperformance and any action plan agreed.

The member of staff may appeal the outcome of Stage 2. See Section 9 – Appeals Process.

7.3 Assessment of Performance following written warnings/Final Written Warning

The line manager must actively monitor performance throughout the specified period of the action plan. Any concerns should be discussed with employee and supportive actions put in place. See Section 4.5 where there are any concerns around health and welfare during assessment.

When the review period has ended the line manager or second line manager must formally assess performance. This formal assessment should be communicated to the member of staff and they can provide evidence of satisfactory or improved performance. The relevant manager should inform the member of staff in writing of the assessment.

Following the assessment of performance period and where performance is satisfactory, the member staff should be reminded that the warning/final written warning will remain valid for the remainder of the 12 month period. If performance is not sustained during this period, then the next stage as appropriate will commence.

7.4 Third Stage Meeting - Dismissal

If performance remains unsatisfactory the line manager should liaise with the relevant HR Officer to recommend progression to Stage Three. The HR Officer will notify the member of staff that they will be required to attend a Stage Three (Dismissal) meeting and Letter Four should be completed. Copies of related documentation in respect of performance must also be included with the letter.

OR

There may be circumstances where the performance is so unsatisfactory that procedures should be initiated at the third stage – usually as a result of a single incident of gross incompetence.

Gross Incompetence can be defined as:-

“a serious inability or failure of a member of staff to perform the duties of the role or grade they are currently undertaking to a satisfactory standard or level, to the extent that dismissal would be justified”.

Approval from the Head of Department should be sought to initiate gross incompetence procedures.

The HR Officer will arrange the Stage 3 meeting and write to the member of staff as soon as dates, times and the panel members are known.

The panel will comprise Chair plus two panel members as follows: -

Chair	Head of Department or Divisional Commander
First Panel Member	Senior HR Business Partner
Second Panel Member	Independent Senior Manager

Panel members will receive copies of all relevant documentation provided for the 1st and 2nd Stage meetings, together with copies of improvement action plans, meeting notes and any documents relating to any appeals. These will be prepared by the relevant HR Officer.

The relevant line manager who undertook the Stage 2 meeting will be required to attend the Meeting in order to present the issues relating to unsatisfactory performance to the panel.

7.4.1 Meeting dates and timeframes

Where possible the Third Stage Meeting should take place no longer than 30 working days after the notification is sent to the member of staff by the second line manager. Any delay will be agreed with the member of staff (Letter four).

As soon as the date is fixed, the HR Officer will notify the panel and the member of staff of the date, place and time.

7.4.2 Procedure at third stage meeting

The Chair will:-

- (a) Explain the reasons why the member of staff has been required to attend.
- (b) Provide the member of staff with the opportunity to make representations.

Having considered any representations, the panel will come to a finding of whether performance has been unsatisfactory or whether the case constitutes gross incompetence. If there is a difference in view between the panel members, the decision will be based on a majority vote.

The third stage meeting will be recorded.

The decision of the panel, with the finding, will be prepared in writing by the Chair of the panel. The letter will state the reasons for the decision and any outcomes. The decision will be sent to the member of staff and line manager. The member of staff has the right of appeal. Possible outcomes are:-

- (a) Issued with a final written warning with consideration as to whether incremental progression should be withheld.
- (b) Dismissal with notice.
- (c) The issue of a final written warning if the panel feels there has been unsatisfactory performance rather, than gross incompetence (if panel set for gross incompetence).

A record should be completed of the decision made. The employee on request must be supplied with a record of the meeting. The member of staff may appeal to the Head of HR – Section - 9 Appeals Process refers.

7.4.3. Witnesses and Evidence

The member of staff may propose a witness or witnesses to attend the meeting and the name(s) submitted to the HR Officer. The attendance of the witnesses must be agreed and this will be relayed by the HR Officer.

Questions for any witnesses must be made through the Chair of the Panel.

Where possible all documents should be submitted in advance. Where a document or evidence is submitted to the panel on the day of the meeting, a short adjournment may be made for consideration of this.

7.4.4 Postponement and Adjournment in cases of absence or ill health

The member of staff does not have to be present for the panel to consider the issues and make a decision. Where the employee informs the panel of non-attendance, or does not attend, but the chair is satisfied there is good reason for this, the meeting may be adjourned.

The re-arranged meeting should take place as soon as practicable but may fall after the 30 day period as outlined above.

If the meeting is re-arranged the HR Officer will notify all parties in writing of the reasons for adjournment and the revised date and time.

7.4.5 Assessment of Performance following Final Written Warning Issued at Third Stage Meeting

In cases where the panel has decided on a Final Written Warning, the line manager will monitor performance over the review period. When this is completed, the panel will assess performance and decide whether there has been sufficient improvement.

If there has been improvement, the chair will write and notify the member of staff. If there has not been improvement, a further stage three meeting will be arranged.

If at the end of the period of the final written warning (12 months from date issued), sufficient improvement has not been sustained, a further third stage meeting will be arranged.

Any further Stage 3 meeting should where possible, comprise the same panel members. Any changes to the panel should be notified to the member of staff as soon as possible. The reconvened meeting will result in dismissal.

8. MONITORING AND REVIEW

The Head of Human Resources is responsible for monitoring the implementation and impact of this policy.

Data held on the Gateway system will be monitored for disproportionate impact on any group of staff.

The guidance will be reviewed bi-annually and the outcome of the monitoring of Gateway will inform this review.

9. APPEALS PROCESS

9.1 First and Second Stage Appeals

A member of staff may appeal against the findings and outcome imposed at stages one and two of the procedure and against the decision to require them to attend a Stage 2 meeting. However, any findings and outcomes from the meetings will continue to apply up to the date the appeal is determined. This means that even if the member of staff appeals, they should follow the terms of the action plan pending the result of the appeal.

The appeal should be made in writing to the relevant manager (first stage appeal) or senior manager (second stage appeal) within 7 days of receipt of the warning. This period may be extended by the manager following an application by the member of staff. The appeal should clearly set out the grounds and evidence for the appeal.

The grounds for appeal are:-

- (a) that the finding is unreasonable.
- (b) that the terms of the action plan are unreasonable.
- (c) that there is critical new evidence which was not considered at the first/second stage meeting.
- (d) That there was a serious breach of the procedures or other unfairness which could have materially affected the finding or the terms of the action plan.

The member of staff has the right to be accompanied and represented by a workplace colleague or trade union representative.

The meeting should be arranged between the relevant senior manager, an independent HR Officer and member of staff. If the member of staff or their representative cannot make this date, they may propose an alternative which must be 5 working days after the first proposed date.

As soon as the date is arranged between the parties, the HR Officer will write to the member of staff outlining notice of the date, time and place of the appeal meeting.

At the meeting the panel will provide the opportunity for the officer and their representative to make representations. The panel may then either:-

- (a) Confirm or reverse the finding.
- (b) Endorse or vary the terms of the action plan.

The member of staff will be given written notice of the decision. The panel should prepare a summary of the reasons for the decision to accompany this.

Any decision made that changes the finding or outcome from the first or second stage meeting will take effect from the date of those meetings.

9.2 Appeal following Stage Three Dismissal

An employee may appeal against the finding and/or outcome imposed. Any findings/outcomes will continue to apply up until the date the appeal is determined so the employee should follow the terms set by the panel until the appeal is concluded.

The Appeal Hearing is not a re-hearing but a re-examination of the original decision and the procedure applied in reaching it.

The Appeal must be submitted in writing to the Head of HR within 10 working days of the employee being notified in writing of the decision.

The grounds of appeal are: -

- a) The finding or outcome imposed was unreasonable.
- b) There is evidence that could not reasonably have been considered at the original hearing which materially affects the outcome or decision.
- c) That there was a breach of the procedures or other unfairness.
- d) The reasons for the appeal (which should be in report format and should set out why the grounds of appeal are applicable to the particular facts and circumstances of the employee's case).
- e) Any supporting documentation.

It may be permissible to submit an appeal after the 10 day deadline, at the discretion of the Chair. The Panel will normally comprise ACPO Officer and Head of HR.

The Chair may agree an extension of time for the submission of the Appeal. Unless there are exceptional circumstances, any extension should be sought in advance of the relevant deadline and should set out clearly why an extension is required.

The member of staff has the right to be represented by a workplace colleague or trade union representative.

The panel shall determine whether the grounds of appeal have been made out. The decision will be notified to the member of staff and the Force within 5 working days of the Hearing.

10. ADDITIONAL GUIDANCE DOCUMENTS

Document 1 -	Warnings Action Plans and Assessment
Document 2 -	Toolkit for the Management of Poor Performance
Document 3 -	Pay scale Progression
Document 4 -	Security and Continuation of Information

NOT PROTECTIVELY MARKED

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